

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 469 OF 2014
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI KONPITOU DAS

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 469 / 2014

U/S 447/294/325/427/336 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI KONPITOU DAS

PRESENT: MR. F.U. CHOUDHURY, AJS
ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SRI RAKESH MILI

CHARGE FRAMED ON : 27.07.2017
EVIDENCE RECORDED ON : 10.10.2017, 04.12.2017, 29.01.2018,
26.02.2018, 15.06.2018 & 09.10.2018
ARGUMENT HEARD ON : 31.05.2019
JUDGMENT DELIVERED ON : 31.05.2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R is that on 25.03.2014, while informant Sri Rahul Das was making preparation for organizing yearly "Hokam" (religious function) at night, accused Sri Konpitou Das rebuked the informant and his family members using obscene language. Thereafter, at about 08:15 PM, the accused person after breaking the boundary fencing entered into the Verandah of the house of the informant and hit informant's father on his right hand with a "dao" and thereby caused

grave injury. The accused person then directed his son and daughter to through stones on the house of the informant and also tried to burn the house of the informant by setting fire to clothes. The informant thereafter lodged an F.I.R about the occurrence before the O/C of North Lakhimpur.

2. On receipt of the F.I.R, the O/C North Lakhimpur police station registered the same as North Lakhimpur P.S Case No. 241/2014 u/s 447/294/326/427/336 IPC. After investigation, I.O of the case submitted charge-sheet against the accused Sri Konpitou Das for the offences punishable u/s 447/294/325/427/336 IPC. Copies of relevant documents were supplied to the accused person u/s 207 of CrPC. Upon hearing both sides and perusal of case record, particulars of the offences punishable under section 447/294/325/427/336 of IPC are read over and explained to the accused person, to which he pleaded not guilty and stood to face trial.

3. During trial, prosecution examined as many as 9 (nine) witnesses on their side; whereas the accused did not examine any witness in his defence. The accused was examined u/s 313 CrPC. Defence case is of total denial as it reveals from the statements made by accused and the tenor of cross-examination of prosecution witnesses by defence. I have heard the arguments of both sides and gone through the material on record.

4. Upon perusal of case record, following points for determination are framed for proper adjudication of the matter involved:

POINTS FOR DETERMINATION:

(i) Whether the accused person on 25.03.2014, at about 8.15 PM, at Gharmora Ahatguri, within North Lakhimpur police station committed criminal trespass by entering into the house compound of the informant Sri Rahul Das, in order to cause hurt to Sri Eya Das, or to intimidate, insult or annoy the informant or his family members, and thereby committed an offence punishable u/s 447 IPC?

(ii) Whether the accused person on the same day, time and place, as above, uttered any obscene words in or near any public place to the annoyance of

the informant and his family members, and thereby committed an offence punishable u/s 294 IPC?

(iii) Whether the accused person on the same day, time and place, as above, voluntarily caused grievous hurt to the father of the informant, namely, Sri Eya Das, and thereby committed an offence punishable u/s 325 IPC?

(iv) Whether the accused person on the same day, time and place, as above, with the intent to cause or knowing that he is likely to cause, wrongful loss of damage to informant, caused destruction to the amount of Rupees 50/- or upwards by cutting the bamboo walls of informant's house with a 'dao', and thereby committed an offence punishable u/s 427 IPC?

(v) Whether the accused person on the same day, time and place, as above, acted rashly or negligently and thereby endangered the life of informant and his family members, and thereby committed an offence punishable u/s 336 IPC?

DISCUSSION, DECISION AND REASON THEREOF:

5. For the sake of convenience and as because point no.1, 2, 3, 4 & 5 are inter-connected, they are taken up herein for discussion and decision as follows:

6. As regards the aforesaid points for determination, PW2 Sri Rahul Das, i.e., the informant, in his evidence in chief has stated that at the time of occurrence, the accused came to their house and started throwing stones which hit the bamboo wall and tin sheet of their house and thereby caused damage. Thereafter, the accused armed with a 'Posa' entered into his (PW2's) house and hit his (PW2's) father near right elbow with that "Posa" as a result of which his blood oozed out from the right hand of his father and the said hand became useless. The accused then fled away.

7. PW3 Sri Chandra Kanta Medhi in his evidence in chief has stated that on a day in the year 2014 at about 08:30 P.M in the night, informant Sri Rahul Das informed him (PW3) that there took place an altercation between the accused

and Sri Eya Das. He (PW3) then went to the house of Sri Eya Das and came to know that the accused caused cut injury on the hand of Sri Eya Das.

8. PW4 Sri Bhugeswar Das, who is the younger brother of informant, in his evidence in chief has stated that at the time of occurrence the accused started shouting near the boundary of his (PW4's) house, and then assaulted his (PW4's) father with a "Posa" on the left hand. His father then raised hue & cry. Thereafter he/PW4 and other came out and found his father lying in an injured condition. He/PW4 and other's removed the jacket of his father and saw injury on the hand. He learnt from his father that the accused assaulted him (PW4's father) with a "Posa".

9. At the time of cross-examination, PW2 has stated that it is not a fact that he did not stated before police that the accused armed with a 'Posa' entered into his (PW2's) house and hit his (PW2's) father near right elbow with that "Posa". Similarly, PW3 during his cross-examination has stated that it is not a fact that he did not stated before police that accused caused cut injury to Eya Das. Again, PW4 during his cross-examination has stated that it is not a fact that he did not mentioned before police that at the time of occurrence the accused started shouting near the boundary of his (PW4's) house, and then assaulted his (PW4's) father with a "Posa" on the left hand, and his father then raised hue & cry, and thereafter he/PW4 and others came out and removed the jacket of his father and saw injury on the hand and then learnt from his father that the accused him.

10. In the above context, PW9 Sri Rufu Chetia, who is investigated this case, in his cross-examination has stated that PW2 Sri Rahul Das did not mentioned before him (PW9) in the statement that the accused armed with "Posa" hit the father of PW2 Sri Rahul Das. PW9 has further stated that PW3 Sri Chandra Kanta Medhi did not mentioned before him (PW9) that the accused caused cut injury to Eya Das. Again, PW4 Sri Bhugeswar Das did not mentioned before him/PW9 that the accused assaulted him (PW4's) father with a "Posa" and he/PW4 after hearing hue & cry raised by his father came out and removed the shirt of his father and saw injury on his body.

11. In my opinion, the statements made by PW2, PW3 and PW4, as quoted in the previous paragraph, are the crux of the allegations made by them in their respective evidence in chief and are the most vital & material part of the entire alleged occurrence. Therefore, in the usual course of the things, it can be presumed that if the occurrence actually took place as alleged by PW2, PW3 and PW4 in their respective evidence, then they will definitely mention such vital and material allegations in their very first statement made before the I.O under section 161 of CrPC. However, as stated by PW9/I.O, the PW2, PW3 & PW4 have failed to mention those material allegations in their statements before PW9/I.O. The failure of PW2, PW3 and PW4 to mention the aforesaid allegations in their respective statements before I.O recorded u/s 161 of CrPC is no doubt a material contradiction which creates serious doubts regarding the truthfulness of the aforesaid allegations made by PW2 & PW3 in their respective evidence.

12. Besides the above, from the statements made by PW3 & PW4, it is clear that they have not seen the accused actually hitting Eya Das and causing injury. Admittedly they have heard the same from others. As such, the statements made by them in this respect is nothing but a piece of hearsay evidence which cannot be relied upon unless corroborated by some other reliable evidence.

13. In the above context, PW1 Sri Paluwan Das in his evidence in chief has stated that on the next day of occurrence he heard that there took place a fight between the accused and Eya Das. Again, PW6 Sri Bhaba Das in his evidence in chief has stated that at the time of occurrence he was attending the "Hokam" ceremony in the house of informant's brother Sri Bhugeswar Das. At that time he heard hue & cry raised by the accused and Eya Das outside the house of Sri Bhugeswar Das. Stones were thrown on the house of Sri Bhugeswar Das. He then came out and went back to his house. Later on he came to know that the accused assaulted Eya Das and caused injury in one of his hands.

14. From the aforesaid version stated by PW1, it is seen that he has not specifically stated that who caused hurt to whom in that alleged fight. As

such, there is nothing in the evidence on PW1 to support the allegations made against the accused. Further, from the version stated by PW6, it is seen that he has not stated specifically that who threw such stones on the house of Sri Bhugeswar Das. As such, there is nothing specific to show that the accused threw such stones as alleged. Further, it is clear from the statements of PW6 that he did not see the accused actually causing hurt to Eya Das; rather he heard the same from others. Therefore, the statement of PW6 in that respect is nothing but a piece of hearsay evidence which cannot be relied upon unless corroborated by some other reliable evidence.

15. PW5 Sri Ghati Das in his evidence in chief has stated that at the time of occurrence the accused assaulted and caused cut injury to Sri Bhugeswar Das. The aforesaid statement made by PW5 is clearly in contradiction to the statements made by PW2, PW3, PW4 & PW6 in that respect. None of the said witnesses have stated anything about any assault upon Sri Bhugeswar Das. Hence, the aforesaid statement made PW5 cannot be believed.

16. In addition to the above, it is seen from the evidence of PW7 Dr. Tulsi Prasad Chutia, who examined said Eya Das as a Medical Officer, that a laceration was detected over the posterior interior part of right arm with active bleeding, and the same caused by blunt object. Now, in general terms, "Posa" refers to a sharp pointed iron instrument. Therefore, the opinion of PW7/M.O with respect to the object which caused the aforesaid injury, is clearly inconsistent with the case of prosecution. As such, the aforesaid opinion of PW7 creates doubt as regards the truthfulness of the allegation made by prosecution witnesses. This doubt is further confirmed by the fact that PW9/I.O admittedly did not seized the weapon of the alleged offence. Had the occurrence took place as alleged, then in my opinion, the I.O should have been in a position to seize the weapon of alleged offence.

17. PW8 Dr. Mangseng Langkang, who also examined said Eya Das as a medical officer, in his evidence has stated that he detected fracture on right humerus. However, the finding of PW8 alone is not sufficient to prove that the accused caused that injury.

18. Before parting with the discussion, I deem it fit to mention that none of the witnesses examined by prosecution have specifically stated anything about use of any obscene words by the accused as alleged. Also, no stones or damaged bamboo wall or damaged tin sheets were seized and produced by the I.O in order to prove the allegation that the accused threw stones on the house of informant and thereby caused destruction of bamboo fence and tin sheets.

19. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused has committed the offence as alleged.

DECISION: Point no.1, 2, 3, 4 & 5 are therefore decided in the negative and goes against the prosecution.

ORDER

20. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Konpitou Das has committed the offences punishable under section 447/294/325/427/336 of I.P.C as alleged, and as such, the above named accused person is acquitted of the charges under section 447/294/325/427/336 of I.P.C on benefit of doubt and he be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 31st day of May, 2019.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

Exhibit.1 – FIR

Exhibit.2 – Medical Injury Report

Exhibit.3 – Medical Injury Report

Exhibit. 4 – Sketch Map

Exhibit. 5 – Charge-sheet

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

PW-1 – Sri Paluan Das

PW-2 – Sri Rahul Das

PW-3 – Sri Chandra Kanta Medhi

PW-4 – Sri Bhugeswar Das

PW-5 – Sri Ghati Das

PW-6 – Sri Bhaba Das

PW-7 – Dr Tulsi Prasad Chutia

PW-8 – Dr Mangseng Langkang

PW-9 – SI Rufu Chetia

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur