

**G.R Case No-1602 of 2017
(State of Assam Vs Sri Homeswar Nath)**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 1602 of 2017

Under section-323/354/506 of I.P.C

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

State of Assam

-Vs-

Sri Homeswar Nath

S/O:-Late Rongai Nath

R/O:- Niz-Borsola

P/S:- Dhekiajuli

Dist:- Sonitpur, Assam

.....Accused Person

Advocate appeared:

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

Mr. Abhijit Bhuyan & Ors, Ld. Advocates..... For the accused person

Evidence recorded on	:- 20.05.2019, 12.09.2019, 17.01.2020 & 03.02.2021
Date of Statement of defence	:- 03.02.2021
Argument heard on	:- 03.02.2021
Judgment delivered on	:- 03.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that one Smt. Konmai Das lodged an Ejarah before the O/C of Dhekiajuli P.S through I/C of Borsola Police Outpost on 04.05.2017 alleging inter alia that on the said date at about 2 PM, when her daughter-in-law named Smt. Dipika Nath Das, who is the daughter of the accused was missing from their house and thereafter, she along with her son named Sri Joy Das went to the house of the accused to enquire about her daughter-in-law. She also stated that when they went near the boundary of the accused, the accused thereafter rashly came out

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and gave blows and kicks upon her son Joy Das, who is the husband of said Smt. Dipika Nath Das and also tried to kill him and when she tried to save her son, accused physically assaulted her and also torn her clothes by causing her injury.

"INVESTIGATION"

2. On receipt of the ejahar, Dhekiajuli P.S Case No. 368 of 2017 u/s-323/325/354/506 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-323/325/354/506 of I.P.C against the above-named accused person.

CHARGE

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copy u/s-207 of Cr.P.C was furnished to the above-named accused person. After hearing both sides, charge of offence u/s-323/354/506 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.

TRIAL & STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused persons examined as many as 04 (Four) numbers of witnesses in support of this case. 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 point for determination in this case:-**

- (i) Whether on 04.05.2017 at about 2 PM at a place called Nizborsola under Dhekiajuli PS, accused person voluntarily caused simple hurt to the victim, named, Sri Joy Das by way of giving him fist blows upon his body and thereby committed an offence punishable under section-323 of IPC?

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- (ii) Whether on the same date, time and place, accused used criminal force to the informant named Smt. Konmai Das with intent to outrage her modesty and thereby committed an offence punishable u/s 354 of IPC?
- (iii) Whether on the same date, time and place, accused threatened the victims with dear consequences of life and thereby committed an offence punishable under section-506 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined as many as four numbers of witnesses including the informant of this case. Let us reproduce the relevant part of the evidences adduced by the prosecution witnesses for the sake of proper appreciation.
8. PW-1, Smt. Konmai Das being the informant deposed that she knows the accused person of this case. She also deposed that the incident took place in the year 2017 one day at 2 PM and on the day of incident, while her daughter-in-law was missing, she along with her son named Sri Joy Das went to the house of the accused to enquire about his daughter and thereafter, the accused rashly came out from his house and physically assaulted her son by giving blows. She also deposed that when she tried to save her son, the accused also gave her blows and torn her clothes by falling down on the ground. She further deposed that when the son of the accused came along with a dao, she and her son fled away from the place of occurrence and immediately went to the place of occurrence. She identified the Ejahar as Ext-1 and Ext-1(1) is her signature.
9. PW-1 in her cross-examination testified that on the day of incident her daughter-in-law went to her father's house i.e. the accused and thereafter, at about 2 PM, she along with son went to his house to find out her daughter-in-law. She deposed that on previous night of the alleged incident, there was a fight took place between her daughter-in-law and her son. She denied the fact that they frequently harassed the daughter of the accused both mentally and physically. She deposed that in connection with the same incident, the accused person has also lodged a case against them. She also deposed that she sustained injuries due to the physical assault done by the accused. She further deposed that her son

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also sustained injuries due to the physical assault done by accused. She deposed that her neighbours saw the alleged incident.

10. PW-2, Sri Nanda Nath deposed that he knows the accused person of this case, who is his neighbour. He deposed that the incident took place around three years back and on the day of incident at about 2 PM, there was an altercation took place between the accused, the informant and her son on the road situated in front of their house and when he came out, he saw the informant's son Joy Das physically assaulted the daughter of the accused.
11. PW-2 in his cross-examination testified that the son of informant named Joy Das eloped with the daughter of the accused. He deposed that on the day of incident, the daughter of accused went to her father's house i.e. the accused and due to that the informant and her son went to the house of accused, there was dashing pushing took place between them.
12. PW-3, Smt. Rakhi Devi Nath deposed that she knows the informant as well as the accused person of this case. She deposed that the incident took place around three years back. She also deposed that on the day of incident at about 2 PM, while she was busy in her house, she heard commotion in the house of accused and thereafter, she went to the house of accused and saw an altercation took place between accused and the informant. PW-3 in her cross-examination testified that the daughter of accused eloped with the son of informant. She also deposed that on the day of incident, when the informant and her son went to the house of accused to bring back the daughter of accused, there was an altercation took place between both parties. She deposed that her house is situated just adjacent to her house.
13. PW-4, Smt. Rina Nath deposed that she knows the informant and the accused of this case. She also deposed that the occurrence took place in the year 2017 but she does not know the exact time of occurrence. She further deposed that she heard that between the informant and the accused altercation took place. She admitted that she has not seen the incident personally.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

14. In the foregoing discussions, it already disclosed that the Criminal law sets in motion against the accused person on the basis of the ejarah lodged by the informant Smt. Konmai Das. In the light of accusations levelled against the accused person in this case the prosecution side has got the burden of prove that on 04.05.2017 at about 2 PM, when

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her daughter-in-law Smt. Dipika Nath Das, who is the daughter of the accused was missing from their house and thereafter, she along with her son named Sri Joy Das went to the house of the accused to enquire about her daughter-in-law. She also stated that when they went near the boundary of the accused, the accused thereafter rashly came out and gave blows and kicks upon her son Joy Das, who is the husband of said Smt. Dipika Nath Das and also tried to kill him.

15. For the sake of proper appreciation of indications accessible before this court, let us deliberate all the facts for fortitude composed in the background of the evidences on record.
16. I have carefully travelled through the evidence on the record and it finds that PW-1 is the informant, who testified that in the year 2017 one day at about 2 PM, her daughter-in-law was missing and thereafter, she along with her son named Sri Joy Das went to the house of the accused to enquire about her daughter-in-law and thereafter, the accused rashly came out from his house and physically assaulted her son by giving blows upon him. She also deposed that when she tried to save her son, the accused gave blows and torn her clothes by falling down on the ground. PW-1 in her cross-examination testified that previous night of the alleged incident, there was a fight took place between her daughter-in-law and her son and thereafter, she went to her parental house. She also deposed that she and her son sustained injuries due to the physical assault done by the accused. She deposed that her neighbours saw the alleged incident.
17. The PW-1, being the informant of this case in her examination-in-chief did not utter any single words to support the incident dated 04.05.2017. She has also not supported and corroborated the fact of threatening the son of the informant Joy Das on 04.05.2017 in her evidence-in-chief as she claimed in her ejahar. She in her evidence also deposed that when the son of the accused came along with a dao, she and her son fled away from the place of occurrence. The fact as deposed by the informant had not been pleaded in her ejahar. If really son of accused tried to assault them with dao, she must have pleaded such fact in her ejahar lodged by her. PW-2 in his evidence simply deposed that on the date of alleged incident, there was an altercation between the parties and when he came out, he saw the informant's son physically assaulted the daughter of accused. As such, it becomes crystal clear that the testimony of PW-2 contradicts the entire contentions of the

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ejahar as well as the version of the informant (PW-1). The evidence of PW-2 cannot be overlooked as he saw the physical assault done by the informant's son to the daughter of accused and his evidence makes the testimony of the informant contradictory in nature.

18. PW-1 in her cross-examination affirmed that there was matrimonial dispute between her son and daughter of accused on previous night of the alleged incident and thereafter, she left her matrimonial house and when they went to house of the accused to enquire about her daughter-in-law, accused rashly came out and physically assaulted her son. PW-2 in his evidence clearly deposed that quarrel took place on the road situated in front of their house. If so, then it appears that entire contentions of informant and version of PW-1 appears to be contradictory in nature regarding the actual place of occurrence.
19. PW-3 appears to be an eye witness of the alleged incident and as per her version three years back at 2 PM, when she was doing her domestic work at her house she heard altercation and on coming out she saw an altercation going on between Smt. Konmai Das and Sri Homeswar Nath. Thereafter, she went from there. She in her cross-examination admitted that the son of informant eloped with the daughter of accused and her house is situated in front of the house of the accused. She also testified that on the date of alleged incident the daughter of accused came out from the house of informant and went to the house of accused. Thereafter, the informant along with her son went to the house of accused for taking her back to their house for which altercation took place between them. The evidence presented by PW-3 appears to be more categorical and she being the eye witness makes it crystal clear that there was only an altercation took place between the informant and the accused over the matrimonial dispute between the daughter of accused and the informant's son. The testimony of PW-3 appears to be direct in nature and relates to the material fact of this case and her statement being relevant in nature cannot be thrown out rather her evidence makes the entire version of informant contradictory. Hence, it is seen that PW-1's version regarding her physical assault and torn off her wearing apparels by the accused and his son on the date of alleged incident appears to be not supportive from the version of PW-2 and PW-3, who have witnessed the alleged incident. That being so, the version of PW-1 appears to be not supportive, corroborative and coherent with the version of other eye witnesses of the alleged incident and in

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presence of such contradiction, the entire prosecution story appears to be doubtful in nature.

20. The evidences presented by other independent witnesses i.e. PW-3 and PW-4, it indicates that there was only an altercation which took place between the informant and the accused person of this case. The PW-4 clearly testified that he has not seen the incident personally and he only heard about the same. PW-3 & PW-4 are not clear about the involvement of accused person with the alleged incident as disclosed from their own testimonies. Hence, in absence of any direct evidence it is very difficult to determine that the accused person actually was involved with the alleged incident. The evidences presented by PW-3 & PW-4 not only makes the version of the informant (PW-1) doubtful but also creates a reasonable contradiction which cannot be thrown away. More also the evidences offered by the prosecution side appears to be full with lots of shortcomings and those being contradictory in nature cannot be relied upon.
21. To sum up the evidences on record, it disclosed that the testimonies of all five witnesses are appears to be contradictory with each other and that makes their evidences doubtful and untrustworthy in nature. This court not finds any single witness to be truthful rather their testimonies found to be full with lot of shortcoming. Hence, this court is unable to put its reliance upon the testimonies of all four witnesses.
22. Therefore, in the light of aforesaid discussion this court is constrained to opine that the prosecution side failed to prove the guilty of the accused person beyond any shadow of doubt. Hence, the accused person is acquitted from the charge's u/s-323/354/506 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
23. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 03rd day of February, 2021.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Smt. Konmai Das, Informant

PW-2:- Sri Nanda Nath

PW-3:- Smt. Rakhi Devi Nath

PW-4:- Smt. Rina Nath

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

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

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur