

**IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
AT GOHPUR, SONITPUR**

**G.R. 328/2017
U/S.: 323/427/34 of I.P.C.**

S T A T E

-Versus-

- 1. Smti. Manju Gowala**
- 2. Smti. Ranju Gowala**
- 3. Smti. Ami Gowala.....accused persons**

**Present: Smt. Pooja Sinha, AJS,
Sub-Divisional Judicial Magistrate (M)
Gohpur**

Advocate appearing for the State : Smt. Barnali Chetia
Advocate appearing for the Accused : Sri Sanjit Das
**Dates of recording evidence : 29.10.2018, 22.11.2018,
14.12.2018, 06.02.2019 &
20.02.2019**
Date of hearing argument : 30.04.2019
Date of delivering Judgment : 04.05.2019

JUDGMENT

- 1. The case of the prosecution in brief is that,** on 17.11.17 at about 4.30 p.m. at the house of Renuka Gowala at Baghar pathar, Gohpur Smti. Manju Gowala, Smti. Ranju Gowala and Smti. Ami Gowala without any reason beat up Promila Gowala, caused her injury on various parts of the body and also damaged the Intex mobile phone after snatching from her hand . Further they verbally abused her using obscene language.
- 2. In this regard,** Smti. Promila Gowala filed an ejahar on 18.11.17, the Officer-in-Charge, Gohpur Police Station registered a case as Gohpur P.S. Case No. 277/17 under section 323/294/427/34 of I.P.C. The police conducted investigation and thereafter submitted **charge-sheet against**

the accused persons Smti. Manju Gowala, Smti. Ranju Gowala & Smti. Ami Gowala for trial under sections 323/294/427/34 of I.P.C

3. In due course, the accused persons entered appearance. They were furnished with the copies as required under section 207 Cr.P.C. My learned Predecessor in office read over and explained the particulars of the offenses U/S 323/427/34 of I.P.C against the accused persons to which they pleaded not guilty and claimed to be tried.
4. In support of the case, the prosecution examined five (5) witnesses. Statement U/S 313 of Cr.P.C. of the accused persons are recorded. Defence plea was of total denial. Defence opted not to adduce evidence.
5. **Point for determination :**
 - I. **Whether the accused persons on 17.11.17 at about 4.30 p.m. at Renuka Gowala's house in furtherance of common intention voluntarily caused hurt to Smti. Promila Gowala and thereby committed an offence punishable U/S 323/34 of I.P.C? subsequently,**
 - II. **Whether the accused persons on same day, time and place in furtherance of common intention caused mischief by causing damage to Intex mobile phone which is valued over Rs. 50/- and thereby committed an offence punishable U/S 427/34 of I.P.C?**
6. **Discussion, Decision and Reasons thereof:** - I have heard the learned Counsel appearing for the State. Also heard the learned Counsel appearing for the accused person. Upon hearing the learned Counsel for the parties and on perusal of the records, I am of the considered opinion to hold the following :-
7. **Point of Determination No. I & II:** Both the points are taken up together for discussion in order to maintain the flow and appreciation of evidence.
8. **P.W.1- Smti. Promila Gowala, she is the informant cum victim of the instant case. She in her examination-in-chief deposed that she recognizes the accused persons. That, a year ago in the month of**

"Aghon" during harvesting time while she was returning home in her cycle one Manju Gowala was walking in the middle of the road. Hence, she rang the bell signaling to leave the way but she refused to move. Over this they had an altercation and thereafter P.W.1 left the place. On the very day at about 4 p.m. while she returned from her work place and went to the house of Renuka Gowala the matter was raised which occurred in the morning hours, and while she returned accused Anju Gowala and Manju Gowala beat her up and verbally abused her using obscene language. That, they assaulted her with a fencing pillar and the other accused persons pulled her hair and beat her. That, while she tried to restrain them, the Intex touch phone mobile which was in her hand fell down and was damaged. That, she raised hue and cry and went to her in-laws place and narrated the incident when Anju Gowala's husband threatened her with injury. Informed the VDP secretary and the accused persons called her to that place insulted her and called her character was attacked. That, she filed the case on the next day. That, when the incident occurred few people witnessed from a distance. However, she refrained from stating their names as they may not like it. That, police seized her mobile phone from the accused persons. She exhibited the ejahar as Ext.1 and identified her signature thereon. Exhibited the seizure list as Ext.2 and identified her signature thereon.

9. **During her cross-examination she deposed that** she does not remember the date when she filed the ejahar. She does not know the contents of the ejahar as she cannot read. That, the incident took place in between 4 p.m. to 4.30 p.m. at the house of Renuka Gowala. That, near the place of occurrence, house of Pradip Gowala, Bohagi Gowala, and Lakhindar Gowala is situated. That, when the accused persons assaulted her she bled from her left hand. She sustained injury on her back, fingers and head. That, she underwent treatment at her village and on the next day of the incident she went to the government hospital for treatment. That, police did not take her to the hospital. Denied that she has not deposed before the police as stated on her evidence in chief. That, the house and the courtyard of accused persons are situated adjacent to their

house. Denied that she has deposed falsely against the accused persons due to previous animosity.

10. **P.W.2- Smti. Renuka Gowala, she in her examination-in-chief deposed that** she is acquainted with both the sides. That, during harvesting time about a year ago at about 5 p.m. the accused and the informant entered into an altercation. That, she did not witness any fight in between the parties. She has no further knowledge about the incident.
11. **During her cross-examination she deposed that** no incident occurred at her house or at the courtyard of her house in between the accused persons and the informant. Later, stated that an altercation took place at the courtyard of her house.
12. **P.W.3- Smti. Bogi Gowala, she in her examination-in-chief deposed that** she is acquainted with both the sides. Informant and the accused persons are her daughter-in-laws. That, the incident took place in the month of "Aghon" one year back at about 5 p.m. when they entered into an altercation. That, Promila came to the husband of P.W.3 and informed that Tutumoni beat her up and broke her mobile phone. That, she scolded them not to fight or quarrel. Later police seized the mobile phone and P.W.3 put her signature at the seizure list and identified her signature thereon.
13. **During her cross-examination she deposed that** Promila brought the mobile and kept at the courtyard of their house.
14. **P.W.4- Smti. Padumi Jadav, she in her examination-in-chief deposed that** informant is her elder sister. She is acquainted with the accused person. That, about 7 to 8 months back when she was at house of the informant at about 4 p.m. while her sister was returning from her workplace she had an altercation with Manju Gowala. That, her sister was crying and she came back from Kunti Gowala's place and informed about the matter to her in-laws. That, her sister left hand was profusely bleeding. That, she was assaulted with fencing pillars and while she tried to restrain the attack her mobile phone fell down and got damaged. Her sister was taken to hospital for treatment.

15. **During her cross-examination she deposed that** she does not remember the date and time of incident. That, she did not witness the incident. The incident took place at the house of Kunti Gowala. Denied that she deposed falsely in favour of her sister. Denied that no incident took place as deposed by her.
16. **P.W.5- Dr. Nawazuddin Barbhuiya, he in his examination-in-chief deposed that** he examined Promila Gowala and found bruise injury on shoulder, back, chest and mild injury on head of 2 days old and nature of injury was simple, caused by weapon hard substance. That, the victim was examined under police requisition GPR 277/2017. He exhibited the medical certificate as Ext.3 and identified his signature there on.
17. **During his cross-examination he deposed that** the injuries might be due to falling.
18. **P.W.6- S.I. Indreswar Gogoi, he in his examination-in-chief deposed that** on 24.11.17 he was posted at Gohpur P.S as an S.I. That, on receipt of ejahar filed by Smti. Promila Gowala, O/C registered a case and the case was endorsed to him for investigation. That, on the same day he proceeded towards the place of occurrence Baghar pathar, prepared the sketch map and recorded statement of the witnesses U/S 161 Cr.P.C. That, the damaged mobile of the informant was seized on 25.11.17 at the police station. That, the accused persons appeared at the police station and later released them on police bail. That, on 27.11.17 he collected medical report of the victim from the Bilotia Sub-Center. That, after preliminary investigation he found sufficient materials against the accused persons and submitted charge sheet U/S 323/294/427/34 of I.P.C. against the accused persons Smti. Manju Gowala, Smti. Ranju Gowala, Smti and Ami Gowala. He exhibited the seizure list as Ext.2, sketch map as Ext.4, charge-sheet as Ext.5 and identified the signatures thereon.
19. **During his cross-examination he deposed that** from the mother-in-law of victim mobile phone was seized. That he went to the place of occurrence on 24.11.2017. He stated that Pramila Gowala did not state before him that accused attacked her character nor about threatening

caused to injury. P.W.1 Pramila Gowala did not state before him that her Intex mobile was damaged while she tried to restrain the attack of the accused. P.W.4 Padumi Jadav did not state before him that accused beat up her sister with a stick. Denied that he has not investigated the matter in accordance with law.

20. From testimonies and on perusal of the materials on record, the following facts are observed:

I. That, the victim cum informant has exaggerated the allegations made against the accused persons while she testified as P.W.1. As it is seen that she in the ejahar stated without any reason accused beat her up, while she deposed as P.W.1 she stated that due to some altercation which occurred in the morning incident took place. Further, in the ejahar she stated that Intex mobile phone was snatched by the accused and they caused damaged. However, while she deposed as P.W.1 she stated that it fell from her hand and was damaged.

II. Further, P.W.2 & P.W.3 stated that only altercation took place in between Promila Gowala and Manju Gowala. They have not corroborated the facts of any beating or assault. P.W.2's witness is material as she is an eye witness and the incident is alleged to have taken place in front of her house.

III. P.W.4 is the younger sister of the victim, who has not seen any incident, but deposed on the lines as stated by the victim. Considering, the inconsistent nature of the testimony of victim herself, the weightage given to the evidence of P.W.4 is very little.

IV. Further, the evidence of M.O. is considered, which does not reveal any date or time of incident.

V. I.O. has brought out contradictions in the statement recorded of victim P.W.1 and P.W.4 the sister of the victim which proves the exaggerated nature of the case.

VI. Further, P.W.3 who is the mother-in-law also did not support the allegations put forward by the victim who is her daughter-in-law.

VII. In the instant case, no independent witness other than P.W.3 is brought forward. Considering the nature of the case, there was necessity of independent witness as the credibility of the victim's testimony is doubted.

VIII. Hence, observing the above, benefit is to be forwarded to the accused persons.

21. As such, I hold that prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubt that **on 17.11.17 at about 4.30 p.m. at Renuka Gowala's house in furtherance of common intention voluntarily caused hurt Smti. Promila Gowala and caused mischief by causing damage to Intex mobile phone which is valued over Rs. 50/- and thereby committed an offences punishable U/S 323/427/34 of I.P.C.**

22. **In the result, the accused persons Smti. Manju Gowala, Smti. Ranju Gowala and Smti. Ami Gowala are hereby acquitted on benefit of doubt U/S 323/427/34 of I.P.C. and set at liberty forthwith.**

23. Bail bonds furnished are hereby extended for a period of 6 (six) months.

24. The case is disposed of on contest.

Given under my hand and seal of this court on this the
04th day of May, 2019 at Gohpur.

(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur

Dictated and corrected by me

(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur

APPENDIX

Prosecution Witness-

- P.W.1- Smti. Promila Gowala**
P.W.2- Smti. Renuka Gowala
P.W.3- Smti. Bogi Gowala
P.W.4- Smti. Padumi Jadav
P.W.5- Dr. Nawazuddin Barbhuiya
P.W.6- S.I. Indreswar Gogoi

Defence Witness-

Nil

Prosecution Side Exhibits-

- Ext.1- Ejahar**
Ext.2- Seizure list
Ext.3- Medical Certificate
Ext.4- Sketch map
Ext.5- Charge-sheet

Defence Side Exhibits-

Nil

(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur