

Gr 1759/7  
state  
vs  
Samudra choudhury  
Reena Choudhury  
Barnali Choudhury

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS, NALBARI**

**Case No. GR 1759/2017 u/s 294/323 IPC**

**STATE**

**-Vs-**

**SAMUDRA CHOUDHURY**

**REENA CHOUDHURY**

**BARNALI CHOUDHURY..... Accused**

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr Hem Chandra Sarma .....for the State.

Mr. Paban Das.....for the accused.

Date of prosecution evidence – 14-11-18, 03-12-18, 18-12-18, 10-01-19, 10-06-19

Date of argument – 01-07-19

Date of judgment – 16-07-19

**Judgment**

**1.** Smti Taraboti Choudhury initiated the instant case by filing written 'ejahar' before the O/C,

Judgment delivered on 16/7/19

Gr 1759/7

state

vs

Samudra choudhury

Reena Choudhury

Barnali Choudhury

Mukalmua P.S. on 11.11.17. The Prosecution case in brief is that the accused persons often abused them with slang language and that on 24.10.17 at about 7:30 p.m. the accused persons abused her with filthy language and thereafter at 8:30 p.m. when she was about to go to her bedroom from her kitchen room the accused person pelted stones at her as a result of which she got hurt in her back, head and left toe. Hence the ejahar.

**2.** On receipt of the 'ejahar', police has registered the case as Mukalmua P.S. case No. 401/17 u/s 143/294/338 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused persons Samudra Choudhury, Barnali Choudhury and Reena Choudhury u/s 294/323 IPC.

**3.** During trial, the accused persons entered appearance and were allowed to go on bail. Relevant copies of the documents of the case were 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 294/323/34 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 as many as 6 witnesses. Defence side did not examine any witness in support of their defence. Examination of the accused persons u/s 313 of CrPC was taken in which they denied all 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:

- Whether the accused persons on 24.10.17 at about 7:30 p.m. in furtherance of common intention has voluntarily caused hurt to the victim and thereby committed an offence punishable under section 323 IPC?
- Whether the accused persons on same date, time and place in furtherance of common intention did any obscene act in any public place to the annoyance of the informant/victim and thereby committed an offence punishable under section 294 IPC?

### **Discussion Decisions and Reasons Thereof:**

**1.** I have carefully gone through the entire evidence on record and materials placed before me.

**2.** Pw 1 Taraboti Choudhury who is the informant herself deposed in her evidence that on the

date of occurrence when she was going towards her bedroom from her kitchen the accused persons pelted stones at her as a result of which she got hurt in her back head and toe. Later she went to Mukalmua medical for treatment.

**3.** During her cross examination she admitted that accused has also filed a cross case against them and the village people suggested both the parties to withdraw the case. She admitted that the accused person has withdrawn their case. She further stated that she did her medical check up on 21.11.17. She further stated that there is fencing between her and accused person's house and that the accused person's house cannot be seen from hers.

**4.** Pw 2 Sankar Choudhury deposed in her evidence that the occurrence took place on 24.10.17 at about 8:30 p.m. He stated that he was out side and when he came back home he learnt that accused persons have pelted stones at their house and when her mother came out it got hit with her person as a result of which she got hurt in her head, shoulder and leg. He further stated that he took his mother to police station and the same day she was taken to hospital. Later she filed the ejahar.

**5.** During his cross examination he admitted that accused has also filed a cross case against them and the village people suggested both the parties to withdraw the case. He admitted that the accused person has withdrawn their case.

**6.** Pw 3 Jagabandhu Choudhury deposed in his evidence that informant is his wife. On 24.10.17 at about 8:30 p.m. an altercation took place between the accused persons and his wife and later all accused persons pelted stones at her as a result she got hurt in her back and chest. He stated that they went to police station and from there she was taken to medical

**7.** During his cross examination he stated that the ejahar was filed on 10.11.17 and that her wife did medical check up on 21.11.17. He admitted that accused has also filed a cross case against them and the village people suggested both the parties to withdraw the case. He admitted that the accused person has withdrawn their case.

**8.** Pw 4 Dalim Choudhury stated that he has heard that both parties had an altercation between them and that he has heard nothing more than that.

**9.** Pw 5 Dipankar Baishya stated that ver often altercation takes place between the parties but he has no knowledge about the occurrence.

**10.** Pw ASI Bisheswar Choudhury deposed in his evidence that on 10/11/17 while he was in his duty an ejahar was filed in Doulasal Op. A GD entry no. 176 dated 10.11.17 was made. The i/c entrusted him with the task of investigation. He then went to PO and prepared the sketch map and recorded the statement of the witnesses. Po is informant's courtyard. The victim did her medical on her own. On completion of investigation he has submitted charge sheet against accused

Gr 1759/7

state

vs

Samudra choudhury

Reena Choudhury

Barnali Choudhury

persons u/s 294/323 IPC. Ex 2 is the sketch map. Ex 2 (1) is my signature. Ex 3 is Charge sheet.

Ex 3 (1) is his signature.

**11.** During his cross examination he stated that as per the medical report the injury sustained was day before the collection of report. On 22.11.17 he collected the report. He stated that the occurrence took place on 24.10.17.

**12.** On perusal of the entire materials on record it transpires that the out of six witnesses examined by the prosecution side only Pw 4 and 5 are the independent witnesses but they have no knowledge about the alleged occurrence. Other Pw 1 2 and 3 are related witnesses. It is a settled law that conviction can also be based on the evidence of related witnesses provided that the witnesses happened to be present at the place of occurrence naturally and there is corroboration in the version of the said witnesses being free **from any kind of illegality.**

**13.** On perusal of the evidence of Pw 2 it transpires that he was not present at the time of occurrence. He was informed over phone and when he came back he saw his mother was hurt in her head, shoulder and toe. Pw 3 stated that his wife got hurt in her chest and back. Whereas Pw 1 stated that she got hurt in toe and back head. Perusal of the Medical report it is seen that she got hurt over back of shoulder and toe. There is no mention of hurt in chest and back head as mentioned by Pw 3 and Pw 1 respectively. Thus there is contradiction seen with regard to the injury sustained by the victim. Moreover, perusal of evidence of Pw 2 it is seen that he stated that his mother was taken to hospital the same date of occurrence. But when his evidence is juxtaposed with that of I/o it is seen that the victim did her medical on her own on 21.11.17. Pw 3 also stated that she did medical on 21.11.17. Medical report also reveals that she was examined on 21.11.7. whereas the ejahar was filed on 12.11.17. Thus the prosecution has failed to suggest any explanation as to why she was examined so late if she was hurt. Further evidence of I/O also reveals that as per injury report age of injury was a day before the collection of report and that he collected the report on 22.11.17 which indicates that the victim sustained injury on 21.11.7. This further leads to a presumption that victim did her medical on 21.11.17 for an injury sustained on the same day and not the one for which she has filed this case. Furthermore, there has also been delay of 18 days in filing the ejahar without any explanation for the same which creates a doubt to the prosecution case.

**14.** Over and above all these discrepancies it is also seen that Pw 1 has stated during her cross that there is fencing between her and accused person's house and that their house cannot be seen from hers. Therefore it becomes difficult to believe that she had seen the accused person pelting stones at her from their house.

**15.** Therefore, on going through the entire evidence on record it appears that vital witnesses

Gr 1759/7

state

vs

Samudra choudhury

Reena Choudhury

Barnali Choudhury

examined by prosecution side, have not supported the prosecution case. Situated thus, I find that the prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt. Accordingly, accused persons Samudra Choudhury, Reena Choudhury and Barnali Choudhury are not held guilty of the offence punishable u/s 294/323 of IPC and accordingly, they are acquitted and set at liberty forthwith.

**16.** The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

Given under my hand and seal of this court on this 16<sup>th</sup> day of July, 2019.

Rubina Yasmin  
J.M.F.C. Nalbari

## **APPENDIX**

### **Prosecution witness:**

*PW 1 – Taraboti Choudhury*

*PW 2 – Sankar Choudhury*

Gr 1759/7  
state  
vs  
Samudra choudhury  
Reena Choudhury  
Barnali Choudhury

*PW 3 – Jagabandhu Choudhury*

*PW 4 – Dalim Choudhury*

*PW 5 – Dipankar Baishya*

*PW 6 – ASI Biseswar Choudhury*

**Defence Witness**

*Nil*

**Prosecution Exhibits:**

*Exhibit 1 – ejahar*

*Exhibit 2 – Sketch map*

*Exhibit 3 – Charge sheet*

**Defence Exhibits:**

*Nil*

Rubina Yasmin  
J.M.F.C. Nalbari