

District :Lakhimpur

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE, (M)  
DHAKUAKHANA, LAKHIMPUR**

**G.R. case no. 21 of 2017  
U/S 448/294/427/323 IPC**

State of Assam

VS

Sri Kushal Das

.....Accused person

**Present : Smt. SaraswatiJohoriPadun, LL.M, AJS,  
Sub-Divisional Judicial Magistrate (M)  
Dhakuakhana, Lakhimpur**

**Advocates :**

Mr.PrasantaHiloidori, Ld. Additional APP for the Prosecution

Sri.DevanjanBoruah , Ld. Defence Counsel

Evidence recorded on: 27.04.2018, 18.09.2018, 23.10.2018, 06.12.2018,  
29.12.2018, 18.01.2019, 17.04.2019, 02.01.2020,

Argument heard on: 04.02.2020

Judgment delivered on: 12.02.2020

### **JUDGMENT**

1. The prosecution case arose from an ejahar lodged by one Sri Ganak Das of village Kachugaon under Dhakuakhana P.S at Lakhimpur District alleging that on 15.01.2017 at about 9:00 PM at night the accused persons broke his bamboo fencing and verbally abused them with obscene language and after forcefully entering into his house physically assaulted him, his mother and father with a sharp weapon. As a result they sustained injury on their body. The accused also threatened to kill them. Hence this case.
2. In connection with the aforesaid incident, the informant lodged an ejahar at Dhakuakhana P.S. On receipt of the FIR, the police registered Dhakuakhana P.S case 12/2017 U/S 448/294/427/324/307 IPC and conducted investigation into the matter. On completion of investigation, the police laid charge sheet against the accused persons u/s 448/294/427/323 IPC.
3. In due course the accused persons entered their appearance in response to the process issued. Copies of relevant documents were furnished to the accused in accordance with Sec. 207 CrPC. On particulars of offence u/s 448/294/427/323 IPC being explained to the accused person he pleaded not guilty and claimed to be tried.
4. The prosecution side examined as many as eleven witnesses including the victim I.O. and the M.O. The statement of accused U/S 313(1)(b) Cr.P.C was recorded. His plea is of total denial. But he refused to adduce evidence in defence. Hence the defence evidence was closed.

#### **Points for determinations :**

5. The following point is required to be determined in this case:
  - I. Whether the accused person Sri Kushal Das on 15.01.2017 at about 9:00 P.M. criminally trespassed into the house of informant Sri Ganak Das to annoy him and to physically assault him and thereby committed an offence punishable U/S 448 IPC ?

- II. Whether the accused person Sri Kushal Das on the same day time and place verbally abuse the informant and his family members with obscene language and thereby committed an offence punishable U/S 294 IPC ?
- III. Whether the accused person on the same day time and place committed criminal mischief by causing wrongful loss to the informant of the valued more than Rs.50/- by breaking his bamboo fencing and thereby committed an offence punishable U/S 427 IPC ?
- IV. Whether the accused person on the same day time and place voluntarily caused her to SmtBhagita Das, Sri Ganak Das and Sri Bhibhi Das thereby committed an offence punishable U/S 323 IPC ?

**Discussion, Decisions and reason thereof:**

- 6. I have gone through the evidence on record and heard the arguments of learned counsels on both sides and I shall now discuss and decide the points formulated.
- 7. PW-1 Sri Ganak Das in his evidence stated that he is the informant of this case. He knows the accused person who is a resident of his village. PW-1 stated that the incident took place on 15.01.2017 at 9:00 PM at his house located at KachuGaon. PW-1 stated that at the time of the incident the accused person hurled abuses to him using obscene language and the accused also attacked him, his father and his mother with a sharp weapon. PW-1 further stated that he sustained cut injuries on his finger, head and on his wrist and his father also sustained cut injuries on his left eye and optical region of the head. PW-1 stated that his mother sustained cut injuries on her left hand and head. PW-1 further stated that on hearing hue and cry, the villagers came to his house and the accused fled away. PW-1 stated that at the time of the incident as there was little light, he could identify the accused person. He also stated that prior to this incident during Maghbihuone person tried to entered the premises of HariMandir and he was apprehended by him

and other members of JuvaSangha. They tried the thief in a village meeting. Since then the accused had been threatening him and other persons of the village saying they have no authority to try the thief as they were not O.C. of any police station. PW-1 further stated that the accused has good relation with the thief. After this incident PW-1 lodged ejahar in this case. Ex-1 is the said ejahar and Ext-1(1) is his signature thereon.

During his cross-examination PW-1 stated that he has studied upto class-X and he is a literate person. He stated that Ext-1 was drafted by one Tarani Sri Bolin Das as per his instruction. He denied to the suggestion that he had stated before the police that he was the secretary of KachuGaonUnnayanSamiti. PW-1 stated that the sharp weapon used by the accused person at the time of the incident might have been "Kekuri". He could not see the said weapon properly. He denied to the suggestion that he had stated before the police that just after the incident he caught hold of the accused person, brought him to his courtyard to save himself and his parents. He denied to the suggestion that he physically assaulted the accused and then lodged this case. PW-1 stated that the police provided medical treatment to him and his parents on 15.01.2017 i.e. on the day of incident itself. His ring finger on his right sustained cut injury on account of assault of the accused person. He denied to the suggestion that at the time of the incident he and his parents caught hold of the accused person and physically assaulted them and then lodged a false case against them. He denied to the suggestion that he did not sustain any injury on his finger as a result of assault of the accused person.

8. PW-2 Smt Mina Gogoi Das, PW-3 Smt Bhagyawati, PW-4 Sri Biswa Das, PW-5 Smt Rina Das and PW-6 Smt Aparupa Das have not seen the incident. Hence their evidence is of no aid to the case of the prosecution.
9. PW-7 Sri Bhibhi Das in his evidence in chief stated that the informant is his son and the accused person Sri Kushal Das resides in his village. He stated that the incident took place on 15.01.2017 post 10:00 PM at his house

located at Kochugaon. PW-7 stated that at the time of the incident Kushal had entered the compound of his house in a drunken state and raised hue and cry. He asked him to leave his house, and then the accused Kushal gave him a fist blow on his forehead and head. PW-7 stated that the accused also assaulted his wife SmtBhagita Das on her right hand. On hearing hue and cry his son Ganak Das came out of the house and the accused then assaulted him with bamboo fencing on his hand. PW-7 stated that the accused then went away. PW-7 further stated that when the accused was raising hue and cry, many people had gathered near his house. He stated that police provided them with treatment.

During his cross-examination PW-7 stated that his son had filed ejahar on the day of the incident itself. The police provided them with medical treatment on the day of lodging the ejahar. PW-7 stated that he knows that the accused has also lodged a case against the informant, Indra Das and Jun Das. PW-7 denied to the suggestion that at the time of the incident the informant, Indra Das and Jun Das have without any reason assaulted the accused and dragged them to his house. He denied to the suggestion that the accused had not physically assaulted them at the time of the incident and that he had deposed falsely to screen the informant from punishment. He denied to the suggestion that he did not sustain any injury on account of the assault of the accused person.

10. PW-8 SmtBhagita Das in her evidence in chief stated that the informant is her son. She knows the accused Kushal Das who resides in her village. PW-8 stated that she does not remember the date of the incident but the same took place one night at about 9:00 PM on 15 January 2017 at her house located at Kachugaon. PW-8 stated that at the time of the incident she and her family members were having dinner. Just at that time Kushal Das entered her house and physically assaulted her on her back with a bamboo stick. PW-8 stated that accused person then assaulted her husband on his head and shoulder. She also stated that the accused also trampled upon her sick daughter. PW-8 stated that the accused also assaulted the informant on his

hand with a bamboo stick and as a result the informant sustained fracture on his hand. She stated that on hearing hue and cry the villagers came to her house. PW-8 stated that she does not remember the names of the villagers who came to her house at the time of the incident. PW-8 further stated that police provided them with treatment on the next day of the incident.

During her cross-examination she stated that the police interrogated her on the next day of the incident. PW-8 stated that when the police interrogated her, they were already medically examined. She denied to the suggestion that she had stated before the police that at the time of the incident the informant, Prafulla Das and Indra Das asked the accused not to raise hue and cry and they also physically assaulted the accused. PW-8 stated that at the time of the incident her son Ganak Das was not at her house and that he came home on hearing hue and cry of the accused. PW-8 stated that she knows that the accused has also lodged a criminal case against the informant, Prafulla Das and Indra Das. She denied to the suggestion that she had not stated before the police that at the time of the incident the accused had trampled upon her sick daughter. She denied to the suggestion that she had deposed falsely today to screen her son.

11. PW-9 Sri ASI Jiten Gohain in his evidence in chief that on 15.01.2017 while he was working as ASI at Dhakuakhana the informant lodged Ext.1 and on that basis Dhakuakhana P.S. case 12/17 was entrusted to him for investigation. He recorded the statement of the witnesses and visited the place of occurrence. He exhibited sketch map of the place of occurrence as Ext.2 and identified his signature on the sketch map as Ext.2(1). After completion of investigation he handed over the case diary to the then O/C of the Dhakuakhana P.S. who submitted charge sheet. He exhibited the charge sheet as Ext.3 and identified the signature of the O/C on the charge sheet as Ext.3(1).

In his cross-examination he stated that he was entrusted with the investigation of this case on 16.01.2017 at about 11:A.M. he got the PW Bhagyawati and other victim examined medically prior to 16.01.2017. he also

stated that during investigation he learnt that the accused had also filed a case against the informant of this case and that case was also investigated by him. He stated that in the medical examination reports of the victim the date and time of medical examination is mentioned as 17.01.2017 at 2.45 P.M.

12. PW-10 Dr.MonuDoley in his evidence in chief is that on 17.01.2017 he was working as Medical Officer at Dhakuakhaha FRU. PW-10 stated that on that day he did not examined the persons namely Sri Bhibi Das, Ganak Das and Bhugita Das. PW-10 further stated that no any injury report was prepared by him in connection with this case.
  
13. PW-11 Dr.LalitSaikia in his evidence stated that on 17.01.2017, he was working in emergency duty at Dhakuakhana Sub-divisional Civil Hospital. On that day at 2:45 PM he examined Sri Bhibi Das, S/o: Gedha Das Vill: Kachugaon, Dhakuakhana. On his examination he found injury over left eye of size 2.5 cm.x2.5 cm. The injury was simple in nature, caused by blunt weapon. PW-11 also stated that he had bruises over occipital (backside of head) size of injury was 5 cm.x 5 cm. The injury was simple and caused by blunt weapon. PW-11 stated that on the same day he also examined Sri Ganak Das, age-14 years. On examination PW-11 found one bruises over right palm size 5 cm x 5 cm. The injury was simple and caused by blunt object. Injury two was over occipital region of head of the size 5 cm.x7.5 cm. The said injury was simple in nature and caused by blunt weapon. PW-11 also examined Bhugita Das W/o Sri Bhibi Das on the same day, same time. On his examination he found bruises over right wrist 5 cm.x7.5 cm the injury was simple in nature and caused by blunt weapon. He also stated that he had bruise over left side of head, size of injury are medical injury report of Bhibi Das, Ganak Das and Bhugita Das respectively and Ext-4(1), 5(1) and 6(1) are his signature in it respectively with seal.

During his cross-examination PW-11 stated that the injury sustained by the 3 victims may also be caused by falling over hard substance. He denied

to the suggestion that in Ext-4, 5 and 6 he has not mentioned the age of injury.

14. Let us now analyse the evidence of the prosecution to come to conclusion of this case. The accused Sri Kushal Das has been alleged to have committed the offence u/s 448/294/427/323 IPC. To substantiate the allegation the prosecution side examined as many as eleven witnesses including the M.O. and the I.O. It has to be seen whether the prosecution has been able to prove the guilt of the accused under the aforementioned sections. In this case the star witnesses are the informant, his father and mother who have been examined as PW1, PW7 and PW8. The witnesses from PW2 to PW6 have not seen the occurrence.
  
15. As can be seen from the evidence of PW1, PW7 and PW8 it is clear that there is no corroboration between them firstly regarding the weapon of offence. PW1 stated that accused assaulted them with a sharp weapon. Whereas PW7 and PW8 stated that informant and Pw8 were assaulted with a bamboo which is blunt. Further PW7 also stated that he was assaulted by the accused with a fist blow.
  
16. Secondly there is contradiction between the aforementioned witnesses regarding the injury sustained by them. PW1 in his evidence stated that he sustained cut injury on his finger, head and wrist. Whereas the PW7 stated that accused attack his son on his hand which contradicts the evidence of PW1. Furthermore the PW8 stated that informant has sustained fracture injury on his hand. But PW1 who is the informant did not mention any fracture on his hand. PW8 further stated that the accused attacked her on her back. So if she was attack on her back she ought to have sustained injury on her back. PW1 stated that PW8 sustained injury on her head and hand which contradicts the evidence of PW8 as she said that she was attack on her back.

17. Thirdly the PW1, PW7 and PW8 in their evidence stated that they were medically examined on the day of incident itself i.e., on 15.01.2017. But perusal of the Ext. 4, 5 and 6 which are the injury report of PW7, PW1 and PW8 reflects that they were examined on 17.01.2017 and the reports were also prepared on 17.01.2017. Further Ext. 5,6& 7 reflects that the injuries were caused by a blunt weapon which contradicts the evidence of the PW1 that they were assaulted by the accused with a sharp weapon. Although the medical reports reflect injuries on the PW1, PW7 and PW8 it cannot be taken into consideration, due to contradiction on the date of examination.

The contradiction between the oral evidence of PW1, PW7 and PW8 regarding the weapon of offence, injury sustained by them and date of medical examination have casted a serious doubt on the truthfulness of the prosecution's story regarding allegation of offence under Section 323 I.P.C. From the evidence of I.O. also it has come out that he was entrusted with the investigation of the case on 16.01.2017 and thereafter only he took the injured persons for medical examination. This contradicts the evidence of the PW1, PW7 and PW8 that they were examined on the date of incident.

Regarding the allegation of offence under Section 294/427 IPC the PW1 did not specify as to what obscene word or language was used by the accused which annoyed them. There is not a single whisper in their evidence regarding the allegation of offence Section 427 IPC. PW7 and PW8 too have not whisper a single word regarding the said allegation. Furthermore the PW1, PW7 and PW8 have not laid any evidence to substantiate the allegation of offence under Section 427 IPC. As such it cannot be said that the prosecution has proved the guilt of the accused person for offence u/s 323/294/427 IPC beyond all reasonable doubt.

But from the evidence of PW1, PW7 and PW8 it is clear that the accused had trespassed into their house which caused annoyance to the informant and his family members. The filing of instant case itself proves that the coming of accused to the house of the informant was not welcome. As per section 442 IPC a person is said to have committed house trespass by entering into or remaining in any building, tent or vessel used as a human

dwelling or any building used as a place of worship or as a place for the custody of the property. In the instant case the accused Sri Kushal Das entered into the house of the informant and annoyed them by remaining there. However for the offence to be complete the prosecution must show that the entry of the accused into the house of the informant was with a view to cause annoyance, insult or intimidation. Thus, in other words it is pertinent to establish the mensrea of the accused. In the instant case the statements of PW1, PW7 and PW8 before the I.O. and their evidence before this Court are contradictory. After considering the entire evidence on record I am of the view that the prosecution has failed to prove the allegation of offence u/s 448/294/323/427 IPC beyond all reasonable doubt against the accused Sri Kushal Das. As such the accused Sri Kushal Das is given benefit of doubt and acquitted of offence charged u/s 448/294/323/427 IPC. He is set at liberty forthwith.

18. Bail bond furnished on behalf of accused person shall remain in force for further period of six months from today as per provision of Section 437-A Cr.P.C.
19. The judgment is delivered and pronounced in open Court in the presence of both sides and is given under my hand and seal of this Court this 12<sup>th</sup> day of February 2010 at Dhakuakhana, Lakhimpur.

**Sub-Divisional Judicial Magistrate (M)**

**Dhakuakhana, Lakhimpur**

## **APPENDIX**

### **A. Prosecution witness**

PW1- Sri.Ganak Das.

PW2- Smt. Mina Gogoi Das.

PW3- Smt. Bhagyawati Das.

PW4- Sri.Biswa Das.

PW5- Smt. Rina Das.

PW6- SmtAparupa Das.

PW7- Sri.Bhibhi Das.

PW8- Smt. Bhagita Das.

PW9- ASI Sri.JitenGohain.

PW10- Dr.MonuDoley.

PW11- Dr.LalitSaikia.

### **B. Defence Witness & Exhibits**

Nil

### **C. Prosecution's Exhibits**

1. Ejahar.
2. Sketch-Map.
3. Charge-Sheet.
4. Medical Report.
5. Medical Report.
6. Medical Report.

### **D. Court's Exhibit**

Nil

### **E. Defence exhibit**

None

### **F. Defence Witness**

None

G.R. 21/2017

12.02.2020 : The accused is present.

Judgment is ready, pronounced and delivered today in the presence of both the sides.

In the result for the reason stated in the judgment written on a separate sheet the accused Sri Kushal Das is held not guilty and acquitted of offence charge u/s 448/294/323/427 IPC. He is set at liberty forthwith.

Bail bond furnished on his behalf shall remain in force for further period of six months from today.

Given under my hand and seal of this Court this 12<sup>th</sup> day of February 2020 at Dhakuakhana, Lakhimpur.

SDJM(M), Dhakuakhana  
Lakhimpur, Assam.