

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GKJ) 420 of 2007

State of Assam

-vrs-

1. Md. Matiur Rahman
2. Md. Afsar Ali
3. Md. Mojibur Rahman
4. Mustt. Manwar Ali
5. Mustt. Majida Bibi

.....Accused persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution--- Shri U. K. Sarkar, APP

For the defence----- Md. A. Islam

Evidence recorded on : 01.3.11, 04.4.11, 26.6.11 & 19.7.12

Argument heard on : 07.5.13

Judgment delivered on : 14.5.13

Penal law involved : u/s 447/323/379/149 IPC

J U D G M E N T

1. The prosecution-case in brief, as revealed from the ejahar, is that on 11.8.07 at about 8-30 AM accused Matiar & Afsar trespassed onto the pond of the informant Md. Wahed Ali for soaking some jute. As the informant offered resistance, all the five accused persons (named above) appeared being armed with lathi, fnali etc. and beat him causing injuries ; accused Matiar held his neck compressed intending to kill him. The children of the informant namely Mustt. Aleya khatun & Md. Atarul Haque came to his rescue whereupon the accused persons beat them too. Accused Afsar snatched away a golden chain worth Rs.7000/- which Aleya was wearing.

2. Police, after investigation, submitted Charge-sheet against the above-named accused persons and, on their appearance before the Court, the charges u/s 447/323/379/149 IPC were framed against and read over & explained to them by my learned predecessor, after supplying copies u/s 207 Cr.P.C & hearing both sides, to which the accused persons pleaded not guilty & claimed to be tried, as the order dated 20.5.09 shows.

3. During trial, prosecution examined seven witnesses and the incriminating materials so brought into the evidence on records were put to the accused persons u/s 313 CrPC. The denied the allegations and declined to adduce any evidence. I have heard the argument of both sides at length.

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4. The **Points for Determination** in this case are :

(i) whether on 11.8.07 at about 8-30 AM the accused persons, in prosecution of the common object of their unlawful assembly, trespassed onto the land/pond of the informant Md. Wahed Ali located in Moisa (Part-II) for committing any of the following offences and thereby committed an offence punishable u/s 447/149 IPC ;

(ii) whether on/at the same date, time & place the accused persons, in prosecution of the common object of their unlawful assembly, voluntarily caused hurt to Md. Wahed Ali, Mustt. Aleya khatun and/or Md. Atarul Haque and thus committed an offence punishable u/s 323/149 IPC ;

(iii) whether on/at the same date, time & place the accused persons, in prosecution of the common object of their unlawful assembly, committed theft of a gold-chain from the person of Aleya and thereby committed an offence punishable u/s 379/149 IPC ;

And, if so, what punishment the accused persons deserve.

Decision & reasons therefor :

5. PW-7 Md. Wahed Ali is the informant-victim. While proving his Ejahar as Ext.1 he testified that on 11.8.07 at about 8-30 AM the accused persons came to soak some jute in his (PW-1's) pond. As he resisted them, they beat him causing injuries. His son Md. Aatur Rahman (PW-5) & daughter Aleya (PW-2) came to save him whereupon accused Afsar, Motiour, Manwar & Mojibur beat them with lathi. During cross-examination PW-1 disclosed that accused Afsar is his own brother with whom he had a civil dispute over the said pond/land, their ancestral property, which had not been partitioned.

6. PW-2 Mustt. Aleya Bibi is the daughter of PW-7 and one of the alleged victims in this case. She stated in her evidence that on 11.8.07 at about 8-30 PM the accused persons came to soak some jute in the pond of her father (PW-7). Her father (PW-7) raised objection whereupon the accused persons assaulted him (PW-7). She went to restrain the accused persons but accused Matiur assaulted her and since then her gold-chain had been missing.

7. PW-5 Md. Aatur Rahman, the son of PW-7 and brother of PW-2, is the other alleged victim. He deposed to the effect that on 11.8.07 at about 8-30 AM, when he was in his house, the accused persons immersed some jute in the pond of his father (PW-7) to which PW-7 objected. Accused Matiur, Afsar, Majibur & Manwar then beat PW-7 with lathi and accused Majida with hand-blows. PW-5 & his sister Aleya (PW-2) then went to restrain the accused persons but the latter assaulted them. Accused Afsar took away a gold-chain from PW-2.

8. PW-1 Shri Nagendra Nath Roy & PW-3 Md. Manser Ali are the neighbouring witnesses. PW-1 deposed that on 11.8.07 at about 8-30 AM the accused persons went to soak some jute in the pond of PW-7 to which the latter objected. A quarrel then took place between both sides following which the accused persons assaulted PW-7 and, on intervention by PW-2, assaulted her too. PW-3 also deposed in the same manner and specified that accused Matiur & Afsar assaulted PW-7 and that accused Afsar gave a thrust to PW-2 since when her gold-chain had been missing.

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9. PW-4 Dr. M. Das is the M.O. He deposed to the effect, *inter alia*, that on 11.8.07 & 12.8.07 he examined PW-7, PW-2 & PW-5 in Agamani CHC and found no external injury and only pain & tenderness on their persons. He proved his reports as Ext.2&3. During cross-examination PW-4 stated that the alleged injuries could be caused by falling on a hard substance. He admitted that he issued the reports on 28.8.08 and that the same do not disclose the age of the injuries. PW-6 is the I.O. in this case.

10. So far as the allegation of criminal trespass is concerned [vide. Point No.(i) in Para-4 above], PW-7 admitted that accused Afsar is his real brother with whom he had a civil dispute over the relevant pond/land, their ancestral property, which had not been partitioned till the date of the occurrence. Therefore, it is quite likely that the accused persons went to the pond on a *bona fide* belief that they were entitled to use its water and, under such circumstances, the intention on their part “to commit an offence or to intimidate, insult or annoy” [vide. Sec.441 IPC] is clearly missing. I may beneficially refer to the decision in Mahan Singh & Another –Vrs- Rana Pratap](Para-6) reported in MANU/PH/0125/1960 : AIR 1960 P&H 160 : 1960 CriLJ 400. The remaining parts of the occurrence *ex facie* took place in the midst of a quarrel (vide. PW-1) leaving little scope for either side to cool down and leave the place. Hence, I am of the considered view that the offence punishable u/s 447/149 IPC is not made out on facts of the case.

11. As regards the allegation of theft [vide. Point No.(iii) in Para-4 above], PW-5 is the only witness to say that accused Afsar took away a gold-chain from PW-2 ; other witnesses are either totally silent about the matter or, at the most, stated that the gold-chain had been missing since the time of the occurrence. PW-2 herself has not implicated anybody of stealing the chain ; she deposed this much that accused Matiur assaulted her and since then her gold-chain had been missing. Even believing PW-2 that she lost the chain in the melee, I am unable to call it a theft, far less, theft by any of the accused persons.

12. However, on the point of Sec.329/149 IPC [vide. Point No.(ii) in Para-4 above], all the PWs gave a vivid description of the incident including the genesis thereof. The claim of PW-2,5&7 claim that they sustained injuries is confirmed by PW-4 (M.O.), an independent official witness. The evidence on records clearly shows that the accused persons voluntarily acted in a consorted manner to cause hurt to PW-2,3&7. PW-1&3, the neighbouring eyewitness of the occurrence, have fully corroborated them on every material point and there is nothing on records to show that these witnesses (PW-1&3) had any enmity with the accused persons or any other reason to implicate them falsely. All the PWs have been cross-examined at length but nothing material, in my considered opinion, could be elicited from them worth shaking their credence.

13. The defence hammered on the so-called three days’ delay in lodging the ejahar but the ejahar itself shows that the informant (PW-7) waited for a village-bichar before lodging of the ejahar on such assurance. Learned defence lawyer argued that the prosecution has not examined any ‘Bichari’ to prove the bichar. I do not find much substance in such submissions, because, it is not the prosecution-case that any bichar was actually held. The ejahar only states that the informant waited for a bichar, in other words, expected a ‘bichar’ to be held. Therefore, the question of non-

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examination of 'bichari' does not arise at all. Moreover, it has been held in a catena of precedents that a mere delay in lodging FIR does not render the prosecution-case doubtful/false nor does a prompt FIR prove the prosecution-case by itself. A delay in lodging ejahar supplies only an opportunity to the informant-side to give a second thought for manipulation of the truth ; therefore, if such manipulation can be gathered from the evidence adduced by the prosecution, a delay in lodging FIR will surely add to the likelihood of its case being false, partly or wholly. But having the opportunity to do an act is one thing, doing it actually is other. Therefore, if the evidence is found reliable, one cannot put the cart before the horse and say that the evidence is false because the witness had opportunity to manipulate the truth.

14. Learned defence lawyer has argued that the case has been instituted on false allegations out of an enmity flowing from a land-dispute between PW-7 & accused Ansar. It is true that PW-7 himself stated in his evidence that he had a land-dispute and consequent enmity with the accused person but enmity, as observed in Ruli Ram and Another -Vrs- State of Haryana reported in [MANU/SC/0803/2002](#) : AIR 2002 SC 3360 : 2002 CriLJ 4337 : (2002)7 SCC 691, is a double edged weapon ; it is the quality of the evidence which determines which way it would cut. It can be read against the prosecution only when the evidence adduced by it is unreliable, which is obviously not the case here.

15. PW-2 deposed that she was beaten up by accused Matiur whereas PW-1 stated that she (PW-2) was assaulted by Afsar. It is also true that the PWs differed to some extent on the role played by accused Majida. But these do not disturb the crux of the prosecution-case that all the accused person beat the informant-side in a consorted manner. I am rather of the considered opinion that when a large number of persons are involved (there were eight persons taking the accused persons & the victims together) in an occurrence of the alleged kind, it is quite natural on the part of the witnesses to make minor mistakes on role played by each of the accused persons individually. I cannot also ignore the fact that the PWs deposed before the Court 4/5 years after the occurrence. Therefore, the possibility of some fading of memory cannot also be ruled out.

16. Situated thus, I convict the accused persons for having committed the offence punishable u/s 323/149 IPC and acquitted them of the ones u/s 447/149 IPC & 379/149 IPC. But the proved offence is of petty nature and was *ex facie* committed in course of a sudden quarrel in course of asserting rights over the land/pond and without any premeditation. There is also nothing on records to show that the accused persons have any criminal antecedent. Moreover, the case is a very old-pending one. Considering all these factors together, I, instead of sentencing the convicts to any punishment, release them after due admonition u/s 3 of the Probation of Offenders Act, 1958, for ends of justice. Their bail-bonds shall stand discharged on expiry of six months from today vide. the spirit of the provisions u/s 437-A CrPC.

Typed & corrected by me and given under my hand and seal of the Court on this 14th Day of the Month of May in the Year 2013.

Addl. Chief Judicial Magistrate,
Dhubri : Assam