

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
LAKHIMPUR, NORTH LAKHIMPUR, ASSAM**

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 2589/2017

Under section 294/323 of the of the Indian Penal Code

**State of Assam
-Vs-
Sri Raju Sharma**

.....Accused

Date of offence explanation : 08.06.2018
Dates of recording evidence of PWs : 14.05.2019, 08.07.2019,
27.08.2019, 10.10.2019,
23.10.2019
Date of examination u/s 313, Cr.P.C. : 26.12.2019
Date of Argument : 14.02.2020
Date of judgment : **13.03.2020**

Advocates appeared in the case:-

Sri Prasanta Dutta and Smti. Ajanta Sharma Baruah, Addl. P.P., for the State
Smti. Chitralkha Chutia, Advocate, for the accused

J U D G M E N T

1. The factual matrix of the prosecution case is that on 03.09.2017 Smti. Jitumoni Buragohain had lodged an FIR with the In-Charge of Harmoti Police Outpost under Laluk Police Station alleging inter alia that on 02.09.2017 at about 9:00 PM while she along with her family members were discussing about some family matters, the accused Sri Raju Sharma came to the courtyard of their house and started abusing them with filthy language and when she resisted his said act, the accused caught hold of her body and pushed her for which her wearing clothes, including the blouse got torn. Thereafter, the accused

assaulted her daughters viz. Smti. Junmoni Gupta and Smti. Janmoni Buragohain by holding their hair and dragging them down to ground thereby injuring them. Hence, the case.

2. On receipt of the ejahar, the In-Charge of Harmoti Police Outpost effected a G.D. entry vide Harmoti O.P. GD entry no. 41 dated 03.09.2017 at 10:00 AM and forwarded the same to the Officer-in-Charge of Laluk Police Station to register a case under proper section of law. After receiving the ejahar, the Officer-in-Charge of Laluk Police Station registered a case vide Laluk P. S. Case No. 270/2017, under sections 447/294/354-B/325 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under sections 294/323 of the Indian Penal Code against accused Sri Raju Sharma to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 294/323 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused entered his appearance before the Court after receiving the summons. Copies were furnished to the accused as per provision contained in section 207 of the Code of Criminal Procedure. The particular of offence under section 294/323 of the Indian Penal Code when being read over and explained to the accused person he pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused on 02.09.2017 at about 9:00 PM had verbally abused the informant Smti. Jitumoni Burgohain and her daughters viz. Smti. Junmoni Gupta and Smti. Janmoni Buragohain with vulgar language in public to cause annoyance to them ?

(b) Whether the accused on 02.09.2017 at about 9:00 PM had voluntarily caused hurt to the informant Smti. Jitumoni Buragohain and her daughters viz. Smti. Junmoni Gupta and Smti. Janmoni Buragohain ?

5. During the trial the prosecution side could examine 6 (six) witnesses, including the M/O and the I/O viz. Smti. Jitumoni Buragohain (PW-1), Smti. Janmoni Buragohain (PW-2), Smti. Devi Munda (PW-3), Smti. Soniya Munda (PW-4), Dr. Mridul Borah, the M/O (PW-5), Sri Anil Borah, the I/O (PW-6) and Smti. Junmoni Gupta as CW-1. The prosecution exhibited the ejahar as Ext-1 and signature of PW-1 therein as Ext-1(1), injury certificates as Ext-2, Ext-3, Ext-4 and signatures of the PW-6, the M/O therein as Ext-2(1), Ext-3(2) and Ext-4(1) respectively, extract copy of the G.D. Entry as Ext-5, rough sketch map of the P.O as Ext-6 and the signature of the I/O therein as Ext-6(1), charge-sheet as Ext-7 and the signature of the I/O therein as Ext-7(1). The defence has cross-examined prosecution witnesses and thereafter all the incriminating materials surfaced in the evidence of the prosecution witnesses against accused was put to his explanation under section 313 of the Code of Criminal Procedure. The defence plea was in complete denial.

6. I have heard the vociferous final argument of both sides and thereupon come to the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

7. For the sake of convenience both the points for determination are taken up together for discussion.

8. Now taking up the evidence of the PW-1 Smti. Jitumoni Buragohain i.e. the informant and victim of this case first it can be seen that she testified that about two years back at about 8:00 PM the accused getting drunk was hurling verbal abuses taking her and her husband's name. When she protested the accused entered her

courtyard to attack her but could not enter inside. Her daughter Junmoni Gupta also protested for which the accused had a verbal altercation with her too for which she had lodged an ejahar against the accused.

9. PW-1 in her cross-examination however admitted that on the date of incident she and the accused together had consumed liquor and thereafter they had a verbal altercation between them and later due to some push and thrust she sustained minor injury.

10. Now going through the version of the daughter of the informant viz. Smti. Janmoni Buragohain i.e. PW-2 it can be seen that she testified that on the date of incident at about 8:00 PM the accused getting drunk was hurling verbal abuses using filthy words to her mother and when she and her elder sister protested then the accused had assaulted her mother and pulling her hair thrown her down to ground. Her mother, her father and her elder sister also sustained injuries.

11. Now Smti. Junmoni Gupta the other daughter of the informant who was examined as CW-1 deposed that on the night of incident she was inside the house and was sleeping after taking her dinner. On that day it was the eve of Karam Puja and the accused got drunk and was raising a hue and cry in front of their house and in a push and thrust she fell down and sustained injury.

12. So from the evidence of PW-1, PW-2 and CW-1 it reflects that there is a lot of contradiction as PW-2 Janmoni Buragohain stated that the accused after shouting verbal abused had entered inside their premises and assaulted her mother by pulling her hair and had thrown her down to ground and her father and elder sister also sustained injuries but the PW-1 the informant on the other hand did not state anything about the accused assaulting her or her husband or her daughters. She in fact stated that the accused just entered her premises with an attempt to assault her but by that time she entered her house and he could not enter inside. She further stated that the accused had only a verbal altercation with her daughter Junmoni

Gupta. The CW-1 Junmoni Gupta also didn't state about the accused physically assaulting the informant or her or her father but had rather stated that she fell down in a push and thrust and sustained injury.

13. So it can be seen that a lot of contradiction is there in the version of the three above named witnesses. So, let us now see what the other PWs had stated.

14. The PW-3 Smti. Devi Munda deposed that at the time of incident it was the eve of Karam Puja and she was at home. Hearing a hue and cry she came out and could see a verbal altercation between the accused and the informant. The informant was heavily drunk that time and the accused too had consumed a little alcohol. The informant was shouting and verbally abusing the accused for which the accused protested and over that matter the quarrel took place between them.

15. PW-3 in her cross-examination had stated that since the informant got heavily drunk so the quarrel took place between them and she was in fact using vulgar language to the accused.

16. The PW-4 Smti. Soniya Munda deposed that on the date of incident about two year back on the eve of Karam Puja she could hear some verbal altercation going on and when she went out could see both the informant and the accused verbally abusing each other.

17. The PW-4 in her cross-examination had stated that she could see the quarrel taking place between the informant and the accused and that it was the informant who first getting drunk had hurled verbal abuses to the accused for which the verbal altercation took place between them.

18. So from the evidence of the said PWs i.e. PW-3 and PW-4, it can be seen that it was the informant who in fact got heavily drunk and had first verbally abused the accused. They didn't state anything about the accused physically abusing the informant or her husband or her daughters.

19. So the PW-3 and PW-4 have contradicted the evidence of the PW-1, PW-2 and CW-1.

20. PW-5 Dr. Mridual Borah, the M/O, in his evidence stated that he only found pain over right side of the forehead of Smti. Junmoni Gupta but there was no external injury reported and also he could find pain only to be there on the right side of the forehead of Jitumoni Buragohain. He also stated about finding pain with tenderness over back, right side and LS spine region of Biju Buragohain who he had examined.

21. The PW-5 M/O in his cross-examination had stated that such type of injuries may be caused by falling on hard substances.

22. Now, it is only the PW-2 who had stated about the accused assaulting the informant i.e. her mother, her father and her elder sister but the rest of the PWs and CW-1 totally contradicted that and didn't state anything about the accused assaulting these persons.

23. So in the given position, it can no way be concluded that the accused had physically assaulted and voluntarily caused hurt to the informant, her husband or her daughters.

24. Further, though the PW-1, PW-2 and CW-1 had stated that the accused had verbally abused the informant but didn't specify the words used by the accused or the type of words used by him to the informant and as such it cannot be ascertained that whether he had used any obscene language or not to the informant moreso when the rest of the PWs have stated that it was in fact the informant who was using obscene words to the accused for which the quarrel took place. The rest PWs also didn't specify the words or they of words used by the accused to the informant.

25. So in the given position, it can no way be concluded that the accused had verbally abused the informant in public with filthy language to cause annoyance to her.

26. Hence both the aforesaid points of determinations are held in negative.

27. So the prosecution has failed to prove the case against the accused under section 294/323 of the Indian Penal Code and as such he is acquitted from the said offences and is set at liberty.

Bail bonds are extended to further 6 (six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 13th day of March, 2020.

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer

Contd. Appendix

A P P E N D I X**WITNESSES FROM THE PROSECUTION SIDE**

Smti. Jitumoni Buragohain (PW-1)

Smti. Janmoni Buragohain (PW-2)

Smti. Devi Munda (PW-3)

Smti. Soniya Munda (PW-4)

Dr. Mridul Borah, the M/O (PW-5)

Sri Anil Borah, the I/O (PW-6)

PROSECUTION EXHIBITS

Ejhar (Ext-1)

Signature of PW-1 [(Ext-1(1))]

Injury certificates (Ext-2), (Ext-3) and (Ext-4)

Signature of the PW-6, the M/O [(Ext-2(1), (Ext-3(2) and Ext-4(1))]

Extract copy of the G.D. Entry (Ext-5)

Rough sketch map of the P.O (Ext-6)

Signature of the I/O [Ext-6(1)]

Charge (Ext-7)

Signature of the I/O [Ext-7(1)]

COURT WITNESS

Smti. Junmoni Gupta (CW-1)

COURT WITNESS EXHIBIT

Nil

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur