

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR(GKJ) 221 of 2009

State of Assam
-Vrs-
Md. Mainul Haque
.....Accused Person

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution ----- Md. J. Bari Sarkar, APP

For the defence ----- Md. J. Talukdar

Evidence recorded on : 22.6.10, 21.6.11, 05.11.12 & 07.3.13

Argument heard on : 05.9.13

Judgment delivered on : 26.9.13

Penal law involved : u/s 336/323/506 IPC

J U D G M E N T

1. The prosecution-case in brief, as revealed from the ejahar, is that on 18.6.09 at about 7-00 PM, when the informant Md. Tamsher Ali was purchasing something in the Silghagri market, the above-named accused person hit on his head by means of a stone as a result of which the informant fell down having sustained a serious injury. The informant added that the accused person & his father-in-law Md. Jahir Ali had some quarrel with him over some household matters in course of which they abused him in filthy language and threatened him with dire consequences.

2. Police, after investigation, submitted Charge-sheet against accused Md. Moinul Haque alone and, on his appearance before the Court, the particulars of the offences punishable u/s 336/323/506 IPC (presumably the first part of Sec.506 IPC, since no formal charge has been framed) were explained to him by my learned predecessor, after supplying copies u/s 207 CrPC, to which he pleaded not guilty & claimed to be tried, as the order dated 17.5.10 shows.

3. During trial, prosecution examined six witnesses including the informant-victim and the incriminating materials so brought into the evidence on records were put to the accused person in course of his examination u/s 313 CrPC ; he denied the allegations and declined to adduce any evidence. I have heard the argument of both sides at length.

4. The **Points for Determination** in this case are :

(i) whether on 18.6.09 at about 7-00 PM the accused person voluntarily caused hurt to the informant in the Silghagri market and thereby committed an offence punishable u/s 323 IPC ;

(iii) whether on/at the same date, time & place the accused person did any act so rashly or negligently as to endanger human life or safety and thereby committed an offence punishable u/s 336 IPC ;

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(iii) whether on/at the same date & time the accused person threatened the informant with dire consequences and thereby committed an offence punishable u/s 506 IPC ;

And, if so, what punishment the accused person deserves.

Decision & reasons therefor :

5. PW-1 Md. Tamser Ali is the informant as well as the sole alleged victim in this case. He deposed to the effect that one day about a year before the date (22.6.10) of his evidence at about 6-00 PM, when the accused person was quarrelling with his wife & daughter in front of his house, he went out hearing the 'hulla' and took them back to his house. PW-1 then went to the market and, when he was purchasing vegetable, the accused person pelted a stone on his head causing bleeding injury. PW-1 claimed that he had seen the accused person pelting stone at him. He exhibited his Ejahar as Ext.1 but, during cross-examination, he failed say the contents thereof.

6. PW-2 Md. Ketabuddin Mia testified that one day about one year before the date (22.6.10) at about 4-00 PM there was an altercation between the accused person & PW-1 over a children's matter. PW-2 then went to the market at about 5-30 PM in the company of PW-1 who suddenly fell down there. PW-2 saw a bleeding injury on his head. PW-1 then told him to have been hit by a stone. PW-2 testified further that he saw the accused person there coming out of a nearby arum-field.

7. PW-3 Md. Nain Ali deposed that about two years before the date (21.6.11) of his evidence one day at 5-00/5-30 PM there was a quarrel between the accused person & PW-1 over a latrine. After some time, when PW-1 was in the market, the accused person hit on his head with a stone, as PW-3 learnt from PW-1.

8. PW-4 Shri Samulya Ch. Roy testified that one day about four years before the date (05.11.12) of his evidence at the time of dusk, when he was in the market, he heard a commotion over there. He also heard that PW-1 sustained a head-injury.

9. PW-5 Shri Nabin Ch. Mondal deposed to the effect that one day about three years before the date (05.11.12) of his evidence at the time of dusk, when he was in his shop located in Silghagri Market, a commotion & gathering took place there. He saw a bleeding injury on the head of PW-1.

10. PW-6 Shri Mukul Ch. Roy is the Investigating Officer in this case. He testified about the details of his investigation and proved the charge-sheet, sketch map of P.O. etc.

11. PW-1 clearly stated in his evidence that he got a stone-injury in his head at the relevant time & place. Shortly after the occurrence PW-2&5 saw a bleeding injury on his head. All these witness have been subject to a detailed cross-examination but could not be dislodged from their stand. The evidence of the PWs are also very natural on facts, as I find. Therefore, I am convinced that PW-1 sustained a head-injury at the relevant time & place in the manner testified by him.

12. However, so far as the involvement of the accused person is concerned, PW-1 stated that he saw the accused person pelting stone at him but he did not disclose it to PW-2 who was accompanying him at that very time.

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Such material omission on the part of PW-1 is highly unnatural and smacks of falsity in my considered opinion. The occurrence took place in a busy market area but none other than PW-1 claimed to have seen the accused person pelting the stone. In fact, PW-4&5 tried to find out the culprit, as I gather from the manner of their deposition, but they could not ascertain it at that time even from PW-1.

13. There is no denying that a strong suspicion exists against the accused person of his involvement in the commission of the offence. The circumstances that he quarreled with the wife & daughter of PW-1 shortly before the occurrence and that he was seen by PW-2 coming out of an arum-field situated near the market at or around the time of the occurrence lend support to such suspicion. But suspicion, however strong, cannot take place of the formal proof. In this regard, one may refer to the decisions of the Hon'ble Supreme Court in [Vijay Kumar Arora –Vrs- State Govt. of NCT of Delhi](#) [reported in [MANU/SC/0041/2010](#) : (2010)2SCC353] and in [Subramanian Swamy -Vrs- A. Raja](#) [reported in [MANU/SC/0667/2012](#) : 2012(7) SCALE 520](Para-52). It is not unlikely that PW-1 also imagined the involvement of the accused person out of those circumstances and this, in turn, explains why the FIR was not lodged on that day.

14. Situated thus, I acquit the accused person of the offences punishable u/s 336/323/506 IPC and direct that he be set at liberty forthwith. His bail-bond shall stand discharged on expiry of six months from today, vide. the spirit of Sec.437-A CrPC. However, for the reasons stated in Para : 11 above, the victim Md. Tamsar Ali (PW-1) is hereby forwarded to the DLSA for compensation u/s 357-A CrPC

Dictated & corrected by me and given under my hand and seal of the Court on this 26th Day of the Month of September in the Year 2013.

Addl. Chief Judicial Magistrate,
Dhubri : Assam