

:: IN THE COURT OF THE SESSIONS JUDGE, NALBARI ::

Present: Smti S. Bhuyan.
Session Judge,
Nalbari.

(Criminal Appeal Case No. 06/15)

**(Appeal against the Judgment & order dated 29/12/14
passed by learned SDJM, Nalbari in connection with GR
Case No. 357/13 u/s- 341/323/447/352/354/34 IPC)**

Shri Karabi Rajbongshi

W/O- Lt. Dipak Rajbongshi

R/O- Vill- Namati

P.S- Nalbari

Dist- Nalbari, Assam..... Informant/ Appellant

-Versus-

1) Shri Jayanta Rajbongshi

D/O- Sri Sadula Rajbongshi

2) Shri Padumi Rajbongshi

D/O- Sri Jayanta Rajbongshi

R/O- Vill- Namati

P.S- Nalbari

Dist- Nalbari, Assam. Accused/ Respondent

3) State of Assam

represented by P.P

For appellant :- None appeared

For Respondent :- Dharendra Nath Barman, PP

Date of argument :- 16/06/2020

Judgment delivered :- 29/06/2020

JUDGMENT

1. The instant appeal has been preferred by informant Karabi Rajbongshi as appellant u/s-372 Cr.P.C for setting aside the impugned judgment and order dated 29/12/2014 passed by the then learned SDJM (S), Nalbari, in connection with G.R. Case No. 357/13 u/s- 341/323/447/352/354/34 IPC by which learned SDJM (S)

Nalbari acquitted the respondent/ accused from the charge of section 341/323/447/352/34 IPC.

2. The brief fact leading to this appeal is that PW-3 Karabi Rajbongshi lodged written ejahar before the OC Nalbari PS at 5.35PM against Jayanta Rajbongshi and Padumi Rajbongshi on 18/03/2013 inter alia stating that at about 9 AM when she was going to the shop of their village, accused persons restrained her in-front of their gate and gave her fist blows. Thereafter, accused persons at about 10 AM again chased her to her house and torn her dress and pulled down her on the earth.

3. On receipt of the ejahar, O/C Nalbari PS registered Nalbari PS Case No. 210/13 u/s 341/323/447/354/34 IPC and started the investigation. I/O of the case after completion of the investigation submitted charge-sheet against the ejahar named accused Jayanta Rajbongshi and Padumi Rajbongshi u/s 341/352/447/354/34 IPC.

4. On receipt of the charge-sheet Learned CJM Nalbari took cognizance and transferred the case to Learned JMFC for trial. Thereafter, the case was transferred to the court of learned SDJM Nalbari for trial disposal. Learned SDJM, Nalbari after receiving the record, on appearance of the accused persons, furnished necessary copies to the accused persons and explained the substance of accusation u/s 341/352/447/354/34 IPC to which accused pleaded not guilty and claimed to be tried. In order to prove the offence against the accused persons, prosecution adduced evidence of 5 numbers of witnesses and exhibited ejahar, medical report, seizure list and charge-sheet.

5. The then learned SDJM Nalbari, after recording statement of accused persons u/s 313 CrPC and hearing the counsel, delivered judgment deciding points for determination in favour of the accused person and passed judgment acquitting the accused Jayanta Rajbongshi and Padumi Rajbongshi from the offence u/s 341/352/447/34 IPC and set at liberty.

6. Now let me find out whether learned trial court rightly appreciate the evidence and material on record and delivered judgment of acquittal or there is grave error in delivering the judgment of acquittal. I have scrutinized the evidence on record. Now let me discuss the evidence on record to arrive at the just decision of the appeal.

7. Being highly aggrieved and dissatisfied with the judgment and order of acquittal delivered by the then Learned SDJM (S) Nalbari, in G.R Case No. 357/13, the informant Karabi Rajbongshi filed this appeal.

8. PW-1 Pranita Rajbongshi, stated the informant is her 'Jaa' (wife of the brother of PW-1's husband) and accused persons is her relatives. She deposed that incident took place at 9.30AM inside the house of informant and accused Akan Rajbongshi, Jayanta Rajbongshi, Padumi Rajbongshi and Arun Rajbongshi assaulted Karabi and she noticed them when they came out from the house of Karabi. She further deposed that she asked what happened and, she was told that four accused persons assaulted Karabi and she found torn blouse of Karabi and Karabi came out crying and report her about the assault. PW-1 further stated that Padumi took one brick to hit Karabi to that she and Dipanjali prevented Padumi. At that time except youngest son of the Karabi, no other persons were present at Karabi's house. In cross she stated that husband of Padumi lodged a case against her husband. Police did not record her statement in this case. She did not make statement to police about Padumi taking a brick to hit Karabi. She noticed accused Jayanta and Padumi and other two on the courtyard of Karabi. She had not witness assaulting incident. She and her daughter Dipanjali came out from her house at the same time. House of Karabi and her is on the same courtyard and house of Padumi is after three houses from her house. She denied that they had assaulted Padumi for which Padumi was hospitalized and was admitted for three days at SMK Civil Hospital. She further denied that they assaulted Padumi on the suspicion that Padumi and husband of

Karabi maintain illicit relationship. She further stated that she had not noticed who torn dress of Karabi. She denied that she made statement before the court in favour of Karabi as accused person lodged a case against her husband.

9. PW-2 Dipanjali Rajbongshi stated that informant is her 'soru maa' (aunty) and accused persons from their village and her dada and bou (brother and sister-in-law). Incident took place in the house of Karabi at 9 AM. Padumi, Jayanta, Akon and Arun came to assault Karabi and all of them assaulted Karabi. Hearing hue and cry she came out from her house and notice all the above four persons Padumi, Jayanta, Akon and Arun give fist blow to Karabi and when she and her mother tried to save Karabi, accused Padumi took one brick to hit Karabi but she could not hit Karabi as they prevented her. In cross she stated that incident took place on 18/03/2013. Pronita is her mother. Fighting incident took place in their path. Purabi came to the house of Karabi to make inquiry about the incident. First incident took place inside the house of Karabi. She further stated in cross that before police she made statement that Padumi assaulted Karabi on road. She again stated that once Karabi was assaulted on road and on other occasion she was assaulted at home. First her mother came and she followed her mother. She did not make statement before the police that Padumi took a brick to hit Karabi. She stated that accused filed one case against her father and other person alleging they assaulted Padumi by dragging her from her house on road and she was hospitalized and was admitted for three days at SMK Civil Hospital.

10. PW-3 Karabi Rajbongshi, is the informant. Her evidence is that accused persons are her relative and incident took place at about 9PM in-front of the house of accused person. At that time she was going to village shop and Arun father of Jayanta and accused person restrained her and wanted to assault her. Out of fear she ran towards her house and all the three accused persons chased her and assault her inside her house and torn her dress. Accused Padumi and Jayanta torn her dress. Thereafter, they left

her house. She stated Pronita Rajbongshi saved her when accused person beat her inside her house. She again stated on the same day at about 2PM all the three accused namely Arun, Jayanta and Padumi came in-front of her house to assault her and at that time scuffle took place between Jayanta, Padumi, her elder sister Nilima and her elder sister's daughter Purabi. She immediately rush to police station lodged ejarah and Ext-1(1) is her signature. In cross stated accused person also lodged one case against them alleging that they have assaulted Padumi. She stated Arun kicked to her but kick does not hit her and kick hit to abdomen of Padumi. They denied that they kicked on the abdomen of Padumi as a result she bled and she was hospitalized. She denied that to safe them from the case filed by accused person they lodged this case. She further denied that she did not mention the name of Arun in the ejarah and before the police. She further stated that she knows Uttam Rajbongshi. She again denied that they alleged and rumored Padumi maintain illicit relationship with Uttam Rajbongshi. She again denied that as Uttam is their relative so despite rumour of the illicit relationship between Padumi and Uttam they went to the house of Padumi in absence of the husband of Padumi and assaulted her.

11. PW-4 Bhaskar Thakuria, is the Medical Officer. His evidence pointed on 18/03/2013 at about 4.55 PM he examined PW-3, the informant Karabi Rajbongshi W/O- Lt. Dipak Rajbongshi R/O- Vill-Namati P.S and Dist. Nalbari, in connection with PS Case No. 210/13, u/s- 341/323/447/354/34 IPC and emergency OPD No. is 6020/13. On examination he did not find any visible external injury. He advised patient to submit her X-ray report but the patient did not submit the same before her. On the same day he also examined Deepjyoti Rajbongshi S/O Dipak Rajbongshi. His emergency OPD No. is 6021/13. On his examination visible external injury found and he advised patient to return back with his X-ray, PAV and chest report for check-up but he did not return back. Ext-2 is the injury report 1 and Ext- 2(1) is his signature. Ext-3 is also the injury report and Ext-3(1) is his signature.

12. PW-5 Hemanta Kr. Das, the I/O of the case on 18/03/2013 was present at police station. Based on the ejahar submitted by Karabi Rajbongshi O/C Nalbari entrusted him with the charge of investigation and taking charge of the investigation he visited the place of occurrence, drawn the sketch map of P.O and recorded the statement of witnesses. He seized torn blouse and not getting accused at his home submitted charge-sheet against the accused showing his name in the absconder column.

13. On scanning of the evidence on record both oral and documentary it has been revealed that in Ext-1 ejahar, informant mentioned name of two accused persons Jayanta Rajbongshi and Padumi Rajbongshi and at that time of adducing the evidence she took the name of three accused persons Arun, Jayanta and Padumi and PW-1 and PW-2 goes one step ahead of her by taking name of another person namely accused Akan Rajbongshi. Ext-1 ejahar pointed that PW-3 lodged ejahar on 18/03/2013 at 5.35 PM where as she stated incident took place at 9 AM. In the ejahar PW-3 informant alleged that accused Jayanta Rajbongshi and Padumi Rajbongshi assault her on the road while she was on her way to village shop and incident took place when she reach in-front of the gate of accused house but at the time of adducing the evidence she made a different version that while she was going to the village shop accused chased her, she ran to her house and they assault her inside her house and all of them left her house and she stated that inside her house where incident of assault took place, her elder sister-in-law Pronita Rajbongshi (PW-1) saved her. But the statement of Pranita Rajbongshi is different from that of PW-3 informant. PW-1 Pronita Rajbongshi stated that she noticed accused when they came out from the house of PW-3 Karabi and Karabi came out from her house at that time. She did not state that she prevent accused Jayanta and Arun when they are beating Karabi inside her house. PW-1 deposed she prevent Padumi when Padumi took one brick to hit Karabi and this incident took place outside the house of PW-3. But this fact of accused Padumi taking a brick to hit Karabi and at that moment Pronita restrain Padumi has

not been stated by PW-3 Karabi. Therefore, story of restraining though made by PW-1 and PW-3, but the detailed fact narrated by them and the story disclosed by them when Pronita came and prevent Padumi are totally different that made their story not believable beyond all reasonable doubt.

14. PW-3 stated Pronita prevent accused persons when accused persons are assaulting with Arun inside her house and story of restraining stated by PW-1 Pronita, PW-2 Dipanjali are that when Padumi took one brick to hit Karabi and this story that accused Padumi took one brick to hit Karabi has not been disclosed by Karabi. Therefore, it is seen that the statement of PW-1, PW-2 and PW-3 is not consistent with one another with regard to the hitting and assaulting of Karabi by the accused persons.

15. PW-3 informant in her ejahar stated first incident took place on road at 9AM and second at 10AM i.e. after one hour inside her house. But while adducing her evidence she did not disclose taking place of assault incident on road at 9 AM. She stated at 9 AM while she was going to shop accused Arun, Jayanta and Padumi restrain, wanted to assault her, she ran towards her house out of fear, accused chased and beat her inside her house and second incident took place at about 2 PM and beating incident is the second incident. This story of second incident on 2 PM not disclosed by the informant while lodging ejahar on 18/03/2013. Therefore, her whole story narrated before the court is not reliable and does not inspire coincidence as she changed her statement and produced different story before the court at the time of incident.

16. The statement of PW-1, PW-2 and PW-3 clearly pointed that accused person lodged one case against them on the allegation of assaulting Padumi by them and PW-1's husband. PW-3 made allegation that she was assaulted by three persons and she went to doctor on same day i.e. on 18/03/2013 but Medical Officer did not found any visible external injury on her body. Had three four mature adult person assaulted one lady vigorously then she would have sustained some kind of injury and at-least swelling, abrasion,

pain and visible external injury but this is not the case with PW-3 when doctor examined her. From the statement of injured PW-3 when scrutinized vigorously, it is seen that though she repeatedly stated that three adults assaulted her but she does not make a single statement of injury sustained by her due to assault nor she disclosed, what bodily pain and on which part of the body she had suffered. PW-3 Karabi Rajbongshi, who is the prosecutrix of this case, did not whisper a single word against the accused persons that accused persons outraged her modesty or tried to outrage her modesty and in Ext-1 ejahar she nowhere mentioned that accused persons torn her dress. This part of her statement forwarded before the court after passing of one year from the incident does not inspire confidence. Therefore, her story of accused persons assaulting her, beating her not believable beyond all reasonable doubt and her statement is not accepted by the learned trial court rightly.

17. According to PW-3 the first incident took place at 9 AM and second according to her statement in the ejahar Ext-1 is just after first incident at 10 AM and from the statement of PW-1 and PW-2 incident took place at 10 AM but PW-3 lodged the ejahar at 5.30 PM. She did not whisper a single line in her ejahar and in her statement made before police u/s 161 CrPC and on oath before the court. Why there is a delay of 7 ½ hours in lodging the ejahar? In the case in hand it is clearly coming out that she had lodged the ejahar after accused person lodged ejahar against them and under such circumstances delay of lodging the ejahar if not explained reasonably, the delay in filing the ejahar is fatal for the prosecution case.

18. In that view of the matter and in view of my discussion made herein above I am constrained to hold that prosecution failed to bring home the offence u/s 341/352/447/354/34 IPC against the accused persons namely Padumi and Jayanta and I hold that learned trial court rightly appreciated the evidence in right perspective and arrived at the right decision by acquitting the

accused persons from the prosecution charge of section 341/352/447/354/34 IPC and there is no error and illegality found to interfere with the judgment and order of the learned trial court of acquitting the accused person from the prosecution charge of section 341/352/447/354/34 IPC. Accordingly, judgment and order of acquittal passed by the learned trial court is hereby upheld.

19. In the result appeal has no merit and is dismissed. However, no cost to the parties.

20. Send the LCR to the learned trial court with a copy of judgment immediately.

Judgment delivered under hand and seal of this court on this 29th day of June, 2020 at Nalbari, District- Nalbari

(Smti S. Bhuyan)
Session Judge, Nalbari

Dictated and corrected by me.

(Smti. S. Bhuyan)
Session Judge, Nalbari

Typed by:
Anzima Brahma
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