

PRESENT:- S. HANDIQUE, A.J.S

GR. NO. 708/2015

U/S-341/323/506/34 IPC

State

Vs.

- 1. Sri Pinku Ray**
- 2. Sri Banku Ray @ Chotka**
- 3. Smt. Rina Ray**
- 4. Smt. Sudha Rani Ray**

For prosecution: Mr. R.C. Mahato

For defence: Mr. H. Das

Evidence recorded on 5-11-15, 11-12-15, 3-2-16 & 17-2-16

Accused examined u/s 313 Cr.P.C on 24-2-16

Arguments heard on 24-2-16

Judgment delivered on 2-3-16

J U D G E M E N T

- 1. Prosecution story:** Informant Sri Debranj Sarkar, son of Late Ganga Charan Sarkar, R/O Uday Nagar, Ward No. 25, Bongaigaon lodged an FIR in North Bongaigaon Police Post on 28-7-15. The informant stated inter-alia that on 28-7-15 at 2.30 to 3 'O' clock accused Pinku Ray, Rina Ray, Chotka Ray and Sudha Rani Ray attacked him and his wife Lakhi Sarkar when they resisted the accused from throwing garbage into the drain in front of their house. He alleged that the accused persons brought one wooden piece and gave a blow on his wife's head and when he protested he was also hit by that wooden piece on the face. As a result he received two stitches and his wife received

five stitches on the head. He also stated that the accused persons threatened them of dire consequences and they were saved by neighbours who rushed to the spot hearing hue and cry. The FIR was registered as Bongaigaon P.S. Case No. 616/15 U/S 341/325/354/506/34 IPC and A.S.I Dulal Sarkar investigated the case. After investigation, the charge-sheet was filed against the FIR name accused persons U/S 341/323/506/34 IPC.

2. Ld. C.J.M. Bongaigaon transferred the case to this Court. Cognizance was taken and the accused persons were summoned. On their appearance accused were released on bail. The necessary copies were furnished to them as per section 207 of the Cr. P.C. The particulars of offences U/S 341/323/506/34 IPC were explained to the accused to which they pleaded not guilty and claimed to be tried.
3. During trial the prosecution side examined as many as nine witnesses including the Medical Officer and Investigation Officer. The accused persons were examined U/S. 313 Cr.P.C. Accused denied the incriminating materials found against them and also declined to adduce evidence. Heard arguments from both the sides. The following points for determination have been framed in this case.

POINTS FOR DETERMINATION:

i. Whether the accused persons in furtherance of their common intention on 28-7-15 at 2.30/3 'O' clock wrongfully restrained the informant and his wife in front of their house and thereby committed an offence punishable U/S 341/34 IPC?

ii. Whether the accused persons in furtherance of their common intention on 28-7-15 at 2.30/3 'O' clock voluntarily caused hurt to the informant and his wife and thereby committed an offence punishable U/S 323/34 IPC?

iii. Whether the accused persons in furtherance of their common intention on 28-7-15 at 2.30/3 'O' clock criminally intimidated the complainant and his wife and thereby committed an offence punishable U/S 506 IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

4. The prosecution has alleged that the accused attacked the victim and assaulted them with wooden piece causing blood oozing injuries on their person. The Id.

A.P.P argued that the evidence of the informant, his wife and eye witnesses fully substantiates the prosecution case. Per contra, the Id. Defence counsel argued that it is a fact that the parties quarreled on that day but the accused have also lodged a police case against the informant and his wife. According to the Id. Defence counsel the informant and his wife first attacked the accused and assaulted them. It was argued that the evidence of the so-called eye witnesses is not creditworthy. Let me go through the evidence of the prosecution witnesses one by one.

5. **P.W.1 Debranj Sarkar** is the complainant in this case. He deposed that the alleged incident took place on 28-7-15 at 2.30 P.M. He was at home at that time and came out hearing hue and cry. On coming out he saw that accused Sudha Ray and Rina Ray were holding his wife's hair and accused Pinku and Chotka were assaulting his wife on the head with a wooden piece. When he resisted accused Pinku and Chotka assaulted him with a lathi. He started bleeding from the nose and received injury on his upper lip. As a result he got stitches on his lip and his wife received stitches on the head. P.W.1 stated that the neighbours came to the spot hearing hue and cry and the accused persons threatened them with dire consequences if the matter was reported to the police. Thereafter he and his wife went to the police station and then they were taken to the hospital. His wife was admitted in the hospital and he lodged the case on the day. Ext. 1 is the FIR lodged by him. Ext. 1 (1) is his signature.
6. In cross-examination P.W.1 stated that the municipal drain flows in front of his house. He admitted that it is not written in his FIR as to who caught his wife's hair and who gave the blow with the wooden piece. He denied the suggestion that he and his wife assaulted Pinku Ray and Rina Ray with wooden piece as they fought over cleaning of the drain. He admitted that Rina Ray has also filed a case against them. He stated that Tapash Sarkar, Aparna Dey, Sanjay Sarkar and Suniti Sarkar came there hearing hue and cry. He testified that no any piece of wood was seized by the police.
7. **P.W.2 Laksi Sarkar** is the wife of the complainant. She deposed that the alleged incident took place at 3.30 P.M. on the relevant date. According to her, when she went to close the gate she saw that two Muslim boys had left some waste materials near her gate. She asked those guys as to why they were throwing those waste materials there. Suddenly, Pinku Ray came there

and stated scolding her. Thereafter Pinku's wife came out and assaulted her. Pinku and Chotka then hit her on the head with a wooden piece. As a result she sustained injury on the head and started bleeding. As her husband came out, accused Pinku and Chotka assaulted him causing injuries on his nose and lips. Thereafter they went to the police station and from there they were taken to the hospital. She was hospitalised for 3 days. P.W.2 also alleged that the accused had threatened them.

8. In cross-examination she stated that the house of the accused is adjacent to her house and the municipal drain flows in front of her house. She could not say the name of the guys who had thrown garbage near her gate. She denied that she did not disclose to the police that the accused had scolded her. She denied that the accused were standing on road outside her gate. She denied that Rina Ray has also filed a case against her and her husband. She denied that she and her husband assaulted Pinku Ray when they were cleaning the drain.
9. **P.W.3 Sumi Sarkar** is a neighbor. She stated that she was standing in front of her gate when Lakhi Sarkar and the accused were quarreling. She stated that Sandhya Ray and Rina Ray were holding Lakhi Sarkar's hand and hair and Pinku hit Lakhi Sarkar on the head with a wooden piece. When Debranjana Sarkar came out he was also hit on the nose and face. She stated that Pinku Ray and Chotka Ray were holding wooden piece and wooden sticks and the sticks got broken. She stated that Lakhi Sarkar become senseless and when she tried to intervene one blow fell on her hand. According to P.W.3 the accused persons left the place with a threatening.
10. In cross-examination P.W.3 stated that her house is on the opposite of the accused. She denied that she did not state before the police that the accused were holding wooden sticks. She testified that two small boys were cleaning the drain. She however denied that Lakhi Sarkar was abusing the accused when Pinku Ray was cleaning the drain and Debranjana Sarkar assaulted the accused. She testified that she did not witness Debranjana Sarkar assaulting the accused.
11. **P.W.4 Sanjay Sarkar** stated that he was in his house at the relevant time and he came out hearing hue and cry. He saw that both the parties were quarreling. He intervened and then noticed that Debranjana and Lakhi were

bleeding from the wounds. He saw a wooden piece in the hand of Pinku. He then left the place of occurrence.

12. In cross-examination P.W.4 stated that he works in the municipality from 10 A.M. to 4 P.M and he had gone to the office on the day too. He however testified that he came to have his lunch at home when the alleged incident took place. He testified that he did not see who assaulted whom but he saw that Pinku Ray was holding a wooden piece. He denied that he did not stay before the police that Pinku was holding a wooden piece.
13. **P.W.5 Aparna Dey** is also a neighbor. She deposed that on the relevant date at 3/3.30 P.M., she came out of her house to throw garbage and saw that Pinku Ray was standing in front of his house with a stick on his hand. She stated that she did not see anything more. This witness was declared hostile by the prosecution. She denied the suggestion that she had stated before police that she witnessed the incident and saw that Lakhi Sarkar was bleeding from the head and Debranjjan Sarkar sustain blood oozing injury on his face. She stated that she did not witness the incident.
14. **P.W.6 Tapash Sarkar** deposed that he was on the way to his shop when he saw that Pinku Ray, Pinku's mother and wife were holding Lakhi and Pinku gave a blow on Lakhi's head with lathi. Lakhi fell down and started bleeding. When Debranjjan Sarkar came for her rescue, he was also assaulted on the head and nose by Pinku.
15. In cross-examination he stated that he saw the incident while coming out of his house. He stated that a municipal drain flows in front of the house of both the parties. He denied that the informant assaulted the accused with wooden piece. He does not know if the accused have also filed a case against the complainant.
16. **P.W.7 M/O K. A. Ahmed** is the M/O for examined Lakhi Sarkar on 28-7-15. He testified that the patient was treated as an indoor patient from 28-7-15 to 30-7-15. Following a history of assault on 28-7-15 is finding sure.
 - i. Scalp laceration over vertex, would size is 3 x 1/2 x 1/5 inch.
 - ii. Investigation – C.T Scan of brain is normal except soft tissue swelling in his opinion the injury was simple in nature fresh in on set and caused by blunt object.
17. He testified that the patient was escorted by a home gourd and there was a police requisition for the report. Ext. 2 is the injury report submitted by him.

Ext. 2 (1) is his signature. In cross-examination he deposed that the patient was admitted in the hospital as soon as she came. According to him, such type of injury may also be caused by falling upon hard substance.

18. **P.W.8 Dr. Diganta Choudhury is the M/O** who examined Debranjank Sarkar on 28-7-15 at 6.20 P.M. According to him the patient was escorted and identified by a home gourd and the patient gave the history of physical assault on 28-7-15 at 4.30 P.M. On clinical examination he found :-

i. Swelling and abrasion around $\frac{1}{2} \times \frac{1}{2}$ cm inner aspect of the middle part of the upper lip.

ii. Blood clots were noted in both the nostrils.

iii. Mild swelling was noted over the dorsum of the nose.

iv. Pulse – 80/ p.m. BP – 120/80, chest CVS per abdomen was normal. X-ray report of the nose and PNS did not detect any fractured.

19. In his opinion the injury was simple caused by hard blunt object. Ext. 3 is the injury report and Ext. 3 (1) is his signature. In cross-examination P.W.8 stated that this type of injury may also be caused by falling upon hard surface

20. **P.W.9 I/O Dulal Ch. Sarkar** is the Investigation Officer in this case. He testified that on 28-7-15 he was posted as A.S.I in Bongaigaon P.P. when the informant Debranjank Sarkar lodged the FIR on 28-7-15. After taking charge of the investigation the I/O visited the place of occurrence, prepared the sketch map (Ext.4) and examined the witnesses. On getting sufficient materials/evidences against the accused persons he filed the charge-sheet (Ext. 5). In cross-examination he testified that the FIR was lodged on the same day at 9.45 P.M. He visited the place of occurrence next day. According to him, the place of occurrence is a thickly populated area. He however testified that he could not examine the boundary men namely Rajen Biswas, Akhil Mondal and Rabi Sarkar as they are not present at home. He testified that P.W.5 Aparna Dey told him that she saw the quarrel but did not witness the alleged assault. He also stated the P.W. Sanjay Sarkar has told him the parties fought over dumping of garbage into the drain.

21. After carefully perusing the testimony of witnesses one by one and comparing their statements with each other, I find that the evidence of the informant, his

wife (both victims) are corroborated by independent witnesses. The defence could not belie the testimony of the informant, victim or the independent witnesses except giving few suggestions which were categorically denied by the witnesses. The defence could not elicit any vital contradiction in their evidence. PW1 clearly stated that when he came out hearing hue and cry he saw accused Sudha Ray, Rina Ray were holding Lakhi Sarkar (PW2) by hair and Pinku and Chotka gave a blow on Lakhi's head with a piece of wood. When he protested accused Pinku and Chotka assaulted him with lathi. Though while recording evidence Pinku is written as Rinku that may be regarded as a typing error as the defence did not raise any objections and the identity of the accused is not disputed. In cross examination his testimony remained intact as far as the alleged assault is concerned. Though he admitted that his FIR is not specific as to who had caught hold of his wife and who had given the blow, I do not consider it as vital omission because the FIR need not contain all the details of an alleged incident. An FIR can be used only for the purpose of corroboration or contradiction and not beyond that. It cannot be taken as a substantive piece of evidence. In this connection the hon'ble Apex Court in ***Ravi Kumar Vs. State of Punjab, (2005) 9SCC315 (MANU/SC/0178/2005)*** held as below:

"The First Information Report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer-in-charge of the Police Station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer-in-charge of the Police Station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer-in-charge of the Police Station is obliged to proceed in person or depute one of his

subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') or to contradict him under Section 145 of that Act. It can neither be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed."

22. PW2 Lakhi Sarkar corroborated her husband by saying that Pinku's mother and wife (Sudha and Rina) caught her and then Pinku and Chotka gave a blow on her head with a piece of wood. She stated that when her husband came out he was also assaulted by Pinku and Chotka. The testimony of this witness remained unrebutted during cross examination.
23. As regards the presence of the eye witnesses, PW1 cited Sanjay Sarkar, Aparna Dey, Sumit Sarkar as eye witnesses. PW3 Sumi Sarkar has testified that the four accused were quarrelling with Lakhi Sarkar. She corroborated PW1 and PW2 by saying that Pinku and Chotka hit Lakhi on the head while the other two accused kept holding the victim by her hands and hair. The house of PW3 is just in front of the accused and she is a natural witness. The defence could not deny her presence at the place of occurrence at the time of occurrence. **PW4 Sanjay Sarkar** has testified that he intervened when the parties were quarrelling. He did not see who assaulted whom but he saw that Pinku was holding a piece of wood in his hands. He further testified that

Debranjana and Lakhi were bleeding. **PW5 Aparna Dey** is declared hostile by the prosecution as she resiled from her earlier statement. But even then she has made a positive statement that accused Pinku was holding a lathi. **PW6 Tapash Sarkar** testified that he saw the quarrel while proceeding to his shop after lunch. He saw that Pinku's mother and wife were holding Lakhi Sarkar and Pinku giving a blow on her head. Lakhi fell down and started bleeding. When Debranjana came to lift her up he was assaulted by Pinku. According to him, Debranjana was bleeding from his head and nose. The medical reports of the victims prove the fact of injury on PW1 and PW2. As per Ext.2, PW2 was hospitalized from 28-7-15 to 30-7-15 as she sustained lacerated injury on her scalp. The medical report (Ext. 3) of PW1 shows presence of swelling and abrasion on his inner aspect of upper lip and swelling in the dorsum of the nose. Both the victims were medically examined within few hours from the alleged assault. The FIR was lodged the same day. Though the medical officers opined that the type of injury on PW1 and PW2 may also be caused by falling on hard surface, but in the present case the injuries do not seem to be self suffered/ self inflicted.

24. The defence plea is that Lakhi Sarkar scolded Pinku Ray as he was cleaning the drain and then both Debranjana Sarkar and Lakhi Sarkar assaulted accused Rina Ray for which case has been lodged against the informant and his wife. As such the accused have not denied the fact of the quarrel. But no any papers were produced before the court regarding the cross case. In fact accused Pinku Ray admitted in his examination u/s 313 Cr. P.C. that he was holding the piece of wood, though he gives a different explanation for that.
25. The evidence on record thus proves that the accused persons got involved in a fighting with the informant and his wife and assaulted them. As the evidence reveals PW1 came out of her gate and two of the accused kept holding her whereas the other two assaulted her. When her husband came out he was also assaulted. The sequence of events clearly shows that the accused shared the common intention when they caught hold of Lakhi Sarkar and assaulted her. Thus offence u/s 341/323/34 IPC is proved beyond reasonable doubt.
26. As regards the offence u/s 506 IPC, I find that only PW1 stated that the accused threatened them with dire consequences. PW2 or others have not corroborated him. Therefore I hold that the offence of criminal intimidation is not fully established against the accused.

27. After going through all the above, I hold the accused guilty u/s 341/323/34 IPC. I have heard both the sides on the quantum of sentence. The Id. A. P. P submitted that since the offence has been proved against the accused, the appropriate sentence should be passed considering the facts and circumstances of the case. The Id. Defence counsel argued that the accused are from the same family and have no criminal antecedents, so they may be shown a bit of leniency and be let off by imposing a fine of reasonable amount. I have pondered over the rival submissions.
28. I have also considered whether the accused can be released on Probation of good conduct. There is no record of previous conviction against them. In the present case the accused attacked the victims on a trivial matter and the whole family joined in the assault, therefore, I refrain from giving them any benefit under the Probation of Offenders Act, 1958 as it would give a wrong signal to the society. Accused Sudha Rani Ray is 65 years of age. Considering all the above, I hold that a sentence of fine would suffice in the present facts and circumstance of the case and thus pass the following order against the accused.

ORDER

29. Judgment is delivered in the open court. Accused Pinku Ray, Sudha Rani ray, Banku @ Chotka Ray and Rina Ray are held guilty and convicted u/s 341/323 IPC. Accused are sentenced to pay fine of Rs 500/-each u/s 341 IPC and Rs 1000/- each u/s 323 IPC, i/d to pay a fine S.I. for 15 days on each count. Accused are however acquitted of the charge u/s 506 IPC. The fine amount so realized shall be paid to the victims as compensation u/s 357 IPC.
30. Given under the hand and seal of the court on 2-3-16.

Typed and delivered by

S. Handique

SDJM (S), Bongaigoan

APPENDIX

PW1..DE RANJAN SARKAR

PW2..LAKHI SARKAR

PW3..SUMI SARKAR

PW4..SANJAY SARKAR

PW5..APARNA DEY

PW6..TAPASH SARKAR

PW7..DR. K.A. AHMED

PW8..DR. DIGANTA CHOUDHURY

PW9..ASI DULAL SARKAE

EXHIBITS:

EXT.1..FIR

EXT.2..INJURY REPORT

EXT.3..INJURY REPORT

EXT. 4..SKETCH MAP

EXT.5..CHARGE SHEET

DEFENCE EVIDENCE..NONE