

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS, SONITPUR

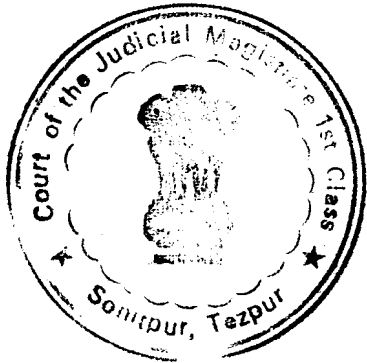
G.A. CASE NO: 723/10 U/S 354/323

PRESENT : K. K. PATHAK, A.J.S

PARTIES : State

-V-

Broto Chauharn



-----ACCUSED

EVIDENCE ON : 24.02.11, 01.04.11, 29.04.11, 05.01.12, 23.02.12

S/D ON : 29.08.12

ARGUMENTS ON :]
JUDGMENT ON :] 28.02.13

LAWYERS : A.P.P. (you state).
A.Pal (you need).


Judicial Magistrate
1st Class, Tezpur


One Md. Atiullah lodged an FIR/EXT 1 before the O/C DHEKIAJULI PS alleging that on 23.04.10 at about 7.30 pm, the accused Bhola Chauhan had entered into his house, slapped his daughter Sahjahan Khatun and when his wife Sayera khatun wanted to save his daughter, his wife was assaulted by 'lathi' by the accused.

Based on the FIR, DHEKIAJULI P/S CASE NO 138/10 U/S 448/323/325 IPC was registered and after investigation, c/s was submitted against the accused u/s 323/354 IPC.

Copies were furnished. Substance of accusation u/s 323/354 IPC was explained to the accused. He pleaded not guilty and claimed to be tried. Prosecution adduced evidence. S/D was recorded. Defence did not adduce evidence. Arguments were heard.

POINT FOR DETERMINATION:

1. Whether the accused on 23.04.10 at around 7.30 pm had voluntarily caused hurt to the victims and had assaulted /used criminal force on the victims with intent to outrage their modesty?


Judicial Magistrate
Ist Class, Tezpur

DECISION AND REASONS:

Out of the examined pws , I find that Amrit Chouhan/pw 3 had stated that he heard that accused had assaulted wife of informant. He also could not say from where he derived the information. His evidence is hearsay and being inadmissible cannot be acted upon. Similarly Sirati Chouhan/pw 4 is also a reported witness. She stated that she had heard about a 'KAJIA' (quarrel). Her evidence also cannot be acted upon.

Now coming to other pws, I find that Lili Gour/pw5 has not implicated the accused in any manner. Horen Baishya/ pw 6 stated that daughter of Atiullah informed him that accused had assaulted Atiullah's wife. But daughter of Atiullah examined as pw2 never stated that she informed pw6 about the incident. Evidence of pw6 is thus also hearsay in nature. So, evidence of pws 3, 4 , 5 and 6 do not help the prosecution case and is discarded.

That leaves me with the evidence of the informant—Atiullah Rain/pw1, victim namely Sahjahan Begum/pw2 and the medical evidence of Dr. Bhaskarjyoti Kakati/pw7.


Judicial Magistrate
Ist Class, Tezpur

Pw1 is the informant. He deposed that he was sick on the d/o and was sleeping. He stated that accused had assaulted his daughter and when his wife interfered she was also assaulted by 'lathi'. He stated that accused had assaulted his daughter by 'lathi' over her eyes and his wife over leg. After this he lodged FIR. As per his version he is an eyewitness.

PW2 stated that accused had slapped her and her mother had been assaulted by 'lathi' by accused over leg. Her father/pw1 had as per her version witnessed the incident.

From the evidence of pw1 and 2, I find that pw1 had stated that accused had assaulted pw2 by 'lathi' over eye. But pw 2 stated that she had been slapped by accused. Evidence of pw1 in this regard is found exaggerated but on account of this exaggeration alone, the entire evidence of pw1 cannot be thrown overboard. The maxim 'FALSUS IN UNO FALSUS IN OMNIBUS' is not applicable in India. The courts have to separate the chaff from the grain. Applying this legal principle, scrutiny of evidence of pw and 2 makes out a case of voluntary causing of hurt. The ocular evidence is supported by medical evidence



Judicial Magistrate
1st Class, Tezpur

vide ext 2 and 3 and through examination of pw7(MO).

The legal position is that if a portion of the evidence is found wanting but the remaining evidence is found sufficient to warrant conviction, then order of conviction can be passed. Voluntary causing of hurt on victims has been proved beyond doubt. It has been vehemently argued that charge has not been proved as one victim has not been examined. The law is that it is quality and not the quantity that counts. So, on the ground of non examination, the other cogent evidence cannot be thrown overboard.

Considering the evidence in its entirety, I hold the accused guilty u/s 323 IPC. He is acquitted of the charge u/s 354 IPC for want of evidence.

There is no evidence that accused was previously convicted. The offence of which has been found guilty(i.e. 323 IPC) does not carry a sentence of more than two years. Considering all aspects, I find no reason not to grant probation.

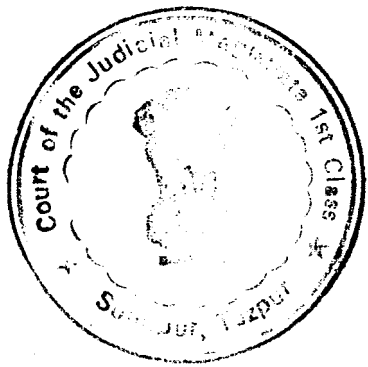


Judicial Magistrate
1st Class, Tezpur

Accordingly, instead of sentencing the accused, I release him on Probation after due admonition.

Bail bonds stand cancelled.

Given under my hand and seal on this the 28th day of February 2013.



A handwritten signature in black ink, consisting of a stylized, cursive script.

JMFC,
SONITPUR
Judicial Magistrate
Ist Class, Tezpur