

DISTRICT : GOLAGHAT.
IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. : **Criminal Appeal No. 28/2012.**

Md. Papu Ali @

Md. Rafiqul Hussain. Appellant.

Vs.

The State of Assam. Respondent.

Date of final hearing 01.11.2013.

Date of judgment &
order. 11.11.2013.

APPEARANCES :

For the appellant Mr. N. Bhattacharjee,
Advocate, Golaghat.

For the respondent/

State of Assam. Mr. N.P. Acharjee,
Public Prosecutor, Golaghat.

P R E S E N T :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT AND ORDER :

1. This Criminal Appeal u/s 374(3) of the Cr.P.C. filed by Md. Papu Ali @ Rafiqul Hussain, resident of Dergaon town, Narikalguri (hereinafter called as appellant) against the judgment and order dated 24.9.2012 passed by the learned Judicial Magistrate, First class, Golaghat in G.R. Case No. 911/2011, convicting him u/s 353 of IPC and sentencing him to rigorous imprisonment of 6 months and to pay fine of Rs.2,000/-, and in default of payment of fine, to undergo rigorous imprisonment for one month ; further, the appellant was sentenced to pay fine of Rs.500/- u/s 447 of IPC and in default of

payment of fine, he shall undergo with simple imprisonment of 15 days.

2. The prosecution case, in brief, is that on 9.7.2011, at around 9'45 P.M., the appellant accompanied with others, entered into the Control Room of Assam Power Distribution Company Ltd., Dergaon and assaulted Sri Pranjal Pegu who was on duty causing him to suffer injury. The O/C of Dergaon police station on receipt of the written ejahar from the Sub-Divisional Engineer, Dergaon Electrical Division, APDCL, Dergaon, registered a case vide Dergaon P.S. Case No. 149/2011 u/s 448/353/34 of IPC and investigate into the case. After completion of investigation, the police submitted the charge sheet u/s 448/353 of IPC against the accused/appellant for trial.

3. Trial began before the Court of learned Judicial Magistrate, First Class, Golaghat. During trial, the appellant pleaded not guilty when the particulars and substances of the offences u/s 448/353 of IPC were read over and explained to him and he claimed to be tried. The prosecution adduced the evidence of 7 witnesses to prove the case. The accused/appellant adduced none in his defence. After hearing from both the sides, the learned trial Court was satisfied to hold that the prosecution was able to prove the case u/s 447/353 of IPC against the accused/appellant, and accordingly, convicted and sentenced him as stated above.

4. Being highly aggrieved by and dissatisfied with the aforesaid impugned judgment and order of the learned trial Court, the accused/appellant has preferred this appeal on the following amongst other grounds -

That the learned trial Court erred in law holding the accused/appellant guilty under the aforesaid sections of law ; that the learned trial Court did not base his judgment on the totality of the evidence ; that the learned trial Court did not discuss anything regarding the place of occurrence ; that the learned trial Court did not consider the contradictory statement made by the prosecution witnesses ; that the non-production of original report submitted by the alleged victim to the P.W.5 has not been produced before the Court and hence, prays for setting aside the said impugned judgment and order of the learned trial court.

5. I have perused the called for case record of G.R. Case No 911/11 which is received from the learned trial Court.

6. Heard the learned counsels of both the sides.

7. Let me discuss the evidence on record to see as to whether the learned trial Court had wrongly convicted the accused/appellant without considering the aforesaid grounds as stated by the appellant.

8. P.W.1 Cheniram Das and P.W.2 Pranjal Pegu are the Switch Board Operators of the A.S.E.B office Control room, Dergaon. P.W.3 Mukul Nath is the night watchman of A.S.E.B., Dergaon P.W.4 Papu Rajbanshi is the Contractor and friend of P.W.2 Pranjal Pegu. P.W.5 Rajesh Payeng is the Deputy Manager of A.S.E.B.. and immediate authority of P.W.1, P.W.2 and P.W.3. P.W.2 is the injured person in this case. The occurrence took place on 9.7.2011 at around 9'45 P.M.

9. According to the evidence of P.W.1, at the time of incident, he was in the Control room of A.S.E.B., Dergaon. When P.W.2 returned to the Control room after having his dinner from his official quarter and before he reached to the Control room, a mar-pit had taken place near the gate of the office between the appellant and P.W.2. He (P.W.1) was sitting inside the Control room and then he went to the place of incident when he was called by P.W.2. Then P.W.1 opened the gate and then the appellant along with others entered into the compound of the office and started to chase P.W.1, who saved himself by entering into the Control room of the office.

10. From the evidence of P.W.1, it is found that the appellant was outside of the office gate when P.W.1 went there as he was called by P.W.2. From the evidence of P.W.1, it appears to be that he did not see the mar-pit that took place between the P.W.2 and the appellant. It is found in the cross examination of P.W.1 that there was a group of persons consisting to 12/15 members outside of the gate. He saw exchanging of fisting blows between the appellant and the P.W.2. From the evidence of P.W.1, it is found that as soon as he opened the gate, the appellant along with others entered inside the compound of the office and chased him and he in order to save himself, entered into the

Control room of the office of AS.E.B., Dergaon.

11. According to the evidence of P.W.2 Pranjal Pegu, the incident took place inside the office compound. The appellant without any reason, gave fisting blows on his face and back.

12. According to the evidence of P.W.3 Mukul Nath, at the time of incident, while he was returning to attend his duty from his official quarter situated inside the office compound, he saw a gathering assembled near the gate of the Control room and altercation among them was going on. He found P.W.1, P.W.2 and Atul Bora in the Control Room. He (P.W.3) was shown the blood stained cloth of P.W.2 and told him by P.W.2 that he was beaten by some boys hailing from Narikalguri.

13. From the evidence of P.W.3, it appears to be that he did not see the actual occurrence, in spite of the fact that at that time, he was returning from his official quarter situated inside the office compound.

14. From the aforesaid evidence on record, it is not clear where exchanging of fisting blows took place between the appellant and P.W.2. According to the evidence of P.W.2, he was given fisting blows by the appellant inside the office compound. But according to the evidence of P.W.1, when he rushed to the place of incident on the call of P.W.2 and when he opened the gate, then the appellant along with others entered into the office compound. As per evidence of P.W.1, inside the compound, no incident took place. P.W.3 did not see any incident. But he was told by P.W.2 that the appellant had assaulted him and showed his blood stain cloth to him. From the evidence of P.W.1 and P.W.2, it is not clear where the incident took place. P.W.2 has stated in evidence that he was taken to the hospital by the police for his medical treatment. But the prosecution did not adduce the medical evidence. Without the medical evidence, it could not be ascertained as to whether the P.W.2 has actually sustained the injury or not. It is also not clear as to whether he was on duty or not at the time of occurrence, as because, when we read together the evidence of P.W.1 and P.W.2, we could not find out the actual place of incident. Therefore, it is not proved beyond reasonable doubt that P.W.2 was assaulted

by the appellant when he was going to his official duty or prevented him from doing his official duty.

15. P.W.4 Papu Rajbanshi is the friend of P.W.2 . According to the evidence of P.W.4, he was told by P.W.2 on the next day of the occurrence that appellant came to his office and assaulted him on the ground of load shedding of electric power. But P.W.2 did not state in his deposition that the appellant came to his office on the ground of load shedding of electric power.

16. P.W.5 Rajesh Payeng, who was working as S.D.E. of the ASEB at the time of occurrence has deposed in evidence that on the day of incident, at around 9'40 P.M., he was informed over telephone by his one official staff that there was a commotion among the gathering near the Control room of ASEB, Dergaon and commotion turn into mar-pit. P.W.5 was informed by the injured P.W.2 that somebody had assaulted him. He did not disclose the name of the assailant before P.W.5 who was the immediate authority. P.W.5 lodged the ejahar vide Ext-1, upon which Ext-1(1) is his signature. As per ejahar Ext-1, the names of two assailants along with others were involved in the incident. Prior to the lodging of the ejahar by P.W.5, P.W.2 filed a written complaint with the P.W.5. P.W.5 prepared the ejahar Ext-1 on the basis of the said written complaint of P.W.2. But the said written complaint of P.W.2 has not been placed on record. P.W.5 has admitted in examination in chief that he was given a written complaint by P.W.2 alleging that he was beaten by somebody.

17. From the evidence of P.W.5, it appears to be that P.W.2 did not disclose the name of any assailant in his written complaint. But during trial, he developed his evidence implicating the appellant as sole assailant in this case. P.W.2 has admitted that the people from Negheriting were gathered in front of the gate of the office and told him that the electric bulbs of the house of many persons in the said area became damaged. It is found from this part of evidence of P.W.2 that the people gathered there to ventilate their grievances before the Electrical office for damaging their electric bulbs. But there is no cogent, convincing and clear evidence that the appellant entered into the compound of the ASEB office and gave fisting blows to P.W.2 in order to prevent or from discharging his official duty.

18. From the aforesaid discussions, I find and hold that the prosecution has failed to prove the offence u/s 447/353 of IPC against the accused/appellant beyond all reasonable doubt. The findings of the learned trial Court is appears to be wrong which can not be allowed to exist. The interference from this Court into the findings arrived by the learned trial Court is to be required.

19. Accordingly, the appeal is allowed on contest.. The impugned judgment and order dated 24.9.2012 passed by the learned trial Court in G.R. Case No. 911/2011 convicting the accused/appellant is set aside and the accused/appellant is set at liberty. His bail bond stands discharged.

20. Send back the case record of G.R. Case No.911/2011 to the learned trial Court immediately along with a copy of the judgment and order for information and necessary action.

Given under my hand and seal of the Court on this the 11th day of November, 2013.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictated & Corrected
by me.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictation taken & transcribed
by me :- S. Borpatra, Steno.