

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

G.R CASE NO: 1764 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI DURLAV DAS AND
SRI SURJYA DAS

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

GR CASE NO: 1764 / 2017

U/S 447/294/323/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI DURLAV DAS AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI JAYANTA KAKATI

OFFENCE EXAPLAINED ON : 24.04.2018
EVIDENCE RECORDED ON : 18.06.2019, 21.08.2019, 03.10.2019,
27.02.2020, 18.01.2021
ARGUMENT HEARD ON : 29.01.2021
JUDGMENT DELIVERED ON : 29.01.2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 15.06.2017 at about 8.20 PM, the accused persons named in the FIR armed with "lathi" and knife chased informant's nephew Sri Abhay Hazarika towards informant's house. Said Sri Abhay Hazarika then asked for help and entered inside the house of informant. Thereafter, the accused persons started shouting and asked the

informant to open the door of his house. As soon as the informant opened the door, accused Sri Durlav Das caught hold of the neck of informant and hit blows on his head and thereafter dragged him on the ground. In the meantime, informant's wife Smt. Gandoi Hazarika came forward to save the informant but the accused persons caught hold of her hairs and outraged her modesty. Accused Sri Subhan Das stabbed the informant with a knife and caused injury. The informant then lodged an FIR about the occurrence before the O/C of Bihpuria police station.

2. On receipt of the F.I.R, a case was registered being numbered as Bihpuria P.S Case No. 524/2017. After investigation, I.O of the case submitted charge sheet against accused persons Sri Durlav Das @ Saruvai and Sri Subhan Das for the offences punishable u/s 447/294/323/34 of IPC. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 447/294/323/34 of IPC are read over and explained to both the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined seven witnesses, whereas the defence did not examined any witness. The accused persons are examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused persons and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons on 15.06.2017 at about 8.20 PM, in furtherance of their common intention, at No. 2 Ruptoli under Bihpuria police station, unlawfully entered inside the house compound of informant Sri Dimbeswar Hazarika with the intent to cause injury to the informant or to intimidate, insult or annoy the informant, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether the accused persons on 15.06.2017 at about 8.20 PM, in furtherance of their common intention, at No. 2 Ruptoli under Bihpuria police station, have rebuked the informant by using obscene words in or near any public place to the annoyance of informant or others, and thereby committed an offence punishable u/s 294/34 of IPC?

(iii) Whether the accused persons on 15.06.2017 at about 8.20 PM, in furtherance of their common intention, at No. 2 Ruptoli under Bihpuria police station, have assaulted the informant physically with the intention to cause hurt, and thereby caused injury, and thereby committed an offence punishable u/s 323/34 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO. 1, 2 AND 3

6. For the sake of convenience and as because point no. 1, 2 and 3 are interconnected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, informant Sri Dimbeswar Hazarika as PW-1 in his evidence-in-chief has alleged that at the time of occurrence both the accused persons came to the courtyard of his house and assaulted him by hitting blows due to which he fell down on the ground. However, during his cross-examination, PW-1 has stated that he sustained a simple injury by falling on the ground while in a scuffle with the accused persons. Thereafter, he lodged this case out of anger.

8. From the above evidence deposited by PW-1/informant, it is seen that his statements in the evidence-in-chief are inconsistent with his statements in the cross-examination. To be more particular, though the PW-1 in his evidence-in-chief has alleged that he sustained injury due to hitting of blows by the accused persons but during his cross-examination PW-1 has stated that he sustained injury by falling on the ground during a scuffle with the accused persons. Such inconsistency in the version of PW-1/informant, who is the most vital witness, creates serious doubt as regards the credibility of the allegations made by him.

As such, I am of the opinion that it is not at all safe to rely upon the aforesaid allegations made by PW-1.

9. In the above context, informant's wife Smt. Gandoi Hazarika as PW-7 in her evidence-in-chief has stated that she heard hue and cry raised by her nephew Sri Abhay Hazarika and then saw that the accused persons are running away from in front of her house. It is interesting to note here that though the informant in his FIR has alleged that his wife came to the place of occurrence to save him and she was also assaulted by the accused persons, but the informant's wife/PW-7 in her evidence has not supported any such allegation made by the informant. This creates further doubt regarding the credibility of the allegations made by PW-1 in his evidence-in-chief. Needless to mention here that the PW7 in her evidence has not stated anything incriminating against the accused persons.

10. Besides the above, PW-2 Sri Gautam Das, PW-3 Sri Sarat Das, PW-4 Sri Gunamoni Borah, PW-5 Sri Bubu Hazarika and PW-6 Sri Abhay Hazarika in their respective evidence have not at all supported the allegations made by PW-1/informant. The PW-4, PW-5 and PW-6 have simply stated that there took place an altercation between both the parties. The PW-2 and PW-3 have stated that they do not know anything about the occurrence.

11. Considering the entire discussion made above, it is clear that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused persons have committed the offences as alleged in the FIR.

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

ORDER

12. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused persons Sri Durlav Das @ Saruvai and Sri Subhan Das have committed the offences under section 447/294/323/34 of IPC as alleged, and as such, the said

accused persons are acquitted of the charges under section 447/294/323/34 of IPC and they 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 29th day of January, 2021.

The case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**PROSECUTION EXHIBITS:**

Exhibit.1 – FIR

DEFENCE EXHIBITS:

NIL

PROSECUTION WITNESSES:

1. PW-1 – Sri Dimbeswar Hazarika
2. PW-2 – Sri Gautam Das
3. PW-3 – Sri Sarat Das
4. PW-4 – Sri Gunamoni Borah
5. PW-5 – Sri Bubu Hazarika
6. PW-6 – Sri Abhay Hazarika
7. PW-7 – Smt. Gandoi Hazarika

DEFENCE WITNESSES:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur