

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::: BONGAIGAON.**GR CASE No. 238/2010.****U/S.323 IPC.****State of Assam****-Vs-****Sri Jamini Chaudhury**

*Present: Sri A.U.Ahmed, AJS
Chief Judicial Magistrate,
Bongaigaon.*

Name of the informant:

*Sri Nirapada Biswas,
S/o Sri Haripad Biswas,
Vill- Chowraguri,
PS & Dist. Bongaigaon.*

Advocates appeared:

For the Prosecution: **Mr. T. Bhowmick, Assistant PP.**

For the Defence: **Mr. S. Mazumdar.**

Argument heard on: **08.04.2013.**

Judgment pronounced and delivered on: **11.04.2013.**

J U D G M E N T

1. The prosecution case in brief is that on 21.04.2010 the informant lodged a written ejahar with the North Bongaigaon PP stating inter-alia that the owner of the shop under name & style of M/S. Devakanya situated at BOC Gate engaged him for repairing roof of its house and while he was working in repairing of the roof, the accused person who is the landlord of the house pelted a brick at him and the same hit on his right leg near the knee joint as a result, he sustained grievous injuries. On receipt of the written ejahar,

North Bongaigaon PP forwarded the same to Bongaigaon PS for registering a criminal case. On receipt of the ejahar, Bongaigaon PS registered a criminal case under section 325 CrPC. On completion of investigation police submitted a Non-FIR case under section 323 IPC. On receipt of non-FIR, this court took cognizance under section 323 IPC against the accused person. Hence the prosecution case has come up.

2. On completion of appearance of the accused person, copy was supplied to him. The particulars of the offence U/S. 323 IPC is duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. During the trial prosecution has examined as many as 4(four) prosecution witnesses. The accused person has been examined under section 313 CrPC. The defence has examined none. The plea of defence is of total denial.

4. **:POINT FOR DETERMINATION:**
(a) Whether accused person caused simple hurt to the informant with blunt object?

5. **:DECISION AND REASONS THEREOF:**

I have very carefully gone the arguments duly advanced by the Ld. Lawyers of both sides as well as evidence on record. Now, let me discuss the evidence on record.

6. PW1 is Nirapada Biswas who is the informant-cum-injured person of this case. He has stated in his testimony that while on the day of occurrence at 10 AM he was working on the roof of shop house of Sanjib, the accused person started rebuking him for climbing to the roof and pelted a brick at him which hit him at leg near knee joint as a result he sustained swelling. Sanjib took him to the hospital.
7. PW2 is Sri Sanjib Kumar Deuri who has stated in his testimony that on the day of occurrence he engaged the informant for repairing the roof of his shop house which belongs to the accused person. He has supporting evidence of PW1 stated in his testimony that while at the time of occurrence the informant was working on the roof, the accused person objected and pelted a piece of wood at him after scolding him which hit him at his leg as a result he sustained serious injury. There after he took him to hospital.
8. PW3 is Dr. Paresh Kr. Ray who examined the informant. Ext2 is the injury report. It shows that he found tenderness and pain on right knee which were simple caused by blunt object. It also shows that the injured person was advised to go for X-Ray but the same was not followed.
9. PW4 is Sri Nitai Chandra Das who was working in the shop of PW2. He has also supporting the evidence of PW1 that while the informant marked as PW1 working on roof of the shop house of PW2, the accused

person came and asked the informant to come down from the roof. While the informant was coming down from the roof, the accused person pelted stone brick at him as a result the informant sustained injury.

10. It is evident that the accused person is the landlord of the shop house and PW2 is the shop owner. PW1, PW1 and PW4 have categorically stated that the accused person pelted a brick at PW1 which hit him at his right leg near knee. Their evidence is supported by the medical evidence.

11. From the cross-examination of PW4 it appears that at the time of occurrence there were customers in the shop and that there are many shops near the PO. It is evident that in respect of the house a civil suit there is pending between PW2 and the accused person. It has been contended by the Ld. Lawyer appearing on behalf of the accused person that non-examination of the customers present in the PO and owners of shops situated near the PO is fatal to the prosecution. It is found that the defence has also refrained from examining the owners of the shops situated near the PO for making the prosecution belie and shaky. PW4 has stated in his cross-examination that at the time of occurrence PW2 was inside the shop house and as such it can be said that he did not see the accused person pelting a brick/a piece of wood at the informant. Apart from this, his evidence shows that the accused pelted a piece of wood at the informant. There is doubt that PW2 saw the accused person pelted a brick/a piece of wood at the

informant. I find no way to discard the evidence of PW1 and PW4 clubbed with evidence of PW3 who is the medical officer. Hence I find no force in the aforesaid submission.

12. It is evident that the informant was engaged by PW2 without knowledge and permission of the accused person. It is also evident that the informant stopped work of repairing on the roof while the accused asked him not to proceed further with repairing work. No person is allowed to take laws in his hands.

13. In the result I find that the accused person guilty U/S.323 IPC and accordingly he is convicted.

14. On the point of sentence the accused person is heard. Considering nature of the offence and age of the accused person the benefit laid down U/S.360 CrPC is not given to him. In my considered opinion he deserves to be punished.

15. The accused person has prayed for leniency in sentencing him. Considering all aspects, I am of the opinion that the accused person is required to be punished leniently and that sentencing him with fine will serve purpose. ***Hence, I do hereby order the accused person to pay a fine of Rs.1000/-(Rupees one thousand) i/d S.I for 2(two) months for the section 323 IPC. Let the fine money be paid to the informant/injured if realized. Let a copy of the Judgment be supplied to the accused person at free of cost. Accordingly, this case is disposed of on contest. Let the Judgment be up-loaded in official web-site.***

16. The Judgment is pronounced and delivered in the open court on this 11th April, 2013 under my hand and seal of this Court.

(A. U. Ahmed)
**Chief Judicial Magistrate,
Bongaigaon.**

Dictated and corrected by me.....

(Sri A. U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**

:- A P P E N D I X :-

The prosecution examined.

1. PW1- Sri Nirapada Biswas.
2. PW2- Sri Sanjib Kumar Deuri.
3. PW3- Dr. Paresh Kr. Ray.
4. PW4- Sri Nitai Ch. Das.

The prosecution exhibited.

1. Ext1= Ejahar.
2. Ext2= Medical Report.

The Defence examined & exhibited. - Nil.

Chief Judicial Magistrate
BONGAIGAON.
