

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

**PRESENT : Sri Chatra Bhukhan Gogoi,
Sessions Judge,
Sonitpur, Tezpur.**

CRIMINAL APPEAL NO. 03 (S-2) 2021

1. Md. Habibur Rahman Khan
2. Md. Imanul Khan
3. Md. Hannan Ali @ Abdul Hannan
4. Md. Farid Khan
5. Md. Saddam Hussain
6. Md. Khurshidul Alom

..... **Appellant.**

- Versus -

1. Musstt. Hanufa Khatun
2. Md. Hanif Ali
3. State of Assam

..... **Respondents.**

A P P E A R A N C E

For the Appellants : Sri F. Haque, Advocate.

For the Respondents : Sri M. C. Baruah, P.P.

Date of Argument : 07-09-2022.

Date of Judgment : 07-09-2022.

JUDGMENT

1. This is an appeal preferred under section 374 (3)(a)(b) of the Criminal Procedure Code, 1973 assailing the impugned judgment and order dated 12-03-2021 passed by Smti Kumari Arti, learned SDJM (S), Sonitpur,

Tezpur in connection with G.R. Case No. 923/2014 u/s 148/325 IPC whereby the learned SDJM convicted and sentenced accused/ appellants to pay fine of ₹1,000/- (Rupees One Thousand) only each u/s 148 IPC and to undergo R.I. for 6 (six) months for the offence u/s 325 IPC.

2. The brief fact of the prosecution case as enumerated in the FIR is that on 22.04.2014 at about 12 PM the appellants/accused persons intervened the son of the informant when he was working in the paddy field. The accused persons verbally and physically assaulted the son of the informant with bamboo causing grievous injury to him. When the informant and some other person tried to restrain the accused persons they also physically assaulted the informant.

3. On receipt of the ejahar, O/C of Tezpur registered the case as Tezpur P.S Case No. 456 of 2014 u/s 147/148/149/447/324/325 IPC and started investigation. On completion of the investigation, the I.O. has submitted charge against accused/ appellants u/s 147/148/149/325 of I.P.C with a view to stand trial.

4. During the course of time, when accused entered their appearance in court, the learned trial court after due compliance of Section 207 Cr.P.C., read over and explained to accused the particulars of the offence u/s 148/324/325 IPC to which accused persons pleaded not guilty and claimed trial.

5. During trial, prosecution side examined as many as 7 (Seven) witnesses including informant and the I.O.

6. Concluding prosecution evidence, accused were examined u/s 313 Cr.P.C. but accused denied all the allegations against them as false and fabricated one. However, on being asked accused denied to adduced any defence evidence.

7. Then, hearing the learned lawyers appearing for both sides and on consideration of the evidence and other materials on record, the learned SDJM vide impugned judgment and order dated 12-03-2021 convicted and sentenced accused/ appellants to pay fine of ₹1,000/- (Rupees One Thousand) only each u/s 148 IPC and to undergo R.I. for 6 (six) months for the offence u/s 325 IPC.

8. On being highly aggrieved and dissatisfied with the impugned judgment and order, the present appeal has been preferred on following grounds amongst others:

(i) That the impugned judgment & order dated 12-03-2021 passed by the learned trial court is not based on sound principles of law and equity hence liable to be set aside.

(ii) That the learned trial court committed grave error in appreciating the evidence on record while passing the impugned judgment of conviction but it is based on surmises and conjectures.

(iii) That the learned trial court while holding the accused guilty u/s 148/325 IPC seems more to be swayed by sentiments than by sound principles of law.

(iv) That at any rate, the judgment of conviction is too hard, harsh and uncalled for under the facts and circumstances of the case because it is an admitted position of the prosecution witnesses that a case had been filed against the injured person Hanif Ali from the side of the accused persons on the same date and the learned trial court was informed about the amicable settlement of the matter between the parties outside the court by moving a petition before the trial court but the trial court did not consider the petition.

9. POINT FOR DETERMINATION:

"Whether the impugned judgment & order dated 12-03-2021 of learned trial court convicting and sentencing of accused/appellants is perverse and unsustainable in law and fact for not appreciating the evidence and law in right perspective making it liable to be interfered with by this court in appeal?"

DISCUSSION, DECISION & REASONS THEREOF:

10. I have heard argument of the learned lawyers appearing for both sides.

11. Learned counsel for the accused/ appellants on behalf of complainant/ respondents filed a petition No. 1956/2022 stating inter alia that though the learned trial court convicted the accused persons for the offences u/s 148/325 IPC and sentenced to pay fine of ₹1,000/- each for offence u/s 148 IPC & to undergo R.I. for 6 (Six) months for offence u/s 325 IPC. However, it is pleaded that during the pendency of the appeal both parties have amicably resolved their differences in view of the prevailing peaceful, harmonious and cordial relationship between the family members of complainant side and accused appellants. Therefore, in the best interest of both parties, they have resolved the differences and the complainant side has no grievance against the accused/ appellants if they are acquitted from the charges u/s 148/325 IPC in appeal.

12. Having heard the contention of the learned lawyers appearing for both sides and on careful consideration of the impugned judgment of learned trial court, it transpires that vide the impugned judgment & order dated 12-03-2021 learned trial court convicted and sentenced the accused persons u/s 148/325 IPC even though charges were initially framed u/s 148/324/325 IPC.

13. Admittedly, the offence u/s 325 IPC is a compoundable offence with the permission of the court but offence u/s 148 IPC is non-compoundable. Be that as it may, when the parties have decided to amicably settle their differences in the best interest of both sides and desires to live happily without any enmity against each other there is no reason to disallow the wishes/ desires of the parties when the law itself mandates that offence can be compounded with the permission of the court. Even though, Section 148 IPC is non-compoundable but the punishment prescribed for the offence may extend to three years or with fine or with both. Nevertheless, the punishment prescribed for the offence u/s 148 IPC is apparently lesser than the punishment prescribed u/s 325 IPC. Therefore, from the point of view of the rationality when the offences prescribing higher punishment has been made compoundable there is little rationality in making the offence non compoundable which prescribes lesser punishment. As such, it is logical that when the offence which prescribes higher punishment has been made

compoundable, the offence which prescribes lesser punishment can also be compounded.

14. In this context, this court gainfully beg to refer a judgment of the Hon'ble Apex Court delivered in **CRIMINAL APPEAL NO. 242 OF 2014 (Dasan Vs. State of Kerala & Anr.)** wherein the Hon'ble Apex Court in para 8 & 9 held as under:

"8. In the circumstances, in our opinion, the appellants conviction under Section 326 of the Penal Code needs to be converted into one under Section 325 of the Penal Code. We accordingly, convert the conviction of the appellant from one under Section 326 of the Penal Code to one under Section 325 of the Penal Code. Offence under Section 325 of the Penal Code is compoundable by the person to whom the hurt is caused with the permission of the court. The question is whether in this case, permission to compound the offence should be granted because PW-2 Uddesh to whom the hurt is caused has made a request to this Court that offence be compounded.

9. In Ram Shanker & Ors. v. State of U.P.,[2] the complainant and the accused had settled the criminal case and an application was made for compounding the offence. The accused were convicted for offence under Section 307 of the Penal Code. This Court converted the conviction of the appellant from one under Section 307 of the Penal Code to that of an offence under Section 325 read with Section 34 of the Penal Code. Permission to compound the offence was granted and the appellants therein were acquitted."

15. Coming back to the facts of the present case, it transpires that the petition No. 1966/2022 has been filed by the complainant & the victim to whom injury was caused by the accused/ appellants stating inter alia that both the families have amicably resolved their differences and have been living life in a congenial atmosphere and in a harmonious and cordial social relationship between them. In the aforesaid judgment of the Hon'ble Apex Court, the Hon'ble Apex Court has allowed the parties to compound the offence u/s 325 IPC in which learned trial court convicted the accused persons and acquitted the accused/ appellants observing that offence u/s 325 IPC is compoundable one with the permission of the court.

16. In the instant case, the accused appellants having been convicted by the learned trial court u/s 148/325 IPC. Admittedly, offence u/s 325 IPC is compoundable and as desired by the informant & victim the offence can very

well be allowed to be compounded but only difficulty is that Section 148 IPC is non-compoundable one but the fact remains that even though offence u/s 148 IPC is non compoundable one but punishment prescribed for the offence is admittedly lower than the punishment prescribed u/s 325 IPC. Therefore, what logically follows is that there should not be any impediment in allowing the party to compound the offence u/s 148 IPC as well to advance the cause of Justice when the offence for which higher punishment has been prescribed is allowed to be compounded. On perusal of the evidence of doctor PW6, it transpires that as against the allegation in the FIR that accused caused injury to the victim with deadly weapon but doctor in his cross-examination stated that the nature of injury suffered can be caused by fall on hard substance. Moreover, in the impugned judgment of the learned trial court there is no specific discussion and finding by learned trial court that accused used deadly weapon in the alleged assault except holding that accused have committed the offence punishable u/s 148/325 IPC.

17. This court has given its anxious consideration to the fact that it was a case of 2014 and ended in conviction only on 12-03-2021. In between accused have rushed in the corridors of justice for about 7 (seven) years and have suffered a lot in the intervening period. Moreover, when this court is inclined to allow the prayer of the party to compound the offence u/s 325 IPC in view of the prevailing interpersonal, cordial and harmonious relationship between the parties, offence u/s 148 IPC can also be allowed to be compounded to serve the ends of justice.

18. In this context, from the impugned judgment it is apparent on record that while convicting and sentencing the accused persons the learned trial court has prima facie committed a mistake by not awarding fine for offence u/s 325 IPC even though, fine is mandatory along with imprisonment for the offence u/s 325 IPC. Apart from this, there is no order that in default of payment of fine for the offence u/s 148 IPC no punishment has been awarded.

19. In view of the foregoing discussion and reasons, the impugned judgment & order dated 12-03-2021 of the learned trial court is hereby set aside. The compounding of the offence under Section 148/325 of IPC is

therefore, allowed. The appellants are accordingly, acquitted. They are on bail. Their bail bonds stands cancelled.

20. The appeal is, accordingly, disposed of.

21. Let the case record of G.R. Case No. 923/2014 of the court of SDJM(S), Sonitpur be send back to the court of learned Chief Judicial Magistrate along with a copy of this judgment for information & doing the needful.

22. Given under my hand and the seal of this court on this **07th day of September, 2022.**

(C.B. Gogoi)
Sessions Judge,
Sonitpur: Tezpur.

Dictated and corrected by me.

(C.B. Gogoi)
Sessions Judge,
Sonitpur, Tezpur.