

**IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE:
SONITPUR AT TEZPUR**

Present: Smti B Kshetry,
Addl. Chief Judicial Magistrate,
Sonitpur, Tezpur.

GR CASE No 1142/2012
(U/s 447/323/34 of IPC)

State

-Vs-

1. Sri Dambaru Keot and
2. Sri Dipak Keot.

..... Accused persons.

Advocate appeared:

Mr M Hussain,
Learned Addl PP : For the prosecution.

Mr S Basak,
Learned Advocate : For the accused.

Date of hearing : 13-06-2013, 19-08-2013, 27-11-2013,
24-12-2013, 02-04-2014.

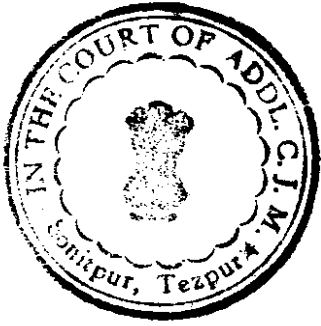
Date of argument : 29-04-2014.

Date of judgment : 13-05-2014.

JUDGMENT

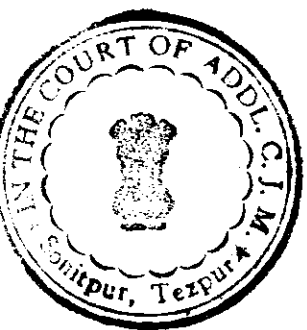
The brief fact of the prosecution case is that:

On 09-05-2012, the complainant Smti Aloka Devi
lodged an ejahar to the effect that on 08-05-2012 at 8 PM the



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accused persons Dambaru Keot and Dipak Keot came to her courtyard carrying an axe and dao on their hands and they assaulted her daughter Smti Himadri Saikia. Hence, this case.



Regarding the occurrence, the complainant lodged an ejahar before Tezpur Police Station.

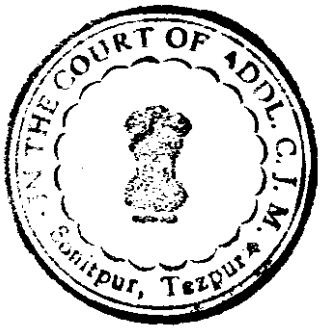
2. On receipt of the ejahar OC Tezpur Police Station registered a case under Tezpur Police Station case No 641/2012 under Section 447/325/34 of IPC and started investigation of the case. Upon completion of investigation police submitted the charge sheet against the accused persons namely Dambaru Keot and Dipak Keot under Section 447/323/34 of IPC to face trial before the Court.

3. On appearance of the accused, copies of the relevant documents were furnished to the accused persons. Upon perusal of the CS and hearing both the sides, particulars of offences under Section 447/323/34 of IPC have been read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

During trial, the prosecution has examined as many as seven PWs including the MO & IO of this case. Defence has examined none. Statements of the accused under Section 313 CrPC have been recorded. They have denied committing the offence and declined to adduce evidence. I have heard the

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arguments advanced by the learned Counsel of both the sides and have carefully perused the evidences on record.



4. POINTS FOR DETERMINATION:

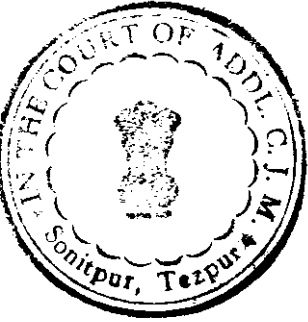
- 1. Whether the accused, on 08-05-2012, in furtherance of common intention, trespass into the compound of the complainant with intent to commit an offence and is liable to be punished under Section 447/34 of IPC?**
- 2. Whether the accused, on 08-05-2012, in furtherance of common intention, voluntarily caused hurt to the daughter of the complainant and is liable to be punished under Section 323/34 of IPC?**

DISCUSSION, DECISION AND REASONS THEREOF:

5. PW1 Smti Aloka Devi is the informat of this case. She deposed that the incident took place in her house. At the relevant time, her husband and her daughters Krishna Saikia and Himadri Saikia were inside the house. Then, somebody pelted stones on their house. On hearing the sound, they came out of the house. They saw the accused persons Dambaru Saikia and Dipak Saikia outside the house and enquired from the accused persons the reasons for pelting stones *at* their house. The accused persons told them that they had pelted stones at the dog. Thereafter, an altercation took place between them. Then, the accused Dambaru Keot inflicted blows on the head and hand of her daughter(PW2) with the blunt side of the dao. As a result, PW2 fell down on the

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ground and became unconscious. PW1 stated that PW2 sustained injuries on her left thumb and on her head. Thereafter, they came to the police station and lodged the ejahar. Ext.1 is the ejahar and Ext. 1(1) is her signature. Police took PW2 for medical treatment.

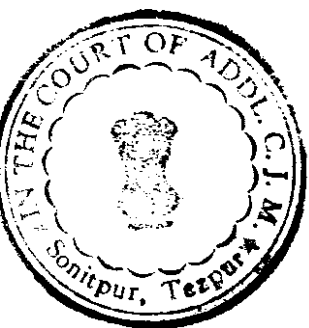


6. PW2 Smti Himadri Saikia is the daughter of PW1 as well as the victim of this case. She deposed that on 08-05-2012, at 8 PM the accused persons Dambaru Keot and Dipak Keot along with others entered into the compound and pelted stones at their house. At this they came out of the house and inquired the reasons for doing so. The accused persons replied that they were pelting stones at the dog. Thereafter, they had a quarrel. Accused Dambaru Keot gave blow to PW2 on her head and right thumb with the blunt side of the dao. As a result, PW2 fell down and lost her sense. She regained her sense at the hospital. This witness stated that she sustained injuries on her head and thumb.

7. PW3 Smti Anima Devi is the neighbour of PW1. She deposed that the incident took place in the compound of PW1. At the relevant time she was in her house. She stated that accused Dambaru Keot armed with a dao(Bekadao) and accused Dipak Keot carried an axe in his hands, entered into the compound of PW1. PW3 stated that on seeing them, she came out of the house. She further stated that the accused persons had come there in search of dog. At this PW1 came outside the house and she inquired from the accused persons the reasons for entering into her compound. Then, the accused persons told her that they had

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come to kill the dog and if the dog is not found, then they will kill the people. The dog was not found on search. Thereafter, PW2 came out and she inquired from the accused persons, then accused Dambaru Keot inflicted blows on her head and right thumb with blunt side of the dao. As a result, PW2 fell down on the ground and she was taken to the hospital. PW3 disclosed further that she saw the incident with her own eyes. She stated that the compound of PW1 was lighted at the time of occurrence.



8. PW4 Smti Renu Devi deposed that she was not present at the time of occurrence. But, she heard that there was a quarrel between both the parties.

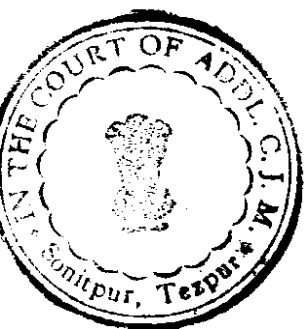
9. PW5 Dr Polashmoni Keot is the MO of this case. He deposed that on 08-05-2012 at 9.10 PM, he examined one Himadri Saikia, female with the alleged history of assault by someone and on examination he found pulse 76 per minutes, blood pressure 110/70. The patient was unconscious and oriented to time. An abrasion was found on her right thumb, size 0.5cm x0.5cm. It was fresh. The patient was admitted in female surgical ward. In his opinion, the doctor opined that the injury is simple, fresh and caused by blunt object. Ext. 2 is the medical report and Ext. 2(1) is his signature.

10. PW6 Smti Sunita Deka deposed that on 08-05-2012 she was the attached officer in the Tezpur Police Station and Roushan Islam^{who} was the i/c of Lalmati Out Post upon receiving the

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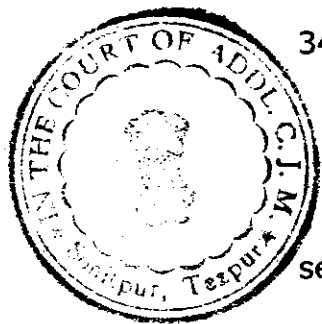
ejahar, forwarded the same to the Tezpur Police Station for registering a case. The OC Tezpur Police Station registered a case returned the same to the said out Post. Thereafter, ASI Mohan Nath(PW7) was directed to conduct the preliminary investigation of the case. In the meantime, i/c Lalmati Out Post Roushan Islam was transferred and PW6 was become the i/c of the said Out Post. After conducting the investigation, PW7 submitted the case diary to PW6 and PW6 going through the case diary and finding sufficient materials against the accused persons under Section 447/323/34 of IPC submitted charge sheet against the accused persons. Ext. 3 is the charge sheet and Ext.3(1) is her signature.

11. PW7 Sri Mohan Nath is the investigating officer of this case. He stated that on 09-05-2012, the i/c Lalmati Out Post Sri Roushan Islam on receiving the ejahar made GD Entry and he forwarded the ejahar to the Tezpur Police Station for registering a case. Said i/c directed the PW7 to make the preliminary investigation. Accordingly, PW7 visited the place of occurrence, prepared the sketch map. He also recorded the statements of the witnesses and arrested the accused persons Dambaru Keot and Dipak Keot. The offences against the accused persons being bailable, they were released on bail. Ext. 4 is the sketch map. Ext. 5 is the bail bond and Ext. 5(1) is his signature and Ext.5(2) is the signature of the bailor. This witness stated further that the injured(PW2) was brought to the Kanaklata Civil Hospital, Tezpur for undergoing medical treatment. PW7 collected the medical report(Ext.2). Thereafter, he completed the preliminary



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investigation and submitted the case diary to the i/c Lalmati Out Post, Smti Sunita Deka and accordingly PW6 submitted the charge sheet (PW3) against the accused persons under Section 341/323/34 of IPC.

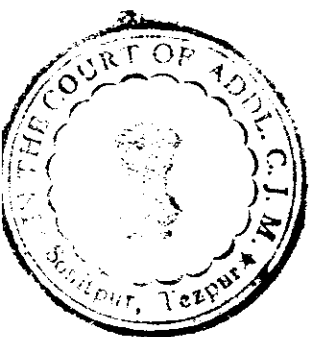


In his cross-examination PW7 stated that he did not seize any blunt weapon.

12 I have carefully perused the evidences on record. On perusal of the evidences on record, it is found that PW2 i.e. the victim was assaulted by the accused- Dambaru Keot and as a result, she sustained injuries on her thumb and on head. The evidence of MO (PW5), who examined the victim Himadri Saikia on 08-05-2013 at about 9.10 PM i.e. immediately after the occurrence shows that she sustained injuries on her right thumb. So, the evidence of PW2 found corroborative from medical evidence.

13. There is also evidence to show that the alleged occurrence took place in the compound of PW1. From the evidences of PW1 & 2 it reveals that on 08-05-2012, at 8 PM the accused persons Dambaru Keot and Dipak Keot along with others entered into the compound and pelted stones at their house. At this, they came out of the house and inquired the reasons for doing so. The accused persons replied that they were pelting stones at the dog. Thereafter, they had a quarrel and the accused Dambaru Keot gave blow to PW2 on her head and right thumb

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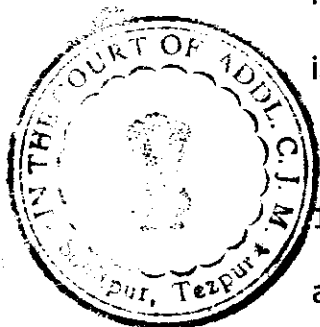
with the blunt side of the dao. Their evidence is fully corroborated by the independent witness (PW3) who had seen the accused persons entering into the compound of PW1 and assaulting the PW2. From the evidence of PW3 it appears that accused Dambaru Keot was armed with a dao(Bekadao) and accused Dipak Keot carried an axe in their hands. According to PW3, both the accused persons entered into the compound of PW1 and as she inquired from the accused persons, the reasons for entering into her compound, then, the accused persons told her that they had come to kill the dog and if the dog is not found, then they will kill the people. Thereafter, PW2 came out and she inquired from the accused persons, and then accused Dambaru Keot inflicted blows on her head and right thumb with blunt side of the dao.

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14. The learned Defence Counsel argued that this case has been filed falsely, but, the evidence of the PWs as regards the accused-Dambaru Keot committing the alleged offences could not be twisted and impaired by the defence and, as such, the above submission of the learned defence Counsel, in my opinion, has no force. It is also seen that there is no enmity between the parties so as to implicate the accused persons falsely.

15. From the evidences on record, it is found that though the accused Dipak Keot ~~was~~ accompanied the accused Dambaru Keot to the compound of PW1, but, none of the PWs have implicated the accused in the alleged assaultation on PW2 or any other witnesses. So, the offences under Section 447/323 IPC are

not attracted against the accused Dipak Keot and accordingly, he is acquitted from the alleged offences and set at liberty forthwith.




16. On the other hand, it has been well proved that accused Dambaru Keot entered into the compound of PW1 with the intent to commit the offence of assaultation. Hence, the offences under Section 447/323 of IPC are well established against the accused Dambaru Keot.

17. In view of above, I have come to an unassailable conclusion that the prosecution has been able to prove the offences under Section 447/323 of IPC against the accused-Dambaru Keot beyond all reasonable doubt. He is thereby held guilty under the said Sections of law and is convicted accordingly.

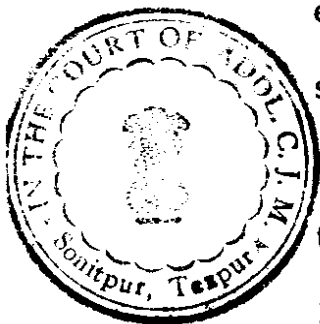
18. Keeping in view of the nature of offence, the benefit of Probation of Offender's Act is not extended to the accused person.

19. Heard the accused person on the question of sentence. He has submitted that this is his first offence and so, he may be dealt with leniently. Moreover, he is the sole earning member of the family and his family will starve if he is sent to the jail.

20. In view of the above submission, I am of the opinion that sentence of fine only on the accused person will meet the


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ends of justice. Accordingly, the accused-Dambaru Keot is sentenced to pay the fine of Rs.300/-(rupees three hundred) i/d SI for 2(two) months for the offence under Section 447 of IPC and to pay the fine of Rs.700/-(rupees seven hundred) i/d to SI for 3(three) months for the offence under Section 323 of IPC.



Furnish the free copy of the judgment to the convict.

Case is disposed of on contest.

13-5-14
(Smti B Kshetry)
Addl Chief Judicial Magistrate,
Sonitpur, Tezpur
addl. Chief Judicial Magistrate
Sonitpur, Tezpur

Dictated and corrected by me:-

[Signature]
(Smti B Kshetry)
Addl Chief Judicial Magistrate,
Sonitpur, Tezpur

Transcribed and typed by me:

(Pori Das)
-Steno-