

CAUSE TITLE**Criminal Appeal No.25(3)2017.**

Appellants : Sri Biren Dutta and Sri Koliya Dutta.

Respondent : State of Assam.

ADVOCATES :

For the Appellant : Mr M.C. Hazarika, learned Advocate.

For the State : Mr J. Saikia, learned Public Prosecutor.

**IN THE COURT OF THE SESSIONS JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
Sessions Judge,
Lakhimpur, North Lakhimpur.

Criminal Appeal No.25(3)2017.

Appellants : Sri Biren Dutta and Sri Koliya Dutta.

Respondent : State of Assam.

Date of Argument : 06/01/2021.

Date of Judgment : 15/03/2021.

J U D G M E N T

1. This Appeal is preferred against the Judgment and Order dtd. 02/08/2017 passed by the Judicial Magistrate 1st Class, North Lakhimpur, in GR Case No.1502/2011, convicting the Appellant, Sri Biren Dutta (hereinafter A-1) and the other Appellant, Sri Koliya Dutta (hereinafter A-2) u/s 447/323/34 of the Indian Penal Code, 1860 (IPC for short), and thereby releasing them u/s 3 of the Probation of the Offenders Act, 1958 after due admonition. They were directed to pay Rs.2,500/- each as compensation to the victim with default clause.

2) The genesis of the case is that on 03.11.2011 at about 1.30 pm, A-1 and A-2 and Luhit Dutta verbally abused Sri Probin Dutta (hereinafter the informant) with obscene language and unlawfully

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entered into his boundary armed with 'dao' and attacked his wife, Smt Lily Dutta and his mother, Smt Umeswari Dutta causing grave injuries on their bodies. They also destroyed the betel-nut and the banana plantation.

3) An ejahar was lodged with the police at Narayanpur P.S. and a Narayanpur P.S. Case No.70/2011 was registered u/s 447/325/427/34 IPC and investigation commenced. Charge-sheet was laid against A-1 and A-2 u/s 447/323/34 IPC. On appearance of the Appellants, copies were furnished and particulars of offence under the aforesaid Sections of Law were read over and explained to them. The Appellants abjured their guilt and claimed innocence.

4) To substantiate its stance, the prosecution adduced the evidence of five witnesses and exhibited various documents, whereas the defence cross-examined the witnesses to refute the charges. On the incriminating circumstances arising against them, the tone and tenor of the answers to questions u/s 313(1) (b) of the Code of Criminal Procedure, (CrPC for short) depicts a plea of total denial.

CONTENTIONS OF THE PARTIES :

5) Through the Appeal Memo. and through his oral argument, the learned counsel for the Appellants laid stress in his argument that the F.I.R. was lodged after three days without any proper explanation. It is submitted that one of the victims was not examined as witness, which casts a shadow of doubt over the veracity of evidence. It is also contended that this case is a replete with contradictions. The learned P.P. laid stress in his argument that the Trial Court dealt leniently with the Appellants without sentencing them to imprisonment.

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POINTS DECIDED BY THE TRIAL COURT :

“i). Whether the accused persons on 03/11/2011, at about 1.30 PM, in furtherance of their common intention, criminally trespassed into the property of the informant, Sri Probin Dutta, with intent to commit an offence, and thereby committed offence u/s 447/34 IPC?

ii). Whether the accused persons on 03/11/2011, at about 1.30 PM, in furtherance of their common intention, voluntarily caused hurt to the victim, Smt Umeswari Dutta and Smt Lily Dutta, and thereby committed offence u/s 323/34 IPC?”

DECISION THEREON AND THE REASONS FOR THE DECISION :

6) As this is first Appeal, the evidence can be taken into account. The informant, Probin Dutta testified as PW.1 that the Appellants are his uncles. The incident occurred on 03.11.2011 at about 1.30 pm, while he was in his kitchen garden planting saplings. At that time, the Appellants armed with ‘dao’ charged towards him and verbally abused him. He (PW.1) immediately went inside his house as he was terrified. A-1 then attacked his wife, who was outside, with the ‘dao’. He dealt two blows on the back of his wife’s head and A-2 attacked his wife with a fence post causing injuries on her head. When his (PW.1's) mother tried to prevent the fight then A-1 pushed aside his mother and his mother fell over a wooden plank and sustained injuries on her chest. He (PW.1) raised alarm shouting “Katile katile”, and then both A-1 and A-2 fled. As he was busy with his wife’s and mother’s treatment, there was a delay in lodgment of the F.I.R.

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7) F.I.R. is Ext.1, wherein Ext.1(1) is his (PW.1's) signature. I have perused the F.I.R. Ext.1. There was no explanation of delay. The incident occurred on 03.11.2011 and the F.I.R. was lodged on 05.11.2011. The evidence of PW.1 is supported and corroborated by the evidence of his wife, who testified as PW.2 that on 03.11.2011 at about 1.30 pm, while she was standing beside her husband, PW.1, the Appellants armed with 'dao' charged towards her husband with intent to attack him. She obstructed the Appellants and then, A-1 dealt blows on her head and on her buttocks and A-2 attacked her with a bamboo fence post on her head. She was knocked unconscious by the impact and she was given injection at home after she sustained injuries. When she regained consciousness, she went for treatment at Bihpuria Hospital. Her mother also sustained injuries when she tried to prevent the Appellants from attacking her.

8) On the cross-examination of PW-1, several contradictions could be elicited. These contradictions have been affirmed by the cross-examination of I/O Sri Jogen Saikia, who testified as PW-5 in his cross-examination that PW-1 did not state u/s 161 Cr.P.C. that A1 dealt two blows with his 'dao' on his wife and then A1 aggressively pushed his mother. The I/O (PW-5) has also affirmed in his cross-examination that PW-1 did not mention u/s 161 CrPC that the appellants trespassed into his premises and he (PW-1) watched them from his 'verandah'.

9) Contradictions could be culled out through the cross-examination of PW-2 and this has been affirmed by the cross-examination of the I/O (PW-5) who admitted that PW-2 mentioned u/s 161 CrPC that when PW-1 was spraying manure on the cabbages, then the appellants came and quarreled with PW-1 and when her mother-in-law tried to stop the fight, the appellants

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pushed aside her mother-in-law. The I/O admitted that apart from the aforementioned statement, PW-2 did not make any statement alleging that the appellants armed with 'dao' or bamboo post assaulted them. Moreover, the cross-examination of I/O depicts that he did not notice any damaged banana plantation or betel nut trees, and so he did not seize any damaged trees. He also did not notice any superficial injuries on Umeswari Dutta's person.

10) It has to be borne in mind that the PW-1 has admitted of a family feud between him and the appellants regarding land disputes. Moreover, the failure of the I/O to examine the other victim, i.e. Smt Umeswari Dutta indicates that the investigation was designedly defective. The I/O has also admitted that he did not record the evidence of all the neighbours around the place of occurrence.

11) In view of my foregoing discussions, it is held that this case is fraught with contradictions. The omission of PW-1 to mention that A1 dealt two blows with his 'dao' on his wife is a major contradiction and lends a benefit of doubt to A1. PW-2 also did not mention u/s 161 CrPC that she was assaulted. Thus the evidence of PW-1 and PW-2 does not inspire confidence. There may have been a scuffle due to family feud, but it will be perilous to convict the appellants on the basis of such evidence.

12) Smt Rosho Bora testified as PW-3 that the incident occurred about 5/6 years back. She was busy collecting paddy when her son Juntil Bora came and told her about the fight between both the parties. She did not know anything about the fight as she did not witness the incident. Similarly, the evidence of PW-4 also does not implicate that the appellants are complicit. Smt Monisha

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Bora testified as PW.-4 that the incident occurred about 4/5 years back. She heard a commotion arising as a result of a quarrel, but she did not go out to find out about the incident. In view of my foregoing discussions, it is thereby held that the prosecution failed to prove beyond a reasonable doubt that the appellants inflicted cut injuries or any other injury on the victim. The medico legal report proved by the PW-5 as Ext.5 depicts that Smt Lily Dutta (PW-2) sustained lacerated wound on the left side of her scalp. The doctor opined that the injury was caused by a blunt heavy object. No sharp cut wounds were detected which may have been caused by a 'dao'. The wound may have been caused by a bamboo post, but due to the contradictions elicited by the cross-examination of PW-2 and PW-3, the A2 gets the benefit of doubt in these respects. PW-5 has proved the medical examination report of Umeswari Dutta as Ext.4, but Umeswari Dutta was not examined as a witness. Ext.4 depicts that Smt Umeswari Dutta, i.e. PW.-1's mother sustained simple injury caused by blunt object and the doctor detected mild tenderness on the left side of the lower chest of Smt Umeswari Dutta. The prosecution failed to produce Umeswari Dutta as a witness.

13) In view of my foregoing discussions, it is held that the prosecution failed to prove beyond a reasonable doubt that the appellants committed criminal trespass and acted in concert and in furtherance of their common intention they voluntarily caused hurt upon PW-1 or PW-2. The Judgment and Order of the trial Court is thereby set aside. The appellants are acquitted from the charges u/s 447/323/34 IPC, on benefit of doubt, and thus set at liberty forthwith.

14) Appeal is allowed.

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15) Send back the lower case record with a copy of this Judgment and Order.

Judgment is signed, sealed and delivered in the open Court on the 15th day of March, 2021.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.