

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL. MAGISTRATE,

MORIGAON::::::::::ASSAM.

GR Case No. 1875 of 2016

U/S 394 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: (I) SRI LULU DAS

(II) SRI BHISMA BORO

Present : Smti. S. Acharyya, AJS,
Addl. Chief Judicial Magistrate,
Morigaon.

APPEARANCE:

For the State : Mr. P. Hazarika, Ld. Addl. Public Prosecutor.
For the accused person : Mr. J. Kr. Nath, Learned Advocate.
Charge framed on : 19.12.2016
Evidence recorded on : 06.03.2018, 07.05.2018, 05.04.2019, 17.05.2019,
17.06.2019, 03.10.2019 and 29.11.2019.
Argument heard on : 29.11.2019.
Judgment delivered on : 30.11.2019.

J U D G M E N T

1. The prosecution case in brief is that the informant Sri Nepal Roy lodged an ejahar stating inter alia that on 31.7.2016, at about 11.00 PM, when his son Sri Pankaj Roy along with two of his friends entered into a *dhaba* at Amlighat for taking meal then 2/3 unknown culprits assaulted his son and snatched away cash amount of Rs. 21,000/- and one mobile phone from his son and caused injury to his son. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Jagiroad P.S. Case No. 355/2016 and the matter was investigated upon.

3. After completion of investigation police filed a charge-sheet against

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the accused persons (i) Sri Lulu Das and (ii) Sri Bhisma Boro under section 394 IPC.

4. On appearance of the accused persons, they were allowed to go on bail. Relevant documents of the case were furnished to them. Upon perusal of materials on record and after hearing both sides, charge under section 394 IPC has been framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case examined seven witnesses. Whereas, the defence side has not examined any witness in support of its defence.

6. The examination under section 313 Cr.P.C. of the accused persons is dispensed with as found not necessary.

7. I have heard the argument advanced by the learned counsels for both sides.

8. Upon hearing and on perusal of the record I have framed the following point for determination:

(i) Whether the accused persons, on 31.7.2016, at about 11.00 PM, committed robbery of Rs. 21,000/-, one mobile and silver ornaments, from Pankaj Ray while he was taking food at Amlighat and in order to commit that robbery caused hurt to Sri Pankaj Ray and thereby committed an offense punishable U/S 394 of IPC?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

9. PW1 Sri Nepal Rai who is the informant inter alia deposed that the occurrence took place in the year 2016. They were taking their dinner. Suddenly, his son Pankaj Rai rang and told that some people were beating him. His elder son Nepur Rai went to the police station and rescued Pankaj from a hotel in an injured condition. He was first taken to Jagiroad Govt. Hospital. They referred him to Guwahati. Ultimately, Pankaj was treated at Guwahati Private Hospital. There was cut injury in the leg of Pankaj apart from other injuries in his body because of beating. Later, Pankaj told him about the occurrence. Four/Five boys had beaten Pankaj. Pankaj was accompanied by 2/3 more boys. He exhibited the ejahar as Ext.1 and his signatures as Ext.1(1). In his cross examination, PW1 inter alia answered that he instituted the ejahar after three days of the

occurrence. He heard about the occurrence. He did not see the occurrence. He does not know the persons who have beaten Pankaj. He denied the suggestion put to him by Ld. defense counsel.

10. PW2 Sri Nupur Roy, who is the son of the informant inter alia deposed that he cannot identify the accused persons, who were standing in the dock. In the summer season of 2016, at about 10.30/11.00 PM, he was taking dinner at his home. His younger brother, Pankaj rang him and told that he had met a quarrel at Amlighat in a Dhaba. He went to find him out, but failed initially. Thereafter, he went to Jagiraod police station and tried to search his brother with the help of police. He and police found Pankaj in the High way near Deosal mandir. He came out from the nearby ditch. He was covered with mud. There was a cut injury in his leg. Stitches were given. Police took him to the Government Hospital, from where he was referred to Guwahati. His brother told that some unidentified persons had beaten him. He does not know about the reason of occurrence. In his cross examination, PW2 inter alia answered that Deosal mandir is about ½ KM away from Amlighat. His house is 3 KM away from Amlighat. 10 minutes time requires to reach Amlighat from his house with motor-bike.

11. PW3 Sri Pankaj Roy who is the victim inter alia deposed that the occurrence took place at about 2 years ago during *Bolboom* time. He went to Dhaba near Deosal. His friends Tabbu Debnath and Liton Deb were with him. There was argument between his friends and the accused persons. When he asked about the incident some unknown persons assaulted him. He cannot identify those persons. He sustained injury at his left leg. Stitches required at his leg. He took treatment at Jagiroad Hospital. Liton Deb expired. In his cross examination PW3 inter alia answered that he cannot say how many people gathered at the PO. He cannot say about the reason of argument.

12. PW4 Sri Tabu Debnath inter alia deposed that the incident took place at about 2/3 years ago, at about 11.00 PM. He, Pankaj and Liton went to a Dhaba at Amlighat. There was argument between them and some unknown persons regarding one Raj Kumar. Then those persons threw bottles towards Pankaj. One of them hit Pankaj at his leg with axe. He has seen his cut injury over his leg. Liton Das expired. Defense side did not cross examine PW4.

13. PW5 Sri Akshya Boro inter alia deposed that he heard about the push and pull. He does not know who had committed the offence.

14. PW6 Sri Partha Kalita inter alia deposed that the incident took place at about 3 years back, at about 10.00/10.15 PM on the occasion of *Bolbom*. He found 20 persons gathering at the Dhaba. He has seen pull and push between those persons.

15. PW7 Sri Hemanta Basumatary inter alia deposed that he know nothing about the case.

16. I have carefully gone through the evidence on record. From the evidence of PW3, who is the victim it appears some unknown persons assaulted him. It also appears that PW3, who is the victim and PW4 & PW6, who are the eye witnesses could not identify the culprits who assaulted PW3. PW1, PW2 and PW5 are not the eye witnesses and they did not implicate the accused persons with the incident. Another witness Linton Debnath expired as revealed from evidence and order dated 5.4.2019. The prosecution did not adduce any other evidence. Hence, I am of the opinion that prosecution has failed to prove the case beyond all reasonable doubts.

17. In view of above discussion, the accused persons (i) Sri Lulu Das and (ii) Sri Bhisma Boro are acquitted of charge U/S 394 of IPC and set at liberty forthwith.

18. Bail bond shall remain in force for next six months.

19. The case is disposed of on contest.

20. Given under my hand and seal, today, the 30th day of November, 2019.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

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Addl Chief Judicial Magistrate
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Dictation taken and
transcribed be me.

Computer Typist.

APPENDIX:

Prosecution witness:

PW1- Sri Nepal Rai
PW2- Sri Nupur Roy
PW3- Sri Pankaj Roy
PW4- Sri Tabu Debnath
PW5- Sri Akshya Boro
PW6- Sri Partha Kalita
PW7- Sri Hemanta Basumatary

Prosecution exhibits:

Ext.1- Ejahar

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected
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Addl Chief Judicial Magistrate
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