

**IN THE COURT OF SESSIONS JUDGE ::::::::::: GOALPARA**

**Crl. Appeal Case No. 09 of 2016**

Present:- **Sri T.K.Bhattacharjee, A.J.S**  
Sessions Judge, Goalpara

**Ajay Lal Rajbhor** .....Accused/appellant.

**-Versus-**

**The State of Assam** ..... Respondent.

**Appearance:-**

For the appellants: Mr. D. Pathak, Ld. Advocate.

For the respondent: Mr. B.K. Das, Ld. P.P.

Date of hearing: 10-06-2019.

**Date of Judgment: 18.06.19.**

**J U D G M E N T**

1. This appeal has been preferred against the judgment of conviction and sentence dated 18/6/16, passed by the Ld. C.J.M, Goalpara in GR Case No. 1748/12, vide which the appellant/accused was convicted u/s 447/323 of the IPC and sentenced to pay a fine of Rs. 500/- u/s 447 of the IPC in default to undergo S.I. of 15 days and further sentenced to undergo SI for 3 months and also to pay a fine of Rs. 1000/- in default to suffer S.I. for one month u/s 323 of the IPC.

2. The brief facts of the prosecution case is that, on 24/08/12 the informant filed an ejahar stating that on 23-08-12 at about 11 pm the accused/appellant tried to abduct the son of the informant and the accused along with others entered into the house of the complainant and used abusive language assaulted the informant, caused damage to property and threatened the informant party.

3. Thereafter, on receipt of the said ejahar, Goalpara P.S Case No. 380/12 was registered u/s 447/294/307/326/506/34 of the IPC and after completion of the investigation the concerned P.S. submitted the charge sheet against the accused person (appellant) u/s 447/294/323 of the IPC. In due course of time the Ld. Lower court read out and explained to the accused person the particulars of offences u/s 447/294/323 of the IPC to which he pleaded not guilty and claimed to be tried and accordingly the trial commenced and after the trial was completed the Ld. Lower court finally convicted the accused/appellant and sentenced him as mentioned above.

4. Being highly aggrieved and dissatisfied with the aforesaid judgment and order of conviction the appellant preferred the instant appeal on the grounds set forth in the Memo of appeal .

5. The connected LCR was called for in this context from the Ld. Court below and it was perused very carefully and the respective Ld. Counsels for both sides were also heard in this context.

6. In the course of arguments, the Ld. Counsel for the appellant submitted that the appellant was convicted without appreciating the evidence on record in legal and proper perspective and in the absence of material facts which were suppressed by the prosecution, by ignoring the contradictions and exaggeration of the witnesses and as such the said order of conviction and sentences that have been challenged in this appeal are liable to be set aside. On the other hand, the Ld. P.P submitted that the convicted person was rightly convicted and leniently sentenced by the Ld. Lower court after elaborate discussion of the evidence on record and as such the impugned judgment and order of conviction and sentence is not required to be interfered with but rather the appeal is required to be dismissed.

7. In view of the contrary arguments of the respective Ld. Counsels, it is felt necessary to carefully scrutinize the entire materials available before me and determine the following :-

**Point for determination:-**

8. Whether the Ld. Lower court was correct in convicting the appellant u/s 447/323 of the IPC and sentencing him as specified above ?

**Discussion , Decision and Reasons :-**

9. On perusal of the entire case record including the connected documents and also the judgment and order dated 18.06.16, passed by the Ld. Lower court, it is found that the occurrence allegedly took place on 23.08.12 at about 11 PM and thereafter the ejahar was lodged against the convicted person and others on the following day i.e. on 24.8.2012. The testimony of the informant and other witnesses show there was hue and cry in the house of the informant late at night and the PW-1, PW-3 and the PW-5 who is an independent witness supported the version of the PW-1 regarding the assault upon the PW-1.

10. The P.W.3 was Smt. Soneka Mondal, the wife of the informant and from her testimony it is found that she was present at the P.O during the occurrence and she saw the accused pulling the neck of her husband.

11. The P.W.-7 was the Medical Officer and from his medical report, the Ext.-2 , it is found that he had examined the victim on the date of occurrence i.e. on 23/08/12 at Goalapra Civil Hospital and found injuries on the back of the chest of the victim caused by blunt objects.

12. The P.W.6 was the police official who took part in the investigation of the case and subsequently submitted the charge sheet against the accused/appellant. From the cross-examination of P.W.6, it is found that no contradictions or omissions of any significant magnitude could be elicited during cross-examination of the said witness (I.O.)

13. On a careful scrutiny of the entire materials available before me including the connected documents and also the impugned judgment and order dated 18-06-16 passed by the Id. Lower Court it is found that the Id. Lower Court relied on the testimony of the PW-1 (victim) and the other

witnesses including eye witnesses and also the medical evidence in arriving at the impugned decision by observing that the accused person had caused physical assault to the victim on the date of the occurrence and the Ld. Court below was pleased to convict and sentence the accused person accordingly.

14. From the LCR it is found that though the defence side cross-examined all the prosecution witnesses but the prosecution story could not be distorted significantly so far as the role of the convicted accused/appellant was concerned in the alleged occurrence as was found by the Ld. Lower court. The law is well settled that the testimony of a single witness is sufficient to prove a case provided the testimony of such a witness inspires the confidence of the Court and in the instant case the P.W.-1, the victim and other witnesses could not be cross-examined effectively in order to raise any doubts with respect to the role of the appellant and as such the testimony in the case record cannot be brushed aside without any cogent reasons. Further, the Ld. Lower court also took up all the disputed points for determination and had made elaborate discussion on the evidence adduced by the prosecution, but nevertheless, from the testimony of the victim and the other witnesses it is apparent that the accused assaulted the victim on his neck but surprisingly the testimony of the medical officer (P.W.-7) shows that the victim was found with injuries in the back of his chest which is contradictory to the oral testimony of the witnesses and as such the testimony of P.W.-7 as well as the medical report the Ext.-2 cannot be relied upon and thus, considering all the facts and circumstances of this case, I find that the ingredients of an offence u/s 323 of the IPC is lacking in the instant case and considering the entire facts and circumstances of this case, I am of the opinion that the prosecution has been able to establish the guilt of the accused appellant u/s 447/352 of the IPC only beyond reasonable doubt.

15. In view of the above, the conviction and sentence of the accused/appellant u/s 447 of the IPC is hereby upheld and the accused/appellant is directed to pay the fine of Rs. 500/- as directed by the Ld. Lower court

in default to undergo S.I. for 15 days but the conviction and sentence of the accused/ appellant u/s 323 of the IPC is hereby reversed and the accused appellant is convicted u/s 352 of the IPC and sentenced to suffer SI for 20 days. The period of detention already undergone by the accused/ appellant shall be set off accordingly.

16. In the result, the appeal is partly allowed on contest but without any costs. The order of conviction of the accused/appellant u/s 447 of the IPC is hereby upheld but the conviction and sentence of the accused/ appellant u/s 323 of the IPC is hereby reversed and the accused appellant is convicted u/s 352 of the IPC and sentenced to suffer SI for 20 days. The period of detention already undergone by the accused/ appellant shall be set off accordingly. The accused/ appellant shall appear before the Ld. Lower court on 28-06-2019 to pay the fine amount and serve out the sentence, if any. Further, in the event of failure of the appellant/ convict to appear before the Ld. Court below, his attendance shall be procured by the Ld. Lower court and thereafter he shall be dealt with as directed above.

17. Send back the LCR with a copy of this judgment to the Ld. Lower court for necessary action.

Given under my hand and the seal of this court on this the 18<sup>th</sup> day of June/2019.

**(T.K. Bhattacharjee)**  
Sessions Judge,  
Goalpara.

Dictated & corrected by me:

Sessions Judge,  
Goalpara.