

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS, KOKRAJHAR.

G.R. case no. 47/2013

u/s 323 IPC

State

vs

Robin Roy

.... accused

Present :- Sri N. Boro,

J.M. 1st Class, Kokrajhar

For the prosecution :- Sri L. Barman, APP

For the defence :- Sri M. K. Ghosh, advocate

Evidence recorded on :- 11/9/2014, 9/10/2014

Argument heard on :- 20/10/2014

Judgment delivered on :- 20/10/2014

JUDGMENT

- 1) Prosecution case, in brief, is that on 11/1/2013, complainant namely Ashini Kumar Roy lodged an ejahar in the Fakiragram police station stating that on that day, at about 3 p.m., accused Robin Roy had attacked him in the field with a spade on his head and caused hurt while complainant had been tried to prevent accused cutting 'Ali' (an embankment across the rice field) in the field. On receipt of ejahar, the Fakiragram police registered a case being the no. 01/2013, u/s 294/326/506 IPC against accused 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, collected injury report of victim and examined witnesses. On completion of investigation of the case, the Fakiragram police laid charge sheet of the case u/s 294/323/506 IPC against accused. Copies of relevant documents were furnished to accused as required u/s 207 Cr. P.C. After having heard both sides and considering the material available on record, the particulars of charge u/s 323 IPC were read over and explained to accused. Accused pleaded not guilty and claimed to be tried.
- 2) Prosecution side examined three witnesses. Accused was examined u/s 313 Cr. P.C. and

his statement was recorded. The plea of accused was of total denial and refused to adduce evidence. I heard argument of the case from both sides.

POINT FOR DETERMINATION :-

- a) whether the accused on 11/1/2013, at about 3 p.m. voluntarily caused hurt to complainant and thereby committed an offence punishable u/s 323 IPC ?

DISCUSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) Rameswar Gaur, p.w.-1, stated that he knows complainant and accused. He stated that the incident has become about one and half years and occurred at about 3 p.m. He stated that on the day of occurrence of the incident, he and Santaram Koiri were cutting and making 'Ali' (an embankment across the rice field) in the field of Robin Roy. He stated that there was a bend 'Ali' (an embankment across the rice filed) in the field and Robin Roy asked them to make it straight. He stated that when he tried to make the bend 'Ali' straight then Ashini Kumar Roy prevented him. He stated that Robin Roy pressed him to make the 'Ali' straight and Ashini Kumar Roy prevented him. He stated that thereafter, Robin Roy had taken spade from him and started to make straight the bend 'Ali' himself and Ashini Kumar Roy prevented Robin Roy. He stated that both of them started pulling and pushing with the Spade. He stated that during the time of pulling and pushing between complainant and accused, spade had slipped from the hand of accused and hit on the head of complainant. He stated that complainant sustained head injury suddenly. He stated that Ahsini Kumar Roy was holding on the side of spade and Robin Roy was holding handle of the spade. He stated that he snatched the spade from hands of complainant and accused. He stated that Ashini Kumar Roy left the spot for taking treatment of his injury.
- 4) During cross-examination, p.w.-1 stated that the incident occurred in the land of Robin Kumar Roy. It was a boundary dispute between the parties. Robin Roy did not voluntarily assault Ashini Kumar Roy. Both are brothers. He cannot say which side of the spade hit Ashini Kumar Roy.
- 5) Santaram Koiri, p.w.-2 stated that he knows complainant and accused. He stated that the incident has become about one year and occurred at about 3/ 4 p.m. He stated that on that day, they were working in the land of Robin Roy and Robin Roy asked them to make straight a bend 'Ali' of the field. He stated that then Ashini Kumar Roy had prevented them for making straight the 'Ali' and Ashini Kumar Roy and Robin Roy engaged in quarrel. He stated that Ashini Kumar Roy and Robin Roy engaged in pulling and pushing with a spade and then handle of spade hit on head of Ashini Kumar Roy. He stated that Ashini Kumar Roy sustained head injury and Rameswar separated both sides from quarreling. He stated that they stopped their work and went to their homes.
- 6) During cross-examination, p.w.-2 stated that Ashini Kumar Roy and Robin Roy are brothers. Robin did not hit Ashini Kumar Roy. When both sides had been engaged in pulling and pushing with the spade then spade had slipped from hand of accused and hit on head of Ashini Kumar Roy.
- 7) Ashini Kumar Roy, complainant of this case deposing as p.w.-3 stated that accused is

his brother. He stated that the incident occurred on 11/1/2013, at about 3 p.m. He stated that on that day, he was drying his rice in the backyard of his house with his wife. He stated that his brother was working in his field with two labours. He stated that he went to the field and his wife also followed him behind. He stated that Robin Roy with the help of two labours were cutting his boundary 'Ali' and made a new 'Ali' about two feet inside his land in possession. He stated that he had prevented Robin Roy not to make 'Ali' and then spade of Robin Roy hit on his back side head. He stated that he sustained bleeding injury and received four stitches on his head. He stated that he lodged ejahar in the police station in connection with occurrence of the incident. Ext.-1 is the said ejahar and ext.-1(1) is his signature.

- 8) During cross-examination, p.w.-3 stated that he arrived at compromise of the dispute with his brother in amicably in this case. He has no objection if accused get acquitted from the charge of this case.
- 9) In view of the above discussion of evidence of prosecution witnesses, it has come out that quarrel in between brothers was taken place due to dispute of boundary land of their field. According to Ashini Kumar Roy (p.w.-3), his brother tried to make a new 'Ali' about two feet inside of his land. The evidence of Rameswar Gaur (p.w.-1), Santaram Koiri (p.w.-2) and Ashini Kumar (p.w.-3) established of the fact that on the day of occurrence of the incident, Ashini Kumar Roy had sustained head injury by a spade. Now, the question is whether accused voluntarily caused hurt to Ashini Kumar Roy with the said spade. P.w.-1 and p.w.-2 are independent witnesses of this case and on the day of occurrence of the incident, they were working in the field of accused. They saw quarrel of complainant and accused in the field. The evidence of p.w.-1 and p.w.-2 do not indicate that on that day, accused Robin Roy hit on head of Ashini Kumar Roy at the time of pulling and pushing with Ashini Kumar Roy. P.w.-3 also did not say in his evidence that accused had hit on his head with the spade. What can be gathered from the evidence of p.w.-3 is that on the day of occurrence of the incident, when he had tried to prevent accused in making a new 'Ali' in the field then spade of accused injured him. Thus, I found, ingredients of offence of hurt are not established. However, during cross-examination of p.w.-3, it has revealed that both sides have arrived at compromise of the dispute and complainant has no objection if accused get acquitted from the charge of this case.
- 10) As such, both sides settled the dispute amicably and complainant has no objection against accused therefore, further discussion of guilt of accused is unnecessary.
- 11) Prosecution side failed to establish the charge u/s 323 IPC against accused beyond all reasonable doubt. Hence, accused is acquitted on benefit of doubt and set at liberty forthwith.

Given under my hand and seal of this court on this 20th day of October, 2014.

Typed and corrected by :-

(Sri N. Boro)