

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

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

Ref: GR Case No.317/2016

State

-VS-

(i) Rafiqul Islam @ Rafiq Ali

S/o- Md. Halim Uddin.

(ii) Rahima Begum.

W/o- Md. Rafiqul Islam.

Both of them are resident of

Village- Namati.

PS- Ghograpar

Dist. Nalbari, Assam

..... Accused persons.

u/s-447/323/34 IPC

EVIDENCE RECORDED ON : 18.05.2017, 24.07.2017, 03.10.2017,
11.04.2018, 06.06.2019, 26.11.2019 & 04.01.2020.

ARGUMENT HEARD ON : 27.01.2020.

JUDGMENT DELIVERED ON : 07.02.2020.

ADVOCATES APPEARED :

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

For the Accused : Mr. H. A. Khandakar, Ld. Advocate.

J U D G M E N T

1. The fact of case, in a brief, is that an FIR was filed on 08.03.2016, before the Officer-in-Charge of Ghograpar PS, by informant

Miss Firoja by putting her thumb impression, against the accused persons namely Md. Rafiq Ali, Joyanal Ali, Moinal Ali, Ainal Ali, Md. Kuddush Ali, Md. Nur Hussain and Miss Rahima Begum, alleging, inter-alia that on that very day, i.e. on 08.03.2016, at about 9.00 am, in the morning, accused Rafiq Ali was taking away some betel nuts belonging to informant and when the informant resisted, accused Rafiq by means of a dagger gave a blow upon her head as a result of which she sustained injury. The informant further alleged that the co-accused persons by means of iron rod, lathi assaulted her and her sons namely Jalil Ali and Khalil Ali and daughter Maharbanu. The accused also outraged her modesty by pulling her wearing apparels. Hence, the case.

2. On receiving the case, the Officer-in-Charge of Ghograpar PS registered Ghograpar PS Case No.33/2016 u/s-147/326/323/354 IPC and started investigation. On completion of investigation, the I.O laid charge-sheet against the accused person namely Rahima Begum u/s-147/323 IPC vide CS No.27/2016 dated 30.04.2016.

3. In pursuance of the process issued, the accused person appeared before the Court and on her appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused person. Thereupon prima facie case was found against the accused person u/s-447/323 IPC and the substance of accusation u/s-447/323 IPC was explained to the accused person and she was asked whether she would plead guilty of the offences charged or claimed to be tried. She had pleaded not guilty and claimed to be tried. Later on, from the evidence of informant, finding materials u/s-447/323 IPC, summons was issued upon Rafiqul Islam. In pursuance of the process issued, the accused person namely Rafiqul Islam 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 person. Thereupon prima facie case was found against the accused person u/s-447/323/34 IPC and the substance of accusation u/s-447/323/34 IPC was explained to the accused person and he was asked whether he would plead guilty of the offences 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 (6) witnesses. 313 Cr.P.C statement of accused persons were of complete denial. The defence side declined to adduce any evidence.

5. I have heard the argument of both the sides. Ld. APP submitted that the prosecution has been successful in proving this case against the accused beyond all reasonable doubt. Refuting the argument of Ld. APP, Ld. Defence counsel strenuously argued that there is no iota of proof that accused persons have committed any offence. Hence, he submitted that accused should be acquitted.

POINTS FOR DETERMINATION

- Whether the accused persons, in furtherance of common intention, on 08.03.2016, at about 9.00 am, in the morning, at village Namati under Ghograpar PS, committed criminal trespass by entering into the homestead of informant Ms. Firoza Khatun and thereby committed an offence punishable u/s 447 IPC ?
- Whether the accused persons, in furtherance of common intention, on 08.03.2016, at about 9.00 am, in the morning, at village Namati under Ghograpar PS, voluntarily caused hurt to informant and her children and thereby committed an offence punishable u/s-323 I.P.C.?

DECISION AND REASONS THEREOF:

6. PW.1 is Musstt. Achia Khatun. She deposed that she knew both the sides. About a year ago, one day, Firoja's husband took away betel nut of accused and therefore, Firoja filed this case. On that day, accused Rahima was not at her residence and she was at her school.

7. Defence declined to cross-examine this witness.

8. PW.2 is Md. Majibur Rahman. He deposed that he knew both the sides. About a year ago, one day, at about 12.00- 1.00 pm, he heard

that there was a quarrel between both the sides due to betel nut.

9. During cross-examination, this witness deposed that accused Rahima is a Teacher.

10. PW.3 is Md. Saiful Islam. He deposed that he knew both the sides. About 1½ years ago, one day, he heard that there was a quarrel between both the sides.

11. Defence declined to cross-examine this witness.

12. PW.4 is Firoja Khatun, informant. She deposed that the incident occurred about two years ago, at her betel nut garden. Accused Rafiq called betel nut buyers on the day of the incident, at about 9.00 am. Then, this witness resisted him. At that time, her husband was not present at her residence. She asked them not to pluck the betel nut until her husband's arrival, but the accused persons did not listen to her. Thereafter, accused Rafiq brought a dao and lathi and gave her a blow as a result of which, her head got fractured. Thereafter, both the accused persons took away his son Jalil to tie him up. Thereafter, her husband came and took her to medical. She had to apply 9 stitches over her head. Police recorded her statements. In her further examination, she deposed that accused persons also assaulted her children.

13. During her cross-examination, this witness deposed that the betel nut trees belong to both the sides. The accused demanded the betel nut trees to be theirs. The betel nut buyers left the place without purchasing the betel nut. She has not stated where she was given the blow. Furthermore, Ld. Defence counsel put many suggestive question to this witness, which she denied.

14. PW.5 is Medical Officer Dr. Trailokya Haloi. He deposed that on 09.03.2016, he was working as SMO at SMK Civil Hospital, Nalbari. On that day, at about 1.00 pm, he examined one Firoja Begum, aged 40 years, female, W/o- Md. Kuddush Ali of village Pub Namati under PS Ghograpar bearing OPD No.20373. The patient attended self. On examination, he found the following injuries:- Stitched wound of size 5 cm x 0.5 cm over occipital region. The patient was referred from

Ghograpar PHC. CT scan of brain was done at Dr. NMB Nursing Home dated 14.04.2016. No abnormality detected. In his opinion:- The mention injury is of simple in type, within 24 hours old and caused by blunt object. Ext-1 is the Medical report and Ext-1(1) is his signature.

15. During cross-examination, this witness deposed that the injury may be caused upon falling. He has not mentioned the colour of the injury. He examined the patient after 24 hours. At first, the patient was admitted in Ghograpar PHC.

16. PW.6 is I.O Tarun Ch. Barman. He deposed that on 08.03.2016, he was working as Sheristadar in Ghograpar PS. On that day, one Ms Firoza filed an FIR before the Ghograpar PS. The Officer-in-charge of Ghograpar PS registered Ghograpar PS Case No.33/2016 u/s-147/326/323/354 IPC and he was endorsed with the task of investigation. He visited the place of occurrence, drew a sketch map and recorded the statements of the witnesses. He sent the injured to medical and later on, collected the medical report of the injured. The accused appeared before him. He recorded their statements. He allowed Rahima Begum to go on bail. He allowed the rest accused to go. Upon completion of investigation, he filed charge-sheet against accused person namely Rahima Begum u/s-147/323 IPC. Ext.2 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, this witness deposed that he allowed Rahima Begum to go on bail as the offences were bailable. He did not find any material against the co-accused and therefore, he recorded their statements and allowed them to go. He did not seize anything. There is land dispute between both the sides. He did not record the statement of the children of the informant. He visited the place of occurrence. He did not find any incriminating material against accused Rafique during his investigation. He recorded the statement of Firoza. She did not state before him that accused Rafique assaulted her by means of lathi. There are residences of Alauddin, Samsuddin and other brothers near the place of occurrence, but he did not record their statements.

18. These are the materials on record.

19. Now, let us see whether the prosecution has been able to bring home the guilt of the accused persons beyond all reasonable doubt. First of all, let us scrutinize the evidence on record. In this case, the prosecution examined three villagers namely PW.1 Achia Khatun, PW.2 Majibar Rahman and PW.3 Saiful Islam, but from their evidences, it appears that they have no knowledge regarding the case. Next we come to the evidence of victim cum informant of this case. PW.4 Firoza Khatun deposed that on the day of the incident, accused Rafiq called betel nut buyers and then, this witness resisted them. At that time, her husband was not present at her residence, so, she asked them not to pluck the betel nut until her husband's arrival, but the accused persons did not listen to her. Thereafter, accused Rafiq brought a dao and lathi and gave her a blow as a result of which, her head got fractured. Thereafter, both the accused persons took away his son Jalil to tie him up. Thereafter, her husband came and took her to medical. She had to apply 9 stitches over her head. She deposed that accused persons also assaulted her children. During her cross-examination, she admitted that there is dispute between both the sides regarding the betel nut trees. The betel nut buyers left the place without purchasing the betel nut. In the instant case, the prosecution has not examined the husband and children of the informant in order to support this case. In the FIR, the informant alleged that the accused persons also assaulted her daughter and two sons and that accused persons outraged her modesty by pulling her cloths, but during her evidence, she is totally silent regarding accused assaulting her children and that accused outraging her modesty. Hence, it appears that the informant has given an exaggerated version of the incident and in absence of any corroborating evidence, I find it hard to base a conviction on the basis of the evidence of the informant. Next witnesses are M.O and I.O who are formal witness.

20. Furthermore, it also transpires from the evidence of the informant that there is land dispute between both the sides. Hence, there is previous enmity between both the sides and informant may have lodged this case falsely in order see the accused persons be

convicted. In the result, it is held that the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubt.

21. In the backdrop of the entire evidence on record and taking into account the facts and circumstances of the case, the accused persons namely Rahima Begum and Rafiqul Islam are acquitted of the offences u/s-447/323/34 IPC and set at liberty forthwith.

22. Bail bonds would stand cancelled after expiry of the appellate period.

23. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 07th day of February, 2020.

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

Dictated and corrected by me

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

APPENDIX:

Witnesses for the prosecution

- PW.1 - Achia Khatun.
- PW.2 - Majibar Rahman.
- PW.3 - Saiful Islam.
- PW.4 - Firoza Khatun, informant.
- PW.5 - Dr. Trailokya Haloi.
- PW.6 - I.O Tarun Ch. Barman.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - Medical Report.
- Ext.2 - Sketch map.
- Ext.3 - Charge-sheet.

Defence Exhibits

None

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