

**IN THE COURT OF ADDL CHIEF JUDICIAL MAGISTRATE AT BONGAIGAON
G.R CASE NO 764/10**

STATE

VS

NIREN CH BARMAN

ANANTA BARMAN

HIREN BARMAN

DILIP RAI

HEMANTA BARMAN

ROYPADA ROY

SANTOSH BARMAN

ACCUSED U/S 147/341/323IPC.

PRESENT : SRI DEBASHISH SAIKIA,AJS

SAMEER KUMAR NATH.....ADVOCATE FOR THE STATE

KAMAL CHAKRABARTY.....ADVOCATE FOR THE ACCUSED.

DATE OF HEARING.....27.8.13,19.9.13,8.10.13,3.2.14,15.3.14,31.8.14.

DATE OF ARGUMENT.....22.10.14.

DATE OF JUDGMENT.....5.11.14.

JUDGMENT

1) Informant Dhiren Barman lodged an ezaher on 31.10.10 before the I.C Bidyapur P.P stating inter-alia that on 30.10.10 at about 7 pm while he was on his way to his home from Lalkura village, accused persons waylaid him before the house of Niren Barman and thereafter they assaulted him. It was further alleged by the informant that he was thereafter dragged to the bank of Champabati river where he was again beaten up and his mobile phone was also taken away by the accused. The informant also alleges that on his raising a hue and cry, nearby people came and rescued him.

2) I/C Bidyapur O.P on receipt of the above ezaher forwarded the same to O.C Bongaigaon P.S who on receipt of the said ezaher registered a case vide Bongaigaon P.S case no 553/10 u/s 147/341/325/379IPC and started investigation of the case. On completion of investigation charge sheet was filed against accused person's u/s 147/341/323IPC.

3) Cognisance of the case was taken and process was issued against the accused. On appearance of the accused copy of the case was furnished. Vide order dt 16.10.12 my learned predecessor in chair explained the particulars of offence u/s 147/341/323IPC to which the accused pleaded not guilty and claimed to be tried. Prosecution in order to prove its case examined eight witnesses including the M.O and the I/O.

4) The plea of the accused persons is that of total denial. Statement of the accused person's u/s 313 CrPC was recorded in which the accused persons reiterated their defence plea. Accused however declined to adduce evidence. I have heard arguments forwarded by the learned counsel of both sides.

5)The only point for determination is : i) Whether the accused persons being members of an unlawful assembly committed rioting on 30.10.10 at about 7pm ?

Secondly whether the accused person on the same day time and place caused wrongful restraint to the informant and thereafter voluntarily caused hurt to him?

DISCUSSION,DECISIONS AND REASONS THEREFOR:

6) PW1 is the informant Dhiren Barman. In his evidence Pw1 deposed that on 30.10.10 at about 6.30 pm when he was on his way to his home from Lalkura village in a bicycle accused Niren Barman and the other accused persons stopped him and after felling him to the ground assaulted him. Pw1 deposed that the accused were armed with weapons and that on his raising a hue and cry his son Prasenjit Barman and other villagers from nearby Chikibiki village came and rescued him. According to Pw1 the VDP secretary of Chikibiki Viallge namely Nur Islam took him to his residence and informed the police and police thereafter sent him to hospital. Pw1 also deposed that he received injuries on his legs, teeth and on his eyes. In this regard he has lodged the ezaher which he identified as Ext1.

7) PW2 is the son of the informant Prasenjit Barman. He deposed in tune with his father Pw1. PW3 is Ganesh Barman and he is a reported witness.

8) Pw 4 Is Md Noor Islam and he is the VDP secretary of Chikimiki village. In his evidence he deposed that the incident took place about three years ago and that at the time of incident he was in the bazaar.PW4 deposed that at that time he received a phone that the

informant has come to meet him. PW4 further deposed that when he reached home the informant told him that people of Nachalkuti village would beat him up if he dares to visit the said village. Coming to know about the same from the informant, he thereafter informed the I/C and on the instruction of the I/C he took the informant to the police outpost.

9) Pw5 is Sarala Barman is the wife of the informant, while Pw6 Basanti Barman is the daughter in law of the informant. Both of them more or less deposed in tune with each other. Both of them deposed that they on hearing the hue and cries of the informant rushed to the place of incident and saw the accused assaulting the informant. PW5 also deposed that VDP secretary rescued her husband and took her husband(Pw1) to the police outpost from where her husband was taken to the hospital.

10) Pw7 is Dr Rahmatullah and in his evidence he deposed that on 30.10.10 while working as M.O at Bidyapur CHC he examined one Dhiren Barman who was brought on police requisition. Pw7 deposed that on examination he found (1) mild laceration at inner aspect of lower limb with active bleeding, (2) Painful swelling around left eye. According to him injury was simple in nature caused by blunt object. Pw7 identified the injury report as Ext 2. In cross the PW7 clarified injury sustained by the victim cannot be caused by falling as had the patient fallen down then there would be injuries on other parts of the body.

11) Pw8 is the I/O S.I Babul Ch Das. In his evidence he deposed that on 30.10.10 at about 8.15 pm VDP secretary Nur islam brought the informant to the outpost and he thereafter sent the injured/informant

to hospital. Pw8 also deposed that on the next day an ezaher was lodged which was forwarded to Bongaigoan P.S and in the meantime he took upon himself the investigation of the case. PW8 after completion of the investigation submitted charge sheet against the accused.

11) Learned counsel of the accused submitted that the prosecution case is doubtful as no independent witnesses have been examined in the case and the lone independent witness who is the VDP secretary of Chikimika viallge did not support the prosecution case and has deposed completely different from what the informant has deposed.

12) On the other hand learned counsel of the state submitted that in spite of some minor deficiencies here and there in the evidence of the prosecution witnesses, the remaining evidence of the prosecution witnesses has proved the case beyond all reasonable doubt and hence the accused deserves to be punished.

13) A perusal of the evidence on record discloses that apart from PW4 the VDP secretary no other independent witness has been examined. Though according to the prosecution witnesses who are the informant and his family members, people from the Chikimiki viallge along with the VDP secretary of the said village came to his rescue on hearing the cries of the victim/infromant, none of them was examined in the instant case apart from the VDP secretary.

14) Further the said VDP secretary (Pw4) has also not supported the informant's claim that he has rescued the informant while the accused were assaulting him. Pw4 only supported that part of the evidence where in informant has stated that he was taken to the police outpost by the said Pw4. Further Pw4 contrary to the claim of the victim Pw1, deposed that it was the informant who came to his house to meet him

and that when he came to his house from the market, the informant sought his help as according to the informant the villagers of Nachalkuti has threatened to assault him if he dares to visit the said village. This version of the Pw4 is contrary to the evidence of the informant Pw1 and in the face of the above contradictory versions between the injured informant on the one hand and the independent witness PW4 on the other hand, it now has to be seen as which of the two versions is believable. In this regard one may refer to the Apex court decision of **Harchand Singh Vs State of Haryana reported in AIR 1974 SC 344** where in the Apex court held that when prosecution adduces two sets of evidence one contradicting the other, and the court is not in a position to ascertain as to which set of witnesses is speaking the truth, then both the sets of witnesses have to be discarded, or the court should accept that set of evidence which is favorable to the accused.

15) Keeping the above principle in mind when the evidence of Pw1 is again revisited it is noticed that the informant Pw1 evidence could not be demolished in the course of cross examination. Similarly when the evidence of Pw4 is perused it is noticed that in his cross examination PW4 has asserted that the informant never told him that he was assaulted by the accused persons. Keeping the above features in mind when the evidence of the M/O Pw7 is perused it appears according to PW7 the informant was examined on 30.10.10 at about 9 pm when he was brought on police requisition and on examination, injuries were found on the body of the victim. Similarly when the evidence of the I/O Pw8 is perused it appears that Pw8 too has deposed that on 30.10.10 at about 8.15 Nur islam (referring to Pw4) has brought the injured/informant to the police outpost and that the injured informant was immediately sent for treatment under police requisition. The above

evidence of the Pw8 was never disputed by the defence and as such the above unchallenged evidence of Pw8 completely corroborates the evidence of the injured informant that he has sustained injuries on the said day and that he was brought to the police outpost by PW4 and he was thereafter immediately sent for treatment on police requisition. PW4 though claimed that informant never told him that he was assaulted by the accused, and further when Pw4 has remained silent about the injuries sustained by the Pw1, the evidence of the Pw7 and Pw8 only goes to show that Pw4 has not come up with the actual truth and has suppressed material facts. Pw4 therefore is a witness who cannot be readily believed, in toto unless his version of the case is supported by other corroborative evidence on record. In the instant case the same is however missing, on the other hand the version of the informant Pw1 has received support from the other prosecution witnesses viz PW2, PW5 and PW6 who being the family members has supported the informant pw1 by stating that hearing the cries of the informant they rushed to the place of occurrence and saw the accused persons assaulting the Pw1. Further when the evidence of the Pw1 about his sustaining injuries has been corroborated by the evidence of the M.O and also by the I/O I see no reason to disbelieve the victim/informant Pw1. In such circumstances I am not inclined to rely upon the evidence of Pw4 and his version that the informant came to him and sought his help, and therefore that part of the evidence of Pw4 which is contrary to the version of Pw1 is therefore rejected. In accepting the evidence of the other witnesses viz Pw2, Pw5 and Pw6, I have also considered the alleged interestedness of prosecution witnesses in the facts and circumstances of the case as well as their reliability. From the trend of cross examination of prosecution

witnesses it is but apparent that the informant had strained relationship with the village people, as Pw1 has even admitted that he was removed from the post of president ship of the Shiv mandir by the local people. Though the defence has not cross examined the I/O as to why he has not examined any other independent witness in the instant case, but from the fact and circumstances that is available in the evidence of the witnesses, the non willingness on the part of the villagers to take side with the informant and speak the actual truth and depose against the accused who are their fellow villagers cannot be ruled out. In such facts and circumstances the evidence of the family members who having seen the incident and who having testified the above facts before the court cannot be looked upon with suspicion, simply for the fact that they are the family members of the victim. The above witnesses have been consistent and their evidence has come out unscathed inspite of lengthy cross examination. There is nothing to disbelieve them and their evidence is accepted. I have also considered the submissions of the learned defence counsel about the discrepancies appearing in the evidence of the witnesses, but I am unable to concede to the same as the said discrepancies appearing in the evidence of the witnesses are on trivial matters not affecting the core of the prosecution case and such discrepancies can be ignored and the same is therefore is ignored.

16) From the discussion made above it is established that all the accused persons had participated in assaulting the informant, the moment the informant had reached near the house of Niren Barman. The sudden attack on Pw1 by all the accused persons only goes to show that all the accused person were actuated with a common intention to assault the informant and in pursuance of the said common intention

all of them assaulted the informant and as such all the accused persons are guilty of voluntarily causing hurt to the informant. Accused persons are therefore held guilty u/s 323 IPC read with 34 IPC. The evidence available on record is however too scanty to hold that the informant was restrained from proceeding to his house by the accused persons as such charge u/s 341 IPC fails. Similarly the evidence is also too inadequate to hold that the accused persons had assembled with a common object and that in pursuance of the said common object they had used force or violence, as such charge u/s 147 IPC fails.

17) I have considered extending the beneficial provisions of the Offenders act to the accused but refrained from doing so as releasing the accused under the beneficial provisions would send a wrong signal to the society.

18) The accused persons are heard on the question of sentence. Accused persons submits that they all have families to look after and that sentencing them would cause immense hardship to their families. I have considered the above pleas vis a vis the facts and circumstances of the case. No previous conviction has been proved against the accused persons and as such considering all the facts and circumstances I am of the measured view that accused deserves a little leniency.

ORDER

Accused Niren Ch Barman, Ananta Barman, Hiren Barman, Dilip Rai, Roy Pada Roy, Hemanta Barman and Santosh Barman are convicted u/s 323 IPC read with 34 IPC and are sentenced to S.I for one month and also to pay a fine of rupees eight hundred each i/d to S.I for another ten days. They are however acquitted of the charge u/s 147 IPC and 341 IPC. Furnish free copy of judgment to the convict accused.

Given under my hand and seal of this court on the 5th day of November 2014 at Bongaigaon.