

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 637 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI PRANAB DAS AND 2 ORS

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 637 / 2017

U/S 341/323/294/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI PRANAB DAS AND ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SRI DEBEN NATH

OFFENCE EXPLAINED ON : 18.11.2017
EVIDENCE RECORDED ON : 22.03.2018, 01.06.2018, 09.08.2018,
29.09.2018

ARGUMENT HEARD ON : 30.05.2019
JUDGMENT DELIVERED ON : 07.06.2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 11.03.2017 at about 08:30 A.M in the morning at Pub Chandmari, under North Lakhimpur police station, all the three accused persons named in the F.I.R armed with rod attacked informant Md. Abdul Safik in front of the shop of Sri Khagen Borah and thereby caused severe injuries. The accused persons also assaulted informant's wife

Rahima Begum and caused injuries to her. In addition to that, the accused persons rebuked the informant and his wife by using obscene language. The informant thereafter lodged an F.I.R before the In-charge of Khelmati police out-post about the occurrence.

2. On receipt of F.I.R, the I/C of Khelmati out-post forwarded the same to O/C of North Lakhimpur P.S who registered a case being numbered as North Lakhimpur P.S Case No. 268/17. After investigation, I.O of the case submitted charge sheet against accused persons Sri Pranab Das, Smt. Manashi Das and Smt. Dimpi Das for the offences punishable under section 341/323/294/34 of I.P.C. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences under section 341/323/294/34 of I.P.C are read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined six witnesses whereas the accused did not examine any witness in support of his defence. The accused persons were examined u/s 313 CrPC. Defence case is of total denial as it reveals from the statements made by accused persons and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

POINTS FOR DETERMINATION:

- (i) Whether the accused persons on 11.03.2017 at about 08:30 A.M, at Pub-Chandmari, under North Lakhimpur police station, in furtherance of their common intention, voluntarily obstructed the informant and his wife so as to prevent them from proceeding in any direction in which they had a right to proceed, and thereby committed an offence punishable u/s 341/34 of IPC?
- (ii) Whether the accused persons on 11.03.2017 at about 08:30 A.M, at Pub-Chandmari under North Lakhimpur police station, in furtherance of their common intention, beat informant and his wife voluntarily with the intention of causing hurt or with the knowledge that they are likely thereby to cause hurt to the informant and his wife, and they thereby

caused hurt to informant and his wife, and thereby committed an offence punishable u/s 323/34 of IPC?

- (iii) Whether the accused persons on 11.03.2017 at about 08:30 A.M, at Pub-Chandmari under North Lakhimpur police station, in furtherance of their common intention, uttered any obscene word in or near any public place to the annoyance of informant and his wife, and thereby committed an offence punishable u/s 294/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO.1, 2 & 3

5. For the sake of convenience, and as because the point no. 1, 2 & 3 are inter-connected, hence they are taken up herein together for discussion and decision as follows:

6. As regards the aforesaid points for determination, PW-1 Md. Abdul Safik, informant of this case, in his evidence-in-chief has stated that on 11.03.2017 at about 8.00 AM, when he came out from his house and reached in front of the shop of Sri Khagen Borah, at that time accused Sri Pranab Das stabbed him on his forehead with an iron rod. The mother and sister of said accused (i.e., the two co-accused) grabbed him/PW1 during that time. He sustained cut injury on left side of his forehead. His wife Musstt. Rahima Begum was also coming after him to that shop. His wife then raised hue and cry and people nearby gathered at the place of occurrence. Somebody from the crowd informed police and accordingly police came to the place of occurrence. Subsequently, he lodged an F.I.R about the occurrence. Exhibit -1 is that F.I.R in which exhibit – 1 (1) is his signature.

7. During his cross-examination, PW1 has stated that the F.I.R was written by one Mosaur Rahman in his house. The F.I.R was read over to him/PW1. He cannot remember as to what is written in the F.I.R. At the time of occurrence, many people gathered at the place of occurrence but he could not recognize those persons as he fell down on the ground due to his injuries.

8. PW-2 Musstt. Rahima Begum, who is the wife of informant, in her evidence-in-chief has stated that about one year back on a day at about 08:00 A.M, her husband went out from the house to attend his job. She also came out to go to a shop and was following her husband. When they reached in front of the shop of Sri Khagen Borah, at that time accused Sri Pranab Das demanded some

advance money from her husband. Her husband replied that he do not have any such advance amount with him, and as such, said accused Sri Pranab Das hit her husband on the left side of his forehead with a rod. She then grabbed her husband. Thereafter, the mother and sister of accused Sri Pranab Das (i.e., the co-accused persons) came there and caught hold of her husband. She then raised hue and cry. The mother of accused Sri Pranab Das then gave a blow to her/PW2 due to which blood came out from her nose. Thereafter, police came there and sent them for medical treatment.

9. During her cross-examination, PW2 has stated that initially there took place an altercation between the accused and informant as the informant replied that he do not have money. She cannot remember what she stated before police.

10. Now, on going through the evidence deposited by PW-1 and PW-2 as narrated above, it is seen that the crux of the allegation made by them in their evidence in chief is that, at the time of alleged occurrence accused Sri Pranab Das stabbed the informant on the left side of his forehead with an iron rod and thereby caused injury. Further, at that time the other two co-accused came there and caught hold of the informant. The mother of accused Sri Pranab Das then hit a blow to informant's wife as a result of which blood came out from her nose.

11. The foregoing allegations, if proved to be true beyond reasonable doubt, in my opinion will attract the ingredients of the offences punishable u/s 323/341/34 of IPC. Therefore, it is necessary to find out as to whether the aforesaid version of PW-1 and PW-2 can be relied upon to form a concrete opinion against the accused persons.

12. In the above context, upon perusal of cross-examination of PW-1 and PW-2, it is seen that the defence during cross-examination has put certain suggestions adverse to the case of prosecution, but those suggestions were clearly denied by PW-1 and PW-2. Further, I do not find anything substantial in the rest of the statements of PW1 & PW2 in their cross-examinations, which can create any reasonable doubt about the truthfulness of the aforesaid version stated by them in their respective evidence-in-chief.

13. In the above context, PW-3 Dr. Nikhil Kr. Kakati, who is the medical officer of this case, in his evidence-in-chief has stated that on 11.03.2017 at about

10:30 A.M, he examined Musstt. Rahima Begum and found tenderness over bridge of her nose with bleeding. The aforesaid injury was fresh & simple in nature, and was caused by blunt object. On the same day and time, he examined Md. Abdul Safik and found laceration over left lateral eye brow of size ½ inch X ½ inch. The aforesaid injury was fresh and simple in nature, and was caused by hard and rough substance. Exhibit-2 and Exhibit-3 are the injury reports in which Exhibit-2(1) and Exhibit-3(1) are his signatures. During his cross-examination, PW3 has stated that the aforesaid injuries can be caused by falling on hard substance.

14. On going through the evidence deposited by PW3 and the contents of exhibit – 3 and exhibit – 4 reports, I find that the findings of PW3 clearly corroborate the statements of PW-1 and PW-2 with respect to the body part of informant/PW1 in which accused Sri Pranab Das allegedly caused hurt. Similarly, the findings of PW3 clearly corroborate the statement of PW2 as regards the body part in which accused Smti Manashi Das hit a blow. Moreover, though PW-3 in his cross-examination has stated that the injuries detected by him may be caused due to fall on hard object, but there is nothing in the evidence on record to show that the informant and his wife fall down on any hard object at the time of alleged occurrence i.e., prior to the medical examination by PW-3. Therefore, the aforesaid evidence deposited by PW-3, in my opinion, clearly supports the allegation made by PW-1 and PW-2 in their respective evidence-in-chief.

15. Now, let me narrate the evidence deposited by rest two independent witnesses. PW-4 Smt. Konmai Borah in her evidence-in-chief has stated that at the time of occurrence accused Sri Pranab Das demanded money from informant in exchange of work done by him. At that time there took place an altercation between the informant and said accused. At this stage, the PW-4 was declared hostile on the prayer of prosecution.

16. PW-5 Md. Aziz Ali in his evidence-in-chief has stated that at the time of occurrence there took place an altercation between the accused and informant. He was inside his house at the time of occurrence. During his cross-examination, PW-5 has stated that he did not see the occurrence himself. He cannot say why the occurrence took place.

17. From the evidence deposited by PW-4 and PW-5, it is seen that none of the said witnesses have stated anything in support of the alleged assault by accused

persons upon the informant and his wife. It is specifically stated by PW-4 during cross-examination by defence that she did not see the accused assaulting anybody. Therefore, it is clear that there is nothing in evidence of PW-4 and PW-5 which can support the allegations of hurt made against the accused persons.

18. At this juncture, it is important to mention that the learned counsel for the defence at the time of argument stated that the independent witnesses, i.e., PW-4 and PW-5, have not supported the case of prosecution and this shows that the entire story of prosecution is false.

19. In the above context, perusal of evidence deposited by PW5 clearly shows that he was not present in the exact place of alleged occurrence at the time of alleged occurrence. As such, it is obvious that he cannot say the details of the alleged. Further, though PW4 in her cross-examination has stated that she did not see the accused persons assaulting, but the PW4 in her evidence has nowhere specifically stated that the accused persons actually did not assaulted the informant or his wife as alleged. Moreover, there is nothing specific in the evidence of PW4 to show that she was present at the place of occurrence during the whole time period of the alleged occurrence. It may be possible that the altercation took place at the beginning and the alleged assault took place at a later stage. In fact, PW-2 in her cross-examination had made it clear that at the beginning of the occurrence there took place only an altercation between the parties. Under such circumstances, I am of the opinion that, the fact that PW4 did not see the accused persons do not necessarily mean that the accused persons actually did not assaulted the informant and his wife as alleged. It is necessary to add here that PW4 is declared as hostile, and as such, I am of the opinion that it is not safe to rely on the version stated by PW4. Therefore, considering the foregoing discussion, I do not find any force in the aforesaid argument for the learned counsel for defence.

20. Before parting with the discussion, it is necessary to mention here that admittedly PW-6 Sri Nityananda Baruah, who investigated this case, has not seized any article from the possession of the accused persons. Learned counsel for the defence argued that absence of seizure of the weapon of alleged offence shows that the allegations made against the accused persons are false. In my opinion, it is true that the absence of seizure of alleged weapon by I.O creates doubts as

regards the allegations, but the only fact that the I.O did not seized the weapon of alleged offence cannot entirely throw out the case of prosecution if the evidence on record otherwise proves that the accused persons have caused hurt to the informant and his wife.

21. In the case in hand, in view of the discussion made above, I find that the evidence deposed by PW-1 and PW-2 are believable and the same can be relied upon. Hence, the failure of I.O to seize the weapon of alleged offence, in my opinion, is not sufficient to create reasonable doubt regarding the truthfulness of the version deposed by P.W-1 and PW2. As such, I do not find any force in the aforesaid argument of learned counsel for defence.

22. Therefore, going by the evidence of PW-1 and PW-2, I find that at the time of occurrence accused Sri Pranab Das stabbed informant Md. Abdul Safik on his forehead with an iron rod thereby caused injury. Also, at that time, the other two co-accused persons caught hold of the informant. Immediately thereafter, wife of informant Musstt. Rahima Begum came there and at that time mother of accused Smt. Manashi Das gave a blow on the nose of informant's wife thereby causing injury. The foregoing facts, in my opinion, clearly shows that the accused persons wanted to cause hurt to informant and his wife for which they deliberately beat the informant and his wife. As such, it is clear that the accused persons beat the informant and his wife with the intention to cause hurt.

23. Further, the fact that accused Smti Manashi Das and Smti Dimpi Das caught hold of informant, clearly shows that they obstructed the informant from movement. Also, the evidence in record makes it evident that the said accused caught hold of the informant in order to facilitate accused Sri Pranab Das to hit the informant. This shows that the obstruction to informant was voluntary on the part of the accused persons. Also, such an act on the part of accused Smti Manashi Das and Smti Dimpi Das shows that all the three accused persons shared the common intention to restrain the informant and cause hurt to him and thereafter cause hurt to informant's wife. As such, I find that all the three accused persons are guilty for the commission of offences punishable u/s 341/323/34 of IPC. Needless to mention here that none of the witnesses examined by prosecution have stated anything about the alleged use of obscene words by the accused persons.

DECISION: Point no.1 & 2 are therefore decided in the affirmative and goes in favour of prosecution. Point no. 3 is decided in the negative and goes against the prosecution.

ORDER

24. In view of the discussion made and decision reached in the point for determination, it is held that the witnesses examined by prosecution have failed to prove that Sri Pranab Das, Smt. Manashi Das and Smt. Dimpi Das have committed the offence punishable under section 294/34 of I.P.C. Hence, all the three accused persons are acquitted from the charge u/s 294/34 of I.P.C.

25. However, it is held that the witnesses examined by prosecution have proved beyond reasonable doubt that accused persons Sri Pranab Das, Smt. Manashi Das and Smt. Dimpi Das have committed the offences punishable under section 341/323/34 of I.P.C. As such, all three above named accused persons are held guilty for commission of offences punishable u/s 341/323/34 of I.P.C. Accordingly, accused Sri Pranab Das, Smt. Manashi Das and Smt. Dimpi Das are convicted for the commission of offences punishable under section 341/323/34 of I.P.C.

26. As the offences are committed in broad day light, and also as because significant injury is caused to the victims, hence I am of the opinion that releasing the accused persons under the provision of Probation of Offenders Act will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offences in future which will ultimately create a sense of insecurity in the minds of people. Hence, I am not inclined to extend the benefits of Probation of Offenders Act to the accused persons. I have heard all the accused persons on the point of sentence. The accused persons have pleaded for mercy as they are daily wage labour by profession and two of them are females. Considering all aspects, all the above named accused persons are sentenced to pay a fine of Rupees of 500/- (five hundreds) each for the offence u/s 341/34 of I.P.C, in default to undergo S.I for 1 month each, and also to pay a fine of Rupees 1000/- (one thousand) each for the offence u/s 323/34 of I.P.C, in default to under S.I for 1 month each. The total fine to be paid by each accused is Rupees 1,500/- (Fifteen hundreds).The period of imprisonment in default of payment of fine shall run concurrently. The fine, if deposited, be paid to victim Md. Abdul Safik

(informant) and his wife Musstt. Rahima Begum in two equal shares as compensation.

This judgment is given under my hand and the seal of this court on this the 07th day of June, 2019.

This case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX

(A) **PROSECUTION EXHIBITS**

- Exhibit.1 – FIR
- Exhibit.2 – Medical Injury Report
- Exhibit.3 – Medical Injury Report
- Exhibit. 4 – Sketch Map
- Exhibit. 5 – Charge-sheet

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

- PW-1 – Md. Abdul Safik
- PW-2 – Mustt. Rahima Begum
- PW-3 – Dr. Nikhil Kr. Kakati
- PW-4 – Smt. Konmai Borah
- PW-5 – Md. Aziz Ali
- PW-6 – Sri Nityananda Baruah (I.O.)

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

