

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE  
(S), BONGAIGAON**

**PRESENT: S. HANDIQUE, AJS**

**G.R. 341/13  
(U/S 341/324/34 IPC)**

**State**

**v.**

- 1. Sanjay Ray**
- 2. Archana Ray**

For prosecution: Mr. T. Bhowmik  
For defence : Mr. P. Sarma  
Evidence recorded on: 9-6-14, 15-9-14, 26-9-14,  
Accused examined u/s 313 Cr. P.C on: 14-10-14  
Arguments heard on: 28-10-14  
Judgment delivered on: 11-11-14

**JUDGMENT**

1. The prosecution story is that Sri Jiban Mandal, s/o late Jogendra Ch. Mandal lodged an FIR on 7-5-13 before the Bongaigaon P.S. against Smti Archana Roy and her husband Sri Sanjay Roy, r/o Bhakrivitha under Bongaigaon P.S. The informant alleged that the accused were his landlords and he was shifting from their house to a nearby house on 5-5-13. He alleged that while he was shifting his goods on that day at about 10 A.M. he saw that accused Archana Ray was assaulting his son Deep Mandal without any rhyme or reasons. When he tried to resist Archana, she and her husband wrongfully restrained him and Archana hit him on his head with a wooden plank and Sanjay hit him on his backside of the head and right hand with a dao causing serious injury to him. He stated further that the neighbours arrived hearing his hue and cry and he was saved somehow. He was then taken to the hospital and was released only on 7-5-14. The FIR was registered as Bongaigaon P.S. Case no. 219/13 and after investigation police filed

- charge sheet against Sanjay Ray and Archana Ray u/s 341/324/34 IPC.
2. After receipt of the charge sheet Id. CJM, Bongaigaon took cognizance u/s 341/324/34 IPC against the two accused and they were summoned. In due course of time the accused appeared, took bail and received the necessary copies u/s 207 Cr. P.C. The charges were framed against the accused u/s 341/324/34 IPC, same on being read over and explained to them, the accused pleaded not guilty and claimed trial.
  3. In this case, six PWs were examined during trial. However, the case got transferred to this court during trial. The investigating officer could not be examined as he expired. The accused were examined u/s 313 Cr. P.C. wherein the accused denied all the incriminating questions put to them and also declined to adduce defence evidence. Heard arguments from both the sides. The following points for determination have been framed in this case:

#### **POINTS FOR DETERMINATION:**

1. *Whether the accused in furtherance of their common intention on 5-5-13 at 10 A.M. wrongfully restrained Jiban Mandal in their courtyard and thereby committed an offence punishable u/s 314/34 IPC?*
2. *Whether the accused in furtherance of their common intention on 5-5-13 at 10 A.M. caused hurt to Jiban Mandal by means of a sharp weapon and thereby committed an offence punishable u/s 324/34 IPC?*

#### **DECISION ON POINT NO. 1 & 2 :**

4. Both the points are taken up together for convenience of discussion. Admittedly, informant Jiban Mandal was a tenant under the accused and on the relevant date he was shifting his household goods to another house nearby. Jiban Mandal as **PWI** has deposed that while he was shifting his goods he suddenly saw that accused Archana was beating his son Deep Mandal with a lathi. He also stated that his middle son informed him about it. So he asked Archana as to why she was beating Deep. At this Archana replied that she will beat thieves and dacoits and then she hit Jiban on his leg. As she was about to give him the next blow, he caught the lathi. Then accused Sanjay came and caught him from backside. Archana dropped the lathi and came with a wooden plank and hit him on his frontal part of the head. He alleged further that Sanjay was holding a dao and he asked Archana to hit him with the dao. At that time Jiban's mother **Pushpa Mandal (PW3)** came out and held Archana. Then Sanjay hit him with the dao on the back side of his head and right hand. He stated that he started to bleed after the alleged assault. As many people arrived the accused let him go. According to PW1, he was taken to the police station by Rabin Nath and from there they were sent to the police station. He stated that

- he was kept in the hospital for two days and discharged only on 7-5-13. He exhibited the FIR dtd 7-5-13 as Ext. 1. During cross examination, he denied his knowledge if his son Deep was scolding Archana. He denied that he went inside Archana's house and assaulted her and her husband. He however admitted that Archana and Sanjay have filed a case against him regarding the same incident. He denied that he was not kept in the hospital till 7-5-13. He denied that Archana did not assault him and his son. He also denied that Archana and Sanjay did not assault him. He testified that Sanjay was holding him from backside with one hand and he tried to free himself but he was hit on his front part of his head. He stated that many people had arrived including the other tenants.
5. He further denied that he did not state before the police that Archana hit him with a lathi first and Sanjay was holding him from backside and Archana had told him that she will beat thieves and dacoits. He also denied that Sanjay did not ask Archana to hit him with a dao. He denied that his son first started the fight and then he lodged the case to save himself.
  6. **PW2 Deep Mandal** is the son of PW1. He deposed that while he was shifting their goods on that day, Archana beat him with a lathi. His younger brother informed the matter to his father Jiban Mandal. When his father arrived, Archana attacked him too with the lathi and then hit him on his head with a wooden plank. He alleged that Sanjay hit his father with a dao on his head and hand. According to him, as many people arrived on the spot, the accused left.
  7. He deposed during cross examination that he is arrayed as an accused in the cross case. He denied that he was scolding Archana in filthy language on that day. He denied that he and his father had trespassed into the house of the accused and assaulted Archana. He denied that Archana did not hit his father with a wooden plank and Sanjay did not hit his father with a dao. He also denied that he did not state before the police that he was assaulted by Archana while he was shifting goods. He further denied that he scolded Archana first and his father attacked her first.
  8. From the testimony of PW2 it is seen he has not corroborated the fact that Sanjay was holding his father from back side. PW1 and PW3 stated that Sanjay was holding Jiban from backside. PW4 went a step further by saying that Sanjay was holding him by his neck from the back side. PW5 did not say anything in this regard.
  9. **PW3 Pushpa Mandal** is the mother of PW1. She deposed that at about 9 A.M on that day Archana assaulted her grandson Deep with a lathi. At this she and Jiban went forward. But Archana hit Jiban with a wooden plank while Sanjay kept him holding from backside. She stated that she was also assaulted when she had resisted. According to her, Sanjay gave the dao to Archana and Archana hit him with the dao from back side.
  10. She denied during cross examination that Archana did not assault her or that she did not state before the police that Archana hit Jiban with a dao. She denied that Deep had scolded Archana and when Archana reciprocated Jiban, he tore off her clothes.
  11. From the testimony of PW3 it appears that she has contradicted her own son and grandson. PW1 and PW2 are stating that Sanjay hit Jiban on his head with a dao. But PW3 is stating that Sanjay gave the dao to

- Archana and it was Archana who hit him with the dao. Further, PW2, PW4, PW5 have not stated anything about the presence of PW3 at the place of occurrence. I therefore do not find her testimony trustworthy.
12. **PW4 Bapi Baidya** deposed that he arrived at the spot hearing hue and cry. He saw a lathi in Archana's hand with which she hit Jiban on his leg. According to him, Sanjay was holding Jiban from backside and aksed Archana to hit him with the dao. He stated that Sanjay hit Jiban on his head from the back side while he kept him holding with the other hand. According to him, Archana hit Jiban on his head with a wooden plank. He denied during cross examination that he did not state before the police that he was working in the same locality at that time. He denied that he did not see Archana assaulting Jiban with a lathi and wooden plank. He also denied that he did not see Sanjay hitting Jiban with a dao. He denied that he did not state before the police that Sanjay was holding Jiban and he came to the spot hearing hue and cry.
  13. Interestingly, PW1 could not say who else had come at the time of the incident except Rabin Nath (PW5). In fact PW1 stated that after he was assaulted many people arrived and the accused left. PW4 Bapi Baidya says that he witnessed the assault. If he witnessed the incident from the very beginning when Archana hit Jiban with a lathi, then he ought to have intervened. From his testimony it appears he was a mute spectator to the assault and it cannot be believed.
  14. **PW5 Rabin Nath** is a helper of PW1. He stated that Archana was assaulting Deep. According to him the fight ensued when Jiban asked about the matter. He stated that Sanjay hit Jiban with a dao and he sustained cut injury. He stated that he took Jiban to the police station and then to the hospital. During cross examination he denied that he did not witness the incident. He could not say on which part of the head Jiban got injured. He could not say if Jiban had to undergo stitches for the injury. He however testified that Jiban was discharged the same day. He does not know about the cross case. As it appears this witness took the victim to the hospital but he could not say on which part of the head Jiban got injured or whether his injury was stitched or not. He testified during cross examination that he did not witness any other assault on anyone. In my opinion this witness has not corroborated PW1 and PW2 in material particulars and his testimony suffers from inconsistencies.
  15. **PW6 Dr. Ghanshyam Deuri** is the medical officer who deposed that he examined Jiban Mandal on 5-5-13 on police requisition. According to him the victim had sustained lacerated injury on his forehead, right parietal side and blunt injury on right shoulder joint. According to him the injuries were simple in nature caused by blunt object. He exhibited the medical report as Ext. 2. He testified during cross examination that the patient was released right after the treatment the same day. He stated that the alleged history of the wound was not written by him.
  16. Accused Archana Ray stated during her examination u/s 313 Cr. P.C that Deep and Jiban scolded them and assaulted them. She denied that they reciprocated the assault. According to her, they lodged the case first. Accused Sanjay Ray stated that Jiban was assaulting Archana and when he held Jiban, he assaulted both of them.

17. If we compare the ocular evidence with the medical report it appears that there are vital differences. Both the injuries on the forehead and right parietal side of Jiban Mandal are stated to be lacerated injuries. The informal prosecution witnesses are stating that both wooden plank and dao were used to hit Jiban Mandal. The witnesses have stated that Jiban was hit with a dao on his back of the head. If he was hit with a dao on his back of the head there would have been incised wound and not lacerated wound as testified by PW6.
18. There is no seizure of lathi or wooden plank or dao or blood stained clothes by the I/O. Unfortunately, the I/O could not be examined to confirm the contradictions as he has expired. To attract the offence u/s 324 IPC there has to be an injury/ hurt as defined u/s 319 IPC and the said injury should be caused by any of the means specified u/s 324 IPC.
19. *Section 324 IPC provides whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*
20. In this case it is being alleged that he was hit with a sharp weapon. But the injury found on the victim is simple and lacerated injury caused by blunt object. Hence, section 324 IPC is not attracted.
21. Furthermore, the alleged incident occurred on 5-5-13. The FIR was lodged on 7-5-13. PW1 stated during evidence and in his FIR that he was discharged from the hospital only on 7-5-13. But PW5 and PW6 have testified that he was discharged the same day after treatment. Although he was medically examined on police requisition, but no FIR was lodged the same day. FIR was lodged two days later and the police examined the witnesses after lodging of the FIR. So meticulous improvement in the FIR and testimony of witnesses could not be ruled out in this case. The Hon'ble Supreme Court in *Dilawar Singh v. State of Delhi (2007) 12 SCC 641*, observed :

*"In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case."*

22. The explanation given in the FIR in the instant case for the delay in lodging the FIR is therefore not satisfactory.
23. Admittedly, there is a cross case and it was a case of cross fighting. The prosecution has been unable to establish who was the aggressor. As it appears the relation between the parties was not cordial prior to the incident and on that day the victim's family was shifting to another house. A quarrel ensued between them and in the result, we have two cross cases alleging assault by the other side. In absence of clear proof of assault and the resultant injury, I deem it fit to give them benefit of doubt. Both the points are decided in the negative.

### **ORDER**

24. In view of the forgoing discussions, I hold the accused not guilty u/s 341/324/34 IPC. Accused are acquitted and are set at liberty forthwith. Bailbonds stand discharged as per law. Given under my hand and seal of the court on 11-11-14.