

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

C.A. No.1(1)/ 2011

Appellants : 1. Sri Dipu Barman
2. Sri Raju Das
- Vs -

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

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

Sri Ashraful Islam, Advocate for the Appellants.

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

Date of Hearing : 23-09-2013

Date of Judgment : 05-10-2013

J U D G M E N T

This Criminal Appeal is projected against the judgment and order of conviction dated 06-12-2010 passed by the learned S.D.J.M (M) in G.R. (BLP) No.228/2003 whereby the appellants were convicted and sentenced to suffer 3 years R.I. and a fine of Rs.2,000/- each i/d to suffer another S.I. of 2 months U/s.325 I.P.C.

2. Being aggrieved and dissatisfied with the impugned order passed in the aforesaid judgment, the appellants namely Sri Dipu Barman and Sri Raju Das assailed the impugned order 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 P.P. is only heard due to the absence of the learned counsel of the Applicants.

4. I have carefully gone through the impugned judgment and order of conviction in the light of the L.C.R. The facts materials leading to the filing of the instant appeal may be narrated in the following manner:

That one Manika Adhikary vide an ejahar dated 22-12-2009 states that at about 10-30 p.m. while her husband Mridul Adhikary was returning from the house of her cousin Jyoti Das, on the way the accused persons namely Dipu Barman and Raju Das attacked her husband with bamboo stick and iron road and also inflicted kick on his person as a result of which her husband sustained injuries on various parts of his body. Since she was busy in the treatment of her husband as such, ejahar was lodged a bit lately.

5. The Bilasipara Police Station on the basis of the aforesaid ejahar registered a case and took up the investigation and at the conclusion of the investigation, laid charge-sheet against the accused persons U/s.341/325/34 I.P.C.

6. On the appearance of the accuseds, the charges U/s.341/325/34 I.P.C. are framed. The charges so framed are read over and explained to the accused persons to which they pleaded not guilty.

7. During trial the prosecution side after examining as many as 5 (five) P.Ws closed their side. Statements of the accuseds were recorded. Learned trial Court below heard the arguments of the case from both the parties and at the conclusion of the trial delivered the impugned judgment and order of conviction as narrated here in before. Thus the occasion of the filing of the instant appeal.

8. Now, the point for determination in this case will be as to whether the materials so far surfaced in the testimonies of the P.Ws would justify the conviction of the appellants U/s.325 I.P.C.

9. To address the aforesaid point for determination obviously perusal of evidences is necessary.

10. P.W-1 Sri Manika Adhikary who happens to be the informant during trial and in her examination-in-chief stated the story as she mentioned in the ejahar under Ext-1 wherein Ext-1 (1) is her signature. She had clearly stated that she had come to know about the incident from her husband. Further, the P.W-1 admitted during cross-examination that she did not see the incident also she admitted during cross-examination that accused Raju Das had brought a case against her husband. Before filing of the instant case she had consulted with other persons.

11. P.W-2 Sri Mridul Adhikary being the victim of the instant case states during trial and in his examination-in-chief that on 05-12-2003 at about 10-30 p.m. while he was returning from the house of Jyoti Das, accused persons namely Dipu Barman and Raju Das inflicted kick on his persons and thereby made him fallen down on the ground. Thereafter, they inflicted blow and fist whereby he suffered fracture on his hip joint on left leg. He was also assaulted on his nose whereby blood was oozing. He took treatment at Dhubri Civil Hospital.

During cross-examination the victim admitted that the incident had taken place on the road and it was covered by darkness and he cannot say as to who assaulted him 1st but accused persons assaulted him. He also admitted during cross-examination that Raju Das had brought a case against him. There are houses in the place of occurrence but at the time of incident there was no person.

12. P.W-3 Munna Saha states during trial that on the date of incident at about 10-30 p.m. he heard shout like “bachau” “bachau”. Hearing the aforesaid cries, he rushed to the place of occurrence and found that Mridul Adhikary was lying. Then he made arrangement to shift him to his house. At that time no person was there but he did not find any injury on his person. During cross examination the P.W-3 stated that he cannot say about the incident in details. The victim was lying on the road and he did not find any torch-light at the hand of Mridul Adhikary and it was covered by darkness. He also heard that the victim used to drink.

13. P.W-4 Dr. Raj Kumar Mahato examined the victim and he recorded his opinion under Ext-2 wherein Ext-2 (1) is his signature.

14. P.W-4 Sri Hem Saikia is the I.O. whose evidences are appearing to be record only.

15. I have carefully gone through the entire evidences on record. Herein this case non-official witnesses examined are numbering three and they are the informant, the victim and one independent witness. Out of them only P.W-2 has witnessed the incident, who is the victim of this case and remaining P.Ws did not see the incident. According to P.W-1, who happens to be the informant, the victim was assaulted by bamboo stick and the iron rod. But the victim did not support her and on the other hand P.W-3 is the first person who arrived at the scene had not stated anything about the weapons used in the commission of crime. This apart, from the testimonies of the P.W-3 it has not been revealed that the victim told him about the incident that the accused persons had assaulted the victim. Infact, it is revealed that the P.W-3 did not find any injury on the victim. The P.O. was covered by darkness and the P.W-3 did not find torch at the hands of victim. It is not clear as to how & under what circumstances the victim was able to identify the accuseds.

16. Therefore, evidences show that there is only solitary evidence that is the evidences of the victim and as such whether the evidence of the victim only can be relied upon to record the conviction of the accused.

17. On a minute scrutiny of the P.Ws, it appears following circumstances:

1. The victim stated that he faced the kick blow on his person and also bleeding injuries on his nose. There are blood stained cloths. The incident had taken place at about 10-30 p.m. of the night in a place which is covered by darkness. There are no materials to show as to what circumstances the victim was able to identify the accused persons.

2. The victim himself admitted during trial that he cannot say as to who 1st assaulted him but according to him he was assaulted by the accused persons together.
3. The victim himself admitted that the accused Raju Das also brought one case against him and why the said case was brought by the accused Raju Das has not been stated by the victim.
4. The incident as per the version of the victim and the informant had taken place on 05-12-2003 the ejarah was lodged on 22-12-2003 and thereafter, Bilasipara P.S Case No.228/03 was registered on 22-12-2003 but the Doctor mentioned the Bilasipara P.S. Case No.228/2003 in the Ext-2 whereas the Doctor mentioned the date of examination of the victim is 13-12-2003.
5. The case in question was registered on 22-12-2003 the Doctor examined the victim on 13-12-2003. The same goes to show that the Ext-2 was prepared after 13-12-2003.
6. The order sheet of the case goes to show that formal charge was framed against the accused appellants but formal charge form is not available in the C.R. and as such it can be deemed that without formal charge form, the learned trial Court below has delivered the impugned judgment.

19. From the aforesaid facts and circumstances, it is felt difficult to base the evidences of the victim for the conviction of the accused appellants under the offence alleged of. But considering the impugned judgment and order of conviction in the light of the aforesaid facts and circumstances, it is seen that the learned trial Court below did not at all consider the aforesaid aspects and ultimately arrived at the conclusion whereby the impugned judgment was delivered.

20. This being the position, it is finally concluded that evidences so far surfaced in the testimonies of the P.Ws are not at sufficient to hold the accused persons guilty of the offence U/s. 325 I.P.C. and as such accused are entitled to get the benefit of doubt. In the result the accuseds are acquitted on benefit of doubt and set at liberty forthwith due to the insufficiency of the evidences.

21. In the result, impugned judgment and order of conviction is set aside and appeal is allowed on contest and without cost. 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 5th day of October, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri