

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

G.R CASE NO: 1993 OF 2013
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI RAKESH DEURI
 SRI RAHUL DEURI

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

GR CASE NO: 1993 / 2013

U/S 447/427/323/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI RAKESH DEURI AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MR. ARUP KALITA

OFFENCE EXPLAINED ON : 26/04/2019
EVIDENCE RECORDED ON : 24/04/18, 28/06/19, 26/08/19
 08/11/19, 09/03/21
ARGUMENT HEARD ON : 22/03/2021
JUDGMENT DELIVERED ON : 22/03/2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 23.12.2013 at about 8.30 AM, the accused persons named in the FIR entered inside the house compound of informant without any permission by taking advantage of absence of any person in informant's house and thereafter cut down few trees from inside that house compound.

Subsequently, informant's father saw the accused persons, and as such, asked them that why they have cut those trees. At that time, the accused persons assaulted informant's father and caused injury. The informant thereafter lodged an FIR about the occurrence before the OC of Narayanpur police station.

2. On receipt of the F.I.R, a case was registered being numbered as Narayanpur P.S Case No. 203/2013. After investigation, I.O of the case submitted charge sheet against accused Sri Rakesh Deuri, Rahul Deuri and Bidyadhar Deuri for the offences punishable u/s 447/427/323/34 of IPC. At the stage of appearance, it came to light that accused Bidyadhar Deuri expired on 29.10.2015. Accordingly, the case proceeded against the remaining two accused only. Copies of relevant documents were furnished u/s 207 of CrPC against the remaining two accused. Considering the materials available in the case record, and after hearing both the sides, particulars of offences punishable u/s 447/427/323/34 of IPC are read over and explained to the said two remaining accused to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined six 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 23.12.2013 at about 8.30 AM, in furtherance of their common intention, entered inside the house compound of informant Sri Moina Deuri with the intent to cut trees, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether the accused persons on 23.12.2013 at about 8.30 AM, in furtherance of their common intention, with the intent to cause, or

knowing that they are likely to cause loss or damage, caused destruction of trees belonging to informant amounting to Rs. 50/- or upwards, and thereby committed an offence punishable u/s 427/34 of IPC?

(iii) Whether the accused persons on 23.12.2013 at about 8.30 AM, in furtherance of their common intention, voluntarily assaulted informant's father Sri Nila Kanta Deuri with the intention to cause hurt, and thereby caused injury to informant's father, 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 inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, the most vital witnesses examined by prosecution are the informant/PW-1 Sri Moina Deuri and his father/PW-2 Sri Nila Kt. Deuri. Therefore, let me first proceed with the discussion of evidence deposed by said two witnesses.

8. The informant/PW-1 in his evidence-in-chief has stated that on 28.12.2013, the accused persons along with their father Bidyadhar Deuri and Aunt Snehlata Deuri entered inside his house compound and cut down two trees. On the next day, both the above named accused persons and their father/deceased accused Bidyadhar Deuri assaulted his father with a bamboo stick on the back and private parts.

9. From the evidence deposed by PW-1, it is clear that the victim of alleged assault by accused persons is actually informant's father Sri Nila Kt. Deuri. Therefore, it is very much obvious that informant's father Sri Nila Kt. Deuri will corroborate the version of informant if the occurrence had actually taken place as alleged by informant/PW-1. However, perusal of evidence deposed by informant's father/PW-2 Sri Nila Kt. Deuri shows that he was allegedly assaulted only by deceased accused Bidyadhar Deuri. The PW-2 has not stated anything about any assault by the remaining two

accused. As such, it is clear that the version stated by PW-1/informant is totally inconsistent with the version stated by his father/PW-2 as regards the alleged assault. Such inconsistency, being related to material part of alleged occurrence creates serious doubt as regards the credibility of the versions deposed by PW-1 and PW-2. In that view of the matter, I am of the opinion that the version deposed by PW-1 and PW-2 as regards the alleged assault by the accused persons cannot be relied upon.

10. Similarly, a careful perusal of the evidence deposed by PW-1 and PW-2 shows that their versions are inconsistent with respect to the alleged cutting of trees by the accused persons. To be more specific, as per PW-1/informant on 28.12.2013 the accused persons have cut the trees and on the next day the accused persons assaulted his father. However, as per informant's father/PW-2, deceased accused Bidyadhar Deuri assaulted him when he raised objection against the act of cutting trees by the accused persons i.e., the alleged cutting of trees and the alleged assault took place on the same day at the same time. The aforesaid inconsistency, in my opinion, creates doubt as regards the allegation of cutting trees by the accused persons.

11. In the above context, though PW-3 Sri Ghana Kt. Neog and PW-5 Kiran Deuri have corroborated the allegations made in the FIR, but in their cross-examination they have made it clear that they have not seen the occurrence. As such, it is clear that their versions are totally hearsay and cannot be relied upon unless corroborated by some other reliable evidence.

12. Besides the above, PW-4/M.O Dr. Atul Ch. Khaund and PW-6/I.O Sri Jugen Saikia who are official witnesses, have not deposed anything material which in itself can prove that the accused persons have committed the offences as alleged.

13. Considering the entire discussion made above, I find 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 and as quoted in the aforesaid points for determination.

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

ORDER

14. 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 Sri Rakesh Deuri and Rahul Deuri have committed the offences punishable under section 447/427/323/34 of IPC as alleged, and as such, both the accused are acquitted of the charges under section 447/427/323/34 of IPC on benefit of doubt 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 22nd day of March, 2021.

The case is disposed of on contest.

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

APPENDIX**PROSECUTION EXHIBITS:**

- Exhibit.1 – FIR
- Exhibit.2 – Seizure list.
- Exhibit.3 – Medical report.
- Exhibit.4 – Extract copy of G.D entry.
- Exhibit.5 – Sketch Map.
- Exhibit.6 – Charge sheet.

PROSECUTION WITNESSES:

1. PW-1 – Sri Moina Deuri
2. PW-2 – Sri Nila Kt. Deuri
3. PW-3 – Sri Ghana Kt. Neog
4. PW-4 – Dr. Atul Ch. Khaund
5. PW-5 – Sri Kiran Deuri
6. PW-6 – Sri Jugen Saikia

DEFENCE EXHIBITS:

NIL

DEFENCE WITNESSES:

NIL

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