

District : Bongaigaon

IN THE COURT OF ASSTT. SESSIONS JUDGE ::::::::::: BONGAIGAON.

Present:- Smt M.C. Bordoloi, M.A, LL.B (AJS)
Asstt. Sessions Judge,
Bongaigaon.

Sessions Case No. 99 (M)/2016.

U/S 307/506IPC (Arising out of C.R case no.303/2015.)

State

Vs.

1. Md. Hasen Ali Accused

Committed by : Smt. B. Borthakur, Additional Chief Judicial Magistrate,
Bongaigaon.

Appearance:- Mr. Nazir Hussain,
Additional Public Prosecutor for the State.
Mr. Mohidul Islam.
Advocate for the accused.

Date of Charge : 5.10.2016.

Date of Commitment : 5.9.2016.

Date of evidence : 1.12.16,16.12.16,28.3.17.

Statement recorded on : 10.4.2017.

Date of argument : 10.4.2017.

Date of judgment : 24.4.2017.

J U D G M E N T

1. One Jahed Ali, lodged a a complaint in the Court of Learned Chief Judicial Magistrate, Bongaigaon, on 16.11.2015 alleging inter-alia that on the 9th day of September 2015 at about 5:30 P.M, when the complainant

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accompanied by one Azad Ali was returning home from Goraimari Market on his bicycle, the accused intercepted the complainant and his pillion rider on the NH 31 Nachanguri area and assaulted the complainant with an iron rod, causing injuries on the complainant's nose, head, chest, whereby the pillion rider fell on to the ground and the complainant became unconscious and had to undergo medical treatment. Hence the case.

2. Upon receipt of the complaint the learned Chief Judicial Magistrate, Bongaigaon transferred the same to the Court of learned Additional Chief Judicial Magistrate, Bongaigaon, who having recorded the statement of the complainant U/S 200 Cr.P.C proceeded further to make further inquiry U/S 202 Cr.P.C. Thereafter having found materials U/S 307 IPC, the learned Court having taken cognizance of the offence U/S 307 IPC, issued process against the accused to secure his attendance and accordingly with the appearance of the accused, copies of the case were furnished to the accused and the learned Court further having found that the offence complained is one exclusively triable by the Court of Sessions, vide order dated 5.9.2016 committed the case record to the Court of Hon'ble Sessions Judge, Bongaigaon vide order dated 5.9.2016.

3. Upon receipt of the case record, from learned committal Court, the Hon'ble Sessions Judge, Bongaigaon, transferred the case record to the instant Court for trial and disposal. The presence of the accused was secured in the instant Court and both sides were heard on the point of charge. The charge U/S 307/506 IPC was framed against the accused vide order dated 5.10.2016. The charge so framed, when read over and explained to the accused, he pleaded not guilty, claiming trial.

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4. Prosecution side in order to prove its case examined 4 numbers of witnesses. PW 1 was re-examined and recross-examined. The defence side cross-examined all the prosecution witnesses, but declined to adduced any evidence.

5. The statement of the accused person was recorded U/S 313 Cr.P.C., wherein the accused pleaded complete innocence and submitted that the instant case was only a ploy to pressurise him to abandon his father's share in the ancestral property, so as to enable the complainant party to take over possession of the same, as his father had expired.

6. The defence plea is that of total denial of guilt.

Arguments :

7. Heard both sides.

7.(i) Learned Additional Public Prosecutor Bongaigaon, submits that the accused is guilt of commission of the offence U/S 307 IPC and that prosecution has succeeded in proving the guilt of the accused to the hilt, for which the accused deserves to be convicted.

7.(ii). Learned defence counsel, refuting the above submissions, submits that there has been a delay of 66 days in lodging the complaint which has remain unexplained. Learned defence counsel further points out that the witnesses so examined by the prosecution are interested witnesses and the PW 2

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being a child witness has been adequately tutored and his testimony cannot be relied on to record conviction against the accused. Learned counsel further submits that the prosecution failed to examine any medical officer in respect of the injury of the victim and also failed to prove the discharge certificate, which was introduced subsequently in the instant case. Learned counsel submits that the discharge certificate exhibited, do not indicate the nature of the injury and it cannot be acted upon as the same has not been proved. Learned counsel submits that the prosecution case being laden with lacunae is liable to be dismissed and the accused be acquitted.

8. Heard both sides. Perused the case record.

9. The points for determination that has arisen for consideration in the instant case is given hereinunder :

The points for determination are :

1) Whether on the 9th day of September, 2015 at about 5.30 P.M the accused assaulted Jahed Ali with an iron rod on his forehead, head and chest with intention and under such circumstance that act of the accused would have caused the death of Jahed Ali, he would have been guilty of murder and thereby committed an offence punishable U/S 307 IPC?

2) Whether on the same date, time and place the accused criminally intimidated Jahed Ali and Azad Ali and thereby committed an offence punishable U/S 506 IPC?

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10. My decision on the above points for determination alongwith reason is given hereinunder :

Discussion, Decision and Reasons therefor

To address the points for determination so framed above, it will be worthwhile to peruse the evidence available on record and I proceed to do so.

11. PW 1 had testified that on 9.9.2015 at about 6 to 6:30 P.M. when he was returning home from Goraimari, in the proximity of a flower-nursery situated on the side of the National Highway between Nachanguri and Goraimari stretch, accused coming out from the nursery dealt a blow with an iron rod on his head, face and chest whereby he became unconscious and the pillion rider Azad Ali who was seated on his bicycle fell at a distance and that one Sahed Ali had saved his life by taking him to the Bijni Hospital.

PW 1 further stated that the hospital at Bijni, refused to cause his treatment whereupon he had to be shifted to Mazgaon Civil Hospital and subsequently he under went treatment under a private practitioner. PW 1 further stated that he had called a 'village bichar' and as the people failed to give any decision he had filed the complaint case belatedly as the concerned police station refused to act on his report.

PW 1 identified the complaint petition as Ext 1 and his signatures thereon as Ext 1(1) to 1(5). PW 1 also exhibited the medical discharge certificate as Ext 2.

In his cross-examination PW 1 disclosed that he could not

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read or write English and that he had only given his signature on Ext 1 which was prepared by his engaged counsel. PW 1 also disclosed that he treads the road from his house to Goraimari Market every day and that he has to cross the Gerukabari outpost to reach the Bazar from his house. PW 1 admitted that he had lodged the complaint after about 66 days from the date of the alleged occurrence and he admitted further that he had not reported about the alleged occurrence either at Gerukabari outpost or with the Bongaigaon Police Station.

PW 1 further disclosed that the alleged nursery has 10/5 employes and that none resides at the nursery at the night and that the alleged occurrence took place at night.

PW 1 also disclosed that it was dark when the alleged occurrence took place and that there was no street light at the place of occurrence. PW 1 further admitted that there was a Bazar near the place of occurrence which houses 20 / 30 shops and generally a gathering of 200/ 300 people takes place in the said market. PW 1 disclosed that accused was his nephew and that the father of the accused expired about 9 or 10 months prior to his deposing in Court and that he is possessing the land left by his father.

PW 1 admitted that Azad Ali was his brother's brother-in-law. PW 1 further disclosed that the residences of Khaleque Mandal, Ali Ahmed Master were situated near the place of occurrence, but he had not named them or any shop-keepers of 'Mandal Bazar' as his witness in the present case.

PW 1 in his recross-examination admitted that the age of the patient as shown in Ext 2 was 50 years and that he had stated his age to be 36 years in his statement recorded U/S 200 Cr.P.C.

12. PW 2- Azad Ali, a child aged about 13 years supported
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PW 1 in all material particulars. PW 2 categorically stated that the occurrence took place on 9.9.2015.

When put to cross-examination PW 2 however failed to state even the date of the day on which he was deposing. PW 2 disclosed that it was dark when the alleged occurrence took place and that there was no street light at the place of occurrence. PW 2 disclosed also that he had seen the accused coming in great speed hitting the man, in which carrier he was sitting on the relevant day, on his chest and face. PW 2 further disclosed that the complainant have gone to his house to fetch him and had tutored him to depose in Court and that he was deposing, as has been taught by the complainant.

13. PW 3 Moyna Khatun and PW 4 Sayed Ali also supported PW 1 in all material particulars.

PW 3 in her cross-examination, disclosed that when she was returning home with her cattle, she could hear some commotion and returning to the source of such commotion she could find the complainant in a injured condition. PW 3 confirmed that she had not found the accused at the place of occurrence and that it was dark when the alleged occurrence took place.

PW 4 in his cross-examination disclosed that it was not dark when the alleged occurrence took place and admitted that there was a Bazar near the place of occurrence where 40/50 shops are housed.

14. This in nut shell is the evidence available on record.

15. Perusal of the evidence discloses that the victim PW 1

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had incriminated the accused and stated that it was the accused who had hit him on his head, face and chest with an iron rod consequent to which he fell down unconscious. To prove the injury as alleged PW 1 has exhibited a discharge certificate being Ext 1.

16. Perusal of the discharge certificate exhibited by the PW 1 admission of which was objected to by the defence, discloses that it was one pertaining to one Jahed Ali aged 50 years who is a resident of Goraimari. Ext 1 further indicated a soft tissue injury of the said Jahed Ali over his nose and forehead. The prosecution has failed to prove the said discharge certificate by calling the official records.

17. Again the perusal of Ext 1 discloses that it was issued against a person who was aged 50 years but the PW 1 who deposed on oath in Court testified that his age was 45 years. Again in his statement during 200 Cr.P.C, PW 1 had disclosed that his age was 36 years. That the Jahed Ali deposing in Court and the Jahed Ali whose discharge certificate was produced by the PW 1 subsequently, was one and the same person could not be established. Further there is nothing to show that the injury sustained by the PW 1 was due to a blow of an iron rod on his forehead. The nature of injury also not being proved.

18. PW 1 had stated that it was Azad Ali who was pillion rider has witnessed the attack on his person. But PW 2 in his cross-examination had disclosed that he had stated everything as was taught to him by the PW 1.

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PW 2 also disclosed that he was brought by the PW 1 from his house and was tutored accordingly. The evidence of PW 2 could not come to the aid of the prosecution hence.

19. Again PW 3 had testified that she seen the accused attacking the PW 1 but in her cross-examination she contradicted her statement saying that she rushed to the place of occurrence only after hearing hue and cry and that when she reached the place of occurrence she did not find the accused there.

20. PW 4 in his evidence deposed that he had seen accused Jahed Ali hitting PW 1 with a rod on his chest, nose and forehead. But it is surprising that he failed to intercept that accused person and PW 3 also failed to state that her husband was present at the place of occurrence when she had reached the place of occurrence. The presence of PW 4 in the place of occurrence at the relevant time was also not stated being PW 1. Had PW 4 been present at the material point of time, the victim or the PW 4's wife would not have failed to make a mention of his presence as it would have given leverage to the case. PW 4 apparently was deposing in favour of PW 1 who is admittedly his uncle.

The alleged occurrence took place in the main road and the distance between the place of occurrence and the police station is not untreadable is forth coming from the materials or record. But the informant failed to report about the alleged occurrence immediately thereafter the alleged incident, and chose to lodge a complaint case in the Court after 66 days.

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Though the PW 1 had attributed the delay to 'village bichaar' which did not see the light of the day, but failed to lead any evidence to show that a 'village bichaar' was at least convened. In fact the delay in lodging the case or setting the criminal law into motion could not be explained and proved by the informant, thereby raising another eye of doubt in the prosecution case.

21. That the accused and the informant are relatives and are sharers in the ancestral property is an admitted fact. The dispute relating to the ancestral property is also a ground for incriminating the accused falsely. Infact, possibility of false implication cannot be ruled out in toto.

22. Further the absence of any evidence of any independent witness when the place of occurrence admittedly is near a Bazar, only raises a doubt in the prosecution version. In so far the charge U/S 506 IPC is concerned, no evidence is forthcoming against the accused in respect of the accused's act of criminally intimidating the informant party.

Accordingly in the above circumstances, I am but to hold that prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Accused deserves to be acquitted.

The point for determination stands answered in the negative.

23. O R D E R

. In the light of the foregoing discussions, accused Hasen Ali is acquitted of charge U/S 307/506 IPC and set at liberty forthwith.

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The bail bond of the accused persons shall remain in force for a period of 6(six) months from today.

Given under my hand and the seal of this Court on the 24th day of April, 2017.

(M. C. Bordoloi)
ASSTT. SESSIONS JUDGE,
BONGAIGAON.

Dictated and corrected by me

(M. C. Bordoloi)
Asstt. Sessions Judge,
Bongaigaon.

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APPENDIX

Prosecution witness :

PW 1 - Jahed Ali.
PW 2 - Azad Ali.
PW 3 - Moyna Khatun.
PW 4 - Sayed Ali.

Prosecution exhibits

Ext 1 - Complaint petition.
Ext 1(1) to Ext 1(5) – Signature of Jahed Ali.
Ext 2 – Discharge certificate.

Materials Ext –

Nil.

Defence witness-

Nil

Defence exhibit -

Nil

(M. C. Bordoloi)
Assistant Sessions Judge,
Bongaigaon.