

Gr 1786/17

state

vs

Bhagaban Haloi & Others

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

**Case No. GR 1786/17 u/s 498A IPC**

**STATE**

**-Vs-**

**BHAGABAN HALOI**

**PRADIP HALOI**

**JUNU HALOI**

**BIMALA HALOI..... Accused**

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr Hem Sarmah.....for the State.

Mr. Rased Bhuyan .....for the accused.

Date of prosecution evidence – 2.11.18, 03.01.19, 29.08.19, 21.09.19

Date of argument – 15.02.20

Date of judgment – 29.02.20

**Judgment**

1. Shri Latika Haloi initiated the instant case by filing written 'ejahar' before the O/C, Mukalmua P.S. on 14.11.17. Prosecution case in brief is that, on 14.11.17 at around 6 am while she and her mother Chandralata Haloi were taking morning walk near their home, accused persons carrying bamboo stick in their hands chased them to assault. Seeing this they entered into the house of Samudra Deka. The accused persons illegally entered into the house of Samudra Deka and physically assaulted them and caused grievous hurt to them Hence, this case.

2. On receipt of the 'ejahar', police have registered Mukalmua P.S. case No. 405/17 u/s

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109/447/341/325/354(B)/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused Bhagaban Haloi, Pradip Haloi, Bimala Haloi and Junu Haloi u/s 109/447/341/323/354(B)/34 IPC.

3. During trial, accused persons were allowed to go on bail. Relevant documents of the accused were furnished to them u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused persons u/s 447/341/323/354(B)/34 IPC. Accordingly, charges were framed and read over to the accused persons by my learned predecessor to which the accused persons pleaded not guilty.

4. Prosecution in support of the case examined 6(witnesses) witnesses. Defence side did not examine any witness in support of their claim. Statement of the accused persons is recorded u/s 313 of Cr.P.C. Defence case is of total denial.

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:

- i. Whether the accused persons on 14.11.17 at around 6 am in furtherance of their common intention committed criminal house trespass and thereby committed an offence punishable u/s 447/34 IPC?
- ii. Whether the accused persons on same date and time in furtherance of their common intention wrongfully restrained the informant and her mother and thereby committed an offence punishable u/s 341/34 IPC?
- iii. Whether the accused person on same date and time in furtherance of their common intention voluntarily caused hurt to informant and her mother and thereby committed an offence punishable u/s 323/34 IPC.
- iv. Whether the accused person on same date and time in furtherance of their common intention assaulted the informant to disrobe her and thereby committed an offence punishable u/s 354(B)/34 IPC.

#### **Discussion, Decision And Reasons Thereof:**

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

8. Pw 1 Latika Haloi who is informant of this case deposed in her evidence that she has filed the case against Bhagaban Haloi, Junu Haloi, Pradip and Bimala. She stated that occurrence took place about one year ago at around 6-6.30 am. She stated that on the date of occurrence, her

mother was taking a morning walk and when her mother did not come, she came out looking for her. Then the accused persons carrying bamboo in their hands chased to beat them. She further stated that when she tried to run away, Bhagaban Haloi restrained her and Bimala beat her. She got hurt in her hand though blood did not ooze out from her hand. She further stated that she was assaulted at Samudra Deka's house. She further stated that her mother was attacked by Pradip Haloi, Junu Haloi and Bimala Haloi. She was attacked with bamboo stick. She also stated that her mother was beaten with wooden stick in her hand. Both of them took treatment at Mukalmua PHC and later filed the ejarah. She further stated that her cloths were torn by the accused persons.

9. During her examination, she stated that police station is 3 km away from the place of occurrence. She stated that police has not seized her torn clothes. She further stated that when she ran towards Samudra Deka's house, there were no other persons in the road. She also stated that many people gathered in the place of occurrence after the occurrence. Jinti Haloi and Girija Deka were present in the place of occurrence. She has denied all other suggestion put forwarded by defence.

10. Pw 2 Chandralata Haloi deposed in her evidence that occurrence took place two years ago at around 7 am. On the date of occurrence, she was taking morning walk and daughter also came out looking for her. Then the accused persons restrained their path. When they tried to attacked them they entered into the house of Lilaboti. She stated that the Likaboti' husband name is Samudra Deka. When they entered into the house of Samudra Deka, Bimala, Junu and Pradip has beaten them in their hands with bamboo stick as a result of which she got hurt in her hand. They took treatment at Mukalmua PHC. She further stated that they have also beaten her daughter. Accused Junu Haloi has beaten in her eyes and Pradip Haloi and Bimala Haloi has beaten her with bamboo and has blow given to her.

11. During her cross examination, she stated that there are residence of Nibaran Deka, Niranjana Deka and many other people in between Samudra Deka's house and the place of occurrence. She do not remember as to who was present at the place of occurrence. She also stated that police has not seized anything. She has denied all other suggestions put forwarded by defence.

12. Pw 3 Samudra Deka deposed in his evidence that occurrence took place a year ago at around 6 am. At the time of incident he was at home. Latika and her mother came running towards their home and accused Bimala and Junu were chasing after them. Bimala and Junu beat them with bamboo. He and his wife Lilaboti them calmed down situation. Both parties then went to their homes and the next day police interrogated him.

13. During his cross examination, he stated that when he came out of his house, he

saw Bimala, Junu, Latika and her mother. After the occurrence many people gathered at the place of occurrence. She has denied all other suggestions put forwarded by defence.

14. Pw 4 Lilabati Deka stated in her evidence that occurrence took place 2 years ago at around 6-7 am. At the time of occurrence, she was at home having her morning tea and she heard 'hulla' outside their house and she came out. When she came out she saw Bimal was beating Latika, Junu and Pradip. She was beating Latika's mother with bamboo. She has calmed down the situation. She stated that occurrence took place at their courtyard.

15. During her cross examination, she stated that she and her husband came out together hearing 'hulla' outside their house. When she came out there were no other persons in the place of occurrence. No one came after the occurrence. She stated that police has not seized anything. She declined other suggestions. There was no other village people at the place of occurrence after they coming out. No person came later also. He has not seized any article from his house.

16. Pw 5 Dr. Pankaj Kr. Goswami deposed in his evidence that on 14.11.17 while he was at Mukalmua PHC, he examined Chandralata Haloi and Latika Haloi in connection with Mukalmua PS case No. 405/17. On examination he found tenderness and swelling on left forearm of Chandralata Haloi. According to him, injury was simple caused by blunt object and age of injury was recent.

17. On examination of Latika Haloi, he found tenderness and swelling on left forearm. According to him, injury was simple caused by blunt object and age of injury was recent.

18. During his cross examination, he stated that patients were escorted by none. He examined one after another. He stated that injury may cause by falling on hard substance.

19. Pw 6 Lalit Bharali deposed the regular procedure of investigation in his chief. During his cross examination, he stated that he visited the PO on the same day when he received the ejahar. He did not record statement of Niranjan Deka and Nibaran Deka. He stated that Chandralata Haloi told him that on 14.10.17 while she returning back from morning walk the occurrence took place. He stated that Latika Haloi did not tell him that Pradip Haloi has assaulted her with stick in her hand and got swelling. Latika Haloi did not tell him that Junu, Bimala and Pradip beat her with stick. He also stated that Chandralata Haloi did not tell him that Junu Haloi assaulted in her eyes. She further stated that Chandralata Haloi did not tell him that Latika and her mother came running to house and they were chased by Junu, Bimala, Pradip and did not catch hold of their hands and assaulted them with stick. He also stated that Lilaboti Deka did not tell him that she came out hearing noise and Junu, Bimala and Pradip assaulted Latika's mother.

20. The accused persons were read over and explained with the charges under section

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447/323/341/354B/34 IPC. However on perusal of the entire evidence on record no elements is found to convict the accused persons u/s 354B. Only Pw 1 stated that her clothes were torn while she was assaulted. Mere stating that her clothes were torn is not enough to construe that the accused have assaulted her with the intention to outrage her modesty. Moreover she has not stated the name of any accused persons who did so. Hence the accused person are acquitted u/s 354B IPC.

21. Now with regard to sec 447 IPC all the Pws sated that the occurrence took place in the house of Samudra Haloi. In order to attract sec 447 IPC prosecution need to prove that accused had entered into the property of another with intent to insult or annoy any person in possession of the said property. But in this case though the occurrence took place in Samudra's house which was in his possession but the offence was committed to somebody else. Hence section 447 IPC does not attract to.

22. However with regard to sec 323 IPC there is corroboration found among all the witnesses. Pw 1 stated that on the date of occurrence when she came out to look for her mother who was taking a morning walk accused persons chased them and they entered into the house of Samudra Haloi. She stated that accused Junu Haloi, Pradip Haloi and Bimala Haloi have beaten them with bamboo cudgel. Pw 2 also stated that accused Pradip, Bimala and Junu have beaten her and her daughter in Samudra's house. Moreover Pw 3 and 4 also stated that the occurrence took place in their house. They stated that hearing halla they came out and saw accused Pradip, Junu and Bimala was assaulting Pw 1 and her mother. At this Defence argued that Both Pw 3 and 4 have come to the PO hearing the halla so they have not seen the occurrence but the defence could not elicit from cross examining the said Pws that they have not seen the occurrence. Defence also tried to argue that Pw 1 and Pw 2 have not stated during their 164 CrPC statement the vital thing which touched the core of the prosecution case. Defence while cross examining pw 2 tried to bring out that the occurrence took place on 14.10.17 and the ejahar was filed on 14.11.17. But on perusal of Exhibit 1 it is clear that the occurrence took place on 14.11.17 and the ejahar was also filed on the same day. It is pertinent here to mention that Pw 2 is an aged lady of 70 years and it is quite possible for her to forget the exact date of occurrence. When the ejahar itself proves that the case was filed on the date of occurrence itself mere saying that that the ejahar was filed a month later does not suffice. Moreover defence stated that Pw 1 did not state in her 164 CrPc that she was beaten by the accused with the bamboo stick but on perusal of CD it is seen that she has indeed stated the same. Moreover I/O stated that Pw 2 did not state before police that Pradip assaulted her with stick and Bimala slapped her and Junu assaulted in her eyes. In almost every criminal case it is seen that some lacuna arises in the investigation of the case. It is not possible

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for an Investigating officer to record the statement of all the witnesses in its verbatim. It is quite natural that some kind of contradiction arises in their statement before the police and court. But when such statement does not touch the core of the case it amounts to omission and not contradiction. Pw 2 might not have stated that Pradip assaulted her in her eyes or Junu assaulted her with the stick but she has stated clearly in her 164CrPC and also during evidence that Pradip, Junu and Bimala has assaulted her with the bamboo. Thus the fact of assault and causing hurt is established. Moreover, the injury report clearly shows that tenderness and swelling were found in both the victim's forearm. Further, accused persons were examined u/s 313 CrPC at length but did not raise any plea of alibi nor uttered a single word as to why they have been falsely implicated in this case. Therefore Marshalling of evidence adduced on record I am of the considered opinion that the prosecution has been able to prove the charges under sec 323/34 against the accused persons Junu Haloi, Bimala Haloi and Pradip Haloi.

23. None of the witnesses have mentioned anything about Bhagaban Haloi committing the offence hence he is acquitted u/s 447/323/354B/341/34 IPC.

### **Probation of Offender's Act**

24. I have considered the provisions of Probation and Offender's Act, 1958. The accused person has attacked two victims and one of them is 70 years old woman. Having regard to the circumstances of the case and the manner in which the offence were committed by him, 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**

25. I have heard the convicted persons on the point of sentence. They have expressed remorse and prayed for leniency. I have also considered the matter of sentence to be imposed upon the convict. Section 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.

26. Considering the fact that there is no previous conviction against the accused person 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 persons Junu Haloi, Bimala Haloi and Pradip Haloi are convicted u/s 323 IPC and are sentenced to pay a fine of Rs. 400/- each and in default the defaulter shall undergo SI for one month.

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

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**Order**

28. The prosecution could not prove the case against the accused persons u/s 447/354B/341 IPC against the accused person and hence they are acquitted under the said charges. However, the prosecution has been able to prove the guilt of the accused persons beyond reasonable doubt u/s 323 IPC. **The accused persons Pradip Haloi, Junu Haloi, Bimala Haloi are convicted u/s 323/34 IPC and are sentenced to pay a fine of Rs. 400/- each and in default the defaulter shall undergo Simple imprisonment for one month.**

The fine amount if received be deposited to the state exchequer.

Let a copy of Judgment be given to the convicted person immediately free of cost.

The convicted person is also informed of their right of appeal against the judgment and order of conviction and sentence.

Given under my hand and seal of this court on this 29<sup>th</sup> day of February'

2020

Rubina Yasmin

JMFC Nalbari

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## APPENDIX

### **Prosecution witness:**

Pw 1- Latika Haloi

Pw 2- Chandralata Haloi

Pw 3- Samudra Deka

Pw 4- Lilabati Deka

Pw 5- Dr. Pankaj Kr. Goswami

Pw 6- Lalit Bharali

### **Prosecution Exhibit:**

Ext. 1- Ejahar

Ext. 2- Injury report

Ext. 3- Sketch map

Ext. 4- Charge sheet

### **Defence witness & Exhibits:**

Nil

Rubina Yasmin

JMFC Nalbari