

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

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

G. R. Case No. 2056/2008
U/s 341/323/34 IPC

State

Vs

1. Rajesh Kumar
S/o Sri Damodar Kumar
Vill T.M. Road, Goroimari
PS : Tezpur
2. Gautam Ram
S/o Sri Ram Kebal Ram
Vill Betonijar
PS : Tezpur

...Accused persons

Appearance:

Counsel for the State : Sri N. Das

Counsel for the defense : Sri P. Sarmah.

Offence explained on : 12-11-2009.

Evidence recorded on : 25-10-11, 23-5-13, 3-5-14, 16-6-14.

Argument heard on : 24-4-2015.

Judgment delivered on : 26-5-2015.

J U D G M E N T

The prosecution's case in brief is that informant Bablu Simah filed an ejahar before the I/C, Salonibari OP on 30-11-08 stating that on 29-11-08 at about 4:15 a.m. at night the accused persons namely Rajesh and Gautam taking advantage of darkness assaulted his uncle Raju Singh near the Air force road Transmitter by lathi causing injuries on his head and face.

2. Upon receipt of the ejahar, the I/C, Salonibari OP made a GDE and forwarded the same to the O/C, Tezpur PS for registering a case. Accordingly the

O/C, Tezpur PS registered a case being Tezpur P S Case No. 1011/08 u/s 325/34 IPC and started investigation. After completion of investigation, police filed charge sheet against the accused Rajesh Kumar and Gautam Ram u/s 341/323/34 IPC.

3. The accused persons appeared before the Court and faced trial. Copy of the prosecution documents were furnished to the accused persons. After hearing learned counsel for both sides, particulars of offence u/s 341/323/34 IPC were explained to the accused persons. The accused persons pleaded not guilty and claimed to be tried.

4. Prosecution adduced evidence of five witnesses including the informant and victim of this case. After close of prosecution evidence statement of the accused persons recorded U/s.313 Cr.P.C. Plea of the accused persons is total denial and adduced no evidence in their defence.

POINTS FOR DETERMINATION

- (i) Whether the accused persons on 29-11-08 at about 4:15 a.m. in furtherance of common intention wrongfully restrained Raju Singh ?
- (ii) Whether the accused persons on 29-11-08 at about 4:15 a.m. in furtherance of common intention voluntarily caused hurt to Raju Singh ?

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 Bablu Simah who is the informant of this case deposed that on 30-11-08 at about 7:40 p.m. while his uncle Raju Singh was returning home from Goroimari biking on a cycle on Transmitter Road and was about to enter into his homestead the accused persons physically assaulted him. At that time he was at his office and on being informed he rushed to the place of occurrence and found his uncle lying with injuries. He along with his uncle immediately went to the Salonibari OP and lodged a written ejahar. Ext.1 is the ejahar and Ext.1(1) is his

signature. From the out post his uncle was sent to Kanaklata Civil Hospital for treatment.

In his cross this witness stated that at the time of occurrence it was dark. He further stated that his uncle is associated with his transportation business. He also denied the suggestion of the defence counsel that his uncle fell down from cycle under influence of liquor and sustained injury.

7. P.W.2 Raju Singh deposed that about four years ago on 29th November at about 8 p.m. while he was returning home on his bicycle through Transmitter Road knocked with accused Gautam and he begged apology but accused Gautam kicked on his chest. Accused Rajesh assaulted him with a bamboo on his head and face and he fell down. He sustained injury on his forehead and near the eye and stitches were applied to the wounds. He further deposed that his nephew Bablu taken him to Salonibari OP wherefrom he was taken to Kanaklata Civil Hospital.

In cross this witness deposed that the occurrence took place at Transmitter Road and there was not street light. He further deposed that on the previous day he was taken to police station by police regarding a case of Jatin Munda and released him as he was not involved with the offence. He denied the suggestion of defence counsel that as the accused persons deposed as witness in the case of Jatin Munda. He further deposed that none accompanied him when the accused persons assaulted him.

8. P.W.3 Damodar Kumar who is the father of accused Rajesh Kumar deposed that at the time of occurrence Raju Singh being intoxicated with liquor abused at the place of occurrence. He further deposed that no other incident took place.

In cross this witness deposed that Raju Singh hit the accused persons by bicycle after taking alcohol.

9. P.W.4 Dr. Ranjan Kr. Das deposed that on 29-11-08 he examined one Raju Singh and found the following injuries :

(i) Irregular cut mark on the right side of fore-head, size 4cm x 1/2 cm x 1/2cm.

(ii) Irregular cut mar on the outer aspect of left eye, size 1cm x ½ cm.

The doctor opined that the injuries were simple, fresh and caused by blunt weapon. Ext.2 is the injury report and Ext.2(1) is his signature.

10. P.W.5 Sarfuddin Seikh deposed that he heard that an altercation took place between Rajesh Prajapati and Bablu Singh but he cannot say why the occurrence took place.

11. From the testimony P.W.1 Bablu Singh who is the informant of this case it appears that he was absent at the time of occurrence. He was informed about the incident and he found his uncle Raju Singh lying with injuries. P.W.2 victim Raju Singh implicated upon the accused and deposed that he sustained injuries on his head, face, fore-head and near his eyes and also deposed that both the accused persons caused hurt to him.

12. To warrant conviction U/s.323 of I.P.C., prosecution must prove that

(i) that the accused caused hurt to another person.

(ii) That he caused such hurt voluntarily

(iii) That such a case was not covered under Section 334 I.P.C.

To bring home an offence U/s.323 of IPC the prosecution is to prove (a) the victim suffered from bodily pain, disease or infirmity, (b) that the accused caused the aforesaid bodily pain etc: (c) that the accused did so intentionally or with knowledge that in the process hurt would be caused.

13. The testimony of the P.W.2 who is the victim is corroborated by the P.W.4 i.e. the Medical Officer who stated that he had examined the victim Raju Singh on 29-11-08 and found irregular cut mark on the right side of fore-head, size 4cm x ½ cm x ½ cm and irregular cut mark on the outer aspect of left eye, size 1cm x ½ cm. The P.W.2 categorically deposed that he sustained injury over his fore-head and near his eye which is corroborated by the medical evidence. P.W.1 though is a reported witness also deposed that he after hearing about the incident rushed to the place of occurrence and found his uncle lying with injuries. So, it

appears from the deposition of P.W.1 that soon after the incident he went to the place of occurrence and found his uncle lying in injured condition. The P.W.3 and P.W.5 are independent witness and have not supported the prosecution case. They deposed nothing implicating the accused persons. But the P.W.2 while deposing before the court during his cross examination stated that there was nobody present at the place of occurrence and none had seen the accused persons causing hurt to him. It appears from the evidence on record that evidence of the P.W.2 remain un-rebutted and there is nothing in the cross examination part to disbelieve the testimony of the P.W.2 regarding the alleged occurrence. So in presence of unshaken evidence of the P.W.2 i.e. the victim which is supported by the P.W.1 and P.W.4 being the informant and Medical Officer, it is quite difficult to brush aside the sole testimony of the victim (P.W.2) though not supported by the independent witnesses P.W.3 and P.W.5.

14. 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.

15. From the deposition of the P.W. Raju Singh it reveals that on 29th November at about 8 p.m. when he was returning home in a bicycle knocked with accused Gautam and then accused Gautam kicked on his chest and accused Rajesh assaulted him with bamboo on his head and face. He further deposed that his nephew Bablu Singh took him to Salonibari OP wherefrom he was taken to

Kanaklata Civil Hospital. Corroborating the evidence of the P.W.2, P.W.1 Bablu Singh also deposed that upon receiving the information he instantly rushed to the place of occurrence and found his uncle lying with injuries. He instantly rushed to Salonibari OP with his uncle from where the injured was sent to Kanaklata Civil Hospital. Though the P.W.3 and P.W.5 being the independent witnesses have not supported that the accused persons wrongfully restrained the P.W.2, but this corroborative piece of evidence of the P.W.1 and P.W.2 also cannot be brushed aside.

16. Hence, in view of the above discussion I found accused Rajesh Kumar and Gautam Ram guilty for the offence U/s.341/323/34 of IPC

O R D E R

17. Considering the facts and circumstances of this case, I found that the prosecution has been able to prove the case against accused Rajesh Kumar and Gautam Ram U/s.341/323/34 of IPC beyond all reasonable doubt. Accordingly accused Rajesh Kumar and Gautam Ram are convicted U/s.341/323/34 of I.P.C.

18. Considering the nature of offence and age of the accused persons I found it not proper to extend the benefit of Probation of Offenders Act to the accused persons.

19. In view of the above, accused Rajesh Kumar and Gautam Ram are sentenced to pay a fine of Rs.300.00 (Rupees three hundred) only each U/s.341/34 of I.P.C. and also sentenced to pay a fine of Rs.500.00 (Rupees five hundred) only each U/s.323/34 of I.P.C. I/d of payment of fine both the accused shall under-go S.I. for 1 (one) month each.

20. Judgment pronounced in open court.

21. Set my hand and seal of this Court on this the 26th May, 2015.

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

A P P E N D I X

Prosecution witnesses

1. P.W.1 : Sri Bablu Simah
2. P.W.2 : Sri Raju Singh
3. P.W.3 : Sri Damodar Kumar
4. P.W.4 : Dr. Ranjan Kr. Das
5. P.W.5 : Md. Sarfiddom Seikh.

Defence witnesses

Nil

Documents exhibited by the prosecution

1. Ext.1 : Ejahar
2. Ext.2 : Medical report.

Documents exhibited by the defence

Nil.

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