

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,  
UDALGURI :: BTAD :: ASSAM.**

**G.R. CASE NO. 1366 of 2012  
(PRC NO. 292/2019)**

**Present: Sri Mridul Kumar Saikia.  
Chief Judicial Magistrate  
Udalgori, BTAD, Assam.**

**STATE**

**-VS-**

**SRI DAOHARU BORO @ DADHI RAM BORO  
.....Accused.**

**For the Prosecution : Mr. M.Khakilary, Ld. Addl. PP.**

**For the Defence : Mr. M.P. Rabha, Ld. Advocate.**

**Date of prosecution evidence : 02-06-15, 14-08-15 & 17-02-20**

**Date of argument & Judgment : 17-03-2020.**

**U/S- 341/326/34 I.P.C.**

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

1. The case of the prosecution, in brief, is that the complainant Md. Mirjanur Hussain lodged an ejarah before the Officer-in-Charge of Tangla Police Station on 13-10-2008 inter-alia stating that on that day at about 10 A.M. while his father Md. Muslim Hussain was going to Purandia market, on his way near Khamekuchi Chowk the accused Daoharu Boro and Mithun Boro wrongfully restrained and assaulted him brutally, leaving him on the road and then left the place of occurrence. He came to know that the accused persons assaulted his father with dagger on his neck & face with intent to kill him. Then with the help of Tangla Police Station his father was taken to Mangaldai Civil Hospital and then he was referred to Gauhati Medical College & Hospital for better treatment.

2. On receipt of the ejahar to the effect aforesaid, the Officer-in-Charge of Tangla Police Station registered Tangla PS case no. 48 of 2008 U/S 341/307/34 I.P.C. and on completion of the investigation, the I/O submitted the charge sheet against the accused persons namely (1) Sri Daoharo Boro @ Dadhi Ram Boro and (2) Sri Mithun Boro alleging commission of the offences U/S 341/326/34 I.P.C. showing the accused Mithun Boro absconder.
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 before the court. Initially, accused Daoharo Boro was arrested and produced before the court at Darrang, Mangaldai. Thereafter, due to territorial jurisdiction, the case was transferred to this newly established court and trial was commenced against the accused person. The accused Daoharo Boro was producing regularly till he enlarged on bail vide order dated 06-08-2016 and during his production before this court, the necessary copies of all relevant papers and documents were furnished to the accused in compliance with the provisions of Section 207 CrPC. Finding a prima-facie case for commission of offences U/S 341/326/34 I.P.C. the charges U/S 341/326/34 I.P.C. were framed, read over and explained to the accused Daoharo Boro to which the accused pleaded not guilty and claimed to stand trial. Thereafter, he was absent continuously for several consecutive dates and vide order dated 08-06-2018 the accused Daoharo Boro was declared absconder and the case was filed against him. On 30-12-2019 the accused Mithun Boro was arrested on the strength of pending warrant issued against him and produced before this court and accordingly, after commencement of trial vide order dated 26-02-2020 judgment was passed against the accused Sri Mithun Boro acquitting him. On 04-03-2020 the accused Sri Daoharu Boro @ Sri Dadhi Ram Boro was arrested and produced before this court and he was remanded to judicial custody.
4. In order to bring home the charges, the prosecution had already examined as many as five(5) prosecution witnesses in the form of :

PW 1 – Sri Gobinda Bania  
PW 2 – Sri Nomal Das  
PW 3 – Sri Golap Deka  
PW 4 – Sri Nayan Daimary  
PW 5 – Sri Netra Rabha.

The court also examined the victim as Court Witness in the form of – CW1.

5. The accused was examined U/S 313 Cr.P.C. All the incriminating circumstances which appeared in evidence against the accused were put to him for his explanation. The accused denied all the circumstances and pleaded his innocence. Further, the accused declined to adduce any evidence in defence.
6. I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused. I have also carefully gone through the entire evidence available with the case record.
7. **POINTS FOR DETERMINATION :** To ascertain the guilt of the accused person on the charges levelled against him, the following points are sorted out for the decision:
  - I. Whether on 13-10-2008 at about 10 A.M. at Khmeikuchi near Purandia market under Tangla Police Station, the accused in furtherance of common intention wrongfully restrained the victim Md. Muslim Hussain on his way to market?
  - II. Whether on the same day, time and place the accused in furtherance of their common intention voluntarily caused grievous hurt to the victim Md. Muslim Hussain by dangerous weapon on his body?

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. To decide the above points, let us scrutinize the evidence led by the prosecution in support of its case. PW-1 Sri Govinda Bania stated that about 8-10 years ago, while he was sitting in front of the shop of Numal Das, police came to him and took his signature on a blank paper. Later on, he came to know that, one person from Bodo Community assaulted a person from Muslim Community.
9. In cross-examination, PW 1 stated that he did not see the occurrence.
10. PW 2 Sri Nomal Das stated that he has no knowledge relating to the occurrence. He only heard that at that time there was a fight in between the Boro and Muslim Community.
11. In cross-examination, PW 2 stated that he did not see the occurrence.
12. PW 3 Golap Deka, PW 4 Nayan Daimary and PW 5 Netra Rabha stated nothing about the occurrence.

13. PW 6 Dr. Elora Chaudhury stated that on 30-06-2009, she examined one Md. Muslim Ali, S/O Lt Asraf Ali who was escorted by ASI R.K Barman in reference to Tangla P.S. Case No. 48/2008. On examination, she found penetrating injury in upper neck portion and she referred him to GMCH. Nature of injury was grievous and caused by sharp weapon. She Exhibited 2 the Xerox Copy of the injury report. Further, as per order of Court she produced the O.P.D. Register Book of Mangoldoi Civil Hospital before the court. Ext. 3 the said O.P.D. Register Book wherein Sl. No. 26023 contains the name of injured Md. Muslim Ali admitted in the hospital. She exhibited her signature Ext.3(2) thereon.
14. In cross-examination, PW 6 stated that she cannot say from the report whether the injured person was directly produced before her or was referred by some hospital. No hospital entry no. was mentioned in her report. She did not mention the measurement of the injury in the report. The O.P.D. Register Book of Mangoldoi Civil Hospital was not certified and the name of the doctor was not mentioned who referred the patient to her. She did not mention in her report about the stitches put to the patient. It was also not mentioned what kind of treatment was provided to the patient. Age of injury was also ignored. She did not have any personal knowledge about the occurrence.
15. CW 1 Muslim Hussain stated that the informant is his son. About eight(8) years ago from the date of his deposition, one day he came to Purandia Weekly market when from a close distance, one Daoharu ridiculed him terming as "Miya" and along with Mithun Boro hit him with a stone on his head and gave a "dao" blow which penetrated through lower part of his jaw. Seeing the incident, nearby people came out and drove away the culprits and message was sent to his village and Police Station and he was taken to hospital. He was admitted in the Guwahati Medical College for one month and fifteen days and still he has to attend medical treatment for the injuries which he had sustained.
16. In cross-examination, CW 1 has stated that he did not lodge any ejahar himself. At the time of occurrence, he was alone. The occurrence took place during the communal riot of Bodo and Muslim people. Police did not record his statement. After seven days of the occurrence, he regained his sense and told about the incident to his near and dear one. He told the fact to the informant after one and half month of the occurrence.
17. The version of the victim discloses that first the accused commented derogatory remark against him terming him as "Miya" while he was in the

Purnadia market which is about 8 km away from his residence. After that he was assaulted by this accused with a stone and dagger. It nowhere appears that he knew the accused anyway. This factor suggests that his claim of alleging the accused with the offence of assault to him is not beyond suspicion. In case, the remaining witnesses would have affirmed the involvement of the accused with the offence as alleged by the victim would have been acceptable. But none of the remaining independent witnesses supported the version of the victim. Therefore, the sole incriminatory evidence of the victim fails to inspire confidence about the involvement of the accused with the alleged offence.

18. Thus, from the above appraisal, appreciation of evidence on record and the application of law, I find that the prosecution has failed to establish the offences U/S 341/326/34 I.P.C. against the accused Sri Daoharu Boro @ Dadhi Ram Boro beyond all reasonable doubt. In the result, the accused Sri Daoharu Boro @ Dadhi Ram Boro is not found guilty U/S 341/326/34 I.P.C. Accordingly, accused Sri Daoharu Boro @ Dadhi Ram Boro is acquitted from the charges U/S 341/326/34 I.P.C. and set him at liberty forthwith.
19. The bail bond shall remain in force for another six months as per provisions of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court on this 17<sup>th</sup> day of March, 2020 at Udalguri, BTAD, Assam.

**Dictated and corrected by me:**

**(Mridul Kumar Saikia)**  
Chief Judicial Magistrate  
Udalguri, BTAD, Assam.

**(Mridul Kumar Saikia)**  
Chief Judicial Magistrate  
Udalguri, BTAD, Assam.

**APPENDIX**

- A. Prosecution witnesses : PW 1 – Sri Gobinda Bania  
PW 2 – Sri Nomal Das  
PW 3 – Sri Golap Deka  
PW 4 – Sri Nayan Daimary  
PW 5 – Sri Netra Rabha.

The court also examined the victim as Court Witness in the form of – CW 1.

- B. Defence witness : Nil.

- C. Documents exhibited : Ext. 3 OPD Register Book of Mangaldai Civil Hospital

**(Mridul Kumar Saikia)**  
Chief Judicial Magistrate  
Udalguri, BTAD, Assam.

Typed and transcribed by me:

(Tulashi Dev Sarma/Stenographer)