

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

GR Case No. 630/12

State

Versus

1. Md. Bogai Ali
2. Md. Asad Ali @ Azad.....Accused persons

Present : **B. Borthakur**

Sub-Divisional Judicial Magistrate,

Biswanath Chariali, Sonitpur.

In appearance:

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

For Defence : Md. Taufique Ahmed, Advocate

Date of recording evidence :17-07-14, 09-03-15, 25-05-15

Date of argument :25-05-15

Date of judgment :25-05-15

u/s 457/325/34, IPC

JUDGMENT

1. The case of prosecution, in brief, is that on 22-08-12 at around 11:30pm, accused persons – Md. Asad Ali, Md. Bogai Ali and Md. Kamizuddin, armed with sharp dagger and lathi, entered the house of informant – Md. Hazarat Ali, as per instructions of Kamizuddin and beat up the informant and his mother, Msst. Asma Khatoon, causing severe injuries to both. The injured were taken in 108 ambulance to hospital for treatment. FIR was lodged on 23-08-14 at Biswanath Chariali P.S. and hence, the instant case.

2. After completing investigation, police submitted charge-sheet against the above-named accused persons u/s 448/326/34, IPC. As accused Kamizuddin expired, case against him stood abated. Copies were furnished to the remaining two accused persons as per provisions of Sec. 207, CrPC. After hearing learned counsels of both sides and perusal of materials on record, charged u/s 448/325/34, IPC, was framed and read out to the accused persons, to which they pleaded not guilty and claimed to stand trial. During course of trial, after examination-in-chief of PW1 (the informant), charge was altered to 457/325/34, IPC, and read out to the accused persons, to which they pleaded not guilty and claimed to be tried.

3. In order to bring home the charges, prosecution examined the four witnesses. Going by their testimony, prosecution closed its evidence. With nothing incriminating against them, examination of the accused persons u/s 313, CrPC, was dispensed with.

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 committed house-breaking by night into the house of informant on 22-08-13, at around 11:00pm, in furtherance of their common intentions; and
 - (ii) Whether the accused persons voluntarily caused hurt to Msst. Asma Khatoon, mother of the informant.

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 Md. Hazarat Ali**, during cross-examination, negated his statements under examination-in-chief and stated that the accused persons had done nothing at all. He stated during cross-examination that the accused persons had entered his house on night of occurrence as some people were chasing them. PW1 had just sat down for dinner at that time. Shortly thereafter, the people chasing them also entered and in the push and pull, his mother fell down and got hurt. PW4 further stated that the misunderstanding is cleared and that he has no grudges against the accused persons.
6. **PW2-Msst. Ahitan Nessa**, did not know when the incident took place or who beat up PW1.
7. **PW3-Md. Alimur Islam @ Ali Hussain**, had only heard that the accused persons had an altercation with PW1.

8. **PW4-Msst. Asma Khatoon**, stated that on night of occurrence, her son, PW1, had come home and sat down for dinner. The accused persons entered as someone was chasing them. Then they ran out from the back door. The other people chasing them also came and in the push and pull, she fell down and got hurt. In anger, her son lodged FIR. PW4 stated further that at present, they are on fine terms and have settled their misunderstanding. She stated that she has no grudges against them.
9. With nothing incriminating against them, examination of the accused persons u/s 313, CrPC, was dispensed with.
10. Heard the rival contentions of learned counsels of both sides and perused record. The witnesses in this case, have not made out any case against the accused persons. The vital witnesses, ie PW1 and PW4, have only stated that the accused persons had entered their house for shelter from those who were chasing them and that when the pursuers entered, PW4 fell down in the push and pull and got hurt. PW1 lodged the FIR in anger. Thus, it appears that the case was one of misunderstanding, lodged in an emotion of fury. This much is not sufficient to bring home the charges against the accused persons. The allegations in the FIR and the testimonies of the PWs do not tally. Under the circumstances, the accused persons cannot be held guilty as charged. The accused persons are, therefore, entitled to acquittal.
11. In a result, I hold accused Md. Bogai Ali and Md. Asad Ali @ Azad, not guilty u/s 457/325/34, IPC, and acquit them accordingly.

12. This judgment is pronounced in open Court.

Given under my hand and seal of this Court on this, the 25th day of May, 2015.

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

APPENDIX

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PROSECUTION WITNESSES

PW1 - Md. Hazarat Ali
PW2 - Msst. Ahitan Nessa
PW3 - Md. Alimur Islam @ Ali Hussain
PW4 - Msst. Asma Khatoon

DOCUMENTS EXHIBITED BY PROSECUTION

Ext-1 - FIR

DEFENCE WITNESSES

None

DOCUMENTS EXHIBITED BY DEFENCE

None

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