

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

Present: Shri Narayan Kuri, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 1658/2013

U/s 342/294/352/34 IPC

State of Assam

-Vs-

1. Md. Subu Ali

S/O: Late Nayeb Ali
R/O: No. 1 Kehutoli
P.S: Laluk
District: Lakhimpur, Assam

2. Md. Akbar Ali

S/O: Late Nayeb Ali
R/O: No. 1 Kehutoli
P.S: Laluk
District: Lakhimpur, Assam

3. Md. Amir Ali

S/O: Md. Akbar Ali
R/O: No. 1 Kehutoli
P.S: Laluk
District: Lakhimpur, Assam

.....Accused persons

Date of offence explanation	: 14.05.2015
Dates of recording evidence of PWs	: 30.10.2015, 30.01.2017 06.03.2017, 16.07.2017, 30.04.2019
Date of recording statement u/s 313, Cr.P.C	: 17.05.2019
Date of argument	: 28.05.2019
Date of judgment	: <u>11.06.2019</u>

Advocates appeared in the case:-

Mr. Prasanta Dutta, Addl. P.P., for the State

Mr. Pranjal Kakati, Advocate, for the accused persons

J U D G M E N T

1. The prosecution case, in brief, is that on 19.10.2013 one Musst. Tara Banu lodged an Ejahr with the the Officer-in-charge of Laluk Police Station, alleging that at about 10:30 AM on the same day on getting the information about her daughter Jusnara Begum was being beaten up by her husband i.e. accused Md. Amir Ali, she along with her husband, Md. Mannas Ali went to the house of the accused to enquire about the said fact and found that accused Md. Amir Ali had upon closing the door was beating her daughter, so they remonstrated with the act of accused Amir Ali. At that other accused persons namely, Md. Akbar Ali, Md. Subu Ali, Md. Jalil Ali, Md. Amir Ali and Md. Akbar Ali's wife and son-in-law started assaulting the informant and her husband. One of the accused persons gave a 'lathi' blow on the head of the husband of the informant causing grievous hurt to him. On getting the information, when their grandson Md. Mijanur Rahman and Mijanur's father Md. Rafiqul Islam intervened to rescue them, the accused persons also assaulted them by giving 'lathi' blows causing grievous injury to them. Hence, the case.

2. After receiving the ejahar, the Officer-in-charge of Laluk Police Station registered a case vide Laluk P.S. Case No. 187/2013 u/s 143/342/325, IPC and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet u/s 342/294/352/34, IPC against accused persons Md. Subu Ali, Md. Akbar Ali and Md. Amir Ali to stand trial in the Court. The other FIR-named accused persons Md. Jalil Ali and wife and son-in-law of accused Akbar Ali were not sent up for trial.

3. On receipt of the charge-sheet, cognizance of the offence u/s 342/294/352/34, IPC was taken as per section 190(1)(b), Cr.P.C. The accused persons entered their appearance before the Court after receiving the summon. Copies were furnished to the accused persons as per provision contained in section 207, Cr.P.C. The particulars of the offence u/s 342/294/352/34, IPC were explained to the accused persons to which they 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 persons, at about 10:30 AM, on 19.10.2013, at village No. 1 Kehutoli, under Laluk Police Station, in furtherance of their common intention, wrongfully confined Mustt Jusnara Begum and thereby committed an offence punishable u/s 342/34 IPC?

(b) Whether the accused persons, at about 10:30 AM, on 19.10.2013, at village No. 1 Kehutoli, under Laluk Police Station, in furtherance of their common intention, used obscene utterance against Musst. Tara Banu and Md. Mannas Ali, in or near a public place, and thereby committed an offence punishable u/s 294/34 IPC?

(c) Whether the accused persons, at about 10:30 AM, on 19.10.2013, at village No. 1 Kehutoli, under Laluk Police Station, in furtherance of their common intention, assaulted or used criminal force to Musstt. Tara Banu, Md. Mannas Ali, Md. Rafiqul Islam and Md. Mijanur Rahman, and thereby committed an offence punishable u/s 352/34 IPC?

5. During the trial the Prosecution side examined 6 (six) witnesses, namely, Musstt. Tara Banu (PW-1), Md. Mannas Ali (PW-2), Md. Rafiqul Islam (PW-3), Md. Lal Mamud (PW-4), Md. Mijanur Rahman (PW-5) and SI Bipul Kr. Gogoi (PW-6) and exhibited 2 (two) documents (Shown in the Annexure appended below). After the closure of the prosecution evidence the accused persons were examined under section 313, Cr.P.C. wherein they denied the incriminating materials put to them from the evidence of the witnesses and declined to adduce evidence in defence.

DISCUSSION, DECISION AND REASONS THEREOF:

6. The evidentiary facts that need to be appreciated in all the three points are intertwined as such let me take up all these points together for discussion for the sake of convenience.

7. PW-1 Musstt. Tara Banu, informant, has stated at 8 AM on the day of the occurrence accused Amir Ali who is her son-in-law had assaulted her daughter Jusnara Begum by taking her inside the house. Her 'buwari' (daughter-in-law) went there and resisted Amir Ali from assaulting Jusnara. Thereafter, on the same day, at about 10/11 AM Amir Ali again assaulted Jusnara and then she along with her husband Mannas Ali went there and resisted Amir Ali. When she tried to save Jusnara, accused Amir Ali assaulted on her head with a 'lathi' for which she fell down. Similarly her husband Mannas Ali assaulted with a 'lathi' on his head by accused Akbar Ali, as a result the head of Mannas Ali got cracked. Due to assault of accused Amir Ali, the wearing of Jusnara went off and in that condition she ran away from the house of Amir Ali. She along with her husband Mannas Ali went to the Laluk Police Station and lodged an FIR and police sent Mannas Ali to Nowboicha Hospital for his medical treatment.

8. In her cross-examination, PW-1 Mustt Tara Banu has stated that the ejahar was not written by her; that her house is located at a hearing distance from that of the accused persons. Her daughter-in-law came to know about the fact of assaulting Jusnara by the accused. Thereafter, when her husband went to the house of her daughter-in-law, Jusnara was again assaulted by the accused and he came to know about the said fact. The 'lathi' by which Amir assaulted her was taken by the police but the police did not seize the 'lathi' by which her husband Mannas was assaulted. She sustained injury when Amir assaulted her but she did not get herself treated by any doctor.

9. PW-2 Md. Mannas Ali, husband of the informant, has stated that the house of accused Amir Ali to whom he married off his daughter is situated at a distance of about 1/1½ furlong from his house and house of his son is also situated near to Amir's house. At about 8:00 AM, on the day of occurrence, he had gone to the house of his son but upon hearing hue and cry in the house of Amir Ali, he went there and saw that Amir had been assaulting his daughter Jusnara Begum. He asked accused Amir Ali not to assault Jusnara and then Amir assaulted him with a 'lathi' on his

left leg and thereafter on his head as a result his head got cracked and it bled. He was taken to Laluk Hospital for his medical treatment. In connection with the occurrence his wife lodged an ejahar at Laluk Police Station. In his cross-examination, he has stated that the occurrence did not take place on the day of Eid. Prior to the occurrence his wife was in the house of accused Amir. He admitted to have told the police that when he along with his wife and daughter-in-law had gone to the house of the accused then all the accused persons had beaten them up.

10. PW-3 Md. Rafiqul Islam, son of the informant, has stated that after 12 noon on the day of occurrence he heard that the accused persons had assaulted his father Mannas Ali. The occurrence took place in between the land boundary of the accused persons and of his elder brother Abdul Hussain. His father sustained injury on his head. In his cross-examination, he has stated that the house of accused Amir is situated after crossing the fishery of his house. He could not recollect the date of the occurrence. But he confirmed to have gone to the place of occurrence later on.

11. PW-5 Md. Mijanur Rahman, who is the son of PW-3 Rafiqul Islam and another victim in this case, has stated that he had heard that some fighting had taken place between Mannas Ali and Tara Banu on the one side and the accused persons on the other side. The daughter of Mannas Ali was given in marriage with accused Amir Ali and in that connection the fighting had taken place.

12. PW-4 Md. Lal Mamud, another son of the informant, has stated that accused Amir Ali is his sister's husband (brother-in-law). At the time of occurrence, he was in his house which is situated less than half-a-kilometer away from the house of the accused persons. His father Mannas Ali was in the house of his elder brother at that point of time. His nephew Miju came to his house and informed him that accused Akbar Ali was assaulting his father. He rushed to the place of occurrence i.e. the house of accused persons and found that the occurrence was already over. He saw his father with bleeding injuries in head lying on the courtyard of the accused persons. He along with his elder brother and other family

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members took his injured father to Laluk Police Station where his mother lodged an ejarah at the police station. The police sent his injured father for medical treatment. Before taking his father to the police station, he had sprinkled water on his father's head whereupon his father regained consciousness. On being asked, his father told him that on being asked accused Amir Ali as to why he had been assaulting his daughter, accused Akbar Ali gave a 'lathi' blow on his head. In his cross-examination, he has clarified to have not seen who had assaulted his father as because he reached the place of the occurrence after the fighting had finished.

13. PW-6 SI Bipul Kr. Gogoi, Investigating Officer, has stated that during the course of investigation, he examined the informant at the police station and recorded her statement. He sent the victim Jusnara Begum for her medical treatment at Laluk PHC. Thereafter, he went to the place of occurrence and inspected the same and prepared Ext.1 rough sketch map of the place of occurrence. He also examined the witnesses found at and around the place of occurrence and recorded their statements. He searched for the accused persons namely Akbar Ali, Subu Ali and Amir Ali but could not find them. On 23.10.2013 accused persons Akbar Ali, Subu Ali and Amir Ali surrendered before the police station and after interrogating them he arrested them and allowed them to go on bail. Thereafter, he collected the medical report of the victim and upon getting sufficient materials against accused persons Akbar Ali, Subu Ali and Amir Ali he submitted Ext.2 charge sheet against them u/s 342/294/352/34, IPC. In his cross-examination, he has admitted to have not seized any 'lathi' from the place of occurrence. On the day of the occurrence itself he examined the witnesses and sent the victim for their medical examination. During the course of investigation, it could be found that although there was an allegation of 'maar-pit' (physical assault) but in the medical examination report no injury was seen.

APPRECIATION OF EVIDENCE

14. As per FIR on 19.10.2013 at about 10:30 AM on getting the information that PW-1 Tara Banu's daughter **Jusnara Begum** being beaten up by her husband accused Md. Amir Ali by confining her inside the door, she along with her husband, **Md. Mannas Ali** went there and found accused Md. Amir Ali had been beating her daughter Jusnara upon closing the door. On being remonstrated by PW-1 Tara Banu and her husband PW-2 Mannas Ali, accused persons namely, **Md. Akbar Ali, Md. Subu Ali, Md. Jalil Ali, Md. Amir Ali and Md. Akbar Ali's** wife and son-in-law had assaulted Tara Banu (PW-1), Mannas Ali (PW-2), PW-3 Rafiqul Islam and PW-5 Mijanur Rahman causing injuries to them. Although the prosecution has not exhibited the medical Report of the victims but the same is available in the case record but reflects no injury in the persons of above victims.

15. It has alleged in FIR that accused Md. Akbar Ali, Md. Subu Ali, Md. Jalil Ali, Md. Amir Ali and wife and son-in-law of Md. Akbar Ali had assaulted PW-1,2,3 and 5. But on perusal of the testimonies of PW-1,2,3 and 5 not even an whisper on the role of accused Subu Ali, Md. Jalil Ali, and son-in-law and wife of Akbar Ali could be transpired.

16. The testimony of PW-1 Tara Banu reveals that on the day of the occurrence her daughter Jusnara was taken inside the house and was being beaten by accused Amir Ali. But this victim Jusnara has not been cited as a witness by the prosecution and no explanation was asked by the prosecution from the I/O for this absence. As such the prosecution theory of wrongful confinement of Jusnara Begum under section 342 of the Indian Penal Code fall flat.

17. The testimony of the witnesses adduced by the prosecution nowhere states that the accused persons had used any obscene utterance against the victims. Moreover, the place of the occurrence is also the house of accused and not a public place, as such I am of the conclusive opinion that the prosecution has failed to prove the charge under section 294 of the Indian Penal Code against the accused persons.

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18. Further, PW-1 Tara Banu and her husband Mannas Ali (PW-2) remonstrated with the act of accused Amir Ali, when the latter had allegedly hit her head with a stick and accused Akbar hit her husband Mannas on the head with a bamboo stick. This same fact is being corroborated by PW-2 Mannas Ali. PW-4 Md. Lal Mamud who also went to the place of the occurrence on being informed by Miju i.e. PW-5, after the fight was over, found PW-2 Mannas Ali lying in injured state with injuries in head. PW-4 Md. Lal Mamud has stated that he was informed by Mijanur (PW-5) to have seen the occurrence but PW-5 Mijanur Rahman claims to have only heard about the incident. So, there exists a contradiction in the version of PW-4 and PW-5. PW-3 Rafiqul Islam and PW-5 Mijanur also confirmed to have only heard of the incident but in the FIR they were shown to be the victim in this case and sustained injuries when they came to save PW-1 Tara Banu and PW-2 Mannas Ali. As regard assault to PW-3 Rafiqul Islam and PW-5 Mijanur Rahman neither PW-1 nor 2 have stated anything in this regard nor PW-3 and PW-5 themselves have uttered the fact that they had been assaulted by the accused persons. In this aspect, there lies a contradiction between FIR and the versions of all the prosecution witnesses.

19. On tallying the above contradiction with the Medical Report which reflects no injury to the person of PW-2 Mannas Ali leaves the prosecution case with only contradictions and exaggeration, and it will be a risky proposition to base the guilt of the accused on such shaky ground of prosecution case. To perorate, I am of the conclusive opinion that the prosecution has failed to prove its case beyond all reasonable doubt against the accused persons.

ORDER

20. In view of the discussion made above, the points for determination are decided in negative against the prosecution. Consequently, Accused Subu Ali, Akbar Ali and Amir Ali are acquitted of the charge under section 342/294/352/34 of the Indian Penal Code and as such they are set at

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liberty forthwith. The bail bonds for the acquitted accused persons shall remain in force for a further period of 6(six) months.

21. The judgment is delivered and operative part of the same is pronounced in the open court on this 11th day of June, 2019.

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Contd. Appendix

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Musstt. Tara Banu (PW-1)
Md. Mannas Ali (PW-2)
Md. Rafiqul Islam (PW-3)
Md. Lal Mamud (PW-4)
Md. Mijanur Rahman (PW-5)
SI Bipul Kr. Gogoi (PW-6)

PROSECUTION EXHIBITS

Sketch-map (Ext-1)
Charge-sheet (Ext-2)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & types by-
Sri Narayan Chetri, Stenographer