

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE
TEZPUR. SONITPUR.**

Present: Smti R. Das
Chief Judicial Magistrate,
Sonitpur, Tezpur.

G. R. Case No. 1048/2010
U/s . 341/323 IPC

State

Vs

1. Sri Diganta Borah @ Khirod
S/o Lt. Khargeswar Borah
Vil Da-Parbatia Da-Chuburi PS: Tezpur.
...Accused person

Appearance:

Counsel for the State : Sri N. Das.

Counsel for the defense : Sri D. Das.

Offence explained on : 18-9-2012.

Evidence recorded on : 21-3-13,24-9-13,10-2-14,30-6-14,21-11-14.

Argument heard on : 24-4-2015.

Judgment delivered on : 8-5-2015.

J U D G M E N T

The prosecution's case in brief is that informant Smti Aijoni Borah filed an ejahar before the I/C, Lalmati OP stating that on 6-6-10 when her husband Premananda Borah was returning home from shop the accused restrained him and inflicted injury on his head causing grievous injuries. Several stitches were applied to the wounds. When the informant asked the accused why he has inflicted cut injury to her husband, the accused also inflicted cut injury on the right hand of the informant causing grievous injuries.

2. Upon receipt of the ejahar, the I/C, Lalmati OP made a GDE and forwarded the same to the O/C, Tezpur P.S. for registering a case. Accordingly, the O/C, Tezpur P.S. registered a case being Tezpur P S Case No. 532/10 u/s 341/326 IPC and started investigation. After completion of investigation, police filed charge sheet against the accused Diganta Borah u/s 341/325 IPC

3. The accused person appeared before the Court and faced trial. Copy of the prosecution documents were furnished to the accused person. After hearing learned counsel for both sides, particulars of offence u/s 341/323 IPC were explained to the accused person. The accused person pleaded not guilty and claimed to be tried.

4. Prosecution adduced evidence of six witnesses including the investigating officer of this case. After close of prosecution evidence statement of the accused person recorded U/s.313 Cr.P.C. Plea of the accused is total denial and adduced no evidence in his defence.

POINTS FOR DETERMINATION

- (i) Whether the accused person on 6-6-10 wrongfully restrained Premananda Bora ?
- (ii) Whether the accused person on 6-6-10 voluntarily caused hurt to Premananda Bora and Aijoni Borah ?

5. Heard argument of the learned counsel for the prosecution and the defense. Perused the materials on record.

DECISION, DISCUSSION AND REASONS THEREOF

6. PW1 Aijoni Borah who is the informant of this case deposed before the court that the accused is her brother-in-law and the incident took place about three years back at about 9 p.m. She and her husband both were in their home and she was in the kitchen preparing food. At that time the accused came to her house and inflicted injury on the head of her husband with a dao and then went to the kitchen and gave a blow on her hand as a result of which she sustained cut injury on her right hand when she tried to save her husband. Later on they rushed to the road and then went to police station. Police took them to Civil Hospital for treatment. Ext.1 is the ejahar filed by her and Ext.1(1) is her signature.

In her cross P.W.1 deposed that there was hue and cry and at the time of alleged incident Latu, Kahiram Boro, Nagen, Apurba and Buddha were her neighbours. When she went to the road after the incident one person named Satai saw them and 15-20 persons gathered there. The ejahar was written by police as per

her dictation. She stated that she did not state before police as well as mentioned in the ejahar that incident took place while she was preparing food in her kitchen. She denied the suggestion made by the defence counsel that she lodged this case falsely implicating the accused as there are some land dispute between them.

7. P.W.2 Premananda Borah is the victim of the instant case and has deposed that the incident took place two years back at about 4 p.m. At the time of incident he was coming from his shop by walking. When he reached near the house of Samiran Borah he was inflicted injury twice from behind and also he sustained injury on his head. Later on he came to know that the accused also caused hurt to his wife with a dao while she came to save him. Both of them were taken to hospital. He regained his sense after 3-4 days.

In his cross P.W.2 deposed that he was caused hurt by dao. He denied the suggestion made by the defence counsel that he has stated before police that the accused caused hurt to him with something and he sustained injury by falling on the road.

8. P.W.3 Sailen Das deposed that about 2-3 years back on one day he came to his house at about 8:30 p.m. and saw a large number of people gathered near his house. On being asked he heard that Premananda was caused hurt by somebody. Later on he heard that an altercation took place between the brothers.

9. P.W.4 Joon Saikia deposed that 3-4 years back on the next day of incident in the morning he came to know that there was an altercation took place between the accused and his brother Premananda and also heard that Premananda sustained injury on his head.

In cross he stated that the incident took place at night.

10. P.W.5 Apurba Das deposed that he came to know that a quarrel took place between the accused and the informant but he does not know about the reason for that quarrel. Cross declined.

11. P.W.6 Pabitra Kr. Sarma is the Investigating Officer of this case and stated that on 6-6-10 he was at Lalmati OP as Incharge. At that time informant Aijoni Borah and her husband Premananda Borah came to the out post at about 9 p.m. in injured condition. Accordingly he made a GDE and sent them to Kanaklata

Civil Hospital for treatment. On the next day Aijoni Borh lodged a case before the out post which was forwarded to the O/C, Tezpur P.S. for registering a case and after registering a case he was endorsed with the investigation by the O/C. He visited the place of occurrence, recorded the statement of the informant, victim and other witnesses. The accused surrendered before him and was later on forwarded to the court. Finding sufficient material he submitted charge sheet against the accused U/s.341/325 of IPC vide Ext.2 charge sheet and Ext.2(1) is his signature.

In his cross the IO stated that he has not filed abstract copy of the GDE No.93 dated 6-6-10 with the case record and also he has not filed the sketch map with the charge sheet. He deposed that P.W.1 Aijoni Borah did not state before him that at the time of incident she was preparing food at her home. The IO further stated that PW2 Premananda Bora told him that the accused had assaulted by something but did not specifically mention about the weapon of offence.

12. To warrant conviction U/s. 341 of IPC prosecution must establish that

(i) That there was same voluntary obstruction caused ;

(ii) That the obstruction was such as to prevent any person from proceeding in any direction;

(iii) That the person obstructed had a right to proceed in that direction.

To bring home an offence under Sec.341, I.P.C. the prosecution must prove (a) that the wronged person had a right to proceed on a particular way over land or water (b) that the accused obstructed or prevented the wronged person from proceeding along the particular way (c) that the accused caused such obstruction voluntarily (d) lastly the obstructor must not have reason to believe in good faith that he had a lawful right to obstruct.

13. On perusal of the case record it appears that informant Aijoni Borah (P.W.1) in the ejahar i.e. Ext.1 stated that the incident took place when her husband was coming to his house i.e. on the road. But when she deposed before the court as P.W.1 she stated that the accused came to her house and inflicted injury upon them by a dao. P.W.2 Premananda Borah who is the vital witness deposed that he was

coming from his shop and was caused hurt from behind. So P.W.1 and P.W.2 have not specifically mentioned about voluntary obstruction caused by the accused person. The P.W.3, P.W.4 and P.W.5 being the independent witnesses deposed nothing implicating the accused U/s.341 of IPC and have not stated anything which fulfills the essential ingredients of Sec.341 of IPC as referred earlier.

14. To warrant conviction U/s.323 of IPC prosecution must establish that the accused has voluntarily caused hurt to informant Aijoni Borah and her husband Premananda Borah on the alleged date of occurrence. It has already been discussed in the previous Section that PW1 Aijoni Borah being the informant herself has contradicted with the ejahar by stating that incident took place in her house while deposing before the court but she stated in her ejahar that the incident took place on the road. The P.W.1 deposed that the incident took place at about 9 p.m. at her house but the injured Premananda Borah (P.W.2) deposed that the incident took place at about 4 p.m. while he was coming from shop and reached before the house of one Samiran Borah. So, the vital witness examined by the prosecution being the informant and the victim it appears that both of them are describing about incident of two different place of occurrence. The P.W.1 and P.W.2 are the husband and wife in relationship and accused is the brother-in-law of the P.W.1 (informant). The P.W.3, P.W.4 and P.W.5 being the independent witnesses have deposed nothing regarding the place of occurrence. So it appears that there are two sets of evidence not corroborating with each other and it is quite surprising that being the husband and wife and being the victims of the alleged incident both are deposing in different way. Further, the P.W.1 deposed that she was caused hurt by the accused on her hand in her kitchen. The P.W.2 also deposed the same in his deposition. Prosecution has not exhibited any medical documents to establish the injury sustained by both the P.W.1 and P.W.2. It is admitted by the P.W.1 in her examination in chief that there is some dispute between the parties regarding land. Hence, it is not impossible on the part of the witness P.W.1 and P.W.2 to exaggerate the instant case. Other independent witnesses P.W.3, P.W.4 and P.W.5 stated about other some incident of quarrel between both the parties.

15. Hence, considering the above contradictory deposition of the vital witnesses and in absence of medical documents in support of the alleged injury sustained by the informant Aijoni Borah and her husband Premananda Borah, P.W.1

and P.W.2 respectively I do not find it unreasonable to held the accused person not guilty for the offence U/s.341/323 of IPC.

O R D E R

16. In view of the above, I found that the prosecution has miserably failed to prove the case against accused Diganta Borah u/s 341/323 of IPC. As a result the accused person is acquitted and set at liberty. The liability of the bailor is extended for 6 (six) months from today as per provision of the amended Cr.P.C.

17. Judgment pronounced in open court.

18. Set my hand and seal of this Court on this the 8th day of May, 2015.

(R. Das)
Chief Judicial Magistrate,
Sonitpur, Tezpur.

A P P E N D I X

Prosecution witnesses

1. P.W.1 : Smti Aijoni Borah
2. P.W.2 : Sri Premananda Borah
3. P.W.3 : Sri Sailen Das
4. P.W.4 : Sri Joon Saikia
5. P.W.5 : Sri Apurba Das
6. P.W.6 : Sri Pabitra Kr. Sarmah

Defence witnesses

Nil

Documents exhibited by the prosecution

1. Ext.1 : Ejahar.
2. Ext.2 : Charge sheet.

Documents exhibited by the defence

Nil.

(R. Das)
Chief Judicial Magistrate,
Sonitpur, Tezpur