

*THE COURT OF CHIEF JUDICIAL MAGISTRATE,*  
*UDALGURI, ASSAM.*

**G.R. CASE NO. 1116 of 2014**  
**(U/S- 447/325/34 IPC)**

*STATE*

*-VS-*

- 1. SRI SUGRIB RAJBHAR*
- 2. SRI JAYMANGAL RAJBHAR*
- 3. SRI RAIMANGAL RAJBHAR.*

*All are resident of*  
*Village- Jangalbari gaon,*  
*PS- Udalguri*  
*Dist. Udalguri, Assam.*

*-----Accused persons.*

*Present: Shri Gitali Rabha, A. J. S.*

*Advocate for the Prosecution : Mr. A. Basumatary*

*Advocate for the Defence : Mr. M. C. Narzary*

**Evidence recorded on : 05-08-16, 01-09-16, 19-09-16,  
28-10-16 and 16-09-2017.**

**Argument heard on : 12-01-2018.**

**Judgment delivered on : 03-02-2018.**

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

1. The prosecution case, in brief is that, informant Sri Sudama Rajbhar lodged the F.I.R. on 11-10-2014 stating that on previous day i.e. on 10-10-2014 at about 10-30 PM the accused Sugrib Rajbhar, Jaymangal Rajbhar and Raimangal Rjbhar armed with dragger and 'dao' criminally trespassed inside his house, assaulted him with dragger and 'dao' causing grievous injury on his body. He reported that, he had sustained severe injury on this head and hand. He further stated that the accused persons had also caused hurt on him prior to this incident. Hence this case.
2. After receiving the aforesaid ejahar the Officer-in-Charge of Udalguri Police Station registered Udalguri PS case no. 156 of 2014, u/S 447/326/34 IPC. Investigating Officer investigated the case, recorded the statement of witnesses, made the seizure list, collected the medical report, prepared the sketch map and after completing the investigation, submitted the charge sheet against the accused persons u/S 447/325/34 IPC vide CS No. 71 of 2014 dated 31-12-2014.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused persons before the court. Accordingly all the accused appeared. The copies of relevant documents were furnished to the accused. Considering the material on record, charge u/S 447/325/34 IPC had been framed against the accused persons. Then the ingredients of charge u/S 447/325/34 IPC was read over and explained to the accused to which all the accused pleaded not guilty and claimed to be tried.
4. During trial the prosecution had examined as many as seven(7) PWs including the informant. The I/O and M/O were also examined to establish the case. The accused were examined u/S 313 Cr.P.C. They had denied the prosecution case totally. No witness been examined by the defence. Argument had been heard from both sides.
5. I have considered the evidence on record, statement of defence recorded u/S

313 CrPC of the accused and the arguments advanced. For the purpose of clarity, the following points for determination is hereby framed:

6. **POINTS FOR DETERMINATION OF THE CASE:** **(I)** Whether on 10<sup>th</sup> day of October, 2014 at about 10-30 PM at No. 3 Jungalbarigaon under Udalguri PS the accused persons, in furtherance of common intention, had criminally trespassed inside the house of the informant with intent to commit offence and thereby committed the offence punishable u/S 447/34 IPC? **(II)** Whether on the same day, time and place the accused persons in furtherance of common intention had caused grievous injury on the person of informant/victim by a sharp weapon(dao) and thereby committed an offence punishable u/S 325/34 IPC?

7. **DISCUSSION, DECISION AND REASONS FOR THE DECISION:** The prosecution had examined as many as seven (7) witnesses:

PW 1 Sri Laldew Rajbhar

PW 2 Sri Ramjatan Rajbhar

PW 3 Sri Kuria Baskey

PW 4 Sri Sudama Rajbhar(informant)

PW 5 Smt. Saraswati Rajbhar

PW 6 Dr. Jyotirmoy Deka and

PW 7 SI Dayal Chandra Das.

8. Let me start with the deposition of the medical officer, an expert. Dr. Jyotirmoy Deka (PW-6), had stated in his deposition that on 10-10-2014 he had examined the victim and found bruise on left forearm, measuring 3 x 2 cm. He had suspected that the forearm bone was fractured and so he advised the patient for further treatment. In his opinion the injury was caused by blunt and hard object. PW 6 had exhibited his medical report as Ext. 2.
9. On the other hand the defence could not rebut the evidence adduce by the

medical officer. Thus the evidence of Dr. Jyotrimao Deka stands proved that the victim has sustained injury on his left arm.

10. The next vital witness of this case is the victim PW 4 Sri Sudama Rajbhar who is also the informant of this case. He had testified in his deposition that on the day of occurrence at about 10-30 PM while he was sleeping, the accused persons armed with lathi, trespassed inside his house and assaulted him. He further stated that the accused had dragged him out from his house and assaulted him causing fracture on his arm, rib bone and scalp. His evidence has been corroborated with the medical document.
11. During cross-examination the informant/victim had stated that the accused persons are his brothers and they were against him for asking share of his parental property. Thus, what follows is that the accused has motive to assault the victim. He further stated that his brother Rai Mangal Rajbhar, a high BP patient, is not capable to do labour work and he often roams around the village. He further admitted that he had taken his brother for mental illness treatment.
12. Smt. Saraswati Rajbhar(PW-5), another eyewitness, she had testified in her deposition that on the day of occurrence the accused persons went to the house of the informant and asked him to come out. Thereafter, the accused persons assaulted the victim and caused injury on his body. She further deposed that in fear, that the accused persons might assault his daughter also and so she escaped from the scene taking her daughter. On the next day, she came to inquire about her son-in-law(victim) and came to know that the accused persons had assaulted him and caused fracture on his hand and skull.
13. PW 7 SI Dayal Chandra Das, investigating officer and formal witness, he had stated that he was endorsed for investigation of the case. Accordingly he had visited the place of occurrence, prepared the sketch map, recorded the statement of material witnesses, arrested the accused and released on bail, the statement of victim was recorded after his treatment and after completion of investigation, he had submitted the charge-sheet against the accused persons. He had exhibited the charge-sheet as Ext. 4.

14. During cross-examination PW 7 had stated that the informant had directly gone to the hospital for his treatment. The informant had intimated him that the brother of informant Sugrib Rajbhar had taken him to hospital. No seizure was made in this case.
15. Learned Addl.PP submitted that the evidence of the victim PW4 (Sudama Rajhar) had been corroborated by the medical documents and the independent witness PW5. He argued that the prosecution has successfully proved the charged against the accused. Hence, he prayed to convict the accused under appropriate sections.
16. Per contra the defence side argued that the prosecution has miserably failed to prove the charge against the accused. It was pointed out that the both PW-1 and PW-5 are interested witness. He further argued that independent witness Sri Laldew Rajbhar (PW-1), Sri Ramjatan Rajbhar(PW 2) and Sri Kuria Baskey(PW-3), who are the neighbours of both the victim and the accused persons, did not support the prosecution case. They had testified that they had not witness any marpit. He argued that the prosecution has failed to prove the charges beyond any reasonable doubt and prayed to acquit the accused from the charges.
17. I have considered the evidence of both sides. The fact that the victim was injured on 10.10.2014 and immediately after the incident he had been examined by the doctor is also not in dispute. Infact, medical documents Exhibit 2 had been proved unchallenged. What has been challenged is that the accused are not the author of the injury. In the instant case though, the victim had testified that the accused are his brothers and they had a land dispute, so the accused had a motive to assault him, but it also remains a fact, that if that be so, a land dispute between the brothers can also be a motive of the complainant to file a false case against the accused. In such case this Court has to scrutinize the evidence of the victim PW4 with caution. I have re-read the evidence of the victim and found that the evidence of the victim has not

been supported by his neighbors PW1, PW2 and PW3. That apart, PW5 who had supported the deposition of PW4 is the mother-in-law of the victim PW4, she is an interested witness. Coupled with that PW5 had stated that she had only seen the accused entering inside the compound of the victim. Thereafter, in fear that the accused might assault her daughter, she had escaped from the place of occurrence. Thus, in short PW5 had also not witnessed the marpit. In view of above discussions, I am of opinion that prosecution has failed to prove the charge beyond any reasonable doubt. Hence, the accused are acquitted from the charge u/S 447/325 IPC read with Section 34 IPC on benefit of doubt.

**ORDER**

As the prosecution has miserably failed to prove the charge against the accused beyond all reasonable doubts, under Section 447 IPC and 325 IPC read with Section 34 IPC, hence the accused namely Sugrib Rajbhar, Jaymangal Rajbhar and Raimangal Rajbhar stands acquitted from the charge. The bail bond shall remain in force for next six months as per provision of section 437(A) CrPC.

The judgment is given under the hand and seal of this Court on this 3<sup>rd</sup> day of February, 2018.

**Dictated and corrected by me:**

**(G. Rabha)**  
Chief Judicial Magistrate.  
Udalguri, Assam.

**(G. Rabha)**  
Chief Judicial Magistrate  
Udalguri, Assam.

**APPENDIX**

- A. Prosecution witnesses : PW 1 Sri Laldew Rajbhar  
PW 2 Sri Ramjatan Rajbhar  
PW 3 Sri Kuria Baskey  
PW 4 Sri Sudama Rajbhar(informant)  
PW 5 Smt. Saraswati Rajbhar  
PW 6 Dr. Jyotirmoy Deka and  
PW 7 SI Dayal Chandra Das.
- B. Defence witness : Nil.
- C. Documents exhibited : Ext. 1 – FIR  
Ext. 2 – Medical report  
Ext. 3 – Sketch map  
Ext. 4 – Charge-sheet.

Chief Judicial Magistrate  
Udalguri, Assam.

Typed and transcribed by me:

(Tulashi Dev Sarma/Steno)