

Prc 213/18  
state  
vs  
Joon Baishya  
Jamuna Baishya  
Kamal Baishya

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

**Case No. PRC 213/2018 u/s 448/341/323/352/34 IPC**

**STATE**

**-Vs-**

**KAMAL BAISHYA**

**JOON BAISHYA**

**JAMUNA BAISHYA**

**..... Accused**

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

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

Mr. Sonapati Sarma .....for the accused.

Date of prosecution evidence – 12.03.19, 28.03.19, 25.04.19, 16.05.19, 10.06.19

Date of argument – 05.07.19

Date of judgment – 16.07.19

**Judgment**

1. Shri Rupamoni Baishya initiated the instant case by filing written "ejahar" before the O/C, Belsore P.S on 02.11.16. The Prosecution case in brief is that on 18.04.18 at about 2:50 a.m. when she was sleeping along with her husband and son her son complained that his leg was bitten by something to which the informant thought to be a cat. Later somebody pulled out her mosquito net and when she screamed her husband put on the torch light and saw it was accused Joon Baishya. The accused person then snatched away the torch and pushing her husband fled away from her house. The next day they arranged for a village meeting where the accused person did

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not appear so they were suggested to call the accused person on their own. She, her daughter and son went to the accused persons house where the other accused persons Kamal Baishya and Jamuna Baishya beat her children and also torn her clothes. She further alleged that accused Jamuna has dragged her daughter by pulling her hair and also disrobed her pants.

2. On receipt of the "ejahar" police has registered the case as Belsore P.S. case No. 70/18 u/s 448/323/354/427/511/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused persons Joon Baishya u/s 448/511 IPC and Kamal Baishya and Jamuna Baishya u/s 323/352/341/34 IPC.

3. During trial, the accused persons were allowed to go on bail. Relevant copies of the documents were furnished to the accused person u/s 207 CrPC. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person Joon Baishya u/s 448 and against Kamal Baishya and Jamuna Baishya u/s 323/352/341/34 IPC. The particulars of the offences were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of the case examined as many as 7 witnesses. Defence side did not examine any witness in support of their defence. The examination of the accused person u/s 313 was taken in which they denied all allegations levelled against them. Defence declined to adduce evidence on their behalf.

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 person Joon Baishya on 18.04.18 at about 2:50 a.m. committed house trespass and thereby committed an offence punishable under section 448 IPC?
- Whether the accused persons Kamal Baishya and Jamuna Basihya on 21.04.18 at about 6 p.m. in Bongaon under Belsore PS in furtherance of common intention has wrongfully restrained the accused person and thereby committed an offence punishable under section 341 IPC?
- Whether the accused persons on 21.04.18 at about 6 p.m. in Bongaon under Belsore PS in furtherance of common intention has voluntarily caused hurt to the informant 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 has used criminal force or assaulted the victim and thereby committed an offence punishable u/s 352 IPC?

### **Discussions, Decisions and Reasons Thereof**

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

2. Pw 1 Rupamoni Baishya deposed in her evidence that the occurrence took place on 18.4.18 at about 2:30-3 a.m. She stated that she and her husband were sleeping in one room and her son was also sleeping near their bed. Suddenly his son Himangshu complained her that something has bitten his finger. She thought it to be their cat. After 15 mins somebody pulled their mosquito net. When her husband put on the torch light they saw Joon Baishya near their bed. When her husband tried to catch him he snatched the torch and pushing her husband he escaped. Later a village meeting was held but the accused person did not appear so they suggested them to call the accused person. So she, her daughter Barakha Baishya and Himangshu went to accused person's house and asked whether Joon Baishya is present then Jamuna Baishya abused them with filthy language and beat her daughter with her hand and later brought one bamboo and beat them. She further stated that Jamuna Baishya pressed her daughter's neck and hurt her. Later the neighbour came for their rescue and took them to police station and then she filed the ejarah. The police then took them for medical examination.

3. During her cross examination she stated that she has filed the ejarah after three days of the occurrence and that she has not mentioned the reason of delay in ejarah. She stated that Bhabani Baishya and Prasanna Baishya resides near their place. She stated that at the time of occurrence no other people were present. When she saw Joon Baishya she raised hue and cry. Hearing her scream Jagen Baishya, Prasanna Baishya, Tutu Baishya came to their place.

4. Pw 2 Prasanna Baishya deposed in his evidence that on 18.4.18 he heard scream in informant's house. He stays near their house. Hearing her scream he came out and saw Joon Baishya running out of informant's house. He further stated that he and informant's husband followed him till his house and when they reached Joon's house his wife told them that he was not at home and so they came back. He further stated that informant's husband Akan Baishya told him that Joon Baishya was hiding in their house and when he saw him a heated altercation took place between them. Later a village meeting was held but the accused did not appear. So after 2 days Rupa Baishya and her daughter went to call the accused, Kamal Baishya and his sister in law beat

them. Hearing this they went to their house.

5. During his cross he stated that Rupa Baishya is his nearest neighbour. Dharani Baishya stays in between Rupa and his house. At the time of occurrence Dharani Baishya, Jogen Baishya, came to PO. He denied all other suggestions put forwarded by the defence side.

6. Pw 3 Himangshu Baishya deposed in his evidence that on the date of occurrence when he was sleeping in the middle of the night something bite on his leg. When he told her mother she thought it to be their cat. After 10 mins somebody pulled the mosquito net of his mother. When his father put on the torch light they saw Joon Baishya near their bed. When his father tried to catch him he pushed him away and escaped. After hearing their scream their neighbours came to their house. They followed to catch Joon baishya but failed. Later a village meeting was held but the accused person did not appear so they suggested his mother to call the accused person. So his mother and sister went to accused person's house where Jamuna Baishya and Kamal Baishya abused them with filthy language and beat them. So he went there where he too was attacked by them.

7. During his cross examination he stated that they have one room. He stays along with his father and mother. His sister Barakha stays in same boundary but in different house. He further stated that when his mother went to call Joon Baishya he was playing cricket with Dipul Baishya, Nayan Baishya, and Diganta Baishya. At the time of occurrence Jogen Baishya, prasanna Baishya, Dharani Baishya came to their house. He further stated that when his mother went to call Joon Baishya he did not do anything on that day.

8. Pw 4 Dharani Baishya deposed in his evidence that on 18.4.18 at about 2 a.m. He heard hue and cry near their house. He then came out and heard that Joon Baishya entered the house of Rupamoni Baishya. During his cross examination he stated that he has not seen the occurrence.

9. Pw 5 Suren Baishya also deposed to the tune of Pw 4.

10. Pw 6 Dr. Ashok Sarma deposed in his evidence that on 21.04.18 at 9 p.m. while he was in his duty in Belsore Model Hospital he examined Himangshu Baishya and found abrasions over anterior aspect of right thigh measuring size about 0.5cm x .5 cm with fresh bleeding. His opinion is Injury is simple caused by blunt object. On the same day he examined Barakha Baishya and Rupamoni Baishya but he found no external injury on them. Moreover they did not furnish the investigation report so he could not ascertain the nature of injury. Exhibit 2, 3 and 4 are the injury report.

11. During his cross examination he stated that injury mentioned in ex 2 might cause by falling on hard substance.

12. Pw 7 Bhaskar Kalita is the investigating officer of this case. He deposed the regular

procedure for investigation. During his cross he stated that the occurrence took place on 18.4.18 and ejahar was filed on 21.4.18. One ejahar was filed on the basis of two occurrence. He stated that he has not seized anything. He stated that Rupamoni Baishya has not stated before him that she raised hue and cry when she saw Joon Baishya. She has not stated that she went to call the accused person and that she has not stated anything about Kamal Baishya. Pw Himangshu Baishya did not state that he chased Joon Baishya when he saw him in his house. He has not stated that he saw Joon at the edge of her mother's bed. He has not stated that when his mother and he went to call the accused the accused persons have beaten his mother. He stated that Prasanna Baishya has stated before him that he saw Joon Baishya running but he did not state that he was running out of informant's house. He did not state that when the victim went to call the accused the latter beat them.

13. On going through the entire evidence on record it transpires that the informant in her ejahar has mentioned about two occurrence one that happened on 18.04.18 and the other on 21.04.18. Pw 1 stated that on 18.04.18 when she, her husband and so was sleeping her son complained her that something has bitten his leg and that Pw 1 thought it to be a cat. Later someone put off her mosquito net and when her husband put on the torch light she saw it was Joon Baishya. Pw 3 Himangshu Baishya corroborated the version of Pw 1 to this extent. Pw 2 though have not seen the occurrence as it took place inside the informant's room yet he has seen the accused person Joon baishya running out of the informant's house. He stated that when he heard informant's scream he came out and saw Joon Baishya was running. Therefore his statement becomes relevant u/s 6 of Indian Evidence Act forming part of the same transaction. The learned counsel for the accused when put the statement before I/o to confirm as to whether Pw 2 has stated the same in 161 CrPc statement it is seen that he has stated that he saw Joon Baishya running though he did not state that he came out of informant's house. It seems a minor contradiction which do not doubt the prosecution case as it is highly unbelievable for a person to run in the road at 2 a.m. in the late night without any reason. Here presumption can be drawn that the accused came out of informant's house as he was seen inside the room by Pw 1 and Pw 3 and he running afterwards by Pw 2. The learned counsel for the accused argued that informant has mentioned in her ejahar that accused Kamal Baishya and Joon Baishya both were present at her house but during her evidence she deposed nothing about Kamal Baishya which creates a doubt to the prosecution case. On perusal of the ejahar it transpires that informant has mentioned only about Joon Baishya being present inside her house and not Kamal Baishya. Ld. Counsel for the accused also argued that the informant has lodged the ejahar after 3 days of the occurrence but has failed to mention any reason of delay. At this point I would like to point here that all the

three witnesses Pw 1, 2 and 3 have corroborated the fact that the informant arranged a village meeting and perusal of the evidence of Pw 3 reveals that the said meeting was held for three days and on the last date when they were beaten they filed the ejahar. Hence the delay in filing the ejahar cannot be ground for the acquittal of the accused Joon when prosecution has been able to prove the case otherwise. Learned counsel also argued that prosecution has failed to bring the informant's husband who was a vital witness to the incident. It is agreed that prosecution has been at fault in non procuring the attendance of the husband of informant as witness but the prosecution case cannot be brushed aside only at this point when they have been able to bring out the corroboration between the witnesses who happened to be naturally present at the time of occurrence. Moreover, defence side could not elicit anything material from the cross examination of the said witnesses with regard to the fact that accused Joon Baishya committed house trespass by entering into informant's house in order to annoy her. Further on perusal of 313 CrPc it is seen that Joon Baishya simply stated that the allegations are false without giving any explanation on his defence. Thus defence has not been able to bring out any contradiction among the witnesses with regard to section 448 IPC. Thus I found no hesitation to hold that the accused person indeed entered into the house of informant at 2:50 a.m. to annoy her and thus committed the offence of house trespass.

14. With regard to other accused persons being involved in the offence u/s 341/352/323/34 IPC many contradiction is seen among the verison of the witnesses. Perusal of the evidence of Pw 3 it is seen that he has not seen the occurrence and that he came later. Moreover he did not even state that he saw any injury upon the victim. Pw 1 in her ejahar stated that when they went to call the accused Joon Baishya, Jamuna Baishya and Kamal Baishya beat her daughter and son. But during her evidence she stated that accused persons has beaten her and her daughter. She has not mentioned anything about her son which contradicts the statement made in the ejahar. She further stated that the accused person beat them with a bamboo and that Jamuna Baishya pressed her daughter's neck but medical report shows that both she and her daughter had sustained no external injury. If a person is beaten with bamboo it is highly unlikley that the said person would sustain no external injury. Further no other witnesses have stated that victims were beaten by bamboo. Moreover Pw 1 stated that both her son and daughter went with her. But Pw 3 stated that he went later after having heard that his mother was beaten. However he only stated that he was attacked but he failed to mention clearly as to how, who and with what he was attacked. Pw 2 did not state about any injury sustained by Pw 3 but medical report suggests that it was Pw 3 who had got simple injury. Pw 3 himslef has not stated anything about his injuries. Thus there is contradiction seen between the witnesses with regard to the injuries sustained. Further the

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presence of victim Barasha Baishya also could not be procured by the prosecution side who could have deposed the actual occurrence or atleast could have guided the court to ascertain as to what was actually happened. There is also no iota of evidence which suggests that the victims were wrongfully restrained in any manner.

15. Therefore I am of the opinion that prosecution has not been able to prove the case beyond reasonable doubt against the accused person Kamal Baishya and Jamuna Baishya u/s 341/323/352/34 IPC and hence they are acquitted and set at liberty forthwith.

16. As already discussed that the prosecution has been able to prove the guilt of the accused person Joon Baishya u/s 448 IPC hence he is convicted under the said charge.

17. I have considered the provisions of Probation of Offender's Act, 1958. Having considered the nature and gravity of the offence and that accused person is not a habitual offender and he has not been previously convicted therefore the guilty accused person Joon Baishya is conferred with the beneficial provisions of Probation of offenders Act. I am also of the opinion that if accused person Joon Baishya is released on probation of good conduct it would give him an opportunity to reform himself.

18. Considering all aspects I hereby direct the release of the accused person Joon Baishya forthwith subject to a condition that he shall enter into a bond without surety of Rs 10,000/- to keep peace and good behaviour and not to commit offence for a period of one year failing which he shall be called upon to appear and receive the sentence.

19. Their bail bonds furnished are extended for another period of six months as per the provision of section 437 A, Criminal Procedure Code.

20. Furnish a copy of judgment free of cost to the convict accused person.

21. Send a copy of the judgment to the learned District Magistrate, Nalbari

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

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## **APPENDIX**

### **Prosecution witness:**

*PW 1 – Rupamoni Baishya*  
*PW 2 – Prasanna Baishya*  
*PW 3 – Himangshu Baishya*  
*PW 4 – Dharani Baishya*  
*PW 5 – Suren Baishya*  
*PW 6 – Dr. Ashok Sarma*  
*Pw 7 – SI Bhaskar Kalita*

### **Defence witness:**

*Nil*

### **Exhibits:**

*Ex 1 – Ejahar*  
*Ex 2, 3 and 4 – Injury Report*  
*Ex 5 – Sketch map*  
*Ex 6 – Charge sheet*

Rubina Yasmin  
J.M.F.C. Nalbari