

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE : JORHAT.

PRESENT : Md. Manwar Ali, M.A.,LL.B., A.J.S.,
Chief Judicial Magistrate, Jorhat.

Ref. : G.R.Case No. 1233 f2008.

State -vs-

Jamini Borboruah Accused.

Under sections 341/323 of I.P.C.

Offences explained on	.....	07.07.09.
Evidence recorded on	.....	10.08.09; 23.10.09; 19.11.09; 10.06.11.
Statement recorded on	.....	23.06.11.
Argument heard on	.....	29.11.11.
Judgment delivered on	.....	03.12.11.

JUDGMENT

1. The prosecution initiated this case on receipt of an ejahar at Jorhat police station filed by one Mrs. Runjun Sabha Pandit Kalita, wife of Sri Hridaya Nanda Kalita of Tarajan under Jorhat police station, district Jorhat, alleging that on 27.10.08 at about 7-30 a.m., the accused person Jamini Borboruah assaulted her husband Hridaya Nanda Kalaita with bamboo lathi and caused injuries on his head and other parts of the body. The accused also threatened them with dire consequences. While trying to protect, the complainant and her elder sister also sustained injuries.

2. The officer-in-charge of Jorhat police station, on receipt of the said ejahar, registered a case vide Jorhat police station case No. 563/08 U/s 325/506 of I.P.C. and endorsed Sri Tirtha Nath Bora, S.I. of police, and Sri Narayan Bora, S.I. of police, to take up the investigation of the case. After completion of investigation the I.O. submitted charge sheet against accused Jamini Borboruah u/s 341/323 of I.P.C.

3. On appearance of the accused person before the Court, necessary

Contd.....P/2.

copies were furnished to him u/s 207 of Cr.P.C. by my predecessor. The particulars of offences u/s 341/323 of I.P.C. were read over and explained by my predecessor to the accused to which he pleaded not guilty and claimed to be tried.

4. The prosecution, in support of its case, examined as many as six witnesses who were cross-examined by the defence in extenso. But the defence did not adduce any evidence. Statement of the accused person was recorded u/s 313 Cr.P.C. The plea of the defence was nothing but an utter denial. I have also heard the arguments of both sides.

POINTS FOR DETERMINATION :

- (i) Whether the accused person wrongfully restrained Hridaya Nanda Kalita as alleged on the relevant date and time and thereby committed offence u/s 341 of I.P.C.?
- (ii) Whether the accused person voluntarily caused injury to Hridaya Nanda Kalita as alleged on the date and time and thereby committed offence u/s 323 of I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF :

5. P.W.1 Smti. Runjun Kalita is the informant. She has deposed in her evidence that on 27.09.08 at about 7-30 a.m. at morning time, while she along with her husband was in their home, the accused suddenly assaulted her husband with a bamboo lathi from back on his left forehead and then on his back. As a result, her husband sustained injuries. On being protested the accused person also assaulted P.W.1 and her elder sister Meena Goswami. As a result, P.W.1 sustained injury on the middle finger of her left hand and Meena Goswami sustained injury on her back. P.W.1 has also confirmed the ejahar marked as Ext.1 with her signature marked as Ext.1(1). P.W.1 has further stated in her cross-examination that the accused is her neighbour. The dwelling houses of Monoj Misra, Dibyajyoti Boruah and Dibakar Sarma Tamuli are situated near the house of P.W.1. Many suggestions were put by the defence during cross-examination of P.W.1 which were denied by her. But the defence

could not disprove the fact that the accused has assaulted one Hridaya Nanda Kalita and caused injury on his person. Therefore, I hold that P.W.1 being eye-witness has stated truthfully and I do not find any reason to discard her evidence.

6. P.W.2 Hridaya Nanda Kalita is the victim. He has stated that on 27.09.08 at about 7-30 a.m. at morning time, the accused attacked on him from back and assaulted him with a bamboo lathi. As a result, he sustained injuries on his left eye-brow, waist and left hand. While his wife attempted to protect him, she also sustained injury on her left hand. On being seen the incident, the elder sister of his wife also attempted to protect them and as a result, she also sustained injury on her waist. Thereafter, throwing the lathi towards them, the accused left the place of occurrence. Then the wife of P.W.2 reported the police over telephone. Then the police visited the place of occurrence and sent the injured persons to Jorhat Civil Hospital for medical treatment. Many suggestions were put by the defence during cross-examination of P.W.2 which were denied by him. But the defence could not disprove the fact that the accused has assaulted Hridaya Nanda Kalita, his wife and the elder sister of his wife. So, I hold that P.W.2 being the victim has stated truthfully and his evidence is corroborated by the evidence of P.W.1. Therefore, I do not find any reason to discard the evidence of P.W.2.

7. P.W.3 Leena Goswami has stated that the informant (Ejaharkari) is her sister and she knows the accused person. On 27.10.2008 at about 7-30, she was in the house of P.W.1. On being heard hullah she came out and saw that the accused person was assaulting P.W.1 and P.W.2 with a lathi from their back. On being protected, she(P.W.3) also sustained injury. Thereafter, the matter was reported by her sister to the police. In her cross-examination P.W.3 has further stated that other persons were also present at the time of occurrence. Many suggestions were put by the defence during cross-examination of P.W.3 which were denied by her. It also appears that the evidence of P.W.3 is corroborated by the evidence of P.W.1 and P.W.2. So, I hold that this witness has also stated truthfully.

8. P.W.4 Dr. Gautam Hazarika has stated that on 27.10.08 he was posted at J.D.S.Civil Hospital, Jorhat, as Senior Medical & Health Officer and on that day, at about 10-00 a.m, he examined one Hridaya Nanda Kalita (P.W.2), Smti Runjun Kalita (P.W.1) and Smti. Leena Goswami (P.W.3) on police requisition in connection with Jorhat police station case No. 563/08 and found the following injuries on Hridaya Nanda Kalita (P.W.2) :-

Abrasion over left forehead of size 1cm x 1cm. Tenderness over left trochantenic region, gait normal, tenderness over the dorsum of left hand.

P.W. 4 has opined that the injuries were simple in nature and caused by blunt object.

P.W.4 found following injury on Smti. Runjun Kalita Sabha Pandit (P.W.1) :-

Tenderness over middle finger proximal phalunx.

According to P.W.4, the injury was fresh, simple in nature and caused by blunt object.

After examination of P.W.3 Smti. Leena Goswami he found :-

Tenderness over right inguinal region, gait normal.

P.W.4 opined that the injury was fresh in nature, simple and caused by blunt object.

P.W.4 has confirmed the injury report marked as Ext.2 with his signature marked as Ext.2(1).

9. P.W.5 Smti. Ira Sabhapandit has stated that she knows the accused as well as the Ejaharkari. P.W.1 Runjun Kalita Sabhapandit is her sister. At the time of the incident P.W.5 was also available in the house of her sister (P.W.1). On being heard hullah, she came out of the house and saw that the accused person was assaulting Hridaya Nanda Kalita (P.W.2) and her sister (P.W.1). Hridaya Nanda Kalita sustained bleeding injury on his head. P.W.2 and P.W.3, her sisters, also sustained injuries. P.W.5 has further stated that during investigation the police also seized one bamboo lathi and one black umbrella. P.W.5 has further confirmed the seizure list marked as Ext.3 with her signature marked as Ext.3(1). In her cross-examination P.W.5 has further stated that one day prior to the incident she visited the house of her sister. She has further stated that during investigation she stated before the police that

she saw the incident. The seized articles were given to the police by Hridaya Nanda Kalita.

10. P.W.6 Tirtha Nath Kalita, A.S.I. of police, has stated that on 27.10.08 he was posted at Jorhat police station as A.S.I. of police and on that day, one Smti. Runjun Kalita Sabhapandit lodged one ejarah and thereafter P.W.6 was endorsed to take up the investigation of the case. He visited the place of occurrence, recorded the statements of the witnesses and also sent the injured persons to hospital for their medical treatment. The accused also surrendered before the police and accordingly, he was arrested and enlarged on bail. P.W.6 has further stated that he on being transferred handed over the diary to the officer-in-charge and thereafter S.I. of police Sri Phani Madhab Saikia submitted charge sheet against the accused person u/s 341/323 of I.P.C. P.W.6 has also confirmed the charge sheet marked as Ext.4 with the signature of Phani Madhab Saikia marked as Ext.4(1) which he knows. P.W.6 has further stated that during investigation he also seized one bamboo stick/lathi and one broken umbrella of black colour. He has confirmed the seizure list marked as aExt.3 with his signature marked Ext.3(1). In his cross-examination P.W.6 has further stated that he prepared the seizure list at the place of occurrence. The seized articles were seized in presence of P.W.1 Runjun Kalita Sabhapandit and P.W.2 Hridaya Nanda Kalita.

11. Smti. D. Hazarika, learned Addl.P.P., while arguing for and on behalf of the State, has submitted that the prosecution has proved its case against the accused person beyond doubt and, therefore, Smti. D. Hazarika contended to accept the prosecution case and to convict the accused person.

12. Per contra, Smti. Bijulata Das, the learned defence counsel raised the following points before me :-

- (i) There is contradiction in the versions of the witnesses ;
- (ii) The prosecution witnesses are interested witnesses ; and
- (iii) No offence is made out u/s 341/323 of I.P.C.

13. “Proof beyond reasonable doubt is a guideline, not a fetish and guilty

man cannot get away with it because truth suffers some infirmity when projected through some human process.” (1978) 4-SCC-161.

14. There are some discrepancies, exaggerations in the statements of the P.Ws. for that reason, the evidence cannot be discarded. Much importance should not be given to minor discrepancies, they can be overlooked unless, discrepancies go to the root of the matter to impeach the basic version of the case. Further version here is supported by probabilities.

15. In the case of State of Himachal Pradesh -vs- Lakhraj (2000)1 SCC-247, the Hon'ble Apex Court has distinguished minor discrepancies from contradiction and held that minor discrepancies or variation in evidence does not make the case doubtful.

16. It is well settled law that the interestedness of witnesses is not fatal, if believed. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for proof or disproof of any fact.

17 I have carefully sifted the evidence on record. After careful appreciation of the materials in evidence on record, and keeping in view the position of law and in view of the foregoing discussions in the instant case, it is found that all the prosecution witnesses have implicated accused Jamini Borboruah with the offence and I hold that the prosecution has come out with flying colours in bringing home the guilt of accused Jamini Borboruah u/s 323 of I.P.C. and accordingly accused Jamini Borboruah is convicted u/s 323 of I.P.C. So far section 341 of I.P.C. is concerned, the ingredients of section 341 of I.P.C has not been proved against the accused person. Hence, the accused is acquitted from the offence u/s 341 of I.P.C.

18. Therefore, taking into consideration of above observations and the gravity and the nature of the offence, I am reluctant to release the convicted accused person on probation of good conduct or due admonition as per provisions of sections 3 or 4 of the Probation of Offenders Act or as per provisions of section 360 Cr.P.C.

19. Heard the accused Jamini Borboruah on the point of sentence u/s

248(2) of Cr.P.C. The accused has fervently prayed for leniency.

20. Considering the facts and circumstances of the case and nature of the offence, I sentence accused Jamini Borboruah u/s 323 of I.P.C. to undergo simple imprisonment for 3 (three) months.

21. Let a free copy of the judgment be furnished to convicted accused Jamini Borboruah forthwith.

22. Judgment is pronounced in the open Court under my hand and seal of this Court on this 3rd day of December, 2011, at Jorhat.

Chief Judicial Magistrate,

Jorhat.

Dictated & corrected by me :

Chief Judicial Magistrate,

Jorhat.

Transcribed & typed by :-

P.K.Bora, Stenographer.
