

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
LAKHIMPUR, NORTH LAKHIMPUR, ASSAM**

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 1236/2015

Under section 341/323 of the of the Indian Penal Code

**State of Assam
-Vs-
Sri Budhen Nath**

.....Accused

Date of offence explanation : 10.01.2017
Dates of recording evidence of PWs : 06.12.2017, 09.05.2018,
28.06.2018, 30.10.2018,
31.07.2019
Date of examination u/s 313, Cr.P.C. : 01.11.2019
Date of Argument : 10.02.2020
Date of judgment : **04.03.2010**

Advocates appeared in the case:-

Sri Prasanta Dutta, Addl. P.P., for the State

Smti. S.R. Baruah and Sri Diganta Bhattacharjee, Advocates, for the
accused

J U D G M E N T

1. The factual matrix of the prosecution is that one Sri Jitu Rajkhowa on 28.05.2015 had lodged an ejahar with the In-charge of Nowboicha Police Outpost alleging that on that day at about 2:30 PM

the accused Sri Budhen Nathin front of the courtyard of his house had restrained him and assaulted him pulling him by his hair and when his uncle Sri Dhaniram Rajkhowa saw the accused beating him then he intervened and tried to rescue him but at that the accused had punched him on his face and thereafter the accused had hit him with an axe on his head for which he fell down on the ground. Hence, the case.

2. On receipt of the ejahar, the Officer-in-charge of North Lakhimpur Police Station registered a case vide N.L.P.S. Case No. 647/2015, under section 341/326/323 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 341/323 of the Indian Penal Code against accused Sri Budhen Nath to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 341/323 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused entered his appearance before the Court after receiving the summons. Copies were furnished to the accused as per provision contained in section 207 of the Code of Criminal Procedure. The particular of offence under section 341/323 of the Indian Penal Code when being read over and explained to the accused person he pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION:

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused had wrongfully restrained the informant ?

(b) Whether the accused had voluntarily caused hurt to the informant and his uncle Sri Dhaniram Rajkhowa ?

5. During the trial the Prosecution side had examined 6 (six) PWs viz. Sri Jitu Rajkhowa as PW-1, Sri Dhaniram Rajkhowa as PW-2, Sri Bidyadhar Nath as PW-3, Smti. Sumi Rajkhowa as PW-4, Sri Lohit Gogoi, the I/O as PW-5 and Dr. Karuna Kanta Baruah, the M/O as PW-6. The prosecution exhibited the ejahar as Ext-1 and the signature of the informant therein as Ext-1(1), the G.D. Entry extract Copy as Ext-2, the rough sketch map of the P.O as Ext-3 and the signature of the I/O therein as Ext-3(1) and the charge sheet as Ext-4 and the signature of the I/O therein as Ext-4(1), the injury report as Ext-5 and the signature of the M/O as Ext-5(1). The statement under section 313 of the Code of Criminal Procedure of the accused was recorded and he declined to adduce evidence in defence.

6. I have heard the argument of both sides and thereupon come to the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

7. For the sake of convenience both the points for determination are taken up together for discussion.

8. The PW-1 Sri Jitu Rajkhowa, the informant of this case, testified that on the date of incident at about 2:30 PM, the accused as usual came to leave his cows on their paddy field to which he objected and threatened him by saying that he would see him. Thereafter, he

returned home and again went out to a shop with his scooty. The accused at that stopped him in front of his house and with an axe, which he kept outside his house, dealt a blow on the back of the head of the PW-1 for which he fell unconscious and later at about 6:00 PM regained his senses at Nowboicha Hospital. He could come to know that Jagat Gogoi had brought him to the hospital.

9. The PW-1 in his cross-examination had denied the suggestion of the accused that he had filed this case out of a grudge as the cows of the accused used to eat paddy from his field.

10. Now, the PW-2 Sri Dhaniram Rajkhowa deposed that the informant is his nephew and on the date of incident the informant came out of his house with a scooty for going to the market and then the informant had stopped his scooty in front of the house of the accused and asked him not to leave his cows for grazing on his paddy field from that day onwards. Thereafter, the accused got hold of the hair of the informant with his one hand and attack on his head with an axe with his other hand. At that point of time he was in a nearby shop and had witnessed the incident and so he came and separated both of them. He could see the informant sustaining injury on his head and blood was coming from the injury. Bidyadhar Nath had tied a cloth in the head of the informant. Thereafter, the accused again came out of his house and gave him a punch below his right eye as a result of which he sustained injury and was bleeding. He had to undergo medical treatment for three months.

11. The PW-2 in his cross-examination had stated that he came to the Court along with Jitu Rajkhowa

12. PW-3 Bidyadhar Nath deposed that on the date of incident he was sleeping in his house and got awakened by the sound of a motorcycle for which he came out on the road and could see Jitu Rajkhowa picking up his motorcycle. He saw blood coming out from Jitu Rajkhowa's head for which he brought a cloth from his house and tied his head with the cloth.

13. PW-3 stated that the house of the accused is opposite to his house on the other side of the road and he had seen Jitu Rajkhowa with his motorcycle on the side of the house of the accused.

14. PW-3 in his cross-examination stated that he doesn't know how Jitu Rajkhowa fell down from his motorcycle and had sustained the injury and that he had seen only Jitu Rajkhowa to be there.

15. So, from the evidence of PW-1, PW-2 and Pw-3 it can be seen that PW-2 Dhaniram Rajkhowa stated that when the accused was assaulting his nephew Jitu Rajkhowa he intervened and had separated both of them and when Bidyadhar Nath came and tied the cloth on the head of the informant he was looking at Bidyadhar Nath doing so. Now, the PW-1 Jitu Rajkhowa had said nothing about the PW-2 Dhaniram Rajkhowa coming there at the spot and separating him and the accused. The PW-3 Bidyadhar Nath also in his cross-examination didn't state about seeing PW-2 Dhaniram Rajkhowa to be there but rather had stated that he had only seen Jitu Rajkhowa to be there at the place of occurrence. So it is really doubtful that whether PW-2 was in fact there or not at the place of occurrence as the PW-1 and PW-2 didn't state anything about his presence in the place of occurrence.

16. Now the PW-3 Bidyadhar Nath who in fact was tying the cloth in the head of the PW-1 didn't state anything about the accused

assaulting the PW-1 with an axe. Rather he in his cross-examination stated that he doesn't know how Jitu Rajkhowa fell down from his motorcycle and had sustained the injury. Now, if the accused indeed would have assaulted the PW-1 there is no reason that why PW-3 would not have come to know about it. So that creates a serious doubt in the story of the PW-1 about the accused hitting with an axe on his head.

17. Again, a look at the evidence of the PW-6 Dr. Karuna Kanta Baruah goes to show that he testified that on examining Sri Jitu Rajkhowa he could find one lacerated in the lower part of left temporal region and the injury was simple caused by blunt object.

18. Now the PW-1 had stated that the accused had cut him with an axe which is a sharp object but the M/O opined about the injury sustained by the PW-1 to have in fact been caused by blunt object.

19. Again, the PW-6 the M/O stated that on examining Dhaniram Rajkhowa he found no external injury in his body. Now the PW-2 Dhaniram Rajkhowa in his evidence had stated that the accused had given him a punch below his right eye as a result of which he sustained injury and there was bleeding but the evidence of M/O goes to totally contradict his version as the M/O didn't find any injury in his body. So that really goes to create a serious doubt in the evidence of the PW-1 and PW-2.

20. Now from the evidence of PW-1 it transpires that he had differences with the accused over the matter of his cow grazing in his field and the accused too gave suggestion to the PW-1 that he had lodged a false case against him out of that grudge which the PW-1 denied.

21. Now since the evidence of the PW-1 and PW-2 are not found to be credible as discussed above, so it is risky to rely on their versions.

22. In the backdrop of the given position it cannot be concluded that the accused had wrongfully restrained the informant and had voluntarily caused hurt to him and his uncle Dhaniram Rajkhowa. Hence, both the aforesaid points of determination are held in negative. So the prosecution has failed to prove the case against the accused u/s 341/323 of the Indian Penal Code. and as such he is acquitted from the said offences and is set at liberty.

Bail bonds are extended to further 6 (six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 4th day of March, 2020.

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer

Contd. Appendix

A P P E N D I X**WITNESSES FROM THE PROSECUTION SIDE**

Sri Jitu Rajkhowa as PW-1,
Sri Dhaniram Rajkhowa as PW-2,
Sri Bidyadhar Nath as PW-3,
Smti. Sumi Rajkhowa as PW-4,
Sri Lohit Gogoi, the I/O as PW-5
Dr. Karuna Kanta Baruah, the M/O as PW-6

PROSECUTION EXHIBITS

Ejhar as Ext-1
Signature of the informant therein as Ext-1(1),
G.D. Entry extract Copy as Ext-2,
Rough sketch map of the P.O as Ext-3
Signature of the I/O therein as Ext-3(1)
Charge sheet as Ext-4
Signature of the I/O therein as Ext-4(1),
Injury report as Ext-5
Signature of the M/O as Ext-5(1)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur