

GAHC010011802013



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

Case No. : Crl.A./314/2013

ABDUL JALIL
S/O LT. AINUL HOQUE, VILL. PUTHIMARI, P.O. BOLIKATIA, P.S. JURIA,
DIST. NAGAON, ASSAM.

VERSUS

STATE OF ASSAM

Advocate for the Petitioner : MS.M DEORI

Advocate for the Respondent : MR P S LAHKAR(ADDL.PP, ASSAM)

Linked Case : Crl.A./315/2013

SAHAR ALI and 5 ORS.

2: BAHARUL ISLAM

3: JOHIRUL ISLAM

4: JOHIRUL ISLAM

5: MUJAHARUL ISLAM

ALL ARE SONS OF ABUL HUSSAIN

6: ABUL HUSSAIN

S/O LT. DILMAHMUD

7: FAKARUDDIN

R/O APPELLANT NO. 1-6 ARE OF VILL. SIALI CHAPARI
GONTIRPAR
P.O. PUB-BARALIMARI
P.S.JURIA LAWKHUWA
DIST. NAGAON
ASSAM.
VERSUS

STATE OF ASSAM

Advocate for : MS.L N CHOUDHURY
Advocate for : appearing for STATE OF ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER (CAV)

Date : 20.03.2023

Heard Mr M H Choudhury, learned counsel appearing for the appellants. Also heard Mr P S Lahkar, learned Additional Public Prosecutor for the State of Assam.

2. Both the appeals being Criminal Appeal No. 314 of 13 and Criminal Appeal No. 315 of 2013, filed by the appellants, which arose in the same set of incident and on same Judgment dated 20.09.2013 passed by learned Sessions Judge, Nagaon, in Sessions Case No. 72 (N)/2005, are being taken up together for disposal, whereby the accused appellants were convicted under Sections 148/326/149 IPC and sentenced to undergo RI for 1 year each and also to pay fine of Rs. 2000/- each in default RI for two months, for the offence under Section

148 IPC and for the offence under Section 326/149 IPC, the accused appellants were sentenced to undergo RI for 3 years and to pay a fine of Rs. 5,000/- each, in default RI for 6 months each.

3. The brief facts of the case what emerges from the FIR is that one Saiful Islam lodged an FIR on 22.06.2004, before the I/C Sutirpar Outpost under Juria Police Station, stating inter alia that on 21.06.2004, at about 07:30 am, while his father Nur Hussain was working in his paddy field, one Akbar Ali called his father for some discussion. Accordingly, as per order of accused No. 1, Abdul Jalil, the other accused persons, namely, Sahar Ali, Baharul Islam, Johirul Islam, Mujaharul Islam, Abul Hussain, and Fakaruddin started to assault his father. Having heard hue and cry, he went to the spot and found that his father was being assaulted by the aforesaid accused appellants. When he raised alarm, the accused persons while tried to attack him, he left the place. Due to the alleged assault, the left hand of his father had been severed below wrist.

4. On receipt of the complaint, one GD Entry was recorded vide Sutirpar P.P. G.D.E. No. 321, dated 21.06.2004 and forwarded to the OC, Juria Police Station for registration of the case and accordingly, a case was registered vide Juria PS Case No. 127 of 2004 under Sections 147/148/447/326/307 IPC and the investigation has been commenced. During investigation, the Investigating Officer has visited the place of occurrence, recorded the statements of witnesses, prepared the sketch map of the place of occurrence and after completion of investigation, submitted charge sheet against the accused persons under Section 147/148/326/307/149 IPC. As the offence under Section 307 IPC is exclusively triable by the Court of Sessions, the case has been committed accordingly,

5. During trial, on appearance of the accused appellants before the Court of Sessions, charge was framed under Sections 147/148/326/307/149 IPC, which was read over and explained to the accused appellants to which they pleaded not guilty and came to be tried.

6. To prove the guilt of the accused, five witnesses were examined by the prosecution, including the Medical Officer and Investigating Officer. After completion of trial, the statements of the accused appellants were recorded under Section 313 CrPC, wherein the incriminating materials found in the evidence of the witnesses against the accused/appellants were put to them, to which they denied the same. After hearing the arguments, advanced by the learned counsel for the parties, the learned trial Court had convicted the accused appellants as aforesaid.

7. Being highly aggrieved and dissatisfied with the aforesaid judgment of conviction, the appellants have preferred this appeal.

8. Learned counsel for the appellants has argued that there are lots of contradictions in the evidence of witnesses. According to the injured PW-1, he was assaulted by the accused appellant, Sahar Ali, but PW-2 has added in his evidence that accused Baharul assaulted PW-1 with 'Ramdao' and accused appellants Fakaruddin, Mujaharul and Johirul also assaulted PW-1 with pointed iron weapon. Hence, the impugned Judgment has not been properly appreciated by the learned trial Court which is liable to be set aside.

9. It is also the submission of the learned counsel for the appellants that PW-1 is the injured, who deposed that only the accused appellant, Sahar Ali gave a dao blow on his left arm and thereafter PW 1 rushed to one nearby house belonging to one Abul Hussain and became senseless. If this part of evidence is believed, in that case, the other appellants other

than Sahar Ali cannot be held guilty at any cost. But the learned trial Court has convicted the other accused appellants also and thereby committed grave illegality while passing the impugned Judgment and Order and hence, the same is liable to be set aside.

10. On the other hand, learned Additional Public Prosecutor has submitted that the evidence of the witnesses are crystal clear regarding involvement of the accused appellants in commission of the offence as alleged. Accused Sahar Ali gave the first blow towards the victim PW-1 for which his left hand has been severed below the wrist. PW-2 is the eye-witness to the incident, who has narrated the entire story how the other accused appellants attacked the victim with the deadly weapons, for which the victim also sustained injuries on other parts of his body. According to the learned Additional Public Prosecutor, the learned trial Court has rightly convicted all the accused appellants, which does not call for any interference by this Court.

11. I have considered the submissions of the learned counsel for the parties. I have also perused the evidence of the witnesses as well as the other documents available in the record of Sessions Case No. 72 (N)/2005.

12. Before proceeding further in the case, let me consider the evidence of witnesses first.

13. PW-1 is the injured, Nur Hussain. From his deposition, it reveals that on the date of occurrence at about 08:30 am, he was busy in cutting jute in his land. Nur Islam and Akbar told him that the accused persons were sitting by the side of Abul Hussain along with other persons. Nur Islam asked him, from whose land, he was cutting the jute. He told him that it was his land. Then the accused Sahar Ali dealt a blow with a 'dao' towards him, as a result of which, his left hand had been severed below the wrist. He ran towards the house of Abul

Hussain, which was situated adjacent to the place of occurrence and he became unconscious. He could not say who took him to the hospital. He regained his sense in the hospital at Guwahati. He had to remain in hospital at Guwahati for about a month.

14. In his cross-examination, PW-1 replied that his son Saiful lodged the FIR. At that time, he was unconscious. Before filing the FIR, he did not ask him anything. He regained his sense after 7/8 days of the incident. At the time of incident, Saiful was at home.

15. PW-2 is Atabur Rahman. He deposed in his evidence that on the date of occurrence, at about 08:30 am, he was near the Masjid, situated at Sialichapori Char. The injured Nur Hussain was working in the paddy field, located near the Masjid. One Nur Islam called Nur Hussain from the paddy field to discuss about something. Near the Masjid, there was discussion between Nur Islam and Nur Hussain. Thereafter, Nur Hussain left the place. While Nur Hussain was about to go away from the place near the Masjid, the accused, Sahar Ali who concealed the 'dao' inside a Chadar suddenly brought out the 'dao' and started giving blows to Nur Hussain. Thereafter, the accused Baharul assaulted Nur Hussain with a 'Ramdao'. While Nur Hussain was trying to run away, the accused Fakar, Mujaharul and Jehirul also assaulted him with a pointed iron. Due to the alleged assault caused by Sahar Ali, left hand of Nur Hussain was detached near the wrist and it fell on the ground. Accused Baharul caused injuries to Nur Hussain on his head, eyes and nose. Nur Hussain ran towards the house of Abul Hussain and the accused persons also left the place. He could not intervene in the quarrel out of fear. He took Nur Hussain to Dagaon Hospital in a horse cart. Subsequently, the injured was shifted to Nagaon Civil Hospital, wherein he was treated for 3/4 days and subsequently, he was taken to Gauhati Medical College and Hospital ('GMCH', in short), and he was admitted there and had undergone treatment for more than one month.

16. In his cross-examination, PW-2 replied that at the time of occurrence, Nur Islam, Akbar, Wahab and some other villagers were also present and they had seen the incident. The occurrence took place at a public place near the Masjid. There are houses of other persons on the side of the road. At the time of occurrence, there was paddy in the field. There was a quarrel between the brothers for share of land and crops.

17. PW-3 is Saiful Islam, who is the son of the injured. From his deposition it discloses that on the date of incident, at about 08:30 am, he along with his younger brother Ajibur and father Nur Hussain were in the jute cultivation, situated in the northern eastern side of 'Char' areas. At that time, Nur Islam came and called his father to the house of the accused Abul Hussain. He did not know what was the discussion in the house of Abul Hussain. Suddenly, he heard the cries of his father and he ran towards the house of Abul Hussain and he saw his father lying in an injured condition. His father sustained injuries on his hand and his hand was severed. His father also received injuries on his eyes and head. His father was first taken to Dagaon Hospital and subsequently he was treated at Guwahati and he lodged the FIR.

18. In his cross-examination, PW-3 replied that the house of Abul Hussain is at a distance of 100 nals from the jute cultivation. He did not go with his father to the house of Abul Hussain. He did not know why his father had been called. Having heard the cries of his father, he rushed to the house of Abul Hussain and found his father lying in an injured condition. He was not present when his father was assaulted.

19. After going through the evidence of PW-1, PW-2 and PW-3, it reveals that PW-3 was not present when the incident occurred. According to injured, Nur Hussain (PW-1), accused Sahar Ali dealt a dao blow towards him, for which his left hand had been severed below the

wrist. Immediately after the incident, he went towards the house of Abul Hussain and became unconscious. He did not implicate other accused persons regarding assault towards him.

20. In his cross-examination, PW-1 replied that on the date of incident, while he was working in his paddy field, Nur Islam called him to the house of Abul Hussain, who is his brother, to discuss about the land. The land which he was cleaning measured about 12 kathas. He was in possession of the land. Accused Baharul claimed half of the land. There was a 'mel' in the village to discuss this matter on that day. In the 'mel', Nur Islam, Akbar, Fakaruddin and some other persons were also present. No settlement could be arrived in the mel. He refused to give half of the land to Baharul.

21. Though PW-1 did not say anything about the involvement of other accused/appellants, except Sahar Ali, but PW-2 who claimed to be the eye-witness to the incident, specifically stated that accused Baharul assaulted Nur Hussain with a 'Ramdao', for which he sustained injuries on his head, eyes and nose. The other accused Fakaruddin, Mujaharul and Jehirul assaulted the victim with a pointed weapon.

22. Now, let me consider the evidence of the Medical Officer, who examined the victim on the date of occurrence.

23. PW-4 is Dr. Sanjib Barua, who deposed in his evidence that on 21.06.2004, he was posted as Senior Medical Officer and health Officer in the Nagaon Civil Hospital. On that day, he examined Nur Hussain, aged about 60 years and found the following injuries:-

- 1) Traumatic amputation on lower third left forearm with extensive laceration upwards along left forearm upto the elbow

- 2) 2" inch x 2" in shelving wound. Right mid-forearm bone deep.
- 3) Circumferential wound 2 $\frac{1}{2}$ " long over left shoulder top with opening out of shoulder joint.

The doctor opined that the injuries were grievous in nature caused by sharp heavy weapon.

24. Though PW-2 has stated that due to the assault caused by accused/appellants Baharul, Nur Hussain has sustained injuries on his head, eyes and nose, but the report of Medical Officer is totally silent in respect of any injury found on the head, eyes and nose of the injured, Nur Hussain. According to PW-2, the other accused appellants, Fakaruddin, Mujaharul, and Jehirul also assaulted the victim with a pointed weapon, but it is not specific on which part of the body the victim Nur Hussain had sustained injury due to the assault hurled by the accused appellant Fakaruddin, Mujaharul and Jehirul. Under such backdrop, it can be said that the prosecution has failed to prove the participation of the other accused appellants, except Sahar Ali in the commission of the offence towards the victim Nur Hussain, on the date of incident.

25. PW-5 is the Investigating Officer. From his deposition, it appears that PW-5, on receipt of an information over phone from I/C Sutirpar Outpost, that a person (PW-1) received injuries on his body and one hand has been chopped off and accordingly, PW-5 went to Dagaon PHC and found the injured there, who had been given first aid and thereafter sent the injured to the Nagaon Civil Hospital, accompanied by one constable.

26. On receipt of the FIR, GD Entry No. 321, dated 21.06.2004 was recorded. According to PW-5, one of the accused Abul Hussain was caught hold of, by the villagers and handed over

to the Police. Accused Abul Hussain, as per version of PW-5, confessed before him that he had caused the injury with a sharp weapon towards the injured, but his statement was not recorded under Section 164 CrPC. Accused Sahar Ali was also arrested and after completion of investigation, charge sheet has been submitted against all the seven accused persons.

27. In his cross-examination, PW-5 replied that he did not send the accused Abdul Hussain to record his confessional statement before the Magistrate. He did not recover any weapon of assault from the place of occurrence or from nearby area. Atabur Rahman and Hazarat Ali are the immediate neighbours in the place of occurrence.

28. It is an admitted fact that due to the alleged assault/incident, left hand of PW-1 (injured) had been severed below wrist. According to PW-1, accused appellant, Sahar Ali dealt a blow with a dao, as a result of which he sustained such injuries. PW-2 also supported the fact by stating that the first blow was given by the accused appellant, Sahar Ali, for which PW-1 sustained injuries on his left hand. But PW-2 also added that the other accused appellants assaulted PW-1 with 'Ramdao' and pointed weapon. But PW-1 did not say anything in respect of involvement of other accused appellants, except Sahar Ali, as he ran towards the house of Abul Hussain, on receipt of his injury on his left hand and became unconscious. Though the Investigating officer also stated that the accused appellant, Abul Hussain had disclosed before him that he had caused injury to the victim, PW-1, but that fact was not proved during trial. Apart from that, the statement before the Police Officer, during investigation, is not admissible under the law and is hit by Section 25 of Evidence Act. However, the testimony of the injured, i.e., PW-1 had remained intact and no discrepancy whatsoever has been found in his statement regarding assault towards him by the accused, Sahar Ali, causing injury to his left hand.

29. In the case of *Namdeo vs. State of Maharashtra*; Criminal Appeal No. 914 of 2006, decided on 13.03.2007, the Hon'ble Supreme Court relied upon its earlier judgment in *Vadivelu Thevar vs. State of Madras*; reported in 1957 SCR 981, wherein it was observed by the Hon'ble Supreme Court as under:-

“1. As a general rule, a Court can and may act on the testimony of a single witness, though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

2. Unless corroboration is insisted upon by statute, Court should not insist on corroboration, except in cases, where the nature of the testimony of the single witness itself requires as a rule of prudence that corroboration should be insisted upon, for example, in case of a child witness or an accomplice or a witness of analogue character.

3. Whether corroboration of the testimony of a single witness is or is not necessary must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depend upon the judicial discretion of the Judge, before whom the case comes.”

30. The Hon'ble Supreme Court further observed that the testimony of a solitary witness can be made the basis of conviction. The credibility of the witness is required to be decided with reference to the quality of his evidence, which must be free from blemish or suspicion and must impress the Court as fact, wholly truthful and so convincing that the Court has no hesitation in recording a conviction solely on his uncorroborated testimony.

31. In the case of *Shadab @ Shamshad Vs. State of Government of NCT of Delhi*, vide

Criminal Appeal No. 1377/2012, decided on 11.03.2014, it was held that-

“There is no hard and fast rule that the testimony of injured requires corroboration before conviction. However, the rule of prudence has to be kept in mind. If the testimony of injured is trustworthy, categorically free from bias, and if there is nothing on record to suggest that the injured has any motive to falsely implicate the accused and allow his real assailants go scot free the conviction can be based on the sole testimony of injured.”

32. In the case at hand, the testimony of the injured witness PW-1, has given a trustworthy and reliable account of the incident and defence has not been able to impeach its credibility in the cross-examination. There is no reason to disbelieve the testimony of PW-1. Since his testimony has remained unimpeached, this Court is of the opinion that no further corroboration is required. Apart from that, the medical evidence has fully supported the ocular evidence to prove that the injured PW-1 had sustained injury due to the alleged incident.

33. In view of the above discussions, this Court is of the view that the prosecution has successfully established the case against the accused/appellant, Sahar Ali, beyond all reasonable doubt. Hence, the conviction under Section 326 IPC against the accused appellant, Sahar Ali, is upheld. However, the conviction under Section 148 IPC, imposed against him is set aside.

34. As the prosecution has failed to prove the case against the other accused/appellants beyond all reasonable doubt, they are acquitted and set at liberty forthwith.

35. In the result, appeal is partly allowed.

36. Accused Sahar Ali is directed to surrender before the learned Sessions Judge, Nagaon, to serve out the sentence. The period which he detained in custody during trial or investigation be set off from the period of imprisonment, imposed on him.

37. Send down the LCR.

38. With the above observations, both the criminal appeals being Nos. 314/2013 and 315/2013 are disposed of.

JUDGE

Comparing Assistant