

Gr 800/17
State
Vs
Altab Ali & Another

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. GR 800/2017 u/s 294/341/342/323/427/34 IPC

STATE

-Vs-

ALTAB ALI & ANOTHER..... Accused

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Manika Chakrabartyfor the State.

Mr. Rajdeep Patgiri.....for the accused.

Date of prosecution evidence – 06-03-18, 05-04-18, 21-05-18, 5-7-18, 26-7-18

Date of argument – 18-09-18

Date of judgment – 27-09-18

Judgment

1. Md. Taijuddin Ahmed initiated the instant case by filing written 'ejahar' before the O/C, Nalbari P.S. on 31.05.17. The Prosecution case in brief is that the informant has a cultivated land situating nearby the accused person's house and that the latter's cow and goats keeps trespassing into the informant's cultivated land and destroys his paddy and this often leads to altercation between the parties. It is alleged by the informant that on 28.04.17 at about 2 p.m. when the informant's son Ajiul Ali and Aminul Ali went to the cultivated land the accused persons restrained them and beat them. Aijul Ali somehow managed to escape but the accused persons took Aminul Ali to the former's house and confined him in a post and assaulted

him by slapping, blowing and caused him hurt. Later when Ajiul Ali informed the informant he along with some other people went to the accused person's house and rescued Aminul from the cage of the accused person. It is also alleged that the accused person also caused damage to the motor cycle and one kirloskar water machine of the victim. Hence the ejahar.

2. On receipt of the 'ejahar', police has registered the case as Nalbari P.S. case No. 363/17 u/s 120B/294/341/342/325/427/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused persons Mafiz Ali and Altab Ali u/s 294/341/342/323/427/34 IPC.
3. During trial, the accused persons entered appearance and were allowed to go on bail. Relevant copies of the documents of the case was furnished to them u/s 207 CrPC. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 294/341/342/323/427/34 IPC. The particulars of the offences were explained to the accused to which they pleaded not guilty and claimed to be tried
4. Prosecution in support of the case examined 7 witnesses. Defence side did not examine any witness in support of their defence. The accused person Altab Ali was examined u/s 313 of CrPC to which he denied all allegations levelled against him. However, examination of the accused person Mafiz Ali was dispensed with as no incriminating materials were found against him.
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:
 - a. Whether the accused persons on 28.05.17 at about 2 p.m. in furtherance of common intention did any obscene act in any public place to the annoyance of the informant and thereby committed an offence punishable under section 294 IPC?
 - b. Whether the accused person on same date, time and place in

furtherance of common intention has wrongfully restrained the informant's son and thereby committed an offence punishable under section 341 IPC?

- c. Whether the accused person on same date, time and place in furtherance of common intention has wrongfully confined the informant's son and thereby committed an offence punishable under section 342 IPC?
- d. Whether the accused persons on same date, time and place in furtherance of common intention has voluntarily caused hurt to the victim and thereby committed an offence punishable under section 323 IPC?
- e. Whether the accused person on same date, time and place in furtherance of common intention has committed mischief and thereby caused loss or damage to the amount of fifty rupees or upwards and thereby committed an offence punishable under section 427 IPC?

Evidence on Record

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. Pw 1 Tajuddin Ahmed deposed in his examination in chief that he has a cultivated land situating nearby the accused person's house and that the latter's cow and goats keeps trespassing into his cultivated land and destroys his paddy. On the date of occurrence his son Aijul Ali and Aminul Ali saw that accused person's cow was grazing in their land and so Aminul beat the cow. In retaliation accused person Altab Ali took Aminul to his house and beat him while confining him. He stated that when he was informed about the same he went there and saw Aminul was kept in confinement. He further stated that when he tried to rescue his son the accused Mafiz's son have given him a blow in his head. Later he rescued his son. He also stated that one of his water machines was thrown in a pond however he did not see as to who did the same. He then took Aminul to Kamarkusi medical for his treatment.

9. In his cross examination he stated that he filed the ejahar two days after the occurrence. He stated that delay caused due to society meet. He denied that he has not told to the I/O that the accused person has beaten his son. He also denied the suggestion that as his son caused accident to the accused so the village people confined his son.
10. Pw 2 Aminul Ali deposed in his examination in chief that on the date of occurrence while he and his brother Ajiul Ali was going towards their pond in their bike accused Altab Ali restrained his bike and gave him fist blow. He stated that accused was wearing ring in his finger and gave him blow on his face. Later he took him to his house and confined him with a post and assaulted him with his bare hand. His family members Hajrat Ali, his father Tajjuddin, Kapil Ali and Mobarak Ali came for his rescue after they heard of the same. When they came fir rescue Altab and his father came with da and axe to attack them. They somehow managed to rescue him and took him to Kamarkusi medical for treatment.
11. In his cross examination he stated that he denied that he did not state before the I/O that the accused Altab Ali had given him blow and slapped him. He stated that very often he and Altab had an altercation with regard to the cow graze in their field. He denied all the suggestions put forwarded by the defence side.
12. Pw 3 Ajiul Ali deposed in his examination in chief that on the date of occurrence he and his brother Aminul Ali was going to their land and when they reached near the accused person's house the accused Altab Ali gave blow to Aminul's head and face. Later he took Aminul to his house and confined him with a post. He further stated that Altab was wearing a ring and gave his brother a blow on his face with the fist in which he was wearing ring. He got hurt on his face and chest. His uncle Hajrat Ali, his father Tajjuddin and Mobarak Ali came for his rescue after they heard of the same. When they came for rescue Altab and his father attacked them. They somehow managed to rescue him and took him to Kamarkusi medical for treatment. Later his father filed the ejahar.
13. In his cross examination denied that he did not state before the I/O that the accused Altab Ali had given his brother blow and slapped him. He stated that very often he and Altab had an altercation with regard to the

cow graze in their field. He stated that the occurrence took place in front of him.

14. Pw 4 Kapil Ali deposed in his examination in chief that he was not present at the time of occurrence. He stated that the accused person Altab Ali took one of the sons of Tajuddin and assaulted him by keeping him in confinement. However when he went to accused persons' house he did not see any injury upon the victim. But he has heard that Altab Ali has beaten him. He further stated that police has seized before him the water machine and he identified his signature as ex 2 (2).
15. In his cross examination he stated that he was far away from the place of occurrence. He also do not know as to how the machine got inside the pond nor has he seen the occurrence himself.
16. Pw 5 Mobarak Ali deposed in his examination in chief that on the date of occurrence his brother Ajiul and Aminul were going towards their land to feed the laborer in their bike the accused person Altab beat his brother Aminul. He then took him to his house and kept him in confinement. Ajiul somehow escaped and informed their family. Later when he and others went to rescue Aminul the accused persons came to attack them but did not beat them. He stated that Altab had beaten Aminul. Later Aminul was taken to Kamarkuchi medical for treatment.
17. In his cross examination he stated that almost 50 people gathered in accused person's house. He stated that after they went no fight took place. He stated that he heard from his brother victim that Altab Ali took him to his house. He stated that he was at home when the occurrence took place. He denied all the allegations put forwarded by the defence.
18. Pw 6 Cilima Bibi deposed in his examination in chief that on the date of occurrence when Aminul was going towards his land in his bike Mafiz's cow which was grazing nearby got hit with the bike and the cow got untied and it then went to their field and destroyed their paddy. Aminul then beat the cow. The witness was declared hostile by the Learned APP and prayed to cross examine the said witness. Prayer was allowed. During cross examination by the Prosecution side the witness admitted that she has stated before the i/o that on the date of occurrence when Aminul saw the cow grazing in their field he beat it and when later on he came to the land

the accused person verbally abused him and took him to his house and asked for the treatment of the cow. The next day she heard that accused persons have thrown the water machine of the informant into the water.

19. In her cross examination by the defence she stated that the accused person did not abuse the victim. She also stated that no fight took place.

20. Pw 7 ASI Nirodh Sarma is the investigating officer of this case. He stated in his evidence that on 31.5.17 an ejahar was field before the Kamarkuchi outpost by Taijuddin Ahmed. A GD entry no. 588/17 was made and the same was sent to the Nalbari P.S. The O/c registered the case and entrusted him with the task of investigation. He went to Place of occurrence on 31/5/17 and prepared a sketch map and recorded the statement of the witnesses. On completion of investigation he filed the charge sheet against Mafiz Ali and Altab Ali under sec 294/341/342/323/427/34 IPC. The sketch map is marked as Ex 3. Charge sheet is marked as ex 4.

21. In his cross examination he stated that complainant though identified the machine but he did not collect the document relating to it. Four of the witnesses are the sons of the informant. The occurrence took place in connection with the rice cultivation but he did not investigate the same point. He denied that fight actually did not take place and he field the charge sheet without proper investigation.

Judicial Determination

22. Now on going through the entire evidence on record it transpires that the informant Pw 1 has not seen the occurrence. However he stated that after having heard of the occurrence he and some other person went to rescue his son Aminul and when he reached the accused person's house he saw his son was confined with a post. The defence could not elicit anything adverse which could corrode the trustworthiness of the testimony of Pw 1. Moreover, defence put a suggestion that the accused was kept in confinement as the victim had hit the accused person with his bike. This indicate that the defence has to some extent admitted that the victim Aminul was kept in confinement. But so far as the hitting through bike is concerned the defence has failed to put forward any material to back up this suggestion.

23. Pw 2 Aminul Ali who is the victim himself stated that accused Altab gave him fist blow and that the accused was wearing ring in his finger and gave him blow on his face. Later he took him to his house and confined him with a post and assaulted him with his bare hand. Pw 3 Aijul Ali who happens to be the brother of the victim and also was present at the place of occurrence also corroborated the version of Pw 2. Even the fact that the accused was wearing ring in his finger and assaulted the victim with that fist were mentioned by both the said witnesses. On perusal of the cross examination of both the Pw 2 and 3 it transpires that the defence has failed to elicit any material which could shake the credibility of the witnesses except the suggestion that both the Pws have not stated before the I/O that the accused person has given fist blow or slapped the victim. Now let us see whether this suggestion made by the defence has been confronted with that of the I/O. On perusal of the evidence of I/O it reveals that the defence have not confronted with the investigating officer with this point to clear it up but has restrained from doing so. It is well understood that making mere suggestions would never suffice. Thus the defence has failed to rebut the testimony of Pw 2 and Pw 3.

24. The fact that Pw 3 Aijul Ali was present at the place of occurrence is not in dispute. Further perusal of the statement of the accused under section 313 Crpc it transpires that the accused has indeed meet the victim on the date of occurrence and he has also admitted that as victim Aminul had beaten his cow he took him to his house for treatment of the cow. Thus the presence of the victim is also not in dispute and that both the victim and the accused had a confrontation between them is also clear. Now while accused denied beating the victim the evidence of Pw 2 and Pw 3 suggests otherwise.

25. Now the defence here at this point argued that the witnesses examined by the prosecution side are the sons of the informant and that they are interested witnesses. The defence side argued that it is natural for an interested witness to depose in favour of the prosecution.

26. At his juncture let me point out that in the case of **State of Rajasthan vs Smt. Kalki & Anr.** reported in **(1981) 2 SCC 752** wherein it was held by the Hon'ble Supreme Court that:

"A witness may be called interested only when he or she derives some benefit from the result of the litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested".

27. It is also held by the Hon'ble Supreme court in **Masalti & others v State of U.P. reported in AIR 1965 SC 202** that witnesses should not be discarded only on the ground that it is evidence of partisan or interested witnesses.
28. Thus from the above two judgment it becomes clear that the testimony of a witness could not be discarded only on the ground that he belongs to the victim. Every case has to be decided on the basis of its own facts and circumstances. Moreover, in the instant case it was only Pw 3 who went with the victim to the place of occurrence and has also corroborated the version of Pw 2 to a great extent.
29. Pw 1 2 3 and 5 all of them has also deposed that when they went to the accused persons house to rescue the victim the accused persons tried to attack them. Though there has been minor discrepancies while narrating the prosecution story but core of their version as to occurrence remains consistent.
30. Now defence also argued that the medical officer has not been called by the prosecution side. However, on perusal of the case record it is seen that the injury report of the victim is available with the record. As the report is forwarded with the police report under section 173 Crpc are public documents hence the proof can be ensured by the production of the originals or certified copy and as the report bears the sign and seal of the Medical officer hence they are admissible in evidence. The injury report reveals that the no visible injury was found.
31. Now let me concede that the report of Medical officer is just an opinion and is not a substantive evidence and the proof of a case depends on the substantive evidence led by the witnesses with regard to the facts in issue or relevant to the fact in issue. Reverting back to this case Pw 2 and Pw 3 categorically stated that the accused person slapped and gave him blow with his bare hand and it is very likely that mark of slap or blow might not

remain on face.

32. Furthermore, the statement of Pw 4 that he did not see the occurrence but has heard that Altab has beaten Aminul and the statement made by Pw 5 that Pw 3 informed him about the occurrence and that he also heard from the victim that he was taken to the accused person's house forms part of the same transaction which becomes admissible under section 6 of the Indian Evidence Act. Thus there has been unbroken chain in the version of the prosecution evidence.
33. On further perusal it is seen that Pw 6 Cilima Bibi was turned hostile and was allowed to cross examine by the prosecution side. However she admitted in her cross that when Aminul came to the land the accused person verbally abused him and took him to his house and asked for the treatment of the cow. Again she denied when she was cross examined by the defence that the accused person verbally abused the victim. Perusal of the evidence of the said witness it seemed the witness is too confused and has often changed her statement. Hence in presence of other reliable witnesses the testimony of Pw 5 becomes tainted.
34. The defence has also taken the plea that there has been delay in filing the ejahar. On perusal of the evidence of I/O it reveals that the occurrence took place on 28.5.17 and the ejahar was filed on 31.5.17 before the Kamarkuchi Outpost and the in charge made a GD entry no. 588/17 and sent the same for registration before the O/C Nalbari. Moreover, Pw 1 who is the informant has stated that there has been delay as they were awaiting for the settlement through society meet. Thus mere delay does not affect the entire prosecution case when it has otherwise been established beyond reasonable doubt by the testimony of the witnesses.
35. Now when there is direct evidence and the defence has failed to bring out any adverse material to prove the credibility or trustworthiness of the prosecution witnesses and that defence remained silent when they were given ample opportunity to bring out the adverse material by examining the I/O thus I am of the opinion that the plea taken by the defence side is not supported by any cogent evidence and just a mere suggestion to shift the burden to the prosecution.
36. Thus in the light of the evidence adduced on record it is my considered

opinion that the prosecution has been able to prove the charges under section 342/323 IPC against the accused Altab Ali beyond reasonable doubt and is convicted under the said section. However, no incriminating materials could be established against accused Mafiz Ali. Furthermore, there is no iota of evidence against the accused under section 294/341/427 IPC.

Probation of Offender's Act

37. I have considered the provisions of Probation of Offender's Act, 1958. Having regard to the circumstances of the case the manner in which the offence were committed by them, some sort of punishment needs to be imposed to deter them from committing similar offences in future and deter others as well from indulging himself in such kind of offences and therefore the benefits of the provisions of the aforesaid Act cannot be extended to the convicted person.

Sentence Hearing

38. Heard the convicted person Altab Ali on the point of sentence. He has expressed remorse and prayed for leniency. I have also considered the matter of sentence to be imposed upon the convict. Both the Sections 342 and 323 IPC prescribes punishment of imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

39. Considering the age of the accused Altab Ali and the fact that no grave injury was found upon the victim I am of the considered opinion that imposition of fine would meet the ends of justice. Hence accused Altab Ali is convicted u/s 342 IPC and is sentenced to pay a fine of Rs. 700/- and in default to undergo Simple imprisonment for one month and also to pay a fine of Rs. 700/- for the offence committed under section 323 IPC and in default to undergo another SI for one month.

40. Considering all I find it proper to pass the following order:

Gr 800/17
State
Vs
Altab Ali & Another

Order

41. The prosecution has been able to prove the guilt of the accused person Altab Ali beyond reasonable doubt.
42. **The accused person Altab Ali shall pay fine of Rs 700/- for the offence under sec 342 IPC in default to undergo Simple imprisonment for one month. He shall also pay Rs. 700/- for the offence under sec 323 IPC in default to undergo Simple imprisonment for one month.**
43. **The accused person Mafiz Ali is acquitted under sec 294/341/342/323/427 IPC and is set at liberty forthwith.**
44. The fine amount if received be deposited to the state exchequer.
45. Their bail bonds furnished are extended for another period of six months as per the provision of section 437 A, Criminal Procedure Code.
46. Let a copy of the judgment be given to the convicted person immediately free of cost. The convicted person is also informed of his right of appeal against the judgment and order of conviction and sentence.
47. The seized material if any be given to the original owner as per due course of law.

Given under my hand and seal of this court on this 27th day of September, 2018.

Rubina Yasmin
J.M.F.C. Nalbari

Gr 800/17
State
Vs
Altab Ali & Another

APPENDIX

Prosecution witness:

PW 1 – Tajuddin Ahmed

PW 2 – Md. Aminul Ali

PW 3 – Md. Ajiul Ali

PW 4 – Kapil Ali

PW 5 – Mobarak Ali

PW 6 – Cilima Bibi

PW 7 – ASI Nirodh Sarma

Defence Witness

Nil

Exhibits:

Ex 1 – ejahar

Ex 1 (1) – Signature of informant

Ex 2 – Seizure list

Ex 2 (1) & 2 (2) – Signature of seizure witnesses

Ex 3 – Sketch Map

Ex 3 (1) – Signature of I/O

Ex 4 – Charge sheet

Ex 4 (1) – Signature of I/O

Rubina Yasmin

J.M.F.C. Nalbari