

**IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, NALBARI**

**G.R Case No:1223/2015**

U/s 447/323/34 of I.P.C

State

-Versus-

(i) Makib Ali

(II) Nazim Ali .....Accused Persons

***PRESENT :*** Smti. Sorbani Bhattacharjee, A.J.S,  
Addl. Chief Judicial Magistrate,  
Nalbari.

**ADVOCATES APPEARED:**

FOR THE PROSECUTION : Md. A. Barman. Ld. A.P.P,

FOR THE ACCUSED PERSON : Mr. Rashed. Bhuyan, Ld.  
Counsel.

EVIDENCE RECORDED ON : 15.09.16, 25.01.17, 02.11.17,  
06.01.18, 05.09.18, 17.06.19  
and 19.11.19.

ARGUMENT HEARD ON : 29/12/2020.

JUDGMENT DELIVERED ON : 11/01/2021.

**JUDGMENT**

- 1) The prosecution in this case was launched by lodging of ejahar with the in Charge of the Kamarkuchi O.P on 09.08.2015 by the informant Musstt.Manju Bibi against the accused persons namely Mokib Ali, Nazim Ali

and Rahman Ali to the effect that on 09.08.2015 at about 8:30 pm, all the FIR named accused persons armed with lathi and dao chased the informant to her house and pulled her hair and torn her cloths. Thereafter accused Nazim Ali gagged her mouth and pulled her to the backyard of her house. The accused persons assaulted her husband with a lathi over his back and hands causing grievous injuries. They also blocked the passage/ path of the informant. Hence the case.

- 2) The-in-charge, Kamarkuchi O.P received the ejahar and forwarded the same to O.C., Nqalbari P.S. On receipt of the ejahar the O.C., Nalbari P.S., registered Nalbari P.S Case No. 554/2015 u/s 447/354(B)/325/34 of I.P.C., and entrusted the I.O., H.C., Kumar for investigation. After completion of the investigation the concerned I.O., submitted charge sheet against the accused person namely Mokib Ali u/s 447/323 of IPC.
- 3) In due course the accused person Mokib Ali appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of CrPC. Having found a prima facie case against the accused, particulars of offence u/s 447/323 of IPC were read over and explained to him to which he pleaded not guilty and claimed to be tried. During trial my Ld. Predecessor having found incriminating materials against not sent up accused Nazim Ali and he was impleaded in this case. In due course he appeared before court and relevants copies were furnished to him and particulars of offernce u/s 447/323/34 of IPC read over the explained to him to which he pleaded not guilty and claimed to be tried. Vide order dated 28.08.2017 the then Ld. Additional C.J.M., Nalbari, he was given opportunity to cross-examined the Pws (PW1 and pw2) whose were already examined in this case.
- 4) The prosecution in support of its case examined six (6) witnesses. The statement in defence of the accused person u/s 313 of the Code of Criminal Procedure was recorded. Defence side examined no witnesses. I have heard the arguments advanced by the Ld. counsels for both sides.
- 5) **POINTS FOR DETERMINATION:-**

- i. Whether the accused persons on or about 09.08.2015 at about 8:30 pm, in furtherance of their common intention entered into the courtyard of the informant Manju Bibi with intent to commit offence or to intimidate, insult or annoy any person in possession of such property and thereby committed an offence punishable u/s 447/34 I.P.C?
- ii. Whether the accused persons, on the same day, time and place, in furtherance of common intention voluntarily caused hurt to the informant Smti. Manju Bibi and thereby committed the offence under section 323/34 of IPC?

**DISCUSSION, DECISION AND REASONS THERE OF:**

- 6) PW 1 Musstt. Manju Bibi deposed that she is the informant of this case. And she lodged the case against Mokib Ali, Hanif Ali and Nazir Ali. The incident took place about one year back at about 8 p.m. At that time she was on the road and when she reached her house then her mother-in-law Rupjaan Bibi told her that Nazim Ali came to their kitchen and caught hold of neck of her mother-in-law. Then she told her mother-in-law that as the accused persons regularly assaulted them hence, they should call for a village bichar. After hearing about it, Nazim Ali came to her courtyard and kicked her. When her husband Md. Hasim Ali objected to it then Nazim Ali slapped her husband. Mokib Ali and Asrafi Bibi came to courtyard of the informant and assaulted her and her husband. Mokib Ali torn her cloths and threaten to kill her. She lodged the ejahar at Kamarkuchi O.P., She exhibited the ejahar as Exhibit-1 and Exhibit-1(1) is her signature. The accused persons blocked the path to her house.
- 7) In her cross-examination by Ld. Counsel for accused Mokib Ali PW1 inter alia stated that accused Mokib Ali is her brother-in-law (Barjana). Accused blocked her path. If he would not have block her road/ path then she would not have lodged this case. Even now if the accused open the road/ path then she will withdraw the case. Earlier also she lodged case against accused but she withdraw the case when accused told her that he will open the road for her. Despite her efforts she could not take possession of the road. Even after the incident she thought to go for 'Bichar' but she did

not lodge any case thinking that it will give rise to some ontoward incident. After her marriage the landed property was pertitioned and they were given possession of their portion of land and her share was handed over to her. In her share there is bamboo fancing. At first quarrel took place between Nazim Ali and her mother-in-law. She has no knowledge about any quarrel between Manowara and Anowara. The ejahar was written by an Advocate clerk at Kamarkuchi O.P., and she lodged the ejahar on the same day of the incident. She further stated that she has not mentioned the name of Asrafi Bibi in the ejahar. Near her house there are house of Maw Ali, Anzer Ali, Rahman Ali, Majnur Ali etc. The incident of assault took place for about half an hour. There were shops which were open. In front of the shop about 100 people gathered. Abu Bakkar Ahmed, Hajera Bibi, Rupjan Bibi saw the whole the incident of assault and they interfered. On the next day of the incident police came to her house. She denied the suggestion that she did not stated before the I.O., that Mokib Ali torted her cloths. Police did not seized the torn cloths. She denied all the suggestion put forwarded to her by Ld. Defence Counsel for accused Mokib Ali.

- 8) In her cross-examination by Ld. Counsel for accused Nazim Ali PW1 inter alia stated that accused Nazim Ali is the son of Mokib Ali and Mokib Ali is the elder brother of her husband. Nazim Ali is her nephew. Nazim Ali works as a handyman. She has strained relationship with Nazim Ali and his family prior to the incident. Hence, she does not know when Nazim Ali comes to his house and leaves. The incident took place at about 8:30 O'clock. She had not seen the accused assaulting Rupjan Bibi. She denied all the suggestions put forwarded by Ld. Defence counsel. She admitted that the FIR was not written by her but it was read over to her by Advocate clerk. She could not re-collect which Advocate clerk wrote the ejahar.
- 9) PW2 Hasim Ali has deposed that the informant is his wife. He knows the accused persons. The occurrence took place about one and half year ago at about 8 p.m., at night. At the time of occurrence he went to his neighbour Petta Ali's house. He went to his house after hearing that the

son of the accused namely Nazim caught hold of his mother Rupjan Bibi. He said why the accused person came to the house and beat and in this regard he called for a 'bichar'. On hearing this accused person namely Mokib Ali and Nazim Ali assaulted him and his wife Manju Bibi. Accused Mokib had torn the 'Maxi' (nighty) of Manju Bibi. He had pain due to the assault. They went to Kamarkuchi Out Post and his wife lodged the FIR. Police interrogated him.

- 10) In his cross-examination the PW2 deposed that Mokib Ali is his own elder brother and accused Nazim is his nephew. He further deposed that he was at the house of Petta Ali and thereafter he came. Police interrogated him. He admitted that before police he had not stated that he was in the house of Petta Ali and Nazim slapped him. He denied the suggestion that before police he did not state that he call 'bichar'. Lots of people gathered at the place of occurrence when the fight took place. Ahmed, Petta and Madhav were present at the place of occurrence but they did not restrain. There was dispute between his family and the accused person regarding a road. If any quarrel took place with Anowara and Manowara then he was not present there. He denied all the suggestions put forwarded by Ld. Defence counsel.
  
- 11) PW3 Mintu Ahmed has deposed that he knows the informant. He also know the accused persons. The occurrence took place about two and half years ago at night. The occurrence took place near his house. He was at his shop situated at Katpoha chowk. He heard that altercation was going on in Rupjan's house among the family members. Mokib asked to restrain. Manju rebuked Mokib with filthy language. Police interrogated him. His cross examination is declined by the defence side.
  
- 12) PW4 Dr. Ganapati Das has stated that on 09-08-2015, he was working as Senior M. & H.O. at Kamarkuchi PHC. On that day at about 11:46 am, he examined Miss Manju Bibi, aged 20 years, female, w/o- Md. Hasim Ali escorted by Homeguard of Kamarkuchi Outpost and found - no abnormality.

On the same day, at the same time, he examined Md. Hasim Ali, aged 26 years, male and found multiple abrasion over the back of the body which was caused by blunt weapon.

On the same day at the same time, he examined Rupjan Bibi, aged 50 years, female, w/o- Lt. Faiz Ali and found - no abnormality. Exhibit 2 is the injury report and Exhibit 2(1) is his signature.

In cross-examination he deposed that the reference P.S. case number is not mentioned in the injury report. History of injury is not reflected in the injury report. The injury may sustain due to fall on hard substance.

13) PW 5 Rupjan Bibi has stated that she know the informant Manju Bibi who is her daughter in law and she filed case against the accused persons namely Makib Ali, Najim Ali and Rahman Ali. The incident took place around 4 years back at about 8 pm. Rahman Ali came to her house and at that time the wife of Rahman Ali came to her house and dragged Rahman Ali to his house. she scolded Sunia Begum wife of Rahman Ali as to why she dragged her husband from her house and at that time Najim Ali came and pressed her neck. Thereafter, Manju Bibi and her husband Hasim Ali rushed to her house and raised hue and cry and at that time Makib Ali and Najim Ali assaulted Manju Bibi with bamboo 'lathi' and caught hold of her hair and tore her clothes and hit her with blows over her chest and also assaulted Hasim Ali. Hasim Ali sustained injuries on his ears and right hand. Manju Bibi went to Kamarkuchi O.P and filed 'ejahar'.

14) During cross-examination she deposed that the accused persons are her 'devor' (brother-in-law). She did not want to file case. There is a dispute between Manju Bibi and the accused persons regarding a road. Manju Bibi is willing to withdraw the case against the accused persons if they hand over possession of the road to Manju Bibi. There was prior enmity with the accused persons regarding the road. There is the house of Rahim Ali in between her house and the house of Manju Bibi. She raised 'hulla' when Najim Ali pressed her neck. Her daughter Monowara also raised 'hulla'. At that time apart from Manju and Hasim no other persons came to her house. There are houses of other people near her house. The son of Makib Ali stays in Guwahati. Police recorded her statement. She was in the

kitchen at the time of incident. Police seized the torn clothes and 'lathi' from the P.O. She deined all the suggestion put forwarded by the Ld. Defence Counsel.

- 15) PW 6 Sri Hari Chandra Kumar (I.O) deposed that on 09-08-2015 he was working as Attached Officer at Kamarkuchi O.P. On that day one Manju Bibi filed one written ejahar which was received vide GD entry no. 197 dated 09/08/15 and forwarded the same to the O/c of Nalbari P.S which was registered as Nalbari P.S case no. 554/15 u/s 447/354(B)/325/34 I.P.C. Accordingly, he went to the P.O, drew sketch map and recorded the statement of witnesses. He collected the medical report of the victim. After completion of investigation he filed charge-sheet against accused Makib Ali u/s 447/323 I.P.C. Exhibit 3 is the sketch map and Exhibit 3(1) is his signature. Exhibit 4 is the charge-sheet and Exhibit 4(1) is his signature.
- 16) PW 6 during cross-examination deposed that he did not accompany the victim Manju Bibi for medical examination. He sent escort along with the victim for medical examination. He did not find any materials against accused Nazim Ali and as such he did not filed charge-sheet against him. He did not seized any articles from the P.O. PW 2 Hasim Ali did not stated before him that Nazim slapped him and also did not stated before him that a bichar was held. PW 5 Rupjan Bibi did not stated before him that Najim Ali came and pressed her neck. He did not recorded the statement of any independent witness at the P.O. He denied the suggestion that that he filed a false charge-sheet against the accused without proper investigation.
- 17) In this case prosecution examined altogether six witnesses including the informant. The accused persons are alleged to have committed offences u/s 447/323/34 of IPC. For the sake of brevity all the points are taken up together for discussion.
- 18) On perusal of the ejahar of this case it is seen that the informant alleged that all the accused persons armed with dao, lathi etc., chased the informant to her house and torn her clothes and Accused Nazim Ali dragged her to the backyard and assaulted her husband with lathi causing grievous injury. But in her

evidence as PW1 informant nowhere stated that accused persons came to her house armed with dao and lathi and chased her rather she stated that Nazim Ali came to her kitchen and caught hold of the neck of her mother-in-law Rupjan Begum. In the ejahar informant alleged that her husband was grievously injured in the incident but in her evidence she only stated that her husband was only slapped by Nazim Ali. There is contradiction in the evidence of the informant on material points which creates doubt over the truthfulness of the prosecution story. Further, if we go through the evidence of PW2 Hasim Ali who is the husband of the informant it is seen that he alleged both the accused persons Mokib Ali and Nazim Ali assaulting him and the informant. He nowhere stated that he sustained grievous injuries in the incident rather he stated that he did not sustain any injury. The version of PW-1 and PW-2 are different regarding the incident of assault. Now, if we see the evidence of PW-2 Hasim Ali and the M.O. (PW-4), and PW-5 together then it is seen that according to PW2 he sustained no injury but according to M.O., PW-2 had multiple abrasion over the back of the body and according to PW-5 Hasim Ali sustained injury on his ears and right and hand. There is no consistency in the evidence of the PW's on material points as revealed from their evidence which brings the prosecution story under shadow of doubt.

- 19) Again, in her evidence informant alleged that accused Mokib Ali and one Ashrafi Bibi came to her courtyard and assaulted her and her husband Hasim Ali. But neither in the ejahar nor in her statement before the I.O. she stated anything alleging Ashrafi Bibi of assaulting anyone. Further, in her ejahar she alleged that all the accused persons torn her clothes but in her evidence she alleged that Mokib Ali only torn her clothes.
- 20) According to PW2 lots of people gathered at the place of occurrence when the fight took place and Ahmed, Petta and Madhab were present at the place of occurrence but prosecution did not examine Petta or Madhab in this case. Prosecution examined only one independent witness i.e., PW-3 Mintu Ahmed and his evidence reveals that only an altercation took place among the family members in the house of Rupjan Bibi and informant Manju Begum rebuked

accused Mokib Ali with filthy language. PW1, PW2 and PW5 are interested witnesses of this case and their version is not supported by PW3 who is the only independent witness in this case. Prosecution failed to examine any other independent witnesses in this case although the place of occurrence is surrendered by houses of many people which creates shadow of doubt over the prosecution story.

21) From the evidence of PW1 and PW5 it is seen that prior to the incident also the accused persons and informant and her family had enmity regarding some passage/ path. From the evidence of Pws it is seen that accused persons are relatives of the informant. Accused Mokib Ali is the brother of Hasim Ali and accused Nazim Ali is the nephew of Hasim Ali. From the evidence of Pws it is apparent that there is a land dispute between both the parties. PW1 in her cross-examination has admitted that if the accused would not have blocked her road/ path then she would not have lodged this case and she is ready to withdraw the case if the accused opens the road/ path. PW5 Rupjan Bibi in her cross-examination has admitted that she did not want to file case and there is a dispute between Manju Bibi and accused persons regarding a road and Manju Bibi is willing to withdraw the case if they hand over the possession of the road to her. From the evidence of Pws it is seen that there is no consistency in their evidence and it seems to be a civil dispute.

22) Now if we go through the evidence of PW-6 who is the I.O. of this case then it becomes clear that he did not find any material against accused Nazim Ali in this case due to which he did not file charge-sheet against him. He also confirmed the contradictions in the statement of the PW's. From the evidence of the it appears that they have exaggerated their version in their evidence and it affects the truthfulness of the prosecution story.

23) On scrutiny of the entire evidence on record it appears that prosecution has failed to prove the alleged offences against the accused persons by adducing cogent and reliable evidence beyond all reasonable doubt and in such circumstances considering the inconsistency in the version of the Pws and all

other aspects as discussed above, the accused persons are entitled to get the benefit of doubt.

24) Accordingly, the accused persons namely Mokib Ali and Nazim Ali are acquitted of the offences u/s 447/323/34 of I.P.C. on benefit of doubt and they are set at liberty forthwith. The bail bonds of the accused persons and their surety(s) shall remain in force for a period of 6 (six) months from today as per amended CrPC.

**Given under my hand and seal of this court on this 11<sup>th</sup> day of January, 2021 at Nalbari.**

Smti. Sorbani Bhattacharjee, A.J.S,  
(Addl. Chief Judicial Magistrate),  
Nalbari.

**G.R No.1223/2015**

**APPENDIX**

**PROSECUTION EXHIBITS:**

- Ext.1 : Ejahar,  
Ext.2 : Injury report.  
Ext.3 : Sketch map.  
Ext.4 : Charge-sheet,

**DEFENCE EXHIBITS**

NIL

**PROSECUTION WITNESSES :**

- PW-1 : Musstt. Manju Bibi (Informant of the case),  
PW-2 : Md. Hasim Ali  
PW-3 : Md. Mintu Ahmed.  
PW-4 : Dr. Ganapati Das (M.O., of this case)  
PW-5 : Md. Rupjan Bibi.  
PW-6 : Sri Hari Chandra Kumar (I.O., of this case),

**COURT WITNESSES :**

NIL

**DEFENCE WITNESSES**

NONE

**MATERIAL EXHIBITS**

NIL

Smti. Sorbani Bhattacharjee, A.J.S,  
(Addl. Chief Judicial Magistrate),

Nalbari