

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS ::NALBARI

**C.R. CASE NO. 709 OF 2015
U/S 448/354/354B OF I.P.C.**

MINA BEGUM

..... COMPLAINANT

vs.

- 1. SAIFUL ALI**
- 2. FAIJUL ALI**
- 3. SAFIQUE ALI**
- 4. ATIK ALI @ ATIKUR RAHMAN**
- 5. RABIA BIBI @ RABIA KHATUN**
- 6. TAIJUDDIN ALI**

..... ACCUSED PERSONS

**PRESENT: - SMRITI REKHA BHUYAN, A.J.S
JUDICIAL MAGISTRATE FIRST
CLASS, NALBARI.**

ADVOCATE FOR THE COMPLAINANT : NAVA KUMAR DOLEY

ADVOCATE FOR THE ACCUSED : JITENDRA NATH MEDHI

**EVIDENCE RECORDED ON : 01.07.2017, 21.04.2018,
07.05.2019, 07.03.2020.**

ARGUMENTS HEARD ON : 21.11.2020

JUDGMENT DELIVERED ON : 25.11.2020

J U D G M E N T

1. The story of the complainant in brief is that on 23/12/2015 at night at about 8:00 p.m., the husband of the complainant named Saiful Ali and his family members came together into their house. Her husband called her and entered to their house. At that time she was sitting on the bed. The accused grabbed her by toppling her on the bed and pulled her clothes and tried to assault her indecently. After that Faijul Ali and Taijuddin Ali came towards her and wanted to kiss her and also pulled her clothes. When she tried to stop them the other co-accused persons gave blows and slapped on different parts of her body. Her husband caught hold her hair and snatched away her gold chain and Rs. 7000/- from her box and also disrobed her. When she shouted Rina Begum and Toslima Begum came to the place of occurrence and witness the occurrence. After threatening her with dire consequence the accused persons went away. When she went to Police station for lodging ejahar Police did not keep her ejahar, but sent her to the court.

Hence, this case was arisen.

2. The complainant and her witnesses were examined u/s 200 and u/s 202 of Code of Criminal Procedure and then having found prima facie materials against the accused persons U/S 448/354/354B of I.P.C., cognizance was accordingly taken under the said sections of law against the accused persons namely **Saiful Ali, Safique Ali, Rabia Bibi @ Rabia begum, Atik Ali @ Atikur Rahman, Faijul Ali and Taijuddin Ali**. On receipt of summons, the accused persons entered their appearance. Contents of charge U/S 448/354/354B of I.P.C. were framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. During the course of trial, the complainant examined 3(three) witnesses.

4. The accused persons have been examined u/s 313 Cr.P.C. Statements of the accused persons **Saiful Ali, Safique Ali, Rabia Bibi @ Rabia begum, Atik Ali @ Atikur Rahman Faizul Ali** and **Taijuddin Ali** have been recorded U/s 313 Cr.P.C. The pleas of the accused persons were of total denial.
5. Defense denied to adduce any evidence.
6. I have heard arguments of both Learned Counsels for the complainant and the accused person.

POINTS FOR DETERMINATION:

- (i) *Whether accused persons namely **Saiful Ali, Safique Ali, Rabia Bibi @ Rabia begum, Atik Ali @ Atikur Rahman Faizul Ali** and **Taijuddin Ali** on 23/12/2015 at about 08-00 p.m. at Adabari village under Mukalmua P.S. committed criminal trespass by entering into house of the informant Mrs. Mina Begum which is used as a human dwelling and thereby committed an offence punishable U/S 448 of I.P.C.?*
- (ii) *Whether accused persons namely **Saiful Ali, Safique Ali, Rabia Bibi @ Rabia begum, Atik Ali @ Atikur Rahman Faizul Ali** and **Taijuddin Ali** on the same date, time and place assaulted informant Mrs. Mina Begum intending to outrage her modesty and thereby committed an offence punishable U/S 354 of I.P.C. ?*
- (iii) *Whether the accused persons namely **Saiful Ali, Safique Ali, Rabia Bibi @ Rabia begum, Atik Ali @ Atikur Rahman Faizul Ali** and **Taijuddin Ali** on on the same date, time and place assaulted or used criminal force with an intention to disrobe informant Mrs. Mina Begum and thereby committed an offence punishable U/S 354B of I.P.C.?*

DISCUSSION, DECISIONS AND REASONS THEREOF:

EVIDENCE ON RECORD:

7. Let us, first of all, re-produce herein below the gist of the testimonies of the witnesses examined by the prosecution in this case.
8. PW1 Mina Begum has deposed in her examination-in-chief that she is the informant of this case. On 23.12.15 at about 8 pm at night her husband Saiful Ali and his family members came together to their house. Her husband called her and he entered to their house. She was sitting on the bed, then he grabbed her by knocking her off on the bed and pulled her clothes and tried to commit indecent assault to her. After that Faijul Ali and Taijuddin Ali came towards her and wanted to kiss her and pulled her clothes. PW1 Mina Begum further stated that Rabia Bibi, Atik Ali, Atar Ali, Jakir Ali and Safique Ali slapped and gave blows her. Her husband toppled her by holding her hair and snatched away her gold chain from her neck and Rs. 7000/- from her box. When she shouted Rina Begum and Toslima Begum came to the place of occurrence and witnessed the occurrence. After threatening her with dire consequence the accused persons went away.
9. During cross, P.W.1 stated that she lodged cases against the accused earlier also and the accused got discharged. P.W.1 further stated that she lodged cases in 2013, 2014 at Bashistha Police station, in the court of J.M.F.C. and in family court. P.W.1 further stated that she had two daughters and one of them lived with Saiful, who maintained her. P.W.1 further stated that she worked in E.S.I. Hospital and Saiful did not pay her Rs.6000/- as maintenance. P.W.1 further stated that the occurrence took place on 23/12/2015 when she was staying at her maternal house. P.W.1 further denied the defence suggestion that she lodged the false

case and the incident of kissing and pulling her cloths by the accused was false. P.W.1 further stated that at the time of incident, Nijara Begum, Junu and Toslima were present there, but they were not called to depose their evidence. P.W.1 further stated that Rina Begum is her elder sister and she was not present at the time of occurrence and Toslima also came there after the incident took place. P.W.1 further stated that the accused persons slapped and gave blows, but she was not treated medically. P.W.1 further denied the defence suggestion that the snatching away of gold chain by the accused from her neck is false and the present case is false as the police did not arrest the accused.

10. PW2 Rina Begum deposed in her examination-in-chief that informant is her sister and she filed the complaint against Saiful Ali, Faizul Ali, Safique Ali and Zakir Ali. On 23.12.15 at about 8.00 p.m., she went to urinate to the back of her house and on hearing commotions of Mina Begum, she entered the house and then she saw Mina Begum was lying on the floor and her saree was left open. The accused left by threatening Mina Begum that this time she was almost dead and next time she will be ended. P.W.2 further stated that she heard from Mina Begum that Saiful took away gold chain of approximately 1 tola and Rs. 7000/- which were kept under the bed and the saree of Mina was left open by Taijuddin and other co-accused slapped and gave blows on Mina Begum.

11. During cross, P.W. 2 stated that Mina Begum is her younger sister and she knew the accused persons. She deposed as witness in four cases and the accused got discharged due to lack of proofs and the accused were in detention and she did not know whether the cases were disposed of. P.W. 2 further stated that the present case was lodged in 23/12/2015 and at the time of occurrence she went to the urinal and she heard commotions.

12. P.W.3 Toslima Begum deposed in her examination-in-chief that she knew the informant and the incident took place around 4 years ago from the date of her deposition and at that time she was at her sister's house.

That day, at about 8.00 p.m., when she went to urinate, then from the toilet she saw Mina Begum slipped there and her cloths were torn and two accused were running away from there and she saw money and one gold chain at the hand of the informant. P.W.3 further stated that she heard the threatening of killing by the accused persons and she knew that much only.

13. During cross, P.W. 3 stated that she deposed in favour of Mina Begum in three cases and Mina Begum is her younger sister and she lived in a separate house of 3 kilometer's distance from Mina's house. P.W.3 further stated that the occurrence took place 5 years ago from the date of her deposition and she was staying in Mina's house at that time for 3 days. P.W.3 further stated that she had not seen the occurrence and she went to the urinal.

DISCUSSION OF THE RELEVANT LAWS IN THE INSTANT CASE:

14. There are allegations of offences U/S 448/354/354B I.P.C. against the six accused persons in the instant case and this court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.
15. Ordinarily, trespass is a civil wrong for which a defendant has the right to sue. **Lord Macaulay** defined, trespass is every usurpation, however slight, of dominion over property. But only when it includes criminal intention, it becomes criminal trespass.
16. In order to bring home an offence u/sec 448 of I.P.C., the following ingredients are necessary to be fulfilled :
- (a) That, the accused committed **criminal trespass**.
 - (b) That, such criminal trespass was committed by entering into, or remaining in a **building, tent or vessel**;

17. Section 354 and 354B of the I.P.C., 1860 has its place under chapter XVI of the I.P.C, 1860 which deals with 'offences against the human body'.

18. In order to bring home an offence u/sec 354 of I.P.C., the following ingredients are necessary to be fulfilled :

(a) An act or omission must have been committed against **a woman**.

(b) The accused must have **assaulted or used criminal force** against the victim.

(c) There must be **an intention** on the part of the accused to outrage the modesty of the woman or **knowledge** that such an act would outrage her modesty.

19. It is to be noted here that existence of an intention and knowledge is the main ingredient for an offence to fall under section 354 of the I.P.C.

20. In order to bring home an offence u/sec 354B of I.P.C., the following ingredients are necessary to be fulfilled :

(a) Assaults or uses force to any **woman** or abets such act.

(b) With the intention of **disrobing** or

(c) Compelling her to be **naked**.

21. The section 354B of I.P.C. clearly states that a man with intent to disrobe (undress) a woman, using the criminal force shall be held liable under this section.

APPRECIATION OF EVIDENCE:

22. The evidentiary facts that need to be appreciated in the three points of determination are interlinked; as such let us take up those together for discussion for the sake of convenience.

23. Now, the question arises, whether prosecution has been able to discharge their burden by proving the ingredients of the offence under which the accused persons have been charged? Even though it is a case instituted otherwise than on police report, nevertheless, the standard of proof is same, i.e. proof beyond reasonable doubt.

24. Ld. counsel for the complainant has submitted in his argument that the complainant has succeeded to prove the case beyond all reasonable doubt in as much as the prosecution witnesses clearly stated in their evidence that the accused persons had committed the alleged incident. He has further submitted that the incident took place at night at 8:00 p.m. and at that time there may be no person present to witness the incident and also there is no defence suggestion regarding evidence of neighbours. He has further submitted that the other prosecution witnesses saw the accused at the courtyard, which implies that there was hint of truth in the prosecution story. Thus, learned counsel for the complainant has submitted that the accused persons are liable to be convicted and sentenced in accordance with law.

25. On the other hand, Ld. defence counsel has submitted in his argument that all the accused persons are members from the same family. Saiful Ali is the husband of the complainant and they have not divorced though they live separately and the other co-accused persons are the relatives of the complainant. Ld. defence counsel has further submitted that at the time of incident Nijara Begum, Junu and Toslima were present there, but they were not called to depose their evidence. As such, learned defence counsel has submitted that the prosecution has failed to prove the case against the accused persons beyond all reasonable doubt and as such the accused persons deserve acquittal.

26. Now, let us find out whether the accused persons criminally trespassed into the house of the informant with an intention to assault the complainant? And, let us find out whether the accused persons have assaulted or used criminal force against the complainant with an intention on the part of the accused to outrage the modesty of the woman or knowledge that such an act would outrage her modesty? And, let us find out whether the accused persons have assaulted or used criminal force against the complainant with the intention of disrobing or compelling her to be naked? And, if so, let us scrutinize, whether there is

any direct evidence against the accused persons regarding the allegations made by the complainant?

27. From the perusal of the entire evidence-on-record of the instant case, the following relevant facts have been hereby extracted for consideration:

- (i) P.W.1 stated in cross that Rina Begum was not present at the time of occurrence and Toslima also came there after the incident took place.
- (ii) P.W.1 stated in cross that at the time of incident Nijara Begum, Junu and Toslima were present there, but they were not called to depose their evidence.
- (iii) P.W.2 and P.W.3 stated that at the time of incident both of them went to the backyard of Mina's house to urinate, but they heard commotions of Mina and then they came into the house and then Mina told them about the incident.
- (iv) P.W.2 stated that she saw Mina was lying on the floor and Mina's saree was left open. Per contra, P.W.3 stated that when she went to urinate, then from the toilet she saw Mina Begum slipped there and her cloths were torn and two accused were running away from there.
- (v) P.W.1 stated that Saiful snatched away her gold chain and Rs. 7000/- from her box. Per contra, P.W.2 stated that she heard from Mina Begum that Saiful took away gold chain of approximately 1 tola and Rs.7000/- which were kept under the bed. In a complete opposite version, P.W.3 stated in evidence that she saw money and one gold chain in the hand of the informant.
- (vi) Complainant/P.W.1 alleged in the complaint petition that she was disrobed by her husband. Per contra, P.W.2 stated that the saree of Mina was left open by Taijuddin.
- (vii) Complainant/P.W.1 stated in evidence that the accused persons slapped and gave blows, but she was not treated medically.

28. From the above findings, it appears before this court that the evidence of P.W.2 and P.W.3 are hearsay evidence, as they were not present at the time of occurrence and they did not witness the incident directly. Moreover, P.W.2 and P.W.3 are the interested and related witnesses as they are the elder sisters of the complainant/P.W.1. and except their evidence, there was no any direct witness or independent witness or any medical evidence to corroborate the evidence of the complainant/P.W.1.

29. Moreover, after proper scrutinizing the entire evidence-on-record, it is found that there are contradictions in many points in the evidence of the prosecution witnesses. As such, it would not be prudent to arrive at the conclusion of the guilt of the accused persons on the basis of such tainted version. In view that, this court is of the considered opinion that the testimony of the complainant/P.W.1 is not unblemished and inspires confidence. As such, it is found that the prosecution has left some facts under a cloud.

30. Criminal law calls for strict proof. Though it is a complaint case instituted otherwise than on police report but the degree of proof is beyond reasonable doubt. In the case of **V. D. Jhingan Vs. State of Uttar Pradesh AIR 1966 SC 1762** the Hon'ble Supreme Court has held, "*It is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lies upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.*"

31. This court observes that there are certain inconsistencies and material discrepancies in the evidence of the prosecution witnesses, which creates doubt about the complainant's case and reliability of the evidence of the prosecution witnesses. The accused persons had totally denied about the allegations made against them in the statements of defense recorded under Section 313 Cr.P.C. and from the aforesaid evidences of PWs, it is

sufficiently clear and established that no any reliable evidences are found against the accused persons under the alleged sections of law in the present case. Thus, the complainant has failed to prove the instant case beyond all reasonable doubts.

32. In view of the entire discussion made above, this court relies on the submission of the learned Defence Counsel made during his argument. In any given case, prosecution is required to discharge its burden. Thus, it has become crystal clear that the prosecution has been failed to discharge its burden.

33. It is settled principle of law that criminal law calls for specific proof. If you allege something, you need to prove the same before court of law. Mere allegation is not enough. Hence, this court finds itself difficult that no such essential elements of the above mentioned sections could be proved by the prosecution beyond doubt.

34. Situated thus, I have reached to the conclusion after perusing the entire evidence on record and submission of both the parties that prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt. In **Partap Vs. State [AIR 1976 SC 966]** it has been observed by the Hon'ble Supreme Court that: *"The right of the accused to obtain the benefit of a reasonable doubt is the necessary outcome and counterpart of the prosecution's undeniable duty to establish its case beyond reasonable doubt and that this right is available to the accused even if he fails to discharge his own duty to prove fully the exception pleaded."*

35. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence. Presumption of

innocence is a human right as envisaged under Art.14 (2) of the International Covenant on Civil and Political Rights 1966. Art.11(1) of the Universal Declaration of Human Rights 1948 also provides that any charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

36. In the light of the above discussions and reasons, this court is of the opinion that the prosecution has failed to prove the case against all the six accused persons beyond reasonable doubt U/S 448/354/354B I.P.C.

37. Consequently, all the points of determination no. 1, 2 and 3 are decided in negative and in favour of all the accused persons.

38. In view of above, in absence of any substantial materials, which can substantiate the allegation of the complainant against the accused persons with regard to the commission of the alleged offence U/S 448/354/354B I.P.C., the accused persons hereby deserve acquittal of the offence U/S 448/354/354B I.P.C.

ORDER

39. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused persons namely **Saiful Ali, Safique Ali, Rabia Bibi @ Rabia begum, Atik Ali @ Atikur Rahman, Faijul Ali and Taijuddin Ali** have committed offence U/S 448/354/354B I.P.C. as alleged by the complainant and as such all these accused persons are acquitted of the charges under U/S 448/354/354B I.P.C. on benefit of doubt and all of them be set at liberty forthwith.

40. Make necessary entry in the Judgment register.

41. The bail bond of the accused persons shall remain in force for six months in view of section 437A of the Cr.P.C.

42. This judgment is given under my hand and seal of this court on this 25th day of November, 2020.

43. The case is disposed of on contest.

Typed & corrected by me

Smriti Rekha Bhuyan, J.M.F.C.,
Nalbari.

SMRITI REKHA BHUYAN
J. M. 1ST CLASS, NALBARI

APPENDIX

LIST OF PROSECUTION WITNESS:

P.W.1- MINA BEGUM

P.W.2- RINA BEGUM

P.W.3- TOSLIMA BEGUM

LIST OF DEFENCE WITNESS:

D.W- NIL

SMRITI REKHA BHUYAN
JUDICIAL MAGISTRATE FIRST CLASS,
NALBARI.