

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

Present: Dr. M Baruah
Chief Judicial Magistrate,
Sonitpur, Tezpur.

G. R. Case No. 228/2011
U/s. 323/324/34 IPC

State

Vs

1. Babu Ali @ Anowar
2. Ator Ali @ Aktor
3. Aminur Ali
4. Bakke Ali

..... Accused persons

Appearance:

Counsel for the State : Sri N. Das.
Counsel for the defense : Sri B. Borah
Charge framed on : 8-2-2012.
Evidence recorded on : 4-4-12,4-8-12,9-10-12,19-2-13,
18-7-13,15-2-14.
Argument heard on : 23-4-2014.
Judgment delivered on : 7-5-2014.

J U D G M E N T

1. The prosecution's case in brief is that the informant Mustt. Jamirun Nessa filed an ejahar before the I/C, Lalmati OP on 6-2-11 stating that on the same day at about 8 a.m. the accused being armed with dao, lathi assaulted her son Joynal Abedin and son-in-law Abdul Rashid causing grievous injuries on their persons. The accused persons also abused by using slang language and also assaulted her daughters. Her son and son-in-law were admitted in the Kanaklata Civil Hospital.

2. Upon receive of the ejahar the I/C, Lalmati 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. 7/11 and started investigation. After completion of investigation, police filed charge sheet against the accused Babu Ali @ Anowar, Ator Ali @ Aktor, Aminor Ali and Bakke Ali u/s 294/323/324/354/34 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, charge u/s 324/325/34 IPC was framed and its particulars of offence were read over and explained to the accused persons. The accused persons pleaded not guilty and claimed to be tried.

4. Prosecution adduced evidence of eight witnesses including the MO and IO of this case. After close of prosecution evidence statement of the accused persons recorded U/s.313 Cr.P.C. The plea of the accused persons is total denial and adduced one witness in their defence.

5. **POINTS FOR DETERMINATION**

- (i) Whether the accused persons, on 6-2-11 at about 8 a.m. in furtherance of their common intention, voluntarily caused hurt to Jainal Abedin by means of a dao ?
- (ii) Whether the accused persons, on 6-2-11 at about 8 a.m. in furtherance of their common intention, voluntarily caused grievous hurt to Abdul Rashid Ali ?

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

6. **DECISION, DISCUSSION AND REASONS THEREOF**

PW-1 Mustt Zamiran Nessa deposed that on the day of occurrence at about 9.00am she was returning home and found her son Joynal Abedin and son-in-law Rashid Ali lying unconscious near the well. She lodged an ejahar at Lalmati Police Out Post where she had

put thumb impression. On being asked, her son Joynal stated that the accused persons assaulted them by a lathi. Rashid Ali sustained fracture on his left shoulder and injury on the hand. Joynal sustained injury on his head.

During cross examination she stated that her house is on the hill top above the house of the accused. on the day of occurrence there was leak of sewage water from the latrine and it passed through the homestead of one Binod Deka. The accused stays adjacent to Binod Deka. On the previous day of the occurrence she informed the police apprehending assault by the accused persons. She denied that on the day of occurrence sewage water leaked from the latrine and the accused protested to it and then her son and son-in-law criminally trespass into the boundary of the accused and physically assaulted the accused persons. She denied that her son and son-in-law sustained injury on falling while attempted to assault the accused.

PW-2 Md. Joynal Abedin deposed that on the day of occurrence at about 5.00am his elder sister Husna Begum went to fetch water from the well. The accused persons physically assaulted her. Seeing this he and his brother-in-law Rashid Ali went to intervene. Then the accused persons physically assaulted him causing injuries to his head and arm. He became unconscious and came to senses after two days. He was in the hospital for seven days.

During cross examination he stated that on the previous day sewage water leaked from their latrine and fell into the house of a Hindu people. His elder sister Husna Begum poured water for cleaning the waste. He denied that the accused persons raised objection against the falling waste from their latrine and so he along with his brother-in-law and other members of the family had attacked the accused persons. He denied that he did not state before the I O that the accused had assaulted Husna Begum. He also denied that he never stated before the I O that he sustained injuries on his head and right arm. For the same incident the accused persons had also filed a case against him and his brother-in-law.

PW-3 Sri Keshab Chetry deposed that he knows both the parties. He has his residence of the hill. On the day of occurrence in between 6.00 am to 6.30 am, he heard hulla at the down hill. He came out and saw people gathering on the road. He saw a lathi (stick) in the

hand of accused Aminur and the accused had struck twice on the head of Rashid. Rashid fell down and the women nearby went and the fight stopped.

During cross examination he stated that he came out about ½ hour after the hulla started. There were a number of people present prior to his presence. The Jonab of the Masjid, Karim, Tarabanu and many were present. He saw that Aminur had hit Rashid. He stated that he did not tell the police that he saw the accused Aminur had hit Rashid by a stick because police did not ask him.

PW-4 Dr. Basanta Kondali deposed that on 6-2-11 he was at Kanaklata Civil Hospital and at 8.20 am he examined the Patient Abdul Rashid Ali and Joynal Abedin who were escorted and identified by the constable No. 203 Dadul Bora. On examining Abdul Rashid Ali he found (i) cut lacerated wound. 8cm x 1cm x 1cm over left parietal region of scalp. (ii) Abrasion 2cm x 1cm over right forehead. (iii) cut lacerated wound 3cm x 1cm x ½ cm over occipital area. (iv) swelling and tenderness right clavicle. Fracture of right clavicle. He opined that the injuries No. (i), (ii) and (iii) are simple and the injury No. (iv) is grievous. The injuries are less than 12 hours and caused by blunt weapon.

On examining Joynal abedin he found (i) cut lacerated wound 4cm x 1cm x ½ cm over vertex of scalp. (ii) incised looking wound 2cm x 1cm x 1cm over ulna aspect of right forearm. He opined that the injury No.(i) is simple and caused by blunt weapon and the injury No.(ii) is simple and caused by sharp weapon. Ext-1 is the medical report and Ext-1(1) is his signature.

During cross examination he stated that it is not possible that the injuries sustained by Abdul Rashid may occur on falling over hard substance. It is not possible to mention the type of injury used for the injuries sustained by Joynal Abedin.

PW-5 Md. Rashid Ali deposed that the informant is his mother-in-law. On the day of occurrence in the morning his wife Husnara Begum came down the hill to fetch water form a well. There an altercation took place between his wife and Parveen. On being informed by his daughter, he came to stop the quarrel. Then the accused Aminur came and hit on his head by a stick. He fell down and

became unconscious. He came to his sense in the hospital and stayed there for six days.

During cross examination he stated that he denied that he did not state before the police that his wife went downhill to fetch water from a well and there she had an altercation with Parveen. He denied that he never stated before the police that the accused Aminur had hit him on his head by a lathi. For the same incident the accused persons also filed a case against him and Joynal. He denied that he had beaten the accused.

PW-6 smti Arati Talukdar stated that the house of the informant is below her house on the hill. In the morning while she was preparing tiffin for her husband, she heard hulla from below the hill. The accused and the informant side had fight. She hears somebody shouting that "Rashid died" she came down and saw that Rashid was carried to hospital

During cross examination she stated that she came after the incident is over. She stated that sewage water of Rashid's residence passes through the drain which goes through the house of the accused. She did not see as to who had beaten Rashid. She stated that she also saw injury on Abedin.

PW-7 Smti Sarala Devi deposed that the accused persons stays near her house. On the day of occurrence at about 7.00 am she heard hulla of having fight. Thereafter she heard the family members of Rashid crying that Rashid died. Then she came down to the low lying area and saw that the family members of Rashid took him to hospital. She saw blood oozing out from the head of Rashid. Abedin also sustained cut injury on his hand.

During cross examination she stated that she know that the fight took place at the "holla" (low lying area).

PW-8 Sri Mohan Ch Nath deposed that the I/C of Lalmati O P had made G D Entry on the ejahar filed by Jamiran Nessa and asked him to make preliminary investigation. Ext-2 is the ejahar and Ext-2(1) is the signature of the I/C Lalmati Out Post. He met the informant in the police outpost and recorded her statement. He went to the place of occurrence. He prepared the sketch map. Ext-3 is the sketch map and Ext-3(1) is his signature. The injured persons were already sent

for medical examination. He arrested the accused persons and forwarded them to jail hazot. He collected the medical documents of injured and after completion of preliminary investigation he handed over the case diary to the I/C Lalmati O P. later on the I/C Sri Rama Kanta Nath filed charge sheet against the accused u/s 324/323/294/354/34 IPC. Ext-4 is the charge sheet and Ext-4 (1) is the signature of the I/C.

During cross examination he stated that in the note of Ext-2 the I/C endorsed in the G D Entry No. 79 dt. 6-2-11. In his diary he had mentioned the G D E No. as 93. He has not produced the GDE No. 79 or 93 in this record. He stated that he made preliminary investigation on the ejahar filed by Miusumi Begum for the same occurrence. He stated that PW-2 did not state before him that the accused persons had assaulted his sister Husna Begum. The witness did not specifically tell him that he sustained injury on his right hand. The PW-5 did not tell him that when his wife went to fetch water from the well and was having quarrel with Parveen and he went to disperse then then accused Aminur assaulted him by a lathi on his head.

The defense adduced evidence of one Md. Nizamuddin. The DW-1 stated that he is the teacher of the Madrassa and he saw that Rashid Ali came to the ITI field with a Khukuri (sharp) weapon. There he had a pushing with Akhtar Ali. He saw that Rashid Ali struck Akhtar Ali by the khukuri. Then Aminur came out from his house by a lathi and hit on the head of Rashid. There were no other persons present at that time. Later on people came. Rashid and Akhtar were taken to hospital.

During cross examination he stated that he knows the accused persons and he stays near the accused residence. He saw both the parties fighting. He denied that he deposed in favour of the accused.

7. Scrutinizing the materials on record, I found that the incident took place on 6-2-11 for which the informant as well as the accused lodged ejahar against each other. Police has registered two cases and the ASI Sri Mohan Chandra Nath made preliminary investigation of both the case. As there is cross case therefore both

the case were tried in this Court together. The case filed by the accused is G.R.Case No. 242/11.

It is also found that the informant's side stays above the residence of the accused. There was a leakage of sewage water from the latrine of the informant and it passes by the drain of the accused. For that reason they had a dispute on 5-2-11 and the informant had informed the police.

The PW-1 who is the informant was not present at the time of occurrence. She came later on and stated that she found her son Joynal and Son-in-law lying near the well and they were injured. On being asked her son Joynal stated that the accused persons assaulted them by a lathi. The PW-2 did not specifically say as to who had caused injury to him. He stated that the accused persons physically assaulted his sister. Seeing this he and his brother-in-law Rashid Ali went to intervene. Then the accused persons physically assaulted him causing injuries to his head and arm. PW-6 and PW-7 are persons staying near the parties. They stated that they heard the hulla of the fight and came out. They saw that the family members of Rashid were crying telling that "Rashid died". They saw people taking Rashid to hospital and blood oozing from the head of Rashid. PW-3 stated that in the morning he heard hull and came out. He saw a lathi (stick) in the hand of accused Aminur and the accused had struck twice on the head of Rashid. The PW-5 who is the victim of this case stated that there an altercation took place between his wife and Parveen. On being informed by his daughter, he came to stop the quarrel. Then the accused Aminur came and hit on his head by a stick. He fell down and became unconscious. The PW-4 who treated Rashid and Joynal had proved that Rashid sustained Fracture of right clavicle which is grievous injuries and also cut injury on the parietal region. He has proved that Joynal also sustained injuries on head and hand. From the above materials, I found that Rashid sustained injuries and was in the hospital. The PW-3 has corroborated the evidence of PW-5. Both stated that the accused Aminur caused injuries to Rashid by a stick. The DW-1 also stated that accused Aminur had hit Rashid by a lathi. Therefore I found that the witnesses are reliable and they have proved that a fight took place near the well down the hill and that the accused Aminur had assaulted the victim Rashid Ali by a stick causing grievous

hurt to him. It is not clear from the evidence as to who had caused hurt to Joynal.

There is no material that the accused persons uttered obscene words in the public place. None of the witnesses have implicated the other accused persons regarding their involvement in the alleged offence. The witnesses and the materials on record shows that the accused Aminur had caused hurt to Rashid Ali by a stick.

8. Therefore, I found that the prosecution has been able to prove the case against the accused Aminur Ali for causing grievous hurt to Rashid Ali. I found that the prosecution has failed to prove that case against the other accused persons for the alleged offences.

9. The accused Aminur Ali is convicted for the offence u/s 325 IPC. Heard the accused on the point of sentence. The accused prayed not to send him to jail hazot.

10. Considering the age of the accused and the nature of the offence committed by the accused, I found it not proper to allow the accused Aminur to avail the benefit of the Probation of Offender's Act. The accused Aminur is hereby sentenced to undergo Rigorous Imprisonment for a period of Six (6) months. The period of earlier detention if any in jail hazot is to be set off.

11. The accused Md. Babu Ali, Md. Ator Ali and Md. Bakke Ali are acquitted and set at liberty. Their bail bonds stands cancelled.

12. A copy of the judgment is to be given to the accused free of cost.

13. The judgment is prepared and typed by me.

14. Set my hand and seal of this case on this the 7th May, 2014.

Dr. Manash Baruah
Chief Judicial Magistrate.
Soitpur. Tezpur.