

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

G.R CASE NO: 124 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI KAMAL KRISHNA PATHAK

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

GR CASE NO: 124 / 2016

U/S 323/342 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI KAMAL KRISHNA PATHAK

PRESENT: MR. F.U. CHOUDHURY, AJS

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

OFFENCE EXAPLAINED ON : 19.08.2016
EVIDENCE RECORDED ON : 11.10.2017, 08.06.2018, 20.08.2018,
01.11.2019, 04.01.2020
ARGUMENT HEARD ON : 26.02.2020
JUDGMENT DELIVERED ON : 27.02.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that informant Md. Abdul Rajak is a poor farmer and retailer businessman. Accused Sri Kamal Krishna Pathak took loan of Rs. 15,000/- (rupees fifteen thousand) from the informant about one week prior to the lodging of this case on condition to return the same within two days. In that connection, the informant on the day of occurrence at about 6.30 PM went to the house of accused Sri Prasanta

Rajkhowa to meet accused Kamal Krishna Pathak. The informant then demanded the aforesaid money and at that time accused Sri Kamal Krishna Pathak hit the informant on his head with a piece of brick and then dragged him on the ground. Thereafter, accused Sri Prasanta Rajkhowa grabbed the informant and assaulted him with brick and caused injury and tried to kill him. The informant somehow managed to save himself and subsequently lodged an FIR about the occurrence before the OC of Boginadi police station.

2. On receipt of the F.I.R, a case was registered being numbered as Boginadi P.S Case No. 09/16 and after investigation I.O of the case submitted charge sheet against accused Sri Kamal Krishna Pathak for the offences punishable u/s 323/342 of IPC. Copies of relevant documents were furnished to the accused u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 323/342 of IPC are read over and explained to the accused person to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined nine witnesses, whereas the defence did not examined any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by the accused and also the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties. 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 on 11.01.2016 at about 6.30 PM at Damorikhowa village under Boginadi police station, voluntarily hit informant with a piece of brick with the intention to cause hurt, and thereby caused injury, and thereby committed an offence punishable u/s 323 of IPC?

(ii) Whether the accused on 11.01.2016 at about 6.30 PM at Damorikhowa village under Boginadi police station, wrongfully restrained informant Md. Abdul Rajak in such a manner as to prevent the informant from

proceeding beyond certain circumscribing limit, and thereby committed an offence punishable u/s 342 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO. 1 AND 2:

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

7. As regards the aforesaid points for determination, informant Md. Abdul Rajak as PW-2 in his evidence-in-chief has stated that the accused took money from him with a promise to supply fish but later on the accused did not supply the fish. On the day of occurrence, the accused called him in the house of village Counsellor Rajkhowa to return the aforesaid money. He then went to the house of said Rajkhowa. The accused then denied to return the money. Thereafter, the accused hit him on his head with a piece of brick as a result of which he sustained injury on the back of his left ear.

8. In the above context, PW-1 Sri Dhenuram Rajkhowa in his evidence-in-chief has stated that at the time of occurrence he was at his home and he heard sound of somebody running outside the house. He then came out of the house but did not find anybody there. On the next day, he came to know that there took place an altercation between the accused and informant. In his cross-examination, PW-1 has stated that he did not see the occurrence.

9. PW-3 Sri Ajit Kalita in his evidence-in-chief has stated that at the time of occurrence he along with the accused and one Nirmal Borah and Lila Kt. Dulakakharia were present in the house of Sri Prasanta Rajkhowa where the occurrence took place. At that time, there took place an altercation between the accused and informant. The informant then hit the accused on his shoulder with a torch light.

10. Now, on perusal of the evidence deposited by PW-2 and PW-3 as narrated above, it is seen that the version deposited by PW-2 and PW-3 are totally contradictory. To be more specific, though PW-2 has stated that the accused has assaulted him/PW-2, but on the other hand, PW-3 has stated that the

informant/PW-2 has assaulted the accused at the time of occurrence. Be it mentioned here that both the PW-2 and PW-3 have claimed themselves to be eye witnesses of alleged occurrence. Under such circumstances, I am of the opinion that it is not safe at all to rely upon the version stated by PW-2 and PW-3 in their respective evidence-in-chief. Further, it is important to note here that though the informant in his FIR/Ext-1 has stated that the accused along with Sri Prasanta Rajkhowa have jointly assaulted him, but in his evidence the informant as PW-1 has not stated anything about any such assault by Sri Prasanta Rajkhowa. This shows that the version stated by informant in the FIR is inconsistent with the version stated by him in his evidence-in-chief. Such inconsistency, being related to material part of the alleged occurrence creates doubt as regards the credibility of the version deposited by PW-1.

11. Moreover, PW-1 in his evidence has not stated anything about any assault by the accused upon informant and has simply stated that there took place an altercation between both the parties. As such, it is clear that PW-1 has not stated anything to support the alleged assault and wrongful confinement by the accused upon the informant. Similarly, PW-4 Smt. Harumai Borah, PW-5 Sri Lakhyajit Borah and PW-6 Sri Papu Borah in their respective evidence have not stated anything in support of the case of prosecution. This creates further doubt as regards the credibility of the allegations made by PW-2 in his evidence-in-chief against the accused.

12. Besides the above, though PW-7 Dr. Mouchumi Saikia, who being the Medical Officer posted at Boginadi Model Hospital on 11.01.2016 examined informant Md. Abdul Rajak, in her evidence-in-chief has stated that she found laceration behind the left ear of size 1cm X 1cm. However, there is nothing specific in the evidence of PW-7 which can prove that the said injury was caused by the accused persons. Under such circumstances, the sole finding of PW-7 cannot prove the allegations made against the accused in the FIR.

13. Before parting with the discussion, I deem it fit to mention here that though PW-8 Md. Mohinur Ali in his evidence-in-chief has stated that he heard that a fighting took place between the accused and informant and subsequently he saw injury on the head of informant, but in his cross-examination, the PW-8 has clarified that he did not see the occurrence with

his own eyes and he saw the injury on the next day of occurrence. As such, it is evident that the version of PW-8 regarding the alleged fighting between informant and accused is totally hearsay and the same cannot be believed unless corroborated by some other reliable evidence.

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

DECISION: This point is therefore decided in the negative and goes against the prosecution.

ORDER

15. In view of the discussions made above and the decisions 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 Kamal Krishna Pathakhas committed the offences punishable under section 342/323 of IPC as alleged, and as such, the accused person is acquitted of the charge under section 342/323 of IPC on benefit of doubt and he be set at liberty forthwith.

The bail bond of the accused person 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 27th day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

Exhibit.1 – F.I.R

Exhibit.2 – Medical report

Exhibit.3 – Sketch map

Exhibit.4 – Charge-sheet

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Sri Dhenuram Rajkhowa

P.W. 2 – Md. Abdul Rajak

P.W. 3 – Sri AjitKalita

P.W. 4 – Smt. Harumai Borah

P.W. 5 – Sri Lakhyajit Borah

P.W. 6 – Sri Papu Borah

P.W. 7 – Dr. Mouchumi Saikia

P.W. 8 – Md. Mohinur Ali

P.W. 9 – Sri Balindra Baruah (I.O)

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur