

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. 550/09  
U/S 447/323 I.P.C.

State of Assam..... Complt.

-Vs-

Md. Hazarat Ali..... Accused.

Date of recording evidences:- 13-04-10,  
22-06-10, 25-08-10, 16-11-10 & 27-07-11.

Date of hearing argument:- 12-10-11.

Date of judgment:- 28-10-11

• ADVOCATE APPEARED

For the state:- Mrs. Hussain, Ld. Advl. P.P.

For the accused:- Mr. F. Jamar.

#### J U D G M E N T

The brief prosecution case, as it appears from the written ejahar ( herein marked as Ext. 1 ) is that, on 02-04-09 at about 9 a.m. the informant Mustt. Ajufa Khatur ( P.W. 1 ) saw the accused cutting tree from her boundary. She and Sofia Khatur ( P.W. 2 ) protested. It is alleged that the accused physically assaulted both of them by a lathi causing injuries to their persons.

Alleging as above the P.W. 1 lodged the Ext. 1 ejahar on that very day before the O.C. Tezpur P.S. On that basis the O.C. of the P.S. registered a regular police station case and endorsed the same for investigation. The investigating police officer ( P.W. 7 ) investigated the case and upon completion of investigation laid charge sheet against the accused U/S 447/323 I.P.C. and forwarded the same to this court.

Receiving the case in charge sheet by Ld. predecessor in chair retained the case record in this court for disposal and also issued process against the accused to procure his attendance. In due course of time the accused entered into appearance. He was furnished with copies U/S 207 Cr.P.C. and going through the materials in the case record the particulars of offences U/S 447/323 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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28/10/11  
Sd/-  
Chief Judicial Magistrate  
Sonitpur, Tezpur

During trial the prosecution side examined in all 7 P.Ws. including the injureds, medical officer ( M.O. ) and the I.O. and also exhibited some documents. Defence side took full scope for cross examination. Upon closure of prosecution evidence the statements of the accused were recorded U/S 313 Cr.P.C. wherein he denied the materials against him and also declined to adduce evidence in his defence. The defence's case is that of denial simpliciter.

Heard argument.

Points for determination:-

Whether on 02-04-09 at about 9 A.M. the accused :-

(a) entered into the boundary of the homestead of the

to cut a tree ? AND

(b) voluntarily caused hurt to the person of Ajufa and

Safia Khatun ?

Discussion, decision and reasons therefor:-

Out of the seven P.Ws. examined by the prosecution P.W. 5 and P.W. 7 are formal official witnesses. Rest five witnesses are non official witnesses and all of them have given eye witness account of the occurrence. As we know, direct eye witness account of any fact bear utmost credence under the law of evidence and can be the sole basis for conviction.

A scrutiny of the evidence of the injureds i.e Ajufa and Safia Khatun, examined herein as P.W. 1 and 2 respectively, show that they categorically stated that on the day of occurrence seeing the accused felling tree from within their homestead boundary they protested to which the accused dealt them with lathi blows causing injuries. In their cross examinations no contradiction or discrepancy could be extracted by the defence to dislodge their testimonies or diminish the credibility of their evidence. P.W. 1 proved the written eajahar vide Ext. 1 lodged very promptly on the very day of the occurrence and the testimonies of the P.W. 1 corroborated the contents in the Ext. 1. Prompt lodging of the eajahar ruled out coining a false story. On the other hand the accused appears to have fumbled in his defence. In the cross examination of the P.W. 1 & 2 they were confronted with suggestions that they went to cut the tree in the bounday of the accused and physically assaulted him. But in his statements recorded U/S 313 Cr.P.C. the accused simply denied the



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occurrence and took the plea that a false case has been lodged against him. Neither the accused adduced any evidence to establish the fact that the P.W. 1 & 2 physically assaulted him nor stated a single line in that respect in his statements recorded U/S 313 Cr.P.C.

P.W. 5 is Dr. Jharna Kaketi who in her testimonies stated that on the very day of the occurrence within a couple of hours of the occurrence she examined the P.W. 1 & 2 at the Kanaklata Civil Hospital, Tezpur and detected fresh and simple injuries on the thigh of the P.W. 1 and on the head of the P.W. 2. According to the P.W. 5 both the P.Ws. disclosed the history of assault on them at 9 A.M. The injuries detected on P.W. 1 & 2 lend full corroboration to the testimonies of the said P.W. 5, thus verifying the credibility of their evidences.



P.W. 3 Anjuna Begum, P.W. 4 Sahidul Islam and P.W. 6 Tahor given eye witness account of the occurrence lending full corroboration to the prosecution case as well as the testimonies of the P.W. 1 and 2 that on the date of occurrence the accused physically assaulted the P.W. 1 and 2 causing injuries to their persons when they resisted in felling a tree from within the homestead boundary of the P.W. 1. The testimonies of the P.W. 3, 4 and 6 do not suffer from any infirmity to disbelieve them.

During advancing argument the Ld. Advocate for the accused submitted that all the non official witnesses are interested and as such they cannot be believed. He also submitted that the land in question is ejmali and there cannot be trespass. From the scrutiny of the evidences on record it appears there is no infirmity in the testimonies of the non official witness to dislodge their credibility and mere relationship with the P.W. 1 and 2 is no ground to disbelieve them. Again, in the cross examination the defence brought in record of the fact that the mandal demarcated the land. If mandal has demarcated the land/boundaries between the accused and the P.W. 1 mere ejmali title of the land is no ground to hold that trespass cannot be held by one co-sharer. Where mandal demarcated the land it implies the parties are having distinct boundaries and in such case the act of the accused in cutting tree within the boundary of the P.W. 1 and physically assaulting her and the P.W. 2 will surely amount to offence of criminally trespass. So I find no force in the argument advanced by the Ld. Advocate for the accused.

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From the above discussions and reasoning it is thus clear that believing the testimonies of the P.W. 1 to 6 we can safely arrive at a conclusion that prosecution has been successful to prove its case beyond all reasonable doubt against the accused. Hence the points in hand are decided in the affirmative.

For affirmative decision of the points in hand the accused is found guilty of the charges U/S 447/323 I.P.C. Accordingly accused stands convicted U/S 447/323 I.P.C.

Considering the fact of the case that the accused's act has caused hurt to weaker section of our society I don't find it fit to extend the benefit of section 360 Cr.P.C. or Probation of Offenders Act 1958 to the convict.

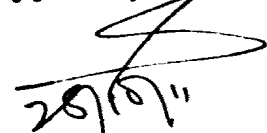
Heard the convict on the point of sentence. He submitted for lenient punishment on the ground of first offence and large dependant family members.

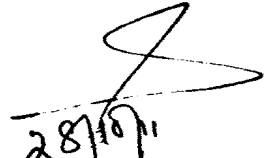
Upon perusal of the case record it appears that the convict and the injureds are related to each other and also inherited immovable properties from a common ancestor. No previous conviction is proved against him. He is stated to be an old man of 60 years of age. Considering all these aspects and also considering the fact that awarding of sentence of imprisonment may worsen the relationship between the parties I am of the judicious view that awarding pecuniary punishment alone will meet the ends of justice.

In the result the convict is sentenced to fine of Rs. 500/- ( rupees five hundred only ) U/S 447 I.P.C. and Rs. 1000/- ( rupees one thousand only ) U/S 323 I.P.C. In default of paying fine to S/I for one month U/S 447 I.P.C. and three months U/S 323 I.P.C.

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

Typed by mg:-

  
28/10/11  
Chief Judicial Magistrate  
Tezpur, Tezpur.

  
28/10/11  
Chief Judicial Magistrate  
Tezpur, Tezpur.

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