

In the Court of Addl.Chief Judicial Magistrate ::::::::::;Dhubri

Present :Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

GR case No.455/12

u/s 294/ 323/506 IPC

State

Vs

Jibesh Ch Ray

.....Accused person

Advocates appeared :

For the prosecution:Mr.K.A.Seikh Asstt.P.P

For the Defence :Mr.S.Hussain

Evidence recorded on :04.06.2014

:10.09.2014

:30.01.2015

:25.06.2015

Argument heard on :03.12.2015

Judgment delivered on :11.12.2015

#### Judgment

1.The facts giving rise to the prosecution case in brief are that on 22.04.12,one Sri Jagdish Ch Ray lodged an ejarah with the Officer - In - charge Golokganj Police Station ,alleging that in the preceding night at around 8 'O' clock while he was returning home along with Jotish Ch Ray from the ' Harirhat Bazar ' ,on the way in Borcharaikhula in front of the Grocery shop of the Saurav Karmakar ,the accused Jibesh accompanied by Saurav Karmakar and Sibang Ray armed with lathi etc surrounded them and started altercating ,abusing them and thereafter beat him with a lathi causing injury on his finger and when Jotish Ray tried to resist them ,they assaulted him too. And further threatened them with dire consequences

2. Upon receipt of the ejahar Golokganj PS case No 205/12 was registered ,investigated in to and finally charge sheet was submitted against the accused Jibesh Ch Ray u/s 341/ 294/323/506 IPC.

3. On his making appearance for facing the trial ,copies were furnished to the accused .Having gone through the relevant documents the particulars of the accusations punishable u/s 294/ 323/506 IPC were explained to the accused by my Ld Predecessor to which the accused pleaded not guilty and claimed to be tried .

4. During the course of the trial the prosecution examined 6 witnesses.After closing the prosecution evidence the accused was examined u/s 313 of Cr.P.C and his defence statements were recorded.The accused declined to adduce evidence.Plea of defence was of total denial.

5.Points for determination:

i) Whether the accused on 21.04.12 at about 8 PM at Borochoiraikhula on public road uttered obscene words towards the informant Jagdish Ch Ray to his annoyance and thereby committed the offence punishable u/s 294 IPC?

ii) Whether the accused on the same date, time ,Place voluntarily caused hurt to the informant Jogdish Ch Ray and Jyotish Ch Ray and thereby committed the offence punishable u/s 323 I.P.C?

iii) Whether the accused person on the same date, time and place committed criminal intimidation by threatening the informant and thereby committed the offence punishable u/s 506 IPC?

6. Decision and reasons thereof:

I have heard the arguments advanced by the Ld counsel for the parties and perused the materials available in the case record. Let us now scrutinize the evidence on record for arriving at just decision.

Pw2 Jagodish Ch Ray is the informant. He has testified to the effect that nearly one and a half years back one evening at around 8 PM while he was returning from Harirhat Market riding his bi cycle ,on the way the accused restrained him from proceeding and thereafter assaulted

him. When one Jyotish came forward to rescue him, the accused assaulted him too .Subsequently the accused along with other 2/3 persons went to the house of Jyotish for attacking him .Next morning Pw2 lodged the ejahar .Ext-1 is the ejahar and Ext-1(1) is his signature .Police sent him for medical examination. He sustained injuries on his hand and back.

In his cross examination Pw2 has admitted that prior to this occurrence the accused Jibesh had lodged a case against him and in that connection police visited his house.

Pw3 Bishnu Roy has deposed to the effect that about one and a half years back one evening at around 8 PM ,while he was in his grocery shop ,accused Jibesh was also there with him .At that time Pw2 was coming from Harirhat market riding bicycle. When Pw2 reached the shop ,an altercation took place between Pw2 and accused Jibesh over some matter relating a instrument used for cutting tiles .Thereafter the accused Jibesh assaulted Pw2 with a Bamboo stick. On his intervening in the matter, both Pw2 and the accused left that place.

Pw3 has conceded that he does not have good terms with the accused Jibesh since he had an altercation with the accused. It is also brought out by cross examining Pw3 that after about one month of the occurrence Pw2 took him to the police station to get his statement recorded . Therefore it appears that Pw3 can not called an independent /neutral witness.

Pw4 Ramesh Ch Roy has stated in his deposition that at around 8 PM while he was returning from Harirhat Bazar ,he saw the accused Jibesh about to assault Pw2 with a bamboo stick and as Jyotish came forward for rescue of Pw2 ,the accused assaulted him too.

It is there in cross examination of Pw4 that he has strained relationship with the accused since the accused stole his some fishing instrument.

Pw5 Jyotish Ch Roy testified to the effect that at the time of occurrence ( at about 7/8 PM) he was in his shop which is situated near

the place of occurrence .Accused Jibesh was also there at that time .thereafter an altercation took place between Pw1 and accused Jibesh following which accused Jibesh picked up a bamboo stick and assaulted Pw2.As Pw5 came forward to resist, accused Jibesh gave him(Pw5) a fist blow on his face .Then the neighbouring people arrived there and intervened in the matter .After that the accused came to the residence Pw5 and abused him and his family members.

In his cross examination Pw5 has admitted that for last four years he has strained relationship with the accused Jibesh and in the case lodged by the accused against Pw2 and others he (Pw5) is one of the accused.

Thus from the evidence of Pw2,Pw3 ,Pw4 and Pw5 it is seen that all of them have enmity with the accused since before the occurrence and that Pw2 and Pw5 who are the alleged victim of this are the accused in the case lodged by the accused Jibesh prior to this occurrence in question. Therefore for relying the evidence of said Pw2,Pw3,Pw4 and Pw5 implicating the accused , corroboration of the same by some independent ,reliable witness is essential .

Here in this case ,the only independent/non interested witness, examined by the prosecution, is Pw1 Binod Roy .Let us now have a glance at the testimony of Pw1. He has said in his testimony to the effect that the occurrence took place about two years back at 6 PM in front of the shop of one Saurav .While Pw1 was returning home from the market he saw a gathering in front of the shop of Saurov.They told him that there was a 'marpit' between the informant and the accused .Pw1 has further said that the accused Jibesh sustained injury in the marpit. Thus it is seen that evidence of Pw1 suggests a mutual fight between the informant and accused and thus it does not support and corroborate the evidence of Pw2 ,Pw3,Pw4 and Pw5 implicating the accused and because of lack of corroboration by any independent witness , their(Pw2,Pw3 ,Pw4 and Pw5) testimony can not be relied upon since the possibility of lodging false and

fabricated case out of grudge / enmity can not be ruled out .

That being the position it is found and held that the prosecution has not been able to bring home the charges leveled against the accused .

7. In the result the accused Jibesh Ch Ray is acquitted of the offences u/s 294/ 323/506 IPC and set at liberty forth with.

Bail bond shall remain in force for the next six months.

Given under my hand and seal of the court on this 11<sup>th</sup> day of December 2015.

(T.Hussain)

Addl.C.J.M Dhubri

Dictated & corrected by me

Appendix :

Witnesses examined by the prosecution :

Pw1..... Binod Roy

Pw2..... Jogodish Ch Roy,Informant & victim

Pw3.....Bishu Roy

Pw4 .....Ramesh Ch Roy

Pw5.....Jyotish Ch Roy ,one of the victims

Pw6.....Abhijit Sarma ,I.O

Documents exhibited by the prosecution:

Ext-1.....Ejahaar

Ext-2..... Sketched map

Ext-3 &4 .....Medical reports

Ext-5.....Charge sheet