

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, NALBARI

G.R Case No: 1794/2015

U/s 294/323 of I.P.C

State

-Versus-

Sri Diganta Das

.....Accused Person

PRESENT: Smti. Sorbani Bhattacharjee, A.J.S,
Addl. Chief Judicial Magistrate,
Nalbari.

ADVOCATES APPEARED:

FOR THE PROSECUTION : Sri Arjun Barman Ld. APP,

FOR THE ACCUSED PERSONS: Mr. T. Pathak, Ld. Counsel.

EVIDENCE RECORDED ON :09.02.18, 25.09.19 & 03.03.20.

ARGUMENT HEARD ON :03.11.2020.

JUDGMENT DELIVERED ON :04.11.2020.

JUDGMENT

- 1) The prosecution in this case was launched by the lodging of the ejahar with the Officer-in-Charge of the Nalbari Police Station by the informant Sri Atul Kalita on 28.11.15 against the accused person namely Sri Diganta Das to the effect that the informant is a driver by

profession. That on 27.11.2015 at about 10 p.m., at night when the informant coming from Guwahati in his truck to Nalbari and reached Jilikani Chowk, near the shop of his employer at that moment, the accused person parked a Santro car bearing registration No.AS-01/AM-6294 in front of the shop of the owner and when the informant asked the accused person to remove the car from there, then the accused person verbally abused. The accused person also gave blows on his head and near the eyebrow of the informant with bottle. As the result of which the informant sustained grievous injuries and he raised hue and cry. The neighbouring people came to the place of occurrence and brought him to S.M.K., Civil Hospital Nalbari. Hence the case.

- 2) The Officer-in-charge, Nalbari Police Station on receipt of the ejahar registered the same as Nalbari P.S Case No.802/15 u/s 294/325 of I.P.C and started investigation. After completion of the investigation the concerned I.O submitted charge sheet against the accused person namely Sri Diganta Das u/s 294/323 of IPC.
- 3) In due course the accused person appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of CrPC. Having found a prima facie case against the accused person, the particulars of offences u/s 294/323 of IPC were read over and explained to him to which he pleaded not guilty and claimed to be tried.
- 4) The prosecution in support of its case examined 4 (four) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. The statement u/s 313 of the Code of Criminal Procedure has been recorded in due course.

Defence side examined no witnesses. I have heard the arguments advanced by the Ld. counsels for both sides.

5) **POINTS FOR DETERMINATION:-**

- i. Whether the accused person, on 27.11.2015 at about 10 p.m in the night at Jilikani Chowk under Nalbari P.S., committed an obscene act causing annoyance to others and thereby committed the offence under section 294 of IPC ?
- ii. Whether the accused person, on the same day, time and place voluntarily caused hurt to the informant Sri Atul Kalita and that you thereby committed the offence under section 323 of IPC?

DISCUSSION, DECISION AND REASONS THERE OF:

- 6) The evidence of PW1 Sri Atul Kalita is the complainant of the case. He stated that he knows the accused person. The incident took place in the month of November'2015 at Jilikani Chowk Nalbari. He further deposed that he is a truck driver and he brought the truck to Talukdar Enterprise at 10:00 p.m. A Santro car bearing registration No.AS-01/AM-6297 was parked in front of Talukdar Enterprise. He told his handyman Mithun Saha to remove the car. Mithun Saha told the accused to move the car from the place where it was parked. The accused verbally abused Mithun Saha and Mithun Saha came and told him. He got down from the truck and told the accused to move the car to which he refused and verbally abused him and hit over his head with a wine bottle. He sustained injury on his head and blood came out. He raised hue and cry, then Jitu Talukdar who is the owner of the truck and Talukdar Enterprise along with other persons came to the place of occurrence. He was brought to Nalbari Civil Hospital at

about 11:00 p.m. He filed the 'ejahar'. Exhibit-1 is the 'ejahar' and Exhibit1(1) is his signature. Police recorded his statement.

- 7) In his cross-examination he inter alia stated that the ejahar was written by advocate and it was read over to him. He came to the police station after the incident. He filed the ejahar on the next day of the incident. He has not stated the reason of delay in filing the ejahar. He further stated that at the time of the incident along with him the handyman of the truck and chowkidar of Talukdar Enterprise were present. He admitted that before police and in his ejahar he has not stated in which portion of his head he sustained injury. He reached Nalbari from Guwahati at 10:00 p.m., and Talukdar Enterprise closes at 7 p.m. Nectar Wine Bar is near Talukdar Enterprise. The day of incident was the 1st day of Rash festival and during Rash the roads of Nalbari town are closed for heavy vehicles. He denied the suggestion put forwarded by Ld. Defence Counsel.
- 8) PW2 Sri Lalit Chandra Das has stated in his evidence that on 27.11.2015 at 8:45 p.m., he was working at SMK Civil Hospital on emergency duty. On that day, he examined Atul Kalita, S/O Lt. Phukan Kalita aged about 35 years vide emergency registration number 22719 in connection with Nalbari P.S. Case No.802/2015. The victim was not escorted by any police personnel. On examination, he found there was history of assault on 27.11.2015. The patient was stable. On local examination he found there was plain lacerated injury:-
1. Site was the vertex (size 1 cm x 1 cm)
 2. CLW side above the left eye (size 2 cm x 1 cm). Colour was red. Impression simple injury. Age of the injury less than 2 hours. Opinion both the injuries were simple caused by blunt object. Exhibit-2 is the injury report and Exhibit-2(1) is his signature.

- 9) In cross-examination PW2 deposed that the injury was approximately of about 6 p.m., of 27.11.2015. The injury could be sustained due to fall down.

- 10) PW3 Sri Jayanta Kumar Talukdar has stated in his evidence that he knows the informant who was his driver. He does not know the accused person. The incident took place in the year 2015. He further deposed that he had one shop at Jilikani Chowk. He received information over phone and accordingly, he came to his shop and found the informant is in injured condition. The injured was taken to SMK Civil Hospital. Police took his signature in Exhibit-3 seizure list. Exhibit-3(1) is his signature. Police recorded his statement.

- 11) In cross-examination PW3 deposed that he does not know what was written in the seizure list and also what was seized by police. The incident took place after 10 p.m., and the victim was taken to the medical between 10/11 p.m.

- 12) The evidence of PW4 Sri Bhaskar Dewgharia (I.O.) reveals that on 28-11-2015 he was working at Nalbari Police Station as TSI. On that day, one Atul Kalita lodged an ejahar before O/C Nalbari P.S. the same was registered as Nalbari P.S. case no 802/2015 u/s- 294/325 of IPC and endorsed him for investigation. On that day, he visited the P.O. and drew sketch map and recorded the statement of witnesses except informant at the P.O. He recorded the statement of informant at the P.S. on the same day. Exhibit 4 is the sketch map of P.O. and exhibit 4(1) is his signature. He seized a stone and broken pieces of glass from the P.O. Exhibit 3 is the seizure list vide which he seized the articles and exhibit 3(2) is his signature. He collected the injury report of victim. He arrested the accused Diganta Das and released him on bail as the alleged offences were bailable in nature.

After completion of investigation he submitted charge-sheet against accused Diganata Das, u/s- 294/323 of IPC. Exhibit 5 is the charge-sheet and exhibit 5(1) is his signature.

- 13) In his cross-examination PW4 stated that as per the FIR the date of occurrence was 27.11.2015 at 10 p.m., and in the ejahar the informant has not mentioned the cause of delay in lodging FIR. He further stated that he had not collected any medical report dated 27.11.2015 after 10 p.m. He admitted that in the medical examination report of the victim which he collected in this case the time of examination was mentioned as 8:45 p.m., on 27.11.2015. The victim was not escorted by police personnel when he was sent for medical examination. He confirmed that PW1 Atul Kalita did not mention before him about sending him to Hospital for medical examination at 11 p.m. on the day of incident. PW1 did not mention before him about any broken pieces of glass and PW1 only stated before him that he was hit with a bottle over his head. He admitted that he had not mentioned about the size and quantity of the broken pieces of glass and the stone in the seizure list. The finger print of the accused over the piece of glass or stone was not sent for forensic examination to FSL. He denied all the suggestion put forwarded by the Ld. Defence counsel.

- 14) In this case the accused is alleged to have committed offence u/s 294/323 of IPC. Let us now at first see whether the prosecution has been able to prove the offence u/s 294 of IPC or not. On perusal of the evidence of PW1 (informant) it is seen that he has alleged the accused of verbally abusing him on the day of incident at Jilikani Chowk, Nalbari. He has not specifically stated in his evidence what abusive words used by the accused against him. To hold the accused guilty for the offence u/s 294 of IPC prosecution has to show that the

accused has done any obscene act in any public place or has sung or recited or uttered any obscene songs or word in or near public place which has caused annoyance to others. Merely saying that accused verbally abused him is not sufficient to prove the charge u/s 294 of IPC. Apart from that no other witnesses have stated anything in this case to show that the accused used any obscene word or done any obscene act against the informant on the day of the incident. Hence, accused is not found guilty for the offence u/s 294 of IPC in this case.

- 15) Let us now see whether the prosecution has been able to prove the offence u/s 323 of IPC or not. If we go through the evidence of Pws then it is apparent that except the informant who is also the victim of this case there is no eye witnesses of the incident. According to the evidence of PW1 on the day of incident accused hit him over his head with a wine bottle due to which he sustained injury on his head and blood came out. He raised hue and cry and then PW3 along with other persons came to the place of occurrence. According to him the incident took place at about 10 p.m., and he was taken to Nalbari Civil Hospital at about 11 p.m. Now if we see the evidence of PW3 then we find that he received information about the incident over phone and when he came to the P.O., he found the informant in injured condition. Although informant stated in his evidence that when he raised hue and cry then Jitu Talukdar (PW2) and others came to the place of occurrence but his evidence does not get support from PW3 as he came to the place of occurrence after getting information over phone and not hearing hulla. Thus, the version of the informant is false that PW3 came to the P.O., hearing his hue and cry. PW3 has not stated in his evidence as to whether accused was present at the place of occurrence when he reached there. According to PW3 also the incident took place after 10 p.m., and informant was taken to the hospital between 10 to 11 p.m. From the version of PW1 and PW3 it is seen that according to them

incident took place sometime around 10 p.m., and informant was taken to hospital within 11 p.m., on the same day. Now if we go through the evidence of PW2 who is the medical officer who medically examined the informant it is seen that he examined the informant at 8:45 p.m. According to him the age of the injury was less than two hours which was sustained at approximately 6 p.m. on 27.11.2015. The evidence of PW4 who is the I.O., of this case it is seen that he has not collected any medical report relating to 27.11.2015 after 10 p.m., and the medical report which he collected the time of examination is mentioned as 8:45 p.m. Thus from the evidence of MO., and I.O., it is seen that PW1 (informant) was medically examined on 27.11.2015 at about 8:45 p.m., and it is inconsistent with the evidence of PW1. If informant sustained injury at 10 p.m., then how he can be examined at 8:45 p.m., which is quite impossible and it shows that the injury report does not relate to the alleged incident and there is room for doubt that informant sustained injury prior to the incident for which he also got treated by doctor. Further as per the evidence of PW1 he sustained injury over his head but as per the medical report the site was in the Vertex and above the left eye. The injury report (Ext.2) mentioned nothing about any kind of injury over the head of the informant. The evidence of PW2 and PW4 also reveals that while the informant went to the hospital then he was not escorted by any police personnel which also creates doubt over the version of the informant. There is no corroboration of other Pws with the informant on material points which creates doubt over the truthfulness of the version of the informant.

- 16)** On perusal of the ejahar and form of FIR it is seen that the alleged incident took place at about 10 p.m., on 27.11.2015 but the ejahar was lodged on the next day at about 5 p.m. Prosecution has failed to explain the reason of delay of one day in lodging the ejahar satisfactorily. The informant neither in the ejahar nor in his evidence

has explained any reason of delay in filing the ejahar which is fatal to the prosecution case. The evidence of PW1 is not convincing enough to hold the accused guilty on the basis of his sole evidence and in such circumstances the accused is entitled to get acquitted in this case.

- 17)** In this case prosecution has failed to prove the case beyond all reasonable doubt by cogent evidence. Accordingly, the accused person namely Sri Diganta Das is acquitted of the offences u/s 294/323 of I.P.C and he is set at liberty forthwith. The bail bond of the accused person and his surety shall remain in force for a period of 6 (six) months from today as per amended CrPC.

Given under my hand and seal of this court on this 4th day of November, 2020.

Smti. Sorbani Bhattacharjee, A.J.S,
(Addl. Chief Judicial Magistrate),
Nalbari.

G.R Case No.1794/2015

APPENDIX

PROSECUTION EXHIBITS:

- Ext.1 :Ejahaar,
Ext.1(1) :Signature of informant Atul Kalita in the ejahaar,
Ext.2 :Injury report,
Ext.2(1) :Signature of Dr. Lalit Chandra Das in the injury report,
Ext.3 :Sizure list,
Ext.3(1) :Signature of I.O., Sri Bhaskar Dewgharia in the seizure list.
Ext.4 :Sketch map.
Ext.4(1) : Signature of I.O., Sri Bhaskar Dewgharia in the sketch map.
Ext.5 : Charge sheet.
Ext.5(1) : Signature of I.O., Sri Bhaskar Dewgharia in the charge sheet.

DEFENCE EXHIBITS

NIL

PROSECUTION WITNESSES :

- PW-1 :Sri Atul Kalita, informant-cum- victim of the case,
PW-2 :Sri Lalit Ch. Das, M.O., of this case.
PW-3 :Sri Jayanta Kumar Talukdar.
PW-4 :Sri Bhaskar Dewgharia, I.O., of this case,

COURT WITNESSES :

NIL

DEFENCE WITNESSES

NONE

MATERIAL EXHIBITS

NIL

Smti. Sorbani Bhattacharjee, A.J.S,
(Addl. Chief Judicial Magistrate),
Nalbari.