

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

G.R CASE NO: 129 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. ABDUL RAJAK ALI

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

GR CASE NO: 129 / 2016

U/S 447/323/506 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. ABDUL RAJAK ALI

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MD. M. ALI

OFFENCE EXPLAINED ON : 11.05.2017
EVIDENCE RECORDED ON : 13.12.2017, 28.03.2018, 20.08.2018,
03.02.2019, 28.08.2019, 17.02.2020
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 F.I.R is that on 11.11.2016 at about 6.30 PM, accused Md. Abdul Rajak Ali wrongfully entered inside the homestead of informant Sri Prasanta Rajkhowa and stabbed informant's nephew Sri Kamal Krishna Pathak with a torch light and thereby caused injury. The accused then grabbed Sri Kamal Krishna Pathak and pushed him on a stack of bricks and tried to hit him on his head with a piece of brick. At that

time, the informant came there and snatched the piece of brick from the hand of accused. The accused then threatened to kill informant and his said nephew. The informant thereafter lodged an FIR about the occurrence before the O/C of Boginadi police station.

2. On receipt of the F.I.R, a case was registered being numbered as Boginadi P.S Case No. 10/16 and after investigation I.O of the case submitted charge sheet against accused Md. Abdul Rajak Ali for the offences punishable u/s 447/323/506 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 447/323/506 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 examine 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 person on 11.01.2016 at about 6.30 PM at Baligaon village under Boginadi police station, unlawfully entered inside the homestead of informant Sri Prasanta Rajkhowa with the intention to cause hurt to informant's nephew Sri Kamal Krishna Pathak, or to intimidate, insult or annoy the informant and his said nephew, and thereby committed an offence punishable u/s 447 of IPC?

(ii) Whether the accused person on 11.01.2016 at about 6.30 PM at Baligaon village under Boginadi police station, voluntarily hit informant's nephew Sri Kamal Krishna Pathak with a torch light with the intention to cause hurt, and thereby caused injury to him, and thereby committed an offence punishable u/s 323 of IPC?

(iii) Whether the accused person on 11.01.2016 at about 6.30 PM at Baligaon village under Boginadi police station, threatened the informant and his above named nephew with injury to their persons, with the intent to cause alarm, and thereby committed an offence punishable u/s 506 of IPC?

DISCUSSION OF EVIDENCE, 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, the most vital witnesses examined by prosecution are the informant and his above named nephew Sri Kamal Krishna Pathak being the alleged victim of this case. Therefore, let me proceed with the discussion to find out whether they have supported the case of prosecution as alleged in the FIR.

8. In this respect, perusal of evidence shows that informant Sri Prasanta Rajkhowa as PW-3 in his evidence-in-chief has stated that at the time of occurrence accused came to his house and said that he (accused) his having some work with Kamal Krishna Pathak. He/PW-3 then requested the accused to come back on the day as he/PW-3 and Kamal Krishna Pathak are supposed to go to Lakhimpur for some urgent work. However, the accused did not agreed to his/informant's request and tried to open the door of car in which Sri Kamal Krishna Pathak was seated. Thereafter, said Kamal Krishna Pathak came out from the car and at that time the accused hit said Kamal Krishna Pathak with a torch light. Thereafter, the accused grabbed said Kamal Krishna Pathak and pushed him on a stack of bricks. Said Kamal Krishna Pathak sustained injury on his head.

9. In the above context, PW-1 Sri Kamal Krishna Pathak in his evidence-in-chief has stated that at the time of occurrence, accused came to the house of informant and started an altercation with the informant. Thereafter, a scuffle took place between the informant and accused. At that time, he/PW-1 heard hue and cry and came out from his house. The accused gave a blow with a torch light on the back of the chest of informant due to which blood oozed out from the injury of informant. Thereafter, the accused left the place.

10. On perusal of the evidence deposited by PW-1 and PW-3 as narrated above, it is seen that though both of them have claimed themselves to be eye witnesses of the alleged occurrence but their versions are totally contradictory to each other. To be more particular, though PW-1 Kamal Krishna Pathak has stated that the accused assaulted and caused hurt to informant/PW-3, but, on the other hand, informant/PW-3 has stated that the accused has assaulted and caused injury to PW-1 Kamal Krishna Pathak. It is important to mention here that the PW-1 in his cross-examination has specifically stated that no occurrence took place with him on that day. The aforesaid contradiction, being related to the material part of alleged occurrence, in my opinion, creates serious doubt as regards the credibility of the statements made by PW-1 and PW-3 in their respective evidence-in-chief.

11. Besides the above, informant/PW-3 in his cross-examination has denied the suggestions of defence that he did not mention the aforesaid allegations in his statement before police. However, in this respect, PW-9 Sri Dambaru Dutta, who investigated this case, in his cross-examination has confirmed that PW-3 has not mentioned the aforesaid allegations in the statement made before him/PW-9. In my opinion, had the occurrence taken place as alleged by PW-3 in his evidence-in-chief then he should have definitely mentioned the same in his very initial statement before I/O. Therefore, omission of PW-3 to mention the aforesaid allegations in his statement before I.O/PW-9 is a material contradiction which creates doubt as regards the credibility of his aforesaid version.

12. As regards the aforesaid point for determination, PW-2 Sri Nipen Dulakakharia and PW-4 Sri Ajit Kalita in their respective evidence-in-chief have supported the case of prosecution by stating that the accused gave a blow to said Kamal Krishna Pathak with a torch light. However, in view of the aforesaid statement made by PW-1 Sri Kamal Krishna Pathak, which is contradictory to the statement of PW-2 and PW-4, I am of the opinion that the evidence deposited by PW-2 and PW-4 cannot be relied upon.

13. In the above context, PW-5 Sri Lila Kt. Dulakakharia and PW-6 Sri Nirmal Borah in their respective evidence have stated that the accused threw a piece of brick on the body of Sri Kamal Krishna Pathak. However, the PW-5 in his cross-examination has specifically stated that he did not see the

occurrence. Similarly, PW-6 in his cross-examination has stated that he came out after hearing the hue and cry and saw the injury on the body of Munna and thereafter he came to know about the occurrence. This implies that PW-6 himself has not seen the alleged occurrence. Again, PW-8 Sri Bishnu Borah in his evidence has stated that he heard that an altercation and fighting took place between the accused and informant but he did not see the occurrence.

14. Therefore, it is clear that the versions stated by PW-5, PW-6 and PW-8 as regards the alleged assault by accused upon Sri Kamal Krishna Pathak or informant, are completely hearsay and the same cannot be relied upon unless corroborated by some other reliable evidence.

15. Before parting with the discussion, it is necessary to mention here that only remaining witness examined by prosecution is PW-7 Dr. Monti Phukan, who being the Medical Officer posted at Boginadi PHC on 16.01.2016, examined Sri Kamal Krushna Pathak but did not find any internal or external injury. As such, it is clear that there is nothing in the evidence of PW-7 which can support the case of prosecution.

16. 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

17. 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 Md. Abdul Rajak Alihas committed the offences punishable under section 447/323/506 of IPC as alleged, and as such, the accused person is acquitted of the charges under section 447/323/506 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 – Seizure list

Exhibit.3 – Medical report

Exhibit.4 – Sketch map

Exhibit.5 – Charge-sheet.

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Sri Kamal Krishna Pathak

P.W. 2 – Sri Nipen Dulakakharia

P.W. 3 – Sri Prasanta Rajkhowa

P.W. 4 – Sri Ajit Kalita

P.W. 5 – Sri Lila Kt. Dulakakharia

P.W. 6 – Sri Nirmal Borah

P.W. 7 – Dr. Monti Phukan

P.W. 8 – Sri Bishnu Borah

P.W. 9 – Sri Dambaru Dutta (I.O)

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur