

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS, TEZPUR,
SONITPUR.

CR CASE NO 386/06

U/S 341/323/379/506/34 IPC

PRESENT : K. K. PATHAK, AJS

PARTIES : ANIL BHADRA

-Vs-

1. APURBA SEN (A1)

2. RANJIT BAISHYA (A2)

3. BINAPANI (A3)

4. PRADIP BAISHYA (A4)

5. CHITTARANJAN BAISHYA (A5)

6. SUJIT BAISHYA (A6)

EVIDENCE ON : 19.07.07, 17.08.07, 25.02.09,, 08.05.09, 02.05.11,
10.06.11, 15.10.11,

S/D ON : 17.06.11

ARGUMENTS ON : 01.08.12

JUDGMENT ON : 04.08.12

LAWYERS : T. N. GAJIREL (FOR COMPLAINANT)

P. S. SETHI (FOR ACCUSED)

JUDGMENT

In the matter at hand, three alleged incidents have been clubbed together by the complainant and a single complaint has been filed. The date of occurrences are different. The first two incidents relate to alleged incidents of assault on his wife, son and himself by the accused along with taking away of articles and damage to his cycle. The third incident pertains to alleged threats on the complainant side by the accused.

After following the due legal procedure, cognizance u/s 341/323/354/379/506/

427/34 IPC was taken against the accused. They entered appearance. Copies were furnished. As it was a warrant procedure case, evidence before charge was recorded and charges u/s 341/323/379/506/34 IPC were framed, read over and explained to the accused. They pleaded not guilty and claimed to be tried.

Evidence after charge was recorded. s/d of the accused were recorded. Defence adduced evidence. Arguments were heard.

POINT FOR DETERMINATION:

1. Whether the accused committed the offences as charged?

DECISION AND REASONS:

INCIDENT NO 1:

As per the complaint, the complainant was not present at the time of the first incident. A1 had assaulted his son Habul. One Purnima Baishya informed his wife who reached the p/o. she told A1 not to assault her son. At this a1 pulled her. At this point a2 reached the p/o and then a1 and a2 assaulted her by fists and 'pira'. It was also alleged in the complaint that the lady's ear rings were taken away by A1. Further allegations are that two hours after this, a2, 4 and 5 went to house of complainant and again assaulted his son by lathis while a3 assaulted his wife. The wife was also abused.

Now let us see whether these allegations are substantiated by the evidence.

Anil Bhadra/pw1 is the complainant. Admittedly, as per the complaint, he was not present at the time of the incident. His evidence in court regarding the incident of assault on his wife and son is hearsay which is not admissible in a criminal court. That apart, it has been stated that the victims(wife, son) were medically treated. But no medical evidence is available to substantiate this aspect. Ocular evidence as a rule prevails over medical evidence. But since it has been stated that victims were assaulted by lathis, 'pira' which is also a hard wooden sitting stool; in my opinion some medical evidence is required. Further, the GAUHATI HIGH COURT in the case of AFTABUDDIN -V- STATE OF ASSAM, 2011(2) GLT 229 had on account of absence of medical evidence acquitted the accused. Evidence of pw1 does not help the prosecution case.

Tarulata Das/pw2 is the wife of the complainant. She deposed that she was informed by one Purnima that a1 and a2 were assaulting her son. When she reached the p/o, a1 and a2 had assaulted her by hands and 'pira' and both the accused took away her ear rings. It was further deposed that after two hours, a1, a3, a2 and other people came and she was assaulted by a3. She stated that her son was about to be assaulted but he moved away.

The testimony of this witness falls in the category of neither wholly reliable nor unreliable. Why I am saying this is because as per the complaint it was only a1 who assaulted Habul. A2, as per the earliest version of the incident being the complaint petition, came later on and then assaulted his wife. Further as per the complaint it was only a1 who took away the ear rings whereas in evidence both a1 and a2 have been implicated. That apart, as per the complaint, a2, 4 and 5 assaulted her son by lathis whereas in her evidence she is totally silent as to assault by lathis and had stated that her son moved away. There are discrepancies between the facts narrated in the complaint and the evidence in court. So there could not have been any assault as stated in the complaint. On account of these inconsistencies, the testimony has been so branded. In evidence of this nature corroboration is required. Let us see if corroboration is available.

Abul Bhadra/pw3 is the son of the complainant and a victim. As per his evidence, a1 had assaulted him. He also stated that a1, a2 and his wife had assaulted his mother. The ear rings of his mother were also lost. It was further stated by him that two hours after this, a2 had assaulted his mother and when he was about to be assaulted he moved away.

Pw2 had never in her evidence stated that when she had gone to save her son wife of a2 had assaulted her as has been stated by pw3 who was present at the p/o. Further regarding the incident which occurred two hours later, pw2 had never stated that she was assaulted by a2. Rather as per her evidence it was a3 who had assaulted her. Pw 3 has also stated that ear rings were lost, thus not implicating anybody of theft, whereas pw2 has stated about theft. On account of material discrepancies in the versions of the victims/eyewitnesses, the evidence of this witness also falls in the category of neither wholly reliable or unreliable.

Sanjoy Baishya/pw4 and Dilip Sarkar/pw5 are not witnesses to this incident. So their evidence does not help.

Santosh Baishya/pw6 who as per the prosecution is an eyewitness has implicated only a1 as having assaulted pw2 and 3. So his evidence is contradictory to the evidence of the victims who have named many people.

Thus, after going through the evidence, I find the evidence of pw2, 3 and 6 fall in the category of neither wholly reliable nor unreliable. No corroboration, as is required, in such testimony is available. One infirm witness cannot corroborate another infirm witness. As such, in view of the available evidence, I do not find the charges as regards the first incident to be proved beyond doubt.

Point stand decided accordingly.

INCIDENT NO 2:

Pw 1 and 2 are the victims in this incident.

Pw1 , regarding this incident stated that , he was returning after informing about the first incident to the Gaon Panchayat President. On the way he saw all the accused sitting by the side of the road and all the accused other than a3 accosted him and a4 and a6 assaulted him with lathi and damaged his cycle. Rs 1700 was also taken away by the accused. His wife/pw2 was also with him at that time.

Pw 2 in her evidence has not stated that all the accused other than a3 accosted her husband and herself. She has only stated that a4 and a6 assaulted her husband and money was taken away.

There are inconsistencies in the evidence of these two vital witnesses regarding this incident. Their evidence falls in the category of neither wholly reliable nor unreliable. Corroboration is required in such case.

Pw 4, in his examination in chief had implicated a4 and a6 but during cross examination, he admitted that he had not seen other accused including a4 at the p/o. so presence of a4 at the p/o is ruled out.

Pw 5 has also implicated the accused but pw4(an eyewitness as per prosecution) has ruled out presence of accused including a4 at the p/o.

So, from the evidence the role of the accused in the assault and in taking away of money is not proved beyond doubt.

INCIDENT NO 3:

As regards the third incident, I find that no evidence at all has been adduced to substantiate the allegations in the complaint.

ORDER

In view of the evidence on record, I do not find the charges to be proved beyond doubt.

Accordingly , all the accused are acquitted of the charges u/s 341/323/379/506/34 IPC and set at liberty.

Bail bonds are cancelled.

Given under my hand and seal on this the 4th day of AUGUST 2012.

(K. K.Pathak),
Judicial Magistrate,
1st Class, Tezpur.