

**G.R No-3113 of 2016
(State of Assam Vs Md. Abdul Salim)**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR: TEZPUR

G. R. Case No. 3113 of 2016

Under section 341/323/354/294 of I.P.C

Present:-**Sri N. J. Hague, AJS,
Chief Judicial Magistrate,
Sonitpur, Tezpur**

State of Assam

-Vs-

Md. Abdul Salim

S/O:- Late Hasen Ali

R/O:- No-2, Joynagar

P/S:- Dhekiajuli

Dist:- Sonitpur, AssamAccused Person

Advocate appeared:

Mrs. Niva Devi, Addl. P.P..... For the State

Mr. N. Haque & Priya Borah, Ld. Advocate.....For the accused person

Evidence recorded on : - 30.05.2019, 26.08.2019 & 31.10.2019
Date of Statement of defence : - 07.11.2020
Argument heard on : - 07.11.2020
Judgment delivered on : - 07.11.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that the informant named Miss Sufia Khatoon lodged an ejahar before the O/C, of Dhekiajuli PS, alleging inter alia that on 14.09.2016 at about 7:30 P.M, she along with her father Md. Nizam Uddin went to intervened one quarrel which took place near their house and the accused named Abdul Salim along with two other unknown persons physically assaulted her and dragged her by pulling her hair. She further alleged that accused also assaulted her father.

"INVESTIGATION"

2. On receipt of the Ejahar, Dhekiajuli P.S Case No.646 of 2016 u/s 341/323/354/34 of I.P.C was registered and investigation into. On completion

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of the investigation, the I.O. of this case submitted charge sheet u/s 341/323/354/294 of I.P.C against the accused person, named, Md. Abdul Salim.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s 207 of Cr.P.C was furnished to the above-named accused person. After hearing both sides, charge of offence u/s-341/323/354/294 of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as 0 (Four) numbers of witnesses including the informant and the victim. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused is examined u/s-313 Cr.P.C and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case:-**

- I) Whether on 14.09.2016 at about 7:30 PM at No-2 Joynagar under Dhekiajuli PS, accused wrongfully restrained the informant Miss Sufia Khatoon & her father Nizamuddin and thereby committed an offence punishable u/s 341 of IPC?
- II) Whether on the same date, time and place the accused person voluntarily caused simple hurt by way of beating the informant and her father named Nizamuddin and thereby committed an offence punishable u/s 323 of IPC?

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III) Whether on the same date, time and place, accused used criminal force to the informant with intent to outrage her modesty and thereby committed an offence punishable u/s 354 of IPC?

IV) Whether on the same date, time and place, accused scolded the informant, using filthy languages and thereby committed an offence punishable u/s 294 of IPC?

DISCUSSION, DECISION AND REASON THEREOF

7. In this case, charges u/s- 341/323/354/294 of IPC was framed against the accused person named, Md. Abdul Salim, on the basis of the indictment levelled against the aforesaid accused by the informant Sufia Khatoon. In the ejahar vide Ext-1, it alleged by informant Miss Sufia Khatoon that on 14.09.2016 at about 7:30 PM, the accused along with two others physically assaulted her and her father, wrongfully restraining them in front of their house. Further, the accused person used criminal force upon her and outraged her modesty and abused her by using filthy languages.
8. The prosecution side got the burden to prove that on the date of alleged incident, the accused person physically assaulted the informant and her father and reprimand them by using filthy language and further outraged the modesty of the informant by dragging her holding the bunch of her hair. The prosecution to prove the aforesaid contention examined as many as four numbers of witnesses including the informant and the victim. For the purpose of proper appreciation, let us discussed all the points for determination together.
9. Now, coming to the evidences of record, this court finds that PW-1 is one Dildar Hussain who is an independent witness and as per his evidence two years back, there was quarrel between husband and wife and he was present at his house at the time of incident. Hence, it is seen that as per PW-1, there was quarrel took place between husband and wife.
10. PW-2 is the informant Miss Sufia Khatoon who lodged the ejahar vide Ext-1 and she in her evidence-in-chief claimed that there was a quarrel nearby her house and then her father Nizamuddin who intervned the quarrel and accused along

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with two others assaulted her father. Further, they scolded using filthy languages and one of them holds her hair. She doesn't know who pulled her and then she lodged the ejahar.

11. The evidence-in-chief of PW-1 make known that although she claimed that someone pulled her holding her hair but she don't know the exact name of the person who pulled her. She claimed that they have been scolded by using filthy languages and accused along with two others assaulted her father and astonishingly in her cross examination she had definitely deposed that she don't know out of three persons who assaulted her father. Hence, it is seen that PW-2, who is the informant cum victim herself appears to be not sure as to who has physically assaulted her father and pulled her by holding her hair. Hence, it is seen that no associate substance found against the accused persons from the evidence of PW-2.
12. PW-3 is another victim who is the father of the informant and as per his evidence when he along with her daughter went to separate the husband and wife between whom the quarrel took place, the accused in front of the courtyard of his house caught hold the hair of the informant and make her fallen and accused also pushed him. The testimonies of PW-2 and PW-3 who are being the star witnesses to the prosecution side appears to be incongruous in respect of physical assault of the informant and physical assault of the victim Nizamuddin. As per the informant accused Abdul Salim along with two others assaulted Niamuddin but she doesn't know out of them who actually assaulted her father. But Nizamuddin in his evidence did not claim that he was assaulted by the accused. He simply deposed that accused pushed him and caught hold the hair of the informant and make her fallen. But the informant in her evidence did not claim that she was forcefully made fallen on the ground and she does not know who actually caught hold her hair. Hence, it is seen both the PW-2 and PW-3 appears to be contradictory with each other regarding the fact in issue of the instant case.
13. PW-4 in his evidence claimed that accused assaulted the informant at the time when between informant and another family member quarrel took place. He saw the incident. He in his cross examination admitted that at the time of

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incident he was at house and he cannot say whether accused assaulted his father. Hence, it is seen that the evidence of PW-4 also appears to be contradictory with his own version and his evidence not further appears to be corroborative with the testimonies of other family members i.e. the informant and victim Nizamuddin.

14. To sum up the evidences of record, it unveiled before this court that evidences of PW-2, PW-3 and PW-4 appears to be contradictory with each other and those contradictions makes their evidences doubtful and untrustworthy.
15. In this case the prosecution side failed to adduce any probable evidence to substantiate the material allegation against the accused person and the court not finds anything incriminating from the case record upon which the accused may held guilty of commission of alleged offences.
16. Therefore in the light of aforesaid discussion, this court constrained to opine that prosecution side failed to prove the charges levelled against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charge u/s 341/323/354/294 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
17. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 07th day of November, 2020.

(Sri N. J. Hague)
Chief Judicial Magistrate,
Sonitpur: Tezpur

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ANNEXURE

1. Witnesses for Prosecution:-

PW 1: Md. Dildar Hussain

PW 2: Miss. Sufia Khatoon, Informant

PW 3: Md. Nizamuddin, Victim

PW 4: Md. Atowar Hussain

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1 :- FIR

Ext 1(1) :- Signature of PW-2

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur