

**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. 413/2016**

Under section 448/323/34 of the of the Indian Penal Code

**State of Assam**

**-Vs-**

**(1) Mustt Ashma Khatun**

**(2) Mustt Halemon Nessa**

.....Accused persons

Date of offence explanation : 21.08.2017  
Dates of recording evidence of PWs : 14.06.2018, 15.02.2019,  
10.06.2019, 09.09.2019,  
12.03.2020, 26.02.2021  
Date of examination u/s 313, Cr.P.C. : 24.03.2021  
Date of Argument : 25.08.2021  
Date of judgment : **07.09.2021**

**Advocates appeared in the case:-**

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

Smti. Janmoni Gogoi, Advocate, for the accused persons

**J U D G M E N T**

1. The factual matrix of the prosecution is that one Mustt Ruhula Khatun on 21-02-2016 had lodged an ejahar before the In-charge of Chilonibari Police Outpost under North Lakhimpur Police Station alleging inter alia that the persons viz. Mustt Asma Khatun, Mustt Haleman Nessa and Anar Hussain on 20-02-2016 had entered her house in absence of her husband and over a matter of a quarrel between the children of the two household had physically assaulted her severely causing serious injuries to her person as she was bitten in her hand causing a portion of her flesh to tear. Hence, the case.

2. On receipt of the ejahar a G.D Entry was made in the Silonibari Police Outpost vide Silonibari O.P. G.D.E. No. 420 dtd. 21-02-2016. The said ejahar was sent to the North Lakhimpur Police Station where a case was registered upon it vide N.L.P.S. Case No. 200/2016, under section 458/326/325/323/34 of the Indian Penal Code. The investigation into the case got commenced and the investigating officer, after completing the investigation, submitted charge-sheet under section 448/323/34 of the Indian Penal Code against the accused persons viz. Mustt Ashma Khaton and Mustt Haleman Nessa to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 448/323/34 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused persons entered their appearance before the Court after receiving the summons. Copies were furnished to the accused persons as per provision contained in section 207 of the Code of Criminal Procedure. The particular of offence under section 448/323/34 of the Indian Penal Code when being read over and explained to the accused persons 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 with common intention had criminally trespassed into the house of the Informant on 20-02-2016 ?

(b) Whether the accused persons with common intention had voluntarily caused hurt to the informant and her son Rahul Ali ?

5. During the trial the prosecution side examined 6 (six) PWs viz. Mustt Rohula Khatun as PW-1, Smt Lakhimai Pegu as PW-2, Md. Rahul Ali as PW-3, Mustt Asiya Khatun as PW-4, Dr. Mridul Soren the M.O. as

PW-5 and Inspector Nikhil Rajkhowa the I.O. as PW-6. The prosecution had exhibited the Injury Reports of Ruhula Khatun and Rahul Ali as Ext-1 & Ext-2 respectively and the signature of the M.O. therein both the exhibits as Ext-1(1) and Ext-2(1) respectively, the G.D. Entry Extract copy as Ext-3, the rough sketch map of P.O. as Ext-4 and the signature of the I.O. therein as Ext-4(1), the chargesheet as Ext-5 and the signature of the I.O. therein as Ext-5(1). The statement under section 313 of the Code of Criminal Procedure of the accused persons were recorded. They denied to be true the incriminating materials that had surfaced against them in the evidence of the PWs and they had also declined to adduce any evidence in defence.

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

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. At the foremost let us have a look at the definition of the term 'House trespass' which the accused persons have been charged to have committed in this case. The same has been defined under section 442 of the IPC as follows : ' *“Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit house trespass.*

*Explanation- The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house trespass.”*

8. Now let us again see what the term criminal trespass means. Section 441 of the IPC defines Criminal Trespass as follows :

*Whoever enters into or upon property, in the possession of another with the intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent*

*thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".*

9. Now let us see whether the accused persons had entered the house of the Informant with the intent to commit an offence. To arrive at a proper conclusion let us take up both the aforesaid points of determination for discussion together.

10. To arrive at a just conclusion let us begin the discussion by having a scrutiny of the evidence of the PWs.

11. The PW-1 Mustt Rohula Khatun the Informant of this case had testified that the incident started with the fact of Md. Anar Hussain the son of accused Asma Khatun assaulting Ramzan Ali the son of the Informant while he was playing with his one and half year old brother on the road. The accused persons on that very day i.e. 20-02-2016 at about 4pm had entered her house while she and her son Rahul went to bazaar and were not present at home. The Accused persons had pounded the door of her house with lathis and also had cut the wall of her house with a dao.

12. When the PW-1 returned home along with her son Rahul she could see her son Ramzan her daughter Rajmina Khatun and her baby crying. The accused Asma Khatun then had pulled the PW-1 by her hair and had dragged her out of the house to her courtyard. She dealt a blow to her aiming to hit her head but she caught hold of the dao for which she sustained injury in the middle finger of her right hand. Thereafter the accused Asma Khatun had bitten in her right hand tearing away her flesh.

13. The PW-1 due to the assault of the accused Asma Khatun got senseless and later as Anuwara Begum poured water over her head she regained her sense and could come to know from Anuwara Khatun that the accused Halemun Nessa had assailed her son Rahul with a lathi on his leg.

14. Now as per the version of the PW-1 she had been assailed by the accused Asma Khatun who had torn her flesh by biting in her right hand and also she sustained cut injuries in the middle finger of her right hand as she caught hold of the dao of the accused Asma Khatun while she dealt a blow to her with the said dao. So to ascertain the veracity of the testimony of the PW-1 let us have a look at the evidence of PW-5 Dr. Mridul Soren the M.O. of this case to confirm that whether she had indeed sustained such injuries.

15. The PW5 the M.O testified that on 20-02-2016 she had examined the PW-1 at about 9 pm and could detect a laceration of about ½" x ½" near left elbow joint. The PW-5 the M.O in his cross examination had stated that such injury could be due to fall on any bamboo fence.

16. So from the version of the PW-5 the M.O. it can be seen that no such cut injury in the middle finger of the right hand or tearing away of flesh on being bitten in the right hand of the PW-1 could be detected. In fact no injury at all in her right hand could be detected. The only injury which the PW-5 the M.O stated about detecting in the body of the PW-1 was a lacerated injury in her left elbow joint which he opined in his cross examination could be due to fall on a bamboo fencing. The PW-1 too in her evidence in fact had not mentioned about sustaining any such injury in her left elbow due to assault of the accused Asma Begum. She in fact had stated about sustaining a different injury that of a cut injury in the middle finger of her right hand and a bite injury on her right hand due to assault of the accused which the PW-5 the M.O. in his examination of the PW-1 couldn't detect.

17. So the PW-5 ( M.O.) and the injury report i.e. Ext-1 doesn't go to support the version of the PW-1 and in fact contradicts her statement. So that creates a doubt in the version of the PW-1. Let us now have a look at the other ocular evidence i.e. the version of the other PWs.

18. The PW-3 Rahul Ali testified that at the time of incident he was present at home and was studying. The accused persons then came and had dragged her mother to a field and had assailed her with dao and lathi. The accused persons had bitten her mother in her left hand and for that she sustained injuries in her hand and due to the assault of the accused persons his mother had sustained head injury as well. PW-3 stated that when the accused persons were assailing his mother he tried to save his mother and at that both the accused persons had beaten him with the butt of the dao in his right leg.

19. The PW-3 in his cross examination had stated that on the date of incident there was a quarrel between Md. Anar Hussain the son of Accused Asma Khatun and the younger brother of PW-3 viz. Ramzan Ali and over that matter the accused Asma Begum had lodged an ejahar against him, his father and his mother Ruhula Khatun i.e. the informant of this case.

20. Now if we compare the evidence of the PW-1 Ruhula Khatun with that of the evidence of PW-3 Rahul Ali it can be seen that while narrating about the incident the PW-3 nowhere stated in his evidence about the accused persons entering their house and cutting the wall of their house with dao and pounding the doors of their house with lathi as narrated by the PW-1. Moreover it can be seen that the PW-1 stated that at the time of incident she and the PW-3 her son went to the bazaar and when they returned from bazaar the accused Asma Khatun had assailed her in her house but the PW-3 on the other hand stated that when the accused persons came he was present in the house and was studying.

21. The PW-1 further stated that the accused persons had beaten her in her house but the PW-3 stated that the accused persons had dragged the PW-3 to a nearby field and had assailed her there. The PW-3 stated about the PW-1 sustaining injuries in her head and hand but the PW-1 didn't state anything about sustaining injuries in her head.

The Ext-1 the injury report too didn't reflect any such injury in the head of the PW-1.

22. The PW-3 Rahul Ali further stated that when the accused persons were assaulting the PW-1 he went to intervene and at that the accused persons had assaulted her but the PW-1 didn't state anything about the PW-3 coming forward to rescue her and getting assaulted by the accused persons in the process. The PW-1 in fact stated that she had heard from Anuwara Khatun about the accused Halemun Nessa assaulting her son Rahul Ali with a bamboo. Now the prosecution didn't examine Anuwara Khatun as a witness in this case.

23. The PW-5 M.O. stated that he detected an abrasion near right knee joint of Rahul Ali on his examination measuring  $\frac{1}{2}$ " x  $\frac{1}{2}$ " and laceration about  $\frac{1}{3}$ " x  $\frac{1}{3}$ " x  $\frac{1}{3}$ " around right ring finger. Now the PW-3 or the PW-1 had never stated anything about the PW-1 receiving injuries in his finger due to assault of the accused persons. The PW-5 M.O. too in his cross examination stated that the said injuries received by the PW-3 Rahul Ali may result due to a fall on any bamboo fencing.

24. Now both the PW-1 and PW-3 being mother and son are related witness. Let us have a look at the evidence of the PW-4 Asiya Khatun an independent witness for that purpose. Now the PW-4 testified that on the date of incident she heard a hue and cry and as such went out and could see Accused Asma Khatun and Informant Rohula Khatun both tugging over a dao. The PW-4 snatched the dao and gave it in the hand of the mother of the accused Asma Khatun

25. The PW-4 stated that she saw some injury in the hand of the PW-1 Ruhula Khatun but she doesn't know how she happened to get that injury.

26. So the PW-4 Asiya Khatun is an eye witness in this case as she was present at the place of occurrence at the time of incidence. She stated nothing about the accused Asma Khatun dealing a blow to PW-1 with a

dao or that of the accused Asma biting the PW-1 or that of PW-1 getting senseless due to the assault of the accused Asma Khatun on her. According to PW-4 the only thing that had happened was that both the PW-1 and accused Asma were tugging over a dao. So the PW-4 the independent witness has not at all supported the version of the PW-1. As for the injury which the Pw-4 stated about observing in the hand of the PW-1 she clearly stated that she doesn't know how the PW-1 had sustained it. As discussed above it can be already seen that the injuries described by the PW-1 were not supported by the Ext-1 i.e. the injury report. Also about the injury detected in the left hand of the PW-1 the PW-5 M.O. stated in his cross examination that such injury could be due to fall on any bamboo fencing. Further the PW-1 didn't state the accused Asma Khatun to have caused any injury in her left elbow joint as reflected in the said injury report. So from the evidence on record it cannot be concluded that the accused Asma Khatun had assaulted the PW-1 Ruhula Khatun.

27. Further the PW-4 who was present at the place of occurrence at the time of incident didn't state anything about the accused persons beating PW-3 Rahul Ali with the butt of dao. PW-4 in fact had stated that she had snatched the dao from the hands of the PW-1 and the accused Asma Khatun and gave the dao to the mother of the accused Asma Khatun. So the PW-4 has totally contradicted the version of the PW-3 that the accused persons had assaulted the PW-3 with the butt of the dao.

28. The PW-2 Smt Lakhimai Pegu another independent witness had stated that she had only heard about a quarrel between both sides and had not witnessed any incident and so is not aware about the facts of the incident. So the PW-2 has also not supported the prosecution case and she in fact is a mere hearsay witness.

29. So at this juncture when the versions of the PWs are all contradictory it is highly unsafe to rely on the version of the PW-1 and

PW-3 whose evidence are not at all found credible. So in the given position from the evidence on record it can no way be concluded that the accused persons had criminally trespassed into the house of the informant and had voluntarily caused hurt to the informant and her son with common intention.

30. Hence both the aforesaid points of determination are held in negative.

31. The Prosecution has failed to prove the case against the accused persons u/s 448/323/34 IPC and as such they are acquitted from the said offences and are set at liberty.

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

Let a copy of this judgment be sent to the District Magistrate.

The judgment is delivered and operative part of the same is pronounced in the open court on this the 7<sup>th</sup> day of September, 2021.

***-Sd-***

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

Dictated & corrected by me-

***-Sd-***

**(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**

Mustt Ruhula Khatun (PW-1)  
Smti. Lakhimai Pegu (PW-2)  
Md. Rahul Ali (PW-3)  
Mustt. Asiya Khatun (PW-4)  
Dr. Mridul Soren (PW-5)  
Inspector Nikhil Rajkhowa(PW-6)

**PROSECUTION EXHIBITS**

Injury Report (Ext-1)  
Signature of the M.O. [Ext-1(1)]  
Injury report (Ext-2)  
Signature of the M/O [Ext-2(1)]  
Extract Copy of GD Entry (Ext-3)  
The rough sketch map of the P.O (Ext-4)  
Signature of the I.O. [Ext-4(1)]  
Charge sheet (Ext-5)  
Signature of the I/O [Ext-5(1)]

**WITNESSES AND EXHIBITS FROM THE DEFENCE SIDE**

Nil

**WITNESSES AND EXHIBITS FROM THE COURT SIDE**

Nil

***-Sd-***

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