



Goalpara in Sessions Case No.42/2017 sentencing each of the appellants to undergo simple imprisonment for one month and to pay a fine of Rs.500/- only each, in default of payment of fine, to suffer Simple Imprisonment for 7 days for the offence u/s 341 of IPC and to suffer Simple Imprisonment for 1 year and to pay a fine of Rs.3,000/- only each, in default of payment of fine, to suffer Simple Imprisonment for 2 months u/s 325 of the IPC, with a direction to run both the sentences concurrently.

2. The brief facts of the prosecution case is that on 16.10.2016, at about 6-00pm, when Abdul Monnaf, who is the husband of informant Khurshida Parvin, was coming home from Bashbari Bazar, the FIR named accused persons, namely Samsul Hoque, Rofiqul Islam, Sofiqul Islam, Mofidul Islam, Shohidul Islam, Abu Bakkar and Halima Khatun, restrained him on the road in front of their house and they got him down from his bicycle and hit on his head, chest and other parts of his body with iron rod, wooden sticks etc. thereby causing grievous injuries on his person. It was further alleged that the accused persons had been threatening him for last six months that they would kidnap the informant.

3. The police on receipt of an First Information Report (herein after be called as FIR) to that effect registered a case vide Baguan P.S. Case No.143/2016 u/s 143/341/326/506 of the

IPC and sprung up into the action of conducting the investigation and on completion of investigation, the police submitted a charge-sheet against accused persons namely Rofiqul Islam, Sofiqul Islam and Mofidul Islam sending them up to stand trial for their offences punishable u/s 341/325/307/34 of the IPC.

4. The learned trial court after hearing both the sides and considering the materials on record had framed charges u/s 341/325/307/34 of the IPC against the accused persons and read over and explained the charges to which the accused persons pleaded not guilty but claimed to be tried.

5. During trial, prosecution has examined as many as 7(seven) prosecution witnesses including the victim, Medical Officer and the Investigating Officer and the learned trial court examined the appellants u/s 313 of Cr.P.C. wherein the appellants have taken the plea of total denial and declined to adduce their defence evidence.

6. It is pertinent to mention herewith that after recording the evidence-in-chief of PW2 i.e. the victim of the case, the trial Court vide order dated 19.09.2017 has arraigned other four accused persons, namely Samsul Hoque, Shohidul Islam, Abu Bakkar and Halima Khatun, who were not charge-sheeted in the case but the learned trial Court formally framed the charges

against the said newly arraigned accused persons also and the contents of the said charges had been read over and explained to the newly added accused persons to which they pleaded not guilty but claimed to be tried.

7. Thereafter, on conclusion of recording the evidence of the witnesses and after hearing the arguments, the learned trial court passed the impugned judgment & order convicting 3 numbers of accused persons namely Rofiquil Islam, Mofidul Islam and Shohidul Islam.

8. I have heard arguments put forward by the learned counsels of both the sides and carefully gone through the evidence on record including the impugned judgment and order.

9. The defence version was that they had not committed the offence. However, the Id. Trial Court convicted the accused appellants in absence of any corroborative evidence. Due to non examination of independent witnesses, the Id. trial court ought to have acquitted the accused appellants. There was delay in lodging the FIR although the Police station was very close to the place of occurrence and in view of such delay, the appellant side submitted that the accused appellants ought to have been acquitted. Non recovery of weapons used in the incident will establish that the prosecution has failed to prove its case against the accused appellants beyond all reasonable doubt. In

support of the above submissions, the Id. Counsel for the appellants relied on the following case laws, which I have perused :- 1) 2002 Supreme Court Cases (Cri) 780, Kalyan and Others –vs- State of UP, 2) AIR 1984 SC 1622, Sharad Birdhichand Sarda –vs- State of Maharashtra, 3) 2000 CRI. L.J. 1442, Mahmood and others –vs- State of Bihar, 4) 2006 (2) Gauhati Law Journal 263, Abdul Hai & Others –vs- State of Assam, 5) 2006(2) Gauhati Law Journal 269, State of Tripura – vs- Pulakesh @Narayan Chakravarty & Others and 6) 1997 SCC (Cri) 1049, Sahib Singh –vs- State of Haryana. Per contra, the Id. Public Prosecutor for the state has submitted that the FIR was promptly lodged and the delay was properly explained. Prosecution witnesses includes the injured eye witness who is believable. There is no contradiction in the evidence of the witnesses on substantial points. If the witnesses are genuine and believable, then in that case it does not affect the prosecution case on the ground that the witnesses are the family members. If eye witness supports the prosecution case, the conviction can be based on his evidence. In the light of admissible evidence of witnesses, if the recovery of weapons used in the offence has not been done by that IO then in that case, prosecution case does not suffer adversely. The Prosecution has proved its case beyond any doubt against the accused. Therefore, the appellants has been rightly convicted

and sentenced in the Id. trial and in view of that matter, the appeal is liable to be dismissed.

10. Having regard to the above and considering the materials on record, it is apparent that as according to the FIR, the occurrence took place 16-10-2016 at about 6pm and the FIR was lodged on 18-06-2016 at about 2:30 pm. In this regard, the PW-1, the informant in her evidence stated to the fact that her husband was immediately shifted to hospital for medical assistance and after recovery of her husband; she could lodge the ejahar after 2 days of the incident. Therefore, in view of the above evidence, it cannot be said that the FIR has been lodged in an inordinate delay and the delay which has been caused was properly explained by the informant, PW-1. In such a situation, mere delay in lodging the FIR with the police is therefore, not necessarily, as a matter of law fatal to the prosecution.

11. In order to prove their case, the prosecution examined altogether 7 witnesses' including the victim, informant, medical officer and the Investigating Officer. PW-1 the informant, did not witness the alleged incident but she had seen injuries on the head, lady finger, chest and other parts of the body of her husband, the victim. PW-4 has no knowledge about the occurrence and this witness was declared hostile by the prosecution side. PW-5 claimed to have seen the victim with serious injuries on the head, chest and the finger. PW-7 is the

Investigating Officer who stated that the victim on his own availed medical treatment at Goalpara Solace hospital. PW-2 and PW-3 who were the eye witnesses to the alleged occurrence has stated that lady finger of the right hand of the victim sustained fracture injury and the victim also sustained injuries on the chest and other parts of the body. But interestingly, the doctor PW-6, who has examined the PW-2 found no such injuries on head, chest and the lady finger of the victim. However, the doctor found injury of fracture of the 5<sup>th</sup> metatarsal bone of right foot. The doctor also found that such injury may be caused by accident or by falling on hard substance. In view of the above discussion, it would appear that the prosecution had not come up with the true story of the injuries allegedly suffered by the victim as discussed above. It appears to be doubtful which has come from the evidence of 2 witnesses namely PW2 and PW3 that the accused appellants were armed with sabol, rod and lathi had assaulted the victim PW-2, as a result of which severe head injuries as well as injuries on chest and lady finger was caused to the victim. Had a person been assaulted with iron rod, lathi and sabol, he would have definitely received severe injuries on his person. But the medical evidence did not find any such serious injuries as claimed by the victim and PW-3 on the person of the victim PW-2. The evidence of the PW2 and PW3 did not describe as to how

and what manner the victim was assaulted by the accused causing several injuries on his person. Now that medical evidence is against the FIR version where it is said the accused-persons had hit the victim on his head, chest and other parts of the body with sabol, iron rod and wooden stick but when it was found that there was no injuries on the head, chest and little finger on the victim as per medical evidence, the medical doctor who examined the victim did not found any injuries as claimed by the FIR as well as the victim and PW-3. Thus, there was a conflict between the eye witnesses and the medical evidences. Before considering the evidence of the witnesses, it is pertinent to mention a few preliminary remarks against the background of the witnesses who claimed to have seen the alleged occurrence and the injuries on the victim. PW-1 is the wife of the victim and the PW-3 admitted that the victim used to call him maternal uncle though they not related thereby suggesting that he was having close relationship with the victim. PW5 who claimed to have seen injures on the victim was a neighbor of the victim. Thus, is seems that all the above witnesses are close relative and friend as well as neighbor of the victim. In view of such close relationship, any person in the position of a witness would have a tendency to exaggerate his or her statements in order to see the alleged offender is punished. In such circumstances, the question comes about the credibly of PW2 and PW3 in absence

any other independent and corroborating evidence. It is a case of one incident in which not only 3 accused were said to be involved but others numbering another 4 were claimed by the prosecution to be involved in the alleged incident but the trial court finding them not guilty had acquitted them. The evidence of the victim PW2 and the PW3 gave a narration of the entire prosecution story. They have mentioned that the PW-2 was assaulted with iron rod, sabol and wooden stick causing serious head injuries, chest injuries and injury on lady finger. The evidence of these witnesses cannot be relied upon as they are in direct conflict with the medical evidence while both the witnesses categorically stated that the 3 numbers of accused assaulted the PW2 with iron rod, sabol, wooden stick causing serious injuries on different parts of the body of the victim. The doctor PW6 had not stated that such injuries on head, chest or lady finger were caused to the victim. No question was put by the prosecution side to the doctor whether any or all of the injuries on the victim PW2 could be caused in the manner alleged by the witnesses. In view of such inconsistency between the ocular and medical evidence, it would be unsafe to maintain the conviction of the accused on the basis of such evidence. Such inconsistency found in the evidence of the prosecution witness vis-a-vis the statement of PW-2 to the medical officer who had examined PW-2 were not properly appreciated by the

Id. trial court. The effect of non recovery and non production of the alleged weapons used in the occurrence by the accused was not properly considered by the Id. trial court. The inconsistency regarding the injuries between the evidence PW2 and the Ext-2 the medical certificate were not properly considered by the Id. trial court in proper perspective. Many improbabilities found in the prosecution case were not considered properly by the Id. trial court. It has come to notice that the testimonies of PW-1, PW2, PW3 and PW5 reveals that the PW1 and 2 are members of one and same family and the PW3 is closely connected with the victim and PW5 is the neighbor. Therefore, it is quite obvious all the witnesses are interested. The mere fact that the witnesses are interested shall not be enough to discard their evidence as unreliable. On the other hand, before accepting their evidence and relying on them, the same must be put through a test of careful scrutiny. When such a test of careful scrutiny is applied and the evidence of PW-1, 2, 3 and 5 are considered in the light of other evidence like the Medical evidence regarding the facts and circumstance of the case, this court can very well come to the conclusion that their evidence is liable to be rejected as unreliable which is contradictory. The injured PW-2 was examined in Seven Sisters Hospital on 16-10-2016. There is no evidence as to the time at which he was admitted to the said hospital and it is also not known when the victim was

discharged from the said hospital. On the other hand, the IO claimed that the victim got admitted at the Solace hospital. There is nothing to show in Ext-2 as to when the report was prepared by the Seven Sisters Hospital. It seems that an attempt has been from the side of the prosecution to show that PW2 chose to go to a private hospital even without intimating the police and after 2 days of the alleged occurrence, the FIR was lodged before the police. Thus, it is clear that there is contradiction between the evidence of PW2, the victim and PW7, the IO regarding the medical treatment availed in a particular hospital by the victim. It is in the evidence of victim PW-2 and 3 that the appellants assaulted him with iron rod, sabol and wooden stick causing serious injuries on his person to the effect that the victim sustained injuries on head, chest and lady finger. Such evidence becomes quite unreliable and unbelievable in the light of evidence of PW-6 Dr. Sandi Prasad Das and Ext-2, the medical injury report. Considering these aspects in proper perspective, it will lead to irresistible conclusion that there are reasonable suspicions regarding the prosecution version as to the manner in which the PW2 sustained injuries. None of the eye witnesses has stated that PW2 has suffered injuries on his foot due to such assault. Therefore, the injury on the foot of the PW2 as found by the doctor was possibly due to accident or falling on hard surface as

suggested by the Dr. Sandi Prasad Das. All such effects and improbabilities which were pointed out will show that the evidence PW1,2, 3 and PW 5 have not passed a test of careful scrutiny. Viewed from such angle, this court comes to the conclusion that the judgment of the Id. Trial Court convicting the appellant number 1 and 3 and punishing them for the offences punishable u/s 341/325 of the IPC is defective, infirm unsustainable in law and hence liable to be set aside in this appeal. Resultantly, the appellant's no. 1 and 3 stands acquitted from the said charges giving the benefit of doubt. In the result, the appeal succeeds and the same is allowed. So far appellant no. 2 Sofiqul Islam is concerned, this judgment will not be applicable on him since learned Trial court had already acquitted him from the charges leveled against him in the judgment and order dated 07<sup>th</sup> June, 2019 passed by learned Trial court in Sessions case no. 42 of 2017

12. In the result, the appeal succeeds so far the appellant no. 1 and 3 are concerned and the same is allowed. The conviction of the appellant's no. 1 and 3 for the offences punishable u/s 341/ 325/34 of the IPC and the sentence imposed by the Id. trial court are set aside and appellants are no. 1 and 3 are acquitted from the charges. The fine amount if any, paid by the appellant's no. 1 and 3 shall be refunded back to them.

13. Send back the LCR with a copy of the judgment to the learned Trial Court for necessary action.

Given under my hand & seal of the court on 3<sup>rd</sup> of May, 2021.

(I. Ali)  
Sessions Judge,  
Goalpara.

Dictated and corrected by me:

Sessions Judge, Goalpara.