AHMED ALI & ORS. A

vs.

STATE OF TRIPURA

(Criminal Appeal No. 50 of 2003)

APRIL 29, 2009 B

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860 – ss. 334 and 335 – Voluntarily causing hurt/grievous hurt on provocation – Alteration of C *conviction of two accused from s.324 r/w. s.34 to s.334 r/w s. 34 and sentenced to rigorous imprisonment for one year – Conviction of other two accused altered from s. 304 (Part II) r/w s.34 to s.335 r/w s.34 and sentenced to rigorous imprisonment for two years – On appeal, held: Maximum* D *sentence permissible u/s. 334 is one month, thus sentence u/s. 334 reduced to one month – As regards other accused convicted u/s. 335, sentence reduced to three months – Fine with default stipulation maintained – Sentence/Sentencing.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 2003.

From the Judgment & Order dated 2.8.2002 of the High Court of Guwahati, Agartala Bench in Criminal Appeal No. 15 of 1997.

Rajiv Mehta for the Appellant.

Gopal Singh for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the High Court of Gauhati, Agartala Bench dated 02nd August 2002.

A 2. The factual scenario is to be noted in brief in view of the legal issues involved.

3. The three appellants, viz., Ahmed Ali, Suraj Ali and Mustafa Miah along with another accused, viz., Mamud Ali
B faced trial for alleged commission of offence punishable under Section 302/324/323 read with Section 34 of the Indian Penal Code, 1860 (in short, 'IPC').

4. The occurrence took place on 14th February 1992. The First Information Report was registered indicating the
C commission of offences punishable under Section 325/326 read with Section 34, IPC. On the death of Nural Islam (hereinafter referred to as 'the deceased') Section 302, IPC was added.

D 5. The Trial Court, after considering the evidence on record, came to hold that the accused Mamud Ali and Mustafa Miah were to be convicted in terms of Section 304 Part II read with Section 34, IPC while accused Ahmed Ali and Suraj Ali were to be convicted in terms of Section 324 read with Section
E 34, IPC. Mamud Ali and Mustafa Miah were sentenced to undergo rigorous imprisonment for five years and accused Ahmed Ali and Suraj Ali were sentenced to undergo rigorous imprisonment for two years.

6. All the four accused preferred an appeal before the High
F Court.

7. By the impugned judgment, the High Court altered the conviction of Ahmed Ali and Suraj Ali to Section 334 read with Section 34, IPC and sentenced each of them to undergo
G rigorous imprisonment for one year with a fine of Rs.500/- with default stipulation. Similarly, in respect of Mamud Ali and Mustafa Miah, the conviction was altered to Section 335 read with Section 34, IPC and each was sentenced to undergo rigorous imprisonment for two years and a fine of Rs.1000/- with
H default stipulation.

8. The present appeal has been filed by Ahmed Ali, Suraj Ali and Mustafa Miah.

9. It is submitted that the maximum sentence permissible for an offence under Section 334, IPC is one month and, therefore, the High Court could not have imposed a sentence of one year so far as the accused Ahmed Ali and Suraj Ali are concerned. So far as accused Mustafa Miah is concerned, it is submitted that he was of tender age at the time of occurrence and the maximum sentence permissible relatable to Section 335, IPC is four years.

10. Learned counsel for the respondent-State submitted that though the sentence in terms of Section 334, IPC is prescribed but the High Court has applied the propositions available under Section 324, IPC.

11. Section 334 and 335 read as follows :

"334. Voluntarily causing hurt on provocation.-Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

335. Voluntarily causing grievous hurt on provocation.- Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both."

12. A bare reading of the above provisions shows that the

A maximum sentence permissible under Section 334, IPC is one month. Therefore, the sentence imposed on Ahmed Ali and Suraj Ali is reduced to one month.

13. So far as Mustafa Miah is concerned, the sentence is reduced to three months.
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14. However, the fine amount with default stipulation in respect of the appellants is maintained.

15. The appeal is allowed to the aforesaid extent.

C N.J. Appeal partly allowed.