

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

G. R. Case No. 303 of 2017

U/S: 341/326 of IPC

The state of Assam

-Versus-

Prakash Kandulana
(Son of Late Pol Kandulana,
Vill. – Tolanpukhuri,
P.S. – Halem,
Dist. - Biswanath) Accused

PRESENT :Diganta Goswami, A.J.S.

Judicial Magistrate First Class, Gohpur

Date of framing of charge : 12.04.2018
Date of recording of evidence : 19.07.2018
Date of argument : 25.07.2018
Date of judgment : 26.07.2018
Ld. advocate for the state : The A.P.P.
Ld. advocate for the defence : Smt. Manju Agarwala

JUDGMENT

1. The case of the prosecution is that informant Sri Joypal Pareya, son of late Bagnu Pareya of village Karigeraj lodged an FIR in the Halem Police Station on 30.10.2017 stating that his son-in-law Prakash Kandulana had often quarrelled with his daughter whom he got married to him. On the previous day of lodging of the FIR, there was some fight between his son-in-law and daughter in the evening. Hearing some noise, his wife Magdali Pareya and son Atish Pareya went to their home to take stock of the situation. Then his son-in-law, the accused

attacked them with a machete and struck his wife and son on their hands injuring them. Therefore, he lodged the FIR to investigate into the matter and doing the needful.

2. The FIR was received and registered vide Halem Police Station case No. 47/17, u/s 341/326 of the Indian Penal Code, dated 30.10.2017. Sub-inspector Sri Alok Dutta Gupta was entrusted with the charge of the investigation of the case.
3. The accused was arrested and on production of him in the court, he was sent to the judicial custody. The police after investigation submitted charge-sheet against accused Sri Prakash Kandulana u/s 341/326 of the Indian Penal Code and subsequently, he was allowed to be released on bail. On appearance, copy was served to him. After perusal of the record, charge was framed against the accused under section 341/326 of the Indian Penal Code. The particulars of offence under those sections were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.
4. The prosecution side examined altogether 3 (three) witnesses. The recording of the statement of the accused was dispensed with as no incriminating materials were found against him. The accused declined to adduce defence evidence. I have heard the learned A.P.P. and the learned counsel for the defence. I have also carefully gone through all the evidence adduced and meticulously scrutinised the entire case record.

5. POINTS FOR DETERMINATION

- (i) Whether the accused Prakash Kandulana on 29.10.2017 in the evening at his home in the village Tolanpukhuri wrongfully restrained the wife and son of the informant Sri Joypal Pareya and thereby committed an offence punishable under section 341 of the Indian Penal Code?
- (ii) Whether the accused on the same day and at same time and place, voluntarily caused grievous hurt to the wife and son of the informant by dangerous weapon and means thereby committed an offence punishable under section 326 of the Indian Penal Code?

DECISION, DISCUSSION AND REASONS THEREOF

6. P.W. 1 Sri Joypal Pareya, the informant in his deposition stated that the case is about one year back. The accused was his son-in-law. The accused had a fight with his wife, i.e. the daughter of the informant. The house of the accused was near their house. As there was a fight, there were some *hullah* emanating from the house of the accused. Hearing that, the wife and son of the informant namely Smt. Magdali Pareya and Sri Atish Pareya respectively went to their house. They saw that a quarrel was going on between the accused and his wife, so they tried to stop it. The accused and others present there got involved in some form of pushing and pulling. During this commotion, Smt. Magdali Pareya and Sri Atish Pareya, the wife and son of the informant slipped and fell down. There was a hole lying near that place on which they fell down. As they fell down, they got hurt by the already lying hoe there. However, the injury was simple. The son of the informant got some injuries in his finger. Therefore, he lodged the case without thinking much. Later, his daughter lived with her husband well. Earlier, his son-in-law used to take alcohol, but later he stopped drinking. He bettered his behaviour and started living peacefully. The accused didn't fight with his daughter anymore. An understanding took place between them and the accused as well. Ext. 1 was the *ejahar* which he lodged and Ext. 1(1) his signature.
7. In cross-examination, he stated that his wife and son had got injured slightly in a silly state of affairs. They slipped and fell down following which his son Atish had got injured in his hand. He didn't have any complaint against his son-in-law anymore. He stated that he would have nothing to say if the accused is acquitted.
8. P.W. 2 Sri Atish Pareya stated in his deposition that the informant was his father and the accused his brother-in-law. His elder sister and brother-in-law had an argument over some domestic issues. As they went there and got involved in between them, they fell down and got injured. In the commotion, there were some pushing and pulling. As a result, they fell down on earth. They were not

intentionally pushed down by anybody, rather they fell down by slipping. There was a hoe lying nearby on which they hit. As a result, he got some injuries in his finger and his mother sustained some injuries on her left hand. So his father had lodged a case. The accused hadn't attacked them, instead they got injured by falling themselves. They got medical treatment following the injuries. Later, they recovered.

9. In cross examination, he stated that he and his mother had got some injuries following some pushing and pulling in which they got involved. He reiterated that the accused hadn't attacked them. He said that he didn't have anything to say if the accused is acquitted of the charges.
10. P.W. 3 Smt. Magdali Pareya stated that there were some altercation on domestic issues. They got involved in a tiff with her son-in-law following some silly matters. All the three persons including herself, her son Atish and her son-in-law the accused got some minor injuries in the squabble. Nobody had attacked anyone. They got injured on falling on the ground. Later, they recovered from the injuries that they sustained and lived happily. They lived peacefully having good relation with their son-in-law. There was no quarrel with him any longer.
11. In cross-examination she stated that she would have no objection if the accused got acquitted from the case.
12. Sri Joyram Pareya said that some *hullah* was emanating from the house of his son-in-law Prakash Kandulana. As his wife and son intervened, there started sort of a shoving amongst the accused, his wife and the wife and son of the informant. During this commotion, the wife and son of the informant fell down on the ground by slipping and were hit by an already lying hoe. As a result, they got injured. Smt. Magdali Pareya, the wife and Sri Atish Pareya, son of the informant got injuries on their hands. Then he lodged the case without thinking much. Later, both his wife and son recovered from the wound they received. They got injuries following silly state of affairs. There was nothing serious in it. He added that he didn't have any complaint against his son-in-law as that was a small incident without any premeditation and everything was fine later on. His daughter was living with the accused peacefully as husband and wife. Atish Pareya stated the same facts what his father had stated. He stated that they got

some minor injuries following an accidental fall. The accused hadn't done any harm to them. Smt. Magdali Pareya also corroborated the versions of the earlier two prosecution witnesses stating that she and her son had received some minor injuries in a squabble with her son-in-law. But, he hadn't caused hurt to them, they got injured on falling on the ground only. They recovered from the injuries sustained and lived happily having good relation with their son-in-law and daughter. There was not any discord between them.

13. The prosecution got 3 (three) witnesses examined. No more witness was posed by the prosecution for examination on its part. The Medical Officer who had examined the injured persons and the Investigating Officer of the case were also not called for deposition. Moreover, there was not any incriminating materials in the versions of the examined witnesses. Nobody of the witnesses said anything that could incriminate the accused person. From their depositions, no element could be drawn so as to assume that the accused committed offence under section 341/326 of the IPC.
14. Section 341 of the Indian Penal Code states about punishment to wrongful restraint. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Section 326 of the IPC states about voluntarily causing grievous hurt by dangerous weapons or means. In the above situation the accused can't be held to committing offences under these sections since no such elements are found in the depositions of the prosecution witnesses. Scanning the evidence on record it is manifest that the victim and the informant have completely derailed from the allegations set forth in the *ejahar*. Far from asserting that the alleged victims had sustained grievous injuries, they did not make feeblest of assertion that they had sustained injury perpetrated by the accused. There was clearly no wrongful restraint of movement of the wife and son of the informant since they had gone to the house of the accused only. That apart, the accused didn't voluntarily cause grievous hurt to them by use of dangerous weapons or means, the fact which was derived from the versions of the witnesses including the informant.

ORDER

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused Prakash Kandulana had committed offences punishable under sections 341/326 of the Indian Penal Code.

As such accused Prakash Kandulana is acquitted of the charges under section 341/326 of the Indian Penal Code on benefit of doubt and he is set at liberty forthwith.

The bail bond of the accused person shall remain valid for six months from today as per section 437 of the Cr.P.C.

Judgment is pronounced in the open court. The case is disposed of on contest.

The judgment is given under my hand and seal of this court on the 26th July, 2018.

DIGANTA GOSWAMI
JMFC, GOHPUR

A-N-N-E-X-U-R-E**Witnesses for the Prosecution:**

PW 1 Sri Joypal Pareya

PW 2 Sri Atish Pareya

PW 3 Smt. Magdali Pareya

Witness for the Defence: NIL

Exhibits :

Ext. 1 - The F.I.R.

DIGANTA GOSWAMI
JMFC, GOHPUR