

Cr 435/17
Raju Bala Baishya
Vs
Sachin Baishya & Others

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. Cr 435/2017 u/s 447/323/294/427/34 IPC

RAJU BALA BAISHYA..... Complainant

-Vs-

SACHIN BAISHYA & OTHERS..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr. Rased Bhuyan.....for the complainant

Mr. Durlav Thakuriafor the accused.

Date of prosecution evidence – 03-04-18, 24-04-18, 19-07-18

Date of argument – 29-08-2018

Date of judgment – 12-09-2018

Judgment

1. Smti Raju Bala Baishya initiated the instant case by filing written complaint before the court on 24/10/17. The complainant's case in brief is that on 18/10/17 the complainant engaged two workers to do some repairing work of her old kitchen room. While the worker were busy doing their work the accused persons forcefully entered into the complainant's premises and caused damage to the tins that were brought by the complainant to do the repairing work which thereby caused her loss of Rs. 5000/- . it is further alleged that all the accused persons used obscene language to her and that the complainant was dragged by her hair by the accused person and was also caused hurt in her body. Hence the case.
2. The complainant was examined under sec 200 CrPC and the witnesses were

examined under section 202 CrPC and then having found prima facie case against the accused persons cognizance was accordingly taken under sec 447/323/294/427/34 IPC against the accused persons Sachin Baishya, Hemanta Baishya, Srimanta Baishya, Kunjalata Baishya, and Rongili Baishya.

3. On receipt of the summons the accused person entered their appearance and were enlarged on bail. The particulars of the offences were explained to the accused to which they pleaded not guilty and claimed to be tried.
4. During trial, the complainant examined 4 witnesses. Defence side did not examine any witness in support of their defence. The accused persons were examined u/s 313 of CrPC to which they denied all the allegations levelled against them.
5. I have heard argument of both sides.

Points For Determination

6. Upon hearing and perusal of the record, I have framed the following points for determination:
 - I. Whether the accused persons on 18/10/17 in furtherance of common intention have committed criminal trespass and thereby committed an offence under section 447 IPC?
 - II. Whether the accused person on same date and place in furtherance of common intention have voluntarily caused hurt to the informant and thereby committed an offence under section 323 IPC?
 - III. Whether the accused person on same date and place in furtherance of common intention committed mischief by causing damage to the tin fencing of the informant and thereby caused loss and damage to the amount of Rs. 5000/- and thereby committed an offence under section 427 IPC?
 - IV. Whether the accused person on same date and place in furtherance of common intention did any obscene act in a public place to the annoyance of the informant and thereby committed an offence under section 294 IPC?

Evidence on Record

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. Pw1 Rajubala Baishya, the complainant of the case deposed in her examination in chief that on the date of occurrence she engaged two workers to do some repairing for her old chali house and the accused persons broke the post and took away the same and sold them as a result of which she suffered loss of Rs. 5000/-. She also stated that accused Srimanta Baishya dragged her and pulled her out of her house and slapped her. The accused person Rangili Baishya and Kunjalata Baishya instigated the other accused. She further stated that the accused Srimanta Baishya had also cut the linter of her house roof.

In her cross examination she stated that the accused sachin, Srimanta and Hemata are her brother in law and Kunjalata is her mother in law and Rangili is her sister in law. She admitted that she filed the complaint after 4-5 days of the incident and that she has not mentioned anything about the reason of the delay caused. She denied that she has not mentioned in her complaint petition that Sachin has dragged her and Srimanta has slapped her. She stated that during the lifetime of her husband their property got divided among them and no altercation took place among them with regard to the property share. She admitted that after the death of her husband she demanded more share in the property. She also admitted that Rampur Women committee came and settled their matter with regard to the property share. She denied that her chali house is in the road and that Srimanta had obstructed her while she built the chali house in that road. She denied that when Srimanta obstructed the workers took away the post. She further stated that no neighbor was present at the time of occurrence. She admitted that Hemanta and Sachin Baishya are government service holder and they work far away from home but she denied that these two accused were not present at the time of occurrence. She also admitted that Rangili baishya is also a working lady and she goes to work in the morning itself. She denied that Rangili and Kunjalata to be present at the time of occurrence.

9. PW 2 Sri Ram Das deposed in his evidence that RajuBAla had called him to do some repairing work and that another worker was also engaged along with him. He stated that the chali house was almost done then Srimanta came and asked them to pull out the post and he did so and then they left.

In his cross examination he stated that the accused person and the complainant are

from same family and that he o the date of occurrence came to complainant's house as he was called by the complainant to do the repairing work.

10. Pw 3 Kala Das @ Moujadar Das deposed in his evidence that Rajubala had called him to do some repairing of her chali house work and that another worker was also engaged along with him. He stated that they built four posts and in the meantime one Fesa came and asked not to build the post and that they pulled out the post as instructed by the said Fesa. He further stated that he do not know the real name of Fesa and that Fesa is the nick name of that person.

In his cross examination he stated that the complainant did not respond when the Fesa asked them to pull out the post.

11. Pw 4 Bikkhita Baishya is the daughter of the complainant. She stated in her evidence that on the date of occurrence her mother Rajubala had engaged two workers to do the repairing of their chali house. While the workers were doing the repair work Sachin Baishya, Srimanta Baishya and Hemanta Baishya came and damaged the tin and also took away the post and while her mother tried to obstruct them Srimanta Baishya beat her mother with bamboo stick and Sachin Baishya dragged her mother by her hair and beat her with his bare hands. She also stated that accused Rangili Baishya and Kunjalata Baishya had abused her mother with obscene languages.

In her cross examination she stated that she is a student of class vii but she did not go to school on the date of occurrence. She stated that the neighbour came to the place of occurrence but none of them restrained the accused persons and that they remain as mere spectator. She also stated that the workers went to home in the evening. She further stated that the accused persons beat her mother for almost 3 hours. She admitted that she has stated the same as she was told.

Judicial Determination

12. On perusal of evidence it is seen that the prosecution side has examined three witnesses along with the complainant. Among them Pw 2 and Pw 3 are the independent witnesses. Pw 1 complained that the accused persons broke the post of her chali house and took away the same and sold them and also that accused Srimanta Baishya dragged her and pulled her out of her house and slapped her while

the accused persons Rongili Baishya and Kunjalata Baishya instigated the other accused. However Pw 2 and Pw 3 who are the independent witnesses whom the complainant hired for the repair work of the chali house only stated that accused Srimanta asked them to pull out the post and they did so. There is no mention of any assault by the accused upon the complainant in the evidence of these two said Pws. Moreover, Pw 4 mentioned that both these pw2 and Pw3 were in their house till the evening. Had it been so the said Pws would have seen the occurrence but the said Pws remained silent about the same.

13. Now let us see whether the evidence of Pw 3 corroborate with the evidence of the complainant that is Pw1. When the evidence of Pw 1 is juxtaposed with that of the Pw 4 many contradictions creep up. Pw 1 alleged that accused Srimanta dragged her and slapper her whereas Pw 4 stated that accused Srimanta beat Pw1 with a *jekoni* (bamboo stick). Pw 4 also exaggerated by saying that accused Sachin Baishya had dragged Pw 1 and beat her with his bare hands. But on perusal of entire evidence of Pw1 no mention of assault by accused Sachin Baishya is found. Moreover, Pw 4 stated that the neighbor gathered near the place of occurrence at the time of incident but Pw 1 stated that nobody was present at the time of occurrence. Thus two opposite version is put forwarded by the two said witnesses. The only corroboration found between the two witnesses is that the accused persons pulled out the post of their house. But this deposition is also found to be inconsistent if we juxtapose the same with the evidence of Pw 2 and pw 3 as the latter mentioned that accused Srimanta only asked them to pull out the post and it was they who did so. Furthermore, Pw 3 deposed that while he pulled out the post the complainant did not obstruct him. Thus from the evidence of Pw 2 and Pw 3 it reveals that the accused person Srimanta Baishya did enter the property occupying by the complainant. But in order to bring home the charge under sec 447 prosecution has also to establish that the accused not merely entered the complainant's property but he entered to commit an offence, intimidate, insult or annoy the complainant which the prosecution failed to do so.
14. Furthermore, complainant had admitted that she filed the case 4-5 days post the date of occurrence but has not mentioned any reason of delay. It is pertinent here to mention that though it is a complaint case filed otherwise than on police report the degree of proof that is required to bring home the charge is same as in police

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registered case. On perusal of entire evidence on record nothing indicates that the alleged offence did take place and also delay in filing of the complaint without explaining the same raises a serious doubt to prosecution case.

15. I therefore find that the prosecution side has miserably failed to establish the guilt of the accused persons. Accordingly the accused persons Sachin Baishya, Hemanta Baishya, Srimanta Baishya, Kunjalata Baishya, Rongili Baishya are held not guilty of the offence punishable under Section 447/323/427/294/34 IPC and accordingly they are acquitted and set at liberty forthwith.
16. The bail bond furnished on behalf of the accused persons shall remain in force for further period of 6 months.

Given under my hand and seal of this court on this 12th day of September, 2018.

Rubina Yasmin
J.M.F.C. Nalbari

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APPENDIX

Prosecution witness:

PW 1 – Rajubala Baishya

PW 2 – Sri Ram Das

PW 3 – Kala Das @ Moujadar Das

PW 4 – Bikkhita Baishya

Defence witness:

Nil

Prosecution Exhibits:

Nil

Defence Exhibits:

Nil

Rubina Yasmin
J.M.F.C. Nalbari