

Gr 832/17
State
Vs
Rabi Das

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. GR 832/2017 u/s 294/120B/323 IPC

STATE

-Vs-

RABI DAS..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Manika Chakrabartyfor the State.

Miss Nirmali Patowaryfor the accused.

Date of prosecution evidence – 8-3-18, 3-4-18, 16-05-18, and 12-06-18

Date of argument – 2-08-18

Date of judgment – 04-09-18

Judgment

1. Shri. Dharmeswar Rajbongshi initiated the instant case by filing written 'ejahar' before the O/C, Belsore P.S. on 6.06.17. The Prosecution case in brief is that on 5.06.17 at about 9:30 p.m. the accused person called the informant's son and took him away from his house and caused grievous hurt to him by using sharp weapon.
2. On receipt of the 'ejahar', police has registered the case as Belsore P.S. case No. 114/17 u/s 120B/326 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused person Rabi Das u/s 294/120B/323 IPC.

3. During trial, the accused persons entered appearance and was allowed to go on bail. Relevant copies of the documents of the case was furnished to him u/s 207 CrPC. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 294/120B/323 IPC. The particulars of the offences were explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. Prosecution in support of the case examined 6 witnesses. Defence side did not examine any witness in support of their defence. The accused person was examined u/s 313 of CrPC to which he denied all the allegations levelled against them and pleaded false implications.
5. I have heard argument of both sides.

Points For Determination

6. Upon hearing and perusal of the record, I have framed the following points for determination:
 - a. Whether the accused person on 5.6.17 at about 9:30 p.m. entered into a criminal conspiracy and thereby committed an offence punishable under section 120B IPC?
 - b. Whether the accused persons on same date time and place did any obscene act in any public place to the annoyance of the informant/victim and thereby committed an offence punishable under section 294 IPC?
 - c. Whether the accused persons on same date, time and place has voluntarily caused hurt to the victim and thereby committed an offence punishable under section 323 IPC?

Evidence on Record

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. Pw 1 Smti Gitika Rajbonshi deposed in her examination in chief that the occurrence took place on 5.6.17 at about 9:30 p.m. she stated that on the date of occurrence her husband went to the shop of the accused person to buy meat where her husband's cycle got hit with the accused person's container where he kept the chicken. As a result an altercation took place between the two. Later on the same night when her husband returned home the accused person came and called her husband outside. She too followed them. She stated that the accused person stabbed her husband with a sharp weapon used for cutting meat. The accused person stabbed him on his face, neck and stomach. She further stated that when she tried to obstruct him she too got hurt in her left hand. She also stated that blood oozed out of his body and he fell down on the ground. The bystanders came to the place of occurrence after having heard the scream. The bystanders then took the victim to the Kaithalkuchi pharmacy. She also stated that the owner of their house also went with the victim. The pharmacist referred the victim to the Nalbari civil hospital and later he was referred to GMCH. Later her father in law filed the ejahar.

In his cross examination she stated that she was outside at the time of occurrence. She denied that she did not state the same to the police. She denied that she did not state before the police that while restraining the accused she too got hurt. She also denied all other suggestions put forwarded by the defence side. She further stated that the accused person stabbed her husband six times.

9. Pw 2 Bipul Bezbaruah deposed in his examination in chief that he has heard that on the date of occurrence an altercation took place between the accused and Manoj in the market. Later when Manoj came home he went out of his house. Then Manoj's wife screamed that Manoj has been stabbed and when he came to the place of occurrence he saw Manoj was fully clothed with blood. He then took the victim to the nearby pharmacy and from where he was referred to the Nalbari civil hospital and was later on referred to GMCH. He later came to know that one Rabi das did the act. He

also stated that Manoj got injured in various parts of his body.

In his cross examination he stated that he stated that at the time of occurrence he was helping his daughter in her studies and that he was not present at the place of occurrence. He further stated that he did not see accused Rabi Das at the place of occurrence. He also stated that he do not know if the accused person got hurt falling from his bicycle.

10. Pw 3 Diganta Barman deposed in his examination in chief that on the date of occurrence while he was coming from Bisimari towards his shop situating near Kaithalkuchi he saw the in the Kaithalkuchi main road that the accused person stabbed Manoj with a weapon used for cutting meat. The accused person stabbed the victim on his ear, neck and stomach. The accused then escaped from the scene after seeing him. He then took Manoj to the Kaithakuchi pharmacy. He then informed Manoj's family and they then took him to Nalbari medical and was referred to GMCh.

In his cross examination he stated that he and the victim are in a friendly terms with each other. He stated that no one else was present at the time of occurrence. He stated that he did not see the weapon used for stabbing in the court. He further stated that when he raised hue and cry the victim's wife came to the place of occurrence. He further stated that he came to know from the victim that he was stabbed.

11. Pw 4 Manoj Rajbongshi deposed in his examination in chief that on the date of occurrence the accused person called him outside and too him to the road and stabbed him with a meat cutting weapon on his neck, ear, stomach and waist and he fell down. The bystanders took him to pharmacy and later was taken to Nalbari then to GMCH. He further stated that the next day morning he was sent back.

In his cross examination he stated that when the ejahar was filed he do not know. He stated that the place of occurrence is a pucca road and people keeps travelling in the road even at the night. He further stated that he did not scream when he was stabbed. The police has not seized the weapon. He further stated that the accused had stabbed very harshly. He also stated that he became unconscious and regained his consciousness only when he reached GMCH. He do not know as to who took him to the pharmacy and

then to hospital. He regained his sense on the same night. He further stated that his father who is the informant has not seen the occurrence but his wife did.

12. Pw 5 Dr. Sanjib Barman deposed in his examination in chief that on 5/6/17 he examined at about 10:30 p.m. Manoj Rajbongshi and on examination he found –

- incise wound of size 8*5 cm in scalp deep over left occipitotemporal region involving left ear, active bleeding was seen,
- abrasion of size 5*5 cm over dorsum of left hand, abrasion of size 4*4 cm over left flank,
- Abrasion of size 383 cm over left side of neck.

Patient was then referred to GMCH. According to him the age of injury was fresh. The first injury was caused by sharp cutting weapon and the other injury was caused by blunt object. His opinion was simple injury.

In his cross examination he stated that the injury could be caused by falling.

13. Pw 6 ASI Kameswar Baishya is the investigating officer of this case. He deposed that on 5/6/17 the O/C informed the in charge of Chamata Outpost about the incident and a GD entry was made bearing no. 68 dated 5/6/17. The O/C then entrusted him with the task of investigation on 5/6/17. He went to the place of occurrence and prepared the sketch map and interrogated the witnesses. On 6/6/17 Darmeswar Rajbongshi filed the ejahar and the same was registered as Belsore PS case no. 114/17. On completion of investigation he filed the charge sheet under section 294/120B/323 IPC.

In his cross examination he stated that the nearby people showed him the place of occurrence. He did not collect the final report form GMCH. He confirmed that Pw1 did not state that she was present at the place of occurrence and that she too got hurt while restraining the accused person. She also did not state that she screamed and that her husband fell down

and also that the pharmacist referred her husband to the hospital. He also confirmed that Pw 2 did not state before him that the victim got hurt in various parts of his body and that he took the victim to the pharmacy and then to Nalbari. The I/O also confirmed that Pw 3 did not state before him that he saw the accused person stab the victim and that he got hurt in his neck and head but only stated that blood oozed out of the victim's ear. Pw 4 did not state that the bystanders took him to pharmacy and later on to the hospital. He also did not state that the accused had stabbed him 4times.

Judicial Determination

14. Now on going through the entire evidence on record it appears that the ejahar was filed against the single accused person. Later the charge sheet was also filed against one accused person and the substance of the offences were also explained to one accused person. The whole incident is alleged to have committed by a single accused person. Therefore the basic ingredient that there must be two or more person to bring home the accused u/s 120B is not fulfilled and hence 120 B does not attract at all.
15. On entire perusal of the evidence it transpires that there is no iota of evidence which could establish that the accused had committed obscene act in any public place to the annoyance of the victim.
16. Now let us analyze whether the prosecution has been able to establish the guilt of the accused with regard to voluntarily causing hurt.
As per the victim's version he was called by the accused person outside his home and when he came out he was taken to the main road and was stabbed in his neck, with a sharp cutting weapon. He stated that his wife has seen the occurrence. The victim's wife who is examined as Pw1 has also claimed to have seen the occurrence. However, Pw 3 who also claims to be the eye witness to the occurrence stated that except him no one else was present at the place of occurrence. He informed the victim's family and

then they took them to hospital. Now to end the confusion let us analyze the evidence of Pw 1. Pw 1 claims that when the accused person called her husband she too followed them and she also tried to restrain the accused person when the latter stabbed her husband. But when her evidence is juxtaposed with that of I/O many contradiction creep up. She has not stated before the I/O that she was also present at the place of occurrence and that while trying to restrain the accused person she too got hurt in her left hand. The victim Pw 4 also did not mention these things. Thus it is clear that Pw 1 in enthusiasm has exaggerated her version during her court statement. Such omission is vital and it ought to have a mention of slightest form in her 161 statement.

17. Moreover, Pw 4 has stated that the accused person has stabbed him with full energy but he did not scream. Pw 1 stated that the accused person stabbed him 6times. It is unlikely that a human being would not scream if he is being stabbed for more than 6 times and that too with full energy. Even though it is presumed that he did not scream but if a person is stabbed with a sharp weapon so many times it is also unlikely that he would get released from the hospital the next morning. Pw 3 who claims to be the eye witness has admitted during his cross examination that he got to know about the stab from the victim himself. Moreover, he also did not mention in his 161 statement that he saw the accused person stab the victim. Furthermore, Pw 2 has admitted that he did not see the occurrence himself and that he also did not see the accused person at the place of occurrence.
18. Therefore there is no corroboration among the version of the witnesses. The prosecution has also been unable to examine the informant as he is an old aged person suffering from cancer disease and is in a bed ridden condition. Thus the evidence led by the prosecution side has not been strong enough to drive home the accused against the said charges.
19. I, therefore, find that the prosecution has failed to establish the guilt of the accused person. Accordingly, accused person Rabi Das is not held guilty of the offence punishable u/s 120B/294/323 of IPC and accordingly, he is acquitted and set at liberty forthwith.

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20. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

Given under my hand and seal of this court on this 04th day of September, 2018.

Rubina Yasmin
J.M.F.C. Nalbari

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APPENDIX

Prosecution witness:

PW 1- Gitika Rajbongshi
PW 2 – Bipul Bezbaruah
PW 3 – Diganta Barman
PW 4 – Manoj Rajbongshi
PW 5 – Dr. Sanjib Barman
PW 6 – ASI Kameswar Baishya

Defence Witness

Nil

Exhibits:

Ex 1 – Injury Report
Ex 1 (1) – Signature of M/O
Ex 2 – Sketch map
Ex 2 (1) – Signature of I/O
Ex 3 – Charge sheet
Ex 3 (1) – Signature of I/O

Rubina Yasmin
J.M.F.C. Nalbari