

**::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::**

**PRESENT : = Sri. K. C. Boro, A.J.S.**

Ref: G. R. Case No. 1549/16

State

-vs-

Barsat Das

S/o- Lt. Subhash Das.

Resident of Sonpur, Ward No.9, Nalbari town

PS Nalbari.

Dist. Nalbari, Assam ..... Accused person.

u/s- 448/294/323 I.P.C.

EVIDENCE RECORDED ON : 18.04.18, 29.05.18, 28.08.18,  
07.12.18, 19.01.19.

ARGUMENTS HEARD ON : 05.07.19.

JUDGMENT DELIVERED ON : 17.07.19.

**ADVOCATES APPEARED :**

For the State : Mr. D. Talukdar, Ld. A.P.P.

For the Accused : Mr. T. Pathak, Ld. Advocate.

**J U D G M E N T**

1. The case of the prosecution, in brief, is that an FIR was filed on 09.10.16 before the O/C of Nalbari P.S by the informant, Junu Rajbongshi by putting thumb impression against accused Barsat Das alleging inter alia that on the said date at around 2 pm, the FIR named accused person criminally trespassed into their dwelling house (rented) and thereafter scolded her husband Basanta Rajbongshi and later on, armed with mirror glass hit her husband and caused injury to his head

and chin and that her husband is presently undergoing treatment at Nalbari SMK Civil Hospital. Hence the case.

2. That on receipt of the ezahar at the P.S, O/C of Nalbari P.S, registered the case as Nalbari P.S Case No.716/16 u/s 448/325/294 I.P.C and started investigation. On completion of investigation the I.O. laid charge-sheet against the accused person namely Barsat Das u/s-448/294/323 IPC vide C.S. No.377/16 dated 26.10.16.

3. In pursuance of the process issued, the accused appeared before the court and on his appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused. Thereupon prima facie case was found u/s-448/294/323 IPC against the accused person and as such substance of accusation of offence u/s-448/294/323 I.P.C was explained to the accused and he was asked whether he would plead guilty of the offence charged or claimed to be tried. He had pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution side examined six number of witnesses. The accused was examined u/s 313 Cr.P.C and his plea is of complete denial. The defence side declined to adduce any evidence.

5. I have heard the argument of both the sides.

### **POINTS FOR DETERMINATION**

I. Whether the accused person on 09.10.16 at about 2 pm, at village Puspakpur, under Nalbari P.S, criminally trespassed into the dwelling house (rented) of informant and thereby committed an offence punishable u/s 448 I.P.C.?

II. Whether the accused person on the aforesaid date, time and place voluntarily caused hurt to the informant's husband Basanta Rajbongshi and thereby committed an offence punishable u/s 323 I.P.C.?

III. Whether the accused person on the aforesaid date, time and place scolded the informant's husband Basanta Rajbongshi using

obscene language in a public place and to the annoyance of others and thereby committed an offence punishable u/s 294 I.P.C.?

**DECISION AND REASONS THEREOF :-**

6. PW 1 - Junu Rajbongshi, informant deposed in her evidence that she had lodged this case against the accused person. PW 1 deposed that about 1½ years ago, one day, at about 1 pm, when she was not present at home and had gone for work, her younger son Rajib Rajbongshi went to call her and as she reached, she saw that her husband Basanta Rajbongshi had sustained injuries in his head and chin and thereafter she took her husband to SMK Civil Hospital, Nalbari. PW 1 further deposed that her husband was admitted in SMK hospital for 4 days. PW 1 deposed that accused person had a desire to marry her daughter Pallabi Rajbonshi and as they denied his proposal, the accused started visiting their house and scolded Pallabi with abusive language. PW 1 deposed that due to said grudge, the accused on the day of occurrence caused injury to her husband by hitting him with glass/ mirror. PW 1 deposed that she has not seen the accused hitting her husband and has only seen his injury. PW 1 deposed that thereafter she had lodged ezahar against the accused person. PW 1 deposed that she has put her thumb impression on the FIR and that police had recorded her statement.

7. PW 1 in her cross revealed that she has not written the FIR by herself and she does not know what was written in the said ezahar. PW 1 revealed that accused Barsat Das did not visit their house on earlier occasion. PW 1 revealed that they stayed in a rented house and nearly 22 household families resided in the same compound and each rented room is adjacent to each other. PW.1 further revealed that they have been staying in their rented house since 6-7 years, but she does not know how many people in total stay there. PW.1 revealed that approximately 60-70 persons stay in their vicinity. PW.1 revealed that she has not witnessed the incident, as at that time she was not present at home. PW.1 also revealed that accused Barsat Das did not know or have any relation with her daughter. PW.1 revealed that accused Barsat

does business with her son. PW 1 revealed that she was not present at home when Barsat Das's family members came to their home with marriage proposal. PW 1 revealed that police did not seize any mirror glass or blood stained clothes of her husband. PW 1 revealed that after 2 weeks of the alleged incident, police had visited the P.O. PW-1 revealed that her husband is a driver by profession. She denied that her husband inebriated condition chased the accused to his residence. She further denied that on the day of the incident accused went to purchase medicine for his mother and then, they assaulted him.

8. PW 2 - Basanta Rajbongshi deposed in his evidence that the informant is his wife and he knows the accused person. PW 2 deposed that around one and half years ago, one day, at about 1 - 1:30 pm, he was watching television with his son Rajib Rajbongshi at home and the said TV is opposite to their door and the door was behind him. PW 2 deposed that accused first entered their house and scolded him and thereafter armed with a mirror/glass hit him and caused severe injury to his head and chin. PW 2 deposed that after the said assault, he fell down beside the door and later on, his wife took him to hospital and he was admitted there for 4 days and thereafter his wife lodged ezahar against the accused person. PW 2 deposed that accused wanted to marry his daughter Pallabi Rajbongshi, but they refused his proposal. PW 2 deposed that he took away his daughter Pallabi to their native house as the accused started visiting their house regularly. PW 2 deposed that the accused had assaulted him due to the said fact. PW 2 deposed that police had recorded his statement.

9. PW 2 in his cross revealed that he was staying in that area for over 7 years and the alleged incident occurred in his house. PW 2 revealed that the accused on earlier occasion visited their house and abused his daughter and that he had not lodged FIR in this regard. He denied that accused used to do business along with his son. PW 2 revealed that in and around themselves, there are 15-20 rented families and around 40-50 persons stayed there. PW.2 revealed that on the day of incident, there were 2 - 3 women in their compound. PW 2 revealed that police had not seized broken glass. He denied that prior to 2-3 days ago, he inebriated condition chased the accused. He

further denied that on the day of the incident, he along with 10-12 persons pulled the accused to his residence while he went to purchase medicine for his mother. He further denied that prior to this incident, he assaulted the accused in the Tempo stand. He also denied that accused came to their residence with a marriage proposal. PW.2 revealed that the incident occurred inside their house. He denied that while he was pulling the accused, there arose an scuffle. Police visited P.O after 2 days and when police visited their house, he was not in hospital.

10. PW.3 - Mamoni Seal deposed in her evidence that she knows both the informant and the accused person and that around 2 years ago, she heard from co-villagers that accused had hit informant's husband with glass and thereafter Basanta was taken to hospital. PW 3 deposed that accused Barsat Das wanted to marry informant's daughter, but as they refused his proposal, the accused assaulted Basanta.

11. PW.3 in her cross revealed that she has not witnessed the said incident by herself and has narrated the same from overhearing other people.

12. PW 4 - Arpana Das deposed in her evidence that she knows both the informant and the accused person and that the incident occurred about one and a half years ago. PW.4 deposed that at the time of incident she was at her home. PW 4 deposed that accused used to visit informant's house prior to the said incident. PW 4 deposed that upon hearing commotion, she came out of her house and saw that both Basanta and Barsat were blood stained and later Basanta was taken to hospital and at that time the accused fled away from P.O. PW.4 deposed that she does not know why the assault took place. PW.4 deposed that police had recorded her statement.

13. PW 4 in her cross revealed that accused person loved the daughter of informant and Basanta and around 18-20 persons stayed in the same campus. PW 4 revealed that she did not narrate before police that she saw both accused and Basanta stained with blood after the incident. PW 4 revealed that police had visited the P.O on the day

of occurrence.

14. PW 5 - Dr. Utpal Das is the M.O, and he deposed that on 09.10.16 at about 2:30 pm, he had examined Basanta Rajbongshi vide Nalbari Dist. Emergency registration no. 18170/16 in connection with Nalbari P.S case no. 716/16, where the patient was escorted by police and upon examination, he had found - (i) lacerated injury of size 4 cm x 2 cm in the left occipital region, reddish with irregular border; (ii) lacerated injury of size 3 cm x 2 cm in the chin, reddish with irregular border. The patient was advised CT scan of brain as there was scalp swelling over frontal calvarius with small hyper-dense focus. The said patient was admitted in male ward of SMK civil hospital and diagnosed with soft tissue injury. Opinion - the injury was fresh within 0 - 6 hours and caused by blunt object. Ext 1 is the injury report and Ext 1(1) is his signature.

15. During cross-examination, the M.O revealed that such injuries might be occurred due to dash with hard substance.

16. PW.6 is Ali Kumar Dusad, I.O. He deposed that on 09.10.16, he was working as 2<sup>nd</sup> TSI in Nalbari PS. On that day, at about 6.00 pm, the informant Junu Rajbongshi lodged a written FIR in the Nalbari PS. On receipt of the FIR, the O.C of Nalbari PS registered Nalbari PS Case No.716/16 u/s-448/325/294 IPC and he was given the task of investigation. He recorded the statement of the informant in the police station. He visited the place of occurrence on 10.10.16, drew the sketch map and recorded the statements of witnesses namely Miss Mamani Seal, Miss Gitu Das and Miss Arpana Das. The informant already admitted her husband Basanta Rajbongshi in the SMK Civil Hospital prior to filing the FIR. He searched for the accused, but failed to trace him out and accused was directed to appear in the police station. On 14.10.16, the accused appeared in the police station. He recorded his statements, arrested him and allowed him to go on bail. He recorded the statement of injured Basanta on 25.10.16. He collected the medical report on the same day i.e. on 25.10.16. Upon completion of investigation, he filed charge-sheet against accused Barsat Das u/s-448/294/323 IPC on 26.10.16. Ext.2 is the sketch map

and Ext.2(1) is his signature. Ext.3 is the charge-sheet and Ext.3(1) is his signature.

17. During cross-examination, the I.O revealed that he recorded the statements of the persons who stayed on rent. Except the tenants, he did not record the statements of the neighbours. He recorded the statements of victim Basanta. He stated before him that he was admitted in hospital from 09.10.16 to 13.10.16. He did not collect the admission and discharge receipt of the victim from SMK Civil Hospital. He has not seized anything from the place of occurrence. It is not a fact that he has filed the charge-sheet against the accused without getting any material.

18. These are the materials on record.

19. The learned advocate for the accused in his argument submitted that there is none to corroborate the evidence of the victim. Furthermore, he stated that neither prosecution examined Rajib Rajbongshi who is the son of the informant, nor the I.O cited him as witness in this case. The victim Basanta Barman claimed in his evidence that while he was with Rajib, then, accused came and assaulted him by means of a mirror. Hence, this witness is vital witness. Furthermore, he stated that the independent witnesses namely PW.3 and PW.4 have not directly implicated the accused person. As no independent witness has supported the prosecution story, hence, the accused is entitled to get the benefit of doubt. The learned advocate for the accused further submitted that the prosecution has failed to establish the case, hence the accused should be acquitted.

20. Controverting the submissions of the Id. defence counsel, Id. APP argued that the accused person had trespassed into the informant's house and all of a sudden hit the husband of the informant with a glass as the victim had refused the proposal of the accused of marrying the daughter of the victim. He further stated that the Medical report fully corroborated the evidence of the victim. Hence, he vehemently argued that the prosecution has succeeded to prove a case of wrongful trespass and assault against the accused and prayed

before this court to punish the accused.

21. I have carefully perused the evidence on record. Now let us see whether the prosecution has been able to bring home the guilt of the accused person beyond all reasonable doubt.

22. **Discussion u/s-294 IPC**

*Section 294 IPC defines- obscene acts and songs- whoever, to the annoyance of others (i) does any obscene act in any public place, or (ii) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. The obscene act or words used by the accused must cause annoyance. The word annoyance is an important ingredient of this offence, it being associated with mental condition has often to be inferred from proved fact. Moreover, section 294 IPC envisaged when such word or song was used in a public place.*

23. As per the evidence of the victim PW.2 Basanta Rajbongshi, it is seen that on the day of the occurrence, at about 1.00-1.30 pm, at noon, while he and his son Rajib Rajbongshi were enjoying TV, accused came inside their residence and verbally abused him and thereafter, hit him by means of a mirror. The evidence of this witness is silent as to what specific words were used by the accused person during such scolding. In the absence of the words specifically uttered by the accused, court cannot presume that the words used were obscene. Moreover, the incident occurred in the residence of the victim i.e. PW.2. Therefore, as the act as alleged by the victim was not committed in a public place, hence, section 294 IPC is not attracted in this case. Therefore, I find that the prosecution has not been able to prove the guilt of the accused person for committing offence u/s-294 IPC. So, he is acquitted of the offence u/s-294 IPC.

24. Sec.448 IPC states that-

- i) That accused committed criminal trespass.
- ii) That such criminal trespass was committed by entering into

or remaining in a building, tent or vessel.

iii) That such building tent or vessel, was used as a human dwelling or as a place of worship or as a place for the custody of property.

25. Now let us again appreciate the evidence of the star witness of this case i.e. PW.2 Basanta Rajbongshi. He deposed that around one and half years ago at about 1 - 1:30 pm, he was watching television with his son Rajib Rajbongshi at home and the said TV is opposite to their door and the door was behind him. PW 2 deposed that accused first entered their house and scolded him and thereafter armed with a mirror/glass hit him and caused severe injury to his head and chin. PW.4 Arpana Das also stated that accused used to visit the residence of the informant frequently as he loves the daughter of the informant. On the day of the incident, on hearing commotion, this witness came outside and saw that the wearing cloths of victim and accused were stained with blood. I have perused the sketch map, Ext.2. From perusal of Ext.2, it transpires that the residence of PW.4 which is marked as "C" by the I.O is adjacent to the residence of the victim. Hence, I have no hesitation to hold that accused committed trespass into the residence of the victim. Therefore, it is concluded that the prosecution has been able to prove the guilt of the accused for commission of offence u/s-448 IPC.

26. **Discussion u/s-323 IPC**

*Sec 319 I.P.C. states that- Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. To bring home an offence u/s 323 I.P.C., the prosecution is to prove (a) the victim suffered from bodily pain, disease or infirmity (b) that the accused caused the bodily pain (c) that the accused did so intentionally or with the knowledge that in the process hurt would be caused.*

27. Now, let us again come to the evidence of the victim PW.2. He stated that on the day of the incident, while he was watching TV with his son Rajib, accused came, scolded him and thereafter hit him with a mirror/ glass and caused severe injury upon his head and chin.

In this case, the informant is found to be a hearsay witness. She was not present at the PO at the time of the incident. She was informed about the incident by her son Rajib and on coming to her residence, she found that her husband PW.2 had sustained injuries on his head and chin. Thereafter, she took her husband to medical. PW.4 Arpana Das stated in her evidence that on the day of the incident, upon hearing commotion, she came out of her house and saw both Basanta (injured) and Barsat (accused) were stained with blood. Thereafter, Basanta was taken to medical and the accused fled away from the place of occurrence. Regarding the injuries sustained by the victim PW.2, it is seen that PW.1 informant and PW.4 have supported the injury. Now, we come to the evidence of the Medical Officer who examined the victim on the day of the incident. On examination, he found lacerated injury of size 4 cm x 2 cm in the left occipital region, reddish with irregular border and lacerated injury of size 3 cm x 2 cm in the chin, reddish with irregular border. Thus, it appears that the Medical report has fully corroborated the injuries sustained by PW.2. Hence, it is found that the evidence of victim PW.2 is wholly reliable. Next, we come to the evidence of PW.3 Mamani Seal. She is also found to be a hearsay witness. She only heard from co-villagers that accused had hit the informant's husband i.e. PW.2 with glass. PW.6 is the Investigating Officer who is a formal witness.

28. In our case the whole prosecution story is based upon a solitary witness i.e. P.W.2 victim Basanta Rajbongshi. The Hon'ble Supreme Court in the case of Lallu Manjhi and anr vs State of Jharkhand, reported in (2003) 2 SCC 401, held thus:

*the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to circumspect and to look for the*

*corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness.*

29. The Ld. Defence counsel argued that the prosecution did not examine the son of the injured namely Rajib Rajbongshi who was an eye witness to the incident. Hence, he stated that non examination of the son of the injured is fatal to the prosecution side. I am not agreed to the submission of the Ld. Defence counsel as the Medical report has fully corroborated the evidence of the injured. Hence, I find nothing that non examination of the son of the injured would be fatal to the prosecution case.

30. The informant stated further that the accused gave a proposal to marry their daughter, but she and her husband i.e. PW.2 did not accept the proposal of the accused and at this, accused became arrogant and in a fit of grudge, he assaulted the injured. PW.2 also stated the same thing. PW.3 also stated that accused wanted the marry the informant's daughter, but as they refused his proposal, the accused assaulted the injured. From the evidence of PW.2, it is further seen that the accused person had hit the victim PW.2 by means of a mirror and he sustained injuries on his head and chin. PW.4 also saw that the wearing cloths of PW.2 was stained with blood. The medical report Ext.1 has fully supported the injures of the victim. Definitely such a hit which was given on the head of a person by means of a mirror would sustain pain. It may be presumed that if a person is hit on his head and chin, it will be enough to attract section 323 IPC. Hence, I find that the accused person has committed an offence u/s-323 IPC.

31. Marshalling the evidence on record, it is found that the prosecution has not been able to prove the guilt of the accused person for committing offence u/s-294 IPC, so, he is acquitted of the offence u/s-294 IPC.

32. On the other hand, on the basis of the entire evidence on record and taking into account the facts and circumstances of the case, I hold accused Barsat Das guilty of offences u/s-448/323 IPC and hence accused Barsat Das is convicted u/s-448/323 IPC.

33. Accused is heard on the point of sentence. He prayed for the mercy of the court and pleaded to take a lenient view.

34. Accused Barsat had hit PW.2 by means of a mirror while he was enjoying television as a result of which he sustained injuries on his head and chin. At that time, the victim was unarmed. Such offence are on the rise amongst the people now a days. If the accused had any grievance against the victim, he should have approached the appropriate forum for redressal of his grievances, instead he assaulted the victim which led him to sustain simple injury. If the accused person is dealt with leniently, then it will send a wrong message to the society and tend to dilute the efficacy of the judicial delivery system in the minds of the common people. Hence I am not inclined to extend clemency and extend the benefits of probation to accused Barsat Das.

35. **O R D E R**

At the end, the prosecution has failed to prove the guilt of the offence u/s-294 IPC against the accused beyond all reasonable doubt. Hence, accused Barsat Das is acquitted of the offence u/s-294 IPC. On the other hand, the prosecution has been able to bring home the guilt of the accused person namely Barsat Das for committing offences u/s-448/323 IPC. Accordingly, accused Barsat Das is convicted u/s-448/323 IPC and sentenced to pay a fine of Rs.500/- for each offence, i/d of payment of fine, he shall undergo S.I. for 30 days.

36. Fine amount if paid by convict be forwarded to the victim (PW.2) as compensation.

37. Supply a free copy of this judgment to convict Barsat Das and to Ld. District Magistrate, Nalbari.

Given under my hand and seal of the Court on this 17<sup>th</sup> July, 2019.

(Sri. K. C. Boro)  
Chief Judicial Magistrate  
Nalbari

*G.R. Case No. 1549/16*

Dictated and corrected by me

(Sri. K. C. Boro)  
Chief Judicial Magistrate,  
Nalbari

**APPENDIX:**

**Witnesses for the prosecution**

- PW.1 - Junu Rajbongshi (Informant).
- PW.2 - Basanta Rajbongshi,
- P.W.3 - Mamani Seal,
- P.W.4 - Arpana Das,
- P.W.5 - Dr. Utpal Das (M.O),
- P.W.6 - Ali Kumar Dusad (I.O)

**Witnesses for the defence**

None

**Prosecution Exhibits**

- Ext 1 - Injury report,
- Ext 1(1) - Signature of M.O,
- Ext 2 - Sketch map,
- Ext 2(1) - Signature of I.O.,
- Ext 3 - Charge sheet no. 377/16,
- Ext 3(1) - Signature of I.O.

**Defence Exhibits**

None

(Sri. K. C. Boro)  
Chief Judicial Magistrate,  
Nalbari