

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS ,
GOHPUR, SONITPUR**

PRESENT : Sandeep Kaushik , AJS

G.R.Case No.-293/09

Under Section 447/323/427/34 I.P.C.

State of Assam Prosecution

-Vs-

Sri Prem Sural

Sri Subash Mili

Sri Manoj Sharma Accused Persons

Learned Advocates:

For the Prosecution Mrs.R.Pegu, Asstt.P.P.

For the Accused Smti. M. Borthakur
Smti. T. Baruah

Offence explained on : 03.02.2011, 26.09.2013

Evidence recorded on : 11.11.2011, 21.04.2012, 06.07.2012, 18.04.2015

Arguments heard on : 13.05.2015

Judgement delivered on : 19.05.2015

JUDGEMENT

1. This case was started on filing of a complaint petition in the Court of Sub-Divisional Judicial Magistrate, Biswanath Chariali by Smti. Birada Das alleging therein that on 02/10/2008, at around 8 AM, the accused Sri Prem Sural, Sri Subash Mili and Sri Manoj Sharma together forcefully entered the land in

possession of complainant in her absence and opened a road inside complainant's land for people in order that they may pass through it. When the complainant returned to her house and asked the accused why they have opened a road across her land, the accused persons pushed the complainant and she fell on the ground. The accused had verbally abused the complainant and threatened to kill her. Thereafter, the complainant went to the police station and lodged the 'ejahar' (F.I.R.). Knowing that the complainant had lodged the 'ejahar', the accused again came to informant's house at 10PM and by holding her hair pushed her on the ground and physically assaulted with a stick and as a result the complainant got injured. The daughter of complainant Smti. Lalita Das noticed the incident of assault by accused and made hue and cry. After that accused also gave stick blows to Lalita Das also. On hearing the hue and cry at the house of complainant, Sri rabindra Mandal, Sri Dataram Sharma, Sri Shiva Adhikari and many people came to the house of complainant and saved them from the accused. As the people started gathering at the house of complainant, accused persons went away from the place of occurrence.

2. On receipt of the said complaint, the learned Sub-Divisional Magistrate of the Court of Biswanath Chariali ordered the Officer-in-Charge, Helem Police Station. to register a G.R. Case on the basis of that complaint petition and submit Final Form immediately after investigation. The Officer-in-Charge, Helem Police Station, on receipt of the said order, registered Helem P.S. Case No. 22/2009, under section 354/387/447/452 read with section 34 of the Indian Penal Code, 1860 (in short, I.P.C.) and took up the investigation. After completion of the investigation, the concerned Investigating Officer (in short, I/O) submitted charge sheet against accused Sri Prem Sural under sections 447/354/323/427 of I.P.C.

3. In due course, the accused person appeared before the Court and after furnishing him the copies of relevant documents under section 207 Cr.P.C., the particulars of offence under Section 447/354/323/427 of the I.P.C. were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. The Prosecution had examined Smti. Birada Das as Prosecution Witness (in short, PW) no.1, Sri Rabindra Mandal as PW2 and Smti. Lalita Das as PW3, Sri Tiken Chandra Das as PW4 to bring home the allegations levelled against the accused persons. But after the completion of examination of I/O i.e. PW4, the evidence revealed that two more persons Sri Subash Mili and Sri Manoj Sharma were also involved in the incident but had not made accused in the charge sheet by police. Hence, both of them were made accused by exercising power under section 319 of Cr.P.C and summons were sent to them. Later on, the new accused Sri Subash Mili and Sri Manoj Sharma appeared before the court and they were also allowed to go on bail. The particulars of offence is explained to them under sections 447/323/427/34 I.P.C. Thereafter, the learned Magistrate altered the charge for the earlier accused Sri Prem Sural and particulars of offence under sections 447/323/427/34 I.P.C. was read over and explained to him to which he pleaded not guilty and claimed to be tried. As persons were made accused in this case, the requirement of re-examination of the already examined witnesses had arisen and accordingly, witnesses were again called upon for re-examination and thereafter, the evidence of prosecution side was closed as per submission of learned A.P.P. The recording of statement of accused under section 313 Cr.P.C. was done. The defence plea was of total denial and they declined to give any evidence in their defence. Hence, arguments advanced by both the parties were heard.

POINTS FOR DETERMINATION :

5. (i) Whether the accused persons Sri Prem Sural, Sri Subash Mili and Sri Manoj Sharma on 02/10/2008 at about 8 AM in furtherance of common intention committed criminal trespass by entering into the land in possession of Smti. Birada Das at Karibil Chapori, Helem in order to open a public way over her land thereby committed an offence punishable under section 447 I.P.C. ?

(ii) Whether the accused persons on the same day at 10 PM in furtherance of common intention voluntarily caused hurt to the complainant Smti Birada Das

and Smti. Lalita Das by assaulting them with a stick and thereby committed an offence punishable under section 323 I.P.C.?

(iii) Whether the accused persons on the same day, at same time and at same place in furtherance of common intention of all committed mischief by causing damage to the house premises of complainant to the tune of more than Rs50/- and thereby committed an offence punishable under section 427 I.P.C. ?

DISCUSSIONS, DECISIONS AND REASONS THEREOF :

6. PW1, who is the complainant of this case, has deposed in her evidence that in her absence, the accused persons had cut open a road through the land in possession of her. When she came to her house and asked the accused persons regarding the clearing of a road through her land, accused Prem Sural pushed her and as a result she fell on the ground. The other accused verbally abused her. PW1 had informed police regarding the incident. Thereafter, on the same day, at around 10/11 PM all the three accused came to the house of PW1 and physically assaulted her and her daughter. According to PW1, the accused had assaulted her in her abdomen, hands etc. by bamboo and wood stick. According to PW1, Manoj Sharma kicked her and Prem Sural had pulled the hair of her daughter and kicked her. Accused had gone away as people gathered at the house of complainant. Thereafter, the complainant again went to police station and this time O/C of the police station rebuked her and she therefore, filed the case in the court. Exhibit-1 is the complaint petition and Exhibit-1(1), Exhibit-1(2), Exhibit-1(3), Exhibit-1(4) are the signatures of complainant on the complaint petition. PW1 has stated that she was given treatment at Gohpur.

7. In her cross examination, PW1 has stated that she had filed the complaint in the court after one week of the occurrence of the incident. PW1 has denied the suggestion that she had filed the complaint after eight months of the occurrence of the incident. PW1 has stated that there is temple of 'Radha-Krishna' (Hindu God) on the boundary of her house. According to PW1, at the time of occurrence of the incident, 'Durga Puja' and 'Kirtan' (religious prayer) was going on at the

temple and lots of people came to see the 'puja'. PW1 has stated that she does not know that Prem Sural was the secretary of 'puja' that was going on at the temple. According to PW1, on the very same day, at about 10/10.30 PM accused had assaulted her by coming to her house. PW1 has denied the suggestion that as she had closed the road of the temple, the village people went to her house to quarrel with her.

During her re-cross examination, PW1 has stated that she has no objection if the honourable court now acquits the three accused persons of this case. According to PW1, at the time of occurrence of the incident she got hurt and felt pain due to the act of the accused and therefore, she had filed the case against the accused persons. Later on, the accused came to her and prayed to forgive them and hence, considering them as if her own son, she pardoned the accused. According to PW1, the accused persons are her neighbour and now she has come to an understanding with the accused.

8. PW2, deposed in her evidence that he knows both the parties. PW2 has stated that before two years when 'Kirtan' of 'Durga Puja' was going on , he heard hue and cry at the house of Smti. Birada Das. PW2 went to her house and saw that the accused persons were assaulting Smti. Birada Das. When People started to gather, the accused went away. According to PW2, he noticed swelling in the hands of Birada Das. Thereafter, PW2 returned to his house.

9. In the cross examination, PW2 has deposed that his house is situated near the house of complainant. According to PW2, near the house of complainant, there is a 'Radha Krishna' temple and near the temple 'puja' generally takes place. PW2 has stated that Prem Sural was the secretary of that 'puja'. According to PW2, somebody had cut a road to the temple by breaking open the wall of Birada Das. PW2 has stated that at 10/10.30 PM, quarrel took place at the courtyard of Birada Das and Subash Mili had assaulted Smti. Birada Das by a stick.

In his re-cross examination, PW2 has stated that at the time of the incident, he was present at the temple where 'Durga Puja' was going on. At that

time there was 20-25 people present at the temple. According to PW2, the house of Birada Das and the temple share a common boundary between them. PW2 has stated that he has no objection if the accused persons are acquitted of their charges by the court. Now, they have been living with the accused by mixing up with one another. At the time of occurrence of the incident, Lalita Das was present in her house.

10. PW3, who is the daughter of the complainant, has deposed in her evidence that on one day, when her mother was not present at the house, accused Subash Mili, Manoj Sharma and Prem Sharma had cleared a road through her land where her house is situated to go to the temple. According to PW3, when she prohibited the accused from doing that, they rebuked her. When the mother of PW3 came later, she apprised the activities of the accused to her mother. Thereafter, when the mother of PW3 went to ask the accused, Subash Mili had caused pulling and pushing with her mother. After that, the accused came to the house of complainant and beat her and PW3 with bamboo fencing. The accused pushed PW3 on the ground by holding her hair and kicked her. According to PW3, her mother had got injury on her abdomen and treatment of her and her mother were done.

11. In her cross examination, PW3 has deposed that one can go to the temple through her house. PW3 has stated that at the time of occurrence of the incident, 'puja' had been going on at the temple and the accused persons had arranged the 'puja'. According to PW3, the accused cleared the road through their land in order to go to the temple. PW3 has stated that she and her mother had filed the complaint in the police station on the day of occurrence of the incident and went to doctor's check up on the next day.

In her re-cross examination, PW3 has deposed that she knows the accused who live near the house of her mother. PW3 has stated that now her mother talks with the accused persons but she does not know whether any understanding between her mother and the accused has arrived at or not. According to PW3, the dispute had started on the subject of a road which goes to

the temple. PW3 has stated that at the time of the incident, 'Puja' had been going on at the temple and 3-4 people were present there. PW3 has stated that now the accused persons have pleaded their guilt in front of PW3 and her mother and hence, she has no objection if the accused persons are released from this case.

12. PW4, who is the I/O of the case, has deposed in his evidence that on 24/06/09, the O/C, Helem P.S. Sri Dayaram Saikia had received one 'ejahar' and registered a case. In Exhibit-1, Exhibit-1(5) is the signature of O/C. PW4 has stated that as he was entrusted with the responsibility of investigating the case, he investigated it, collected doctor's report, questioned the witnesses and at the end of investigation, submitted the Charge Sheet against the accused. Exhibit-2 is the Charge Sheet and Exhibit-2(1) is his signature on the Charge Sheet.

13. In his cross examination, PW4 has stated that the incident had occurred on 21/10/08. The distance between the police station and the place of occurrence of incident was almost 5 Kilometres. PW4 has stated that there is a temple situated just back of the house of complainant. The complainant blocked the road that leads to the temple by erecting fencing wall. PW4 has also stated that at the time of the occurrence of the incident, there was 'Durga Puja'.

14. Now, let me appreciate the evidence on record. In this case, prosecution has examined four witnesses out of which PW1 and PW3 are interested witnesses as they are mother and daughter. PW2 is an independent witness and PW4 is the I/O of the case. The allegation of criminal trespass into the land of PW1 is admitted in the evidence by only PW1 and PW3. The incident of criminal trespass was alleged to have occurred at 8AM on 2/10/08 and PW2 said nothing about that incident. PW2 has only stated about the incident of physical assault of the complainant by the accused at night on the same day. Therefore, PW2 seemed to have no knowledge regarding the criminal trespass that alleged to have been committed by accused into the land of complainant. On the other hand, PW4, that is the I/O has deposed a completely different version. The I/O has stated in

his cross examination that the complainant had blocked the road that leads to the nearby temple by raising fencing. Hence, it appears that the allegation of criminal trespass is supported by only PW1 and PW3, both of whom are interested witnesses, on the other hand PW2 said nothing about trespass and I/O's version reveals that the complainant had illegally blocked the road that leads to the temple. Now, coming to the incident that had occurred at night, PW1, PW2 and PW3, all of them have stated that the accused after entering the house of PW1 assaulted her and her daughter. But in contradiction to this, when the witnesses were again called for re-examination for subsequently implicated accused, all of them have stated that they have now no grievance against the accused and if honourable court exonerate the accused from the charges of this case and acquit them, they have no objection. Hence, it appears that during their earlier evidence all the witnesses have implicated the accused with the commission of offence but when they are later on called to depose for the newly implicated two accused, they have stated a completely different version and stated that they have pardoned the accused and they have no objection if the accused are acquitted from the case as the accused have pleaded their guilt before them and prayed to forgive them. Therefore, it seems that both the evidences deposed earlier and later by the witnesses are contradictory to one another and depending upon contradictory evidence, the accused cannot be held guilty for the offence as charged.

15. Another allegation against the accused was that they have caused hurt to the complainant. In this regard, the independent witnesses i.e. PW2 and PW4 have stated nothing about the hurt caused by accused to the complainant. PW2 only stated that he saw the accused person assaulting the complainant and he also saw swelling in the hands of complainant. The medical report states that the doctor found simple injury which is caused by blunt weapon over the body of complainant and Lalita Das, both of them were advised for X-ray but no report had been submitted to the doctor. The prosecution has not examined the Medical Officer (in short, M.O.) and in the Injury Report submitted by M.O. does not mention about any specific swelling of the hands of complainant as claimed by PW2. The report does not state clearly about the type of injuries observed by the M.O. over the body of complainant and the prosecution has also not examined

the M.O. to ascertain about the injuries. Moreover, X-ray was advised but it was not done by complainant. Hence, in absence of any cogent evidence regarding causing of hurt to the complainant by the accused, accused cannot be held guilty for offence under section 323 I.P.C. The offence under section 323 I.P.C. is not proved beyond reasonable doubt.

16. In the instant case, none of the witnesses have stated specifically how and in what manner mischief was caused to the complainant by the accused. It can be gathered from the evidence on record that the complainant and the accused were beaten by the accused. All the witnesses stated about their assault and verbal abuse by the accused. But it is not clear from the evidence on record that to what extent the accused had caused mischief to the complainant.

17. Therefore, it appears that the PWs while deposing against the accused Prem Sural stated that the accused persons assaulted the complainant and her daughter with stick, kicked them, pushed them due to which they fell on the ground, pulled their hair etc. But when they are once again called to depose for the newly implicated two accused persons namely Subash Mili and Manoj Sharma, the same witnesses including the complainant stated that they have pardoned the accused as they pleaded their guilt in front of them and prayed to forgive them. PW1, PW2 and PW3, which are the main witnesses of this case, in their subsequent deposition have not implicated the accused persons of committing the offence and stated that they have no objection if the accused persons are acquitted of their charges by the court. PW1, when re-cross examined for the two new accused, has stated that at the time of occurrence of the incident she got hurt mentally and felt pain due to the act of the accused and therefore, she had filed the case against the accused persons. But later on, the accused came to her and prayed to forgive them and hence, considering them as if her own son, she pardoned the accused. PW2 in her subsequent evidence has stated that the accused have pleaded their guilt before them and therefore, if the court exonerates them of their offence, she has no objection. Similarly, PW2 has stated in his subsequent evidence that he and the complainant have now been living with the accused in mixing up with one another and he has no objection if

court acquits the accused of their charges and from this case. Thus, in the earlier evidence the witnesses have stated that accused has committed offence against them but later on when they are again called to depose against the newly implicated accused, the same witnesses have stated that they have settled the case by coming to an understanding between them, they have pardoned all the accused and they have no objection if all the accused are acquitted and released from this case by court. Hence, it appears that there are vital contradictions between the earlier evidence and subsequent evidence of the same witnesses of this case and the contradictions created doubt to the prosecution case. In this case, the entire evidence has created great doubt as the same witnesses once implicated the accused and in subsequent stage stated that they have no objection if the accused are acquitted of the charges of this case and thus, the accused cannot be convicted of an offence depending upon contradictory evidence. It is the prosecution to prove the case beyond reasonable doubt, but the evidence on record of the case in hand has created doubt and contradiction and for which the benefit goes to the accused persons. I find that the evidence on record are self contradictory and doubtful and also found not sufficient to hold the accused persons guilty for the offences as charged. Moreover, it is the complainant who comes to the court with a grievance against the accused and if the complainant deposes that she has settled the matter with the accused and does not want to proceed with the case against the accused, in my opinion it is not justified on the part of the court to compel her to proceed with the case especially when the offences are not grave offences.

13. In view of the above discussion, I am of the opinion that the prosecution has failed to establish the guilt of the accused persons under sections 447/323/427/34 I.P.C. The offence under sections 447/323/427/34 I.P.C. is not proved against the accused persons. Therefore, the accused Sri Prem Sural, Sri Subash Mili and Sri Manoj Sharma are found not guilty and they are acquitted of the offence under section 447/323/427 read with section 34 I.P.C. The accused Sri Prem Sural, Sri Subash Mili and Sri Manoj Sharma are set at liberty forthwith. The bail bonds executed by the accused persons and their surety are extended for next six months as per provision of section 437A of Cr.P.C.

Given under my hand and seal of this court on this 19st day of May, 2015.

Judicial Magistrate First Class
Gohpur, Sonitpur

APPENDIX

PROSECUTION WITNESS :

- PW1 -- Smti. Birada Das
- PW2 -- Smti. Rabindra Mandal
- PW3 -- Smti. Lalita Das
- PW4 -- Sri Tiken Chandra Das

DEFENCE WITNESS :

Nil

EXHIBITS BY THE PROSECUTION :

- Exhibit 1 - Complaint petition
- Exhibit 1(1) - Signature of the complainant on the complaint petition
- Exhibit 1(2) - Signature of the complainant on the complaint petition
- Exhibit 1(3) - Signature of the complainant on the complaint petition
- Exhibit 1(4) - Signature of the complainant on the complaint petition
- Exhibit 2 - Charge Sheet
- Exhibit 2(1) - Signature of the I/O on the charge sheet

EXHIBITS BY THE DEFENCE :

Nil

Judicial Magistrate First Class
Gohpur, Sonitpur