

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE
TEZPUR. SONITPUR.**

Present: Dr. M Baruah
Chief Judicial Magistrate,
Sonitpur, Tezpur.

G. R. Case No. 1869/2005
U/s 341/323/34 IPC

State

Vs

1. Abdul Hasim
2. Aktaruddin
3. Hatem Ali
4. Samsul Ali Accused person

Appearance:

Counsel for the State : Smti R Chakravorty, Sri N Das.
Counsel for the defense : Sri J. Borah.
Offence explained on : 17-3-2007.
Evidence recorded on : 19-7-07,17-12-08,2-3-09,7-8-09,
9-10-09,
Argument heard on : 25-9-2013.
Judgment delivered on : 9-10-2013.

J U D G M E N T

The prosecution's case in brief is that the informant Nurikul Haque filed an ejahar before the O/C Sootea PS on 26-10-05 stating that on the same day at about 4 p.m. when the informant was returning home from Itakhola, the accused persons wrongfully restrained him in front of the house of Puniram assaulted him with the blunt edge of the khukri and lathi causing injuries on his person. When the informant raised hulla, Puniram came and saved his life.

2. Upon receive of the ejahar, the O/C Sootea PS registered a case being Sootea P S Case No. 102/05 u/s 341/325/34 IPC and

started investigation. After completion of investigation, police filed charge sheet against the accused person Abdul Hasim, Akataruddin, Hatem Ali and Samsul Ali u/s 341/323/34 IPC.

3. The accused persons appeared before the Court and faced trial. Copy of the prosecution documents were furnished to the accused persons. After hearing learned counsel for both sides, particulars of offence u/s 341/323/34 IPC explained to the accused persons. The accused persons pleaded not guilty and claimed to be tried.

4. Prosecution adduced evidence of the five witnesses, including the MO and IO of this case. After close of prosecution evidence, statement of the accused persons U/s.313 Cr.P.C. recorded. The plea of the accused persons is total denial and they adduced no evidence in their defence.

5. **POINTS FOR DETERMINATION**

- (i) Whether the accused persons, on 26-10-05 at about 4 p.m, in furtherance of common intention, wrongfully restrained Nurikul Haque while he was returning to his residence on his cycle?
- (ii) Whether the accused persons, on 26-10-05 at about 4 p.m, in furtherance of common intention, voluntarily caused hurt to Nurikul Haque ?

Heard argument of the learned counsel for the prosecution and the defense. Peruse the materials on record.

DECISION, DISCUSSION AND REASONS THEREOF

6. PW-1 Md Nurikul Haque stated that on the day of occurrence at about 4.00 pm he was returning from Itakhola bazar to his residence on a bicycle. At a tinali the accused Md Hasim Ali , Aktaruddin and Bagdora were waiting. The accused Hasim told the other to restrain

him. The accused persons restrained him and Bagdora had beaten him on his right hand by a fencing stick. Then Kuddush came and rescued him. He came to his residence and told the matter to his father and filed the ejahar. Ext I is the ejahar and Ext-(1) is his signature.

During cross examination he stated that he does not know what is written in the ejahar. He stated that there was no other persons present at the time of occurrence. He denied that he told before the police and also wrote in the ejahar that Puniram came and rescued him. He does not know if he mentioned about Bagdora in his ejahar. He denied that he never stated the involvement of Bagdora before the police. He stated that another case is pending against him, Rajek and Nurul which was filed by the accused persons. He denied that he and Nurul had caused injuries of Abdul Hasim by sharp weapon.

PW-2 Md. Nurul Haque deposed that on the day of occurrence at about 3.00pm his brother Narikul Haque was returning from Balochunga center to his residence and the accused persons had beaten his brother in front of their residence. He was informed by a person and immediately he and his father Abdul Rezek went to the place of occurrence. He saw swelling injury on the left hand of his brother.

During cross examination he stated that the place of occurrence is about 1 ½ km from his residence. He came to the place of occurrence on a bicycle and saw the accused persons. There was no other persons present. He denied that they filed this case against the accused in order to save themselves from the case given against them by the accused.

PW-3 Md. Kuddus Ali deposed that at about 3 to 4 pm he was returning from Itakhola center and he saw that Nurikul and Abdul Hasim was holding a stick and there was pulling and pushing. Nurikul told him that Abdul Hasim had beaten him. He did not see any injury on the body of Narikul.

During cross examination he stated that after the fight was over the brother of Narikul and his father came.

PW-4 Dr. Rupak Barua deposed that he examined one Nurikul Haque on Police requisition. He found swelling over right fore arm and abrasion over the right wrist. He opined that the injuries were fresh, simple and caused by blunt weapon.

PW-5 Sri Promod Bora deposed that he made preliminary investigation of the case. After investigation he filed charge sheet against the accused u/s 341/323/34 IPC. Ext-3 is the charge sheet and Ext-3(1) is his signature.

During cross examination he stated that is a case against Nurikul, Rejek and Nurul filed by the accused. He did not examine Puniram.

7. On scrutinizing the materials on record, I found that the informant in his ejahar mentioned that the accused persons wrongfully restrained him in front of the house of Puniram assaulted him with the blunt edge of the khukri and lathi causing injuries on his person. When the informant raised hulla, Puniram came and saved his life. But PW-1 in his deposition stated that he was saved by his brother and father who came to the place of occurrence after hearing about the incident. But PW-3 stated that the brother of Nurikul and his father came to the place after the fight was over. PW-3 further stated that he saw Nurikul and Abdul Hasim was holding a stick and there was pulling and pushing. He did not see that the accused had beaten the informant. PW-1 stated that PW-3 Kuddus Ali came and rescued him, whereas PW-3 did not confirm the same. The informant did not mention in the ejahar the name of Bagdora regarding his involvement in the case. It is also found that the accused persons had also given a case against the informants and his brother. Therefore considering the materials on record, I found that the the prosecution's case is doubtful because the witnesses have contradicted in their evidence. The material witnesses are not believable.

O R D E R

8. Considering the facts and circumstances of this case, I found that the prosecution has failed to prove the case against the accused persons u/s 341/323/34 IPC beyond reasonable doubt. As a result the accused persons are acquitted and set at liberty. Their bail bonds stand cancelled.

9. The judgment is prepared and typed by me.

10. Set my hand and seal of this Court on this the 9th day of October, 2013.

(Manash Baruah)
Chief Judicial Magistrate,
Sonitpur, Tezpur.