

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE :::
BISWANATH CHARIALI, SONITPUR

GR Case No. 37/14

State

Versus

Shri Jitu Das.....Accused person

Present : **B. Borthakur**

Sub-Divisional Judicial Magistrate,

Biswanath Chariali, Sonitpur.

In appearance:

For Prosecution : Ms. Jahnabi Kalita, Addl P.P.

For Defence : Shri Padma Borah, Advocate

Shri Anil Das, Advocate

Date of recording evidence : 26-11-14, 09-01-15,
06-04-15

Date of argument : 06-05-15

Date of judgment : 16-05-15

u/s 342/323/34, IPC

JUDGMENT

1. The case of prosecution, in brief, is that on 14-01-14, at around 12:30pm, accused persons, namely Shri Jitu Das and Shri Petu Das, hit Shri Sanjib Das, son of informant-Smt. Jetuki Das, with the oar of a boat, causing grievous injury. The victim was taken to Kanaklata Civil Hospital for treatment, due to which delay was caused in lodging FIR. FIR was lodged on 17-01-14 and hence, the instant case.
2. After completing investigation, police submitted charge-sheet against the above named two accused persons, u/s 342/323/34, IPC. Copies were furnished to the accused persons on their appearance as per provisions of Sec. 207, CrPC. Particulars of offence under the said sections of law were explained to the accused persons, to which they pleaded not guilty and claimed to stand trial.
3. In order to bring home the charges, prosecution examined as many as seven witnesses, including the I/O. The accused persons were examined u/s 313, CrPC. Their plea was one of total denial. They rather stated that it was Sanjib Das who had hit them instead. Accused Shri Petu Das was found to be a juvenile-in-conflict-with-law. He was then forwarded to the JJB for inquiry. The present case remained against accused Shri Jitu Das only.

POINTS FOR DETERMINATION

4. I have heard arguments of learned counsel for complainant and of learned defence counsel. I have also carefully gone through the entire evidence available in case record. Upon

such examination, I find, that to ascertain the guilt of the accused person, it is necessary to determine whether-

- (i) The accused persons, in furtherance of their common intention, wrongfully confined Shri Sanjib Das on 14-01-14 at around 12:30pm; and
- (ii) Whether the accused persons voluntarily caused hurt to Shri Sanjib Das at that time, in furtherance of their common intention.

DECISION, DISCUSSION AND REASONS THEREOF:

5. To arrive at a decision on the above points, the evidence adduced has been carefully gone through. **PW1-informant Smt. Jetuki Das**, revealed that accused Shri Jitu Das is her cousin and juvenile Petu Das his son. She got information at around 11:00am from Shri Ladu Das that her son, Shri Sanjib Das, has sustained injury and that someone had hit him. She rushed and found her son unconscious. He had got injury on his head. It was not bleeding. Accused Jitu Das was also present there amongst others. She brought an autorickshaw and she took her injured son to Biswanath Chariali Civil Hospital, from where he was referred to Kanaklata Civil Hospital, Tezpur. Her son regained consciousness that night at around 11:00pm and was admitted in the hospital for five days. Ext-1 is the advice slip, Civil Hospital BNC, dated 14-01-14. Ext-2 is the money receipt of CT scan of brain dated 15-01-14. She explained that she lodged the FIR, Ext-3, after about ten-twelve days as she was busy in treatment of her son.
6. **PW2-Shri Kalia Das**, was ferrying passengers at Biswanath Ghat at time of occurrence. He brought some passengers

back. He saw juvenile Petu Das going towards the Ghat to ferry some passengers to the other side. When he came down the Ghat after bringing change from the nearby shops, he saw **Babu, son of PW1, (ie Sanjib Das) inflicting a blow on juvenile Petu Das.** When Petu tried to hit, Babu caught hold of him and both fell into the water. **Accused Jitu Das arrived, jostled with them, gave two slaps to his son, ie juvenile Petu Das, and took him away.** Babu then caught hold of accused Jitu Das and both of them again fell into the water. Juvenile Petu then took an oar of a boat and hit Babu on his head with it. **Babu was unable to speak and asked accused Jitu Das to hold him and bring him up from the Ghat. PW2 and the others brought Babu up from the Ghat.** They changed his clothes and went to call a vehicle. An auto-rickshaw was called and Babu was taken to hospital.

7. **PW3-Shri Lakhiram Das,** was coming from his house to his tea shop near the Mandir at Biswanath Ghat when he saw the son of PW1, whom they call Babu, lying by the riverside at the Ghat, from above the embankment. He shouted that someone should save him. **Then he saw Bhaity, PW2 and accused Jitu Das lifting up Babu and bringing him up.** Babu was senseless. They changed his clothes and applied mustard oil to his body. PW3 saw that he had injury on his head and that it was bleeding. PW3 then sent information to his mother through a boy and asked her to come with an auto-rickshaw immediately. His mother, PW1, arrived and took Babu in the auto-rickshaw to Chariali.
8. **PW4-Shri Bhaity Das,** was coming from the other bank and he saw PW2 and accused Jitu Das trying to lift up Sanjib Das. When they could not, they called PW4 to help them in lifting up Sanjib Das. Sanjib was taken in an auto-rickshaw to Chariali

Hospital by his mother. Before his mother (PW1) arrived, his clothes were changed.

9. **PW5-Shri Sanjib Das**, stated that he had brought a big boat to ferry passengers. Some passengers arrived at around 11:00am and wanted to be ferried on his boat, perhaps because it was bigger. When they boarded his boat, juvenile Petu @ Moina Das came and said that he will charge only Rs. 5/- for up and down both. The rate otherwise is Rs. 10/- for one way. Then they both got into an altercation. PW5 stated that Petu beat him up and he also retaliated. Petu inflicted fist blow on PW5 and PW5 fell into the river. Petu's father, accused Jitu Das, came and held him with force under the water and Petu kept on beating him all over mercilessly. PW5 got boxed all over his face and it got swollen up also. By this time, they had reached the banks of the river. Then Petu hit him with oar of a boat and he fell further into the river. Slowly PW5 came towards the bank and fell down unconscious. When he regained consciousness, he was at Tezpur Civil Hospital.
10. **PW6-Shri Hemram Das**, husband of PW1, was at the Naamghar and when he reached home at around 4:00pm, he almost became senseless to know that his son, PW5, was assaulted at the Ghat and that he was taken to Civil Hospital, Tezpur. He waited till he got some news of his son and when he came to know that his son has come to his senses, he called a village meeting. The accused persons did not obey the decision taken at the village meeting and the instant ejahar was lodged.
11. **PW7-the I/O-ASI Jadunath Katakya**, narrated the various steps taken for investigation. He collected the medical report, Ext-6, in which it is stated that the doctor examined PW5 on

14-01-14 at around 4:00pm and found head injury which was fresh, minor and caused by blunt object.

12. The accused persons were examined u/s 313, CrPC. Their plea was one of total denial. Accused Petu @ Moina Das was found to be a juvenile-in-conflict-with-law and was forwarded to the JJB for enquiry.
13. Accused Jitu Das stated that Petu had taken three passengers @ Rs. 30/- each. But Sanjib (PW5) came and said that he will ferry them at a total amount of Rs. 30/- only. The passengers then got down from Petu's boat and boarded the boat of PW5. Petu asked why Sanjib did this. They got into an altercation and jostled with one another. Both fell into the river. Then Jitu Das went and brought out both from the river. PW5 then hit Jitu Das. Sanjib had hit Petu prior to that.
14. Heard the rival contentions of learned counsels of both sides and perused record. Learned counsel for prosecution argued that the altercation arose out of passengers. In it, accused Jitu Das also got involved. It has come up in evidence that he was holding the victim under water, in a bid to help his son, juvenile Petu Das, in the offensive act. Learned counsel then submitted that the Court may see the evidence and that it is a fact that the fight had taken place.
15. Learned counsel for defence contended that actually the accused person and the informant are relatives. They earn their livelihood by ferrying passengers. The fight took place over winning over passengers. It was a small altercation on grave and sudden provocation. The passengers were pulled by both parties and there is no mens rea in this offence. Jitu Das has no allegations against him. In fact he slapped his son for embarking on the fight. He had no bad intentions as he had

actually tried to stop the fight. No doubt, it is a fact that the fight had taken place, but accused Jitu Das is not responsible for it. The case is too concocted with statements that the alleged victim was taken to Tezpur, etc., but there is no such report. That apart, MO has also not been examined. There is no evidence against Jitu Das regarding the allegations made against him. He just got implicated because of his son, Petu Das.

16. Now, PW2 has clearly stated that **it was PW5 who hit juvenile Petu Das and that when Jitu Das who arrived, he jostled with them and gave two slaps to his son, juvenile Petu Das, and took him away.** PW2 further stated that it was PW5 who caught hold of Jitu Das and that both of them again fell into the water. This matches with the statement of accused Jitu Das that he had brought out both the boys from the water and that it was PW5 who had hit him. **PW2, PW3 and PW4 all stated that accused Jitu Das was the one to help in lifting Sanjib Das (PW5) and bringing him to the Ghat.** All this does not tally with the testimony of PW5. **As far as accused Jitu Das is concerned, the testimony of injured PW5 is not supported by other PWs.** In fact, what transpires is that PW5 and juvenile Petu Das were having a fight and that it was accused Jitu Das, who came and slapped his son, ie juvenile Petu, and then helped in lifting up PW5 and bringing him to the Ghat. Accused Jitu Das was rather trying to help than voluntarily cause hurt to PW5. And as far as offence of wrongful confinement is concerned, there is no evidence to bring home said charge. Under these circumstances, accused Jitu Das cannot be held guilty as charged.

17. In the result, I hold accused Shri Jitu Das, not guilty u/s 342/323/34, IPC, and acquit him accordingly.

18. This judgment is pronounced in open Court.

Given under my hand and seal of this Court on this, the 16th day of May, 2015.

Bipaakkhi Borthakur
SDJM (M), Biswanath Chariali,
Sonitpur.

APPENDIX

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PROSECUTION WITNESSES

PW1 - Smt. Jetuki Das
PW2 - Shri Kalia Das
PW3 - Shri Lakhiram Das
PW4 - Shri Bhaity Das
PW5 - Shri Sanjib Das
PW6 - Shri Hemram Das
PW7 - I/O ASI Jadunath Katakya

DOCUMENTS EXHIBITED BY PROSECUTION

- Ext-1 - Advice slip of BNC Civil Hospital dated 14-01-14
- Ext-2 - Money receipt of CT scan of brain dated 15-01-14
- Ext-3 - FIR
- Ext-4 - Sketch Map
- Ext-5 - Charge Sheet
- Ext-6 - Medical Report of Sanjib Das

DEFENCE WITNESSES

None

DOCUMENTS EXHIBITED BY DEFENCE

None

Bipaakkhi Borthakur
SDJM(M), Biswanath Chariali,
Sonitpur.