

G.R No-778 of 2014
(State of Assam Vs Sri Paku @ Faku Jajowar)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 778 of 2014

Under section 323 of I.P.C

Present:-**Sri N. J. Haque, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

Sri Paku @ Faku Jajowar

S/O:- Late Ratia Jajuwar

R/O:- Kachubil

P/S:- Tezpur

Dist:-Sonitpur, AssamAccused Person

Advocate appeared:

Mr. Niranjana Saikia, Asst. P.P..... For the State

Mrs. Kabin Sharma, Ld. Advocate..... For the accused person

Evidence recorded on	:- 08.02.2017, 04.01.2018, 01.11.2018, & 10.02.2020
Date of Statement of defence	:- 13.10.2020
Argument heard on	:- 13.10.2020
Judgment delivered on	:- 03.11.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that one Sri Shiv Sankar Sah lodged an ejahar before the O/C, of Tezpur PS alleging inter alia that on 01.04.2014, when the labours were loading bricks in his truck bearing Regd. No. AS-12/E-3787 at Kachubil Itabhatta(brickfield), the driver of the said truck named Mohan Patel went inside the said Itabhatta (brickfield), for having rest and thereafter the accused at about 2 PM, came in an intoxicated state without any reason assaulted the driver on his head and due to that the driver sustained grievous injury. It is also alleged that the accused forcefully took Rs. 12,000/- from the pocket of the said driver Mohan Patel. When he came to know about the incident, he shifted the driver to Panchmile N.P.H.C for his treatment.

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“INVESTIGATION”

2. On receipt of the ejahar, Dhekiajuli P.S Case No. 381 of 2014, u/s 325/387 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s 323 of I.P.C against the accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s 207 of Cr.P.C was furnished to the above-named accused person. After hearing both side, particulars of offences u/s- 323 of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as five numbers of witnesses including the informant, medical officer and investigating officer. Considering, the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused is examined u/s 313 Cr.P.C and his pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on their defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case :-**

Whether on 01.04.2014 at Kachubil Itabhata the accused person, voluntarily caused simple hurt by way of beating the driver named Mohan Patel of vehicle bearing Regd. No. AS-12/E-3787 and thereby committed an offence punishable u/s 323 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the accusation examined 05 (Five) numbers of witnesses including the informant. For the sake of proper appreciation of evidences on record, let us reproduce the evidences presented

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by the prosecution side. PW-1, Md. Mubarak Hussain deposed that he knows the informant as well as the accused person of this case. He also deposed that the incident took place around 1-2 years back and on the date of alleged incident, he took one truck on rent from Tezpur Parowa Chariali to Khonamukh Itabhatta. He further deposed that when the driver was loading bricks on the truck for sending to Lakhimpur, he was sitting inside the room of one Mohori and thereafter, he heard hue and cry of the driver and on hearing the same, he went there and saw the injury on his head wherefrom blood was oozing. He further deposed that he heard from the labours that accused assaulted the driver with bamboo sticks. He also saw that the accused person along with the alleged weapon fled away from the place of occurrence.

8. PW-1 in his cross examination testified that he had not seen the alleged incident. Police had not interrogated him in connection with this case. He denied the fact that he had not stated before the police as he has stated before the court that while fleeing from the place of occurrence nobody caught the accused.
9. PW-2, Sri Mohan Patel deposed that he knows the informant, who is the owner of the truck. He deposed that in the year 2014 while he was standing near the bamboo bush and the labours were loading bricks on the truck at Kachubil Centre, thereafter, the accused was coming in a cycle carrying one table. He further deposed that as the road was congested, the accused started scolding him with slang languages. He also deposed that the accused first assaulted him with feast and blow and then again came with lathi and started beating him on his head and due to that he sustained injury on his head from where blood was oozing and his shirt became blood stained. He also deposed that he was taken to Panchmile hospital by the people from Vartak and also by the truck owner. He deposed that he had got ten stitches on his head.
10. PW-2 in his cross examination deposed that the accused was coming by pulling the cycle using his two hands. He deposed that police had interrogated him in connection with this case on the date of occurrence. He also deposed that he did not know whether police had seized anything from the place of occurrence or not. He denied the fact that he had not stated before the police that the

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accused used slang words to him and also assaulted him with fist and blow and then again he came with a lathi and started beating him.

11. PW-3, Dr. Sangeeta Sharma, who is the medical officer of this case deposed that on 01.04.2014, she was at KCH, Tezpur as M&HO-I and on that day, she examined Sri Mohan Patel. On examination he found freshly repaired wound under antiseptic dressing on forehead. She opined that the injury is simple caused by blunt object. She identified her report as Ext-1 wherein Ext-1(1) is her signature. PW-3 in her cross examination testified that patient was not identified by anybody. She further deposed that the injury may be caused due to dashing on the hard substance.
12. PW-4, Sri Shiv Shankar Shah being the informant of this case deposed that on 01.04.2014 during day time, his driver Mohan Patel took his truck to load bricks. He also deposed that his driver informed him that a person assaulted him on his head. Thereafter, he immediately went to the Itabhatta. He saw injury on his forehead. Later, he lodged the ejahar. Ext-2 is the Ejahar and Ext-2(1) is his signature. PW-4 in his cross examination testified that he had not seen the incident of "marpit". He further deposed that he also did not see the person who had assaulted the victim. He deposed that he could not remember the name of the accused.
13. PW-5, Sri Bidyaram Kalita (Retired SI), who is the Investigating Officer of this case, deposed that on 01.04.2014, he was posted as ASI at Salonibari OP. On the said day, an ejahar was received from one Sri Shiv Shankar Shah and accordingly, the same was registered as Tezpur PS Case No. 381/14 u/e 325/387 of IPC and he was entrusted to investigate the case. Thereafter, he went to the place of occurrence, prepared rough sketch map and recorded the statement of the witnesses including the informant. He also deposed that he also sent the injured Mohan Patel for treatment and later collected the injury report. He also tried to search for the accused but could not find him. He also deposed that as in the meantime, he retired, he handed over the case diary to SI Lakhi Prasad Kachari who handed over the case diary to SI Kunjalal Pator, who completed the investigation of the case and submitted charge sheet against the accused u/s 323 of IPC. Ext-3 is the sketch map and Ext-3(1) is his

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signature. Ext-4 is the charge sheet and Ext-4 (1) is the signature of SI Kunjalal Pator.

14. PW-5 in his cross examination deposed that witness/victim did not specifically state before him that the accused rebuked him in slang words and assaulted him with feast blow and then again came and assaulted him with a lathi. He also deposed that he had not seized anything from the place of occurrence.

APPRECIATION OF EVIDENCES

15. In this case particular of offence punishable u/s-323 of IPC was explained to the accused person. In the foregoing discussions, it already disclosed that the Criminal law sets in motion against the accused person on the basis of an ejahar lodged by the informant named Sri Shiv Shankar Shah. In the light of accusations levelled against the accused person in this case, the prosecution side has got the burden of prove that on 01.04.2014, while the labours were loading bricks in his truck bearing Regd. No. AS-12/E-3787 at Kachubil Itabhata, at about 2 PM, the accused came in an intoxicated state and without any reason assaulted the driver on his head and due to that the driver sustained grievous injury and the driver was shifted to Panchmile N.P.H.C for his treatment.
16. For the sake of proper appreciation of indications accessible before this court, let us deliberate all the facts in the background of the evidences on record. On meticulous perusal of evidence on record this court finds that PW-1 testified that on the date of alleged incident, when the driver was loading bricks on the truck for sending to Lakhimpur, he was sitting inside the room of one Mohori and thereafter, he heard hue and cry of the driver and on hearing the same, he went there and saw the injury on his head wherefrom blood was oozing. He also saw that the accused along with the alleged weapon fled away from the place of occurrence. However, PW-1 in his cross examination admitted that he had not seen the alleged incident himself. The evidence of PW-1 appears to be hearsay in nature. PW-1 claimed that he saw the accused along with the alleged weapon fled away from the place of occurrence. PW-1 further utters about a weapon through which the accused allegedly inflicted injury on the head of victim. Nowhere in the ejahar had the informant alleged about any

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weapon. PW-1 also failed to depose anything to substantiate the offence of causing voluntarily simple hurt upon the body of the victim by the accused person. PW-1 claimed that he saw injury and fleeing the accused from the place of incident. The circumstances as deposed by the PW-1 generate circumstantial evidence and such fact needs to be appreciated carefully in the light of evidences presented by other prosecution witnesses. The only fact that creates reasonable doubt regarding the alleged weapon as claimed by PW-1. Let us appreciate the evidence of PW-1, in the backdrop of other testimonies.

17. PW-2, Sri Mohan Patel, being the victim of this case deposed that in the year 2014 while he was standing near the bamboo bush and the labour were loading bricks on the truck at Kachubil Centre, thereafter, the accused was coming in a cycle carrying one table and as the road was congested, the accused started scolding him with slang languages. He also deposed that the accused first assaulted him with feast and blow and then again came with lathi and started beating him on his head and due to that he sustained injury on his head from where blood was oozing and his shirt became blood stained. During his cross-examination the defence side gave suggestions denying that all the facts deposed in his examination-in-chief he did not state before the I.O in his statement recorded by the I.O and the said facts affirmed and corroborated by the defence side during cross-examination of PW-5 (Investigating officer) and I.O confirmed before this court that the said PW-2 (Injured) did not state before him that the accused used slang words to him and also assaulted him with feast and blow and then again he came with a lathi and started beating him.
18. The evidences as offered by PW-2 in his examination in chief admittedly was not stated before the I.O. during recoding of his statement u/s 161 Cr.P.C by the I.O. PW-2 in his cross-examination acknowledged that police recoded his statement on the day of incident and it is not believable in nature that a person whose statement has recorded immediately after the incident, he did not state all the relevant facts of the prosecution case before the Investigating officer and that makes it crystal clear the version of PW-5 contradictory with his own statement recorded by the IO during investigation.

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19. Hence, the admitted fact is that PW-2 being the victim of this case omitted to state the actual state of affairs before the I.O who had recorded his statement during the investigation. The PW-2 omitted to state the material facts regarding the alleged physical assault before the I.O and same stands proved from the evidence of PW-5(I.O). The material omissions disclosed from the version of PW-2 makes his version contradictory and that being contradictory in nature cannot be overlooked in the light of settled provisions of law. As such it is seen that PW-2 being the victim of this case appears to be contradictory with his earlier statement and that weakens the story of prosecution.
20. PW-4, being the informant deposed that on 01.04.2014 during day time, his driver Mohan Patel took his truck to load bricks. He also deposed that his driver informed him that a person assaulted him on his head. Thereafter, he immediately went to the Itabhatta. He saw injury on his forehead. Later, he lodged the ejahar. Ext-2 is the Ejahar and Ext-2(1) is his signature. PW-4 in his cross examination testified that he had not seen the incident of "marpit". He further deposed that he also did not see the person who had assaulted the victim. He deposed that he could not remember the name of the accused. PW-4 in his cross examination testified that he had not seen the incident of "marpit". He further deposed that he also did not see the person who had assaulted the victim. The evidence of PW-1 appears to be hearsay in nature. As such it seen that PW-4 being the informant of this case not deposed anything against the accused and he further contradicted the contentions of ejahar by way of testifying that a person assaulted the driver, whereas in his ejahar he contended that accused assaulted his driver and such fact makes his version to be contradictory in nature.
21. Now, coming to the cross examination part of PW-5 who is the Investigating Officer of this case, this court finds that the prime witness i.e. the victim –cum-injured (PW-2) in his statement before the I.O not deposed some relevant facts which he has deposed before the court. PW-3 being medical officer on examination of victim unearths injury on his forehead which is simple in nature. The victim sustained injury as person the Medical report but whether such injury caused by the accused? To, prove such fact prosecution side failed to

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adduce any trustworthy evidences. The evidence presented by PW-1 failed to fulfil the entire chain that may help the court to draw inference of guilty of accused. The victim of this case himself appears to be contradictory with his earlier version.

22. To sum up the evidence on record this court finds that evidence of prosecution not appears to be corroborative and this court not finds any single witness to be trustworthy, rather the version of informant and victim appears to be contradictory in nature. Accordingly the evidences of prosecution appear to be untrustworthy in nature and cannot be relied upon.
23. In view of the above evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused person beyond reasonable doubt. Hence both the accused persons are entitled to benefit of doubt.
24. In the result the accused persons are acquitted from the charge u/s- 323 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
25. Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 03rd day of November, 2020 at Tezpur.

(Sri N. J. Haque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

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ANNEXURE

- 1. Witnesses for Prosecution:-** PW-1 :- Md. Mubarak Hussain
PW-2 :- Sri Mohan Patel, the injured
PW-3:- Dr. Sangeeta Sharma, M.O.
PW-4:- Sri Shiv Shankar Shah, Informant
PW-5:-SRI Bidyaram Kalita, I.O
- 2. Witnesses for Defence** :- NIL
- 3. Court Witnesses** : NIL
- 4. Prosecution Exhibits:**
Ext 1 : Injury Report
Ext 1(1): Signature of PW-3
Ext 2:- FIR
Ext 2(1): Signature of PW-4
Ext- 3:- Sketch Map
Ext-4:- Charge Sheet.
- 5. Defence Exhibits:** NIL
- 6. Material Exhibits:** NIL

Chief Judicial Magistrate
Sonitpur, Tezpur