

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 100/2014

STATE OF ASSAM VERSUS ARUN DAS AND OTHERS

U/S 147/148/149/447/341/325 IPC

**FOR THE PROSECUTION: MR. R.C.MAHATO, LEARNED
ASST. P.P**

FOR THE DEFENCE: MR. A.K. DEKA, LEARNED ADVOCATE

EVIDENCE RECORDED ON: 6/8/2014, 10/9/2014, 23/9/2014

ARGUMENTS HEARD ON: 17/11/2014

JUDGMENT DELIVERED ON: 29/11/2014

JUDGMENT

1. Sri Mithu Das, S/o Late Munindra Das lodged an ejahar at North Bongaigaon P.P. on 13th February, 2014 alleging that on the previous date at about 10 p.m. Barun Das, Arjun Das, Arun Das, Tarun Das, all sons of Sri Anil Das, Gobinda Das, S/o Badal Das,

Badal Das, S/o Late Amulya Das and Shyamal Bhowmick, S/o Sukumar Bhowmick and five other men whose names he did not know, came armed with dao, axe and iron rod and started assaulting his older brother Ratan Das in the courtyard alleging that he had beaten some Rajeswar Nath. The accused persons caused severe injury on the leg of Ratan Das with the blunt side of an axe and took him to North Bongaigaon P.P. in injured condition. The FIR was entered into the General Diary vide North Bongaigaon P.P G.D Entry No. 352 dated 13/2/2014 and was forwarded to Bongaigaon P.S for registering a case where Bongaigaon P.S Case No. 69/2014 u/s 147/148/149/447/341/325 I.P.C was registered and investigation was carried on. During investigation a prima facie case was found to be well established under sections 147/148/149/447/341/325 IPC against the accused persons named Arun Das, Tarun Das, Barun Das, Badal Das and Shyamal Bhowmick and accordingly Police submitted Charge Sheet U/S 147/148/149/447/341/325 IPC against the accused persons above named.

2. Cognizance had been taken U/S 147/148/149/447/341/325 IPC against the accused persons.
3. Upon appearance copies of the relevant documents were supplied to the accused persons in compliance with section 207 Cr.P.C.
4. After considering the relevant documents produced by the police I found prima facie materials U/S 147/148/149/447/341/325 IPC against the accused persons. Accordingly particulars of the offences U/S 147/148/149/447/341/325 IPC were explained to the accused persons. They pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of six witnesses. After closure of prosecution evidence the accused persons were examined under section 313 Cr.P.C in which they denied all the allegations levelled against them but declined to adduce any evidence.

6. After considering the relevant documents and after hearing the defence and the prosecution I find that following are the points to be determined in this case:

- 1) Whether the accused persons on 13/2/2014 at 10 p.m. at Kharija Dolaigaon, being members of an unlawful assembly used force or violence in prosecution of the common object of such assembly and thereby committed an offence punishable under section 147/149 IPC?
- 2) Whether the accused persons on the same date, time and place, committed rioting, being armed with deadly weapon, or with anything which, used a weapon of offence, is likely to cause death and thereby committed an offence punishable under section 148/149 IPC?
- 3) Whether the accused persons on the same date, time and place, entered into or upon property in the possession of Mithu Das with intent to commit an offence or to intimidate, insult or annoy the informant and her family members and thereby committed an offence punishable under section 447/149 IPC?
- 4) Whether the accused persons on the same date, time and place, voluntarily obstructed the brother of the informant so as to prevent him from proceeding in any direction in which he has a right to proceed and thereby committed an offence punishable under section 341/149 IPC?
- 5) Whether the accused persons on or about the same date, time and place, voluntarily caused grievous hurt to the brother of the informant and thereby committed an offence punishable under section 325/149 IPC?

7. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:
8. PW1 Mithu Das is the informant. She stated that on the date of occurrence about five months ago at about 9.30 p.m. he was standing in front of his house. His brother Ratan Das was coming by the road and Arun Das, Barun Das, Tarun Das, Badal Das and Shyamal Bhowmick chased his brother from the road armed with iron rod, lathi and sharp weapon and assaulted him on the courtyard with rod. Then all of them dragged his brother to the road side Shiv Mandir and assaulted him with the blunt side of an axe on his right leg and after that they took him away in an auto rickshaw. He went to North Bongaigaon P.P. the next day where police told him that at about 1.30 a.m. at night the accused persons took his brother to the P.P. and that his brother is admitted in Civil Hospital. He then lodged ejahar which he identified as Exhibit 1 and his signature as Exhibit 1(1).
9. In his cross examination PW1 stated that he made a statement before police that at about 8.30 on the date of occurrence Ratan Das had assaulted Arun Das of their village. However, on the material points the PW1 remained steadfast and consistent. Defence could not shake his credibility.
10. PW2 Anita Das is the wife of the informant. She also stated in the same tune as her husband that on the date of occurrence at about 9.30 p.m. the accused persons chased Ratan Das from the road and assaulted him with rod and then they dragged him out to the road and assaulted him with the blunt side of axe. She also stated that the accused persons themselves informed police.
11. During her cross examination she stated that Ratan Das is her husband's elder brother and he often gets drunk and shouts in the neighbourhood. She admitted having stated before police that on

12/2/2014 at about 7 p.m. she came out of her house on hearing commotion and saw that Ratan was assaulting Arun Das.

12. PW3 Priya Ghosh and PW4 Raju Das stated in similar fashion that on the date of occurrence at about 10 p.m. they came out of their houses on hearing commotion and saw that Arun Das, Barun Das, Tarun Das, Badal Das and Shyamal Bhowmick were assaulting Ratan Das in the courtyard of Mithu Das.
13. Both of them stated that Ratan Das is a drunkard and he often quarrel with neighbours and that on the date of occurrence too at first Ratan had assaulted Arun Das. But defence could not shatter their evidence on the material points. Both the PW3 and PW4 stated that they had seen the accused persons in the light of electric bulb even though it was night.
14. PW5 Dr. Kochir Ali Ahmed stated that on 13/2/2014 at about 1 a.m. he examined Sri Ratan Das of Kharija Dolaigaon and found :
 - i. Laceration of right foot (4 inch×1 inch×1/2 inch) and right frontal scalp (3 inch×1/2 inch×1/4 inch)
 - ii. Comminute fracture of right first meta tarcel bone
 - iii. Chest pain
15. PW3 opined that the injury mentioned in serial number 1 and 3 are simple and that mentioned in number 2 is grievous in nature. That, all the injuries are fresh, caused by blunt weapon. He exhibited his reports as Exhibit 2 and his signature as Exhibit 2(1).
16. PW6 Debojit Sharma is the investigating officer who submitted the charge sheet after investigation and he identified the Charge sheet as Exhibit 3 and his signature as Exhibit 3(1).
17. During cross examination it was brought to light by the defence that the I/O did not seize any rod or axe from the place of occurrence. But the medical report clearly states that the injuries were caused by blunt object and one of the injuries is grievous in nature. Therefore, even if the I/O did not seize any weapon from

the place of occurrence, this fact, in no way weakens the prosecution case.

18. Now from what has been stated by the witnesses in their evidence, it has become clear that the victim Ratan Das, who, according to the witnesses is a habitual drunkard, created nuisance in the locality very often. On the night of the occurrence Ratan Das quarrelled and assaulted Arun Das and later on the accused persons armed with deadly weapon chased him from the road to the house of Mithu Das and assaulted him in the courtyard. This fact has been established by corroborated testimonies of PW1, PW2, PW3 and PW4. Even the medical report corroborates and supports the independent witnesses.
19. Defence pointed out during the cross examination of all the PWs that the victim Ratan Das was a drunkard and that day too, he assaulted Arun Das. This fact lends further support to the fact that the accused persons assaulted the victim Ratan Das and handed over him to police themselves. Even if it is presumed for the sake of argument that Ratan Das assaulted Arun Das at first and only after that the accused persons assaulted him, but as pointed out the by defence Ratan Das is a habitual drunkard and no one is allowed to take the law in his hand and assault someone just because he assaulted someone in a state of intoxication. The fact that Ratan Das assaulted Arun Das in an intoxicated state cannot be an excuse to form an unlawful assembly armed with deadly weapon and cause grievous hurt to him with deadly weapon.
20. I have carefully gone through the ejahar and the evidence of the prosecution witnesses. There is no discrepancy between the contents of the ejahar and the evidence of the PWs. All the PWs corroborated each other. Further, the evidence of the PW5 i.e. the Medical Officer lends support to the evidence of the PWs. I find no reason to not believe the PWs. After a thorough appreciation of the

evidence on record I find that the evidences of all the witnesses are cogent and trustworthy. Defence could not shake their credibility during cross examination on material points.

21. Now let us discuss the evidence in the light of the ingredients of the offences.

Point No.1:

22. Section 147 IPC prescribes punishment for rioting. The essential ingredients of the offence u/s 147 IPC are (i) that, the accused persons, being five or more in number, formed an unlawful assembly, (ii) that, they were animated by a common object, (iii) that, force or violence was used by the unlawful assembly or any member of it in prosecution of the common object.
23. In the present case prosecution has been able to show that a group of five men armed with deadly weapon chased a man and assaulted him causing grievous hurt to him. Hence in my considered opinion the accused persons are guilty of the offence of rioting.

POINT NO. 2:

24. Again section 148 IPC provides punishment for the offence of rioting armed with deadly weapon. In this case, the weapons of offence have not been seized by the I/O from the place of occurrence. But the place of occurrence was the courtyard of the informant and the accused persons cannot be expected to leave the weapons there for the I/O to collect them later on. However, the medical report suggests that the injury inflicted on the victim was grievous and caused by blunt weapon. The medical report supports the prosecution case and I am of the considered opinion that the accused persons are guilty of the offence U/S 148 IPC.

Point No. 3:

25. The offence under section 447IPC requires the following:

- (i) Entry into or upon property in the possession of another;
- (ii) If such entry is lawful then unlawfully remaining into such property;
- (iii) Such entry or unlawful remaining must be with intent-
 - (a) To commit an offence, or
 - (b) To intimidate, insult, or annoy any person in possession of the property

26. Here in this case PW1, PW2, PW3 and PW4 have stated in unison that the accused persons assaulted Ratan Das in the courtyard of Mithu Das. This establishes the fact that the accused persons have entered into the courtyard of Mithu Das with the intent of committing an offence and thus it is found that the accused persons are guilty of committing the offence u/s 447 IPC.

POINT No. 4:

27. The essential ingredients of wrongful restrain are :
- (i) That the accused person obstructed the a person;
 - (ii) That such obstruction prevented the person from proceeding in a direction in which he had the right to proceed;
 - (iii) That the accused caused such obstruction voluntarily.
28. From the evidence adduced by PW1 and PW3 it has become clear that Ratan Das was coming by the road and the accused persons namely Arun Das, Barun Das, Tarun Das, Badal Das and Shyamal Bhowmick chased him from the road to the courtyard of Mithu Das where they assaulted him. There was voluntary obstruction of Ratan Das and the accused persons prevented Ratan Das from proceeding in a direction in which he had a right to proceed. Hence the offence u/s 341 stands proved.

POINT No.5:

29. The medical report suggests that the victim Ratan Das had suffered from fracture of right first metatarsal bone. According to section 320 IPC fracture or dislocation of a bone falls within the purview of grievous hurt. It is also seen from the above discussions that the accused was coming by the road when the accused persons chased him. At that moment there was no provocation by the victim and the hurt caused to him was voluntary. Hence in my considered opinion the accused persons have committed the offence under section 325 IPC.
30. The accused persons were examined under section 313 Cr.P.C and were given opportunity to explain the piece of incriminating material against them. They flatly denied all the allegations levelled against them but did not adduce any evidence to prove their innocence.
31. The purpose of recording statement under Section 313 of the Code, I must point out, is to afford opportunity to the accused to explain the incriminating materials appearing against him in the evidence. In this context **Sub Section 4 to Section 313** manifest the legislative intent and reads: “The answers given by the accused **may be taken into consideration** in such inquiry or trial, and **put in evidence for or against him** in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.” Bearing in mind what Sub Section 4 to Section 313 Cr.P.C states, I have carefully looked into the statement of the accused person and I find that the accused persons have not at all tried to explain the incriminating materials against them.
32. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. In *Inder Singh Vs State 1978 STPL (LE) 9271 SC* the

Supreme Court held proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or feeble doubt flits past feeble mind. **Standard of proof beyond reasonable doubt is a guideline not a fetish** and guilty man cannot get away with it because truth suffers from infirmity when projected through human process. In the result and for reasons discussed in the preceding paragraphs, I become convinced that accused persons have committed the offence punishable u/S 147/148/149/447/341/325 IPC and thus they stand convicted.

33. I have considered the provisions of Probation of Offenders' Act, 1958. Considering the nature of the offence I do not find any ground to extend the provision of this beneficial legislation to the accused persons.

SENTENCE HEARING:

34. Heard the accused persons on the point of sentence. They pleaded for leniency.
35. The object of law is to deter the criminal. Our society cannot be safe if such a crime of attacking an individual by a group of armed men is allowed to go unpunished. The object of law would be achieved only by imposing appropriate sentence. Considering all aspects accused Arun Das, Barun Das, Tarun Das, Badal Das and Shyamal are convicted of the offences under sections 147/148/149/447/341/325 IPC and sentenced to R.I for one year each with fine of Rs. 1000/- each, i/d R.I for one month U/S 147 IPC, to R.I for 2 years each with fine of Rs. 1000/- each, i/d R.I for one month U/S 148 IPC, to S.I for seven days each U/S 447 IPC, to S.I for one month each u/s 341 IPC and to R.I for 2 years each with fine of Rs. 2000/- each, i/d R.I for one month U/S 325 IPC. All these sentences shall run concurrently and the period of imprisonment already undergone by the accused persons during the trial or investigation shall be set off. Furnish free copies of the judgment to the accused persons immediately.

Order

The accused persons namely Arun Das, Barun Das, Tarun Das, Badal Das and Shyamal Bhowmick are convicted of the offences under sections 147/148/149/447/341/325 IPC and sentenced to R.I for one year each with fine of Rs. 1000/- each, i/d R.I for one month U/S 147 IPC, to R.I for 2 years each with fine of Rs. 1000/- each, i/d R.I for one month U/S 148 IPC, to S.I for seven days each U/S 447 IPC, to S.I for one month each u/s 341 IPC and to R.I for 2 years each with fine of Rs. 2000/- each, i/d R.I for one month

U/S 325 IPC. All these sentences shall run concurrently and the period of imprisonment already undergone by the accused persons during the trial or investigation shall be set off. Furnish free copies of the judgment to the accused immediately. Given under the hand and seal of this court on this the 29th day November, 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

APPENDIX:

Following are the lists of exhibits which were exhibited during the trial:

- 1) Exhibit 1: F.I.R
- 2) Exhibit 1(1): Signature of the informant, i.e. PW1
- 3) Exhibit 2: Medical Report
- 4) Exhibit 2(1): Signature of PW3, i.e. the M.O
- 5) Exhibit 3: Charge Sheet
- 6) Exhibit 3(1): Signature of S.I. D. Sharma

LIST OF WITNESSES:

1. PW1: Sri Mithu Das
2. PW2: Smt. Anita Das
3. PW3: Smt. Priya Ghosh
4. PW4: Sri Raju Das
5. PW5: Dr. Kochir Ali Ahmed
6. PW6: Sri Debojit Sharma, I/O

