

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

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

(Criminal Appeal Case No. 16/15)

**(Appeal against the Judgment & order dated 09/03/15
passed by learned Addl. CJM, Nalbari in connection with GR
Case No. 353/14, u/s-447/323/34 IPC)**

Junumoni Begum

W/O- Md. Mokbil Ali

R/O-Vill-Madhupur

P.S- Belsor

Dist- Nalbari, Assam.Appellant/ accused.

-Versus-

1. State of Assam.

2. Suria Begum

W/O- Md Harun Ali

R/O- Vill-Madhupur

P.S.-Belsor

Dist- Nalbari, Assam.....Respondents.

Advocates appeared:-

For the Appellant :- Mr. Naba Kumar Dutta, advocate

For the Respondent :- Mr. Dharendra Nath Barman, learned PP

Date of argument :- 15/06/2020, 20/06/2020

Date of judgment :- 29/06/2020

JUDGMENT

1. The instant appeal has been preferred by appellant accused Junumoni Begum u/s-374(3) CrPC read with section 382 Cr.P.C against the impugned judgment and order passed by the then learned Addl. CJM, Nalbari in connection with G.R. Case No. 353/14 u/s-447/323/34 IPC whereby the learned Addl. CJM, Nalbari convicted the accused appellant Junumoni Begum and sentenced her to a fine of Rs.1,000/- (Rupees one thousand) only for offence under section 323 IPC in default, to undergo simple imprisonment for 1(one) month.

2. Fact leading to the prosecution case is that PW-1 Md Harun Ali lodged written ejahar before O/C, Belsor PS on 13/03/14 inter alia citing that on that day at 3.40 pm, he engaged one labour to cut one kadam tree which stands within his boundary and the labour climb the tree. At that time accused came and pulled down the labour from the kadam tree. At that time his wife Suria Begum came and told accused why they are preventing from cutting the tree. Immediately accused jump over his wife like a wild animal, assaulted her grievously and pushed her in the pond. Hearing the incident he came running to his house from his workplace and took his wife to SMK Civil Hospital, Nalbari for treatment.

3. O/C, Belsor PS on receipt of ejahar registered Belsor PS Case No. 49/14 u/s-325/326/34 IPC and started investigation. I/O of the case on completion of investigation and collecting injury report of the injured submitted charge sheet against the ejahar named accused Mokbil Ali, Mahnur Ali and Junumani Begum u/s-447/323/34 IPC for trial of the accused persons.

4. The then learned CJM, Nalbari took cognizance of the case on receipt of the charge sheet and transferred the case to Addl. CJM, Nalbari for trial disposal. Learned Addl. CJM, Nalbari issued process to the accused to face trial. Learned trial court after furnishing necessary copies to the accused persons, explained and stated substance of accusation u/s-447/323/34 IPC to the accused persons to which they pleaded not guilty and claimed to be tried. Prosecution adduced evidence of 3 numbers of witnesses and learned trial court after recording statement of the accused u/s-313 CrPC where plea of accused is denial and hearing the learned counsel for both sides delivered judgment and acquitted accused Mokbil Ali and Mahnur Ali from the charge of section 447/323/34 IPC but convicted accused Junumoni Begum u/s-323 IPC and sentenced her to pay fine of Rs.1,000/- in default to undergo simple imprisonment for 1 (one) month. Accused Junumoni Begum is acquitted from the charge of section 447/34 IPC.

5. I have heard learned PP in the virtual court through VC. Learned appellant counsel submitted written argument. Perused the evidence and material on record of the trial court, impugned judgment and order of the learned trial court to decide the appeal.

6. Learned PP made submission that learned trial court rightly delivered the judgment and convicted the accused.

7. Learned appellant counsel made submission that prosecution failed to establish the offence u/s-323 IPC beyond all reasonable doubt and no independent witnesses have been examined and that the evidences are inconsistent, uncorroborated with the statement of witnesses.

8. Now let me find out whether evidence on record establish the prosecution charge of section 323 IPC against the accused beyond all reasonable doubt and learned trial court rightly appreciate the evidence on record.

9. To arrive at a just decision of the appeal let me discuss the evidence on record. PW-1 informant Harun Ali in his evidence stated that incident took place on 13/03/14 at about 3.40 PM and on that day they engaged one labour to cut the kadam tree standing on their compound and at that time he was doing labour works in the house of others. Accused restrain to cut down the tree and his wife claimed that tree belongs to them and at that time accused assaulted his wife on her back with a bamboo goj (post). Accused Mahnur Ali gave fist blow on her chest. Accused Junumani Begum attacked his wife on her right hand with a small knife. Hearing hue and cry he runs to his house and witness the incident. His further evidence is that neighbour Saleha, Jeherul and other people witness the incident and he took his wife to Nalbari civil hospital for treatment and he lodged the ejahar. Ext-1 is the ejahar. In cross stated kadam tree was standing on the boundary of his and accused land. There is a boundary dispute between the two parties in respect of the land where kadam tree is standing. He denied that court declared the land in favour of the accused where kadam tree is standing. Learned ADC filed a criminal case against

him alleging violation of order of Executive court and that case is pending at SDJM court.

10. PW-2 deposed on the date of incident at about 3.30 pm informant called vendor to sell the kadam tree standing on his boundary and at that time there was altercation between the parties and he heard that wife of Harun was taken to hospital and also heard that accused Junumani had a quarrel with the wife of informant. In cross stated he did not witness the incident. There is boundary dispute where kadam tree is standing. Informant wife restrain mandal kanungo when they came to took measurement of the land and he was present at that time.

11. PW-3 is the injured. Her statement is that on 13/03/14 at about 3.40 pm, she engaged two labour to cut the kadam tree standing on her land and accused persons restrain them. Thereafter, accused Makbil gave fist blow on her chest. After that accused Mahnur Ali hit on her shoulder with a stick and accused Junumani inflicted on her right arm with a knife. Thereafter all the three accused persons dragged her and pushed her on the pond. When she fell down in the pond she was unable to say anything and she means she lost her consciousness. She took treatment at Nalbari civil hospital as indoor patient for three days and narrated incident. In cross stated one of the labour is Saiful who hails from Khalisa but do not know the name of other labour. There was a boundary dispute where kadam tree stands. Her further cross is that there was altercation took place prior to assault incident and other persons not present at the time of incident except the two labours. She regain her consciousness at hospital.

12. I have scrutinized the record. In the ejahar it is alleged by informant that accused assaulted rigorously to his wife jumping on her body but in his deposition he made statement that his wife sustained injury on the right hand and injury on the right arm is also admitted by the injured.

13. I have also perused the injury report of the injured wherein the doctor stated that on examination he found fresh lacerated cut injuries in the left arm size 3 cm x 3 cm and forearm size 3 cm x 3

cm and in his opinion injury is simple fresh and caused by blunt object. Prosecution allegation is that victim sustained injury on the left arm but the victim and PW-1 stated injury on the right arm which means there is a contradiction in their statement. According to informant incident of assault took place at 3.40 PM and injured was taken to hospital at 5.10 PM which means there is a gap of 90 minutes and if a person is thrown in a pond and left there for 90 minutes he would have died and here in this case injured stated she regain her consciousness at hospital and there may be a chance of making a false and fabricated story.

14. In view of the aforesaid discussion, I came to my judicious finding that prosecution failed to establish the charge of section 323 IPC against the accused Junumani Begum beyond all reasonable doubt and she is acquitted from the charge of section 323 IPC and accordingly, Judgment & order dated 09/03/15 passed by learned Addl. CJM, Nalbari in connection with GR Case No. 353/14, u/s-447/323/34 IPC is set aside.

15. In the light of above direction, appeal is allowed. No costs.

16. 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:
Biswajit Bhattacharjya,
U.D.Asstt.