

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, SONITPUR, AT TEZPUR, ASSAM.

Present:- Sri S. K. Dhar,

C.J.M. Tezpur.

G. R. Case No. 1972/07
U/S 341/323/506 I.P.C.

State of Assam.....Complt.

-Vs-

Sri Biren Kalita.....Accused.

Date of recording evidence:- 05-05-10, 30-11-10, 27-07-11.

Date of argument:- 10-1-12.

Date of judgment:- 24-1-12.

ADVOCATE APPEARED

For the state :- Mr. N. M. Das, Ld. Addl.

Public Prosecutor.

For the accused:- Mr. H. C. Dev Goswami.

J U D G M E N T

The brief of the prosecution's case, as revealed from the written ejarah (F.I.R. of the case and marked as Ext. 1) is that, on 06-12-07 at about 2 P.M. (after noon) the accused dealt a blow on the head of the informant by a bamboo and caused bleed ozzing injury. It is also alleged that the accused threatened the informant.

Alleging as above the informant Sri Ajit Ch. Kalita (P.W. 1) lodged the Ext. 1 ejarah on that very day before the O.C Tezpur P.S. on the basis of which a regular police station case was registered and investigated into. Police investigated the case and upon completion of investigation filed charge sheet against the accused U/S 341/323/506 I.P.C. and forwarded the same to this court. Receiving the case record in charge sheet by Ld. predecessor in chair retained the case record in this court for disposal and taking cognizance issued process against the accused to procure his attendance.

In due course of time the accused entered into appearance. On his appearance he was furnished with copies of the prosecution documents as per provision of Cr.P.C. and going through the materials in the case record the particulars of offences U/S 341/323/506 I.P.C. were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

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Chief Judicial Magistrate
Sonitpur, Tezpur, Assam

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

Heard argument advanced by both the sides.

Points for determination:-

Whether on 06-12-07 at about 2 P.M. :-

1. The accused wrongfully restrained the informant on his way and voluntarily caused hurt to him ? AND

2. The accused criminally intimidated him ?

Discussion, decision and reasons therefor:-

In this case out of the four P.Ws. examined by the prosecution P.W. 1 & 2 have given eye witness and direct account of the occurrence. So naturally their evidence bears much evidentiary value in the eye of law. Let us first scan the evidences of P.W. 1 and P.W. 2.

P.W. 1 is Sri Ajit Ch. Kalita, the informant of the case. In his evidence he proved the injurious Ext. 1 and testified that when he was seeing off Pradip Baruah the accused dealt him a blow on the back of his head causing blood oozing injury. At that time P.W. 2 intervened and drove away the accused. According to the P.W. 1 he instantly went to the thana and lodged the Ext. 1. According to him the police sent him for medical treatment. In cross examination except confronting with some suggestions nothing has been elicited to diminish the direct eye witness account of the P.W. 1. A careful scrutiny of the cross examination reveals that the defence side admitted the fact of sustaining injury by the P.W. 1.

P.W. 2 is Basista Ram Baruah who was present with the P.W. 1 at the time of occurrence. In his testimonies P.W. 2 completely lent corroboration to the P.W. 1 stating that he saw the accused assaulting P.W. 1 by a bamboo causing injury on the head of the P.W. 1. He also corroborated the P.W. 1 stating that he intervened and saved the P.W. 1.

The testimonies of the P.W. 1 and P.W. 2 corroborated each other in establishing the fact that on the date of occurrence

the accused physically assaulted the P.W. 1 and caused injury on the back of his head. The testimonies of the P.Ws. do not suffer from any contradiction nor the defence in the cross examination could rebutt the testimonies. So their evidence bear credibility of belief and reliability.

P.W. 4 is Dr. Nilakshi Das who examined the P.W. 1 on the very day of the occurrence and detected a small cut injury on the right side of head measuring 2" long and $\frac{1}{4}$ " in depth. According to the P.W. 4 the injury is simple and caused by blunt object.

The medical evidence of the P.W. 4 also lent corroboration to the direct eye witness testimony of the P.W. 1 and P.W. 2 and fortified the fact of physical assault on the P.W. 1 by the accused.

P.W. 3 Sri Bibeknanda Saikia is the investigating police officer who investigated the case and filed charge sheet. In his evidence he stated that on the very day of the occurrence the Ext. 1 was received at the thana and investigation started. Prompt lodging of the Ext. 1 rules out the possibility of coining a false story.

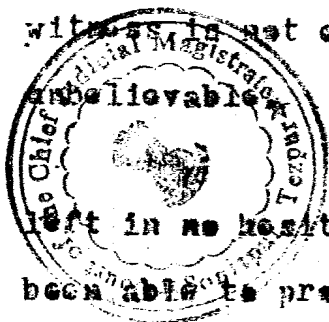
During the course of argument the Ld. Advocate for the accused argued that admittedly the accused is the nephew of the P.W. 1 and tried to impress that out of family dispute regarding partition of ancestral property a false case has been lodged by the P.W. 1. He further submitted that though there are several houses in the neighbourhood but the I.O. has not examined any other independent witness. He further submitted that without corroboration of prosecution case by independent witness it is not safe to rely upon the testimonies of the P.W. 1 and 2 to convict the accused.

Going through the case record it is found true and admitted fact that the P.W. 1 is the uncle of the accused and they stay in same campus in ancestral property. It is also true that except the P.W. 2, who is the friend of the P.W. 1 no other person has been either cited as a witness or examined by the prosecution to lend support to the prosecution case. But question arises as to whether mere relationship between the accused and the P.W. 1 or non examination of other neighbouring witness made the prosecution case unworthy of belief? The answer to this question is in the negative as in the cross examination of the P.W. 1 and 2 no contradiction or other infirmities is elicited by the defence side to diminish their evidentiary value. Rather the direct eye



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Cuttack, Odisha

witness account of the occurrence by the P.W. 1 and 2 without any defect makes their evidence worthy of credence. It is also not a statutory requirement that in all cases court is to seek corroboration from other independent witness. When the evidence of the P.W. 1 and 2 are found worthy of belief and is corroborated by the medical evidence of the P.W. 3 no earthly reason arise to disbelieve their testimonies. So non examination of neighbouring witness no way make the prosecution case unworthy of belief. It may be noted here that as per law of evidence it is the quality and not quantity of evidence which matters in the court of law for appreciation of evidence. So the argument of the Ld. Defence Advocate that neighbouring witness is not examined by the prosecution no way make the prosecution case unbelievable.



Relying on the testimonies of the P.W. 1, 2 and 4 I am left in no hesitation to arrive at a conclusion that the prosecution has been able to prove the fact beyond all reasonable doubt that on the date of occurrence the accused voluntarily caused hurt to the person of the P.W. 1 Sri Ajit Ch. Kalita and as such the charge against the accused U/S 323 I.P.C. is well proved. However, for lack of evidence the charges U/S 341/506 I.P.C. are not found proved against the accused. Accordingly, the points in hand are decided.

Accordingly the accused stands convicted U/S 323 I.P.C. but acquitted of the charges U/S 341/506 I.P.C.

Considering the fact that the nephew has assaulted his uncle I am not inclined to extend the benefit of Probation of Offenders Act or section 360 Cr.P.C. to the convict.

Considering the fact that no earlier conviction is proved in the record and his antecedent is not blemished I am of the view that imposition of fine only will meet the ends of justice.

In the result the convict is sentenced to fine of Rs. 1000/- (rupees one thousand only) i/d to S/I for two months.

Given under my hand and seal of this court on this the

24th day of January 2012 at Tezpur.

Typed by me:-

24/1/12.
Chief Judicial Magistrate
Tezpur, Tezpur.

24/1/12.
Chief Judicial Magistrate
Tezpur, Tezpur.