

Criminal Appeal No. 19/18

IN THE COURT OF SESSIONS JUDGE, BAKSA:.....AT MUSHALPUR

Present: Mr. A. Rahman, L.L.M, A.J.S,
Sessions Judge, Baksa

CRIMINAL APPEAL NO. 19/18

Mohan Basi Sarkar

..... Accused/Appellant

-versus-

State of Assam

..... Respondent

Appearance:

For the appellant : Mr. T. Sarma, Learned Advocate

For the respondent : Mr. R. Chetry, Learned Public Prosecutor, Baksa

Date of hearing : 04.01.2021.

Date of judgment : 08.01.2021.

J U D G M E N T

1. This instant appeal was preferred u/s 374(3) Cr.PC challenging the judgment and order dated 07.01.2014 passed by S.I Rahman learned Additional Chief Judicial Magistrate, Nalbari in G.R Case No. 55/10 (B) convicting the accused/appellant u/s 325 IPC and sentencing him to simple imprisonment for one year and fine of Rs. 1,000/- (one thousand) with a default stipulation of one month simple imprisonment.

2. Initially the appeal was preferred before the Hon'ble Sessions Judge, Nalbari. Subsequently, after creation of district judiciary in the district of Baksa and in

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pursuance of letter No. HC.VII-118/2017/6330/A dated 27.12.2017 of the Hon'ble Gauhati High Court, the record was transferred to this court for disposal.

3. I have heard Mr. T. Sarma learned counsel for the accused/appellant and Mr. R. Chetry learned public prosecutor for the state respondent. I have also thoroughly and dispassionately scrutinized the evidence recorded by learned Magistrate, the impugned judgment and the records of G.R Case No. 55/10 (B).

4. Precisely, the prosecution case in brief is that Smt. Manasi Mandal, daughter of accused Mohan Basi Sarkar, Vill-Palasbari was married to the son of informant Nitai Mandal. After about one and half year back, daughter in law of the informant having quarreled with her husband over domestic affairs, left matrimonial home and did not return. On 24.02.2010 at about 4 pm, when the informant Nitai Mandal at Palasbari Chowk asked accused Mohan Basi Sarkar about his daughter, he with a wooden stick severely beat him causing grievous injury on his left hand and head. Hence, this case.

5. Based on the FIR dated 27.02.2010, Tamulpur P.S Case No. 29/10 u/s 325 IPC was registered. Police after due investigation, submitted charge-sheet against the accused u/s 325 IPC.

6. Learned Magistrate, having considered the materials on record, framed charge u/s 325 IPC to which the accused denied and claimed to be tried.

7. Prosecution during the trial, examined altogether five witnesses including the Medical Officer and Investigating Police Officer. The accused in his statement u/s 313 Cr.PC has denied the prosecution allegation and declined to adduce evidence.

8. Learned Magistrate, after hearing argument advanced by learned assistant public prosecutor as well as learned advocate for the defence and appreciating the evidence, passed the impugned judgment of conviction and order of sentence as aforesaid.

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9. I have heard Mr. T. Sarma learned advocate for the appellant and Mr. R. Chetry learned public prosecutor for the state respondent. Mr. T. Sarma learned counsel, during the course of hearing, submitted that the delay of three days in lodging the FIR was not at all explained by the prosecution which creates doubt on the genesis of the prosecution case. That apart, learned counsel submitted that independent witnesses namely PW-2 Mahadev Das and PW-3 Kandu Biswas are not the eye-witness to the actual occurrence. Besides, Makhan Sarkar who is the owner of the tea stall, where the alleged occurrence took place, was never examined either by the police during the investigation or by the learned trial court which also creates doubt on the veracity of the prosecution case. So, the learned counsel submitted that the accused is entitled to benefit of doubt and the impugned judgment of conviction and order of sentence requires to be set aside by this appellate court.

10. On the other hand, Mr. R. Chetry learned public prosecutor countering the above submission, contended that learned magistrate appreciating the ocular evidence of the injured witness and medical evidence, rightly held that the accused had committed the offence u/s 325 IPC and convicted him accordingly. Further contention of the learned public prosecutor is that due to medical treatment, PW-1 Nitai Mandal being the injured could not promptly lodge the FIR which is explained in the FIR itself. So, learned public prosecutor submitted that the impugned judgment and order of sentence requires no interference and appeal be dismissed.

11. I have considered the above rival submission of the learned counsels and independently scrutinized the evidence of the witnesses.

12. PW-1 Shri Nitai Mandal is the complainant as well as the injured of this case. He deposed that on 24.02.2010 at about 4 pm while having tea at a tea stall in his village, the accused went there and involved in an altercation with him. When he came out, the accused beat him with a wooden piece on his head. When he tried to save himself, he sustained fracture injury on his left hand and he fell fainted. Thereafter, he was taken to Kumarikata State Dispensary for treatment. He has confirmed that Exbt.1 is the ejahar lodged by him and Exbt.1(1) is his signature.

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13. PW-2 Mahadev Das and PW-3 Kandu Biswas are the co-villagers and independent witnesses. According to PW-2 about two years back on the relevant day, a quarrel took place at a shop between PW-1 Nitai and accused Mohan. He saw Nitai was lying with injury on his hand. He has confirmed that Exbt.2 is the seizure list and Exbt.2(1) is his signature.

14. According to PW-3, the occurrence took place about two years back. At the relevant time, he was sitting in the tea stall of Makhan. Accused Mohan was also sitting there. Nitai came and wanted to have tea. Mohan went out from the tea stall and Nitai showed hand injury to him. But he did not see any injury on the person of accused Mohan.

15. PW-4 Dr. Sanatan Kalita examined PW-1 on 24.02.2010 at 7pm at Kumarikata State Dispensary. On examination he found fracture over left forearm and bruise over the central part of the scalp of PW-1. He has proved that Exbt.3 is the injury report and Exbt.3(1) is his signature. In cross-examination, he has made it clear that fracture was clinically found. The injury may be caused by falling.

16. PW-5 Shri Upendra Nath is the Investigating Officer of this case. He is the most formal witness and has stated briefly about the investigation of the case. He has proved that Exbt.2 is the seizure list and Exbt.4 is the charge-sheet prepared by him.

17. Now, upon scrutiny of the evidence of PW-1, it becomes very clear that on 24.02.2010 at about 4pm, the accused assaulted him causing fracture injury on his left hand and it appears that the occurrence took place outside the tea stall. The injury on the person of PW-1 is not challenged by the defence during his cross-examination. On the other hand, the evidence of the doctor (PW-4) and Exbt.3 injury report fully corroborates the evidence of PW-1 that he sustained fracture injury on the left hand on 24.02.2010 being the date of occurrence itself. Thus, the medical evidence fully corroborates and supports the evidence of PW-1.

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18. Surprisingly, the defence tried to bring contradiction in the previous statement of PW-1 and the statement before the court. In this connection, the defence gave him suggestion that in his previous statement before the I/O, he did not state that accused started altercation with him inside the tea stall and thereafter assaulted him with a piece of wood. However, the defence side during cross-examination of PW-5, did not confront him with regard to this suggestion. So, the suggestion remains a mere suggestion without any consequence. There appears no material contradiction in the evidence of PW-1 to shake his credence. The proof of injury on his person itself proves his presence at the place of occurrence which cannot be discarded.

19. PW-2 and PW-3 although have not clearly stated that the accused assaulted PW-1, but they witnessed injury on the person of PW-1. What emerges from the above discussion and observation is that the prosecution could prove beyond all reasonable doubt that the accused voluntarily caused fracture injury on PW-1 by assaulting him with a wooden piece. The fracture injury is also classified as a grievous injury as per Section 320 IPC.

20. Now as regards the delay in lodging the FIR is concerned, the occurrence took place on 24.02.2010 at about 4 pm whereas, Exbt.1 was lodged on 27.02.2010. It is explained in the FIR itself that as PW-1 was busy in his treatment, so there was delay. The aforesaid medical evidence clearly proves that PW-1 went to Kumarikata State Dispensary for taking treatment on the date of occurrence itself. Therefore, under the facts and circumstances of the case and also the explanation contained in Exbt.1, in my considered view, the delay stands explained. It is the well settled law that mere delay in lodging the FIR is not a ritualistic formula to outright reject the prosecution case or to discard the evidence of the injured evidence.

21. On scrutiny of the impugned judgment, I find that learned Magistrate made elaborate discussion on each and every point convicting the accused/appellant u/s 325 IPC.

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22. However, learned Magistrate did not mention the reason as to why he did not extend the provision of the Probation of Offenders' Act to the accused. It is established from the record that there was a relation between PW-1 and the accused due to marriage of their son and daughter respectively. Due to quarrel, the daughter of the accused left matrimonial home of PW-1. There is also no material on record to hold that the accused with a pre-planned way caused injury upon PW-1.

23. Therefore, considering all the aspects, I am of the view that the accused deserves to be leniently dealt with. The accused is sentenced to simple imprisonment for four months for committing offence u/s 325 IPC. However, this sentencing part of fine of Rs. 1,000/- (one thousand) with default stipulation of one month simple imprisonment, imposed by learned Magistrate is maintained. The accused/appellant shall surrender before the court of learned Chief Judicial Magistrate, Baksa within one month for serving the sentence, failing which, the learned Chief Judicial Magistrate will take necessary steps in accordance with law.

24. Fine if realized, shall be paid to the injured. With the above modification of sentence, the appeal stands partly allowed.

25. Return the records of G.R Case No. 55/10 (B) along with a copy of this judgment to learned Chief Judicial Magistrate, Baksa for information.

26. The judgment is declared and delivered in the open court under my hand and seal on this **08th January, 2021**.

Dictated and Corrected by :

Mr. A. Rahman,
Sessions Judge,
Baksa, Mushalpur