

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

C.A. No.5 (3)/ 2010

Appellants : Md. Maharuddin & 11 (eleven) others

- Vs -

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

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

Sri Giasuddin Ahmed & Sri Ashraful Islam, Advocates for the Appellants.
Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 01-09-2013

Date of Judgment : 08-10-2013

J U D G M E N T

This criminal appeal is projected against the judgment and order of conviction and sentences passed by learned Judicial Magistrate 1st Class, Dhubri in G.R.(SSM) P.S. Case No.86/2005 whereby the appellants were convicted and sentenced U/s.147/447 and Sections 325/323 of I.P.C.

2. Being aggrieved and dissatisfied with the aforesaid impugned order, the appellants assailed the same on a numbers of grounds which are narrated in the memo of appeal.

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

4. I have carefully gone through the material particulars available with the L.C.R. in the light of the submissions rendered by learned counsels of the appellants as well as learned Public Prosecutor.

5. On a minute analysis of the L.C.R. the background story of this appeal appears as follows:

That one Abdul Hamid lodged an ejahar on 20/04/2005 before the Bandhiana Out Post under South Salmara Police Station and alleged that on the aforesaid date at about 10 a.m. when he was ploughing on the land of his brother, Taher Ali situated at Jharnarcher, the accused persons armed with lathi, rod etc. entered into the said land and begun to beat him up alongwith Taher Ali, Mahar Ali, Omar Ali, Amir Ali, who are his brothers and as a result of which they sustained grievous injuries on their persons.

6. The South Salmara Police Station on registration of a case on the aforesaid ejahar, took up the investigation and at the conclusion of the investigation laid the charge sheet under Sections 147/447/323/325 I.P.C.

7. On the appearance of the accused persons, the charges U/s. 147/447/323/325 I.P.C. were framed against the accused persons. The charges so framed were read over and explained to the accuseds to which they pleaded not guilty.

8. During trial the prosecution side after examining as many as 12 (twelve) P.Ws closed their evidence. The statements of the accused were recorded. Learned trial Court below heard the arguments of the case and finally judgement as indicated above was delivered. Thus the occasion of the filing of this appeal.

9. Now point for determination in this case will be as to whether materials surfaced in the testimonies of the P.Ws are sufficient to record conviction of the accused appellants under the offences alleged of?

10. To address the aforesaid point for determination, perusal of evidences on record is necessary. Thus I propose to do the same.

DECISION AND REASONS THEREON.

11. Here in this case P.W-1 Abdul Hamid being the informant of this case states that the incident had taken place on 20-04-2005 at about 9 a.m. behind the courtyard of his house. The accused persons namely Maharuddin and Ahmed came and forcibly obstructed his workers from ploughing his land and this led to a quarrel. It is stated by him that the remaining accused persons as per their plan entered into his land armed with weapons and on the direction of the Maharuddin they assaulted him. The P.W-1 stated that accused Lachu Sk. ad Kalachand grabbed Taher from the backside and accused Juran Ali hit him as a result, Taher suffer fracture. It is also stated in his evidence that the accused Fazar Ali grabbed his brother Mahar Ali and accused Saukat hit him with a iron rod. Accused Ahmed and Kadam Ali chased and grabbed his other brother Amer Ali and hit him on his head and at that moment when he went forward to save his brother accused Kangal hit him with a lathi on the back side of his chest. P.W-1 also stated that they took treatment and that he filed an ejahar under Ext-1 on the same day.

From the testimonies of the I.O. who is examined as P.W-12 it is revealed that the P.W-1 did not state before him that the accused assaulted his brother Taher with bamboo stick.

From the cross-examination of P.W-1, it is revealed that the accused persons also brought one case against them relating to the same incident. He came from a distance of 1 ½ rashi and found the quarrel also he resisted both the parties but none of them paid any heed to it. He did not give description of the land in the ejahar. Both the parties claimed the suit land of their own. He did not sustain any injury. On the date in question the incident had arisen out of the possession of the suit land.

12. P.W-2 Md. Hazi Akbar Hussain in his evidence stated that on the day of occurrence at about 9 a.m. he on hearing hue and cry rushed to the place of occurrence and saw that at the instigation of accused Maharuddin accused Amer hit his son Taher on his head. P.W-2 stated that while he alongwith Madan and Insab were carrying his son Taher, somebody hit him on his back.

From his cross-examination, it is revealed that the accused persons also filed a case against them in which he was an accused. The accused persons had also land nearing to the D/L and accused persons had also claiming D/L as their own.

13. P.W-3 Md. Moinuddin Sk. in his evidence states that on the date of incident at about 9 a.m. he and others were ploughing the land and at that time accused Maharuddin came and obstructed them and by this time from the house of accused Amer, Amer, Kalachand, Juran, Saukat, Fazar, Kangal and some others came armed with lathi and rod and on the direction of Maharuddin, accused Kalachand and Lacchu grabbed Taher and accused Amir hit Taher with a lathi, and accused Juran hit Taher with a rod as a result of which Taher's head got fractured. He then left the place for his house and do not know what happened thereafter.

P.W-3 during investigation did not bring the following story as it revealed from the testimonies of I.O. (P.W-12) that accused Kalachand and Lacchu grabbed Taher and Amir assaulted him and also the accused Juran hit Taher with iron rod.

Further from the cross-examination of the P.W-3, it is revealed that the accused persons also filed a case against them alleging that they armed with weapons went to assault them on the same day. He is also one of the accused person in the said case and in the incident both side sustained injuries. He did not sustain any injury.

14. P.W-4 Md. Omar Ali in his evidence stated that on the date of occurrence he was ploughing while Taher was scrapping grass from the paddy field and at that time accused Mahar and Juran came and objected them as to why they were ploughing the land. At that time from the house

of accused Amer 10/12 persons came armed with lathi and rod and accused Amir hit Taher with a lathi and accused Juran hit Taher with a iron rod. The P.W. also stated that accused Kadam and Ahmed caught him and accused Mahammad hit him with a iron rod as a result of which he fainted.

From the testimonies of I.O. it is revealed that P.W-4 did not state before the I.O. during investigation that accused Amir hit with bamboo stick.

Further from the cross-examination of P.W-4 it is revealed that he stated before the police that accused Maharuddin and Ahmad Ali cultivated the land on the northern side and he objected and there was altercation. Further, P.W-4 during cross-examination stated that there was a dispute regarding the D/L. from one year claiming by both the parties and the accused persons also filed a cross-case against them and he is an accused of that case. He did not show any blood stained cloths to police nor he can say as to whether the accused persons were injured or not.

15. P.W-5 Md. Mahar Ali has deposed in the same tune as that of previous P.W. and stated that accused Amer and Juran hit Taher with lathi and rod respectively. He (P.W-5) deposed that accused Lacchu and Kalachand caught him and accused Amir gave a blow on his head with a bamboo, while accused Sarkar gave a blow with an iron rod as a result of which he fainted. The P.W-5 stated that he later found his head bandaged.

From the testimonies of I.O. it is revealed that the P.W-5 Mohar Ali did not state during investigation before him that accused Amir Ali hit with bamboo stick.

Further it is revealed from the cross examination of P.W-5 that accused persons also brought a case against them regarding the same occurrence and he was also named as the accused in the said case. The disputed land was also claimed by the accused persons of their own and Marpit took place about 7/10 minutes and they raised hue and cry.

16. P.W-6 Taher Ali during trial states that the occurrence took place on 20-04-2005 at about 10 a.m. in the suit land. They have built a house long ago. As the backside Mohar and Omar and his brothers were cultivating the D/L. At that time he was uprooting grass from the place of occurrence. At that time Moharuddin and Ahmed forcibly objected to plough the field. Then they found that from the house of Amir about 15/16 people came to the place of occurrence armed with lathi, rod Moharuddin gave order to assault Taher, Lacchu and Kalachand caught him Amir gave blow on his head with bamboo rod. Juran gave a blow on head with iron rod. He fell down and became senseless.

During cross examination he stated that there was dispute regarding D/L as the accuseds were also claiming D/L. Accused persons also filed a case against them including him regarding the same occurrence.

17. P.W-7 Md. Rahman Ali during trial stated that on the date of incident he was proceeding toward his house and at that time he saw both the parties are arguing and that accused Amir having a bamboo lathi and accused Juran having a iron rod. He also stated that he urged both the parties to talk and settle the matter. He further stated that at that time on the direction of Maharuddin accused Kalachand and Lachu caught Taher from the backside and accused Amir hit Taher with a rod. He also stated that accused Fazar caught Mahar and he was thereafter assaulted.

The P.W-7 during cross examination stated that police did not record his statement and he did not find injury on the body of the accused persons and his house is situated at a distance of 25 miles from the place of occurrence. Accused persons objected in ploughing suit land claiming it of their own.

18. P.W-8 Shahjahan Ali deposed in the same tune and manner as that of P.W-7 and stated that Taher was assaulted by accused Amer with a lathi and by accused Juran with a iron rod on Taher's head. He also stated that he and other took injured Taher to his house. It is also evidence that some other incidents of assault also took place but he did not notice the same.

The P.W-8 during investigation did not state before the I.O. that the accused Taher did not assault Amir with the bamboo stick nor P.W-8 did state before the I.O. that accused Joran assaulted Taher on his head with the Iron road.

Further, it is revealed from the cross-examination of P.W-8 that he did not see any injuries on the persons of the accused persons and his house is at a distance of 2 k.m. from the place of occurrence and he noticed the incident at a distance of 10/12 meters from the place of occurrence.

19. P.W-9 Abul Kalam deposed during trial that there was a argument between the parties and that he and other urged the both parties not to quarrel & to go for Bichar. But both the parties began to quarrel & marpit.

But during cross-examination he stated that he could not say as to who initiated the incident first and who assaulted whom. There was marpit between both sides and both side sustained injuries.

20. P.W-10 Insabl Ali deposed that on the date of incident at about 9/9-30 am the informant and his brother were cultivating, at that time accused Maharuddind and Ahmed also came to cultivate the said land and thereafter a quarrel started. By this time Amer, Juran came and began to assault. Accused Amer gave a blow on Taher on his head, accused Juran also gave a blow on the head of Taher. Thereafter they took injured Taher to hospital.

21. P.W-11 is Dr. N.M. Ahmed of this case. His deposition recorded during trial are as follows:

He examined Omar Ali and found (1) laceration over forehead size 4 cm X 5 cm. The X-ray of the said victim was done and according to him the victim sustained simple injury.

1. On the said day he also examined Abdul Hanif 40 years old and found
 - i) Bruise over left 1 1/2 inch X 1 1/2 inch
 - ii) Abrasion over left chest wall laterally size 1.5 cm X .25 cm. According to him the injuries were simple in nature, caused by blunt object.
2. He also examined Taher Ali aged 35 years old and on examination he found
 - i) Scalp laceration over right perito-auxipiral region 6 cm X 1 cm size.
 - ii) Bruise over left arm 1 1/2 inch X 1/2 inch.

He also stated that the said victim was admitted from 20-04-2005 to 28-04-2005 and his X-ray revealed fracture of perital bone. According to him the injury No. (i) was grievous and injury No.(ii) was simple in nature and both the injuries were caused by blunt object.

3. On the same day he also examined Mahar Ali and on examination he found:
 - i) Scalp laceration over right perital region size 5 cm X 1 cm.
 - ii) Bruise over left thigh 2 inch X 1/2 inch size.

According to him both the injuries were simple in nature caused by blunt object.

4. M/O also testified that on the same day he examined Hazi Akbar Hussain 70 years old and found (i) Abrasion on left forearm size 3 cm X 1 cm and pain over left scapula region.

According to him both the injuries were simple in nature caused by blunt object and the injuries were simple in nature. Ext-2, 3 and Ext-4 are the injury reports prepared by him.

22. P.W-12 S.I. Jamuddin Sk. is the I.O. of the case, whose evidences are appearing to be record only.

So these are all about the evidences on record.

23. On a close analysis of the entire evidences of the P.Ws, it is found that parties to the case were battling as regards the possession of the suit land prior to the incident. Both the parties laid claim over the suit land. As regards the incident on the date of incident at the very outset quarrel took place between parties as regards the possession of the suit land and ultimately the said quarrel ended in the marpit. It is also evident that accused persons also sustained injuries but there is no explanation as to why and under what circumstances accused persons had sustained the injuries. There are no conclusive and clinching materials that the accused persons initiated the incident and took the aggressive part in the said incident. From the materials revealed in the testimonies of the independent witnesses, it is clear that infact marpit had taken place between both the parties as regards the possession of the suit land.

24. Viewing the entire evidences on record following circumstances had surfaced in my considered opinion.

1. Neither party has recorded success to establish exclusive physical possession over the suit land as it has been revealed from the testimonies of the P.Ws that the ocular testimonies are not at all sufficient to establish the exclusive physical possession over the suit land in favour of the informant side. Further, no documentary evidence has also been adduced in favour of the informant side showing their exclusive physical possession over the suit land. Rather it is evident that the accused had also claim over the suit land.
2. The materials so far surfaced are not at all sufficient to attract the ingredients of Sec. 147 I.P.C. as the P.Ws have recorded failure to bring sufficient materials in favour of the ingredients of Section 147 I.P.C. Rather it has been revealed from the testimonies of the P.Ws that infact Marpit had taken place between the parties in relating to the possession of the suit land.
3. Thus it is seen that open fight/marpit appears to have taken place in relating to the suit land on the date of incident. There are no clinching evidences that the accused first initiated the incident & took the aggressive part in the incident & thereby authored the crime. Since the accused persons had also

sustained the injuries and as there are no explanation as to the sustainment of the said injuries by the accused persons, therefore, all the accused persons cannot be convicted U/s.325 or 323 I.P.C. with out taking aid of Sec. 149 I.P.C.

4. Though it is written in the order sheet that charges are framed U/s.147/447/323/325 I.P.C. but the formal charge form in support of the aforesaid factum is not found available with the L.C.R.
5. A cross-case was also filed by the accused persons as regards the same incident and most of the P.Ws are also accuseds of the said case. The aforesaid factum is also revealed from the testimonies of the I.O. and he was the I.O of that case also.

25. Therefore, considering the aforesaid circumstances, it is not felt safe to convict the accused persons under the offences alleged of as the evidences so far surfaced are not at all found sufficient to convict the accused persons under the offences alleged of. But on coming to the impugned judgment and order of conviction, it is seen that learned trial Court below did not appreciate the evidences on record in the light of the aspects as indicated above, for which in my considered opinion the impugned judgment and order of conviction is not legally sustainable.

26. In the result the impugned judgment and order of conviction is set aside and accuseds are acquitted on benefit of doubt due to the insufficiency of evidences and their bail bonds stand discharge. The appeal is allowed on contest. Judgment is delivered in the open Court. L.C.R. be send back alogwith copy of judgment.

Given under my hand and seal of the Court on this 8th day of October, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri