

GR CASE NO: 1741 of 2014

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR**

GR CASE NO: 1741 of 2014

Under Section 341/294/323 IPC

State

-Versus-

Sri Mathura DasAccused Person

**PRESENT : Sri Jayanta Kumar Saikia, AJS
Judicial Magistrate, First Class
Lakhimpur, North Lakhimpur.**

ADVOCATES APPEARED-

FOR THE PROSECUTION : Sri Debajit Dutta Borah.

**FOR THE ACCUSED : Sri B. Buragohain
Smt. Kabita Saikia**

OFFENCE EXPLAINED ON : 28.07.2015

EVIDENCE RECORDED ON: 19.11.2015, 24.10.2016

30.11.2017, 11.01.2018

31.05.2019

S/D RECORDED ON : 07.06.2019

ARGUMENT HEARD ON : 12.06.2019

JUDGMENT DELIVERED ON: 27.06.2019.

JUDGMENT

- 1.** The prosecution case sets into motion on filing a F.I.R, by the informant, Sri Tilak Das, alleging that on 06.09.2014 at 3:20 pm, when he was travelling from Dholpur to his house by riding his motor-cycle, on which his wife was a pillion rider, the accused person, namely, Sri Mathura Das assaulted him with a bamboo piece, uttering filthy language in front of the house of the accused person on the road. It is further alleged that Smt. Bhekuli Das, wife of the accused person, also attacked the wife of the informant by pulling her hair and causing injury to her person with bamboo sticks. Hence, he lodged this case.
- 2.** The Officer-in-charge, Narayanpur Police Station on receipt of Ejahar registered Narayanpur P.S. Case No. 124/2014 under section 341/294/325/34 of IPC and endorsed the concerned I.O for investigation. After completion of the investigation, the concerned I.O. submitted charge sheet against accused person, Sri Mathura Das under Section 341/294/323 of IPC.
- 3.** In due course, the accused person appeared before the Court on receipt of summon 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 person under Section 341/294/34 of IPC, the particulars of offences under section 341/294/34 of IPC are read over and explained to the accused person by the then Learned Presiding Officer, vide order dated 28.07.2015, to which he pleaded not guilty and claimed to be tried. On 12.06.2019, I have heard both sides again on consideration of charge and it is found that there is material against the accused person under section 341/294/323 of IPC only in this case. Accordingly, the particulars of offences under section 341/294/323 of IPC are explained to the accused person to which he pleaded not guilty. The Defence side submitted that they do not need to cross-examine the PWs again regarding section 323 of IPC.

4. The prosecution, in support of its case, examined 06 (six) witnesses including the Investigating Officer.
5. The accused person is examined under section 313 of Cr.P.C. wherein all the incriminating evidence was put to the accused person. During his examination, he denied his culpability in the alleged offences. Defence side examined no witnesses.
6. I have heard the arguments advanced by the learned Asstt. Public Prosecutor and the Learned Defence Counsel at length and perused the material on record

POINTS FOR DETERMINATION:-

7. Upon hearing both sides and on perusal of the record, the following points for determination are framed:
 - (i) Whether on 06.09.2014, at about 3:20 pm, at No-2 Harmotigarh, under the jurisdiction of Narayanpur Police Station, the accused person wrongfully restrained the informant/victim, Sri Tilak Das with intent to commit an offence and thereby committed an offence punishable under section 341 of IPC?
 - (ii) Whether on the same date, at the same time, at the same place, which is a public place, under the jurisdiction of Narayanpur Police Station, the accused person, scolded the informant/victim, Sri Tilak Das in filthy language and thereby committed an offence punishable under section 294 of IPC?
 - (iii) Whether on the same date, at the same time, at the same place, under the jurisdiction of Narayanpur Police Station, the accused person, voluntarily caused hurt to the informant/victim, Sri Tilak Das and thereby committed an offence punishable under section 323 of IPC?

DISCUSSION, DECISION AND REASONS THEREOF

- 8.** I have carefully gone over the evidence on record and have also given thoughtful considerations to the rivalry submissions made by both sides. Now, let me proceed to appreciate the evidence on record to reach at a just decision.
- 9.** The prosecution side marshaled evidence of (06) six witnesses including the investigating officer to prove its case. Let us discuss the testimonies of the witnesses one by one.
- 10.** The evidence of **PW1**, namely, Sri Tilak Das, the informant of this case reveals that he knows the accused person. He says in his evidence that about four months back, at 4:30 pm, in front of the house of the accused person, when he was coming with his wife by riding his motor-cycle, at that moment, the accused person came from his house and hit him on his shoulder with a "lathi" from back side, causing injury to his person. Due to which, he along with his wife fell on the ground. He exhibited Exhibit-1 as the FIR and Exhibit-1(1) as his signature. He also stated that the police recorded his statement and sent him for medical examination.
- 11.** During his cross-examination, PW1 stated that he has no knowledge regarding whether or not the accused person lodged a cross-case against him in connection to the same incident. He asserted in his cross-examination that the accused person assaulted him while he was riding his motor-cycle. He has denied the other suggestions levied by the defence side.
- 12.** Coming to the evidence of **PW2**, namely, Sri Umeswar Das, reveals that he knows the accused person as well as the informant. He has stated that about more than one year ago, he saw the said Tilak Das and Suren Das equipped with two numbers of "lathi" going to the house of the accused person Sri Mathura Das. In his cross-examination, he has stated that apart from the said occurrence, he knows nothing else.
- 13.** The evidence of PW2 turns a bolt to the story of the prosecution side as PW2 did not support the statement made by

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the PW1 and the allegation made in the FIR (Exhibit-1) regarding the happenings of the alleged incident. Instead, according to his version, the informant (PW1) and his father was the aggressor on the day of the alleged occurrence. Though the prosecution side had opportunity to shake the credential of PW2 by cross-examining him, declaring him a hostile witness, but the prosecution side has not exercised that rule of evidence. Due to which, there is no option left before this court for not believing the statement made by PW2.

14. PW3, namely, Smt. Rupali Das, has stated that she knows nothing about the occurrence. Her cross-examination is declined by the defence side. Her evidence also has not laid any support to the prosecution's case.

15. PW4, namely, Sri Nilomoni Saikia, has stated that about 1 ½ years back, on Sunday at 10 am, the incident occurred. He says that Sri Mathura Das is his brother and Tilak Das is his relative. He heard that the accused person Sri Mathura Das assaulted Sri Tilak Das and there was a quarrel between them. In his cross-examination, PW4 deposed that he has heard only about the alleged incident but he has not seen the alleged incident. He also stated that the police did not interrogate him. Admittedly, the evidence of PW4 is hearsay evidence and the prosecution side failed to receive any support from his evidence.

16. PW5, namely, Sri Suren Das, has stated that that about 2 years back, at about 1:30 pm, when the informant, Sri Tilak Das was going to market from his house on his motor-bike to Dholpur. While Tilak was going, the accused person, Sri Mathura Das hit him with a stick and as such, stopped the bike of Tilak Das. One Nilomoni Saikia rescued Tilak Das and Tilak Das and Sri Mathura Das went away to the respective houses. At that time, he was cutting grasses on the field. He saw the whole incident and he told Nilomoni Saikia to stop the quarrel. After that Tilak Das went to the Thana and he was medically examined.

17. In her cross-examination, PW5 deposed that Sri Tilak Das is his son. He denied the other suggestions levied by the defence side.

- 18.** PW6 (I.O), Sri Jogen Saikia in his evidence stated about the investigation of the case. He was cross-examined by the defence side.
- 19.** From the aforesaid evidences adduced by the prosecution side, it is found that there are irreconcilable discrepancies in the evidence adduced by the prosecution side. It is prominent from the positive evidence adduced by the PW1 (informant-cum-victim) of the case that along with him, his wife was also present at the time of the alleged occurrence, who was riding with him as pillion rider. It is also evident from the evidence of PW1 that his wife is also a victim in this case. It is clearly mentioned in the Exhibit-1 (FIR) that the wife of the informant in this case was also assaulted by wife of the accused person at the time of the alleged occurrence. But, surprisingly the I.O (PW6) has not recorded the statement of Smt. Juri Das, wife of the informant during the investigation of this case nor cited her as a witness in the charge-sheet (Exhibit-4). Moreover, the prosecution side has not called this important eye witness who could have been a star witness in this case if called for.
- 20.** It is already discussed that the evidence of PW2 does not corroborate the evidence of PW1. Instead, in his evidence, PW2 stated that it is the informant, namely, Sri Tilak Das (PW1), and his father, Sri Suren Das (PW5) were the aggressor, who went to the house of the accused person Sri Mathrua Das holding lathi. PW3, namely, Smt. Rupali Das and PW4, namely, Sri Nilomoni Saikia also has not seen the incident and being hearsay witness, their evidences could not be relied upon. Though PW5, father of the informant, has stated that he has witnessed the incident from the place from where he was cutting grass, but his version differs from the evidence of PW1 (informant-cum-victim). Moreover, according to PW5, it was Sri Nilomoni Das (PW-4) rescued Sri Tilak Das (PW-1) from the accused person. But, Sri Nilomoni Das (PW4) clearly stated in his statement that he is not present at the time of alleged occurrence. Moreover, Sri Nilomoni Das (PW4) has not stated in his evidence as stated by PW5, Sri Suren Das that PW5, Sri Suren Das

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directed the PW4, Sri Nilomoni Saikia to stop the quarrel. These contractions are vital and it goes to the root of the prosecution case because the only witness PW-5, Sri Suren Das who has supported the prosecution case is the father of the informant (PW-1) and an interested witness. Moreover, according to PW-2, PW-5 was also an aggressor who went to the house of accused person Sri Mathura Das holding a lathi. As such, I have no hesitation to hold that the evidence of PW-5, namely, Sri Suren Das is not believable and trust worthy. Hence, it will not inspire any confidence to the prosecution's case.

- 21.** On careful perusal of the evidences adduced by the prosecution side, it is also found that though it is stated that the victim was medically examined on the day of the alleged occurrence, but the medical report, which was collected by the I.O (PW6) on 08.09.2014 from Dhalpur CHC, is neither exhibited in this case nor the Medical Officer, who has examined the victim during investigation, was called for in this case to adduce evidence in support of the prosecution side.
- 22.** Now, let us proceed to the plea of the defence side. On perusal of the 313 statement of the accused person, it is found that he has stated that on the day of the alleged occurrence, the informant (PW1) along with his father (PW5), Sri Suren Das visited the place of alleged occurrence and uttered obscene language to him. The plea of the defence is interestingly supported by PW2 who is a neighbor of the informant (PW1) who has stated that he himself has seen that the informant (PW1) and his father (PW5) were aggressively going to the house of the accused person equipped with "lathi".
- 23.** The I.O (PW6) has not seized anything in this case. Neither the weapons alleged to be used nor the motor-cycle which was alleged to be fallen down due to alleged assault was also seized in connection with this case. No other witnesses have corroborated the evidence of PW1 (informant). No medical evidence is adduced

in this case even though the prosecution side alleged commission of an offence under section 323 of IPC.

24. In the light of the above discussions and reasons thereof, I am of the considered opinion that the prosecution side has failed to bring home the guilt of the accused person under offence under section 341/294/323 of IPC beyond reasonable doubt.

ORDER

In the light of aforesaid discussion and reasons thereof, I am of the considered opinion that the prosecution side failed to prove its case against the accused person beyond reasonable doubt.

Accordingly, the accused person, Sri Mathura Das is acquitted of the offences under section u/s 341/294/323 of IPC and he is set at liberty forthwith.

The bail bonds of the accused person and his surety shall remain in force for a period of 6 months from today as per amended CrPC.

The I.O is to dispose of the seized property as per law.

Given under my hand and seal of this court on this 27th day of June, 2019.

Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur

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APPENDIX

PROSECUTION EXHIBITS:

- Exhibit-1: F.I.R.
- Exhibit-2: Endorsement order
- Exhibit-3: Sketch map.
- Exhibit-4: Charge-Sheet.

DEFENCE EXHIBITS

NIL

PROSECUTION WITNESSES

- PW-1 : Sri Tilak Das (informant)
- PW-2 : Sri Umeswar Das
- PW-3 : Smt. Rupali Das
- PW-4: Sri Nilomoni Saikia
- PW-5: Sri Suren Das
- PW-6: Retired ASI Jogen Saikia (I.O)

DEFENCE WITNESSES

NONE

MATERIAL EXHIBITS

NIL

Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur