

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,
MORIGAON

C. R. Case No: 28/2017

Under Section 148/427/323 of Indian Penal Code

Md. Jabbar Ali

.....**Complainant**

Vs

1. **Md. JoynalAbedin,**
2. **Md. Firuz Ali,**
3. **Md. Abdul Hussain,**
4. **Md. Izahar Ali,**
5. **Md. Jakir Hussain,**
6. **Md. Jamshed Ali,**
7. **Md. AinulHoque,**
8. **Md. Jakir Hussain,**
9. **Md. Hashen Ali and**
10. **Md. Abul Hussain.**

.....**Accused persons**

Present: Lohit Kumar Sarmah, SDJM(S), Morigaon

Advocates appeared

For the complainant: **Mr. K. Ali and Mr. M. Islam**

For the accused persons: **Mr. H. Rahman**

Evidence recorded on: 25.7.2017, 13.10.2017, 22.12.2017, 16.8.2018,
27.12.2018, 14.3.2019, 11.7.2019 and 16.8.2019

Argument heard on: 5.11.2019

Judgment delivered on: 21.11.2019

JUDGMENT

1. The complainant Md. Jabbar Ali had lodged a complaint on 10.1.2017 before the Learned Chief Judicial Magistrate, Morigaon against the accused persons **Md.**

JoynalAbedin, Md. Firuz Ali,Md. Abdul Hussain,Md. Izahar Ali,Md. Jakir Hussain, Md. Jamshed Ali, Md. AinulHoque,Md. Jakir Hussain,Md. Hashen Ali and Md. Abul Hussain.A brief of the case is that on 14.9.2015 at around 7 am preplanned and cut the government road connecting from Boramari village to Barampur village in two places during the flood in order to catch fish which caused life-threatening to the public and kids going to school through the road. Moreover, due to the damage on the road, 14 quintal fish worth Rs.168000/- from the complainant's personal pond floated out. On 15.9.2015, for the benefit of the society when the complainant went near the accused persons along with the listed witnesses and tried to intervene, the accused persons armed with spear, sharp weapon, etc. tried to kill them. On 15.9.2015 the complainant had filed an ejarah in the Jagiroad PS when the police along with the reporter went to the place then the accused persons armed with dao, lathi, etc. showed anger in front of the police officials of which few video footages were recorded. In spite of finding enough evidence the police submitted the final report in the Jagiroad PS. Case No. 390/15. Hence the informant had filed this case now.

2. After taking cognizance of the offense against the accused persons, the accused persons were summoned. On the appearance of the accused persons, the relevant copy was furnished and a formal charge under sections 148/427/323 of the Indian Penal Code was framed and the particulars of offenses under sections 148/427/323 of the Indian Penal Code were read over and explained to the accused persons to which they pleaded not guilty and claimed trial.
3. The complainant has examined five witnesses who were duly cross-examined and discharged. The statements of the accused persons under section 313 of CrPc are recorded. The defense side adduced no evidence and pleaded for total denial.

4. **POINTS FOR DETERMINATION:**

- i) Whether the accused persons on 15.9.2015 committed rioting being armed with deadly weapons on the government road and thereby committed offense under section 148 of the Indian Penal Code?
- ii) Whether the accused persons on 15.9.2015, committed mischief/damage to the fishery of the informant and thereby caused loss or damage to the amount of Rs. 168000/- to the informant's property and

thereby committed an offense punishable under section 427 of the Indian Penal Code?

- iii) Whether the accused persons on 15.9.2015, voluntarily caused hurt to the informant and other members and thereby committed an offence punishable under Sec. 323 Indian Penal Code?

I have heard the oral arguments put forward by the learned advocate for both parties. I have also gone through the entire evidence available on record. My discussion and reasons for the decision are discussed below.

DISCUSSION, DECISION, AND REASONS THEREOF:

5. P.W-1, Md. Jabbar Ali who is the complainant-cum-victim deposed in his examination-in-chief that in the year 2014 at around 7 am the accused persons cut the government road connecting from Karchuabori village to Barampur village in two places in order to catch fish. There were two fisheries of the complainant behind that road where he kept around 14 quintal fishes worth Rs.168000/-. Due to cuts on the road, the fishes crossed the pond of which he informed the Jagir road police. On the next day, the police found the road in the cut state and at the time of police visit the accused persons came out of their houses armed with dao, jathi, etc. The accused persons then came and beat PW1 and the police persons. TV reporter recorded the incident. Then the police rescued PW1 from the place of occurrence and they took the charge. As the police had filed a final report on the case filed by PW1 hence he had filed this case. Material Ext-A is the CD recorded by the reporter.
6. During cross-examination, PW1 stated that he did not remember the date of the incident. The persons of both the villages used to pass by the said road. The place where PW1 catches fish is about half km away from the place of occurrence. PW1's fishery is about 200 feet away from the said road. The concerned authority was not informed regarding the incident. No other person had filed a case regarding this incident except PW1. PW1 had filed this case because his fishes went out of his pond due to flood. The rest are just some suggestions to which PW1 denied.

7. P.W-2, Md. Hanif Ali who deposed in his examination-in-chief that both the parties were known to him. The incident took place around 3 years prior to his deposition at around 7 am. On the day of incident PW1 along with police came to the place of occurrence and when PW2 also came there. The police ordered the accused persons to take out their fishnet from the road then they armed with weapons tried to argue with the police when PW2 left the place. The reporter also came there who recorded the incident. Jabbar took police with him as the accused persons cut his fishery's dam.
8. During cross-examination, PW2 stated that PW1 is his elder brother. PW2 accompanied many other persons but he does not remember their names. PW2 did not witness the cutting of the road. PW2 saw around 20/25 persons there in the place of occurrence. The police did not apprehend anyone in front of PW2. The place of occurrence was a public road. The rest are just some suggestions to which PW2 denied.
9. P.W-3, Md. Subhan Ali who deposed in his examination-in-chief that both the parties are known to him. Around two years prior to his deposition when the accused persons cut the government road then the fishes of PW1's pond came out of the pond. On the same day at around 7 am when Abdul Jabbar took police with him then the accused persons armed with weapons tried to beat him. He does not know anything else about the incident.
10. During cross-examination, PW3 stated that he went to the place of occurrence along with the police and returned from there with the police. It was flooded during the incident. PW3 found around 100/200 persons at the place of occurrence. PW3 did not witness himself cutting the road. He denied the fact that he falsely deposed before the police that the accused persons tried to beat Abdul Jabbar armed with weapons. PW3 does not know if the police after investigation submitted a final report. PW3 has come with the complainant to the Court to depose and he has also paid his bus fare. The rest is just a suggestion to which PW3 denied.
11. P.W-4, Md. Yasin Ali who deposed in examination-in-chief that the complainant is his neighbor and the accused persons are known to him and live around 1 km away from PW4. The accused persons cut the portion of government road connecting from Karchuaboramari to Barhampur, put the net to catch fish after which the fishery of PW1 became down and all his fishes came out of the pond. Regarding which PW1 filed a case in the police

station and then the police went at the place of occurrence along with PW1 but the accused persons tried to fight with the police too. Hence the complainant had filed this case. Though the villagers came to the place of occurrence but returned from there as there were some push-backs due to rush.

12. During cross-examination, PW4 stated that the incident took place around 3/4 years prior to his deposition. PW4 also came to the place of occurrence when the police came. PW4 is not aware of if the police had submitted a final report regarding the incident. By the said road people of 3/4 villages used to pass by. It was flooded when the road tore. PW4 informed the concerned authority of the incident.
13. P.W-5, Sri MahabirGour who deposed in examination-in-chief that upon receipt of Abdul Jabbar's ejahar, the 2nd Officer Subhash Ch. Doloy asked PW5 to take the camera with him as a government road was cut and fishes are being caught there. Along with the police staff and 2 Officer PW5 also went to the place of occurrence. As the vehicle was not able to move to the place of occurrence hence they kept the vehicle a little far and went there on foot. PW5 was capturing images on being reached there. The complainant along with few others accompanied PW5. Upon reaching the place of occurrence PW5 saw that the road was cut and a long baghjaal was spread out. At the same time the accused persons armed with boitha, lathi, ciprang, etc. came, started arguing with the complainant and tried to beat him. When the police tried to save the complainant then they assaulted the police too. PW5 recorded the whole incident with his camera. The same video was copied to a CD which was handed over to PW5's officer. MR Ext-A is the CD made by PW5. PW5 has carried his official camera Sony Cyber-Shot through which he recorded the incident. Then again on 11.7.2019 PW5 was re-examined when he stated that earlier too he had deposed in this case. PW5 had submitted a CD earlier which was found blank upon playing. Hence he had submitted the memory card in the Court containing the incident. PW5 had copied the video footage into a CD which PW5 wants to deposit before the Court as the Memory card would be kept in the office. MR Ext-B is the CD and MR Ext-C is the memory card.
14. During cross-examination, PW5 stated he does not remember the year and the date of the incident. 5 people including PW5 went to the place of

occurrence. From the said road there was a way to other villages. PW5 did not go to the place of occurrence as a reporter. PW5 is not aware of if a final report was submitted regarding the incident by the IO even after making the video recording. The IO might know why the accused persons were not apprehended even after assaulting the police persons. There were about 20/25 persons who came to the place of occurrence after PW5 visited thereof which 3/4 were women and the rest were men. Many other people live in the village except PW1. PW5 did not witness who cut the road. The rest are just some suggestions to which PW5 denied. Again on 16.8.2019 during the re-examination of cross PW5 deposed that the incident took place in the year 2017 but he did not remember the date. 5 police officials accompanied PW5 to the place of occurrence. The IO took the recorded CD from PW5.

15. Let me analyse the evidences adduced by the complainant in respect of each of the provisions of law under which the accused persons are charged. Regarding the offence under section 323 of the Indian Penal Code the complainant alleged in his petition that on 15.9.2015, for the benefit of the society when the complainant went near the accused persons along with the listed witnesses and tried to intervene, the accused persons armed with spear, sharp weapon, etc. tried to kill them. On the same day he had filed an e-jahar in the Jagiroad PS when the police along with the reporter went to the place then the accused persons armed with dao, lathi, etc. showed anger in front of the police officials of which few video footages were recorded. Thus the complainant did not implicate the accused persons under section 323 of the Indian Penal Code in his complaint. He did not state that he had sustained any injury in the incident. However, during deposition as PW1, the complainant stated that on the next day, the police found the road in the cut state and at the time of police visit the accused persons came out of their houses armed with dao, jathi, etc. The accused persons then came and beat PW1 and the police persons. Although in the complaint he stated that the accused persons only showed anger to the police but during deposition he stated that the accused persons had beat him and the police persons. Hence there are contradictions in the testimonies of the complainant and in view of absence of any injury report of any person. PW2, Hanif Ali only stated that on the day of incident PW1 along with police came to the place of occurrence and when PW2 also came there. The police ordered the accused persons to

take out their fishnet from the road then they armed with weapons tried to argue with the police. Thus he did not state that the accused persons had beat the complainant and the police persons causing simple hurt to them. PW3 also stated that the accused persons tried to beat the complainant but he did not state anything whether the complainant had sustained any injury or not. PW4 also stated only that the accused persons tried to fight with police also. Thus, none of the witnesses stated that the accused persons had voluntarily beat and caused hurt to the complainant or anyone. Further there is no medical report in reference to any injury sustained by the complainant. Also the video footage recorded by the witness, PW5 which was marked as exhibit B, when played in the open court did not show anything to establish that the complainant was beaten by the accused persons. Hence the ingredients of the offence under section 323 of the Indian Penal Code could not be established by the prosecution beyond reasonable doubt.

16. Therefore, the point for determination No. 3 is decided in negative and in favour of the accused persons.
17. Regarding the offence under section 148 of the Indian Penal Code, the complainant alleged in the ejarah that on 15.9.2015, for the benefit of the society when the complainant went near the accused persons along with the listed witnesses and tried to intervene their act of damaging the road, the accused persons armed with spear, sharp weapon, etc. tried to kill them. On the same day he had filed an ejarah in the Jagiroad PS when the police along with the reporter went to the place then the accused persons armed with dao, lathi, etc. showed anger in front of the police officials. However during deposition as PW1 he only stated that at the time of police visit the accused persons came out of their houses armed with dao, jathi, etc. The accused persons then came and beat PW1 and the police persons. The PW5 who recorded the video footage of the incident deposed that at the same time the accused persons armed with boitha, lathi, ciprang, etc. came, started arguing with the complainant and tried to beat him. When the police tried to save the complainant then they assaulted the police too. PW5 recorded the whole incident with his camera. However during display of the video footage in the open court no such incident of assaulting the complainant or the police persons had been witnessed. In the video footage it was clear that there was a situation of flood and many people were gathering at the place of

occurrence and some of those persons had sticks on their hands but there was no footage of any assault by the accused persons to the complainant or the police officials. It casts a doubt upon the story of the complainant. PW2 stated that the accused persons armed with weapons tried to argue with police whereas PW3 stated that the accused persons armed with weapons tried to beat the complainant and PW4 stated that the accused persons armed with weapons tried to fight with the police. But no such incident was witnessed in the video footage exhibited by the complainant through PW5. The complainant had filed one e-jahar regarding the same occurrence and in that case the police had submitted final report which is annexed with this case record. The final report nowhere mentioned that the accused persons had armed with weapons tried to beat the police or the complainant. As such the story of the complainant seems to be exaggerated one and can not be believed with certainty to the degree of beyond reasonable doubt as required under criminal justice system. Hence, the complainant is failed to prove the ingredients of the offence under section 14 of the Indian Penal Code beyond reasonable doubt to bring the accused persons to book under the said provision of law.

18. Therefore the point for determination No. 1 is decided in negative and in favour of the accused persons.
19. Regarding the offence under section 427 of the Indian Penal Code, the complainant alleged in his complaint petition that on 14.9.2015 at around 7 am preplanned and cut the government road connecting from Boramari village to Barampur village in two places during the flood in order to catch fish which caused life-threatening to the public and kids going to school through the road. Moreover, due to the damage on the road, 14 quintal fish worth Rs.168000/- from the complainant's personal pond floated out. During deposition as PW1 the complainant stated that in the year 2014 at around 7 am the accused persons cut the government road connecting from Karchuabori village to Barampur village in two places in order to catch fish. There were two fisheries of the complainant behind that road where he kept around 14 quintal fishes worth Rs.168000/-. Due to cuts on the road, the fishes crossed the pond. PW2 Hanif Ali did not support the complainant as he did not depose anything regarding any loss of the complainant. PW3 Subhan Ali only stated that around two years prior to his deposition when the accused

persons cut the government road then the fishes of PW1's pond came out of the pond. PW4 Yasin Ali also stated that the accused persons cut the portion of government road connecting from Karchuaboramari to Barhampur, put the net to catch fish after which the fishery of PW1 became down and all his fishes came out of the pond. However from the evidences of the witnesses along with the complainant it cannot be ascertained as to where was the pond of the complainant. The record reveals that it was a flood affected area and at the time of the incident it was flood at the place of the incident. The complainant failed to explain in such a situation when the water was overflowing how the act of the accused persons caused the fishes of his pond came out of it. As the certified copy of the FR has been annexed with the complaint, the court gone through it to find that in the ejahar the complainant being the informant had not mention anything regarding fishes coming out of his pond causing loss of Rs. 168000/-. This shows that the complaint filed by the complainant in protest to the FR is nothing but exaggeration of facts and improvements of facts. Hence there is sufficient reasons to doubt the story of the complainant. Although the complainant stated that people of two villages used to use the road, he did not examine any villager who deposed that the accused persons had damaged the public road. The complainant during cross examination conceded that neither he nor any of the villagers informed the concerned authority of the damage of the road caused by the accused persons. PW2 during cross examination stated that he did not witness the cutting of the road by the accused persons. In fact there was no eye witness of the incident of cutting of the public road by the accused persons. PW4 during cross examination stated that it was flooded when the road tore. Therefore, it cannot be completely denied that during overflowing flood there is every chance of tearing of any road easily. Further there is no proof that the complainant had put 14 quintal of fish worth Rs. 168000/- in his pond and the accused persons activity had caused a loss of the same as during flood fishes used to move by itself from one place to other. Hence the facts have been improved by the complainant than suggested by him at the time of the filing of the ejahar in this case which resulted into an FR. Thus improvements and exaggeration in the story of the complainant cannot be denied and this is sufficient to cast doubt upon the authenticity of the story of the complainant. Hence the complainant could not prove the

ingredients of the offence under section 427 of the Indian penal Code beyond reasonable doubt. The principle of criminal justice suggests that the benefit of doubt must go in favour of the accused.

20. Therefore the point for determination No. 2 is decided in negative and in favour of the accused persons.
21. In view of the above, it is held that the prosecution has failed to establish the offence under sections 148/427/323 of the Indian Penal Code against accused persons. Accordingly, accused persons namely **Md. Joynal Abedin, Md. Firuz Ali, Md. Abdul Hussain, Md. Izahar Ali, Md. Jakir Hussain, Md. Jamshed Ali, Md. Ainul Hoque, Md. Jakir Hussain, Md. Hashen Ali and Md. Abul Hussain** are found not guilty and are acquitted of the alleged offence labelled against them and they are set at liberty forthwith.
22. Bail bond and affidavit submitted by the bailor is extended for a period of six months as per amended Cr.PC.

Given under the hand and seal of this Court on this the 21st day of November 2019, at Morigaon.

Lohit Kumar Sarmah
SDJM(S), Morigaon, Assam

Prosecution witnesses:

PW1- Abdul Jabbar(Complainant-cum-victim)

PW2- Hanif Ali

PW3- Subhan Ali

PW4- Yasin Ali

PW5- MahabirGour

Exhibits for the prosecution:

MR Ext-A : CD

MR Ext-B : CD

MR Ext-C :Memory Card

Defence witness:

Nil.

Exhibits for defense:

Nil.

Lohit Kumar Sarmah
SDJM(S), Morigaon.