

GAHC010008962011



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./181/2011

RAJIB DOLEY
S/O SRI KAMESWAR DOLEY, VILL. 2 NO. MAJULIPUR, P.O. LAIMEKURI, P.S.
JONAI, DIST. DHEMAJI, ASSAM.

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MS.R PEGU

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. J Chutia, Advocate

For the Respondents : Mr. KK Parasar, Additional PP, Assam

Date of Hearing : 09.08.2023

Date of Judgement : 09.08.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. J Chutia, learned counsel for the appellant. Also heard Mr. KK Parasar, learned Additional Public Prosecutor, Assam.
2. The present appeal is preferred against the judgment and sentence dated 29.09.2011 passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 20(JN)/2008 whereby the present appellant was convicted under Section 324 of IPC and the appellant was sentenced to undergo simple imprisonment for 2 years and also to pay fine of Rs. 5,000/- and in default simple imprisonment for another two months and the period of detention be set off.
3. The prosecution was launched on the basis of an FIR lodged by the complainant, Padma Kanta Doley alleging that in the evening at about 6.30 p.m. of 11.01.2008, the accused Rajib Dloey voluntarily caused hurt to the victims Uma Kanta Doley and Tai Bomjen near the grocery shop of one Gandheswar Taid by means of 'mit-dao' intending to cause them death. On receipt of the ejahar, police registered a case and started investigation and after completion of investigation, the Investigating Officer laid charge-sheet against the accused under Section 324/307 IPC.
4. To bring home the charges against the appellant, the prosecution examined as many as 10 witnesses. The accused was examined under the provision of Section 313 Cr.P.C. and thereafter the learned trial court below convicted the appellant and sentenced him as discussed above.
5. Before having the determination, let this court first examine the depositions of the PWs.
6. As is discernible from the FIR, the alleged act of assault inflicted by the accused, PW5 and PW8 got injured and therefore they are injured

witnesses. The PW4 and PW6 allegedly carried these two victims to the hospital and PW1 is the informant and brother of one of the victim, PW5. Therefore, let this court first examine these vital witnesses i.e. PW4, PW1, PW5, PW8, PW6, PW9 and PW10. The other witnesses PW2 and PW3 are not so vital for determination of the issue though their testimonies shall be dealt at the later part of the judgment.

7. PW1, informant deposed that he knows the injured persons, one is his brother and the other is his co-villager. According to him the occurrence took place at around 6.30 p.m. His deposition reflects that at the time of occurrence of the alleged incident he was inside a vegetable shop and he came out hearing noises outside the shop and saw both the injured persons lying on the courtyard of the shop of Gandheswar Taid. He candidly deposed during his evidence that he had not seen the miscreant who assaulted the injured. According to him, he along with PW4 took both the injured to a private nursing home in a Maruti Car. When they were at the nursing home, police came there and thereafter FIR was lodged.

During his cross-examination, he denied the suggestion that he has not heard that it was the accused Rajib Doley, who inflicted the injury upon the injured persons.

8. According to PW4, he arrived the place of occurrence after half an hour and he saw both the injured lying in front of the shop of Gandheswar Taid and he took both the injured to a nursing home in his Maruti Car. According to him after giving treatment at the said nursing home, he again took back them to the house of the victim. He deposed that he has not heard anything, who inflicted injury upon the victim.

9. PW5 is one of the victim. He deposed that he knows the accused, who is his fellow villager and the incident took place in the evening of one day in the month of January in Gela Taid's shop. He deposed that he had an altercation with the accused over an issue of election. According to him the accused is his companion. While saying 'who are you' the accused dealt a cut blow to his head with a dao. According to him when Tai Bomjen (PW8, other injured) tried to resist the accused, the accused dealt a cut blow in the hand of PW8, the other injured victim. He described his injury as an injury extending from head to near the eye. According to him the accused fled the scene after dealing the cut blow to them. He further deposed that he was taken to hospital for treatment and the doctor treated him.

During cross-examination, he deposed that one Bopai Mili was present at the time of occurrence. He further deposed that he is a member of Congress party. He did not know which party Bopai Mili belonged to and the accused was a supporter of a independent candidate. He deposed that as the police has not asked the reason of hacking, he has not stated before the police that the incident took place over an issue of election. He denied the suggestion that he had a quarrel with Bopai Mili. He further denied that while he was quarreling with Bopai several people came there to dissuade them from quarrelling and therefore, he did not see, who dealt the cut blow.

10. PW8, who is the other injured person, in his deposition, stated that the incident took place at 7 p.m. on 11.01.2008 at Majulipur. There was a quarrel and he too sustained injury when he went there to see what had happened. According to him a large number of people were present

there and he did not see who had made the assault as the night fell and darkness descended, he could not recognize the people. He heard at hospital that Rajib Doley had inflicted the cut. He sustained injury on his hand.

During cross-examination, he denied the suggestion that none told him that Rajib had dealt the cut blow.

11. PW10 is the doctor. He deposed that on 13.01.2008 he was working at Ramdhan PHC as Medical and Health Officer. On that day, he medically examined PW8 and found the following injuries:

- (1) One cut wound over right fore arm size 3" X nil X 1/2".
- (2) One clean cut wound over left hand below wrist joint size 3" x not mentioned x 1/2".

He further deposed that he also examined the other injured Uma Kanta Doley and found the following injuries:

- (1) A clean cut wound over the right temporal region length 1 1/2 " x depth 1/2" inches.
- (2) Another clean cut would over right temporal region length 1 1/2 " x depth 1/2 ".

During cross, he deposed that the breadths of the injuries are also not mentioned in his report. He also did not mention any report regarding the age of the injury and case reference. He denied the suggestion that he never medically examined the injured.

12. The PW3 deposed that he heard that there was a quarrel in front of the shop of Gandheswar Taid. He came to the place of occurrence

and saw the injured lying there. He has not seen who inflicted the injury. The defence declined to cross-examine.

13. PW6 also deposed that he was told by Uma Kanta Doley that a quarrel had taken place in the courtyard of Gandheswar Taid's shop and the said quarrel had taken place between accused and the victim. He did not witness the quarrel. He noticed injury on Uma Kanta Doley's head near the eye.
14. The PW7 has also not witnessed the incident, however, he heard that there was a quarrel and Uma Kanta Doley and Tai Bomjen sustained injuries and he came across the two injured after they returned from medical and he noticed injury on Uma Kanta Doley's head and Tai Bomjen's head and both the injured persons told that Rajib had caused their injuries.
15. PW9 is the I/O. He deposed that some persons from Laimekuri informed over phone that someone had caused cut injury to some people. Accordingly, a GD entry being GD Entry No. 217 dated 11.01.2008 was entered and proceeded for investigation. Arriving at the place of occurrence he found two injured persons i.e. Uma Kanta Deley and Tai Bomjen and then he issued requisition doctor for examination of the injured persons and furnishing report thereof. He recorded statement of seven witnesses, drew sketch map etc. He proved the sketch map. According to him the accused appeared in the police station on 17.01.2008 and then accused was arrested and forwarded him to the court. After collecting medical report, charge-sheet was filed.
16. Accused was examined under Section 313 Cr.P.C. and he

denied the allegation made against him. However, he declined to adduce any evidence on being asked.

17. From the aforesaid testimonies of the prosecution witnesses, the following facts are established:

- (I) There was a quarrel and in the said quarrel PW5 and PW8 sustained injured and the reason of such quarrel was issue of election.
- (II) Though the injured witness PW5 specifically testified that it is the accused, who inflicted the blow and when the other accused PW8 came to save him, he also got injured. However, the other injured witness testified that there was a quarrel but he did not see who inflicted the blow.
- (III) Thus there are two version of the two injured witnesses and in the aforesaid contraction further corroboration shall be required to bring home the charges against the accused though it is well settled that value of the testimony of injured witness is always in a higher pedestal than others but in the case in hand two injured witnesses deposed in a different way though they testified that there was a quarrel. One pin pointed the accused and the other testified not seeing, who inflicted the injury.
- (IV) From the evidence as discussed hereinabove, a doubt has also been created regarding the place of occurrence. Another aspect of the matter is that the PW5, who is implicated the accused specifically stated that the incident took place in front of the shop of one Gela Taid, whereas the other person PW8

deposed that incident occurred at Majulipur and other witnesses deposed that the incident occurred in front of the shop of Gandheswar Taid and the I/O deposed that it was in Laimekuri. The PW5 testified that it was in front of the shop of Gela Taid. There is no evidence on record that Gela Taid and Gandheswar Taid are the same person. Such discrepancies also created a doubt in the mind of this court the actual place of occurrence.

(V) Another important aspect of the matter is that PW1 deposed that he took the two injured victim in the vehicle of PW4 to a private nursing home and in the same vehicle the injured were brought back to their residence.

(VI) The PW1, informant and the brother of the victim further deposed that when they were at the nursing home, police came there and thereafter FIR was lodged whereas, PW9 the I/O deposed that he found the two injured persons in a Pharmacy and then he issued requisition to doctor for examination of the injured persons for furnishing report.

(VII) Thus, the testimonies of these witnesses are contradictory in nature. When the PW1 and PW4 deposed that they took the persons to a private nursing home and got them treated where as the I/O stated that he found them in a pharmacy and thereafter he issued requisition doctor for examination. Thus, a doubt is created actually how and when such treatments were given to these alleged injured persons. The PW1 also deposed that after hearing the hue and cry, he came out and saw the two victims lying in front of Gandheswar Taid's shop and took both of them to

the nursing home. Whereas PW4 deposed that he came to the place of occurrence i.e. Gandheswar Taid shop after half an hour of the incident and he saw both of them lying in front of the shop and he took the injured to the nursing home in his Maruti car. This also creates a doubt whether the injured persons were immediately brought by PW1 to the doctor or they were lying at the place of occurrence for half an hour and till PW4 reached the place.

18. Thus, in the entirety of the evidence though it is established beyond reasonable doubt that there was a quarrel and in that quarrel both the victims got injured, however, the prosecution failed to prove beyond reasonable doubt, who inflicted the injury upon these two victims as well as the actual place of occurrence.
19. In view of aforesaid doubt, in the consideration opinion of this court, the benefit of doubt should be given to the accused. Accordingly, judgment and sentence dated 29.09.2011 passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 20(JN)/2008 is hereby set aside and quashed and the appellant/accused is acquitted from the charges.
20. The appellant be set at liberty forthwith, if his custody is not required in connection with any other case. LCRs be returned back.

JUDGE