

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BAKSA

P.R.C. No. 221 of 2019

Under Sections 323, 294, 427, 506 of Indian Penal Code

State

Vs.

Chandra Kalita

--- Accused person

Present: Pragyashree Chetia, AJS.

Judicial Magistrate First Class, Baksa

Evidence recorded on : 23.12.2019, 13.03.2020, 06.03.2021,
20.04.2021, 09.12.2021

Arguments heard on : 11.01.2022, 19.02.2022

Judgment delivered on : 19.02.2021

Appearing for the Prosecution: Sri. Kishor Basnet

Appearing for the Defence : Tazuddin Ahmed, Matiur Rahman

JUDGMENT

1. The accused person namely, **Chandra Kalita** has been put to trial in the instant case to answer the charges for the offences punishable under Section 323, 294, 427, 506_IPC.

BRIEF FACTS

2. The case of the prosecution in brief is that on 30.07.2017 the informant Lakhman Choudhury lodged an FIR in Barbari Police Station wherein he alleged that he was supervising the cutting of trees on the road of their village as electricity posts and transformers were to be installed in the village. When they went to the accused persons house to cut the bamboo trees in front of his house, and placed a 'kasi' on his neck. The local people intervened however the accused person physically assaulted him and also broke his pair of spectacle and also verbally abused him. Hence, the case.
3. On the basis of the FIR, a case was registered as Barbari P.S. Case Number- 33/17 under Section 325, 427, 506 IPC. The accused person was arrested and produced before the court and after which he was released on bail. After the completion of the investigation charge sheet along with one seizure list, one bail bond, one injury report, and one sketch map were submitted by the I.O. S.I. Pranab Baishya against the accused person Chandra Kalita under Section 323, 294, 427, 506 IPC.

4. Copy of relevant documents was furnished to him in accordance with Section 207 Cr.P.C. Upon consideration of relevant documents and hearing both parties, particulars of offences u/S 323, 294, 427, 506 IPC were read over and explained to the accused person Chandra Kalita to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined 6(six) witnesses after which the prosecution evidence was closed. The statement of the accused person u/S 313 Cr.P.C was recorded in separate sheet. He completely denied committing the crime and stated that he told the informant that he will cut the trees himself on the next day as they would be destroyed if they are cut by them. On hearing that the informant came and involved himself in a verbal altercation with him. Defense did not adduce any evidence.

6. Heard the arguments advanced by learned Assistant Public Prosecutor and learned defence counsel and perused the evidence on record.

POINTS FOR DETERMINATION

7. Whether the accused person Chandra Kalita, on or about the day of 30.07.2017, voluntarily caused hurt to the informant and thereby, committed an offence under Section 323 IPC?

8. Whether the accused person on the same day uttered obscene words in a public place to the annoyance others and thereby, committed an offence under Section 294 IPC?

9. Whether the accused person on the same day committed mischief by breaking the spectacles of the informant and thereby, committed an offence under Section 427 IPC?

10. Whether the accused person on the same day criminally intimidated the informant and thereby, committed an offence under Section 506 IPC?

EVIDENCE OF THE PROSECUTION

11. The prosecution examined the informant Lakhman Choudhury as P.W.1. In his examination in chief, he deposed that the incident occurred on 30.07.2017 at about 4-4:30

P.M. The villagers applied for connection of electricity in their village and accordingly, the electricity department made arrangements for installation of electricity. Accordingly, they constituted an electricity committee and he was made head of the committee. Their function was to cut the trees which caused obstruction in installation of electric wire as well as transformer. On the day of occurrence he instructed some villagers to cut the trees and when he along with the villagers tried to cut the bamboo trees of the accused person then he prevented them and rebuked them. Thereafter, some scuffle took place between the public and the accused person. He saw the accused person armed with a 'kasi' and attempted to assault him on the neck. But he snatched the 'kasi' and threw it. The accused person gave him a hand blow on his head due to which he fell down on the ground. Due to the assault his spectacles broke. Thereafter, Nareswar Kalita brought him and he lodged the FIR on the day of occurrence, and he himself went to Mushalpur Civil Hospital for treatment. He identified the FIR as Ext. 1 and his signature as Ext. 1(1).

12. In his cross examination, he deposed that that he fell on the ground and he did not know how his spectacle broke. The accused did not actually assault him with the 'kasi' and no scuffle or pulling or pushing took place between

him and the accused person. He deposed that only a verbal altercation took place. After one month of the installation of the transformer the accused cut the trees and cleared the plot.

13. Rabi Kalita was examined as P.W.2. In his examination in chief, he testified that the occurrence took place 2-3 years ago. The work of electricity connection was going on in the village. P.W.1 asked the accused person to cut the bamboo trees planted on his land. In reply the accused person cut the trees on the next day. Later, he heard that some verbal altercation took place regarding the issue between them. He did not have any knowledge what happened thereafter. In his cross examination, he deposed that he did not witness any kind of assault at the place of occurrence between P.W.1 and the accused person. He did not have any knowledge about breaking of specs of P.W.1. He also did not hear any abusive language uttered by the accused person.

14. The next prosecution witness, P.W.3 Dal Bahadur Magar deposed in his examination in chief that the occurrence took place two- three years ago. On that day, the work of installation of transformer was going on in the village. P.W.1 asked the accused person to cut the bamboo trees planted

on his land. In reply the accused person stated that he would cut the trees by engaging his own labour. But P.W.1 forced the accused person to cut the bamboo trees immediately. Regarding this issue, there was an altercation of words between the informant and the accused person. Thereafter he left the place and had no knowledge what happened thereafter. In his cross examination, he stated that he did not witness any kind of assault at the place of occurrence between P.W.1 and the accused person. He did not have any knowledge about breaking of specs of P.W.1. He also did not hear any abusive language uttered by the accused person.

15. The prosecution examined Son Prasad Upadhyay as P.W.4. He stated that that in the year 2017 there was an issue regarding cutting of bamboo trees standing in the compound of the accused person. The accused person later cut the bamboo trees on his own. The informant gave a case against the accused as he told he would cut the trees himself. There was no fight between the informant and the accused person. In his cross examination he stated that there was no scuffle between the informant and the accused person.

16. P.W.5 Dr. Mohan Ch. Boro deposed that on 30.07.2017 he examined Lakshman Choudhury at Dr. Rabi Boro Civil Hospital and found the following injuries: 1. Haematoma on skull on left parietal linear, size 2.5 x 2.5 cm, 2. Haematoma on left lateral eye with size 2x 2 cm, 3. Multiple scratch marks on upper chest and neck by nail. Nature of injury was simple caused within 2 hours. 1st and 2nd injuries were simple caused by hard and blunt object and 3rd was simple injury caused by sharp pointing object like nail. The victim was escorted by UBC/284 Nabajit Bharali, Barbari P.S. he identified Ext. 2 as injury report and Ext. 2(1) as his signature. In his cross examination, he stated that haematoma can be caused by getting hit by bamboo and other blunt objects. The scratch marks can be caused by sharp bamboo fence or thorns. He denied that the injury was self inflicted.

17. The next prosecution witness was the investigating officer, S.I. Pranab Baishya who was examined as P.W.6. He deposed that on receiving the FIR he examined the informant in the police station and sent him for medical examination. He visited the place of occurrence on the same day and prepared the sketch map and examined the witnesses. He seized the broken pair of spectacle from the informant. On finding sufficient materials, he submitted

charge sheet against the accused u/S 323, 294, 427 and 506 IPC. He identified the sketch map and seizure list as Exhibit 3 and 4 respectively and charge sheet to be Exhibit 5 and Exhibits 3(1), 4(1) and 5(1) to be his signatures. In his cross examination, he stated that PW.1 did not state before him that due to the hand blow he fell on the ground. PW1 also did not state that he snatched the 'kasi' from the accused person and threw it.

APPRECIATION OF EVIDENCE AND DECISION

18. For brevity, both the points will be decided together. I have carefully perused the evidence on record. What is found after the perusal of the evidence is that P.W.1/informant after elaborately describing about the incident in his examination in chief, completely backtracked on his statement in his cross examination. He deposed that only a verbal altercation took place and the accused person did not actually assault him with a 'kasi'. There was no scuffle and no pulling or pushing between them. He also stated that he did not know how his spectacles broke.

19. It also appears that there has been some misunderstanding between the accused person and the informant prior to the happening of the alleged incident and

there is no visiting terms between them though their houses are adjacent to each other. Therefore, it is seen that there is some kind of hostility prevailing between both of them.

20. Also, none of the other witnesses deposed to the effect that they saw any kind of assault by the accused person. P.W.2, P.W.3 and P.W.4 were at the place of occurrence at the time of the alleged incident. From their testimonies it is clear that a verbal altercation took place regarding the cutting of bamboo trees in the land of the accused person but they did not witness any assault or scuffle taking place between them. P.W.3 was a seizure witness when the broken spectacle was seized by the police. But he stated that he did not have any knowledge about breaking of spectacles of the informant.

21. Therefore, on a thorough perusal of the testimony of the witnesses, this court is of the opinion that the prosecution witnesses are not cogent and reliable to prove the guilt of the accused person beyond reasonable doubt.

ORDER

22. Thus, in view of the above discussion it is held the prosecution has failed to prove the allegations against the accused person Chandra Kalita under Sections 323, 294, 427, 506 IPC beyond all reasonable doubt. As such the accused person is acquitted of the offences under the above-mentioned Sections and is set at liberty forthwith.

23. His bail bond is extended for a period of six months as per Section 437A Cr.P.C.

24. The judgment delivered and pronounced by me today in the open court given under my hand and seal of this Court on this 19th day of February, 2022.

The entire judgment is typed by me.

Pragyashree Chetia
JMFC, Baksa, Mushalpur.

APPENDIX

PROSECUTION WITNESSES:

1. P.W.1: Lakshman Choudhury
2. P.W.2: Rabi Kalita
3. P.W.3: Dal Bahadur Magar
4. P.W.4: Son Prasad Upadhyay
5. P.W.5: Dr. Mohan Ch. Boro
6. P.W.6: S.I. Pranab Baishya

DEFENCE WITNESSES:

None

PROSECUTION EXHIBITS:

1. Exhibit 1 : FIR
2. Exhibit 2: Injury report
3. Exhibit 3: Sketch map
4. Exhibit 4: Seizure list
5. Exhibit 5: Charge sheet

DEFENCE EXHIBITS:

None

MATERIAL EXHIBITS:

None

Pragyashree Chetia
JMFC, Baksa, Mushalpur