

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.13/2016

State

Vs.

- 1. Sri Saitendra Das
Son of Late Birendra Das**
 - 2. Sri Jogendra Das
Son of Late Birendra Das**
- All are residents of village: Buraburi
P.S.- Mayong,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.

For the defense: Md. M. Rahman, Advocate

Offences explained: u/s 341/323/34 IPC
Evidence recorded on: 28-12-2017, 1-8-2018 and 9-10-2019
Statement of defence recorded on: 23-10-2019
Argument heard on: 1-11-2019
Judgment delivered on: 16-11-2019

JUDGMENT

1. The prosecution case in brief is that one Sri Pradip Das lodged a complaint in the court of Chief Judicial Magistrate, Morigaon on 22-12-2015 against the accused persons namely Sri Saitendra Das and Sri Jogen Das alleging therein that on 18-12-2015 at about 9.00 p.m., the complainant, along with five witnesses named in the complaint as well as others, went to attend a ritual feast on the occasion of death of a family member in the house of Sri Krishna Kanta Biswas, who was also listed as one of the witnesses in the complaint. While the invitees were engaged in a discussion, the aforementioned two accused persons, armed with a long dagger and a ram-dao, with premeditation, in order

to kill the complainant, came to the house of Sri Krishna Kanta Biswas, started shouting and the accused Sri Saitendra Das inflicted a dagger blow on the complainant. The complainant avoided the blow by falling on the ground and the blow fell on a wall. The accused Sri Jogen Das, in order to kill the complainant, inflicted a dao blow with the ram-dao. The complainant avoided the blow by falling on the ground. When the complainant created a commotion, the witnesses as well as members of the public, who gathered for the ritual, prevented the accused persons after which the accused persons went away but threatened to kill the complainant and the witnesses with gun. Thereafter, the complainant and the witnesses, out of fear, saved themselves by going to their own houses. It is further stated in the complaint that had it not been for the witnesses, both the accused persons would have killed the complainant. It is further revealed in the complaint that the accused Sri Saitendra Das deposited a gun in the police station earlier also. At the time of filing the complaint, the accused persons were threatening to kill the complainant. Due to the attack of the accused persons, the complainant sustained injuries on several parts of his body.

2. The said complaint was forwarded to the Officer-in-Charge of Mayong police station, as per prayer of the complainant, for registration of a case, for investigation and submission of report under section 173 CrPC. Accordingly, the complaint was received in the Mayong police station on 1-1-2016 and a Mayong police station case No.1/2016 under sections 447/341/323/307/506/34 IPC was registered and one assistant sub inspector of police Sri Kuladhar Nath was assigned to take up the preliminary steps of the investigation and sub inspector of police Md. Akbar Ali, who was the Officer-in-Charge of the said police station, decided to complete the investigation. On completion of investigation police submitted charge sheet against the accused Sri Saitendra Das and Sri Jogendra Das under sections 341/323/34 IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused under section 207 CrPC. Particulars of offences under sections 341/323/34 of IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 4 (four) witnesses namely Sri Pradip Das, Sri Krishna Kanta Biswas, Sri Prem Nath Biswas and ASI Sri Kuladhar Nath, as PW-

1, PW-2, PW-3, and PW-4, respectively. Prosecution also exhibited 4 (four) documents including the ejahar as well as the charge sheet. While under examination under section 313 CrPC, the accused persons denied the allegations leveled against them. Defence side refused to adduce any evidence

5. I have heard the argument of Mrs Alakananda Kakati, learned APP as well as the argument of Md. Mustafijur Rahman assisted by Ms. A. A. Newaz, learned defence counsels. I have also perused the case record and considered the same. The points for determination are as under:

- i. Whether the accused persons, on or about 18-12-2015, at about 9.00 p.m., at village Buraburi, under Mayong police station of Morigaon district, in furtherance of their common intention, wrongfully restrained Sri Pradip Das, so as to prevent him from proceeding in any direction in which he had a right to proceed and thereby committed an offence punishable under section 341 IPC, read with section 34 IPC?
- ii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, voluntarily caused hurt to Sri Pradip Das and thereby committed an offence punishable under section 323 IPC, read with section 34 IPC?

Discussion of evidence, decision and reasons therefor:

6. The ejahar is exhibited as exhibit-1 and the signature of the informant Sri Pradip Das is proved as exhibit-1(1) and 1(2) thereon. The informant Sri Pradip Das himself deposed before the court as PW-1. It is noticed in the ejahar that the alleged occurrence took place on 18-12-2015 at 9.00 p.m., however, the complaint was lodged in court on 22-12-2015 i.e. after four days. There is no explanation in the ejahar as to why the informant awaited for four days to approach the court or police station. Unexplained delay in lodging the ejahar afforded sufficient opportunity to the informant to deliberate as to how the ejahar should be lodged and what should be written therein. The said delay also robbed the ejahar of its spontaneity.

7. The allegation against the accused persons as indicated in the ejahar is that the accused Sri Saitendra Das inflicted a dagger blow on the complainant and the accused Sri Jogen Das inflicted a dao blow on the complainant. However, the informant as PW-1

has stated that it was accused Sri Saitendra Das, who brought a dao from his house and also brought his own brother Sri Jogen Das with him, who was holding a dagger. This revelation in the deposition of PW-1 contradicts the indication given in the ejahar regarding the material part of the accusations. In other words, the complainant has implicated the accused Sri Saitendra Das of being armed with a dao and accused Sri Jogen Das of being armed with a dagger whereas, he stated the opposite in his own ejahar. This contradiction cannot be treated as minor contradiction, as, if the complainant had saw the accused persons of holding weapons as indicated in his ejahar, there is no reason for him to forget and contradict regarding the said facts. Further, it is indicated in his ejahar that the said PW was taken inside the house by others when the accused Sri Saitendra Das inflicted a dao blow but the dao blow fell on a wall. There is no mention of any dagger blow in his deposition. This is a material omission as he indicated clearly in his ejahar (exhibit-1) that accused Sri Jogen Das inflicted a dao blow on him. Further, it is also indicated in his deposition that the accused persons threw the dao and dagger and went to their own house to bring a pistol. This fact was not indicated in his ejahar. Further, it is also indicated in his deposition that the accused Sri Saitendra Das went to the house of the complainant with one Sri Harilal Das searching for the complainant. This fact was also not indicated in his ejahar.

8. Rather, in his cross examination, it is indicated that regarding the same occurrence accused Saitendra Das lodged an ejahar against the complainant for which the complainant did not go to the police station to lodged a case. This behaviour of the complainant appears to be unusual in view of the accusation leveled in the ejahar. As per his ejahar, the informant was allegedly inflicted with a dagger blow and a dao blow from which he somehow saved himself, the informant should have immediately gone to the police station to lodge complaint of the same. He also could have immediately approached the court to lodge a complaint against the accused persons in the light of the accusation against the accused persons. It is also indicated, while under cross-examination, that he did not sustain any injury by the accused Sri Saitendra Das and Sri Jogen Das. This statement in his cross-examination contradicts his own statement in the ejahar that due to the action of the accused persons, he sustained injury on several parts of his body. He has further revealed that the accused persons lodged a case

against him and one Sri Subharanjan Biswas accusing him and Sri Subharanjan Biswas of beating the accused persons. This lodging of the case against the complainant, in the light of the discrepancies found in his ejahar vis-à-vis his deposition coupled with delay in lodging the complaint in the court renders him a doubtful witness, who cannot be relied upon in order to come to a conclusion regarding the guilt of the accused persons.

9. PW-2 Sri Krishna Kanta Biswas is the person in the house of whom, according to PW-1, the ritual feast was arranged. He stated that he invited the accused persons as well as the informant to his house and he asked them to take their seats in order to start the feast and he went out to the house of another person situated near his house. He heard a commotion and returned to his own house and saw that there was a commotion and people were holding dao and lathi. There is no mention of lathi in the deposition of PW-1. Accused Sri Saitendra Das was holding a dao in his hand. According to him, the members of the public snatched away the said dao. However, the said accused again brought another dao with him. This fact was also not indicated in the ejahar or in the deposition of PW-1. This deposition of Sri Krishna Kanta Biswas does not go to support the deposition of PW-1 in its material particulars. Further, PW-2 did not indicate anything about Sri Jogen Das and that he brought a dagger with him. According to his own statement, he did not see the quarrel with his own eyes as he was went out to invite other persons. Further, it is revealed in his cross-examination that at the time of commotion Sri Pradip Das was not present at the courtyard of the PW-2.

10. PW-3 Sri Premnath Biswas stated that he heard that accused Sri Saitendra Das and Sri Pradip Das were engaged in a quarrel. However, he did not see any injury as he went to the place of occurrence after the occurrence. His evidence is not of much use as he did not see the alleged occurrence with his own eyes.

11. PW-4 ASI Sri Kuladhar Nath was the investigating officer, who amongst others, prepared the sketch map of the place of occurrence which is exhibited as exhibit-2 wherein he confirmed his signature as exhibit-2(1). The charge sheet which is submitted by Md. Akbar Ali is exhibited as exhibit-3 and the signature of Md. Akbor Ali is exhibited as exhibit-3(1), as the signature is known to the said PW-4. PW-4 also collected the injury report of the injured and the signature of the Dr. P.K. Khound is exhibited as exhibit-4(1), as the signature of the said doctor is known to PW-4.

12. Perusal of the exhibit-4 injury report reveals that Sri Pradip Das was examined by Dr. P.K. Khound at Jhargaon P.H.C. on 19-12-2015 at 12.38 a.m. and found tenderness and swelling of right hand, chest congested, lumber region tender and back tender. The injury found by the doctor on the person of Sri Pradip Das does not appear to be the injuries caused by the accused persons as the PW-1 himself stated in his cross-examination that he did not sustain any injury due to the action of the accused persons. If that be so, those injuries indicated in his medical report were not caused by the accused persons.

13. The unexplained delay in lodging the complaint in court and the discrepancies noticed in the depositions renders the prosecution story as a doubtful one. PW-2 and PW-3 also did not support the accusations against the accused persons in its materials particulars. Further, the discrepancies in the deposition of the PWs and the medical findings further renders the prosecution story an improbable one.

14. For the aforesaid reasons and discussion the points for determination are answered in the negative.

15. The prosecution has failed to prove the case against the accused persons beyond all reasonable doubt. As such, the accused persons are found not guilty and accordingly acquitted of offences under sections 341/323/34 IPC alleged against them. They be set at liberty forthwith. Their bail bonds shall remain in force for six months from today in view of section 437A of CrPC.

16. The judgment is pronounced in open court and given under my hand and seal on this 16th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

- Ext.-1: Ejahar
- Ext.-1(1) & 1(2): Signatures of Sri Pradip Das
- Ext.-2: Sketch map
- Ext.-2(1): Signature of ASI Sri Kuladhar Nath
- Ext.-3: Charge sheet
- Ext.-3(1): Signature of SI Md. Akbar Ali
- Ext.-4: Injury report
- Ext.-4(1): Signature of Dr. P.K. Khound

(B) DEFENCE EXHIBITS

None

(C) EXHIBITS PRODUCED BY WITNESSES

None

(D) COURT EXHIBITS

None

(E) PROSECUTION WITNESSES

- P.W.-1: Sri Pradip Das
- P.W.-2: Sri Krishna Kanta Biswas
- P.W.-3: Sri Prem Nath Biswas
- P.W.-4: ASI Sri Kuladhar Nath

(F) DEFENCE WITNESSES

None

(G) COURT WITNESSES

None

Chief Judicial Magistrate, Morigaon