

IN THE COURT OF THE SESSIONS JUDGE SONITPUR::
TEZPUR

SESSION CASE NO 07 of 2019

Under section 294/324/307 of I.P.C.
(Arising out of G. R Case No. 3856/18)

State of Assam

-Vs-

1. Sri Girish Nath Accused person.

**Present : Smti I. Barman, AJS
Sessions Judge,
Sonitpur, Tezpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. P. Sing Sethi, Advocate.

Date of Argument : **15-02-2021** .

Date of Judgment : **18-02-2021**

J U D G M E N T

1. The case of the prosecution may in brief, be disclosed thus:
On 28-09-2018, at around 5.30 p.m. accused Girish Nath abused his informant wife Labanti Devi suspecting her of maintaining illicit relation with her brother-in-law Syamanta Nath and inflicted dao blows on her head, as a result of which, she sustained injuries.

2. On receipt of an FIR on 28-09-2018 from Labanti Devi (PW 1), the wife of the accused, the Incharge of Bihaguri Out Post entered the GDE No. 466 and forwarding the FIR to the Officer-in-charge of Tezpur Police station, himself launched investigation of the case. Based on the FIR, Tezpur PS Case

No. 1998/18 u/s 294/326/307 of the IPC was registered. The Investigating Officer visited the place of occurrence, examined the witnesses and on closure of the investigation laid charge sheet, against the accused Sri Girish Nath u/s 294/324/307 of IPC.

3. On appearance of the accused person, the learned Chief Judicial Magistrate, Sonitpur, Tezpur after furnishing the copies as required u/s 207 of Cr.P.C, committed the case to the Court of Session, being the offence u/s 307 of the IPC exclusively triable by the Court of Session. Accordingly, on appearance of the accused, before this Court, after hearing both parties, charge u/s 294/324/307 of the IPC was framed against the accused Sri Girish Nath and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.

4. During trial, in order to bring home the charge leveled against the accused person, prosecution examined 7 witnesses. In the statement recorded u/s 313 Cr.P.C, accused Girish Nath denied all the allegations and declined to adduce evidence.

5. I have heard the argument of learned counsel of both sides and also have gone through the evidence on record.

6. The points to be determined in this case is as follows–

1. *Whether accused Girish Nath, on 28-09-2018, at around 5.30 p.m., at Gerua Baligaon under Tezpur PS, uttered obscene words to his wife/informant Labanti Devi, in public place causing annoyance to others and thereby committed an offence punishable u/s 294 of the IPC?*

2. *Whether accused Girish Nath, on 28-09-2018, at around 5.30 p.m., at Gerua Baligaon under Tezpur PS, voluntarily caused hurt to Labanti Devi by means of a dao, a sharp cutting weapon and thereby committed an offence punishable u/s 324 of the IPC?*

3. Whether accused, Sri Girish Nath, on 28-09-2018, at about 8 am. at village Gerua under Tezpur PS, did an act, namely, struck with a dao upon head of the informant Labanti Devi, with such intention and knowledge and under such circumstance, that if, by that act, the accused had caused the death of Labanti Devi, he would have been guilty of murder and thereby caused hurt to Labanti Devi and committed an offence punishable u/s 307 of the IPC?

7. In order to appreciate the argument advanced on behalf of both the sides, I deem it appropriate to briefly recapitulate the evidence on record as follows :

8. **PW 1** injured Labanti Devi, the wife of the accused, testified that on the day of incident at around 5 PM when her husband returned home from work, an altercation took place between her and her husband. At that time the accused possessed a dao in his hand and when she tried to hold the dao, she sustained injury over her head. Thereafter, she lodged the FIR, Ext.1.

During cross, she admitted that her husband was not mentally sound since her marriage and on the day of incident he did not hit her intentionally. She further stated that as her husband was a daily wage earner, so he used to carry a dao while going for work and on the day of incident also while an altercation took place with her, the dao was in his hand.

9. **PW 2** Smti Joon Devi, stated in her evidence that on the day of incident hearing hulla in the house of Labanti Devi, she went there and saw bleeding injury over the head of Labanti Devi. She heard that the accused inflicted dao blows over his wife.

During cross, she admitted that she had not seen the incident.

10. **PW 3** Sri Baneswar Nath deposed that about six months back in the evening time hearing hulla in the house of the accused, he went there and heard that accused Girish Nath had beaten his wife Labanti, in which she sustained injury over her head. But in cross examination he stated that he did not know how the injured sustained injury.

11. PW 4 Sri Jogeswar Nath testified that he heard that in a quarrel between the injured (PW1) and her husband accused Girish Nath, PW 1 sustained minor injury over her head.

During cross he stated that he did not know how Labanti Devi sustained injury.

12. PW 5 Sri Mahendra Nath turned hostile. His evidence disclosed that on the day of incident hearing quarrel between the accused and his wife, he went there and had seen a little bit of blood upon the forehead of the wife of the accused and on being asked Labanti Devi told that she had quarrel with the accused.

During cross by defence he stated that he did not know how Labanti Devi sustained injury.

13. PW 6 Dr. Rajdeep Das, the Medical Officer of TMCH, stated that on 28-09-2018, he examined Labanti Devi and on examination found (i) cut injury over scalp (fronto parietal region), size 2 cm x .5 cm, and pain over back, the injury was simple and caused by sharp object. The doctor proved the injury report as Ext. 2.

14. PW 7, Sura Chandra Doley, the Investigating Officer, deposed that on 01-10-2018, the O/C of Tezpur Police station entrusted him to complete the investigation of the Tezpur PS Case No. 1998/18. Accordingly, after going through the case diary, he collected the medical report and on completion of investigation submitted chargesheet against the accused Girish Nath u/s 294/324/307 of IPC vide Ext. 3.

15. While considering the present case, what may be noted, at the very outset, is that PW 1 who is the injured, the wife of the accused herself has deposed that on 28-09-2018 at around 5:00 PM when her husband returned home from work, an altercation took place with her. Her evidence also disclosed that the accused used to carry a dao with him while goes for work and on the day of incident when the accused returned home, the dao was in his hand. As soon as he returned home, the altercation took place, while the dao was in his hand and in the quarrel when she tried to hold the dao, it hit over her head causing injury to her. She clearly stated that the accused did not intentionally hit her. Her evidence is crystal clear that in the altercation while

she tried to hold the dao which was in the hand of the accused, the dao hit her head, it was not intentional, rather accidental one. PW 2 and PW 3 only heard that the accused inflicted dao blow over his wife. PW 4 also heard that in a quarrel with accused husband, the wife (PW 1) sustained injury. Another witness PW 5 had seen blood upon forehead of PW 1 and on being PW 1 told him that she had a quarrel with her husband. Evidence of PW 5 does not reveal how PW 1 sustained injury in the quarrel with accused husband.

What emerges from the evidence adduced by the prosecution, it clearly transpires that except the injured, all other witnesses had not witnessed the incident, all are hearsay witnesses. Though PW 3 and PW 4 once stated that they heard that the accused inflicted injury over head of his wife but again in cross examination they stated that how the injured sustained injuries. In the instant case, the victim herself did not support the prosecution version.

16. From the medical evidence on record it is crystal clear that PW 1 sustained simple cut injury over scalp caused by sharp weapon and if this fact is borne in mind, though it becomes clear that the medical evidence fully supports and corroborates the evidence of the injured that while her accused husband returned home, the dao which he carried at the time of going for work, was in his hand and as soon as he returned, an altercation took place between herself and her accused husband and in the midst of quarrel, when the wife tried to hold the dao from her husband, it hit her head causing injury to her. But at the same time taking the evidence of the injured herself it cannot be said that the accused voluntarily caused hurt to his wife, rather the dao hit the injured accidentally in going to hold the dao.

17. From the above discussed evidence, rendered by the prosecution witnesses, no incriminating material could be found against the accused person for alleged offence of voluntarily causing hurt to his wife. In this case, I find that the prosecution failed to adduce the substantive and cogent evidence inspiring confidence to conclusively hold that the accused person voluntarily caused injury to his wife with intent to kill her. As such charges u/s 324/307 IPC stands disproved.

18. With regard to alleged offence u/s 294 IPC, the alleged occurrence took place in the premises of the injured not in a public place. Moreover, the injured victim only stated that an altercation took place between herself and her accused husband. She did not state about uttering any obscene word towards her by her husband. So, the allegation of uttering obscene words by the accused towards her wife also not established in this case.

19. On a totality of the revelation as above from the evidence on record, I am constrained to hold that the prosecution neither established nor consistent with the hypothesis of the guilt of the accused person u/s 294/324/307 IPC and as such he cannot be held guilty.

20 Accordingly, accused Girish Nath is acquitted from the charge u/s 294/324/307 IPC and set him at liberty forthwith. His bail bond shall extended till next six months in view of section 437 A of Cr.PC.

21. Send back the GR case to the learned committal court.

22. Given under my Hand and Seal of this Court on this the **18th day of February, 2021.**

(I. Barman)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me.

(I. Barman)
SESSIONS JUDGE,
SONITPUR :: TEZPUR.

APPENDIX

Prosecution Witness

- | | | | |
|----|--------------------------|----|------------------------------|
| 1. | Prosecution Witness No.1 | :- | Smti Labanti Devi, informant |
| 2. | Prosecution Witness No.2 | :- | Smti Joon Devi |
| 3. | Prosecution Witness No.3 | :- | Sri Baneswar Nath |
| 4. | Prosecution Witness No.4 | :- | Sri Jogeswar Nath |
| 5. | Prosecution Witness No.5 | :- | Sri Mahendra Nath |
| 6. | Prosecution Witness No.6 | :- | Dr. Rajdeed Das, M.O. |
| 7. | Prosecution Witness No.7 | :- | Sri Sura Chandra Doley, I.O. |

EXHIBITS

- | | | | |
|----|--------------|----|----------------|
| 1. | Exhibit No.1 | :- | FIR |
| 2. | Exhibit No.2 | :- | Injury report. |
| 3. | Exhibit No.3 | :- | Charge sheet. |

(I.Barman)
SESSIONS JUDGE
SONITPUR: TEZPUR