

IN THE COURT OF JUDICIAL MAGISTRATE, 1<sup>ST</sup> CLASS, KOKRAJHAR.

G.R. Case no. 398/2010

u/s 325/34 IPC

State

vs

Manik Singh Roy

Lalji Roy

... accused

Present ;- Sri N. Boro,

J.M. 1<sup>ST</sup> Class, Kokrajhar.

For the prosecution :- Sri L. Barman, APP

For the defence :- Sri S. Pahariya, advocate

Evidence recorded on :- 17/7/2012, 13/2/2013, 8/7/2013, 7/8/2013, 20/8/2014

Argument heard on :- 24/9/2014

Judgment delivered on :- 13/10/2014

JUDGMENT

- 1) Prosecution case, in brief, is that complainant namely Prasanna Kumar Roy lodged an ejahar in the Kazigaon police station stating that on 6/4/2010, at about 9 p.m. one Bijoy Singh Roy had kept his motor cycle bearing no. AS-17/4306 in front of Kamaleswar Roy's shop for which Kamaleswar Roy asked Bijoy Singh Roy not to stand his bike in front of the shop and then accused Manik Singh Roy and Lalji Roy attacked Kamaleswar Roy and caused severe injury on tooth. On receipt of ejahar, the Kazigaon police registered a case being the no. 27/2010, u/s 325/506/34 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 victim. On completion of investigation of the case, the Kazigaon police laid charge sheet of the case u/s 325/506/34 IPC against accused persons namely Manik Singh Roy and Lalji Roy. 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, my predecessor, framed charge of the case u/s 325/34 IPC against accused persons. The particulars of charge u/s 325/34 IPC were read over and explained to accused persons. Accused persons pleaded not guilty and claimed to

be tried.

- 2) Prosecution side examined seven witnesses including medical officer and investigating officer as official witnesses. Court examined Kamaleswar Roy as c.w.-1. Accused were examined u/s 313 Cr. P.C. and their statement were recorded. The pleas of accused were of total denial and refused to adduce evidence. I heard argument of the case from both sides.

POINT FOR DETERMINATION :-

- a) whether the accused persons on 6/4/2010, at about 9 p.m. voluntarily caused grievous hurt to Kamaleswar Roy and thereby committed an offence punishable u/s 325 IPC ?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) Ali Hussain, p.w.-1, stated that he knows complainant and accused persons. He stated that the incident has become about one year. He stated that on that day, he was drinking tea at Rupshi market and then he heard hue and cry in some little distance from the tea stall. He stated that he saw gathering of people at the place of occurrence and he went to the spot. He stated that he saw blood on mouth of complainant.
- 4) During cross-examination, p.w.-1 stated that he did not see 'marpit' (brawl).
- 5) Gobinda Roy, p.w.-2, stated that he knows complainant and accused persons. He stated that the incident has become about two and half years and occurred in the time of evening. He stated that on that day, he was in his shop and he saw gathering of people about 30/40 feet distance from his shop. He stated that he heard that a quarrel was taken place in between Kamaleswar Roy and Manik Singh Roy. He stated that he heard that 'marpit' (brawl) had taken place. Police examined him in connection with this case.
- 6) During cross-examination, he stated that he cannot say who was beaten up by whom.
- 7) Bhabendra Nath Roy, p.w.-3, stated that he knows complainant and accused persons. He stated that the incident has become about 3/ 4 years. He stated that it was in the afternoon time and at that time, he was in the market and it was weekly market day. He stated that he heard commotion in the market and saw people gathered at that place of commotion taking place. He stated that he came to know that a quarrel was taken place among Lalji, Kamaleswar and Manik Singh Roy. He stated that he heard, 'marpit' was taken place. He stated that he heard that Kamaleswar had sustained injury on teeth.
- 8) During cross-examination, p.w.-3 stated that he did not hear as to how Kamaleswar had sustained injury on his teeth. He did not see injury of Kamaleswar and he did not meet Kamaleswar.
- 9) Prasanna Kumar Roy, complainant of this case deposing as p.w.-4 stated that he knows accused persons. He stated that the incident occurred in the year 2010 and at about 9 p.m. He stated that Kamaleswar Roy is his son and his son had a stationery shop at Rupshi market. He stated that on the day of occurrence of the incident, accused persons kept their motorcycle in front of his son's shop. He stated that his son requested accused persons not to keep their motorcycle in front of the said shop and then accused persons gave blow to his son. He stated that his son sustained injury in the lower part of tooth. He stated that when his

son had gone to Dhubri hospital for treatment then Dhubri hospital referred his son's case to Guwahati hospital for better treatment. He stated that his son still cannot eat properly with the help of lower part tooth. He stated that later, he lodged ejahar in connection with the occurrence of the incident. Ext.-1 is the said ejahar and ext.-1(1) is his signature.

- 10) During cross-examination, p.w.-4 stated that there is a police out post at Rupshi and it is about half an hour walking distance to the police out post from the place of occurrence. He lodged ejahar in the police station after eleven days later of occurrence of the incident and he did not mention ground of delay in his ejahar. He was near the place of occurrence on the day of occurrence of the incident. He signed on his ejahar after knowing of the fact stated in the ejahar. He took his son at Rupshi primary hospital after knowing occurrence of the incident.
- 11) Nirmal Kumar Roy, p.w.-5, stated that he knows complainant and accused persons.
- 12) P.w.-5 was declared hostile on being prayed by the prosecution side and prosecution side was allowed to cross-examine p.w.-5. During cross-examination by prosecution side, p.w.-5 denied that he had said to police " on the day of occurrence of the incident accused Manik Singh Roy and Lalji Roy beat Kamaleswar Roy in front of the shop and caused hurt. He reached the place of occurrence after the occurrence of the incident. He and many others saw the incident on that day". Manik Roy and Lalji Roy are his elder brothers. It is not true that he showed ignorance of the incident for being accused persons are his elder brothers.
- 13) During cross-examination by the defence side, p.w.-5 stated that on the day of occurrence of the incident, he was at Guwahati and worked at Guwahati as labour. Police did not examine and record his statement in connection with this case.
- 14) Sadananda Roy, the investigating officer of this case deposing as p.w.-6 stated that on 17/4/2010, he was working as ASI of police at Kazigaon police station. He stated that on that day, complainant namely Prasanna Kumar Roy lodged an ejahar in the police station and the then O/C of the station registered a case on receipt of ejahar from complainant. He stated that the then O/C of the station directed him to investigate the case. He stated that he went to the place of occurrence, drew a sketch map of the place of occurrence and examined witnesses. He stated that at that time, he did not find accused persons on being searched in their houses. He stated that he sent victim Kamaleswar Roy for medical treatment and thereafter, collected injury report of victim. He stated that for being failed to apprehend accused persons, charge sheet was submitted, on completion of investigation of the case, u/s 325/506/34 IPC against accused persons namely Bijoy Singh Roy, Manik Roy and Lalji Roy showing absconder. Ext.-2 is the said charge sheet and ext.- 2(1) is his signature. Ext.-3 is searched report and ext.-3(1) is his signature.
- 15) During cross-examination, d.w.-6 stated that according to ejahar the date of occurrence of the incident was on 6/4/2010, at about 9 p.m. and complainant lodged ejahar about occurrence of the incident on 17/4/2010, at about 10 a.m. Kamaleswar Roy, victim, took medical treatment himself on 9/4/2010 in the hospital, before lodging ejahar of this case. Complainant did not mention ground of delay of lodging ejahar and complainant also did not state ground of delay at the time of recording statement u/s 161 Cr. P.C. He did not draw sketch map of the place of occurrence. He did not examine Kamaleswar Roy, victim of this

case, in connection with occurrence of the incident and he did not record statement of Kamaleswar Roy u/s 161 Cr. P.C. There was a police out post at Rupshi, at the time of occurrence of the incident. Rupshi out post was situated about five minutes walking distance from the place of occurrence. It is not true that he did not record statement of Nirmal Kumar Roy. It is not true that he did not complete investigation of the case properly and submitted charge sheet of the case falsely.

- 16) Dr. Debasree Choudhury, medical officer, deposing as p.w.-7 stated that on 8/5/2010, she was working at Dhubri civil hospital. She stated that on that day, one injured person namely Kamaleswar Roy brought before her for medical treatment in connection with Kazigaon police case no. 27/2010. She stated that after examination, she found, on person of Kamaleswar Roy, fractured mandible at the angle of left side. She stated that injury of victim was grievous and caused by blunt weapon. She stated that she referred case of Kamaleswar Roy to the Regional Dental College, Guwahati, for better treatment. Ext.-4 is the said medical report and ext.-4(1) is her signature.
- 17) During cross-examination, p.w.-7 stated that she examined Kamaleswar Roy on 9/4/2010 as outpatient and in ext.-4 registration no. of Kamaleswar Roy shown as 3119/2010. Police personnel did not accompany with Kamaleswar Roy at the time of examination of Kamaleswar Roy. She put case no. in the ext.-4 later and Kamaleswar Roy did not state to her as to how he had sustain injury.
- 18) Kamaleswar Roy, victim of this case was examined as c.w.-1. He stated that complainant is his father and he knows accused persons. He stated that about 4 years ago accused persons, at about 9-30 p.m. kept their motor cycle in front of his shop situated at Rupshi market. He stated that he had said to accused persons not to stand motor cycle in front of his shop and then accused Manik Singh Roy gave a blow on his left cheek saying that he is son of a police man. He stated that accused Lalji also assault him and he sustained injury. He stated that he had left his shop and went to Rupshi hospital for treatment and Doctor of Rupshi hospital after examination of his injury, referred him to Dhubri hospital for better treatment. He stated that he went to Dhubri hospital in the night of occurrence of the incident. He stated that Doctor of Dhubri hospital after examination of his injury advised him to go to Guwahati for better treatment. He stated that on next day of occurrence of the incident, he went to Regional Dental hospital Guwahati. He stated that he took treatment at Guwahati hospital staying about 15/16 days. He stated that his father lodged ejarah in connection with this case.
- 19) During cross-examination, c.w.-1 stated that his father was grade-IV employee of Forest department and posted at Rupshi. He informed about the occurrence of the incident to his father in that night and went to Dhubri along with some 2/4 friends. He visited Dentist Dipali Choudhury (Debsree Choudhury) in that night. His father did not go along with him. It is about 2 minutes distance to Rupshi State Dispensary from his shop and it is about 5 minutes walking distance to Rupshi out post from his shop. Gobinda Roy's fruit shop was situated near his shop along with Khairul, Khairuddin etc. On the day of occurrence of the incident, Gobinda, Nirmal, Ali Hussain, Bhaben Roy etc. went to his shop on being heard hue and cry. He denied the suggestions made by the defence counsel on behalf of accused persons.

20) The points for discussion are taken together for sake of convenience in discussion. In this case, Ali Hussain (p.w.-1), Gobinda Roy (p.w.-2), Bhabendra Nath Roy (p.w.-3) and Prasana Kumar Roy (p.w.-4) did not see beating Kamaleswar Roy by accused persons on the day of occurrence of the incident. Nirmal Kumar Roy (p.w.-5) turned hostile. Sadananda Roy (p.w.-6) is investigating officer of this case and Dr. Debasree Choudhury (p.w.-7) medically examined victim Kamaleswar Roy at Dhubri hospital. Thus, prosecution case is based on evidence of Kamaleswar Roy (c.w.-1). The investigating officer of this case did not examine Kamaleswar Roy in connection with this case during the period of investigation of the case.

21) Kamaleswar Roy (c.w.-1) stated in his evidence that on the day of occurrence of the incident, when he had asked accused persons not to stand their motor cycle in front of his shop, at about 9-30 p.m., then accused Manik singh gave a blow on his left cheek and accused Lalji Roy also assaulted him. Kamaleswar Roy stated that he had sustained injury and went to Rupshi hospital for treatment and thereafter to Dhubri hospital in that night. During cross-examination, Kamaleswar Roy stated that he visited Dentist Dipali Choudhury (p.w.-7) on the day of occurrence of the incident. Kamaleswar Roy stated that Dipali Choudhury (p.w.-7) advised him to visit Regional Dental College at Guwahati for better treatment. P.w.-7 also corroborated the fact that she advised Kamaleswar Roy to go to Regional Dental college, Guwahati, for better treatment (ext.-4). Now, the question is whether Kamaleswar Roy did visit Dr. Debasree Chudhury (p.w.-7) for treating his injury on the day of occurrence of the incident i.e. in the night of 6/4/2010. The evidence of Dr. Debasree Choudhury (p.w.-7) and ext-4 shows that victim Kamaleswar was medically examined by her on 9/4/2010, as outpatient vide OPD registration no. 3119/2010. On the other hand ext.-1 shows that the date of occurrence was on 6/4/2010, at about 9 p.m. So, the fact that Kamaleswar Roy visited Dr. Debasree Choudhury, on 6/4/2010, in the night, is doubtful and does not find corroboration. From the evidence of p.w.-4 and c.w.-1, it is cleared that Rupshi out post was situated near the place of occurrence. P.w.-4 did not state in his ejahar the ground of delay lodging ejahar in the police station. The evidence of p.w.-7 and ext.-4 reveals of the fact that Kamaleswar Roy did not visit p.w.-7 on 6/4/2010, in the night. If Kamaleswar Roy had visited p.w.-7 on 6/4/2010 for treatment then p.w.-7 would have stated the same in her evidence and would also write the same on ext.-4. Therefore, it can be said that Kamaleswar Roy did not sustain injury on his teeth on 6/4/2010.

22) Thus, in view of the above discussion, observation and reasons, I do not find it safe to hold accused persons guilty only on the basis of evidence of Kamaleswar Roy for committing offence u/s 325 IPC read with section 34 IPC. Prosecution side failed to establish the charge u/s 325 IPC against accused persons beyond all reasonable doubt.

23) Hence, accused are acquitted on benefit of doubt and set at liberty forthwith.

Given under my hand and seal of this court on this 13<sup>th</sup> October, 2014.

Typed and corrected by :-

( Sri N. Boro )