

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS ,  
GOHPUR, SONITPUR**

PRESENT : Sandeep Kaushik , AJS

G.R.Case No.-542/12

Under Section 448/352/354/457/427 I.P.C.

State of Assam ..... Prosecution

-Vs-

Sri Bhaben Baruah @ Ritu ..... Accused Person

Learned Advocates:

For the Prosecution ..... Mrs.R.Pegu, Asstt.P.P.

For the Accused ..... Sri G. Borah

Charge framed on : 02.07.2013

Evidence recorded on : 20.11.2013, 16.12.2013, 12.03.2014, 21.04.2014,  
20.05.2014, 27.02.2015

Arguments heard on : 24.04.2015

Judgement delivered on : 02.05.2015

**JUDGEMENT**

1. This case was started on receipt of an 'ejahar' at the Hawajan Police Out Post on 24/07/2012, filed by informant Smti. Chandana(Devi) Sarma alleging therein that on 23/07/2012 at about 4.30 PM, accused Sri Bhaben Baruah unlawfully entered her house and without any reason dragged her over the ground by holding her hair and assaulted her by fist and blows and kicks, as a result of which she became injured. The accused tried to burn up the house of informant

and by holding her hair pulled her to the road and assaulted her. The nephew of the informant and two carpenters present in her house somehow saved the life of the informant and took her into the house. But the accused went to his house and again to the house of informant, this time with a sharp cutting weapon (Dao) and tried to kill her. At that time, when the nephew of informant Sri Bhaskar Sarma tried to rescue her from the hands of accused, accused also tried to kill him. On the same day at about 10.30 PM, the accused again unlawfully entered the house of informant by breaking open the door of the house with an axe and tried to kill them. To save their life, all the persons present there entered another room of the house and locked the door from inside and the accused broke down all the articles present in the room. Thereafter, accused came out of the house and vandalised the TATA ACE car of informant's brother that was kept in the courtyard of her house.

2. The In-Charge, Hawajan Police Out Post on receipt of the said 'ejahar' made GDE No.365 dated 24/07/2012 and forwarded the 'ejahar' to the Officer-in-Charge (in short, O/C), Gohpur Police Station for favour of registering a case. The O/C, Gohpur P.S. thereafter registered Gohpur P.S. case number 166/12 under section 341/323/506/457/427/352 of Indian Penal Code, 1860 ( in short I.P.C.) and took up the investigation. After completion of the investigation, the concerned Investigating Officer (in short I/O) submitted charge sheet against Sri Bhaben Baruah @ Ritu under section 341/457/427/354/352/506 I.P.C.

3. In due course, the accused person appeared before the Court and after furnishing him the copies of relevant documents under section 207 Cr.P.C., the charge under section 448/352/354/457/427 I.P.C is framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. The Prosecution had examined Smti. Chandana Sarma as Prosecution Witness (in short, PW) no.1, Sri Apu Barthakur as PW2 and Sri Bhaskar Sarma as PW3, Sri Pawan Das as PW4, Sri Gobinda Das as PW5, Sri Tulan Chandra Bhuyan as

PW6, Sri Bulti Baruah as PW7, Sri Anil Borah as PW8 to bring home the allegations levelled against the accused person and thereafter, the evidence of prosecution side was closed as per submission of learned A.P.P. The statement of accused under section 313 Cr.P.C. is recorded. On the other hand, accused declined to give any evidence in his defence. Hence, arguments advanced by both the parties were heard.

**POINTS FOR DETERMINATION :**

5. (i) Whether the accused Sri Bhaben Baruah on 23/07/2012 at about 4.30 PM trespassed into the house of the informant Smti Chandana Sarma and assaulted her by caught hold of her hair and pulled her, gave fist blows and kicked her and thereby committed an offence punishable under section 448/352 I.P.C. ?

(ii) Whether the accused person on the same day, at same time and at same place used criminal force to Smti. Chandana Sarma with intent to outrage her modesty and thereby committed an offence punishable under section 354 I.P.C.?

(iii) Whether the accused person on the same day at about 10.30 PM trespassed into the house of informant by breaking open the door of the house with the help of an axe and thereby committed an offence punishable under section 457 I.P.C. ?

(iv) Whether the accused person on the same day, at about 10.30 PM at the same place committed mischief by causing damage to the household articles of Smti. Chandana Sarma to the tune of more than Rs50/- and thereby committed an offence punishable under section 427 I.P.C. ?

**DISCUSSIONS, DECISIONS AND REASONS THEREOF :**

6. PW1, who is the informant of this case, has deposed in her evidence that on 23/07/2012 at about 4.30 PM when she was sitting in her house accused came to her house and threatened to burn up the house and went away. After half an

hour, the accused again came and after caught hold of hair of PW1 and dragged her inside the house. At that time, the nephew of PW1 Sri Bhaskar Sarma and two carpenters namely Gobin and Ram Das were present in the house. Accused assaulted PW1 with fist blows and kicks, verbally abused her and tried to burn up the house. When the informant made hue and cry, her nephew, daughter and the carpenters saved her by taking her outside. The accused assaulted the informant outside the house also. PW1 has stated that the accused then went to his house and returned with a sharp 'Dao' and threatened to kill her. According to PW1, at that time when her daughter fell in the leg of accused and prayed to forgive her, the accused threw the 'Dao' and PW1 ran away to the police station. According to PW1, she returned from police station at 10 PM and accused again at 10.30 PM came to the house of PW1 and broke her door and damaged the TATA ACE car bearing registration number AS12E 3985 which was brought by her brother on rent. PW1 has stated that she immediately telephoned police and police after coming to her house caught the accused. Exhibit-1 is the 'ejahar' filed by her in the police station, Exhibit-1(1) is her signature on that 'ejahar', Exhibit-2 is the seizure list through which police had seized the broken pieces of glass of the car and Exhibit-2(1) is her signature on that seizure list.

7. PW1 in her cross examination has deposed that in her house she lives along with her daughter and one relative brother. The residence of the brother is in Helem and he is not her own brother. PW1 has stated that her husband had expired on 13/10/2002 and the brother did not live with her at that time. But after her surgical operation, the brother used to live with her. According to PW1, the accused has his residence in front of her house and there is a road passing in between her house and the house of the accused. According to PW1, the accused's land and her land shared a common boundary and there has been a dispute going on between them since last two years regarding the land boundary. According to PW1, in the first time, the accused assaulted her by fist blows and kicks at all parts of her body. In the second time, the accused dragged her over the gravel road and she moved in a standing posture, but she did not fall down due to dragging. Third time, accused caught hold of her hair and pulled her near an abutment on the road and after pushing down her on the road tried to kill her. PW1 has stated that on the same day at day time she had filed the

'ejahar' and on the next day the incident that had taken place at night was added to the 'ejahar' filed on the previous day. PW1 has stated that at 10.30 PM on the day of occurrence of the incident, the accused broke open the wooden front gate of the compound that was locked at that time and entered the house by opening the door of the house. According to PW1, police had not seized the broken gate. PW1 has denied the suggestion that accused while returning after discharging his responsibility of a football match, PW1, her nephew and both the carpenters assaulted the accused and injured him.

8. PW2, in his evidence has deposed that the incident had occurred on 23/07/2012 at about 4.30 PM. At that time, PW2 was not at home. PW2 has stated that his elder sister i.e. the informant of this case, informed him that accused had caught hold of her hair and pulled her, assaulted her, tried to burn up the house and also assaulted the carpenters working at that time at the place of occurrence. According to PW2, he met the informant at the police station and came along with her to the informant's house. According to PW2, at about 10 PM the accused came with an axe and at first, he broke open the gate, then doors and windows and entered the house of informant. PW2 informed the police and police came and accused ran away. Police apprehended the accused. PW2 has stated that accused also damaged his car. Police had seized the car vide Exhibit-2, the seizure list and Exhibit-2(2) is his signature on that seizure list.

9. In the cross examination, PW2 has deposed that he did not see the incidents before 10.30 PM. PW2 has stated that the gate was a wooden gate and was tied up with a iron chain. Police had seized broken bed, wall etc. but PW2 does not know whether police had seized the gate or not. According to PW2, police had arrested the accused from the road. PW2 has stated that at that time a football match had been going on at Kalabari but he does not know whether the accused was the secretary of that match or not. PW2 does not know how the accused had become injured. PW2 has denied the suggestion that when the accused was returning from the football match, PW2 and his relatives had assaulted the accused and hand over him to the police.

10. PW3, who is the nephew of the informant, in his evidence has deposed that on 23/07/2012 at about 4.30 PM, accused came in front of the door of the house of informant and started rebuking but PW3 does not know, whom the accused had been rebuking. After that accused went away. At that time, PW3, Smti. Chandana Sarma and two carpenters were sitting at their home. Thereafter accused again came and caught hold of the hair of the informant and dragged her inside the house and assaulted her. According to PW3, accused kicked the informant and tried to burn up the house. PW3 together with the carpenters had been able to rescue her from the hands of accused. According to PW3, the accused had also assaulted him and the carpenters Gobind Das and Ramu Das. The accused again caught hold of the hair of the informant and this time he dragged her to the road, assaulted her and tried to kill her with 'Dao'. When PW3 restrained him from doing that, the accused placed the 'Dao' in his neck. PW3 has stated that after reaching home from medical, the accused again came and broke open the gate, door of the house with an axe and damaged the head light, front and side glass of TATA ACE car of Okku. After breaking the door, the accused again tried to assault the informant. According to PW3, they informed the O/C over phone about the incident and accused escaped when police came. The accused had also damaged the television of the house of informant. Police had seized the car and Exhibit-2 if the seizure list and Exhibit-2(3) is her signature on the seizure list.

11. In his cross examination, PW3 has deposed that when accused had assaulted the informant on the road, no one came to save her. According to PW3, the accused had kicked the informant in her chest, abdomen etc. and dragged her over the gravel road. The PW3 has stated that accused had assaulted him in his face and abdomen but he was not injured. Appu is not a blood relation of informant, but she made him her brother. According to PW3, when accused came at night, he, informant, her daughter and Appu was present at the house. Both the carpenters went to police station with the informant. PW3 put his signature i.e. Exhibit-2(3) at the police station.

12. PW4, in his evidence has deposed that on the day of occurrence of the incident he had been doing carpentry work at the house of informant. At about 4.30 PM, accused rebuked the informant from the road. After one hour accused came and caught hold of the hair of Smti. Chandana Sarma and dragged her inside the house and tried to burn her. The accused assaulted the informant. Both the carpenters and Sri Bhaskar Sarma rescued her from the accused and accused ran away to fetch a 'Dao' and again came to informant's house, by holding her hair tried to cut down the hair. The accused physically assaulted the informant and when they wanted to restrain the accused, he tried to kill them with the 'Dao'. The accused pulled the hair of the informant, took her to the road and assaulted her.

13. In his cross examination, PW4 has stated that Bhaskar came to the house of informant on the previous day of the incident. PW4 has stated that he had been working in the house of Chandana Sarma since ten days of the occurrence of the incident. He was making furniture for the informant, bed, chair etc. Police had questioned her when they went to lodge the 'ejahar'. PW4 has stated that he has not mentioned before police that accused rebuked the informant from road, that after one and a half hours, accused again came and took the informant inside room to burn her, that they went to save her etc. PW4 has stated that they have come with Chandana Sarma to the court and Appu took them from their house. PW4 has denied the suggestion that he has stated in the court what was taught to him by informant.

14. PW5, in his evidence has deposed that the incident had occurred on 23/07/2012 at about 4.30 PM at the house of Chandana Sarma of Kukura sorai village. The accused first came and after rebuking went away. Accused again came at 4.30 PM, and assaulted Chandana Sarma, gave fist blows to her, dragged her by holding her hair. When PW5, another carpenter present and the nephew of informant tried to stop the quarrel, the accused also assaulted PW5. Accused brought a 'Dao' from his house and tried to cut the hair of the informant. The accused also threw away the good of the house. PW5 has stated

that he went to the police station along with informant and after keeping her at medical he returned to his house.

15. PW5, in his cross examination has deposed that before ten days from the occurrence of the incident informant asked them to make chair, bed etc. The house of Appu Barthakur is situated at Helem and PW5 does not know how he is related as brother to the informant. According to PW5, accused had rebuked at 10.30 AM on the road. PW5 has stated that Chandana Sarma did not get hurt externally. People gathered at the place of occurrence and they saw the incident. PW5 has also stated that he had not stated before police that accused came with a 'Dao' and threw their instrument of carpentry and threatened them. PW5 has denied the suggestion that he has stated in the court what was taught to him by informant.

16. PW6, in his evidence has deposed that he knows both the accused and informant. The incident took place before one and half years. PW6 has stated that on that day when he went to bring his cows, he saw police at the house of informant and therefore, he went to the house of informant to know why police had come.

17. PW6, in his cross examination has deposed that he knows Apu Barthakur. There is no relationship between Apu and Chandana Sarma.

18. PW7, in his evidence has deposed that the incident had occurred before one year. On that day, PW7 saw police in front of the house of informant. He was coming to his house with his cows and police asked his name and address.

19. In his cross examination, PW7 has stated that he knows Apu Barthakur and he is not related in any way with Chandana. After the demise of the husband of informant, Apu used to stay with her.

20. PW8, who is the I/O of this case, deposed in his evidence that on 23/07/2012 at about 10.40 PM, Smti. Chandana Sarma informed the police over telephone that Sri Bhaben Baruah had assaulted her and damaged the car which was kept in her courtyard with the help of an axe. PW8 went to the place of occurrence and saw that all the articles inside the house were in sixes and sevens. The glasses of a Tempo goods carriage car bearing number AS12E 3985 were also broken and scattered in the courtyard. The body of the car was also damaged in some of the places. PW8 came to know that Bahben Baruah @ Ritu who was related to the incident was lying near the road in an injured condition. PW8 went to the road and saw that Bhaben Baruah got injured below his neck and in his leg. PW8 has stated that he sent both the accused and the informant for their treatment to Gohpur civil hospital and asked the informant to file the 'ejahar'. The informant filed the 'ejahar' on the next day at Hawajan Out Post. Thereafter, PW8 had investigated the matter, seized the damaged car, collected medical report and submitted the charge sheet. Exhibit-3 is the charge sheet and Exhibit-3(1) is the signature of PW8 in the charge sheet. Exhibit-2 (4) is his signature on seizure list. Exhibit-4 is the sketch map of the place of occurrence and Exhibit-4(1) is his signature on the sketch map.

21. In his cross examination, PW8 has deposed that, the informant did not file any 'ejahar' on 23/07/2012. At night, when informant informed PW8 about the incident, he made a GD entry-356 dated 23/07/2012. PW8 has stated that he had not shown the seized car in the court. Exhibit-2, the seizure list does not contain court's seal or signature. PW8 has stated that he knows that when an article is seized, it is to be shown in the court and it is not possible to bring the article to the court, it is to be shown forthwith in the court. But in this case that legal duty was not done. PW8 has stated that he had not enquired who was the registered owner of the car. Exhibit-'Ka' is the medical report of Chandana Sarma collected by PW8 on 30/07/2012. PW8 has stated that he had not seized the scattered pieces of broken glass of the car. Chandana Sarma in her statement before the police had not stated that accused caught hold of her hair three times and dragged her. There was no gate in front of the house of Chandana Sarma.

PW8 had not seized any broken wall or bed. During recording of statement by police, Bhaskar Sarma had not stated that accused came and without any reason caught hold of the hair of the informant and dragged her inside the house, assaulted her, kicked her and he and the carpenters rescued her. He also not stated before police that accused assaulted him and tried to cut the hair of informant. PW8 has stated that Gobin Das during his recording of statement by police said that accused caught hold of the hair of informant and dragged her and assaulted her. PW8 has also stated that he had not sent the sketch map of the place of occurrence to the court with the charge sheet and he had not mentioned anything about that in the charge sheet.

22. Now, let me appreciate the evidence on record. In this case, out of the 8 witnesses produced by the prosecution, PW6 and PW7 seem to be ignorant about the incident. Both of them stated in their evidence that they went to bring their cow in the evening and when they returned to their house with their cows, saw police in front of the house of informant and enquired why police had come to the house of informant. Therefore, it appears that the evidences of these two witnesses cannot be taken into consideration for arriving at a just decision in the case. In the instant case, the incident had occurred in two phases. First phase occurred in the evening at about 4.30 PM when PW1, PW3, PW4 and PW5 were present and the second phase had occurred at night at about 10.30 PM when PW1, PW2 and PW3 were present but it is not clear whether PW4 and PW5 were present or not because those two witnesses said nothing about the incident and naturally as they are carpenters and daily wage worker, it can be easily presumed that their duty might have ended in the evening and they are not present at the time of the incident at night.

23. The first allegation against the accused is that the accused trespassed into the house of informant and assaulted her. PW1 in her evidence has stated that on 23/07/2012 at about 5 PM accused entered her house and without any reason caught hold of her hair and dragged her inside the house and assaulted her by giving fist and blows and kicking her. He also tried to burn up the house and she was rescued by her nephew Sri Bhaskar Sarma and two carpenters Gobinda Das

and Pawan Das. PW3 also in his evidence has stated the same story and said that the accused in addition to the informant, also assaulted him and the two carpenters present. PW3 has also stated that the accused tried to kill the informant with the help of the 'Dao' which he carried with him. PW4, who is the carpenter also supported the version of informant and stated that at the time of occurrence of the incident, he was working at the house of informant. PW4 also stated that at about 5.30 PM, when informant was sitting near him, accused came and caught hold of her hair and dragged her inside the house and assaulted her. He along with the nephew of the informant and other carpenter present there rescued Chandana Sarma. According to PW4, the accused went to his house and this time came with a 'Dao' and tried to kill the informant. PW5 also supported the version of other witnesses. Moreover, the I/O in his cross examination has stated that PW5 has stated before him during the recording of statement by police that accused caught hold of the hair of informant and assaulted her. Hence, it appears that the evidence of PW1 regarding the illegal entry of the accused into her house and her assault by accused is corroborated by the evidence of PW3, PW4 and PW5. I found nothing to disbelieve the evidence of witnesses. But the fact of bringing a 'Dao' by the accused is not conclusively proved as police did not seize any such 'Dao' and no injury was found over the body of informant on the basis of which it can be said that informant was assaulted by 'Dao'. The evidence of PW1, PW3, PW5 and PW6 regarding the illegal trespass and assault by accused of the informant exactly resembles to each other and remained completely unrebutted by the accused side during the cross examination. Hence, the evidence on record clearly leads to the conclusion that the accused has committed criminal trespass by entering into the house of informant and caught hold of her hair and assaulted her by fists and blows. During the argument the learned counsel for the accused had argued that medical report shows nothing about the injury of the informant, hence it cannot be held that the accused in fact assaulted by the informant. Here, it must be mentioned that every assault may not result in injury. It is not necessary that in each and every case of the assault injury will be caused. The learned counsel for the accused also claimed that the two carpenters present at the house of informant are interested witnesses as they were paid by the informant for their works. But in my considered opinion the carpenters present at the house of informant are not interested witnesses as they are getting payment for their

works only. The accused has neither been successful in proving that the carpenters are the relatives of the informant nor they are in any other means getting any extra benefit from the informant for which they can be taken as interested witnesses. Therefore, the argument of the accused side that the carpenters are interested witnesses has no force to consider and act upon. Thus, from the evidence of PW1, PW3, PW5 and PW6 and in view of the above observation, it can be safely hold that the accused entered into the house in possession of informant and used criminal force and assaulted the informant otherwise than on grave and sudden provocation given by the informant and thereby committed an offence punishable under section 448/352 I.P.C.

24. In order to hold an accused guilty under section 354 I.P.C., assault or criminal force to any women with intent to outrage her modesty is to be proved. To prove an offence under section 354 I.P.C., intention of the accused plays a vital role. Merely torturing a woman or holding her hair or pulling or dragging her does not mean that the accused had the intention to outrage the modesty of that woman. In the case at hand, the prosecution could not prove any intention of the accused due to which he would outrage the modesty of the informant Smti. Chandana Sarma. Mere assault by the accused or holding her hair and pulling her does not amount to outrage her modesty as the intention of the accused to outrage the modesty of the informant is not established in this case. Hence, offence under section 354 I.P.C. is not proved against the accused person.

25. In the instant case, PW1, PW2 and PW3 have stated that accused at about 10.30 PM broke open the gate of the compound which was locked, with the help of an axe and thereafter he entered the house by breaking the door. But it appears that the I/O neither seized any broken gate nor he seized any axe used in the occurrence of the incident. Whereas the I/O stated that the house of the informant was without any gate. In the earlier incident that had taken place at 4.30 PM there were two independent witnesses, whereas to support the incident of 10.30 PM when the accused was allegedly broke open the gate and door, there are no such independent witnesses present. PW1, PW2 and PW3 are the only witnesses to support this allegation, but all these witnesses are found to be

interested witnesses as PW2 is the brother of the informant and PW3 is her nephew. Hence, the evidence on record does not prove the offence of the accused under section 457 I.P.C. for lurking house trespass or house breaking at night.

26. Now, PW1, PW2 and PW3 have stated that at 10.30 PM accused entered the compound of informant and damaged the car of Sri Apu Barthakur. The TATA ACE car was parked in the courtyard of informant and accused damaged it by an axe. The I/O has also stated that after coming to the place of occurrence, he saw the car in a damaged condition and the broken glasses of the car were scattered everywhere. But the I/O neither seized the broken pieces of glasses nor he saw anyone damaging the car. As discussed earlier PW1, PW2 and PW3 are interested witnesses and their evidence cannot be taken into consideration unless corroborated by any other witnesses. But in this case, no other person except PW1, PW2 and PW3 saw the incident. When I/O reached the place of occurrence the car was already damaged and without any satisfactory proof that who had damaged the car, hence, the accused cannot be held guilty under section 427 I.P.C. Moreover, the seizure list by which the damaged car was seized was neither produced in the court nor made the list seen by the magistrate. Hence, it is not proved beyond doubt that the accused had damaged the car and the offence of mischief is not proved against the accused.

27. In view of the above discussion, it is concluded that the prosecution has been able to successfully establish the offences under section 448/352 I.P.C. against the accused person Sri Bhaben Baruah beyond reasonable doubt. Accordingly, the accused person is held guilty under the said sections and he is convicted under the said sections of I.P.C. On the other hand, the prosecution has failed to establish the offences against the accused person under sections 354/457/427 I.P.C. Hence, accused person is acquitted of the charges under sections 354/457/427 I.P.C.

28. The accused person illegally entered the house of a lonely woman who is a widow and assaulted her without any reason which is not acceptable in a civilised society. Hence, I am not inclined to give the accused the benefit of any provisions of the Probation of Offenders Act.

29. Heard the accused on the point of sentence. The prosecution has not shown any past criminal record of the accused and it is the first time the accused has committed any offence. Hence, considering the entire matter and facts and circumstances of the case, I find that a lenient approach of punishment by imposing minimum fine will meet the ends of justice. Accordingly, the accused is sentenced to pay a fine of Rs.500/- (Five hundred) only under section 448 I.P.C in default 15 days simple imprisonment and Rs.300/- (Three hundred) only under section 352 I.P.C. in default further simple imprisonment for 9 days.

30. Furnish a free copy of this judgement to the accused person.

Given under my hand and seal of this court on this 02<sup>th</sup> day of May, 2015.

Judicial Magistrate First Class  
Gohpur, Sonitpur

APPENDIX

PROSECUTION WITNESSES :

- PW1 -- Smti. Chandana Sarma
- PW2 -- Sri Apu Barthakur
- PW3 -- Sri Bhaskar Sarma
- PW4 -- Sri Pawan Das
- PW5 -- Sri Gobinda Das
- PW6 -- Sri Tulan Chandra Bhuyan
- PW7 -- Sri Bulti Baruah
- PW8 -- Sri Anil Borah

DEFENCE WITNESS :

Nil

EXHIBITS BY THE PROSECUTION :

- Exhibit 1 - Ejahar
- Exhibit 1(1) - Signature of the informant on the 'ejahar'
- Exhibit 2 - Seizure list
- Exhibit 2(1) - Signature of witness in the seizure list
- Exhibit 2(2) - Signature of witness in the seizure list
- Exhibit 2(3) - Signature of witness in the seizure list
- Exhibit 3 - Charge Sheet
- Exhibit 3(1) - Signature of the I/O in the Charge Sheet
- Exhibit 4 - Sketch Map of place of occurrence
- Exhibit 4(1) - Signature of I/O on the sketch map

EXHIBITS BY THE DEFENCE :

Exhibit Ka - Medical report of informant

Judicial Magistrate First Class  
Gohpur, Sonitpur