

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GKJ) 476 of 2010

State of Assam

-Vrs-

1. Md. Dyvor Ali

2. Md. Sabat Ali

3. Md. Jahinul Khan

4. Md. Jobbar Ali

.....Accused persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution ---- Shri U. K. Sarkar, Addl. PP

For the defence ----- Md. N. A. Sheikh & Shri N. Dutta

Evidence recorded on : 11.7.13

Argument heard on : 16.7.13

Judgment delivered on : 30.7.13

Penal law involved : u/s 447/143/147/323/506 IPC

J U D G M E N T

1. The prosecution-case in brief, as I gather from the ejahar, is that on 23.8.10 at about 11-00 AM, when the informant Md. Sahadat Hussain & his wife Mustt. Jahura Bibi was going to Gauripur taking Rs.5000/- for purchasing some articles, they saw the accused persons & others (named in the Ejahar) cutting soil from the public path near the informant's house. As the informant offered resistance, the accused persons & their associates *en bloc* thrust him to the waters and beat him with lathi etc. His wife went to his rescue but they beat her too causing serious injuries and threatened her with dire consequences.

2. Police, after investigation, submitted Charge-sheet against the above-named four accused persons and, on their appearance before the Court, the particulars of the offences punishable u/s 447/143/147/323/506 (presumably the first part thereof, since no formal charge has been framed) IPC were explained to him by my learned predecessor, after supplying copies u/s 207 CrPC, to which the accused person pleaded not guilty, as the order dated 20.02.13 shows. During trial, the prosecution examined three witnesses and declined to adduce further evidence. The accused persons were thereafter examined u/s 313 CrPC ; they denied the allegations and declined to adduce any evidence. I have heard the argument of both sides.

3. The **points for determination** in this case are :

(i) Whether on 23.8.10 at about 11-00 AM the accused persons alongwith others formed an unlawful assembly on the public located in Uttar Raipur in prosecution of their common object of committing the following offence/s and thus committed an offence punishable u/s 143 IPC ;

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(ii) Whether on the same date, time & place the accused persons, in prosecution of common object of their unlawful assembly, committed violence in the following manner and thereby committed an offence punishable u/s 147 IPC ;

(iii) Whether on the same date, time & place the accused persons committed any criminal trespass punishable u/s 447 IPC ;

(iv) Whether on the same date, time & place the accused persons voluntarily caused hurt to the informant Md. Sahadat Hussain and/or his wife Mustt. Jahura Bibi and thereby committed an offence punishable u/s 323 IPC ;

(v) Whether on the same date, time & place the accused persons threatened said Mustt. Jahura Bibi with dire consequences and thereby committed an offence punishable u/s 506 IPC ;

And, if so, what punishment accused persons deserve.

Decision & reasons therefor :

4. Already noted, the prosecution has examined three witnesses in this case out of whom PW-2 Md. Moinul Islam Bepari expressed his total ignorance of the alleged occurrence. PW-1 Md. Zakir Hussain testified to have heard that accused Divor Ali had taken away some soil from a common path of the village to which the informant objected leading to some infighting between them. His evidence is clearly hearsay and inadmissible.

5. PW-3 Md. Sahadat Hussain is the informant-victim. He deposed to the effect that about three years back at 3-00/4-00 PM, when he was coming along the common village path, he saw accused Divor Ali cutting soil from the path. PW-3 raised objection whereupon the accused person manhandled & slapped him ; a son of the accused person appeared at that juncture and he also assaulted PW-3. The brothers of PW-3 took him to his house from where the latter went to the police-station and lodged the Ejahar (Ext.1).

6. PW-3 admitted during cross-examination that he did not inform the occurrence to the President or Secretary of the village and that the accused person did not cut soil from his land. He also disclosed that the accused persons had a long standing land-dispute with his maternal uncle Md. Ayub Bepari. Other parts of his cross-examination involve denial of some suggestions which have no evidentiary value.

7. PW-3, the alleged victim, thus clearly stated in his evidence that accused Dabor Ali beat him at the relevant time & place. Though he also alleged that a son of accused Dybor also assaulted him, he has not specified which of the sons he meant. I may note in this context that the FIR-named accused persons Md. Munu Sheikh & Md. Saidur Ali (not charge-sheeted) are sons of accused Dabor Ali but they have not been proceeded against u/s 319 CrPC for the aforesaid vagueness in the evidence of PW-3. However, so far as the role played by accused Dybor is concerned, the evidence of PW-3 is very natural & trustworthy ; he has been subjected to a detailed cross-examination but nothing material, in my considered opinion, could be elicited from him worth shaking his credence. Learned defence lawyer argued that PW-3 ought to have reported the occurrence to the President or Secretary of the village before lodging the Ejahar and such non-reporting creates a serious doubt as to whether the alleged occurrence had taken place at all. I find no force in such submissions, because,

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there is neither any legal necessity nor any set rule of conduct that the informant has to report the occurrence to such President/Secretary before lodging the ejahar.

8. PW-2 has not supported the prosecution-case but he has not also injured it either. He only expressed his ignorance of the alleged occurrence and, needless to say, no negative presumption can be drawn about existence of a fact out of a mere ignorance of a person of that fact in absence of any evidence that the person would invariably, at least be likely, to know the fact if it existed. Similar is the position of the testimony of PW-1 ; his entire version, so far as the occurrence is concerned, is hearsay and inadmissible, as already noted. The defence tried to take a plea of self-defence from the evidence of PW-1 that he heard about some infighting between PW-3 & accused Divor Ali at the relevant time. But an inadmissible piece of evidence is inadmissible for every purpose ; it is meant to be treated simply as *non est*, in my considered opinion. Learned defence might argue that the prosecution has not adduced any corroborative evidence to support the version of PW-3 but it is well-settled that conviction can be based on the testimony of solitary witness if found reliable. I may reiterate here that I find nothing to disbelieve the evidence of PW-3 so far as the involvement of accused Divor Ali is concerned. The defence also questioned the *locus standi* of PW-3 to lodge the Ejahar on the grounds that accused Divor Ali did not cut any soil from his (PW-3's) private land. The contention is difficult to swallow and impossible to digest. It is well-settled that anybody can set the law in motion unless the law specifically requires (for example, u/s 198 CrPC) any particular person or class of persons to do the same. There is no such bar in respect of any of the offences explained to the accused persons in this case. Further, speaking factually, PW-3 clearly had a right to use the common village path and, hence, had reasons to be aggrieved when the path was being damaged by accused Divor, more so, when he was assaulted by the latter for raising objection to such mischief.

9. PW-3 admitted during cross-examination that the accused persons had a long standing land-dispute with his maternal uncle. Learned defence lawyer argued in this context that the accused persons have been falsely implicated in this case out of that enmity. It may be true to some extent which would be evident from the fact that though PW-3 implicated other accused persons in his Ejahar and also projected his wife as a co-victim, he is totally silent about them in his evidence. But it is a matter of common experience that the victim-party often tries rope in the entire family & friends of the real culprit/s out of a grudge and also magnifies their own injuries by exaggerating the hurt sustained, even by falsely adding to the number of the victims, perhaps to make their case more appealing. Therefore, the real appreciation of evidence necessarily involves a process of separation of these exaggerations & embellishments so as to churn out the truth. To explain the process, the Hon'ble Supreme Court observed in Gangadhar Behera -Vs- State of Orissa reported in (2002) 8 SCC 381 that "Even if a major portion of the evidence is found to be deficient, in case the residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons.". In the case at hand, the

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implication of the other accused persons and the involvement of the wife of the informant may be false, but this does not mean that the role played by accused Divor in causing hurt to PW-3 has also to be disbelieved.

10. One may wink at the non-examination of the M.O. & I.O. in this case. So far as the first part is concerned, I do not also consider that the want of medical evidence is a serious defect in the prosecution-case, for, even the slightest pain may amount to hurt within the meaning of Sec.319 IPC and PW-3 being the victim himself is the sole person who could testify about his pain, because, a pain is perceivable by the skin only and none other than the victim could perceive it by that sense (skin/touch) [vide. Sec.60 (Fourth Paragraph) of the Evidence Act]. Needless to add, no doctor's evidence is required to understand that a slap would invariably cause some bodily pain, whatever be the severity of it. As regards non-examination of the I.O., the defence could not elicit a single contradiction between the evidence of PW-3 & his statement u/s 161 CrPC. If the defence means any lapse in the investigation, it is well-settled that the defects in investigation by itself cannot mean that the prosecution-case is doubtful [see Ramappa Halappa Pujar & Others -Vrs- State of Karnataka reported in (2007)13 SCC 31].

11. Situated thus, I am of the considered opinion that the prosecution has proved beyond all reasonable doubts that accused Dybor Ali voluntarily caused hurt to PW-3 and, hence, I convict him (accused Dybor Ali) for having committed an offence punishable u/s 323 IPC. I may note here that the offences were explained to the accused persons not with the aid of Sec.34 IPC or Sec.149 IPC and, hence, there is no legal impediment, in my considered opinion, in convict accused Divor Ali u/s 323 IPC singly. He is, however, acquitted of the offences punishable u/s 447/143/147/506 IPC. There being no implication of the remaining three accused persons in the evidence on records, they are acquitted of all the offences explained to them.

12. Considering petty nature of the proved offence and that there is nothing on records to show that the convict Md. Dybor Ali has any criminal antecedent, I, instead of sentencing him to any punishment, release him after due admonition u/s 3 of the Probation of Offenders Act, 1958, for ends of justice. He is, however, directed u/s 5 of the Act to pay Rs.300/- (Rupees three hundred only) to the victim (Informant/PW-1) as compensation. No further compensation i.e. u/s 357-A CrPC is necessary on facts, in my considered opinion. The bail-bonds of the accused persons including the convict shall stand discharged on expiry of six months from today vide. the spirit of the provisions u/s 437-A CrPC.

Dictated & corrected by me and given under my hand and seal of the Court on this 30th Day of the Month of July in the Year 2013 at Dhubri.

Addl. Chief Judicial Magistrate,
Dhubri : Assam