

IN THE COURT OF JUDICIAL MAGISTRATE, 1<sup>ST</sup> CLASS, SONITPUR

G.R. CASE NO: 912/05 U/S 447/323/354/506/34 IPC

PRESENT: : K. K. PATHAK, A.J.S

PARTIES : State

-V-

Nabin Kumar



-----ACCUSED

EVIDENCE ON : 19.09.12, 04.10.12, 20.10.12, 20.12.12


S/D ON : 04.02.13

ARGUMENTS ON : 08.02.13

JUDGMENT ON : 08.02.13

LAWYERS : A.P.P. (for state).

N.K. Mishra (for accused).

  
Judicial Magistrate  
1st Class, Tezpur

one Amar choudhury lodged an fir before the o/c Dhekiajuli p.s. alleging that there was an argument between two persons and he and others had sought to separate the parties. At that moment, the accused Nabin Kurmi along with 40/50 others came and attacked them. As a result Biplab Dtta, he himself, Babul dutta were injured. Two women were also allegedly assaulted and threats issued.

Based on the allegations in the FIR, Dhekiajuli ps case no 173/05 u/s 147/341/448/354/325/307 ipc was registered. After investigation, c/s was submitted against accused Nabin Kurmi and Jogen Tanti u/s 447/323/354/506/34 ipc. Case was split up against accused jogen tanti.

Case proceeded against Nabin Kurmi. Copies were furnished. Substance of accusation u/s 447/323/354/506/34 ipc were explained to the accused. He denied the allegations. During trial, prosecution adduced evidence. s/d of the accused was recorded. Defence did not adduce evidence. Arguments were heard.

#### POINTS FOR DETRMINATION:

1. Whether the accused in furtherance of common intention committed trespass, voluntarily caused hurt to victims, outraged modesty of women and issued threats?

#### DECISION AND REASONS:

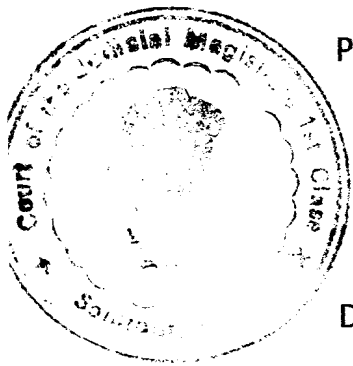
Biplab Dutta/pw1 as per fir is a victim. He narrated that one thelawala under influence of drinks was shouting, was told not to shout and wanted to assault amar. He and others intervened. In the evening accused and others assaulted him. In cross he stated that no woman was injured and blood stained clothes were not seized.

Supriya Dutta/pw2 stated the biplab dutta was his uncle and he had seen the incident. He implicated jogen tanti(case split up). He saw some people( not named) attacking pw1. During cross examination, he admitted that accused nabin had only sought to compromise the matter and had taken steps in this regard.

Pw3 is Dr Hari Deb Das . he had examined victim Amr Choudhury and did not find any injuries. Ext 1 is his report.

Debika Dutta/pw4 has stated that she had seen the incident and that she saw accused nabin and others assaulting biplab dutta. During cross she stated that she and her husband were not assaulted.

Priyanka Dutta /pw5is also an eyewitness and stated that she had seen biplab being assaulted by accused and others. During cross she admitted that as there were many people she could not say as to who assaulted whom.



  
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Amar Choudhury /pw6 is the informant /victim. He lodged fir/ext 2. He stated that due to mental disorder he could not remember anything.

As per the prosecution case in the fir, Amar choudhury, Biplab dutta, Babul Dutta @Subinay Dutta and two unnamed women are the victims. Victim amar choudhury has not supported the prosecution case. Ext 1 does not show any injuries on him i.e. Amar Choudhury. So far as Babul@Subinay is concerned, I find that pws have not stated about any assault on Babul@Subinay. His wife (pw4) has also admitted during cross that her husband was not assaulted. There is also evidence of assault on women.

So only the aspect regarding victim Biplab Dutta needs to be looked into. The victim/pw1 and pw4 implicated accused of assault. Pw5 tested by cross admitted that as there were many people she could not say as to who assaulted whom. Contrary to evidence of pw 1 and 4, I find that pw2 who is related to the victim has admitted that accused had only sought to compromise the matter and had taken steps in this regard.

So there are two sets of evidence regarding the role of the accused. In such situations, the evidence in favour of the accused has to be considered. Given this legal aspect, I find that if evidence of pw 2 is considered, no criminal act can be attributed to the accused. In any event at least the benefit of doubt has to be extended to the accused.

Considering the facts and circumstances, the charges u/s 447/323/354/506/34 ipc are not found to be proved beyond doubt. The accused nabin kurmi is consequently acquitted of the charges and set at liberty.

Bail bonds are cancelled.

Given under my hand and seal on this the 8<sup>th</sup> day of February 2013.



JMFC,  
SONITPUR, TZIP  
Judicial Magistrate  
1st Class Tezpur