

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

**C.A. No. 7 (1)/ 2013**

Appellant : Md. Jigir Ali

- Vs -

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

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

Sri M. Shaiyeb Ali, Advocate for appellant.

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

Date of Hearing : 15-05-2013

Date of Judgment : 23-05-2013

**J U D G M E N T**

This criminal appeal is projected against the Judgment and order of conviction dated 22-02-2013 passed by the learned Judicial Magistrate First Class, Bilasipara, whereby the accused appellant Gigir Ali was convicted U/s.326/341/323 I.P.C. in connection with Bogribari P.S. Case No.89/2003.

2. Being aggrieved and dissatisfied with the aforesaid impugned judgment, the convict-appellant Gigir Ali, assailed the impugned judgment on a numbers of grounds, which are narrated in the memo of appeal.

3. During hearing, L.C.R. is called for also the learned counsel of the appellant as well as learned Public Prosecutor are heard.

4. The background story leading to the filing of this appeal is narrated here in below:

One Bachu Khan Raja on 24-08-2003 lodged an ejahar before the Police Station to the effect that on 23-08-2003 about 3:30 p.m. when his minor daughter namely Jaida Khatun and the minor daughter of Gigir Ali namely Monu Begum playing together, a quarrel broke out between them. It is alleged that when the quarrel was going on accused Jigir Ali came running towards them and gave a tight slap on the face of the daughter of the informant due to which she started crying. Hearing her cries wife of the informant namely Memena Bewa came to the scene. During which accused Fulu Sk and Roushna Bibi assaulted Momena Bewa with a lathi. Thereafter hearing hue and cry of his mother Momena bewa, Monoruddin Khan came running towards his mother. Then accused Johor Ali gheared him and accused Jigir Ali gave a blow with a sharp cutting weapon known as Kirish on his right hand and thereby caused grievous injuries on his hand.

5. On the basis of the aforesaid ejahar, Bogribari Police Station on registration of a case took up investigation and at the conclusion of the investigation laid the charge sheet against the accused persons including the appellant U/s.341/323/326/34 I.P.C.

6. On the appearance of the accused persons, the charges there under were framed against the accused persons and the same were read over and explained to the accused, to which the accused persons pleaded not guilty and claimed to be tried.

7. During trial of the case, the prosecution side after examining as many as 9 (nine) P.Ws closed their side. The accused did not adduce D.Ws. The statement of the accused were recorded U/s.313 Cr.P.C. Learned trying Magistrate was pleased to hear the arguments of the case from both the parties and finally delivered the impugned judgment whereby the accused appellant was convicted and other accused persons were acquitted. Thus the occasion of the filing of the appeal by the accused appellant.

8. Now, it is to be seen as to whether the materials surfaced in the testimonies of the P.Ws would justify the conviction of the accused appellant U/s.341/326/323 I.P.C.

9. During hearing learned counsel of the appellant vehemently argued that here in this case serious contradiction as to the medical evidences so also evidence of the I.O. and the victim had surfaced in regard to the examination of the victim by the Medical Officer. But at the time of writing out the judgment, said aspect was ignored by the learned trying Magistrate. It is further submitted by the learned counsel of the appellant that the alleged incident had taken place on 23-08-2008. The Medical Officer in his evidence stated that he also examined the victim on 23-08-2003 but the I.O. of the case (P.W-7) had stated during trial that he had given the requisition for Medical examination of the injured on 24-08-2003.

10. Under the aforesaid circumstances according to the learned counsel of the appellant, it has not been conclusively established as to whether the victim of this case was examined by the Medical Officer or not?

11. Learned Counsel of the appellant further submits that since the conviction of the accused is recorded U/s.326 I.P.C and as doubt generated in the examination of the victim by the Medical Officer, therefore, the conviction recorded by the learned trying Magistrate against the accused appellant is not sustainable in the eye of law.

12. Now, I propose to address the aforesaid submissions advanced by the learned counsel of the appellant during discussion of the evidences on record.

13. Here in this case altogether 9 (nine) P.Ws were examined. P.W-1 Bachu Khan being the informant states during trial that accused Jigir Ali on the date of incident and at the relevant point of time gave slap on the face of his daughter. Then his daughter started to cry. Seeing it his son Mohoruddin Khan approached towards Jigir Khan as to why he had given slap to Jaida. Thereafter, Jigir Ali inflicted blow with a dagger on the hand of Mohoruddin Khan. Mohoruddin Khan was given treatment at the Dhubri Civil Hospital. He laid ejahar under Ext-1 wherein Ext-1 (1) is his signature.

14. P.W-2 Mohoruddin Khan being the victim has totally supported the story of the P.W-1.

15. P.W-3 Momena Bibi had also supported the story of the P.W-1 and P.W-2. P.W-4 Kabbat Ali found the victim Mohoruddin Khan at an injured state. P.W-5 Shar Ali also found the victim Mohoruddin Khan on an injured state. P.W-6 Nasiran Bibi did not see the incident.

16. P.W-7 S.I (B), Haynuruddin Sk. is I.O. of this case, whose evidences are appearing to be record only. The I.O. of this case during cross-examination clearly stated that the incident took place at about 3:30 p.m. on 23-08-2003. He had given requisition for medical examination of the injured on 24-08-2003.

17. P.W-8 Dr. N.M. Ahmed is the Medical Officer of this case. According to him he examined one Mohoruddin Khan aged about 18 years escorted by Constable No.85, Purna Roy and he found simple hurt as well as grievous hurt at the person of the injured during examination.

18. P.W-9 Dr. Samsher Ali is another Medical officer of this case. According to him he on 24-08-2013 examined one Momina Bibi and found simple injuries on her person.

So these are all about the evidences on record.

19. I have carefully gone through the entire evidences on record. Here in this case the accused faced conviction U/s.341/323/326 I.P.C. According to the learned Trial Court below, it has been established beyond all reasonable doubt that the accused appellant wrongfully restrained the victim Mohoruddin and also assaulted him, his mother Memena Begum and as such the accused was convicted and directed to suffer the sentences as indicated in the impugned judgment.

20. The ejahar in this case is exhibited under Ext-1 which shows that a case on the basis of the ejahar was registered on 24-08-2003. From the testimonies of the I.O, it is seen that on 24-08-2003 the case was registered and he was endorsed to investigate into the case on that day. The testimonies of the I.O. (P.W-7) would further show that on the

aforesaid date he visited the place of occurrence, prepared Sketch Map, examined witnesses and also recorded statement. There is no evidence to show that the victim Mohoruddin was sent to Dhubri Hospital on 23-08-2003 on being escorted by police personnel Constable No.85 Purna Roy.

21. This being the position then who is that person and who was examined on 23-08-2003 by P.W-8. During hearing the prosecution side neither addressed nor explained the aforesaid question. Since in order to record conviction U/s.326 I.P.C., the medical evidences are very much pertinent, but here in this case to establish the injuries of the victim U/s.326 I.P.C. the aforesaid materials are not sufficient. Rather the same appears to be sufficient to shake the ocular testimonies of P.Ws. But from the ocular evidences of the victim and other witnesses, it can be concluded that here in this case the offence U/s.323 I.P.C. has been made out against the accused appellant. So far materials to attract the ingredients of Sec. 341 I.P.C is concerned, it is found that the same is lacking.

22. Considering the aforesaid facts and circumstances from all angles, it can be concluded that here in this case the conviction recorded by the learned trial Court in the impugned judgment U/s.326/341 IPC has got no legal footing to stand. However, it can be concluded that the offence U/s.323 I.P.C. against the accused appellant has been established beyond all reasonable doubt.

23. In view of the above, the conviction recorded by learned trial Court below U/s.326/341 I.P.C. against the appellant is hereby set aside and the same recorded U/s.323 I.P.C. is here by upheld.

24. Accordingly, the appeal as indicated above is hereby allowed partly on contest and without cost and accused convict is directed to surrender before the learned Trial Court below to suffer sentences as has been recorded in the impugned judgment. From the evidence on record, it appears that victim Mohoruddin had suffered injures, therefore, he may be provided adequate compensation U/s.357 (A) Cr.P.C. for his rehabilitation. Let a copy of the judgment be furnished to the DLSA, Dhubri for doing needful. Send back the L.C.R. alongwith a copy of the judgment.

Given under my hand and seal of the Court on this 23<sup>rd</sup> day of May, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri