

IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS: GOLAGHAT, ASSAM

G.R. CASE NO - 71/2010.

U/S 448/324/34 of Indian Penal Code.

STATE

V.

SRI NABA BORA

SRI CHENIRAM BORA

SRI MANASH BORA.

.....Accused persons.



PRESENT: - MRS. LEENA DOLEY, AJS

J.M. FIRST CLASS, GOLAGHAT.

FOR THE PROSECUTION: - MRS DIPLIP GOGOI, Asstt. P.P

FOR THE DEFENCE: - SRI SUMANT SINGH, SRI PRANJAL GOGOIAdvocates.

EVIDENCE RECORDED ON: - 12-11-2012, 12-12-2012, 21-01-2013, 30-04-2013

21-08-2013, 25-09-2013.

ARGUMENTS HEARD ON: - 28-10-2013.

JUDGMENT DELIVERED ON: - 11-11-2013.

JUDGMENT

The prosecution case in brief is that on 14-01-2010 at about 6 PM, Cheniram Bora, Naba Bora and Manash Gogoi caused hurt to Sri Paban

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Bora's brother Kekon Bora with axe and sawn wood and later Sri Paban Bora lodged an FIR in the Khumtai police station.

2. The police registered a case bearing Kamargaon P.S. Case No 03/2010 and investigated the case. After investigation the police submitted the charge-sheet U/S 448/324/34 of the Indian Penal Code and was registered as G.R. Case No-71/2010. Cognizance was taken by the Chief Judicial Magistrate and the case was transferred to this court for trial.



3. The accused persons appeared in the court and were allowed to go on bail. Copies of relevant documents were furnished to the accused as required U/S 207 of Criminal Procedure Code. After a preliminary hearing the formal charges U/S 448/324/34 IPC were framed against the accused persons and when the charges were read over and explained to the accused they pleaded not guilty and claimed to stand trial.

4. Prosecution examined seven witnesses in order to prove its case and the accused did not examine any witness.

5. The accused were examined under section 313 of the Code of Criminal Procedure on 05-10-2013 and in their examination they have denied the allegations leveled against them and stated those to be baseless.

6. Heard the arguments advanced by the Learned Counsels of both the sides.

7. After analyzing the evidences and various documents in record and also after hearing the arguments lead by the Learned counsels of both the sides I frame the following points for determination:

Whether on 14-01-2010 at about 6 PM, the accused Cheniram Bora, Naba Bora and Manash Gogoi in furtherance of a common intention committed criminal trespass by entering the victim's house and voluntarily caused hurt to the victim with dangerous weapon and thereby committed offences punishable U/S 448/324/34 IPC.

If yes, what punishments do they deserve?

8. DISCUSSIONS, DECISION AND REASONS THEREOF:-

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I have carefully examined the evidences on record, analyzed the relevant documents on record and after hearing the arguments advanced by the Learned Counsels of both the sides, give my decision on the above noted points as follows:-



i) PW4 is the victim and in his examination in chief has deposed that on the day of Magh Bihu in 2010 in the evening he was sitting by the fire in the front yard of his house and then the accused Naba Bora came to him and quarreled with him and pushed him and he fell down on the ground. He has deposed that thereafter the accused Cheniram Bora came there and cut his right ear with an axe and also cut over his left shoulder. He has deposed that after raising a hue and cry his brother came out and also informed the VDP (village defence party) and took him to the K.K.Civil hospital where he bore stiches in his ear and had to stay in the hospital for around 4 days. He has deposed that his brother lodged an FIR in the police station.

ii) PW1 is the informant of this case and has narrated the incident in the same manner as that of the victim (PW4). He has deposed that he was inside the house and rushed outside hearing the noise and saw his brother Kekon falling on the ground and was bleeding from his ear and the accused Cheniram going out of their boundary with an axe in his hand. He has deposed that he also saw the accused Naba Bora going out of their gate and the other accused Manash Bora was standing outside the wall. He has deposed that thereafter he informed the President of VDP (village defence party) about this incident and then Kekon was taken to the K.K.Civil hospital for medical treatment where he was admitted in the hospital for 7 days and that he also bore 14 stiches in his ear. Later he lodged an FIR in the Khumtai police out post. Exhibit 1 is the FIR and Exhibit 1(1) is his signature.

iii) PW2 and PW3 are hearsay witnesses who know nothing about the incident and only heard that a quarrel took place between the accused persons and Kekon Bora. PW5 is the sister in law of the victim and wife of the informant and has also narrated about the incident in the same manner as that of the other two witnesses. She has deposed that the incident took place on 1st Magh 2010 and at about 12 noon and that she was standing in the front yard when the incident took place. She has deposed that the accused Cheniram cut on the right ear of Kekon Bora with an axe and ran away to his house and then Kekon was taken to the K.K.Civil Hospital.

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iv) PW6 is the medical officer and in his examination in chief has deposed that he examined Sri Kekon Bora on 14-01-2010 at about 7.35 PM in K. K .Civil Hospital during his emergency duty and found the following:

- a) Incised wound over the superior border of the right ear measuring about 3 x 0.5 x 0.5 cm
- b) Incised wound over the right shoulder measuring about 2 x 0.5 x 0.5 cm and about 2 x 0.5 x 0.5 cm.

All the injuries were simple in nature caused by sharp cutting weapon and were less than 24 hours. PW6 also deposed that the injured (PW4) was admitted in the male surgical ward from 14-01-2010 till 17-01-2010. Exhibit 2 is the injury report and Exhibit 2(1) is his signature.

v) PW7 is the investigating officer and has done his regular investigation and in his examination in chief has deposed that he visited the place of occurrence and examined the witnesses in process of investigation and has also prepared a sketch map. Exhibit 3 is the sketch map and Exhibit 3(1) is his signature. He has deposed that he submitted the charge sheet against the accused persons on completion of the investigation. Exhibit 4 is the charge sheet and Exhibit 4(1) is his signature.

vi) From the discussions till here it is seen that PW1, PW4 and PW5 have very well corroborated with each other in their evidence and the prosecution case is almost evident from the testimony of the principal witness (PW4) and that of PW1, the chance witness who happened to come out of the residence and saw the accused Cheniram walking out with an axe in his hand. Further from the evidence of PW6 also it is evident that the victim (PW4) sustained injuries over his right ear and right shoulder though the injuries were opined as simple injuries and that the weapon used for causing hurt was sharp cutting in nature which again corroborates with the testimonies of the witnesses as they have deposed that the accused Cheniram Bora caused hurt with an axe.

vii) PW7 in his cross examination has stated that PW5 did not depose before him in her earlier statement that she was standing in the front yard at the time of the incident which amounts to contradiction on part of PW5. But even if this part of the statement of PW5 is not taken into consideration all the other facts and circumstances have led to the



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transparency of this incident. PW7 did not seize the axe or any other weapon of offence but taking consideration of the testimonies of the witnesses and corroborating evidence of PW6 where he has opined the weapon to be sharp cutting, it is also evident that the victim (PW4) sustained injuries caused by a sharp weapon.



viii) PW1, PW4 and PW5 have admitted that their relationship with the accused persons was not good since long time and that they are related to each other. PW4 has admitted that the accused persons lodged a case against him where he was convicted but has denied the suggestion that he has lodged this instant case falsely against the accused persons in avenge. But none of the witnesses have other than the victim (PW4) has deposed about the accused Naba Bora of causing hurt to the victim and due to lack of sufficient evidence against this accused this court gives him the benefit of doubt and hence this accused Naba Bora is acquitted from the charges. None of the witnesses have deposed anything about the accused Manash Bora except that he was seen outside the boundary by PW1. Since the victim (PW4) has not stated anything about this accused Manash Bora I do not find any ground to hold him guilty of committing any offence and hence Manash Bora is acquitted from the charges. The accused persons in their statements recorded U/S 313 CrPC have denied the allegations leveled against them and have also failed to provide satisfactory answers to the question put to them.

ix) From the overall discussions it is evident that the incident is true and that the accused Cheniram Bora has criminally trespassed the boundary of the victim (PW4) and voluntarily caused hurt to the victim (PW4) with a sharp cutting weapon likely an axe and hence I decide this point in the positive only against the accused Cheniram Bora.

9. Heard the accused on point of sentence where the accused Cheniram Bora has stated that he is an ailing old person and is forced to walk with supporting stick (peng) due to injury sustained by him and hence prays for leniency.

10. Considering the prayer of the accused and the all other aspects of this case this court not intending to provide the accused the benefits as provided U/S 313 CrPC as at his age he was expected to act as a matured person but he caused hurt to his own relative who is young at his age and the accused must understand the pain the victim has sustained due to wrong done by

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him. However as he is ailing with different illness as stated by him this court is of the opinion that sentence of fine only shall meet the ends of justice.



ORDER

11. In the result considering the entire facts and circumstances of the case and upon analyzing the evidences on record, I am of the opinion that the prosecution has succeeded in proving the charges U/S 447/324 IPC against the accused person beyond all reasonable doubt and hence the accused is convicted under the aforesaid sections.


The accused Cheniram Bora is sentenced to pay a fine of Rs 500/- (Rupees Five Hundred only) for committing an offence punishable U/S 447 IPC and in default of payment of fine, to undergo simple imprisonment for 5 days.

The accused Cheniram Bora is also sentenced to pay a fine of Rs 2000/- (Rupees Two Thousand only) for committing an offence punishable U/S 324 IPC and in default of payment of fine, to undergo simple imprisonment for a period of 6 months.

It is further ordered that the fine amount of Rs 2500/- so paid by the accused shall be given to the victim Sri Kekon Bora as compensation provided U/S 357 CrPC. However the fine amount shall not be paid to the victim before the period allowed for presenting the appeal has elapsed or if an appeal be presented, before the decision of the appeal.

12. Furnish a free copy of this judgment to the accused.

13. Signed, sealed and delivered in the open court, on this 11th day of November, 2013, at Golaghat.


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