

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

PRESENT : Sandeep Kaushik , AJS

G.R.Case No.-588/12

Under Section 447/323/294/34 I.P.C.

State of Assam Prosecution

-Vs-

Sri Rajen Nath

Sri Mridul Nath Accused Persons

Learned Advocates:

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

For the Accused Sri P. Baruah
Sri J. Saikia

Offence explained on : 08.05.2013

Evidence recorded on : 01.06.2013, 05.07.2013, 10.07.2014, 11.05.2015

Arguments heard on : 30.05.2015

Judgement delivered on : 30.05.2015

JUDGEMENT

1. This case was started on receipt of an 'ejahar' (F.I.R.) at the Gohpur Police Station on 07/08/2012, filed by informant Sri Moina Borah alleging therein that on the same day at about 3 PM, the accused persons Sri Rajen Nath and Sri Mridul Nath, in absence of anyone at the house of informant, unlawfully entered

her house and verbally abused her daughter Smti. Archana Borah by using obscene words. The accused persons also physically assaulted the daughter of the informant with the help of a bamboo stick and caused injury in her right hand. When the informant asked the accused as to why they had assaulted her daughter, the accused attacked the informant and injured her in her hand and back of the body by beating with the bamboo stick.

2. The Officer-in-Charge (in short, O.C.), Gohpur Police Station on receipt of the said 'ejahar' registered Gohpur P.S. case number 187/12 under sections 448/294/323/325/34 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 Rajen Nath and Sri Mridul Nath under section 447/323/294 read with section 34 I.P.C.

3. In due course, the accused appeared before the Court and after furnishing them the copies of relevant documents under section 207 Cr.P.C., the particulars of offence under section 447/323/294 read with section 34 I.P.C are read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. The Prosecution had examined Sri Moina Borah as Prosecution Witness (in short, PW) no.1, Sri Bubu Nath as PW2, Sri R.N. Deori as PW3, Sri Archana Borah as PW4, Sri F. Hoque as PW5 to bring home the allegations levelled against the accused persons. Two witnesses Smti. Sumi Borah and Smti. Jayanti Das were also examined as Court Witness (in short, CW) no.1 and CW2. Thereafter, the evidence of prosecution side was closed as per submission of learned A.P.P. The statements of accused under section 313 Cr.P.C. are 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 person Sri Rajen Nath and Sri Mridul Nath on 07/08/2012 at about 3 PM in furtherance of common intention committed criminal trespass by entering into the house of Smti. Moina Borah of Golsepa, Gohpur with intent to commit an offence and thereby committed an offence punishable under section 447 I.P.C. ?

(ii) Whether the accused persons on the same day, at same time and at same place in furtherance of common intention voluntarily caused hurt to Smti. Archana Borah and Smti. Moina Borah by assaulting them with a bamboo stick and thereby committed an offence punishable under section 323 I.P.C. ?

(iii) Whether the accused persons on the same day, at same time and at the same place, in furtherance of common intention uttered obscene words at Smti. Archana Borah which caused annoyance to her and thereby committed an offence punishable under section 294 I.P.C. ?

DISCUSSIONS, DECISIONS AND REASONS THEREOF :

6. PW1, who is the informant of this case, has deposed in her evidence that the incident had occurred on 7/8/12 at about 3 PM. On that day, accused Sri Rajen Nath had verbally abused the daughter of PW1 Smti. Archana using insulting comments. After coming to know about the altercation, PW1 went to the house of accused and asked Rajen to correct his character first and returned to her house. Due to comment made by PW1 on the character of Rajen, accused Mridul Nath came from behind PW1 and assaulted her with a stick. Due to the assault, the elbow of right hand of PW1 became dislocated. In the mean time, Rajen had assaulted the daughter of PW1 with a branch of flowering tree that was present in the house compound of PW1 and she got injured. After that Jayanti, Minati and Sumi Borah had taken PW1 and her daughter inside the house and hence, the accused went away. PW1 has stated that she had taken medical treatment at Gohpur. Exhibit-1 is the F.I.R. submitted by PW1 and Exhibit-1(1) is her

signature on the said F.I.R. PW1 has stated that accused persons are her neighbour. PW1 has also stated that Rajen while assaulting her daughter verbally insulted them by stating that she and her daughter are prostitutes.

7. In her cross examination, PW1 has deposed that the houses of Bhadrakanta and Manik Borah is situated between her house and the house of accused. PW1 has stated that Smti. Aimoni Nath came to break up the quarrel. PW1 has stated that she had not stated before police that Jayanti, Sumi etc. had taken them inside the house and accused verbally assaulted them by saying prostitute. According to PW1, the place of occurrence was on the road and in front of the house of Bhadra Borah. PW1 has also stated that many people ply through the road where the incident had occurred. PW1 has stated that she first went to police station, then she and her daughter were sent to hospital. According to PW1, she received injuries in the back of the body, in elbow and hips.

8. PW2, has deposed in his evidence that quarrel had occurred between informant and accused and he helped to break up the quarrel between them. PW2 has stated that he had not seen any incident of physical assault between the parties. PW2 had seen only altercation between the parties.

9. In his cross examination, PW2 has deposed that he saw altercation between Rajen and Moina Borah at the house of Rajen. He helped in breaking up the quarrel and then Moina went to her house and Rajen stayed in his house. PW2 has stated that he has not noticed any incident of physical assault.

10. PW3, who is the Medical Officer (in short, M.O.) of this case, has deposed in his evidence that he had examined Archana Borah on 07/08/12 and found simple injury caused by blunt weapon in her right arm. According to PW3, the victim was pregnant of 20 weeks and foetal movement was present. Exhibit-2 is the Injury Report and Exhibit-2(1) is the signature of M.O. On the same day, PW3 had also examined Moina Borah and found tenderness and swelling in the back

and right eye along with scratch mark present on the outer side over the left hand. The injury was simple and caused by blunt weapon. Exhibit-3 is injury report and Exhibit-3(1) is the signature of the M.O. on such report.

11. In his cross examination, PW3 has deposed that no case number or G.D. number is mentioned in the Exhibit-2 and Exhibit-3. According to PW3, injury described in Exhibit-2 may be caused by hit in some substance and injury caused to Moina Borah may be caused by fall.

12. PW4, who is the daughter of the informant, has deposed in her evidence that the incident had occurred on 07/08/12 at around 3.30 PM. PW4 has stated that on that day, when they were at the house of elder brother of her father, accused came, physically assaulted her and her mother and verbally abused them using filthy language. As a result, PW4 had become injured in her right shoulder and her mother received injury near her elbow. According to PW4, she was pregnant at that time. Medical treatment was given to them. PW4 has stated that she does not know why the accused have tortured them.

13. In her cross examination, PW4 has stated that the name of her father's elder brother is Bhadrakanta Borah and his house is in the west side of the house of PW4. According to PW4, at the time of occurrence of the incident, the eldest and youngest daughter of her father's elder brother Smti Jayanti Borah and Smti.Sumi Borah respectively were present in the house. According to PW4, Jayanti and Sumi were the direct eye witnesses of the incident. PW4 has stated that she had not mentioned before police that accused had assaulted her mother by bamboo stick and herself by branch of a flowering tree.

14. PW5, who is the I/O of this case, has deposed in his evidence that he has investigated this case, questioned the witnesses, collected medical report and submitted charge sheet. Exhibit-4 is the charge sheet and Exhibit-4(1) is his signature on the charge sheet.

15. In his cross examination, PW5 has stated that he had been in Gohpur P.S. from 2011 to 2013 and at that time Sri Ashok Kumar Dutta was the O.C. PW5 has stated that F.I.R. was lodged on 08/08/12 at 4.30 PM and he got the responsibility of investigation on 09/08/12. On 07/08/12, the victims were medically examined on police requisition. On 09/08/12, PW5 went to Golsepa, Gohpur. PW5 has stated that accused's shop is located in the east of the place of occurrence and to the west situated the house of Bhadrakanta. PW5 has stated that he had taken the statement of Moina Borah, Archana Borah, Bubu Nath and Narayan Das. According to PW5, PW1 had not stated before him when questioned that she went to the house of Rajen and asked Rajen to correct his character and upon that Mridul had assaulted her from back and as a result, her elbow of right hand become dislocated. According to PW5, PW1 had not stated before him that Sumi and Jayanti had taken them inside the house and accused had addressed PW1 as prostitute.

16. CW1, has deposed in her evidence that she knows both the parties. CW1 has stated that she was not present at the place of occurrence and had gone to paddy field to work there. Therefore, she does not know anything about the occurrence of the incident.

17. Cross examination of CW1 is declined by the accused side.

18. CW2, has deposed in her evidence that accused is her maternal uncle and informant is her aunt. CW2 has stated that at the time of occurrence of the incident she went to paddy field and she had not seen the incident. CW2 has stated that after coming to the home, she came to know that an altercation took place between informant and the accused. CW2 has also stated that she does not know about any incident of physical assault. When CW2 reached her house, quarrel had already ended.

19. In her cross examination, CW2 has deposed that she was not present at the place of occurrence during the incident. CW2 has stated that now informant and accused talk with one another.

20. Now, let me appreciate the evidence on record. The first allegation against the accused persons is that the accused had committed criminal trespass into the house of informant. In this regard, PW1, who is the informant of this case, in her 'ejahar' (F.I.R.) as well as in her evidence before court has stated that accused entered her house and verbally abused and physically assaulted her and her daughter Smti. Archana Borah. But contradictory to this, the daughter of informant as PW4, in her evidence has stated that when she and her mother were in the house of her father's elder brother, accused came and verbally abused and assaulted them. On the other hand, PW2 stated in his evidence that he saw only altercation between Rajen and Moina Borah at the house of Rajen and he did not see any case of physical assault between the parties. PW2 had helped to break up the altercation between the parties and Moina went to her house and Rajen stayed in his own house. Therefore, PW2 has not deposited anything regarding criminal trespass by accused into the house of informant. The evidence of PW5, who is the I/O of this case, also does not reveal anything regarding the offence of criminal trespass by accused. CW1 has stated that she does not know about the incident and CW2 stated in her evidence that she after coming home from paddy field came to know that an altercation had taken place between the parties. Hence, out of all the witnesses examined by the prosecution, only PW1 and PW4 has stated in their evidence that accused had criminally trespassed into the house. But PW1 has stated that accused entered her house and PW4 has stated that accused had entered the house of her father's elder brother's house. PW2, on the other hand, stated that he saw the altercation of accused Rajen and Moina Borah at the house of accused. Therefore, it is not clear from the evidence on record whether the accused had entered the house of Moina Borah or Bhadrakanta Borah. Moreover, PW1 and PW4 are interested witnesses in this case. Hence, the evidence of these two witnesses needs corroboration by independent witnesses. But there is no other witness except PW1 and PW4, in this case who deposed about any case of

criminal trespass by accused into the house of informant. Hence, the offence of criminal trespass against the accused is not proved.

21. The second allegation against the accused is that the accused had voluntarily caused hurt to the informant and her daughter. In the instant case PW1 and PW4 have stated in their evidence that they were physically assaulted by the accused persons. According to PW1 and PW4, accused Mridul Nath had assaulted PW1 by a bamboo stick and Rajen Nath had assaulted PW4 by the stem of a flowering tree. PW2 has stated nothing about any kind of physical assault caused by accused or injury of the informant. PW5 i.e. the I/O of the case stated in his cross examination that PW1 had not stated before him that Mridul Nath had attacked her from back and due to which her right hand elbow became dislocated nor she stated that Rajen also assaulted by using flowering shoot. Therefore, it is seen that the informant did not inform the I/O about the assault caused by the accused to her. On the other hand, M.O. has found simple injury and swelling over the hands of informant and her daughter. But the M.O. as PW3 has stated in his evidence that such type of injury may be caused if someone hits on hard surface. M.O. has also stated that injury to Moina Borah may be caused by fall. On the other hand, PW1 in her evidence has stated that Jayanti and Sumi were present at the place of occurrence and they had taken PW1 and her daughter inside the house. Similarly, PW4 has also stated in her evidence that Jayanti Bora and Sumi Borah are the eye witnesses of the occurrence of the incident. Therefore, those two witnesses were called as Court witnesses. But, CW1, Sumi Borah has stated that she does not know about the incident and CW2, Jayanti Borah has stated that she had not seen the incident. Therefore, it appears from the evidence on record that except, PW1 and PW4 the evidences of other witnesses do not lead to the clear conclusion that the accused had assaulted the informant and her daughter Archana Borah. Moreover, both PW1 and PW4 are interested witnesses and without corroboration by some cogent evidence, the accused cannot be convicted depending upon the evidence of PW1 and PW4. Hence, I find that the evidence on record is not sufficient to hold the accused persons guilty of the offence under section 323 I.P.C.

22. The PW1 in her 'ejahar' as well as in evidence has stated that accused had assaulted verbally her daughter Smti. Archana Borah. She has also stated that accused Rajen had addressed her and her daughter as prostitute. But Archana Borah in her evidence as PW4 has stated that accused rebuked her using bad language. But she has not mentioned what are obscene words used by accused during his rebuking. On the other hand, PW2, PW3, CW1 and CW2 have stated nothing regarding the verbal abuse of the informant and her daughter by the accused. Hence, it is seen that except the comment of Rajen that the informant and her daughter are prostitutes, the evidence on record is deficient to prove that the accused had verbally assaulted the informant using obscene words. But while coming to the comment of Rajen, it is also seen that the I/O in his evidence has stated that PW1 did not state before him that accused had commented on her and her daughter as prostitute. Hence, the evidence of PW1 is found to be doubtful. Had the accused passed any such comment, PW4, CW1 and CW2, who were present at the place of occurrence, would have mentioned about that. But none of them said anything regarding the obscene words used by accused during his altercation with the informant. Hence, depending on the sole testimony of PW1, the accused cannot be held guilty of the offence under section 294 I.P.C. Moreover, to constitute the offence under section 294, it is important that the verbal assault must have taken place in a public place. But in the instant case, PW1 has clearly stated that Rajen had spoken obscene words after entering her house while physically assaulting her daughter. But, the evidence of PW1 clearly reveals that verbal abuse took place at house. Therefore, the offence mentioned in section 294 I.P.C. is not proved against the accused persons.

23. In view of the above discussion, I am of the opinion that the prosecution has failed to establish the guilt of the accused persons under section 447/323/294/34 I.P.C. The offence under section 447/323/294/34 I.P.C. is not proved against the accused persons. Therefore, the accused Sri Rajen Nath and Sri Mridul Nath are found not guilty and they are acquitted of the offence under section 447/323/294 read with section 34 I.P.C. The accused persons are set at liberty forthwith. The bail bonds executed by the accused persons and their surety are extended for next six months as per provision of section 437A of Cr.P.C.

Given under my hand and seal of this court on this 30th day of May, 2015.

Judicial Magistrate First Class
Gohpur, Sonitpur

APPENDIX

PROSECUTION WITNESSES :

PW1 -- Smti. Maina Borah
PW2 -- Sri Bubu Nath
PW3 -- Dr. R.N. Deori
PW4 -- Smti. Archana Borah
PW5 -- Sri F. Hoque
CW1 -- Smti. Sumi Borah
CW2 -- Smti. Jayanti Das

DEFENCE WITNESS :

Nil

EXHIBITS BY THE PROSECUTION :

Exhibit 1 - 'Ejahaar'
Exhibit 1(1) - Signature of the informant on the 'ejahaar'
Exhibit 2 - Injury Report
Exhibit 2(1) - Signature of M.O. on Injury Report
Exhibit 3 - Injury Report
Exhibit 3(1) - Signature of M.O. on Injury Report
Exhibit 4 - Charge Sheet
Exhibit 4(1) - Signature of I/O on the Charge Sheet

EXHIBITS BY THE DEFENCE :

Nil