

**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. 09/2015

Under section 341/323 of the Indian Penal Code

State of Assam

-Vs-

Md. Abdul Sattar

S/O: Md. Afajuddin

R/O: No. 1 Rounapur

P/S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 21.07.2015
Dates of recording evidence of PWs : 25.02.2016, 17.12.2016,
02.11.2018, 18.04.2019,
06.09.2019, 18.09.2019
Date of examination u/s 313, Cr.P.C. : 01.10.2019
Date of recording evidence of DW : 31.10.2019
Dates of Argument : 26.11.2019, 24.12.2019
Date of judgment : **24.12.2019**

Advocates appeared in the case:-

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

Mr. Armanul Haque Bhuyan, Advocate, for the accused person

J U D G M E N T

1. The factual matrix of the prosecution in short compass is that on 31.12.2014 informant Md. Abdul Samad lodged an FIR with the In-charge of Khelmati TOP under North Lakhimpur Police Station alleging that at about 12:00 noon, on the same day while he was going to the North Lakhimpur Town, on the way, near the house of accused Md.

Saddam Hussain, he saw a fighting taking place between the drivers of two tempo vehicles and as such he separated them. Thereafter, accused persons Md. Abdul Sattar, Md. Saddam Hussain and Md. Jeherul Islam, in a group, severely assaulted him with bamboo sticks, as a result, he sustained grievous injuries on both eyes and the doctor advised him to go to Guwahati for better treatment of his injured eyes. It is further alleged that during the course of the occurrence the accused persons also snatched away an amount of Rs. 50,000/- (rupees fifty thousand) from his pocket. Hence, the case.

2. After receiving the ejahar, the In-charge of the Khelmati TOP effected a G.D. Entry vide Khelmati TOP G.D.E No. 639 dated 31.12.2014 at 3:00 PM and forwarded the ejahar to the Officer-in-charge of North Lakhimpur Police Station to register a case under proper section of law. The Officer-in-Charge of North Lakhimpur Police Station, on receipt of the ejahar, registered a case vide North Lakhimpur P.S. Case No. 05/2015, under section 325/326/379/34 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 person Md. Abdul Sattar 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), Cr.P.C. The accused person entered his appearance before the Court after receiving the summons. Copies were furnished to the accused person as per provision contained in section 207, Cr.P.C. The particular of offence under section 341/323 of the Indian Penal Code when being read over and explained 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 accused person, at about 12:00 noon, on 31.12.2014, at village No.1 Rounapur, under North Lakhimpur Police Station, wrongfully restrained informant Md. Abdul Samad with intent to commit an offence, and thereby committed an offence punishable under section 341 of the Indian Penal Code ?

(b) Whether accused person, at about 12:00 noon, on 31.12.2014, at village No. 1 Rounapur, under North Lakhimpur Police Station, voluntarily caused hurt to informant Md. Abdul Samad, and thereby committed an offence punishable under section 323 of the Indian Penal Code ?

5. During the trial the Prosecution side could examine 7 (seven) witnesses namely Md. Abdul Samad (PW-1) Musstt. Joshara Begum (PW-2), Musstt. Moriam Begum (PW-3), Musstt. Rejia Begum (PW-4), Dr. (Mrs.) Kalpana Goswami (PW-5), Md. Hazarat Ali (PW-6), Inspector Sushil Kumar Bhuyan (PW-7). The prosecution has also exhibited 5 (five) documents (Shown in the Annexure appended below). The defence has cross-examined prosecution witnesses and thereafter, all the incriminating materials surfaced in the evidence of the prosecution witnesses against accused person was put to his explanation under section 313, Cr.P.C. The defence plea was in completed denial and inclined to adduce evidence in his defence and as such he examined one Md. Alimuddin Ahmed as DW-1.

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

DISCUSSION, DECISION AND REASONS THEREOF:

7. Since a common thread of facts runs through both the points as such both theses points are taken together for discussion for the sake of convenience of discussion. But at the outset let me recapitulate the

deposition of the witnesses making short-shrift but touching upon the merits of the case.

8. PW-1 Md. Abdul Samad, informant-cum-victim, has stated that the occurrence took place on 31.12.2014. On the day of occurrence, at about 12:00-12:30 PM he was coming to the office of the Life Insurance Cooperation situated at Town Bantow, North Lakhimpur. On the way, he saw a tempo driver was being assaulted and as such he separated the man from onslaught of the tempo driver and went away from there by riding his bicycle. At that time, accused Abdul Sattar assaulted him with a bamboo lathi on the head by the side of right eye and as such he fell down from his bicycle. Accused Jeherul Islam assaulted him on his back. Thereafter, one Tabarak Ali picked him up when he came to Khelmati Police Outpost from where he was sent to Saboti Hospital. On the day of occurrence itself he lodged an ejahar at Khelmati Police Outpost. Ext-1 is the ejahar wherein Ext-1(1) is his signature. From Saboti Hospital he was referred to Gauhati Medical College and as such he had also undergone medical treatment there. In his cross-examination, he has stated that the accused attacked him as he had separated the tempo driver from the accused. He has claimed to have no any previous enmity with the accused person. According to him there was no bleeding from the injury which he had sustained by the side of his eye. On being assaulted he could not immediately get up. He had seen accused Abdul Sattar assaulting him. Due to the incident he could not walk for about 3 (three) days.

9. PW-2 Musstt. Jasnara Begum, an independent witness, has stated that the occurrence took place about a year ago. On that day, at about 11:00 AM/12:00 PM, on the road, in front of their house, the tempo of Abdul Sattar was kept parked and that tempo was slightly hit by an another tempo for which an altercation took place between Abdul Sattar and the driver of that tempo. Abdul Samad who was going through the said road had told them not to fight but at that Abdul Sattar got angry and dislodged a split bamboo from the boundary

fencing of her and assaulted Abdul Samad with the said split bamboo as a result Abdul Samad sustained injury in his eyes and fell down. A family members of Abdul Samad came and took him away from there. In his cross-examination, she has stated that the informant and the accused are his neighbours but they are not related to her family.

10. PW-3 Musstt. Moriam Begum, an independent witness, has stated that at about 12:00/12:30 PM on the road situated in front of their house the occurrence took place. Hearing hue and cry on the road, she came out and saw that Abdul Sattar was assaulting Abdul Samad with a split bamboo for which Abdul Samad fell down. She also saw bleeding in the eye of Abdul Samad. The family members of Abdul Samad came to the place of occurrence and took him from there. In her cross-examination, she has stated that at the time of the occurrence she was drying paddy in her courtyard and coming out of her house she saw the occurrence. According to her there is a 'jeura' (bamboo fencing) in front of her house but it is not covered fencing. She has clarified that from her house the road his situated at a distance of about 7-8 meters away.

11. PW-4 Musstt. Rejia Begum, an independent witness, has stated that the occurrence had taken place in the year 2014, at about 12:00 noon, in front of their house and at that time she had gone to the paddy field for tethering their cow. After returning from there she saw a gathering of villagers in front of their house and the younger brothers of accused Abdul Sattar were holding bamboo sticks by removing the same from their 'jeura' (bamboo fencing). Abdul Samad was standing there. She came to know that an altercation had taken place between Abdul Samad and the younger brothers of Abdul Sattar. The villagers sent both the parties from in front of their house. Later on, a physical fighting had taken place between both the parties at some other place. She came to know that Abdul Samad had sustained injuries. In her cross-examination, she has stated that she had not seen Abdul Sattar

in front of their house. He does not know about the physical fighting between both the parties that had taken place later on.

12. PW-5 Dr.(Mrs.) Kalpana Goswami, Medical Officer, has stated that on 31.12.2014, she was working as Senior Medical and Health Officer at North Lakhimpur Civil Hospital. On that day, at 3:25 PM, she examined one Abdul Samad, son of Late Amiruddin, resident of village No. 1 Raounapur, P.O. and P.S: North Lakhimpur, District: Lakhimpur, in the casualty Department of North Lakhimpur Civil Hospital, on being identified and escorted by SPO Sri Jitu Chutia of Khelmati TOP. On examination, she found (1) Swelling (one in number) over right eye with blackening, size of injury: 1 ½" x 1 ½". (2) One abrasion in lateral end of left eyebrow of size 2 cm x 1 cm and (3) Imprint injury (one in number) over the right pelvic bone. Size of injury: 3" x 1". All the injuries were simple in nature and caused by blunt weapon. Ext-2 is the injury certificate wherein Ext-2(1) is her signature with seal. In her cross-examination, she has opined that such injuries may also be caused by falling on a hard surface.

13. PW-6 Md. Hazarat Ali, an independent witness, has stated that he knows nothing about the occurrence. In his cross-examination, he has stated that the police did not examine him in connection with the occurrence.

14. PW-7 Inspector Sushil Kumar Bhuyan, Investigating Officer, has stated that ASI Dharmeswar Das was entrusted to conduct the preliminary investigation of the case and as such ASI Dharmeswar Das, examined the informant at the police outpost itself and recorded his statement and sent him to North Lakhimpur Civil Hospital for his medical treatment. Thereafter, ASI Dharmeswar Das visited the P.O and inspected the same and drew a rough sketch map of the P.O. Thereafter, ASI Dharmeswar Das searched for the accused and finding him he brought him to the police station and after interrogating him and finding sufficient materials against him he arrested him and forwarded to the Hon'ble Court. He has further stated that ASI

Dharmeswar Das also examined the witnesses found at and around the P.O. and recorded their statements and also collected the medical report of the victim and on completion of the preliminary investigation on 20.01.2015 submitted the case diary to him. He has further stated that thereafter, on going through the case diary, it appears that the investigation of the case has already been completed and only charge-sheet had to be submitted and as such he being satisfied with the investigation conducted by ASI Dharmeswar Das submitted charge-sheet against the accused under section 341/325 of the Indian Penal Code. Ext-3 is the extract copy of the G.D. Entry, Ext-4 is the sketch-map of the place of the occurrence and Ext-5 is the charge-sheet. In his cross-examination, he has stated that he did not go to the place of the occurrence and as such he did not know who drew up the rough sketch-map of the place of the occurrence. No 'lathi' (stick) was seized in connection with the occurrence.

15. DW-1 Md. Alimuddin Ahmed has stated that he knows the accused as well as the informant of this case. According to him, the occurrence took place about two years ago. On the day of occurrence, there was Wednesday weekly market at village Rangchali. The accused was going towards his house by driving his tempo, and on the way, while he crossed another tempo it slightly hit his tempo for which the cloth of his tempo got torn and as such the matter was amicably settled between the accused and the driver of other tempo. The occurrence took place a few distance away from the Wednesday weekly market and at that time he was going to the said market for which he had witnessed the whole occurrence. After the dispute was settled between the owners of both the tempo vehicles, the informant came from somewhere and started assaulting the accused and in the process the informant himself fell down and sustained injury on the upper portion of his eye. The accused did not assault the informant. In his cross-examination, he has stated that the accused is his co-villager. He tried to stop the informant but he did not listen him. The road of their village is not wide and as the accused had parked his tempo by

the side of the road, so the informant objected to the said act of the accused and assaulted him.

APPRECIATION OF EVIDENCE

16. Let me now appreciate the evidence in sequence. PW-5 Dr.(Mrs.) Kalpana Goswami, Medical Officer, has stated that on 31.12.2014 at 3:25 PM, she examined victim Abdul Samad in the casualty Department of North Lakhimpur Civil Hospital under police escort and found (1) Swelling (one in number) over right eye with blackening, size of injury: 1 ½" x 1 ½". (2) One abrasion in lateral end of left eyebrow of size 2 cm x 1 cm and (3) Imprint injury (one in number) of size 3"x1"over the right pelvic bone. All the injuries were simple in nature and caused by blunt weapon. Ext-2 is the injury certificate. She has opined that such injuries may also be caused by falling on a hard surface. Thus the evidence of the medical officer shows that at 3.25 PM on 31.12.2014 victim Abdul Samad (PW-1) had simple injuries near her right eye, left eye-brow and at right pelvic bone. Let me now look at the assertion of all the witnesses including victim.

17. According to victim PW-1 Md. Abdul Samad, at about 12 or 12.30 day time on 31.12.2014 he was coming to the office of the Life Insurance Cooperation situated at Town Bantow, North Lakhimpur but on the way, he saw a tempo driver was being assaulted and as such he separated the man from onslaught of the tempo driver and went away from there by riding his bicycle. At that time, accused Abdul Sattar assaulted him with a bamboo lathi on the head by the side of right eye and as such he fell down from his bicycle. Accused Jeherul Islam assaulted him on his back. Thereafter, one Tabarak Ali picked him up when he came to Khelmati Police Outpost from where he was sent to Saboti Hospital. He has clarified that he was being attacked by accused as he had separated the tempo driver from the accused. According to him there was no bleeding from the injury which he had sustained by the side of his eye.

18. PW-2 Musstt. Josnara Begum, and PW-3 Moriam Begum are the persons before whose house the occurrence took place. They have corroborated the version that an altercation indeed took place between Abdul Sattar and the driver of a tempo and when victim Abdul Samad intervened at that accused Abdul Sattar assaulted Abdul Samad with a split bamboo. PW-4 Musstt. Rejia Begum, is also an independent witness, who has arrived at the place of the occurrence after an altercation had already over between victim Abdul Samad and accused Abdul Sattar. In her presence the villagers had asked both accused and victim to leave that place. Later on she came to know that Abdul Samad had sustained injuries. Thus, PW-4 Rejia Begum did not see the accused assaulting victim Abdul Samad but had come to know that he was being assaulted by accused Abdul Sattar. But rest two PWs i.e PW-2 and PW-3 are the eye-witness in whose presence the accused had assaulted victim Abdul Samad.

19. The preliminary investigation of this case was done by one ASI Dharmeswar Das and charge-sheet was filed by PW-7 Inspector Sushil Kr. Bhuyan. PW-7 has admitted that no 'lathi' (stick) was seized in connection with the occurrence.

20. Thus, except non-seizure of the instrument of assault i.e. the bamboo stick no any material contradiction has been noticed in the version of victim PW-1 Abdul Samad vis-à-vis PW-2 Josnara Begum and PW-3 Mariam Begum. All of them have congenly deposed that initially accused Abdul Sattar had a brawl with a tempo driver to which victim Abdul Samad had intervened to separate them from quarreling when accused Abdul Sattar got agitated and hit the victim with a bamboo stick from behind causing injuries near his eyes. The evidence of PW-4 Rejia Begum lent support to the above facts although she had not seen the actual occurrence but saw brother of accused holding a stick and victim and accused present there. As against the above irresistible facts came out of the prosecution case, the defenece has tried to salvage its case by adducing the evidence of DW-1 Md. Alimuddin

Ahmed, whom the defence has projected as the eye-witness. But during cross-examination of the prosecution witnesses, the defence side has failed to give any suggestion stating the presence of DW-1 Alimuddin Ahmed at the place of the occurrence at the relevant time. As such the entire fact adduced by DW-1 Alimuddin as the eye-witness is appeared to be doubtful. DW-1 has stated that informant Abdul Samad while assaulting accused Abdul Sattar has himself fallen down and sustained injuries and he indeed tried to resist the informant. But none of this fact was being put forward by the defence side to victim Abdul Samad or eye-witnesses i.e. PW-2 and 3 in their cross-examination to vouch for the authenticity of his claim to have been present out there at the relevant time of the occurrence. Hence, I am of the conclusive opinion that the deposition of DW-1 Alimuddin is found to be not credible as he failed to prove his presence at the place of the occurrence at the relevant time.

21. Thus on analyzing the evidence of the prosecution and defence side it has turned out that the defence side has failed to build up a convincing case that it was informant Abdul Samad who had assaulted accused Abdul Sattar. In effect the defence evidence has also not negated the fact that there was a brawl between victim and accused. On the other hand, the prosecution has cogently established the fact that accused Abdul Sattar has assaulted victim Abdul Samad by a bamboo stick while he had intervened a brawl between two tempo drivers. Hence, I am of the conclusive opinion that the prosecution has able to bring home the charge under section 341/323 of the Indian Penal Code against accused and accordingly he stands convicted.

DISCUSSION ON RELEASE OF CONVICT ON PROBATION:

22. It has proved in evidence that victim Abdul Samad had come near the convict to douse a brawl between convict and another tempo driver. Victim had indeed succeeded to separate the quarreling parties but instead of showing gratitude to victim, the convict had assaulted

him that too in a sensitive part of his body (eyes). The convict has assaulted victim without any provocation which shows his indifferent attitudes towards social norms. For the above reason, I am inclined not to give the benefit of probation to convict under section 3 or 4 of the Probations of Offenders Act,1958.

SENTENCE HEARING:

23. Convict is heard on the point of sentence where he pleads mercy as he is the sole breadwinner of his family comprising two small children, wife and old aged parents and he earns his livelihood by working as helper to mason.

24. I have heard learned Defence Counsel and Learned Addl. Public Prosecutor on the point of sentence to be awarded. The injury that the victim had suffered would have been fatal for his eyes. Weighing the nature of injury sustained by victim and the family and economic background of the convict I am of the reasonable opinion that he deserves slight leniency in the sentence and accordingly the following sentence is ordered to the convict.

ORDER

25. In the result of the above discussion, accused Abdul Sattar is found guilty of the offence under section 341/323 of the Indian Penal Code and accordingly stands convicted of this charge. Convict Abdul Sattar is sentenced as follows:-

- (a) **Under section 341 of the IPC:** to undergo rigorous imprisonment for a period of 1(one) month.
- (b) **Under section 323 of the IPC:** to undergo rigorous imprisonment for a period of 6(six) months.

26. Both the sentence shall run concurrently. The period of detention undergone by the accused shall be set off from the substantive punishment as per section 428 of the Code of Criminal Procedure, 1973.
27. Convict Abdul Sattar is taken into custody accordingly.
28. The bail-bond of convict Abdul Sattar stands cancelled and surety stands discharged.
29. A copy of the judgment be furnished free of cost to the convict.
30. Judgment is delivered and operative part of the same is pronounced in the open Court on this the 24th day of December, 2019.

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

Dictated & corrected by me-

(Shri Narayan Kuri)
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**

Md. Abdul Samad (PW-1)
Musstt. Josnara Begum (PW-2)
Musstt. Moriam Begum (PW-3)
Musstt. Rejia Begum (PW-4)
Dr. (Mrs.) Kalpana Goswami (PW-5)
Md. Hazarat Ali (PW-6)
Inspector Sushil Kumar Bhuyan (PW-7)

PROSECUTION EXHIBITS

Ejhar (Ext-1)
Injury Certificate (Ext-2)
Extract Copy of the G.D. Entry (Ext-3)
Sketch-map (Ext-4)
Charge-sheet (Ext-5)

WITNESSES FROM THE DEFENCE SIDE

Md. Alimuddin Ahmed (DW-1)

DEFENCE EXHIBITS

Nil

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