

DISTRICT SONITPUR, IN THE COURT OF THE C. J. M. AT TEZPUR, ASSAM:::~::~

Present:- Sri S. K. Dhar,

C.J.M. Tezpur.

C. R. Case No. 110/04
U/S 324/34 I.P.C.

Sri Men Bahadur Rai.....Compltt.

-Vs-

Sri Karna Bahadur Rai.

Sri Dhanser Rai.....Accuseds.

Dates of recording evidences:- 13-12-05, 19-12-05, 03-03-06, 21-09-06, 05-10-09.

Date of argument:- 7-4-12.

Date of judgment:- 19-4-12.

ADVOCATE APPEARED

This case is arising out of a written complaint petition. The brief of the prosecution's case, as it appears from the written complaint petition is that, the complainant is the Head master of the Tarabari Asemiya L.P. School situated at village Tarabari. The accuseds are resident of that village. It is alleged that on 23-03-04 the complainant was going to the school riding on a cycle. At that time one Netre Bahadur Thapa attacked him and caused hurt to his person by dealing him due blow as well as shoot from his catapult.

Alleging as above the compltt. lodged a written complaint petition on 08-04-04 before this court which was made over to the court of the Ld. Addl. C.J.M. for disposal. Receiving the complaint petition on transfer the then Ld. Addl. C.J.M examined the compltt. U/S 200 Cr.P.C. and having found that the Rangapara P.S. already registered a police case called for a report from the O.C. Rangapara P.S. U/S 210 Cr.P.C. Thereafter upon receipt of police report the then Ld. Addl. C.J.M having found sufficient grounds to proceed against the present accuseds took cognizance of offences U/S 341/323/324 I.P.C. and issued processes against the accuseds to procure their attendances. In due course of time the accuseds entered into appearance thereafter the court proceeded as per procedure laid down for trial of warrant procedure case. It may be noted here that considering the fact that another G.R. case arising out of the same day occurrence was pending before this court the then Ld. Addl C.J.M. forwarded the case record to this court and my Ld. predecessor in

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Chair retained the case record in this court for trial alongwith the G.R. case No. 390/04.

In this case the prosecution side examined six P.Ws. and another witness was examined as C.W. Defence side took full scope for cross examination. Thereafter hearing both the sides and going through the materials in the case charges U/S 324/34 I.P.C. was framed against the accuseds. Charge so framed and particulars of offences embodied in the charge were read over and explained to the accuseds to which they pleaded not guilty and claimed to be tried.

As already stated above the prosecution examined six P.Ws. and one C.W. Defence side took full scope for cross examination. Upon closure of prosecution evidence the statement of the accuseds U/S 313 Cr.P.C. was dispensed with in view of no incriminating material against them.

Heard argument advanced by both the sides.

Points for determination:-

Whether on 23-04-04 the accuseds in furtherance of their common intention voluntarily caused hurt to Mon Bahadur Rai by a dao, an instrument for cutting and liable U/S 324/34 I.P.C. ?

Discussion, decision and reasons therefor:-

This is a criminal case where the prosecution has levelled charge U/S 324/34 I.P.C. against the accuseds. In a criminal case the burden of proof of its case as well the charge levelled against the accuseds lies squarely upon the prosecution and the prosecution is to prove its case as well as the charge beyond all reasonable doubt to establish the guilt of the accuseds. To prove the case as well as the charges prosecution is to adduce cogent and reliable evidence. Mere levelling allegation against the accuseds is no proof of the charge and the accds. are also not required to prove their innocence. Bearing in mind the above broad principles of criminal trial let us now scrutinise the evidences on record.

P.W. 1 is Mon Bahadur Rai, the complainant of the case whose testimonies he attributed the act of physically assaulting him on one Netre Bahadur and nothing has been attributed in respect of the present accuseds. It may be noted here that Netre Bahadur Thapa is the accd. in G.R. Case No. 390/04 and facing trial U/S 324 I.P.C. for voluntarily



Chief Judicial Magistrate
Sunitpur, Teraha.

causing hurt to the P.W. 1 on 23-04-04.

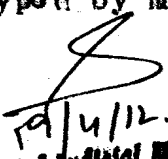
Likewise P.W. 2 Kharka Ram Rai, P.W. 3 Chatur Singh Rai, P.W. 4 Sanma Newar, P.W. 5 Suraj Limbu and P.W. 6 Hari Rai in their evidence has attributed the act of assaulting the P.W. 1 on Netre Bahadur Thapa (an accused of G.R. Case No. 390/04) and not on the present two accuseds. Rather the P.W. 6 in his examination in chief categorically stated that the present accuseds are not involved in the case. C.W. 1 is the medical officer who examined the P.W. 1 on the very day of occurrence & found some injuries on his person. C.W. 1 no way has personal knowledge of the occurrence and has no bearing in determination of the point in hand.

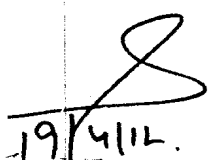
Since there is absolutely no evidence of indicting the accuseds the point in hand is decided in the negative. For negative determination of the point in hand the accuseds are not found guilty of the charge U/S 314/34 I.P.C. Accordingly the accuseds stand acquitted of the charge levelled against them and set at liberty forthwith. Their bail bonds in the case record also stand discharged.

Before parting up with this judgment I like to observe here that the complainant of the case has lodged the complaint petition against the accuseds Karua Bahadur Rai and Dhansor Rai without any reasonable cause and thereby dragged them to the court of law to face the charge thereby compelled them to attend the court w.e.f. 19-11-04 till date. As such the complainant is required to show cause U/S 250 Cr.P.C. as to why he shall not pay compensation to the accuseds.

Given under my hand and seal of this court on this the 19th day of April 2012 at Tozpur.

Typed by me:-


19/4/12.
Chief Judicial Magistrate
Sonitpur, Tezpur.


19/4/12.
Chief Judicial Magistrate
Sonitpur, Tezpur.