

G.R. 1281/14
State
vs
Hafij Ali & ors.

**IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS,
NALBARI**

Case No. G.R. 1281/2014 u/s 447/448/323/34 IPC

STATE

-Vs-

- 1. Din Mohammad Ali**
- 2. Hafij Ali**
- 3. Habibar Rahman**
- 4. Khabir Ali**

..... Accused persons

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr. Hem Sarmafor the State.

Mrs. Bareque Alifor the accused.

Date of prosecution evidence - 20.2.15, 23.3.15, 9.12.16,
29.4.17

Date of argument - 5.11.20

Date of judgment - 23.11.20

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Judgment

1. Md. Islam Ali initiated the instant case by filing written 'ejahar' before the O/C, Mukalmua P.S. On 25.8.14. Prosecution case in brief is that, on 25.8.14, at about 2 pm, the accused persons trespassed into the house of the informant and forcefully dragged his daughter-in-law Mafida Bibi from the house and wanted to take their house. It is stated that when he and his wife, mother and sister restrained the accused persons, the accused persons assaulted the informant and his wife and sister and accused Habib Ali took away his sister-in-law Mofida.
2. On receipt of the ejahar, Mukalmua P.S. registered the same as Mukalmua P.S. case No. 312/14 u/s 447/448/323/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused persons Din Mohammad Ali, Habib Ali, Hafij Ali and Khabir Ali u/s 447/448/323/34 IPC.
3. During trial, accused person was allowed to go on bail. Relevant documents of the accused were furnished to him u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, my learned Predecessor found sufficient materials against the accused persons and particulars of the offences u/s 447/448/323/34 IPC were explained to them to which they pleaded not guilty and claimed trial.
4. Prosecution in support of the case examined 7(six) witnesses. Defence side did not examine any witness in support of their claim. Statement of the accused person was recorded u/s 313 of Cr.P.C. in which the accused persons have denied all allegations levelled against them. Defence side declined to adduced any evidence on its

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behalf.

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:

1. Whether the accused persons on 25.8.14 at around 2 p.m. in furtherance of their common intention committed criminal trespass into the house of the informant and thereby committed an offence punishable u/s 447/34 IPC?
2. Whether the accused persons on same date, time and place in furtherance of their common intention committed house trespass to the house of informant and thereby committed an offence punishable u/s 448/34 IPC?
3. Whether the accused persons on same date, time and place in furtherance of their common intention voluntarily caused hurt to the informant and his wife and sister and thereby committed an offence punishable u/s 323/34 IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

7. I have carefully gone through the entire evidence on record and materials placed before me. Before analysing the evidence let me first elaborate here the deposition made by the witnesses.

8. Pw 1 Islam Ali, the informant of this case deposed in his examination-in-chief that the incident took place on 25.8.14 at about 1 pm. He stated that his sister Ayesha Begum called him over phone. He came and saw his sister Ayesha Begum, his mother Joygun Bibi and his wife Mofija

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Bibi's clothes were in torn condition. On being asked they told that Habibur Rahman, Hafij Ali, Ain Mohammad Ali and Khabir Ali assaulted them. His father was also not at home at that time. His brother Nur Mohammad was at home at that time. Later he filled ejahar. Accused persons came and took away Mofida Bibi. They were taken to hospital from the police station. Ext. 1 is ejahar. Ext. 1(1) is his signature.

9. During his cross examination, he stated that he arrived home at about 3 pm. The incident took place at about 1 pm. He stated that he has not seen the occurrence himself. Mofida Bibi is his sister-in-law. Sometimes quarrel take place between Mofida and Nur Mohammad. Habib Ali is Mofida's grand-father. He also stated that on the date of occurrence, Khorshed Ali came to their house at 12 pm. He admitted that Mofida lodged a case at Mukalmua P.S. against them the previous day. They took bail in that case. He stated that his sister told him that accused persons scuffled with them due to Mofida Begum. He has denied all other suggestion put forwarded by the defense side.

10.Pw 2 Monija Bibi deposed in her examination-in-chief that on 25.8.14 at about 12-1.00 pm Mofida's father Khorshed Ali came to their house. She stated that accused persons came to their house and assaulted her and her sister-in-law Ayesha Bibi and Joygun and disrobed them tearing their clothes. Accused persons slapped and kicked them as a result of which they got injury. All the accused persons assaulted them. She also stated that accused Hafij assaulted Ayesha with hand and untied her cloths and latter, he forcefully took away Mofida. Mofida is her sister-in-law.

11.During her cross examination, she stated that Nur

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Mohammad is her brother-in-law. He is Mofida's husband. She stated that often quarrel takes place between Mofida and Nur Mohammad. Mofida lodged a case on 25.8.14 against them alleging they have assaulted her. He does not know if Khorshed Ali came for Mofida. Mofida lodged a case in this court for rescue of her son and furniture and through that case, Mofida got her own child and furniture back. She further stated that altercation took place between them and accused persons and Mofida restrained them.

12. Pw 3 Ayesha Bibi deposed in her examination-in-chief that on 25.8.14 at about 12-1.00 pm Mofida's father came to their house. Later accused persons came to their house and started assaulting their mother. When they arrived, accused persons also assaulted them. She stated that accused Hafij torn her cloths. Other accused persons abused them with filthy languages and assaulted them. She further stated that accused persons assaulted them and took away Mofida forcefully.

13. During her cross examination, she admitted that quarrel takes place between Mofida and Nur Mohammad and a meeting was held in the village with regard to the same. Mofida lodged case at police station against them alleging assault upon her. At the time of quarrel, no person came to their house. She stated that as they were assaulted they did not get time to restrain the accused persons. They made hue and cry.

14. Pw 4 Joygun Bibi deposed in her evidence-in-chief that the occurrence took place about 7-8 months back in the evening. She stated that on the date of occurrence, Mofida's father came to their house. Later, accused persons came to their house and quarrel took place. They

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came and assaulted her and her daughter-in-law. She also stated that accused persons assaulted them and took away Mofida.

15. During her cross examination, she stated that accused Khabir is Mofida's brother and others are her uncle and maternal uncles. She stated that Mofida's father came for Mofida. She does not know why the quarrel took place, but the accused persons assaulted them indiscriminately. Nur Mohammad is her son and he got married with Mofida. She also admitted that frequently quarrel takes place between them and for that reason, 'bichar' was held in the village. She stated that Mofida has filed various cases against them in the police station and court. They were accused in that case. Accused assaulted her when she came to calm down the quarrel. No nearby people came at the time of occurrence. At the time of arrival of Islam at home, it was little dark. She called him over phone.

16. Pw 5 Dr. R.K. Barman deposed in his examination-in-chief that on 26. 8.14 he was on duty at Mukalmua PHC. He stated that on that day he examined Monija Bibi, 25 years, in reference to Mukalmua P.S. Case no. 312/14. The victim was not accompanied by any person. Upon examination he found no injury on the body of the victim.

17. Pw 6 Jalal Ali deposed in his examination-in-chief that the incident occurred about 4 years ago. He has no idea about the time of occurrence. There was some quarrel in the house of Nur Mahammad about which they came to know. Nur Mahammad's mother had assaulted Khabir Ali with a broom. Habib Ali went to rescue Khabir Ali and Habib Ali was also assaulted by Nur Mahammad. He stated that he has not seen the occurrence with his own eyes. When he came to the place of occurrence after hearing hue and cry,

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he could see that Habib Ali was injured. He had arranged to take him to the hospital.

18. Pw 7 Taun Chandra Barman who is the investigating officer of this case deposed the regular procedure for investigation during his examination in chief. In his cross examination he stated that on 26.08.14 itself he visited the place of occurrence and recorded the statement of the witnesses. He stated that Islam did not tell him that he has seen accused person tearing clothes of his wife and sister. He also stated that Monija did not tell him that accused person has assaulted and tore her clothes. Monija did not tell him that she sustained injury during scuffle and that male person did not misbehave her. Aisha did not tell him that accused person tore her clothes and assaulted her.

19. On going through the entire materials on record the prosecution case in brief can be described as:

“the informants' brother Nur Mohammad Ali and his wife Mofida's relation was in strain. Often quarrel takes place between them and Mofida has also filed a case against the informant and family alleging that the latter assaulted Mofida. On the date of occurrence all the accused person came and assaulted informant's wife, sister and mother and took away Mofida from their house”

20. My learned predecessor found prima facie material against the accused person and particulars of the offences u/s 447/448/323/34 were explained to them. In order to book the accused person u/s 323 prosecution must prove that there was no sudden and grave provocation on the part of the victim and that the hurt was made by the accused person voluntarily. On perusal of the entire evidence it transpires that all the witnesses have admitted

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that Mofida has filed a case against them alleging that they have assaulted her. Well, filing a case only does not prove that the victim has done something offensive. But the evidence of prosecution side also suggests that Mofida and Nur Mohammad's relation was not a compatible one. They often had quarrel with each other. This already has strained the relation between the two families. Pw 3 and 4 who are the victims have deposed that on the date of occurrence firstly Mofida's father came to their house to inquire about Mofida and later the accused person came. This indicates that there was no intention on the part of the father to quarrel or assault the in laws of Mofida. Some altercation might took place between them and then only the accused persons came to the scene. With regard to the injury also the Medical officer has clearly stated that victim Mofija was not found with any external injury. Further other victims Ayesha Beguma and Joygun Begum were examined by Dr. P.K. Goswami but the said Medical officer is not even examined by the prosecution side. Thus the injury could not be established by the medical evidence. Even if we believe the ocular evidence but on perusal of single independent witness Pw 6 it transpires that it was Nur Mohammed's mother who assaulted accused Khabir Ali. However this witness is not an eye witness. But he has specifically stated that hearing the hue and cry he came to the place of occurrence and he saw injury upon the accused Habib Ali and that he had arranged to take Habib Ali to hospital for treatment. Even though he is not an eye witness but whatever he has stated forms a part of the same transaction. He has seen injury upon the accused and he only took him to hospital which indicates that the fight took place between both the sides. It is not only the victim who was hurt but the

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accused person was also hurt during the fight. Therefore even if hurt was caused to victim prosecution could not establish that the hurt was voluntarily caused by the accused person.

21. It is an established law that the prosecution has the burden to prove the case and the evidence must be cogent and consistent with the charges levelled against the accused. However, minor contradiction can be ignored but the evidence led by the prosecution must be strong enough to outlast the relentless attack made by the defence side. Unfortunately in this instant case the prosecution evidence lacks that credibility thereby giving rise to reasonable doubt to the prosecution case.

22. Therefore, the vital witnesses examined by prosecution side could not establish the guilt of the accused person beyond reasonable doubt. Accordingly, accused persons Habib Ali, Hafiz Ali, Din Mohammed Ali and Khabir Ali are not held guilty of the offence punishable u/s 447/448/323/34 IPC and accordingly, they are acquitted and set at liberty forthwith.

23. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

Any seized items may be disposed of in accordance with law in due course of time.

Given under my hand and seal of this Court on this 23rd day of November, 2020.

Rubina Yasmin

J.M.F.C. Nalbari

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APPENDIX

Prosecution witness:

Pw 1 – Islam Ali

PW 2 – Manija Bibi

Pw 3- Ayesha Bibi

Pw 4- Joygun Bibi

Pw 5- Dr. R.K. Barman

Pw 6- Jalal Ali

Pw 7 – Tarun Chandra Barman

Prosecution Exhibits:

Ex 1 – ejahar

Ex 2 – charge sheet

Defence witness & Exhibits:

Nil

Rubina Yasmin

J.M.F.C. Nalbari