

BEFORE THE JUVENILE JUSTICE BOARD, BONGAIGAION

**PRESENT: S. HANDIQUE, PRINCIPAL MAGISTRATE, JJB,
BONGAIGAON**

MEMBERS:

**Mr. D. C. Basak
Mrs. R. Choudhury**

**(G.R. 748/10)
(u/s 457/380/511/326 IPC)**

State

v.

Rajesh Murmu

For prosecution: Mr. T. Bhowmik, APP

For defence: Mr. H. Ali

Evidence recorded on: 14-7-11, 11-8-11, 22-3-12

Juvenile examined u/s 313 Cr. P.C on: 30-10-14

Arguments heard on: 11-11-14

Judgment delivered on: 18-11 -14

JUDGMENT

1. The prosecution was set into motion in this case on the basis of an FIR lodged by Majeda Khatun, w/o Sukmuddin Dewan, r/o Mouzabari under Sidli P.S., Chirang on 30-10-10. The informant alleged in the FIR that on the intervening night of 29-10-10 and 30-10-10 while she and her husband were sleeping in their grocery shop at Mouzabari market they heard a noise as if someone was opening their tin door. Her husband then came out and grabbed the thief. But the thief hit her husband on his leg and head with a dao causing grievous injury to him. As her husband raised hue and cry the local people came out and caught the thief named Rajesh Murmu and handed him over to the police. The FIR was registered as Sidli P.S. Case no. 62/10 and after investigation the charge sheet was filed against juvenile Rajesh Murmu u/s 457/380/511/326 IPC.
2. After filing of the charge sheet, the case was forwarded to this Board. The juvenile was then summoned and on his appearance, necessary copies were furnished to him.

3. During enquiry seven witnesses were examined including the investigating officer. The medical officer was called several times but his presence could not be procured inspite of several attempts. The accused was examined u/s 313 Cr. P.C. Heard arguments from both the sides. The following points for determination have been framed in this case:

POINTS FOR DETERMINATION:

1. *Whether the juvenile called Rajesh Murmu attempted to commit lurking trespass at night in the grocery shop of the complainant on 29-10-10 at midnight and thereby committed an offence punishable u/s 457511 IPC?*
2. *Whether the juvenile called Rajesh Murmu attempted to commit theft in the grocery shop of the complainant and in the attempt he tried to open the tin door of the shop on 29-10-10 at midnight and thereby committed an offence punishable u/s 380/511 IPC?*
3. *Whether the juvenile called Rajesh Murmu voluntarily caused grievous hurt to the complainant's husband by means of a dao by giving him blows on his head and leg and thereby committed an offence punishable u/s 326 IPC?*

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

DECISION ON POINT NO. 1 & 2

4. The first allegation against the juvenile is that he tried to enter the grocery shop of the complainant while they were sleeping inside in order to commit theft. Let us examine the evidence on record. **PW1 Majeda Khatun** is the complainant. She deposed that on 30-10-10 at about 11.30 P.M. while she and her husband were sleeping in their grocery shop situated at Mouzabari market they heard someone was cutting their door. Her husband came out hearing the sound and saw the juvenile. She also came out after some time hearing the hue and cry made by her husband and saw that her husband was holding the thief. The defence could not break the testimony of this witness during cross examination. The defence suggested that the juvenile was returning from his friend's place at that time and he was caught and assaulted, however PW1 has denied it. Her husband **Sukkumuddin (PW2)** has deposed that he heard as if someone was cutting their wall and so he came out. According to him the juvenile hit him as soon as he came out. The defence could not break the testimony of this witness too. It seems the defence has admitted the fact that the juvenile was found outside the shop of the complainant at about midnight and he was caught.
5. **PW3 Dilbar Ali Khan** has deposed that he was sleeping in his home and came to the place of occurrence hearing hue and cry. He saw that the villagers had caught the juvenile. He heard that the juvenile had cut the door of the complainant's shop in order to commit theft.
6. **PW4 Lal Mahmud Miya** has deposed that he also arrived at the spot hearing hue and cry and saw that Sukkumuddin was holding the juvenile. **PW5 Munnaf Ali** deposed in the same line. He too saw that

- the public had kept the juvenile confined and he heard that the juvenile was caught by Sukumuddin while he attempted to commit theft.
7. **PW6 Manoranjan Medhi** is the I/O who filed the charge sheet (Ext. 3). **PW7 Kalindra Das** is the I/O who investigated the case. He deposed that VDP Secy. Lal Mahmud called him over phone and informed him that a thief has been caught red handed in his village market. He recorded the G.D Entry and proceeded to the place of occurrence. He found that the public had kept the thief confined and on his arrival he took the juvenile into his custody. It is thus seen PW3,PW4,PW5 arrived at the spot after the juvenile was caught. They all heard that the juvenile was caught while he tried to commit theft in the shop of the complainant.
 8. The juvenile though denied to have committed the crime he could not deny his very presence at the spot and his subsequent confinement. He could not discharge the burden as to why he was caught outside the shop of the complainant. The defence tried to prove that PW2 changed his statement during trial. The defence suggested that PW2 stated before the police that the juvenile was opening his door at the relevant time, but he stated during enquiry that the juvenile was cutting the wall of his shop. But the I/O was confronted as regards this contradiction. In our view the said contradiction is not vital, because it does not negate the fact that he was caught just outside the shop of the complainant in a suspicious circumstance. It is therefore proved beyond doubt that the juvenile had attempted to enter into the shop of the complainant at midnight with a dishonest intention to commit theft and he was caught red handed. Point no. 1 and 2 are decided in the affirmative.

DECISION ON POINT NO. 3

9. The second allegation against the juvenile is that he hit the victim/ PW2 with a dao when he was caught. PW1 deposed that as soon as the juvenile saw her husband he gave two blows on his head with a dao and also gave another blow on his leg. According to her, she came out hearing her husband screaming and saw that her husband was holding the juvenile. Thereafter, she also caught the juvenile and screamed. At this time the villagers came and confined him. She stated that she took her husband to the Lower Assam Hospital. During cross examination the defence could not break her testimony apart from suggesting that juvenile did not hit her husband on his head with a dao. No cross examination was done as far as the injury on the leg of the victim is concerned.
10. **PW2 (victim)** deposed that when he came out hearing the sound, the juvenile hit him on his head with a dao. Then he managed to catch the juvenile, but the juvenile gave him a blow on his leg with the dao. He stated that he sustained injury on his head and leg. According to him, his wife and neighbours arrived and they too kept holding the juvenile. During cross examination he testified that it was a dark night, but he denied that the juvenile did not hit him on his head and leg. The defence could not belie his testimony.

11. **PW3** stated that on arriving at the spot he saw that the villagers had confined the juvenile and Sattar Ali was taking the dao from his hand. He testified that he had heard that the juvenile had first hit Sukumuddin on his head with a dao and when he was caught, the juvenile hit the victim on his leg with the same dao. PW3 is a seizure witness. He testified that the police seized the dao vide Ext. 2, though he stated that he does not know what is written in Ext. 2.
12. **PW4 Lal Mahmud Miya** deposed that on arriving at the spot he saw that Sukumuddin was holding the juvenile and he (Sukumuddin) was bleeding from his leg. According to him, Sukumuddin was sent to the Lower Assam Hospital for treatment after the incident.
13. **PW5** heard about the alleged assault on his arrival. He saw that the juvenile was kept confined by the public. He however did not find the victim on the spot as he had already left for the hospital. **PW7** has testified that he seized the dao on the spot.
14. The juvenile has admitted during his examination u/s 313 Cr. P.C. that he had a quarrel with Sukumuddin in front of Sukumuddin's shop and then Sukumuddin assaulted him with a lathi. At this he too hit Sukumuddin with the dao on his head and leg. He has admitted that he was holding a dao in his hand with which he gave hit the victim. Although he gave a different explanation for his presence outside the shop of the complainant, but if we peruse his explanation u/s 313 Cr. P.C with that of the evidence adduced by PWs it is crystal clear that the juvenile had gave blows on the head and leg of the victim. Although the medical officer is not examined in this case but the ocular evidence coupled with the statement of the juvenile u/s 313 Cr. P.C leaves no room for doubt that the juvenile is indeed the assailant. The evidence of the victim, complainant and other witnesses amply prove that the received grievous cut injury on his knee by means of a sharp weapon (dao) and the medical report supports the fact. So the offence of grievous hurt by means of a sharp weapon as provided u/s 326 IPC stands proved against the juvenile beyond reasonable doubt.
15. Heard both the sides on the question of passing appropriate order as per section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The prosecution argued that considering the tender age of the juvenile the appropriate order as per provisions of law may be passed. On the other hand the Id. Defence counsel argued that the juvenile be shown leniency considering his future prospects.
16. This Board has pondered over the submissions on both the sides. The juvenile is 18 years old. The incident occurred about four years ago. There is nothing adverse in his Social Investigation Report. Considering his tender age at the time of commission of the offence and the period of his detention during the investigation stage, we deem it fit to deal with the juvenile u/s 15 (1) (e) of the Juvenile Justice (Care and Protection of Children) Act, 2000. We release him on probation of good conduct and place him under the care of his father on execution of a bond of Rs. 20,000/- without surety for the good behaviour and well being of the juveniles in conflict with law for a period of one year. The bond is to be executed as per the Juvenile Justice (Care and Protection of Children) Rules, 2007 containing the following conditions:

- A) That the father of the juvenile shall not change the place of residence without giving prior intimation in writing to the Board through the Probation Officer/ DCPO
- B) That the juvenile shall not be removed from the limits of the jurisdiction of this Board without giving prior intimation in writing to the Board through the Probation Officer/ DCPO
- C) That the juvenile shall be produced before the Board in case he does not abide by this order and he is beyond control of the father.
- D) That he shall render assistance to the Probation Officer/ DCPO to enable him to carry out the duties of supervision
- E) In case of default, he shall appear before the Board in order to enable the Board to take appropriate action and to forfeit the Bond amount of Rs 20,000/- to the Government.

Given under the hand and seal of this Juvenile Justice Board,
Bongaigaon on 18-11-14.

Smt. S. Handique, AJS
Principal Magistrate, JJB, Bongaigaon

Sri. D.C. Basak,
Member, JJB, Bongaigaon

Smt. R. Choudhury,
Member, JJB, Bongaigaon