

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (THT) 35 of 2009

State of Assam

-vrs-

1. Md. Ahmed Ali

2. Mustt Sahida Bibi

.....Accused persons

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 : 22.3.13, 30.4.13 & 28.10.13

Argument heard on : 04.01.14

Judgment delivered on : 07.01.14

Penal law involved : u/s 447/323/34 IPC

J U D G M E N T

1. The prosecution-case in brief, as revealed from the ejahar, is that on 06.7.09 at about 11-00 AM the above-named accused persons alongwith others entered the house of the informant Mustt. Mahijan Bewa and tried to take away some banana kept over there. As she offered resistance, accused Ahmed Ali hit her with a bamboo-stick causing fracture in her hand. The informant immediately went to the Tamarhat PS and the police referred her for treatment. On release from the hospital, she lodged the Ejahat. The informant added that the accused persons damaged the fence of her house and threatened to kill her.

2. Police, after investigation, submitted Charge-sheet against the above-named accused persons and, on their appearance before the Court, the particulars of the offences punishable u/s 447/323/34 IPC were explained to them by my learned predecessor, after supplying copies u/s 207 CrPC, to which they pleaded not guilty, as the order dated 16.8.12 shows.

3. During trial, prosecution examined three witnesses including the informant-victim and, at that stage, I closed further evidence for the prosecution for the reasons stated in the orders dated 28.10.13 & 03.12.13. The accused persons were then examined u/s 313 CrPC ; they denied the allegations and declined to adduce any evidence. I have heard the argument of both sides.

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

(i) whether on 06.7.09 at about 11-00 AM the accused persons, in furtherance of their common intention, entered upon the homestead of the informant Mustt. Mahijan Bewa located in North Kaskhana for stealing some banana and/or remained there for voluntarily causing hurt to her and thereby committed an offence punishable u/s 447/34 IPC ;

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(ii) whether on/at the same date, time & place the accused persons, in furtherance of their common intention, voluntarily caused hurt to the informant and thereby committed an offence punishable u/s 323/34 IPC ;

And, if so, what punishment the accused persons deserve.

Decision & reasons therefor :

5. PW-1 Mustt. Mahijan Bewa is the informant as well as the sole alleged victim in this case. She deposed to the effect that one day about three years before the date (22.3.13) of her evidence the accused persons cut away some bamboo and, as PW-1 offered resistance, chased her with axes in their hands. Accused Ahmed Ali caused fracture in her hand but accused Sahida did not beat her.

6. PW-1 deposed further that she was hospitalized for three days and then went to the Superintendent of Police (SP) since the policemen at the PS did not attach any importance to her matter. On receipt of an endorsement/note of the SP on her medical report, she lodged the Ejahar which was scribed by one Samsul. She stated during cross-examination that she lodged the Ejahar seven days after the occurrence (Ext.1 is dated 08.7.09) and that there was a land-dispute prior to the occurrence. She stated further that the occurrence was not witnessed by anybody ; she, however, named some of her neighbours who went to the place of the occurrence. PW-1 admitted to have heard that accused Ahmed Ali sustained cut-injury on his leg.

7. PW-2 Md. Soder Ali & PW-3 Md. Moinul Haque deposed almost in the same manner to the effect that about four years before the date (28.10.13) of their evidence one day about 11-00 AM, when they were gossiping with each other on the road, they heard a commotion. They rushed to the place and saw accused Ahmed Ali with a cut-injury on his leg. PW-3 added that he saw PW-1 going with a knife in her hand.

8. PW-1 clearly exonerated accused Sahida from the allegation of causing hurt. As regards the remaining parts of the matter, her FIR shows that the occurrence started with an attempt on the part of the accused persons to steal away some banana from her house. But, during evidence, she testified that it was her resistance to cutting away some bamboos by the accused persons which led to the occurrence. PW-1 thus changed the very genesis of the prosecution-case. She deposed further that accused persons chased her with axes in their hands and that accused Ahmed Ali caused fracture in her hand. But, in her Ejahar (Ext.1), she had stated that she was hit by a bamboo-stick (not axe).

9. PW-1 first stated during cross-examination that nobody had witnessed the occurrence. In her very next breath, she named some neighbours and claimed that they came to the place of the occurrence. PW-2&3, her neighbours, have not supported her case at all. They rather found accused Ahmed Ali to have sustained a cut-injury on his leg. PW-2 even testified that he saw PW-1 going with a knife in her hand shortly after the occurrence. It is interesting to note here that PW-1 has not denied the fact that accused Ahmed Ali sustained cut-injury in the occurrence ; when asked about the matter, she tacitly replied that she had heard so.

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10. PW-1 deposed that she lodged the Ejahar seven days after the occurrence. The FIR (Ext.1) on records is dated only two days after the alleged incident. PW-1 claimed that her Ejahar was scribed by one Samsul but Ext.1 shows that it was written by one Jahanuddin. PW-1 stated during evidence that police initially refused to act upon her Ejahar/information for which she had to go to the SP. But Ext.1 itself reveals that soon after the occurrence PW-1 reported it orally at the Police Station whereupon police referred her to the hospital. That earliest version (oral) of PW-1 has not been proved by the prosecution by producing/exhibiting any G. D. Entry.

11. With so many falsities glaring in the evidence on the most material points, the prosecution must fail in my considered opinion. Hence, I acquit the accused persons of the offences punishable u/s 447/323/34 IPC and direct that they be set at liberty forthwith. Their bail-bonds shall stand discharged on expiry of six months from today, vide. the spirit of Sec.437-A CrPC.

Dictated & corrected by me and given under my hand and seal of the Court on this 07th Day of the Month of January in the Year 2014.

Addl. Chief Judicial Magistrate,  
Dhubri : Assam