

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

DHUBRI

GR CASE NO 930/10

STATE

V.

MAZIDUL HOQUE AND ANR

ACCUSED

[U/S 447/352/34 IPC]

PRESENT: N.J.SARMA,JMFC,DHUBRI

APPEARANCE:

FOR THE PROSECUTION:MR.K.ALI SK,APP

ASSISTED BY:MR.H.A.KHAN,ADV

FOR THE ACCUSED :MR.M.K.NAG .,ADV

DATES:

FOR EVIDENCE:11/4/12,20/6/12,6/7/12

18/12/13,13/2/14

FOR ARGUMENT:20/5/14

FOR JUDGMENT:2/6/14

JUDGMENT

1.The prosecution's case as revealed from the FIR is as follows:One Hamidur Rahman lodged a FIR in the Gauripur p.s on 5/5/2010 alleging inter alia that on that day his younger brother Bazirul Rahman went to plant tree sapling in his own land.Then the accused persons Mazidul Hoque,Monowara Bibi and Pintu Hoque armed with dao,axe,stick,fela etc attacked his younger brother and snatched Rs1000/ from him.On 3/5/2010 the accused persons trespassed into his boundary and made raw latrin there.As he and his younger brother obstructed the accused persons in their unlawful activity they plotted the incident of today as mentioned.On hearing hue and cry of his brother the neighbourhood people

approached the place of occurrence and the accused persons fled from there.Hence,the FIR.

2.In pursuant to lodging of the FIR the same was registered as Gauripur p.s case no.241/2010 u/s 342/384/34 IPC and investigation was carried out.On completion of investigation the I/O of the case filed chargesheet u/s 447/352/34 IPC against the accused persons Mozidul Hoque and Monowara Bibi.Other accused person was not sent up for trial.

3.On appearance of the accused persons they were supplied with the relevant documents u/s207 CRPC.Particulars of offences u/s 447/352/34 IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.The prosecution in order to establish its case examined as many as six witnesses.The accused persons on their examination u/s 313 CRPCdenied all the allegations leveled against them.The defence has not examined any witness.Its plea is of total denial.I have heard the Id.counsels of both the sides at length and perused the evidences available on record carefully to arrive at a just decision of the case.It is pertinent to mention here that in the instant case the informant has engaged Id.counsel to assist the prosecution and he has filed written argument to support the case of the prosecution.

4.POINTS FOR DETERMIANTOIN:

(i)Whether the accused persons in furtherance of their common intention criminally trespassed into the premises of the informant's brother and thereby committed an offence u/s 447/34 IPC?

(ii)Whether the accused persons in furtherance of their common intention used criminal force against the brother of the informant without grave provocation and thereby committed an offence u/s352/34 IPC?

5.DISCUSSION,DECISION AND REASONS FOR DECISION:

Let us peruse the evidences available on record carefully to decide the points at hand.

(i)Pw1,Hamidur Rahman in his examination in chief has stated that he is the informant .Ext 1 is the FIR and Ext1(1) is his signature.He knows the accused persons.The incident took place on 5/5/2010 at 8 am .At that time he was at his shop near the road and his brother Bazirul Rahman went to plant pumpkin sapling in their cultivating land.Suuddenly the accused persons Mozidul Hoque and Monwara Bibi and their son Pintu Hoque unauthorisedly entered their cultivating land.The accused Monwara Bibi confined his brother with hands from behind and accused Mozidul Hoque attempted to assault his younger brother with a dao.Then his younger brother raised hue and cry.On hearing hue and cry he rushed to the place of occurrence saw the accused Mozidul snatched away Rs1000/ from the pocket his brother and fled away from the p.o.On 3/5/2010 the accused persons tried to construct a latrine encroaching their land ,they

prevented them from constructing the said latrine. For the said incident on 3/5/2010 out of revenge the accused persons assaulted his younger brother. On his cross examination he has admitted that the police recorded his statement. He has admitted that he and his brother Bazirul are accused in a cross case filed by the accused Mozidul Hoque. He has denied all the suggestions put to him.

(ii) Pw2, Bazlur Rahman in his examination in chief has stated that the informant is his elder brother and he knows the accused person. The occurrence took place on 5/5/2010 at 8 am. At that time he was planting sapling in his land adjacent to his house. Suddenly the accused persons Mozidul, Monwara Bibi and two others Mintu and Pintu surrounded him and assaulted him with blows and kicks. Thereafter, the accused Monowara caught hold of him from behind and Mozidul tried to assault him with dao. He raised hue and cry and on hearing his hue and cry the neighbourhood people approached the place of occurrence and the accused Mozidul snatched Rs 1000/ from his pocket and ran away. Later on, his brother Hamidur lodged the FIR. On his cross examination he has denied the suggestion that he has not stated before the police that "Monowara caught hold of his hand from behind; Mozidul snatched Rs1000/ from his pocket". He has admitted that in this connection the accused Mozidul has also filed a criminal case in which he and his brother the informant of the instant case are the accused. He has denied all the other suggestions put to him.

(iii) Pw3, Sohikul Rahman in his examination in chief has stated that he knows the informant as well as the accused persons. The occurrence took place on 5/5/2010 at about 8 am. At the time of occurrence he went to the shop of Hamidur to purchase something. He heard hue and cry at a distance of 30 meters away from Hamidur's shop. He rushed to the p.o to see that the accused persons Mazidul, Monowara and Pintu were running away from the p.o. On asking Bazirul he replied that the accused Mazidul snatched away Rs1000/ from Bazirul's pocket and assaulted him with blows. On his cross examination he has admitted that he has not seen the occurrence. He has deposed before the Court whatever he heard from the victim Bazirul. He has admitted that he has stated before the police that he has not seen the occurrence.

(iv) Pw4, Sofiquil Islam in his examination in chief has stated that he knows the informant as well as the accused persons. The occurrence took place on 5/5/2010 at about 7am-8am. At that time he was brushing his teeth. Suddenly he heard hulla in the land of the informant's brother Bazirul. He reached there and saw that the accused Monwara Bibi was catching hold of Bazirul and the accused Mazidur was attempting to hit him with a dao. On seeing this he along with people nearby raised hue and cry, because of which the accused ran away. Bazirul informed him that the accused persons while running away picked out two nos. of Rs500/ notes from his pocket. When he asked Bazirul about the incident he told them that while he went to plant bettle nut sapling and pumpkin sapling in his cultivating land the accused persons forcefully restrained him. On his cross

examination he has admitted that he was not posted as Homeguard at that time. His house is at a little distance from Bazirul's house. He does not remember whether he has stated before the police that accused Monwara Bibi was catching hold of Bazirul and the accused Mozidul was attempting to hit him with a dao. He has denied the suggestion that he has not stated before the police that Bazirul informed him that the accused Mazidul snatched two Rs 500/ notes from him. He has denied all the suggestions put to him.

(v) Pw5, Rezia Bibi in her examination in chief has stated that she knows the informant and the accused persons. He does not know about the incident. The defence declined to cross examine the witness.

(vi) Pw6, Prajanan Kr. Brahma the I/O of the case in his examination in chief has stated that on 5/5/2010 he was working as attach officer in Gauripur p.s. On that day on receipt of the written FIR filed by the informant Hamidur Rahman he was entrusted with the investigation of the case. He went to the place of occurrence and drew sketch map. He has examined the witnesses. He arrested the accused persons and allowed them to go on bail. On completion of his investigation he filed chargesheet u/s 447/352/34 IPC against the accused persons. Ext 2 is the chargesheet and Ext2(1) is his signature. On his cross examination he has admitted that pw1, Hamidur Rahman in his FIR and sec 161 CRPC has not stated that he was present at the place of occurrence. He has also admitted that Bazirul Rahman in his sec 161 CRPC has not stated that Mazidul, Monwara, Pintu and Mintu surrounded him and gave him blows and kicks; Monowara caught him from behind and Mazidul tried to hit him with a dao; Mazidul snatched Rs1000/ from his pocket. He has also admitted that Pw3 Sahidur Rahman in his sec 161 CRPC statement has not stated that Mozidul snatched Rs1000/ from Bazirul's pocket. He has also admitted that pw4 Safiqul in his sec 161 CRPC has not stated that Monowara caught hold of Bazirul from behind and Mazidul tried to hit him with a dao and the accused Mazidul snatched two Rs500/ notes from his pocket.

6. In the instant case the Id. counsel of the informant Mr H.A. Khan has submitted the written argument to support the case of the prosecution. He has relied on the following decision of the Hon'ble Gauhati High Court to buttress his claim : 1994(2) Gauhati Law Journal 500. I have carefully perused the written argument and the Judgment referred by the Id. counsel.

7. Now, let us discuss the points at hand in the light of evidences and materials available on record. On careful perusal of the FIR and the testimonies of the pws it is evident that the informant Hamidur Rahman in his FIR the Ext1 has stated that his younger brother Bazirul Rahman went to plant tree sapling in his own land. Then the accused persons Mazidul Hoque, Monowara Bibi and Pintu Hoque armed with dao, axe, stick, fela etc attacked his younger brother and snatched Rs1000/ from him. On the other hand in his testimony as pw1 he has admitted that he has arrived at the place of occurrence on hearing hue and cry and saw the accused Mozidul snatched Rs1000/ from the pocket of Bazirul Rahman his

younger brother. On the other hand the pw6 in his cross examination has stated that pw1, Hamidur Rahman in his FIR and sec 161 CRPC has not stated that he was present at the place of occurrence. The pw2 the victim in his testimony has stated that suddenly the accused persons Mozidul, Monwara Bibi and two others Mintu and Pintu surrounded him and assaulted him with blows and kicks. Thereafter, the accused Monowara caught hold him from behind and Mozidul tried to assault him with dao. He raised hue and cry and on hearing his hue and cry the neighbourhood people approached the place of occurrence and the accused Mozidul snatched Rs 1000/ from his pocket and ran away. On the other hand the pw6, the I/O in his cross examination has admitted that Bazirul Rahman in his sec 161 CRPC has not stated that Mazidul, Monwara, Pintu and Mintu surrounded him and gave him blows and kicks; Monowara caught him from behind and Mazidul tried to hit him with a dao; Mazidul snatched Rs1000/ from his pocket. Thus confirming the contradiction of the statement of the pw2 the victim. Moreover, he is silent regarding attack on him with dao, fela, axe etc by the accused persons Mazidul, Anowara and Pintu as stated in the Ext1. The pw4 who is a chance witness of the incident has stated that at that time he woke up and was brushing his teeth. Suddenly he heard hulla in the land of the informant's brother Bazirul. He reached there and saw that the accused Monwara Bibi was catching hold of Bazirul and the accused Mazidul was attempting to hit him with a dao. On seeing this he alongwith people nearby raised hue and cry, because of which the accused ran away. Bazirul informed him that the accused persons while running away picked out two nos. of Rs500/ notes from his pocket. When he asked Bazirul about the incident he told them that while he went to plant bettle nut sapling and pumpkin sapling in his cultivating land. The accused persons forcefully refrained him. The pw6 the I/O in his cross examination has admitted that the pw4 Safiqul in his sec161CRPC has not stated that Monowara caught hold of Bazirul from behind and Mazidul tried to hit him with a dao and the accused Mazidul snatched Rs500/ from his pocket. Hence, confirmed the contradictions of the statement of the pw4. On careful perusal of the instant case it is evident that the prosecution has examined as many as five witnesses excluding I/O of the case of, out of the said witnesses only the pw2 and pw4 are the witnesses who were present in the place of occurrence at the time of the incident. However, their statements were not in conformity with each other. In the instant case the pw2 has stated that Mazidul, Anowara, Mintu and Pintu were present in the place of occurrence. On the other hand the pw3 has stated that he saw accused persons Mazidul, Anowara and Pintu were running away from the place of occurrence. On the other hand pw4 has been silent regarding the presense of the the other FIR name accused person Pintu. The pw1 and Pw2 have stated about the snatching of Rs1000/ from the pocket of the Bazlirul by Mazidul. On the other hand the pw4 though was present at the time of the incident in the place of occurrence did not witness Mazidul snatching Rs 1000/ from Bazirul. However, he has stated that Bazirul informed him that Mazidul snatched two Rs500/ notes from his pocket. The said fact of snatching two 500/ rupees notes were not stated by the

pw1 and pw2. From the above discussion it is evident that though the alleged incident was taken place in the day light and the prosecution has examined as many as five witnesses but failed to prove its case against the accused persons beyond reasonable doubt. The testimonies of the pws have suffered from veracity and material contradictions to each other as evident from the above discussion. Hence, I am of considered opinion that the accused persons are entitled to get benefit of doubt. Accordingly, they are acquitted from the charges u/s 447/352/34 IPC. They are set at liberty forthwith. The bail bonds are extended to six months from today.

8. Pronounced by me in this open Court under the hand and seal of this Court on this 2nd day of June, 2014.

(NAYAN JYOTI SARMA)