

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

**PRESENT: SYEDA FARIDA AFZAL ZINNAT**

**G.R CASE NO: 223/2012**

**STATE OF ASSAM VERSUS PARAN ARJYA AND OTHERS**

**U/S 447/323/427/34 IPC**

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

**FOR THE DEFENCE: MR. M. KALITA, LEARNED ADVOCATE**

**EVIDENCE RECORDED ON: 4/9/2013, 3/10/2013, 5/11/2013,  
18/12/2013, 30/1/2014, 24/7/2014**

**ARGUMENTS HEARD ON: 27.10.2014, 10/11/2014**

**JUDGMENT DELIVERED ON: 21.11.2014**

**JUDGMENT**

1. On 20<sup>th</sup> April 2012, informant Smt. Uma Sutradhar lodged an FIR with North Bongaigaon P.P. alleging that she and accused Paran Arjya and Deepak Ghosh shares a common boundary and very

often they quarrel with her regarding boundary dispute. That, on the same day at about 4 p.m. Paran Arjya, Deepak Arjya, Kalidas Dey and Kapil Dey quarrelled with her regarding boundary dispute and destroyed the bamboo fencing and accused Paran Arjya, Kalidas Dey and Kapil Dey assaulted her and her 72 years old mother and 12 years old son with lathi. They also broke her bangles. The FIR was entered into the General Diary vide North Bongaigaon P.P G.D Entry No. 487 dated 22/4/2012 and was forwarded to Bongaigaon P.S for registering a case where Bongaigaon P.S Case No. 146/12 u/s 447/325/427/34 I.P.C was registered and investigation was carried on. During investigation a prima facie case was found to be well established under sections 447/323/427/34 IPC against the accused persons above named and accordingly Police submitted Charge Sheet U/S 447/323/427/34 IPC against the accused persons above named.

2. Cognizance had been taken U/S 447/32/427/34 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 447/323/427/34 IPC against the accused persons. Accordingly particulars of the offences U/S 447/323/427/34 IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of seven 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 20.4.2012 at about 4 p.m. at Palpara, Netaji Nagar, in furtherance of their common intention entered into or upon property in the possession of Uma Sutradhar 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 IPC?

2) Whether the accused persons on or about the same date, time and place, in furtherance of their common intention, voluntarily caused injury to the informant and her mother and son and thereby committed an offence punishable under section 323 IPC?

3) Whether the accused persons on or about the same date, time and place, in furtherance of their common intention, committed mischief and thereby caused loss or damage to the amount of fifty rupees or upwards and thereby committed an offence punishable under section 427 IPC?

7. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

8. PW1 Uma Sutradhar is the informant. She stated that on the date of occurrence at about 2/2.30 p.m. she was at her home with her mother Tulsi Das and son Rupam Sutradhar. Her husband was not there. Labours were putting up bamboo fencing on the boundary of her house at that time. At that time, Dipak Ghosh, Paran Arjya,

Kali Das and Kapil Dey came and broke the newly erected bamboo fencing and assaulted her and her mother and son. Kali Das and Kapil Dey assaulted her with bamboo lathi on her right hand and right leg. Kapil De broke her bangles. Paran Arjya threw a bamboo towards her son Rupam which hit him on his right leg. She also stated that the accused persons hurt her mother on her right hand. When they raised alarm neighbours came and the accused persons left. She then lodged ejahar which she identified as Exhibit 1 and her signature as Exhibit 1(1) and took treatment at Lower Assam Hospital.

9. In her cross examination PW1 stated that the land where she is staying is not purchased by her. To the east of her house there is a road adjacent to her boundary and the five families who stay near her house use this road. She stated that Paran Arjya and Dulal's houses are in front of her house. She also stated that there are no fixed posts in the boundary of her land.
10. I am convinced that on the material points the PW1 remained steadfast and consistent. However, defence has been able to point out that in the statement recorded under section 161 Cr.P.C PW1 omitted that the accused persons hurt her right leg and right hand and broke her bangles and also that the accused persons hurt her mother and accused Paran Arjya hurt her son Rupam with a piece of bamboo. Learned defence counsel has pointed to these omissions and argued that the statement of the PW1 ought not to be believed. On the other hand, Mr. Mahato, learned Asst. P.P, argued that the PW1 could not be shaken on the material points and so her testimony should not be rejected merely on the ground that the I/O did not record some aspect of the case in the statement U/S 161 Cr.P.C. In Alamgir versus State reported in (2003)1 SCC 21, the Supreme Court observed that **the omission to mention a relevant fact in a statement U/S 161 Cr.P.C but stated before**

**the Court by the prosecution witness would not be a ground for rejecting his witness on that aspect only, if his evidence is otherwise acceptable and that such lapses on the part of the police official would not take away the nature and character of the evidence.**

11. Defence also raised the point that the F.I.R was received on 22/4/2012 and the date appearing in the F.I.R is 20/4/2012. Regarding this I would like to point out that from the evidence on record and from the date written on the F.I.R it becomes clear that the occurrence took place on 20/4/2012 and the informant took treatment at Lower Assam Hospital on the same day. I/O also stated that the victims took treatment on 20/4/2012 themselves. Therefore there remains no doubt that the occurrence took place on 20/4/2012. Police may have shown the date of receiving the F.I.R as 22/4/2012 but it does not in any way affect the prosecution case because from the materials available on record it is proved that the occurrence took place on 20/4/2012.
12. PW2 Tulsi Das, the mother of the PW1 supported the PW1 in as much as she stated that on the date of occurrence at about ¾ p.m. the accused persons trespassed into their campus by breaking the bamboo fencing which was being erected and assaulted them. According to PW2 before this incident also the accused persons assaulted them but police did not act. She stated to have received injuries on her hand and fingers.
13. During cross examination PW2 stated that at the time of the occurrence the labours who were working on the bamboo fencing ran away in fear and there were no one except the accused persons. She also stated that her daughter works at Lower Assam Hospital and stays there till afternoon.
14. PW3 Dr. Dharmeswar Hazarika stated that on 20/4/2012 at about 5 p.m. he examined Smt. Uma Sutradhar (32 years/F) accompanied

by her mother Tulsi Das and found one lacerated injury over right forearm. PW3 opined that the injury is fresh, caused by blunt weapon and simple. He also examined Smt. Tulsi Das (72 years/F) on the same day and found abrasion over right forearm. PW3 opined that this injury is also fresh, caused by blunt weapon and simple He exhibited his reports as Exhibit 2 and 3; his signatures as Exhibit 2(1) and 3(1).

15. During cross examination PW3 stated that the reports were prepared on 19/10/2012 from the Medico Legal Register upon receiving police requisition.
16. Lending further corroboration to the testimonies of PW1 and PW2, PW4 Smt. Bishnupriya Das, an octogenarian lady, testified that about one and a half years ago at about 4 p.m. she was sitting at Uma Sutradhar's house and the accused persons broke the fencing and assaulted Uma and her mother. She also added that the son of Kalidas broke Uma's bangles. According to her police came after two days and recorded her statement.
17. Defence pointed out during the cross examination of PW2 and PW3 that Uma Sutradhar, i.e. the informant, works at Lower Assam Hospital and she comes home in the evening. Emphasising on this point learned defence counsel argued that the informant was not present at her home at the time of occurrence and so the allegations against the accused persons are false. The fact that the informant works at Lower Assam Hospital does not mean that her work hours are fixed and she cannot go home in between. Therefore, I refuse to rely on the submission that the informant was not at her home at the time of occurrence.
18. Although PW5 Gauri Das could not state the time of occurrence accurately but the rest of her testimony totally corroborates the testimonies of PW1 and PW2. According to her she was at her

home when she heard commotion and came outside and saw the accused persons assaulting Uma.

19. During cross examination PW5 stated that the occurrence took place because of the road in front of Uma's house which is also used by the accused persons. The road became narrow because of the fencing put up by Uma and so the accused persons broke it. She also stated that the accused persons have filed a civil suit against Uma.
20. PW6 Santana Dutta did not support the prosecution case but during cross examination she stated that the quarrel took place because of the road. She even stated that the road where Uma put up the fencing is 30/40 years old. It appears to me that the PW6 is a tutored witness. When she denied knowing anything about the occurrence she is not competent to depose about the reason of the quarrel.
21. 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. Except the PW6 the other PWs corroborated each other. Further, the evidence of the PW3 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 evidence of PW1, PW2, PW3, PW4 and PW5 are cogent and trustworthy. Defence could not shake their credibility during cross examination on material points.
22. The accused persons were examined under section 313 Cr.P.C and were given opportunity to explain the piece of incriminating material against them. Three out of four accused persons namely Kali Das, Paran Arjya and Dipak Ghosh stated that the occurrence took place because of the bamboo fencing put up by Uma Sutradhar.

23. 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.PC states, I have carefully looked into the statement of the accused person and I find that the explanation afforded by the accused persons actually lend support to the prosecution case. The accused persons have indirectly admitted that there was indeed an incident and it took place because of erecting bamboo fencing on the boundary of Uma covering the road.

24. In **Sukhdeo Singh Vs State** reported in **AIR 1992 SC 2100** wherein the Hon’ble Court *held that “ an answer given by an accused under S. 313 examination can be used for proving his guilt as much as the evidence given by a prosecution witness.”* . Summing up the discussion, the Hon’ble Court concluded that there is no legal impediment in convicting a person on the basis of the statement recorded and went on to observe is Sukhdeo Singh (supra) at para 52 as under:

*“Even on the first principle we see no reason why the Court could not act on the admission or confession made by the accused in the course of the trial or in his statement recorded under is S. 313 of the Code.”*(emphasis supplied). The Gauhati High Court in a decision reported in 2009(1) GLT 405 reiterated the position of law and opined that *the statement so made, can, indeed, be taken into consideration, at the trial, against the accused for the purpose*

*of arriving at the guilt or otherwise of the accused.* Applying the above principle to the facts involved in the case at hand, what becomes transparent is that when the evidence on record is read with the statement of the accused it leads to a reasonable **inference** that accused persons trespassed into the property in possession of the informant with the intention of breaking and destroying the newly put fence and of assaulting the informant and her family members.

25. 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 447/323/427/34 IPC and thus they stand convicted.
26. I have considered the provisions of Probation of Offenders' Act, 1958. Considering the nature of the offence and the fact that the accused persons assaulted women and children I do not find any ground to extend the provision of this beneficial legislation to the accused.

**SENTENCE HEARING:**

27. Heard the accused persons on the point of sentence. They pleaded for leniency on the ground that they have families dependent on them. Their pleas are recorded in separate sheets.
28. Considering all aspects accused Paran Arjya, Dipak Ghosh, Kalidas Dey and Kapil Dey are convicted of the offences under sections 447/323/427/34 IPC and sentenced to pay fine of Rs. 3000/- each (Rs.1000/- for each of the offence). In default of payment of fine, the accused persons shall undergo Simple imprisonment for a period of three months. Their Bail Bond stands cancelled. The amount of fine, if realised, shall be awarded as compensation to the informant.

**Order**

The accused persons Paran Arjya, Dipak Ghosh, Kalidas Dey and Kapil Dey are convicted of the offences under sections 447/323/427/34 IPC and sentenced to pay fine of Rs. 3000/- each (Rs.1000/- for each of the offence). In default of payment of fine, the accused persons shall undergo Simple imprisonment for a period of three months. Their Bail Bond stands cancelled. The amount of fine, if realised, shall be awarded as compensation to the informant. Given under the hand and seal of this court on this the 21st day November, 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1<sup>st</sup> 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 2,3: Medical Report
- 4) Exhibit 2(1), 3(1): Signature of PW3, i.e. the M.O
- 5) Exhibit 4: Charge Sheet
- 6) Exhibit 4(1): Signature of S.I. D. Baishya
- 7) Exhibit 5: Seizure list
- 8) Exhibit 5(1): Signature of PW7, I.E. I/O

**LIST OF WITNESSES:**

1. PW1: Smt. Uma Sutradhar
2. PW2: Smt. Tulsi Das
3. PW3: Dr. Dharmeswar Hazarika
4. PW4: Smt. Bishnupriya Das
5. PW5: Smt. Gauri Das
6. PW6: Smt. Santana Dutta
7. PW7: A.S.I. D. Talukdar

