

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

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

G. R. Case No. 242/2011
U/s. 323/324/34 IPC

State

Vs

1. Rashid Ali
2. Abedin @ Joynal Abedin
..... Accused persons

Appearance:

Counsel for the State : Smti R. Chakavarti , Sri N Das
Counsel for the defense : Sri A. Mahanta.
Charge framed on : 8-2-2012.
Evidence recorded on : 6-6-12,9-10-12,19-2-13,2-5-13,
26-6-13,
Argument heard on : 1-3-2014.
Judgment delivered on : 7-5-14.

J U D G M E N T

1. The prosecution's case in brief is that the informant Mousumi Begum filed an ejahar before the I/C, Lalmati OP on 6-2-11 stating that the accused persons were abusing her family members using slang language since 5-2-11 as they asked the accused persons for passing the water from the latrine tank by the side of informant's residence. On 6-2-11 all the accused persons being armed with dao and lathi chased to the house of the informant and accused Rashid Ali assaulted Aktar Ali on his head and accused Abedin also assaulted Anowar Hussain with dao on his left hand and back causing grievous injuries on their persons. The accused persons also assaulted the informant and her sister-in-law Sultana Begum by

holding their hair. The other accused persons also man-handled the other family members.

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. 108/11 and started investigation. After completion of investigation, police filed charge sheet against the accused Rashid Ali and Abedin @ Joynal Abedin 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 323/324/34 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 six witnesses including the 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 no evidence in their defence.

5. **POINTS FOR DETERMINATION**

- (i) Whether the accused persons, on 6-2-11 in furtherance of their common intention, voluntarily caused hurt to Aktor Ali by means of a dao ?
- (ii) Whether the accused persons, on 6-2-11 in furtherance of their common intention, voluntarily caused hurt to Anowar Seikh ?

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

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

The informant Musstt. Mousumi Begum deposed as PW-1 and stated that injured Akhtar Ali is her brother-in-law and Anowar

Seikh is her elder brother. The accused have their house above the hill top. Most often the sewage water from the service latrine of the accused fall on the back side of her residence and they requested the accused to take preventive measure. On 5-2-11 the accused persons abused her family members using obscene words for asking them to take preventive measures. On 6-2-11 at about 7.00am accused Abidur armed with a dagger and Rashid Ali armed with lathi accompanied their family members entered into the her courtyard and assaulted Akhtar Ali and Anowar Hussain. Akhtar Ali sustained injury on his head and Anowar hussain sustained injury on left hand and back. Thereafter she lodged the ejahar. Ext-1 is the ejahar and Ext-1(1) is her signature. The injured were treated at Kanaklata Civil Hospital.

During cross examination she stated that regarding the incident dated 5-2-11 they did not file any complaint before the police but the accused persons had informed the police. She also stated that for the same occurrence, the accused's side also filed an ejahar against them. She also admitted that the accused Rashid sustained injury and was in the hospital for several days. She denied that that on the day of occurrence she started quarrel with Husnara when she came to fetch water from the well at the foot hill. She denied that seeing the incident the accused persons with family members came and she along with Anowar and Akhtar attacked the accused persons causing grievous injuries to Rashid. She denied that she did not say to police that the incident took place in their courtyard. When she came to the police station, she saw the saw the family members of the accused coming from the police station. She denied that they were the aggressor of the occurrence.

PW-2 Md. Akhtar Ali deposed that on 6-2-11 at about 8.00am he was sleeping and hearing the hulla he came out. He was brushing near their well. Then his wife Parbeen Begum, sister-in-law Mousumi Begum had a quarrel with Jamirun Nessa and Aklima Nessa. He tried to intervene and then accused Rashid Ali struck on his head by a dao. The accused Joynal had hit his brother-in-law Anowar Seikh by a "siprang" (tool used for digging earth) on the left hand. They were treated at Civil Hospital by police.

During cross examination he stated that hearing hulla from the women, he came out. The accused have their well below the foot

hill. On the earlier day a quarrel took place between the parties regarding passing of water from the latrine of the accused through the boundary on the informant's house. He denied that when his sister-in-law has an altercation with Jamiran Nessa, then he and Anowar had beaten the accused. For the same incident he was in the jail hazot. He admitted that he had not stated before the investigation about the accused assaulting him because the police did not ask about it.

PW-3 Smti Minu Deka deposed that on the day of occurrence in the morning she was on her bed due to illness and she was told by her son that a fight had taken place nearby.

PW-4 Jamir Ali deposed that on the day of occurrence at about 8.00am he was ready to go for his work. He saw that the accused and Amirul Seikh were having an altercation on the road near a field. Thereafter he went away.

During cross examination he stated that fight took place on the road to Ouguri Pahar.

PW-5 Anowar Seikh deposed that the waste water of the latrine of the accused enters his residence. Therefore on 6-2-11 at about 7.00am when the waste water from the latrine entered his courtyard, he went and told the accused. Then accused Rashid, Abedin, Hasnara and Akli had beaten him and his brother-in-law. Accused Rashid assaulted Akhtar Ali by a dao and accused Abedin Ali had hit on his left hand and head by a stick. Akhtar sustained cut injury and they were first taken to Lalmati O P.

During cross examination he stated that there are residences of other people nearby. On the earlier day there was an altercation regarding passing of the latrine water and for that the accused persons filed ejahar. There is a well near the foot hill from where the people take water. He denied that when Husnara came to fetch water from the well, his sister Mousumi allacked Husnara and when the family members of Husnara came out then he attacked the accused persons and assaulted them. He denied that Akhtar has hit on the hand of Rashid by a rod causing grievous injuries. He denied that he never stated before the police that accused Rashid had hit Akhtar by a dao and he was hit by a stick. He denied that due to the fault of his sister, she filed this false case against the accused persons.

PW-6 Sri Mohan Chandra Nath (ASI) deposed that the I/C Lalmati O P after receiving an ejahar from Mousumi Bagum, made G D Entry and sent the ejahar for registering a case. he was endorsed to make preliminary investigation. He went to the place of occurrence and sent the injured persons to hospital. He prepared the sketch map of the place of occurrence and arrested the accused persons. He allowed the accused persons on bail. He collected the medical report of the injured and after completion of preliminary investigation he handed over the case diary to the I/C Rama Kt. Nath who later on filed Charge sheet. Ext-3 is the charge sheet and Ext-3(1) is the signature of the I/C Rama Kt. Nath.

During cross examination he stated that he is not aware if both the parties came to the police o p on the previous day. He took preliminary steps on 6-2-11 and completed investigation on 24-2-11 and the charge sheet was filed on 28-2-11. For the same incident the accused also filed a case of which he made investigation. He stated that the PW-1 told him that the accused persons armed with dao and lathi came to their courtyard and seeing them the family members of informant fled away, but he did not mention that the occurrence took place in the court yard of informant. He stated that the witness Anowar did not state before him that the accused persons release sewage water from their latrine which enters their compound and when they went to tell about it to the accused persons, he accused persons assaulted them. The said witness did not state him that accused Rashid Ali assaulted Akhtar Ali by a dao and assaulted him with a lathi on his finger.

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. 228/11.

In this case the informant (PW-1) stated that the sewage water from the latrine of the accused persons enters the compound and they objected to it. They requested the accused to take preventive measure. For this there was an altercation on 5-2-11. On 6-2-11 at

about 7.00am accused Abidur armed with a dagger and Rashid Ali armed with lathi accompanied their family members entered into the her courtyard and assaulted Akhtar Ali and Anowar Hussain. Akhtar Ali sustained injury on his head and Anowar hussain sustained injury on left hand and back. So according to the PW-1 the incident took place in their courtyard. Whereas PW-2 stated a different fact. PW-2 stated that on 6-2-11 at about 8.00am he was sleeping and hearing the hulla he came out. He was brushing near their well. Then his wife Parbeen Begum, sister-in-law Mousumi Begum had a quarrel with Jamirun Nessa and Aklima Nessa. He tried to intervene and then accused Rashid Ali struck on his head by a dao. The accused Joynal had hit his brother-in-law Anowar Seikh by a "siprang" (tool used for digging earth) on the left hand. PW-4 who is an independent witness stated that he saw that the accused and Amirul Seikh were having an altercation on the road near a field. PW-5 stated another fact regarding the occurrence of the incident. He stated that on 6-2-11 at about 7.00am when the waste water from the latrine entered his courtyard, he went and told the accused. Then accused Rashid, Abedin, Hasnara and Akli had beaten him and his brother-in-law. Accused Rashid assaulted Akhtar Ali by a dao and accused Abedin Ali had hit on his left hand and head by a stick. The I. O. (PW-6) stated that he prepared the sketch map. Ext-2 is the sketch map where he showed the place of occurrence on the road. The medical officer has not been examined. The cross case is also looked into and found that the place of occurrence is near the well which is on the foot hill. From the contradiction of the witnesses as regarding the place of occurrence, I found that the informant has filed this case to counter the case filed by the accused persons. It is also found from the cross case that the accused Rashid and Joynal suffered grievous injuries. Considering the evidence of this case and that of the cross case, I found that the informant's side are aggressor. The occurrence did not take place in the court yard of the informant. The informant's case is doubtful.

From the above finding, it is found that the prosecution has failed to prove the case against the accused beyond doubt.

8.

O R D E R

Considering the facts and circumstances of this case, I found that the prosecution has failed to prove the case against the accused persons u/s 323/324/34 IPC beyond reasonable doubt. As a result the accused persons are acquitted and set at liberty. Their bail bonds stand cancelled.

9. The judgment is prepared and typed by me.

10. Set my hand and seal of this Court on this the 7th day of May, 2014.

(Manash Baruah)
Chief Judicial Magistrate,
Sonitpur, Tezpur.