

IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),

AT GOHPUR, SONITPUR

G.R.No. – 90/2017

U/S.: 448/294/323 of I.P.C.

S T A T E

-Versus-

Sri Haliram Das.....accused person

**Present: Smt. Pooja Sinha, AJS,
Sub-Divisional Judicial Magistrate (M)
Gohpur**

Advocate appearing for the State : Sri Sanjay Dey

Advocate appearing for the Accused : Sri Kulen Das

Smt. Rashmi Rekha Baruah

**Dates of recording evidence : 24.10.2017, 20.11.2017,
& 30.06.2018**

Date of hearing argument : 26.07.2018

Date of delivering Judgment : 27.07.2018

JUDGMENT

- 1. The case of the prosecution in brief is that,** on 14.04.2017 at about 8 p.m. at Pub Ghogora, Nalbari, Gohpur in the house of Numal Das, one Holiram Das and one Bikash Das entered and beat up Numal Das. That, they hit Numal Das with a bamboo stick as a result of which he sustained grievous injury on his head. That, Holiram Das and Bikash Das also attacked Lakhimai Das and her niece Pompy. Later, Numal Das was rushed to the hospital and underwent treatment at Tezpur Medical College hospital.
- 2. In this regard, Smt. Lakhimai Das filed an ejahar on 15.04.2017, the Officer-in-Charge, Gohpur Police Station registered a case as Gohpur P.S. Case No. 77/17 under section 448/325/34 of I.P.C. The police conducted investigation and thereafter submitted charge-sheet against the accused person **Sri Haliram Das for trial under section 448/294/323 of I.P.C.****

3. In due course, the accused person entered appearance. He was furnished with the copies as required under section 207 Cr.P.C. My Learned Predecessor-in-Office read over offences U/S 448/294/323 of I.P.C. to the accused person and explained to him the particulars of the offences, to which he pleaded not guilty and claimed to be tried.
4. In support of the case, the prosecution examined five (5) witnesses and one (1) Court witness was called. Statement U/S. 313 of Cr.P.C. of the accused person is recorded. Defence plea was of total denial. Defence opted not to adduce evidence.
5. **Point for determination :**

I. Whether the accused person on 14.04.2017 at about 8 p.m. at Pub Ghogora, Nalbari, Gohpur criminally trespassed into the house of Numal Das to commit an unlawful act and thereby committed an offence punishable U/S 448 of I.P.C.?and

II. Whether the accused person on same date, time and place used obscene language in order to annoy Numal Das in a public place and thereby committed an offence punishable U/S 294 of I.P.C.?and

III. Whether the accused person on same date, time and place voluntarily caused hurt to Sri Numal Das, Lakhimai Das and one other, thereby committed an offence U/S 323 of I.P.C.?

6. Discussion, Decision and Reasons thereof: -I have heard the learned Counsel appearing for the State. Also heard the learned Counsel appearing for the accused person. Upon hearing the learned Counsel for the parties and on perusal of the records, I am of the considered opinion to hold the following:-

7. Point of Determination No. I, II & III: All the points are taken up together for discussion in order to maintain the flow and appreciation of evidence.

8. P.W.1 Smt. Lakhimai Das, she is the informant. She in her examination-in-chief deposed that she is acquainted with the accused person. That, the incident took place on the 1st day of Bohag Bihu over a musical drum in between her brother-in-law Numal Das and the accused person. That, the accused went to the courtyard of Numal Das and hit him with a bamboo stick

on his head and as a result sustained injury. That, she was present at the time of incident. Thereafter, they called up 108 for Ambulance and sent her brother-in-law to Gohpur Civil Hospital and later was referred to Tezpur Medical College. She exhibited the ejahar as Ext.1 and identified her signature thereon.

9. During her cross-examination she deposed that she doesn't know what was written in the ejahar. That, the incident took place at about 9.00 p.m. That, initially they quarreled over a musical drum at the house of Ranji. That, she was sleeping when she heard hue and cry in the house of Ranji and then she went to Ranji's house. Denied that she deposed falsely to safeguard her brother-in-law.

10. P.W.2- Smt. Rupali Das, she in her examination-in-chief deposed that the complainant is her sister-in-law. That, the accused is her neighbor. That, the incident took place on the 1st day of Bohag Bihu at about 8.30 p.m. when accused Haliram Das came to their house and hit her husband Numal Das with a bamboo stick on his head, as a result of which he sustained injury and at that time Lakhimai Das, Debajit Das, Sabiram Borah, Narayan Das, Bikash Das and few others were present. Thereafter, they called up 108 Ambulance service and sent her husband to Gohpur Civil Hospital, who was later referred to Tezpur Medical College for treatment.

11. During her cross-examination she deposed that police did not record her statement. That, a quarrel took place in between Bikash Das and Madhu Das. That, her husband tried to interevene when the incident happened. Denied that she has deposed falsely that the accused hit her husband.

12. P.W.3- Sri Debajit Das, she in her examination-in-chief deposed that the complainant and accused are his co-villagers. That, the incident took place on the day of Bohag Bihu. That, he was at the house of Numal Das when they heard hue and cry and then Numal Das went to restrain them from fighting when accused hit Numal Das with a bamboo stick on his head and as a result of which he sustained injury. Thereafter, they called up 108 Ambulance service and sent Numal Das to Gohpur Civil Hospital.

13. During his cross-examination he deposed that the incident took place in the evening. That, he saw that accused hit Numal Das, but he has no

knowledge if there was any dispute amongst them, prior to the incident. That, police did not record his statement.

14. P.W.4- Sri Sabiram Das, he in his examination-in-chief deposed that the complainant and accused persons are his co-villagers. That, at the time of incident he was at his house when he heard hue and cry and went to the place of occurrence i.e. house of Numal Das and saw Numal Das in an injured state. That, police seized blood stained shirt of Numal Das in his presence. That, he exhibited the seizure list as Ext.2 and identified his signature thereon.

15. During his cross-examination he deposed that on the very next day of the incident at about 4 p.m. police took his signature when police seized the blood stained shirt. That, he has not seen the shirt in the Court.

16. C.W. Numal Das, he is the victim , he in his examination-in-chief deposed that complainant is his elder sister-in-law and accused Haliram Das is his cousin. That, on the 1st day of Bohag Bihu at about 8.30 p.m., when he was having his dinner, he heard hue and cry in the courtyard of Ranji Das. That, Bikash Das and Madhu Das were quarrelling amongst themselves. That, he went to restrain them from fighting, when the accused Haliram Das hit him with a bamboo stick on his head. That, he fell unconscious and fell on the ground. Thereafter, he was sent to Gohpur Civil Hospital in an ambulance and later sent to Biswanath Chariali and later at Tezpur Medical College where he was admitted and undertook treatment for 11 days.

17. During his cross-examination he deposed that a quarrel took place in between Bikash Das and Madhu Das in the courtyard of Ranji Das, where villagers were present. Denied that he deposed falsely that accused hit him from the back side on his head. That, police did not record his statement as he was hospitalized. Denied that he has deposed falsely that Haliram Das hit him.

18. P.W.5 A.S.I. Alimuddin Ahmed, he in his examination-in-chief deposed that on 15.04.17 Lakhimai Das filed an ejahar. That, he was posted as an Attached officer at Gohpur P.S. That, on 15.04.17, after registering case, O/C endorsed him to investigate the matter. That, accordingly, he proceeded towards the place of occurrence Nalbarigaon, Gohpur and prepared the sketch map. That,

he seized a blood stained shirt from Lakhimai Das. That, he recorded the statement of the accused person at police station and later released him on bail. That, on 16.04.17 he collected the medical report of the victim. That, he found sufficient materials against the accused person and submitted charge-sheet against the accused Haliram Das U/S 448/323/294 of I.P.C. That, he exhibited the sketch map as Ext.3, seizure list of blood stain shirt as Ext.2 and charge-sheet as Ext.4 and identified his signature thereon.

19. During his cross-examination he deposed that the incident took place on 14.04.17 during night hours. That, he has not recorded the statement of Ranji Das and Padma Das shown in Ext.3 as index C. That, P.W.1 Lakhimai Das has not stated before him that the incident occurred during night at about 9 p.m. That, P.W.2 Rupali Das has not stated before him that Bikash Das and Madhu Das had a quarrel and her husband went to settle their matter, when accused hit her husband, P.W.3 Debajit Das did not state before him that incident occurred at the house of Numal Das. That, he has not recorded the statement of Numal Das U/S 161 Cr.P.C. Denied that he has not investigated the case in accordance with law. Denied that he has submitted false charge-sheet against the accused person.

20. In the light of the above testimonies and on perusal of the materials on record, the following facts are observed:

- I. That the victim was examined as a Court witness, who stated that accused Holiram Das hit him on his head with a bamboo stick on the day of incident at about 8.30 p.m. during Bohag Bihu. His testimony is substantially corroborated on this point by P.W.1 the informant, P.W.2 his wife and P.W.3 who is an independent witness. And all of them are eye witnesses.**
- II. That, the medical officer is not examined by the prosecution side. The medical report is considered U/S 294 of Cr.P.C, it reveals that injury caused is of simple nature at the left parietal region by blunt object. The date of examination is same with the date of occurrence.**

Therefore, it aids the prosecution story to the extent that victim sustained injury on the head on the date of occurrence. However, the victim i.e. C.W. and his wife P.W.2 testified that the victim was referred to Tezpur Medical College, where he underwent treatment. But, this point is not supported by any medical document. Further, none of the witnesses stated that Lakhimai Das and Pompy were beaten up by accused. Hence, there is certain inconsistency.

III. That the victim Holiram Das however, mentioned that it was Bikash Das and Madhu Das who were quarrelling amongst themselves. That, he went to restrain them from fighting, when the accused Haliram Das hit him with a bamboo stick on his head. That, from the above evidence it reveals that the victim Numal Das came out of his house and intervened in between Bikash Das and Madhu Das, when the accused came and hit him. Therefore, the element of trespass into the house of the victim by the accused person is not proved, on the basis of C.W testimony. Now, considering the ejahar which was filed by Lakhimai Das and who deposed as P.W.1, it reveals that she alleged that accused criminally trespassed into the house of victim in ejahar and stated that he was attacked at the courtyard of his house. Further, the other 3 witnesses P.W.2 and P.W.3 stated that Numal Das was hit by the accused at the courtyard and P.W.4 witnessed Numal Das lying on the ground at his courtyard it is held that Place of occurrence was Courtyard and not inside the house of the victim. Therefore, the points requiring proof U/S 448 of I.P.C. is not present in the instant case. However, from the above preceding point of observation it reveals that there was no provocation from the side of victim and it was the voluntary act of the accused who caused hurt to the victim Numal Das, which is

substantially proved based on the cogent evidence put forward by the P.Ws. Hence, offence U/S 323 of I.P.C stands proved in the instant case.

IV. The prosecution also alleged of offence U/S 294 of I.P.C, however none of the P.Ws including the C.W. has stated anything incriminatory against the accused Haliram Das on this point. As such, offence U/S 294 of I.P.C stands not proved in the instant case.

21. Considering the above, I hold that prosecution has succeeded to prove the guilt of the accused person that on 14.04.2017 at about 8 p.m. at Pub Ghogora, Nalbari, Gohpur voluntarily caused hurt to Sri Numal Das and thereby committed an offence punishable U/S 323 of I.P.C.
22. However, though charge U/S 448 of I.P.C is not proved in the instant case, it reveals from the above discussion that points to prove an offence U/S 447 of I.P.C. is present and stands proved in the instant case against the accused person.
23. Therefore, by applying provision U/S 222 (1) of Cr.P.C. which states that –“when offence proved included in offence charged. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitute a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.” The accused person is held guilty U/S 447 of I.P.C.
24. In the result, the accused person Sri Haliram Das is hereby found guilty and convicted U/S 323/447 of I.P.C.
25. Considering the facts and circumstances of the case, the benefit of Section 3 of Probation of Offenders Act is not forwarded to the convicted person.
26. However, while considering the quantum of sentence, the age of the convict, his liabilities, the relationship of the offender and the victim that they are cousin brothers and there

is scope of reconciliation of their differences in the future , nature of the offence committed, and no past criminal record of the convict is taken note of.

27. Accordingly, Sri Haliram Das is sentenced to pay fine of Rs.1, 000/- (One thousand) U/S 323 of I.P.C. i.d. Simple Imprisonment of 30 days and is sentenced to pay fine of Rs. 500/- (Five hundred) U/S 447 of I.P.C,i.d. Simple Imprisonment of 15 days.
28. Bail bonds furnished are hereby extended for a period of 6 (six) months.
29. Fine amount so collected will be forwarded to the victim.
30. Furnish a free copy of the judgment to the convicted person.
31. The case is disposed of on contest.

Given under my hand and seal of this court on this the 27th day of July, 2018 at Gohpur.

(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur

Dictated and corrected by me

(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur

APPENDIX

Prosecution Witness-

**P.W.1- Smt. Lakhimai Das
P.W.2- Smt. Rupali Das
P.W.3- Sri Debajit Das
P.W.4- Sri Sabiram Das
P.W.5- A.S.I. Alimuddin Ahmed
C.W. - Numal Das**

Defence Witness-

Nil

Prosecution Side Exhibits-

**Ext.1- Ejahar
Ext.2- Seizure list
Ext.3- Sketch map
Ext.4- Charge sheet**

Defence Side Exhibits-

Nil

**(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur**