

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS, KOKRAJHAR

G.R. Case no. 4017/2012

u/s 147/323/427/149 IPC

State

vs

Bahadur Ali

Maharuddin Sheikh

Jaharuddin Sheikh

Sukur Ali

Badiat Jamal

Abbdul Karim @ Karim Ali

Falu Sheikh

Mecher Ali

Sukur Ali

Meher Ali

.... accused persons

Present :- Sri N. Boro,

J.M. 1st Class, Kokrajhar

For the prosecution :- Sri L. Barman, APP

For the defence :- A. S. Talukdar, advocate

Evidence recorded on :- 26/9/2014, 8/10/2014

Argument heard on :- 9/10/2014

Judgment delivered on :- 9/10/2014

JUDGMENT

- 1) Prosecution case, in brief, is that on 19/10/2012, complainant namely Azad Ali lodged an ejahar in the Bagribari police station stating that on that day, at about 7-30 a.m., when his nephew namely Abdul Rezzak had reached his house riding a cycle then accused persons, in

a body, attacked his nephew with sticks, 'dao' etc. and when Sharif Ali went to prevent assault by accused persons on Abdul Rezzak then accused persons also caused hurt to Shariff Ali by assaulting. On receipt of ejahar, the Bagribari police registered a case being the no. 111/2012, u/s 147/148/149/323/427/506 IPC against accused persons and launched investigation of the case. During the period of investigation of the case, the investigating officer visited the place of occurrence, drew a sketch map of the place of occurrence, examined witnesses and collected injury report of victims. On completion of investigation of the case, the Bagribari police laid charge sheet of the case u/s 147/149/323/427 IPC against accused persons. Copies of relevant documents were furnished to accused persons as required u/s 207 Cr. P.C. After having heard both sides and considering the material on record, the particulars of charge u/s 147/323/427 IPC read with section 149 IPC were read over and explained to accused persons. Accused persons pleaded not guilty and claimed to be tried.

- 2) Prosecution side examined three witnesses. Considering the nature of evidence adduced by the prosecution witnesses, examination of accused persons u/s 313 Cr. P.C. were dispensed with. I heard argument of the case from both sides.

POINTS FOR DETERMINATION :-

- a) whether the accused persons on 19/10/2012, at about 7-30 a.m. were members of an unlawful assembly and in prosecution of the common object of that assembly used force upon complainant, Abdul Rezzak and Shariff Ali and thereby committed an offence punishable u/s 147 IPC ?
- b) whether the accused persons on 19/10/2012, in a body, voluntarily caused hurt to complainant, Abdul Rezzak and Shariff Ali and thereby committed an offence punishable u/s 323 IPC ?
- c) whether the accused persons on 19/10/2012, committed mischief causing damaged to complainant amounting more than Rs. 50/- and thereby committed an offence punishable u/s 427 IPC ?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) Azad Ali Sheikh, complainant of this case deposing as p.w.-1 stated that the incident occurred in the year 2012, at about 7-30 a.m. He stated that on that day, an altercation was taken place in his house with accused Badiat Jamal on account of cutting trees from their estate and the said estate is run by their NGO. He stated that thereafter, other accused persons also arrived at the spot and altercation was also taken place with them. He stated that therefore, he lodged this case against accused persons. Ext.-1 is the said ejahar and ext.-1(1) is his signature.
- 4) During cross-examination, p.w.-1 stated that except accused Badiat Jamal other accused persons reached at the spot after the quarrel. Accused are his neighbours. He lodged ejahar against accused persons due to misunderstanding of fact. He arrived at compromise of the dispute with accused persons. He has no objection if accused persons get acquitted from the charge of this case.

- 5) Abdul Rezzak, p.w.-2, stated that he knows complainant and accused persons. He stated that the incident has become about two years and occurred at about 2 p.m. He stated that on that day, he along with Azad Ali engaged in an altercation with accused persons on matter relating to a cycle. He stated that therefore, complainant lodged an ejahar against accused persons.
- 6) During cross-examination, p.w.-2 stated that accused are co-villagers. At present, both sides arrived at compromise of the dispute. He has no objection if accused persons get acquitted from the charge of this case.
- 7) Sharif Ali, p.w.-3 stated that he knows complainant and accused. He stated that the incident has become about two years and occurred at about 9/10 p.m. He stated that on that day, he was in the tea stall of Azad Ali. He stated that he heard commotion taking place outside of the tea stall and saw an altercation taking place between Azad Ali and accused persons after coming out of the tea stall. He stated that the said quarrel between the parties was taken place on account of cutting tree. He stated that he prevented both sides from quarreling.
- 8) During cross-examination, p.w.-3 stated that on the day of occurrence of the incident, no 'marpit' (brawl) was taken place between the parties. Quarrel between the parties was taken place due to misunderstanding of fact. He has no objection if accused persons get acquitted from the charge of this case.
- 9) The points for discussion are taken together for sake of convenience in discussion. Thus, in view of the above discussion of evidence of prosecution witnesses, it has not come out that accused persons, on the day of occurrence of the incident, used criminal force, assaulted p.w.-1, p.w.-2 and p.w.-3 and caused mischief in prosecution of the common object. What can be gathered from the evidence of p.w.-1, p.w.-2 and p.w.-3 is that on the day of occurrence of the incident, both sides engaged in an altercation regarding felling of trees in an estate belonging to a NGO established by complainant. As such, both sides have arrived at compromise of the dispute and p.w.-1, p.w.-2 and p.w.-3 have no objection if accused persons get acquitted from the charge of this case therefore, further discussion of evidence regarding guilt of accused persons is unnecessary. Ingredients of offence u/s 147/323/427 IPC are not established against accused persons.
- 10) I inclined to believe that prosecution side failed to establish the charge u/s 147/323/427 IPC against accused persons read with section 149 IPC beyond all reasonable doubt. Hence, accused are acquitted on benefit of doubt and set at liberty forthwith.

Given under my hand and seal of this court on this 9th day of October, 2014.

Typed and corrected by :-

(Sri N. Boro)