IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE: SONITPUR AT TEZPUR

PRESENT : Smt. M.R. Sharma
Additional Sessions Judge
Sonitpur, Tezpur

CRIMINAL APPEAL NO. 9 (S-2) OF 2009

[Appeal against the Judgment and Order dated 09-04-2009 passed by Smt. M. Thakuria, learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, in connection with G. R. Case No. 1003 of 2005 under Sections 448 / 326 / 380 / 34 of the Indian Penal Code.]

Sri Bhaskar Kakoti ..... **Accused-appellant**

-VERSUS-

State of Assam ..... **Respondent**

ADVOCATES WHO APPEARED IN THIS CASE

For the Appellant : Sri A. Paul, Advocate

For the State of Assam : Sri H. Serai,
Additional Public Prosecutor

Date of Argument : 24-02-2014, 21-04-2014

Date of Judgment : 13-05-2014

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J U D G M E N T

This appeal has been filed under Section 374 of the Cr.P.C. against the Judgment and Order dated 09-04-2009 passed by Smt. M. Thakuria, learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, in connection with G. R. Case No. 1003 of 2005 under Sections 448 /

326 / 380 / 34 of the Indian Penal Code, whereby she convicted and sentenced the accused-appellants Sri Bulen Kakoti and Sri Bhaskar Kakoti to Rigorous Imprisonment for 2 (two) years and with a fine of Rs. 1000/- (Rupees One Thousand), in default of fine, they will undergo Simple Imprisonment for 2 (two) months each u/s 326 IPC. Further both the accused persons are sentenced to Rigporous Imprisonment for 6 (six) months with a fine of Rs. 500/- each, in default of fine undergo Simple Imprisonment for 1 (one) month u/s 380 IPC. Again both the accused persons are sentenced to Rigorous Imprisonment for 2 (two) months each u/s 448 IPC. The learned Magistrate also directed to run the sentences concurrently.

2. The relevant fact of the prosecution case, in brief, is that on 11-06-2005, the informant Smt. Jayanti Devi lodged an ejahar before the Officer-in-Charge of Bihaguri Police Out Post alleging inter-alia that the appellants wrongfully trespassed in her house on 10-06-2005 and assaulted on the head of her husband with a dao causing grievous injury and also snatched away an amount of Rs. 23,688/-.

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On receipt of the ejahar, the Officer-In-Charge, Tezpur Police Station registered a case being Tezpur P.S. Case No. 474 of 2005 u/s 326 / 380 / 34 IPC and investigated into and on completion of investigation charge sheet was submitted under Sections 448 / 326 / 380 / 34 of the Indian Penal Code against the accused persons.

On appearance of the accused persons before the learned trial Court, i.e. the Court of Additional Chief

Judicial Magistrate, Sonitpur, Tezpur, the learned trial Court framed charges under Sections 448 / 326 / 380 / 34 of the Indian Penal Code against the accused persons, to which on being asked they pleaded not guilty and claimed to face the trial. On conclusion of the evidence of the prosecution side, the learned trial Court examined the accused-appellants u/s 313 Cr.P.C. and after hearing the argument, finding the accused persons guilty of the offences punishable under Sections 448 / 326 / 380 / 34 of the Indian Penal Code, they were convicted and sentenced under the said sections of law, as aforesaid.

3. That being highly aggrieved and dissatisfied with the impugned judgment and order passed by the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, the accused-appellants have preferred this appeal and have prayed to pass an acquittal order by setting aside the impugned order of the learned Magistrate on the following grounds :-

(i) That the impugned order and judgment of conviction and sentence of the learned trial Court is illegal, improper and unjust in law and fact and the same is not sustainable;

(ii) That the finding of the learned Court in the impugned judgment and order of conviction and sentences are neither based on establish principle of law nor on legal and admissible evidence on record;

(iii) That the learned trial Court has miserably failed to appreciate the evidence on records to arrive at just conclusion;

(iv) That the learned trial Court has committed grave error of law in convicting the appellants u/s 326 IPC relying in evidence under Ext. 5, Medical Certificate, and similarly also has committed grave error in taking into consideration the certified true copy of the GD Entry under Ext -6;

(v) That the learned trial Court also committed wrong in convicting the accused-appellants basing upon the twos medical reports, i.e. Exts. 4 and 5, which are contradictory to each other;

(v) That there is no legal and conclusive evidence in the record to convict the accused-appellants u/s 380 IPC;

The appellants-accused has prayed for setting aside the impugned order dated 09-04-2009 of the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur.

4. I have heard the argument advanced by the learned counsel Sri A. Paul, appearing for the accused-appellants and the learned Additional Public Prosecutor Sri H. Serai, appearing for the State. I have carefully gone through the impugned judgment and order and also carefully scrutinized the entire evidence on record.

5. As stated earlier during the pendency of the appeal, one of the accused-appellant, namely, Bulen Kakoti expired and so, the case is abated against him. It is therefore necessary to see how much the prosecution witnesses have implicated Sri Bhaskar Kakoti.

6. One of the ground taken by the appellant is the learned trial Court had passed the order of conviction and sentence without going into the legality and admissibility of evidence on record. The FIR of this case was that the accused persons had inflicted grievous injury on the hand of husband of the informant when she was about to distribute an amount of Rs. 23,688/- of Mahila Samittee amongst the members, and the occurrence took place in front of 15 members of the Mahila Samittee. The witnesses have also stated that the accused persons had caused grievous hurt to PW-5, the victim and husband of the complainant for which he sustained grievous head injury. The only contradictions is that there are two Medical Reports and on one report (Ext-4) it is shown as sharp cut injury on the right side of the head; whereas the other Medical Report (Ext-5) shows injury on the left side of the head. The evidence of the witnesses also corroborate the fact that the injury was on the left side of the head. The Medical Officer (PW-9) who was also examined by the prosecution gave the evidence of the injury on the left side of the head. The learned trial Court had rightly held that the even though the two Medical Reports contradict each other, from the testimonies of the witnesses the injury was on the left side of the head, and the learned trial Court was also justified in holding that when ocular evidence supported the Medical Report (Ext – 5), the same cannot be discarded and the said discrepancies cannot be said to be contradictions. So, the fact of the accused committing the offence u/s 326 IPC is proved. The learned trial Court had not passed the order illegally, improperly and unjustified in law in holding that the accused persons had committed the offence u/s 326 IPC.

7. Corresponding to the evidence of the witnesses as stated above, it is also seen from the evidence that the accused persons had entered the house of the complainant and while the complainant had started to distribute the said amount for the 15 members of the Mahila Samittee, the accused persons entered with 'dao' and Bulen Kakoti (expired) gave a blow to the victim. It has also come on evidence that the other accused Bhaskar Kakoti also gave a blow but he was restrained by the members present and the blow fell on the hand of mother of the complainant. So, the offence of trespassing into the house of the informant has been sufficiently proved and the learned trial Court had rightly held that the accused persons are guilty of committing offence u/s 448 IPC.

8. I find that the learned trial Court had appreciated the evidence rightly. The appellant has also taken a ground that the trial Court had committed error in taking into consideration the certified true copy of the GD Entry (Ext – 6). It is seen from the case record that Ext – 6 and Ext – 7 are two extract copies of G.D. Entry certified by In-Charge of Bihaguri Police Out Post upon which the investigation had started. The FIR was filed after 24 hours sand the contents of the FIR and that of the GD Entry are similar. The learned trial Court had rightly come to the conclusion that because the original GD Entry was not brought on record, and not compared with Ext -1, the FIR, the accused cannot be said to have been prejudiced. The Investigating Officer of the case had in his evidence deposed that he had started the investigation after making a GD Entry and had proceeded to the place of occurrence immediately and on being informed by one S.I. of the Tezpur Police Station

recorded the commission of the offence. The said GD Entry cannot be disbelieved being a extract copy which corroborates with the FIR, and the learned trial Court had rightly come to the conclusion that failure to produce the original GD Entry has not prejudiced the accused as the certified copies are proof of the existence of the said GD Entry, which cannot be doubted. The learned trial Court had cited **2003 (3) SCC 272**, in which the Hon'ble Supreme Court has held that, -

> ***"Technical objection which tends to be stumbling block to defeat and deny substantial and effective justice should be strictly viewed for being discouraged except where mandate of law inevitably necessitates."***

I find that the learned trial Court was fully justified in arriving at such a conclusion.

9. On going through the judgment of the learned trial Court, I also find that the Court has held that the filing of FIR after 24 hours cannot be fatal to the prosecution as the complainant was busy in taking the victim to the hospital for treatment which is quite natural. The learned trial Court had rightly held that there was no afterthought in filing the FIR after 24 hours. It is also seen from the materials on record that for the head injury, the victim was taken to GNRC, Guwahati from Kanaklata Civil Hospital, Tezpur. So, the gravity of the injury can easily be ascertained. I find no illegality in the judgment of the learned trial Court. As per the records, the ejahar was filed on 11-06-2005 for the incident that took place on 10-06-2005, at about 4 p.m. During investigation, the Investigating Officer seized one

Recurring Deposit Book which was closed on 10-06-2005 on final withdrawal of Rs. 23,688/- on being produced by the complainant Smt. Jayanti Devi, which are exhibited as Ext – 2 and Ext – 3. The amount of Rs. 23,688/- was snatched away from the house of the complainant Jayanti Devi in presence of the Mahila Samittee while she was distributing the share can be taken into consideration as there is no substantial denial on the part of accused persons. Though the said amount was not recovered, the fact that the amount of Rs. 23,688/- was snatched away by the accused persons is proved on the evidence of the witnesses substantiating Ext – 2 and Ext – 3. The learned trial Court had rightly come to the conclusion that the accused persons had committed the offence of 380 IPC.

10. As is seen from the evidence, the first blow was given by Bulen Kakoti who has expired, and that the injury was caused on the head of the victim by the accused Bhaskar is not totally proved by the prosecution witnesses. However, that he was present at the time of commission of the offence and had also tried to give a blow which fell on the hand of the mother of the complainant is sufficiently proved by the prosecution witnesses. Learned trial Court has properly appreciated the evidence as well as the documents exhibited, and the grounds taken up in the appeal that there is no legal and conclusive evidence to convict the accused person cannot be accepted and is not sustainable.

11. Considering all the discussions above, I uphold the judgment of the learned trial Court with the following modifications :

The accused Bhaskar Kakoti is convicted and sentenced to pay a fine of **Rs. 2,000/- (Rupees Two Thousand)** for each Sections, in total **Rs. 6,000/- (Rupees Six Thousand)** in default to **Simple Imprisonment for 3 (Three) months** for each Section.

Further more, the amount of fine realized shall be paid to the victim Tankeswar Nath.

In the result, the appeal is ***partly allowed*** modifying the sentences, as aforesaid on contest.

The accused-appellant Sri Bhaskar Kakoti is directed to surrender in the Court below within **30th June, 2014** to serve out the sentence imposed upon him by this Court.

Send back the original G.R. Case Record to the Court below along with a copy of this judgment forthwith.

Judgment is given under my hand and seal of this Court on this ***13th day of May, 2014***.

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Dictated and corrected by me
And every page bears my signature.

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Transcribed and Typed on dictation by me –

13/5/14
(I. Goswami)
Stenographer