

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

Present:- Sri S. K. Dhar,

C.J.M. Tezpur.

G. R. Case No. 1355/06  
U/S 147/447/323/325 IPC

State of Assam .....Compitt.

-Vs-

Mr. Hafiz Uddin.

Mr. Dulal Ali.

Mr. Babul Ali.

Mr. Sulaman Ali.

Mr. Abdul Kalam.

Msmt. Syamla Khatun.

Msmt. Anzora Begum.....Accuseds.

Date of recording evidences:- 11-06-08, 24-07-08, 19-12-08, 24-03-10 & 27-10-10.

Date of argument:- 23-8-11, 19-9-11, 15-10-11

Date of judgment:- 28-10-11

ADVOCATE APPEARED

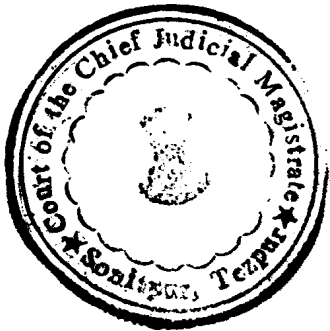
For the State:- R. Chakraborty, For the accused:- S. Bora.

The brief of the prosecution's case, as it appears from the written charge ( Ext. 1 ) is that, on 21-09-06 at about 7 A.M. all the accuseds armed with dao, lathi, iron rod, axe etc. entered into the courtyard of the homestead of the informant and caused injuries to his person and his parents, brother and wife.

Alleging as above, within two hours of the occurrence the informant Berek Ali ( P.W. 1 ) lodged the Ext. 1 before the O.C. Missamari P.S. on the basis of which a regular police station case was registered and investigated into. Upon completion of investigation the police officer filed charge sheet against the accuseds U/S 147/447/323/325 I.P.C. and forwarded the same to this court. Receiving the case record this court made over the case record to the court of the Ld. S.D.J.M.(S) for disposal.

Receiving the case record on transfer for disposal the Ld. S.D.J.M.(S) first took cognizance of the offences and also issued processes against the accuseds to procure their attendance. In the due course of time the accuseds appeared. They were furnished with copy

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S. K. Dhar  
Magistrate, Sonitpur

U/S 207 Cr.P.C. and after hearing both the sides and going through the materials available in the case record charges were framed against the accuseds U/S 147/447/323/325 I.P.C. Charges so framed and particulars of offences embodied in the same were read over and explained to the accuseds to which all of them pleaded not guilty and claimed to be tried. It may be pointed out here that vide order dt. 26-03-08 the case record was withdrawn from the court of the Ld. S.D.J.M.(S) and retained in this court for disposal.

During trial the prosecution side examined in all 10 P.Ws. including the M.O. and the I.O. Defence side took full scope for cross examination. Upon closure of prosecution evidence the statements of the accuseds were recorded U/S 313 Cr.P.C. wherein they denied the materials against them and also declined to adduce evidence in defence. The defence case is one of denial simpliciter.

Points for determination:-

1. Whether on 21-09-06 at about 7 A.M. the accuseds formed an unlawful assembly with the common object to commit an offence?
2. Whether in prosecution of common object of that assembly the accuseds entered into the homestead boundary of the informant and caused grievous hurt to the person of Mafiz Ali and hurt to the persons of Barok Ali, Sattar Ali ?

Discussion, decision and reasons therefor:-

For the purpose of determining the points in hand I have gone through the materials in the case record. Alongwith the trial of this case G.R. Case No. 1519/06 was also simultaneously tried as a cross case. So apparently an occurrence between the parties is an admitted position of fact. The date and time of occurrence in both these cases is 7 A.M. on 21-09-06. Regarding the same occurrence, there appears allegation and counter allegations. As a principle of criminal law cross cases are to depend on their own individual merit and evidence recorded in one case cannot be used in another case, unless proved as per law of evidence.

In the present case prosecution has examined the medical officer who examined the injureds after the occurrence. Dr. Phani-dhar Sarma is that medical officer who has been examined as P.W. 10. As per testimonies of the P.W. 10 on 21-09-06 just within a couple of

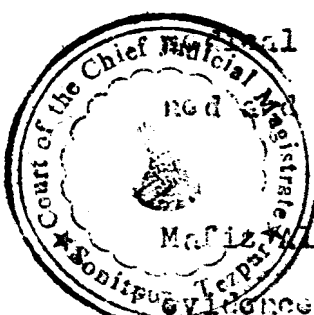
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of Judicial Magistrate  
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hear of the occurrence he examined Berek Ali, Mafiz Ali, Sattar Ali, Rashida Khatun and Ramisha Khatun at the Garubandha State Dispensary and detected marks of injuries on the former three persons and no mark of injury on the later two. From the evidence of the P.W. 10 it appears the injureds were escorted by police persons and examination of the persons was done in relation to Missamari P.S. case. Though in cross examination P.W. 10 admitted that he didnot disclose the case number but the fact remained that he examined Berek Ali, Sattar Ali and Mafiz Ali and detected simple lacerated wounds on the forehead of Berek Ali and occipital region of Sattar Ali, which in his opinion simple in nature and caused by blunt surface. Though he detected tenderness and swelling on the left hand of Hafiz Ali he didnot give any opinion but referred to the Kanaklata Civil Hospital. The defence side didnot dispute the injuries detected on these persons but confronted P.W. 10 with suggestions that these injuries may be caused by dashing against hard substance. There is, however, no medical evidence of Kanaklata Civil Hospital that Hafiz Ali was examined and any grievous injury was sustained by him.

The prosecution side has examined Berek Ali, Sattar Ali, Mafiz Ali, Sahara Khatun and Ramisa Khatun vide P.W. 1 to P.W. 5. In their evidence they have corroborated the prosecution case to the hilt in giving direct account of the occurrence. According to them on the date of occurrence the accuseds in a body entered into the campus of their home being armed with different weapons and physically assaulted them regarding a preceding day quarrel between them in respect of a plough. It may be noted here that there is no dispute at the bar that the occurrence took place due to return of a plough. The medical evidence of P.W. 10 also lent support to their testimonies that hurt were caused to the persons of P.W. 1, 2 and 3. Though the defence side extensively cross examined these P.Ws. no major discrepancies or improvement over his earlier statements could be extracted to dislodge their testimonies. Even an independant witness Sri Rajen Das supported the testimonies of the P.W. 1 to 5 that on the date of occurrence the accuseds in a body entered into the home-stand of the P.W. 1 and physically assaulted him and his other family members. He also saw weapons in the hands of the assailants. An independant witness supporting the prosecution case has fortified the truthfulness of the prosecution case as well as the evidences of P.W. 1 to 5. It



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may be noted here that it is not the quantity of evidence but quality of evidence which weigh in the court of law for arriving at a decision. In this case believing the testimonies of the P.W. 1 to 6 and P.W. 10 we can safely arrive at a conclusion that the prosecution side has been able to prove the charges U/S 147/447/323 I.P.C. against the accuseds beyond all reasonable doubt. However, there is no evidence of grievous hurt being caused to Hafiz Ali. So the charge U/S 325 I.P.C. against the accuseds stands not proved. Accordingly the points in hand stand decided.

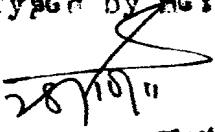
In view of above the accuseds stand acquitted of the charge U/S 325 I.P.C. but stand convicted U/S 147/447/323 I.P.C.

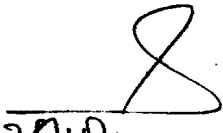
Considering the fact of the case that both the sides are closely related to each other staying in the neighbourhood and no earlier conviction is proved against them and the antecedents of the convicts are not blemished I am of the view that justice would be served if the convicts are given the benefit of Probation of Offenders Act 1958.

Accordingly extending the benefit of section 3 of the Probation of Offenders Act 1958 the convicts are released after due admonition.

Given under my hand and seal of this court on this the 28th day of October 2011 at Tezpur.

Typed by me:-

  
28/10/11  
Chief Judicial Magistrate  
Sonitpur, Tezpur

  
28/10/11  
Chief Judicial Magistrate  
Sonitpur, Tezpur



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