

IN THE COURT OF ADDL. C.J.M :::::::::::::::::::::NALBARI

Present: *Sri Jayanta Kumar Saikia,*
Addl. CJM, Nalbari.

(Date of judgment: 22/09/2022)

(P.R.C. No. 756/2019)

u/s 448/323/34 of IPC.

INFORMANT:	Musstt. Mainu Begum
REPRESENTED BY	Sri. Arjun Barman, Ld. APP
ACCUSED	Musstt. Nabijan Begum and Musstt. Minu Begum
REPRESENTED BY	Md. Saiful Haque, Ld. Advocates
Date of Judgment	22/09/2022

Accused details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charge with	Whether acquitted or convicted	Sentence imposed	Period of detention under gone during trial for the
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							purpose of section 428 of IPC
A-1	Musstt. Nabijan Begum	19/12/2018	19/12/2018	U/S 448/323 /34 of IPC	Convicted	The accused/convicted persons namely Musstt. Nabijan Begum Musstt. Minu Begum are directed to pay compensation of Rs. 1500/- (One Thousand Five Hundred	N/A
A-2	Musstt. Minu Begum						

						<p>) only each, totaling Rs. 3000/- (Three Thousan d) only to the informan t of the case as per section 5 of The Probatio n of Offender s Act, 1958.</p>	
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APPENDIX-13

Date of offence	17/12/2018
Date of FIR	18/12/2018
Date of charge-sheet	27/12/2018

Date of O.E.	08/08/2019
Date of commencement of evidence	14/10/2019
Date on which judgment is reserved	N/A
Date of judgment	22/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

1. The prosecution case sets into motion by filing a FIR by the informant, Musstt. Mainu Begum stating that on 17/12/2018 at 9:00 P.M., when her husband was not at home, the accused persons namely Musstt. Nabijan Begum and Musstt. Minu Begum criminally trespassed into her house, pulled her hair, threw her on the floor and assaulted her. The other accused persons namely Md. Islam Ali and Md. Joynal Ali came to the place of occurrence pulled her from inside her house and torn her wearing clothes to outrage her modesty. Due to push and pull one pair of gold ring and scarf of the informant lost. Hence, informant lodged this case.
2. The Officer-in-charge, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 890/18, under section 448/323/354(B)/34 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused

persons, Musstt. Nabijan Begum and Musstt. Minu Begum, Under Section 448/323/34 of IPC.

3. In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to them as per section 207 of Cr.P.C. Particulars of offence u/s 448/323/34 IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. The prosecution, in support of its case, examined five (05) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.
5. The statements of the accused persons under section 313 of Cr.P.C. are recorded wherein they took the plea of innocence and false implication. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Learned Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused persons Musstt. Nabijan Begum and Musstt. Minu Begum, in furtherance of their common intention, on 17/12/2018 at 9:00 P.M., at Danguapara, under the jurisdiction of Nalbari P.S., criminally trespassed into the dwelling house of informant Musstt. Mainu Begum with an intent to*

commit offence or to intimidate or insult or annoy any person in possession of the property and thereby committed offence punishable U/S 448/34 I.P.C.?

- (ii) *Whether the accused persons Musstt. Nabijan Begum and Musstt. Minu Begum, in furtherance of their common intention, on same day, time and place, voluntarily caused hurt to the informant Musstt. Mainu Begum and thereby committed an offence punishable u/s 323/34 of IPC?*

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** The prosecution case sets into motion by filing a FIR by the informant, Musstt. Mainu Begum stating that on 17/12/2018 at 9:00 P.M., when her husband was not at home, the accused persons namely Musstt. Nabijan Begum and Musstt. Minu Begum criminally trespassed into her house, pulled her hair, threw her on the floor and assaulted her. The other accused persons namely Md. Islam Ali and Md. Joynal Ali came to the place of occurrence pulled her from inside her house and torn her wearing clothes to outrage her modesty. Due to push and pull one pair of gold ring and scarf of the informant lost. Hence, informant lodged this case.
- 9.** PW-1, Musstt. Mainu Begum in her deposition says that she is the informant. She filed the ejahar against Minu Begum, Nabijan Begum, Jainal Ali and Islam Ali. The incident took place on 17-12-2018 at about 2.30 pm. On that day her son Md. Mitul Ahmed was coming with Moktabor Ali who is the

son of Minu Begum from school and a quarrel took place between them on the road. On that day at about 9.00 pm while her son was studying Nabijan Begum came to her house asking for Kerosene oil. She opened the door and came out. Nabijan Begum caught hold of her hair and threw her on the ground and assaulted her. Minu Begum also assaulted her and took her scarf and snatched her ear ring. Jainal Ali and Islam Ali came to the P.O. and dragged her on the backyard of her house and attempted to rape her. Her sons raised 'hulla'. Her mother Asia Bibi came to the P.O. Thereafter the accused persons left the P.O. She came to her house. Her husband came back from work. Next day she came to Nalbari P.S. She sustained scratch injuries in her chest. She filed ejahar. Police recorded her statement. Exhibit 1 is the ejahar and Exhibit 1(1) is her signature.

- 10.** During cross-examination of PW-1 (informant), the defence side insinuated that the accused persons filed an ejahar against Monir Ali, Aisa Bibi and Jitu Ali. According to the defence side, informant is relative of the accused persons and due to the previous animosity the informant lodged this false case against the accused persons. It is a settle principle that previous animosity is double edged weapon. It is possible that due to previous animosity the alleged crime has been committed or due to previous animosity the accused persons are wrongfully framed by filing false FIR. The testimony of the

witness who has previous animosity with the accused persons to be appreciated with precaution.

- 11.** Apart from this, no vital contradiction has come from the evidence of PW-1. Apart from the fact that informant (PW-1) has not stated before the I/O that Jainal Ali and Islam Ali came to the place of occurrence and dragged her on the back yard of her house and attempted to rape her.
- 12.** PW-2, Md. Mainuddin Ahmed has no knowledge of the incident. But he heard that a quarrel took place between the informant and the accused persons.
- 13.** PW-3, Musstt. Ashia Bibi is the mother of the informant/victim. In her testimony she stated that she knows the informant Mainu Begum. She knows the accused persons namely Minu Begum, Nabijan Begum, Jainal Ali and Islam Ali. The incident took place around 1 year ago at about 9 pm. The son of Mainu Begum was raising hulla hearing which she came to their house. She saw Minu Begum and Nabijan Begum were assaulting Mainu Begum and when she tried to restrain Minu Begum and Nabijan Begum, accused Islam Ali and Jainal Ali pulled Mainu Begum towards the backside of her house. She raised hulla and then the accused persons left. Hearing hulla Mainuddin who resides nearby came to the P.O. Mainu Begum filed the ejahar on the next day. Police recorded her statement.
- 14.** During cross-examination PW-3 stated that there are no houses between her house and the house of Mainu

Begum. When she reached no other persons were present at the P.O. Her presence at the alleged place of occurrence is natural one. Hence, this court has no other material at hand to disbelieve her testimony apart from the fact that accused persons filed a case against her, Monir Ali, Jitu Ali and Mainu Begum.

15. Both the evidences of PW-1 and PW-3 suffers from exaggeration to the fact that accused persons namely Jainal Ali and Islam Ali came to the place of occurrence and dragged the informant (PW-1) on the back yard of her house and attempted to rape her. The I/O has not submitted charge sheet against these two accused persons namely Jainal Ali and Islam Ali. But apart from that no vital contradiction is found in their statements u/s 161 Cr.P.C. and their evidence before this court.

16. Coming to the evidence of M.O., Dr. Khanindra Mohan Saud, who examined the victim on 18-12-2018 and the date of alleged occurrence is 17-12-2018. The FIR was lodged on 18-12-2018. M.O. (PW-4) in his evidence stated that on 18-12-2018 he was working at SMK Civil Hospital as M&H.O.1. On the day he examined Minu Begum, 24 years escorted by WPC Mayarani Dihingia in connection with Nalbari P.S. Case No. 890/2018 vide OPD registration number 166526 with alleged history of assault. On examination he found one contusion of size 0.5x0.5 CM bluish in color, over right forearm. Age of injury- recent. Injury caused by blunt object.

Nature of injury- simple. Exhibit 2 is the injury report and exhibit 2(1) is his signature.

17. During cross-examination PW-4 says that the injury sustained by the victim may also be caused by falling over hard surface.

18. PW-5 (I/O), WSI Parishmita Gogoi in her evidence stated about the investigation of the case. During cross-examination PW-5 (I/O) confirmed that PW-1 (informant) tells in her statement recorded u/s 161 Cr.P.C. that Nabijan Begum caught hold of her hair and threw her on the ground and assaulted her.

19. The essential ingredients of section 323 of IPC are:
(1) Accused voluntarily caused bodily pain, deceased or infirmity to the victim;
(2) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.

20. Coming back to the instant case, there is simple injury found on the person of the informant as per the medical report i.e., Exhibit 2. Nothing on record to disbelieve the medical report which was prepared by M.O. on 18-12-2018 after examining the informant. According to the informant (PW-1), the accused persons namely Musstt. Nabajin Begum and Musstt. Minu Begum caused those injuries by assaulting her. Her mother (PW-3) corroborated her evidence and stated that she has seen the incident. Their

evidences could not be shaken by the defence side. The evidence of PW-1 and PW-3 are supported by the medical document. During cross-examination of the I/O (PW-5), no vital contradiction is found in the statements of the witnesses recorded u/s 161 Cr.P.C. and their evidences recorded in court.

21. However, this is a fact that evidences of PW-1 and PW-3 suffers from exaggeration regarding the fact that Md. Jainal Ali and Md. Islam Ali came to the place of occurrence and dragged her on the back yard of her house and attempted to rape her. These are the facts not told by the PW-1 and PW-3 during investigation before the I/O nor made any place in the FIR. This exaggeration on the part of the witnesses cannot throw the whole prosecution case out of the window.

22. The alleged place of occurrence is inside the house of the informant. It is clear from the evidences of PW-1 and PW-3. From the evidence on record it is found that the accused persons entered into the house of the complainant and committed offence u/s 323 of IPC by causing injury to the informant (PW-1).

23. Hence, I am of the opinion that the prosecution side succeeded to adduce cogent, credible and trustworthy evidence against the accused persons namely Musstt. Nabijan Begum and Musstt. Minu Begum that they have committed offence u/s 448 of IPC by entering into the house of the

informant Musstt. Mainu Begum and committed offence u/s 323 of IPC by inflicting simple injury on the person of the victim Musstt. Mainu Begum.

24. From the aforesaid discussions it is found that both the accused persons committed the criminal act in furtherance of their common intention and both of them have participated actively in the criminal act.

CONCLUSION/DECISION:

1. The accused persons namely Musstt. Nabijan Begum and Musstt. Minu Begum are found guilty of offence u/s 448/323/34 of IPC and they are convicted u/s 448/323/34 of IPC.

I have considered the nature of the offence committed by the accused persons and whether they can get the benefit of The Probation of Offenders Act, 1958.

2. Convicted accused persons namely Musstt. Nabijan Begum and Musstt. Minu Begum are heard.

3. Convicted accused Musstt. Nabijan Begum has stated that she has three children and she is a mother of a suckling baby. Convicted accused Musstt. Minu Begum has also stated that she has three children and she is a mother of a suckling baby. They stated that they are innocent and requested the court to consider their case leniently.

4. I heard Ld. Defence Counsel as well Ld. A.P.P. The convicts pleaded mercy and pray for considering leniently.

5. Learned APP prays taking into consideration nature of the offence committed by the accused persons, the accused persons to be punished.

6. Learned Defence Counsel made submission that the accused persons are mothers of suckling babies, hence, they are to be released.

7. After hearing Ld. Counsels for both sides and accused persons, going through the material on record and considering the nature of the offence which accused persons have committed, I am of the opinion that this is a fit case to consider accused persons leniently.

8. Hence, the accused persons who are found guilty of committing offence punishable u/s 448/323/34 of IPC and as no previous conviction is proved against them and having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient to release the convicts after due admonition. Accordingly, the accused persons/convicted persons are released on due admonition u/s 3 of The Probation of Offenders Act, 1958.

9. The accused/convicted persons are further directed to pay compensation of Rs. 1500/- (One Thousand Five Hundred) only each, totaling Rs. 3000/- (Three Thousand) only to the informant of the case as per section 5 of The Probation of Offenders Act, 1958.

10. The convicted/accused persons are told that they have right to appeal against the judgment and order of this court before

Hon'ble Appellate court through the jail authority or independently of their own.

11. Convicted accused persons are further informed that they are entitled free legal aid to prefer appeal before the Hon'ble Session court.

12. Let furnish free copy of Judgment to convicted accused persons.

13. Send copy of judgment to Learned District Magistrate Nalbari u/s 365 Cr.P.C.

Given under my hand and seal of this court on this 22nd day of September, 2022 at Nalbari.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Musstt. Mainu Begum	Informant
PW-2	Md. Mainuddin Ahmed	Other witness
PW-3	Musstt. Ashia Bibi	Eye witness
PW-4	Dr. Khanindra Mohan Saud	Medical witness
PW-5	WSI Parishmita Gogoi	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit 1	Ejahaar
2.	Exhibit 2	Injury report
3.	Exhibit P-3/PW-5	Sketch map
4.	Exhibit P-4/PW-5	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description

C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description

D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari