

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

Present: Shri Narayan Kuri, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 1461/2015
U/s 447/326 IPC

State of Assam

-Vs-

Md. Din Islam

S/O: Md. Hurmuj Ali

R/O: Kandura Pathar

P/S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused person

Date of framing charge : 06.01.2016
Dates of recording evidence of PWs : 04.06.2016, 16.08.2016,
04.01.2017, 21.07.2017,
16.10.2017, 18.05.2018
Statement u/s 313, Cr.P.C. recorded on : 28.03.2019
Date of argument : 05.04.2019
Date of judgment : **18.04.2019**

Advocates appeared in the case:-

Smti. Ajanta Sharma, Addl. P.P., for the State

Sri Rupak Mahanta, Advocate, for the accused person

J U D G M E N T

1. This case has arisen out of an ejahar filed on 30.07.2015 by informant Md. Kuddush Ali before the In-charge, Silonibari Police Outpost under North Lakhimpur Police Station. It is alleged in the ejahar that at about 11:00 AM, on 30.07.2015, while his 'bhagin' (nephew) namely Haider Ali was working in the jewellery shop situated at Ghuronia Tiniali, at that time, accused Md. Din Islam came there with by concealing a 'khamti dao' with him and when his nephew came

out to the verandah, the accused person gave a 'dao' blow with the said 'dao' on his neck causing grievous injury to him. Thereafter, the public who were present in the Ghuronia Tiniali apprehended the accused person and handed him over to the police station. Hence, the case.

2. The In-charge of Silonibari Police Outpost, on receipt of the ejahar, effected a G.D. Entry vide Silonibari O.P. G.D. Entry No. 652 dated 30.07.2015 and forwarded the ejahar to the Officer-in-charge of North Lakhimpur Police Station. After receiving the ejahar, the Officer-in-charge, North Lakhimpur Police Station, registered a case being North Lakhimpur Police Station Case No. 771/2015 u/s 447/326, IPC and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet u/s 447/326, IPC against accused person Md. Din Islam to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence u/s 447/326, IPC was taken as per section 190(1)(b), Cr.P.C. Necessary copies were furnished to the accused person as per section 207, Cr.P.C. after his appearance before the Court. After considering the materials on record and hearing both the sides, charge u/s 447/326, IPC was framed in writing against the accused person. The charge was read over and explained to the accused person to which 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 person, at about 11:00, on 30.07.2015, at Ghuronia Tiniali, under North Lakhimpur Police Station, committed criminal trespass by entering into the jewellery shop compound of informant Md. Kuddush Ali with intent to commit an offence, and thereby committed an offence punishable u/s 447, IPC ?

(b) Whether the accused person, at about 11:00, on 30.07.2015, at Ghuronia Tiniali, under North Lakhimpur Police Station, voluntarily caused hurt to Md. Haider Ali, nephew of informant Md. Kuddush Ali with a 'dao' which is a sharp cutting object, and thereby committed an offence punishable u/s 326, IPC ?

5. During the trial, the prosecution has examined as many as 7 (seven) witnesses, namely, Md. Subhan Ali (PW-1), Md. Kuddush Ali (PW-2), Md. Haider Ali (PW-3), Md. Abdul Nur (PW-4), Md. Mahamad Gazi (PW-5), Md. Nazrul Islam (PW-6) and Dr. Jatindra Nath Medak (PW-7). The prosecution has also exhibited 2 (two) documents (Shown in the Annexure appended below). It appears from the case record that the instant case was pending for evidence of investigating officer (I/O) since 29.06.2018 and as such considering the repeated failure of the prosecution to procure the attendance of I/O and the age of the case, the prosecution evidence was closed. After the closure of the prosecution evidence the accused person was examined under section 313 Cr.P.C. wherein he denied the incriminating materials put to him from the evidence of the witnesses and declined to adduce evidence in his defence.

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

DISCUSSION AND DECISION WITH REASONS THEREOF:

7. At the very outset it is essential to have a brief resume of the version of the witnesses in order to marshal the evidence in right perspective in tandem with the points for discussion.

8. PW-1 Md. Subhan Ali has stated that he did not see the occurrence but on the following day of the occurrence he heard that the accused and the jeweler fought with each other. In cross-examination he has averred that at the time of the occurrence he was present in his house and as such hee had not seen the occurrence and knew nothing about the occurrence.

9. PW-2 Md. Kuddush Ali has stated that he had filed the ejahar of this case by putting his thumb impression on the ejahar. He works in the jewellery shop of his maternal uncle victim Haider Ali. On the day of the occurrence he had come to his rented room from the jewelry shop where he was working. After about 10 minutes he again went back to the jewelry shop and he saw that blood oozing out from the neck of Haider Ali who was lying down with cut injury on the neck of Haider Ali. People gathered at that place. He along with others took Haider Ali to the police station. The police sent his maternal uncle victim Haider Ali for medical examination.

10. While answering to Court question PW-2 has stated that he knows the accused Md. Din Islam. A fighting had taken place between the accused and Md. Haider Ali and Md. Haider Ali sustained injury and blood came out. But in his cross-examination, PW-2 has stated that he does not know to read and write and as such got down the ejahar written down from some other person. He expressed his ignorance about the content of the ejahar as the same was not read over to him. He clarified to have not witnessed the occurrence and filed the ejahar as per suggestion of the villagers. He admitted that Md. Haider Ali did not tell him anything about the occurrence.

11. PW-3 Md. Haider Ali has stated that on the day of occurrence, at about 12:00/1:00 PM, he was sitting in his jewellery shop. The accused came to his shop as he had given to make gold earrings in his shop. As the said gold earrings were not ready, the accused started altercation with him and also pushed him. In order to save himself he also pushed the accused and in the process he fell down on the glass of the show-case of his shop and the glass was broken. Due to the breaking of the glass of the show-case of his shop he sustained cut injuries on his hand and neck causing bleeding. At the time of the occurrence informant was not present in the shop as he had gone to his house to take meal. After the occurrence, the people of market took him to hospital and later on he came to know that his maternal uncle had lodged an ejahar. He had undergone medical treatment at Lakhimpur Chaboti Hospital

for four days and thereafter the son of his maternal uncle took him to his native home Barpeta where he had undergone local treatment.

12. In his cross-examination, PW-3 Haidor Ali has stated that at the time of occurrence informant Kuddush Ali was not present and as such he did not witness the occurrence. He admitted to have not asked informant Kuddush Ali to lodge any ejahar in connection with the occurrence and the latter also lodged the ejahar without informing him. He clarified that the accused did not inflict any injury on his person with 'dao' blow and as such he did not have any objection if the Court acquit the accused.

13. PW-4 Abdul Nur has stated that he heard that that fighting had taken place between Haider Ali and Din Islam in the shop of Haider Ali. In his cross-examination, PW-4 has stated that he did not see the occurrence and as such he did not know how Haider Ali had sustained injury.

14. PW-5 Md. Mahamad Gazi has stated that at about 11:00/11:30 AM on the day of the occurrence he had gone to his house from garage for taking meal. When he had come out of his house after taking lunch, he heard from the villagers that a fighting took place in the jewellery shop of Haider Ali and in the scuffle Hyder Ali fell down and sustained cut injury in his neck with broken glass of showcase. Later, he heard that the fighting had taken place between Haider Ali and the accused.

15. PW-6 Md. Nazrul Islam has stated that he was not present at the spot at the time of occurrence. Later on, he had heard that some fighting took place between the accused Din Islam and Haider Ali. Thereafter, in the night he received a phone-call from the police and the police asked him to come to Rampur Ghuronia Centre. Accordingly, he came there and found the police waiting there. Accused Din Isalm was also present with the police. Thereafter, in his presence, the police opened the jewellery shop of Haider Ali. The police took out a 'dao' from the said shop and seized the same in his presence vide seizure

list Ext-1 and Material Ext-1 is the 'khamti dao' which is shown to him in the Court on the date of his deposition.

16. In his cross-examination, PW-6 has stated that he did not see any fighting taking place. When police came, the accused was sitting in the vehicle of the police. According to him the police did not seize the 'dao' from the possession of the accused but from inside the shop of Haider Ali. He does not know if the 'nal' (handle) of the 'dao' was wooden or of some other material. The police did not ask him anything regarding the occurrence. He did not give any statement before the police which he had given in the Court on the date of his deposition. As he had seen the 'dao' in the night, so he cannot say if there was any blood stain on the 'dao', but there was some blackish mark on the 'dao'. The 'dao' which the police had seized in his presence resembled Material Ext-1, but he could not say whether Material Ext-1 was the 'dao' so seized by the police. He did not enter the shop of Haider Ali with the police, but he had entered later on, as the police called him inside.

17. PW-7 Dr. Jatindra Nath Medak has stated that on 30.07.2015, at 1:10 PM, while he was on duty in SOPD, North Lakhimpur Civil Hospital, he had examined one Haider Ali Shekh and found (1) cut injury, size 4" x ½" x muscle deep, on anterior aspect of neck, (2) cut injury, size 2"x 1" x muscle deep, on cleft of right thumb and index finger; and (3) cut injury, size 3" x ½" x ¼", on left thigh. He further stated that all the injuries were caused by sharp cutting object and were fresh. The patient was referred to Barpeta Medical College, so the final report was to be collected from concerned hospital. He exhibited the injury certificate as Ext-2 wherein Ext-2(1) is his signature. While answering to Court question PW-7 has stated that based on his 30 years of medical practice, to his opinion, the injuries as mentioned above, must be of grievous nature.

18. In his cross-examination, PW-7 has stated that in Ext-2, he did not mention whether the injuries were grievous or simple in nature. He

further stated that such injuries may be caused by cutting by glass also.

APPRECIATION OF EVIDENCE

19. From the evidence on record it has reflected that PW-2 informant Md. Kuddush Ali was not present when the occurrence took place and is also not aware of the content of the FIR. He has further stated that victim Haider Ali did not instruct him to lodge any FIR. PW-3 victim Haider Ali in his evidence has impeccably stated that he got the hurt by falling over the glass of the show-case in his jewellery shop during pushing and pulling with accused and that he has got no objection if the accused is acquitted of this case. He has corroborated the version of informant PW-2 Kuddush Ali that he lodged the case without consulting him.

20. The evidence on record has further clarified the fact that at the time of the occurrence except accused Din Islam and victim Haider Ali none was present inside the shop. PW-1 Md. Subhan Ali, PW-4 Md. Abdul Nur, PW-5 Mamammed Gazi and PW-6 Md. Nazrul Islam are all indirect witnesses and have deposed to have heard of the incident. So, in such a situation the deposition of victim Haider Ali gets prominence but he exonerated the accused from the guilt by saying that accused did not caused the injury but it was due to fall on the glass which caused the cut in his neck. This fact clearly established that the prosecution has failed to prove the voluntariness on the part of the accused in causing the injury and as such I am of the reasonable opinion that the ingredient of the offence under section 326 IPC stands not proved against accused and accordingly the point no.(b) is decided in negative against the prosecution.

21. It has also established in evidence that accused was a customer of the victim and as such he came there to know the status of his order but since the order was not ready as such an altercation took place between both the sides which graduated into a mutual fight. So, the entry of the accused in the shop of victim Haider Ali cannot be

trespassed as trespass as because accused came there to exercise his right as consumer. Hence, I am of the conclusive opinion that the ingredient of section 447 IPC also stands not proved against accused and as such point no.(a) is also decided in negative against prosecution.

ORDER

22. In view of the above discussion, I have no hesitation in holding that the prosecution has failed to bring home the charge u/s 447/326, IPC against the accused person. As such, the point for determination is decided against the prosecution. Accused person Md. Din Islam is acquitted of the charge under section 447/326, IPC and as such he is set at liberty forthwith.

23. Considering the facts and circumstances of the case, I hereby extend the bail-bond of the acquitted person Md. Din Islam for a further period of six months.

24. The seized article be disposed of in due course.

25. The judgment is delivered and operative part of the same is pronounced in the open court on this 18th day of April, 2019.

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated and Corrected by me:

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed and typed by me:
Narayan Chetri, Stenographer

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Md. Subhan Ali (PW-1)
Md. Kuddush Ali (PW-2)
Md. Haider Ali (PW-3)
Md. Abdul Nur (PW-4)
Md. Mahamad Gazi (PW-5)
Md. Nazrul Islam (PW-6)
Dr. Jatindra Nath Medak (PW-7)

PROSECUTION EXHIBIT

Seizure list (Ext-1)
Injury certificate (Ext-2)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur