

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No.2

SONITPUR :: TEZPUR

Sessions Case No. 54 of 2012

Under section 323/324/307 I.P.C

(Arising out of G.R. Case No. 107 of 2012)

State of Assam

–Vs–

Sri Turen Rava.... Accused.

Present

Ms. A. Ajitsaria, AJS,

Addl. Sessions Judge No.2, Sonitpur, Tezpur

Date of Evidence : 9.07.12, 3.12.13, 10.1.14,  
20.2.14, 7.6.14, 3.12.14,

Date of Hearing : 30.4.2015

Date of Judgment : 14.5.2015

For the State : Sri Khemraj Adhikary, Addl Public Prosecutor.

For the accused : Sri Bijoy Kumar Basumatary

### J U D G M E N T

1. The prosecution case, in a nutshell, is that on 15.1.12, Sri Bidul Das lodged an FIR stating inter alia, that on 15.1.2012 at about 7 PM when his father Karuna Das was coming on the road, Turen Rava called him in his house and assaulted his father with a dagger on the head , injuring him grievously. It was stated that the accused wanted to kill his father but his

father ran and saved himself. The same was registered as Dhekiajuli P.S Case No. 23/12.

2. After due investigation, charge-sheet was submitted against the accused person, namely, Turen Rava, under section 341/323/307 IPC.

3. The accused entered appearance and after observing necessary formalities, the offence being Sessions triable, was committed to the Court of Sessions for trial by the learned Chief Judicial Magistrate, Sonitpur, Tezpur.

4. After hearing both sides and on perusal of the police report furnished u/s 173 of the CrPC, formal charge u/s 323/324/307 IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, this trial.

5. In support of the case, the prosecution examined nine witnesses and defence examined none. The plea of defence is of total denial.

6. After closure of the prosecution evidence, the accused person was examined u/s 313 of the CrPC.

#### POINTS FOR DETERMINATION

- (1) Whether the accused person on 15.1.2012 voluntarily caused hurt to Karuna Das and whether the said hurt, if caused was caused by dangerous weapon ?
- (2) Whether the accused assaulted Karuna Das with weapon and caused hurt to Karuna Das, with an intention or knowledge that such assault could cause the death of Karuna Das ?

7. I have carefully examined the evidence on record and heard arguments of both sides.

DECISION AND REASONS THEREOF

8. PW- 1, Sri Bidul Das @ Bipul Das, stated that during Magh Bihu at about 7/8 PM, his father was lying in an injured condition covered with blood, outside the house of Holodhar Bhuyan. PW 1 stated that he saw his father in an injured condition and took him to the Dhekiajuli Hospital. PW 1 stated that he saw cut injuries on his father's head, face and leg. PW 1 stated that his father had kept his cycle near the house of the accused and he had gone to see "Bihu". On his return when his father had not seen the cycle, he enquired about the same, upon which, the accused assaulted his father with an axe. PW 1 stated that thereafter he lodged the FIR (Ext 1).

9. In cross examination, PW 1 stated that he did not know the name of the writer of the FIR and that he had signed the FIR. PW 1 stated that he was at home at the time of occurrence. Diganta , a co-villager had informed him about the occurrence at about 6.30 PM. PW 1 stated that the distance between the house of Haldhar @ Holodhar Bhuyan and the accused was about 200-300 meter and his house was about 200-300 mtr away from the house of Holodhar. PW 1 stated that houses of other persons like Lahiram, Senaikuch, Srimal etc, were situated between the house of the accused and Holodhar. PW 1 stated that a crowd had gathered before he reached the house of Holodhar and amongst them, majority were women. PW 1 stated that his father used to visit the house of the accused. PW 1 further stated that he could not say whether the sister of the accused used to sell liquor. PW 1 stated that he had not seen the accused at the place where he found his father lying and he could not say whether the accused was there in his house on the date of occurrence. Two days , after the occurrence police visited the place of occurrence and

recorded his statement. PW 1 denied that he had not stated before the police that father had kept his cycle near the house of Turen and gone to watch bihu; that after returning when his cycle was not found; that Turen was asked about the same and on being so asked he took out a dah and assaulted his father and threatened him and took khukuri in his hand; that his father had fallen down from the cycle after consuming excess liquor and that the accused did not assault his father.

10. PW 2, Sri Girindra Das, brother of the injured Karuna Das deposed that the occurrence was of Magh Bihu, he was at home when Haldhar Bhuyan informed him that accused Turen Rava assaulted his brother with an axe. PW 2 stated that he went and saw his brother Karuna lying in an injured condition, full of blood and some persons were washing away his blood. PW 2 stated that when he asked his brother, he stated that Turen assaulted him. PW 2 stated that he took Karuna to the hospital. PW 2 stated that his brother's son lodged an FIR. During investigation police seized one axe (Material Ext 1) from the house of the accused vide Seizure List being Ext 2, where he had signed.

11. In cross examination, PW 2 stated that the injured was his own brother and he went about ½ hour after being informed by Holdhar. PW 2 stated that he had not gone looking for Turen whose house was about ½ km away from the house of PW 2. PW 2 stated that he had gone to the hospital along with the injured. PW 2 stated that police had recorded his statement at his residence and he was not present when the police recovered the dah from the house of the accused, he was called by the police and it was the police who informed him that the dah was recovered from the accused. PW 2 stated that he had not read the seizure list nor could he say from whom the dah was seized.

12. PW- 3, Dr Palav Sahu deposed that on 15.1.2012 he examined Karuna Das @ Dhana, 48 year old male and found that he had suffered simple injuries. PW 3 stated that the type of weapon used was blunt - heavy weapon. PW 3 exhibited the Injury Report as Ext 3.

13. In cross-examination by the defence, PW 3 stated that there was requisition from the police to examine Karuna Das. PW 3 stated that he had not mentioned the name of the police who had escorted Karuna. PW 3 stated that Exbt 3 was recorded in a 'format'. PW 3 stated that he had also not mentioned the case number as well as the GDE of the case. PW 3 stated that it was not a fact that there was no requisition and since case number was not mentioned, he could not say whether the said Exbt 3 was related to the instant case. PW 3 stated that he had not mentioned in Exbt 3, the part where Karuna Das sustained injury as only nature of injuries were required to be mentioned.

14. PW- 4, Sri Holodhar Koch deposed that on the date of occurrence, at about 7.30 PM Karuna Das came to his house in an injured condition and on enquiry he informed PW 4 that a quarrel had taken place. PW 4 stated that he tied the wound of Karuna Das with a cloth, his son came and took Karuna Das away. PW 4 stated that he only helped Karuna. PW 4 stated that police came and arrested the accused. PW 4 stated that he signed on a paper. PW 4 was declared hostile at the instance of the prosecution. In cross-examination by prosecution, PW 4 having stated before the IO that when he asked Karuna Das, he informed him that Turen Rava had injured him with a dao. PW 4 denied that when police seized "meat dao" he was present and he signed on the Seizure List.

15. In cross-examination by defence, PW 4 stated that he did not know injured Karuna Das nor could he say why the police had taken his signature.

16. PW- 5, Sri Nande Koch deposed that during Bihu, at about 7 o'clock in the evening he heard that there was a quarrel. PW 5 stated that he went out and met Bimal Koch who informed him that Gagen was looking for Karuna and when he did not find Karuna he threw the axe on the "kutha" in his anger. PW 5 stated that he heard that quarrel had ensued because of the fault of Karuna. Prosecution did not cross-examine the said witness.

17. PW- 6, Sri Karuna Das deposed that on the date of occurrence it was Bihu and he was returning home in the evening. He saw that Bihu dance was going on and so he kept his cycle near the house of the accused and went to watch the dance. PW 6 stated that on his return when he did not see the cycle he enquired about the same from the accused whereupon the accused assaulted him with an axe in anger. PW 6 stated that the accused gave him three blows. PW 6 stated that he could save himself from two blows but one blow hit his head. PW 6 stated that he ran and went towards Holodhar's house, where he fell down unconscious and from there, he was taken to the hospital. PW 6 stated that Material Exbt 1 was the dah /axe with which the accused assaulted him and the same was seized vide Seizure List Ext 2.

18. In cross-examination, PW 6 stated that it was Magh Bihu time. PW 6 stated that Bihu dance was going on about 5 mtr from the house of the accused in the house of Gajen; there were many people. PW 6 stated that no one came when argument ensued between the accused and him. PW 6 stated that in the house of the accused his sister was there. Her name was Shamili. PW 6 stated that Shamili resided in the same house of the accused. PW 6 denied that the accused did not assault him with the dah/axe and after which he ran away ; he had consumed alcohol since it was Bihu time and he fell down because of which he was injured. PW 6 stated that police had taken his statement about a week of the incident. PW 6 denied that he did not tell before police that he ran after being assaulted by the accused and became

unconscious in Holdhor's house; that because of his ill behaviour with the sister of the accused, the accused had rebuked him because of which he had given a false case against the accused; that the accused did not assault him with the axe; that for the first time in the Court, he had seen the Material Exbt 1 and had deposed falsely.

19. PW- 7, Sri Bimal Koch deposed that on the day of occurrence he was enjoying bonfire in his house along with Nanda Koch. PW 7 stated that at that time, Gajen Rabha and Turen Rabha came and asked the whereabouts of Karuna @ Ghana. PW 7 stated that he replied by saying that that Karuna had not come there and on hearing the same Gajen, who was carrying axe threw the axe in anger on the ground/mati. PW 7 stated that he knew nothing else. The defence declined to cross-examine the said witness.

20. PW- 8, Sri Uttam Tamang deposed that on 11.2.2012, he was posted at Rakasmari OP under Dhekiajuli PS as I/C and on that day he was endorsed with the instant case as the earlier I/O SI Hemendra Sinha had been transferred. PW 8 stated that he collected the medical report in respect of victim Karuna Das and being satisfied with the investigation which was already completed earlier, he filed chargesheet (Ext 4) against the accused u/s 341/323/307 IPC.

21. In cross-examination, PW 8 denied that there were no materials to submit charge sheet under the sections which he had shown in the chargesheet; that there were no materials to file chargesheet u/s 307 IPC; that he had filed the chargesheet, Ext 3 without there being any materials against the accused persons and without any legal basis.

22. PW-9, Sri Hemendra Singha deposed that on 16.1.2012, he was posted at Hoograjuli Camp under Dhekiajuli PS as I/C and on that day,

Bidul Das lodged an FIR at Rakasmari OP (Ext 1) which was registered as Dhekiajuli PS Case No.23 of 2012 and he was endorsed with the investigation of the case. PW 9 stated that during investigation, he visited the place of occurrence, prepared the sketch map (Ext 5) and recorded the statement of witnesses. PW 9 stated that he seized one meat-dah (Material Ext 1) from the accused vide Ext 2, the seizure list. PW 9 stated that witness Holodhar Koch stated before him that when he asked Karuna Das, he had stated before him that Turen Rava had injured him with a dao. While investigation when police seized "meat dao" Holodhar was present and he signed on the Seizure List. PW 9 exhibited the statement of the said witness as Ext 6.

23. In cross-examination, PW 9 stated that he went to the place of occurrence, that was the house of the accused, at about 10 AM on 16.1.2012. PW 9 stated that he seized the meat-dah from the possession of the accused. PW 9 stated that when he seized the meat-dah there was no blood stain on it. PW 9 stated that he did not seize the clothes of the victim. In the sketch map he had shown the neighbours whose houses were situated near the house of the accused but he had not shown the said persons as witnesses nor did he record their statement. PW 9 stated that he recorded the statement of witnesses Bidul Das, Girindra Das, Holodhar Koch, Nandi Koch, Karuna Das and Bimal Koch on 16.1.2012 at the place of occurrence. Complainant, Bidul had taken him to the place of occurrence. PW 9 stated that no one else led him to the place of occurrence. PW 9 denied that he did not record the statement of Holodhar Koch and he did not state in the manner recorded by him; that Bidul Das had not stated in the manner he had deposed in his evidence; that Girindra Das was not present in the house of the accused when the meat-dah was seized by him and later Girindra was called and his signature taken. PW 9 stated that requisition for medical examination of the accused was given but no GDE No. or case number was mentioned in the said requisition. PW

9 denied that the seized meat-dah without any reason as such dah was readily to be found in each house-hold; that his investigation was defective.

24. From the evidence so adduced it is apparent that there is no eye witness in the instant case. Of course, the injured himself is a vital witness. The case therefore is to be tested on the basis of the evidence of the injured witness, coupled with it, the circumstances brought into play by the prosecution ought to form a complete chain and point out only to the guilt of the accused and nothing else.

25. At the very outset it is to be kept in mind that the accused is facing trial for having caused hurt to the victim, Karuna (PW 6) with dangerous weapon and also for causing such hurt with an intention of causing the death of Karuna. The evidence of PW 3, the medical officer shows that Karuna suffered from simple injuries and the nature of weapon has been recorded to be blunt and heavy. In the injury report (Ext 3) the part of the body on which the said simple injury was detected has not been recorded. Hence, from the evidence of the medical officer it is clear that simple injuries were indeed suffered by Karuna. PW 6, Karuna, himself being an injured witness, it is unlikely that he would falsely implicate the accused and spare the real culprit. To that extent, the prosecution has been able to prove that the accused caused simple injuries to Karuna.

26. Causing of injuries with dangerous weapon could not be established, in as much as, PW 6, the alleged victim stated that the accused caused him injury with a dao, whereas the other witnesses (PW 1 and 2 ) have mentioned axe to be the weapon of offence, whereas, the IO has seized a "meat dao". The said discrepancies do not assist the cause of the prosecution for the purpose of section 324 IPC and is held to be material discrepancy. Again, had PW 6 been assaulted with an axe or a dao, the injuries certainly would have been more than simple injuries.

27. For attracting section 307 IPC it is to be shown that injuries have been inflicted with an intention of causing death of the person assaulted. In the instant case, having held that Karuna suffered from simple injuries and there being nothing on evidence to show that the accused inflicted several injuries or injuries with dangerous weapon, it is held that the prosecution has failed to prove that the accused had intention to take the life of the accused.

28. While analysing other evidences, it is seen that Holodhar (PW 4) in whose house the injured Karuna directly went after sustaining injuries, stated that he helped Karuna by tying his wound. PW 2, son of the injured stated that he arrived in Holodhar's house after about half an hour and he found his father there. The latter too lends support to the fact that injury was simple. There is embellishment on the part of Karuna in respect of the grievousness of the injuries sustained, in as much as, neither PW 4 nor the medical report supports his version but as stated herein before, this Court is of the considered view that the prosecution has been able to prove the case so as to attract section 323 IPC.

29. In view of the discussion above, it is held that the prosecution has failed to prove its case u/s 324 and section 307 IPC. The prosecution, has been able to prove its case beyond reasonable doubt u/s 323 IPC and consequently, the accused person, Sri Turen @ Toren Rava, is convicted under section 323 IPC.

### **HEARING ON SENTENCE**

30. Convict Sri Turen Rava is heard in person. He submits that he has a family and has no criminal antecedents, nor has he ever indulged in overt act during the pendency of the instant case. He further submits he was in

custody for about 2 months and his family being poor could arrange for surety only after 2 weeks of bail being granted by the Ld Magistrate, after his arrest. He submits that he may be dealt with leniency.

31. I have given my thoughtful consideration to the submission advanced by the accused person as well as Ld Counsels for the defence.

32. Considering all the aspects, this Court is of the considered view that the occurrence is of three years back, the accused is seen to be a first offender, no criminal past has been reported in the chargesheet. Even he has not been involved in any criminal activities during the pendency of the trial. In the ultimate analysis therefore this Court is of the view that the accused may be given an opportunity to reform and lead a peaceful life by respecting the law of the land. This Court is thus of the view that conviction for a period of 55 days would be sufficient, justified and proper sentence. The accused is convicted u/s 323 IPC and sentenced to undergo imprisonment for the period of 55 days.

33. Period of detention undergone so far (from 17-1-2012 to 14-3-12 – total 57 days), by the accused shall be set off.

34. Let the seized article be destroyed in due course, if not already destroyed.

35. Let a free copy of this judgment be furnished to the convict immediately.

36. Let a copy of this judgment be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 of the CrPC.

Given under my hand and seal of this Court on this 14<sup>th</sup> day of May, 2015 at Tezpur.

Addl. Sessions Judge No.2

Sonitpur, Tezpur

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution
  - P.W. 1: Sri Bidul Das @ Dipul Das
  - P.W. 2: Sri Girindra Das
  - P.W. 3: Dr. Palallav Sahu
  - P.W. 4: Sri Holodhar Koch
  - P.W. 5: Sri Nande Koch
  - P.W. 6: Sri Karuna Das
  - P.W. 7: Sri Bimal Koch
  - P.W. 8: Sri Uttam Tamang
  - P.W. 9: In Charge Hemendra Singha
2. Witnesses for Defence : NIL
3. Court Witnesses : NIL
4. Prosecution Exhibits:
  - Ext. 1: FIR
  - Ext 2: Seizure List
  - Ext 3: Medical Report
  - Ext 4: Charge Sheet
  - Ext 5: Sketch Map
  - Ext 6: Statement of Holodhar Koch
5. Defence Exhibits : NIL
6. Material Exhibits: Material Exhibit 1: Dah/Axe

Addl. Sessions Judge No.2  
Sonitpur, Tezpur