

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

C.A. No.8 (4)/ 2009

Appellants : 1. Md. Sahar Ali
2. Md. Anser Ali
3. Md. Ansar Ali @ Ensar Ali

- Vs -

Respondent : State of Assam
Represented by the P.P, Dhubri

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri U.K. Dutta, Advocate for the Appellants.

Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 22-05-2013

Date of Judgment : 30-05-2013

J U D G M E N T

This criminal appeal is projected against the judgment and order of conviction dated 12-10-2009 passed by the learned Addl. Chief Judicial Magistrate, Dhubri in G.R (GKJ) Case No.214/2005, whereby the appellants namely Md. Sahar ali, Md. Anser Ali and Md. Ansar Ali were convicted U/s.448/323 I.P.C. and sentenced each of them to pay a fine of Rs.500/- i/d S.I. for 30 days U/s.448 and further they were sentenced each of them to undergo S.I. for 6 (six) months U/s.323 I.P.C.

2. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction, the convict-appellants assailed the impugned judgment on a number of grounds, which are narrated in the memo of appeal.

3. During hearing L.C.R. is called for and also learned counsels of the parties are heard.

4. From the materials surfaced during hearing of this appeal, the background story is found as follows:

That one Rustom Ali lodged a written complaint on 30-08-2005 at Paglahat W.P. under Golakganj Police Station alleging that on 28-08-2005 at about 6-30 a.m. accused persons trespassed into their house and started to quarrel with him. The accused persons also assaulted him and his wife with lathi causing severe injuries on their persons. His wife took medical treatment at Tamarhat hospital. Hence the occasion of filing of this case.

5. The Golakganj Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid charge sheet against the accused persons U/s.447/323/354/34 I.P.C.

6. On the appearance of the accused persons, the substance of accusation U/s. 448/323/34 I.P.C. were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. During trial the prosecution side after examining as many as 6 (six) P.Ws closed their side. Statement of the accuseds were recorded U/s.313 Cr.P.C. Learned trial Court below heard the arguments from both the parties and at the conclusion of the trial delivered the impugned judgment and recorded the sentences as indicated above. Thus the occasion of filing of this appeal.

8. Now it is to be seen as to whether the learned trying Magistrate was justified to convict the accused appellants as indicated above on the basis of the evidences on record?

9. To address the aforesaid point for determination, let us have a look at the evidences on record.

10. Here in this case altogether 6 (six) P.Ws were examined by the prosecution. P.W-1 Rustom Ali during trial states that prior to the date of incident there was quarrel between his wife and the accused persons as regards the boundary of the house. On the next day i.e. on the date of incident at about 6-30 a.m. accused persons came and assaulted him in his house. Accused Saher Ali assaulted him with lathi and the other two accused persons assaulted him with fire wood.

During cross-examination P.W-1 as informant states that the ejahar was lodged on the very same day.

11. P.W-2 Halima Bibi being the wife of the P.W-1 supported her husband during trial.

During cross-examination she has also confirmed that the ejahar was lodged on the very same day of the incident.

12. P.W-3 Azizur Rahman appears to be reported witness and he came to know about the incident from the informant and his wife.

13. P.W-4 Aivan Bibi states during trial that on hearing hue and cry from Rustom Ali's house, she rushed to his residence and saw accused persons assaulting Rustom Ali. Thereafter, when Rustom Ali's wife Halima Bibi came to save her husband, accused Saher Ali assaulted Halima with bamboo lathi. Halima sustained injury on her head. Thereafter they took the victim to police station. Subsequently, the victim took medical treatment at Tamarhat P.H.C.

14. P.W-5 Babar Ali Sk. During trial states that there is a shop nearing to the house of the informant and when he arrived at the shop, he heard hue and cry. Hearing hue and cry he rushed to the house of complainant Rustom Ali and saw Sahar Ali, Anser Ali and Md. Ansar Ali assaulting the informant. Asher was armed with a lathi and Anser & Insat were armed with fire wood. All the aforesaid three accused persons were assaulting complainant. Then Rustom's wife Halima arrived at the scene, she was also assaulted by Saher Ali.

During cross-examination the aforesaid witness stated that the complainant's house and the houses of the accused persons were in the same compound.

15. P.W-6 S.I. Sankha Sargiwari is the I.O of this case. According to him on 31-08-2005 he was posted at Paglahat O.P. under Golakganj Police Station as i/c. On that day he received an ejahar from the complainant Rustom Ali and the same has been entered into the G.D. entry No.298 dated 31-08-2005 and he forwarded the same to the O.C. Golakganj for registration of a case. He investigated into the case. As part of investigation, he visited the place of occurrence on the same day, also prepared sketch map of the P.O. and recorded statement of the witnesses. The incident took place on 28-08-2005. On that day the complainant informed him about the occurrence and he entered the same into G.D. Entry No.256 dated 28-08-2005 and sent the injured persons to Tamarhat P.H.C. on the basis of the G.D. entry No.256 and collected injury report of the victim Rustom Ali, victim Halima Bibi. Ext-2 and Ext-3 are the injury reports and submitted charge sheet under sec. 447/323/356/34 I.P.C. under Ext-4 wherein Ext-4 (1) is his signature.

During cross-examination the I.O. admitted that occurrence took place on 28-08-2005, he received the ejahar on 31-08-2005 and the ejahar was seen by area magistrate on 02-09-2005. On 28-05-2005 there was no written information submitted before him. However, an oral information was made before him by Rustom Ali.

16. I have carefully gone through the testimonies of the P.Ws as discussed here in before. From the testimonies, it is clear that the incident had taken place on 28-08-2005 and on that day itself the concerned I.O. had received the information about the incident which he got entered into the General Diary under G.D. Entry No.256 dated 28-08-2005. So the aforesaid G.D. Entry is the earliest information of the incident recorded by the concerned I.O. But at the time of filing the charge sheet, I.O. did not submit the copy of the same nor during trial learned trying Magistrate had taken pain to call for the said G.D. Entry and to exhibit the same. Infact learned trying Magistrate allowed the prosecution side to exhibit the written information, which was furnished on 30-08-2005 under Ext-1 which is hit u/s.162 Cr.P.C. & which cannot be treated as first information of the incident.

17. So, in the case in hand no ejahar has yet been submitted by the prosecution nor exhibited and even the learned trying Magistrate did not take any step to call for the aforesaid G.E. Entry, which is the earliest information about the incident. This apart, it is revealed that so called ejahar under Ext-1 was submitted before the I.O. on 31-08-2005 and it was placed before the concerned Magistrate on 02-09-2005. This is a serious infirmity of the prosecution story.

18. For the aforesaid reasons and in my considered opinion, it is felt that it is a fit case to remand with a direction to the learned trying Magistrate to call for the G.D. Entry in question i.e. G.E. Entry No.256 dated 28-08-2005 and to re-hear the matter by giving reasonable opportunity to the parties of being heard and thereafter to deliver judgment afresh.

19. In the result, the impugned judgment is set aside. The case is remanded back to the learned trying Magistrate to re-hear the matter and to deliver the judgment afresh by observing the direction as narrated here in before. Judgment is delivered in the open Court. Send back the L.C.R. alongwith a copy of the judgment.

Given under my hand and seal of the Court on this 30th day of May, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri