

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

G.R CASE NO: 381 OF 2017  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SARIFUL ISLAM AND ORS.

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

GR CASE NO: 381 / 2017

U/S 447/294/323/506/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. SARIFUL ISLAM AND ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA  
ADVOCATE FOR THE ACCUSED: MR. S. KHANDAKAR

OFFENCE EXPLAINED ON : 03.05.2018  
EVIDENCE RECORDED ON : 05.07.2018, 06.12.2018, 05.07.2019,  
09.06.2020  
ARGUMENT HEARD ON : 05.01.2021  
JUDGMENT DELIVERED ON : 08.01.2021

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF:**

1. Prosecution's case in brief as it reveals from the FIR is that on 03.02.2017 at about 8.30 AM, while informant Musstt. Jabeda Khatoon was having food in the courtyard of her house at that time all the five accused persons came there and started to abuse the informant verbally and eventually attacked the informant as a result of which the informant fell down on the ground. Accused Md. Sariful Islam then sat on the chest of informant and snatched an ear ring which the

informant was wearing and also caused injury by biting in the ear of informant. The other accused persons also caused injury to the informant by assaulting her. The informant was then taken to hospital where she was provided with stitches in the injury of her ear. The informant subsequently lodged an FIR about the occurrence before the Superintendent of Police, North Lakhimpur which was then forwarded to the O/C of Laluk police station for taking necessary action.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 40/2017. After investigation, I.O of the case submitted charge sheet against accused persons Md. Sariful Islam, Mustt. Ajifa Khatoon, Mustt. Asma Khatoon, Md. Abdul Kadir and Md. Jalaluddin @ Abdul Jalil for the offences punishable u/s 447/294/323/506/34 of IPC. 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 punishable u/s 448/294/506/34 of IPC are read over and explained to both the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined two witnesses, whereas the defence examined one witness. The accused persons were examined u/s 313 of 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-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons in furtherance of their common intention on 03.02.2017 at 8.30 AM, entered inside the courtyard of informant's house with the intent to cause hurt to the informant, or intimidate, insult or annoy the informant, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether the accused persons in furtherance of their common intention on 03.02.2017 at 8.30 AM, abused the informant verbally by using obscene words in or near any public place to the annoyance of informant or others, and thereby committed an offence punishable u/s 294/34 of IPC?

(iii) Whether the accused persons in furtherance of their common intention on 03.02.2017 at 8.30 AM, hit the informant physically with the intention to cause hurt, and thereby caused injury to the informant, and thereby committed an offence punishable u/s 323/34 of IPC?

(iv) Whether the accused persons in furtherance of their common intention on 03.02.2017 at 8.30 AM, threatened the informant with injury to her person, with the intent to cause alarm, and thereby committed an offence punishable u/s 506/34 of IPC?

**DISCUSSION, DECISION AND REASONS THEREOF:**

**POINT NO. 1, 2, 3 & 4**

6. For the sake of convenience and as because point no.1, 2, 3 & 4 are interconnected, hence they are taken up herein together for discussion & decision as follows:

7. As regard the aforesaid points for determination, informant Musstt. Jabeda Khatoon in her evidence as PW-1 has stated that the accused persons entered into her house compound at the time of occurrence. During her cross-examination, PW-1/informant specifically denied the suggestion of defence that the accused persons came to her house compound on being invited. However, informant's mother/PW-2 Musstt. Samala Khatoon during her cross-examination has specifically stated that the accused persons came to her house at the time of occurrence on being invited by her husband.

8. Therefore, it is clear that the PW-1 and PW-2 examined by prosecution have deposed two different and contradictory statements regarding the manner of alleged entry of the accused persons inside the house compound of informant. It is a well settled legal position that whenever two views are possible from the evidence deposed by prosecution witnesses then the view which supports the defence is to be accepted by the court. Under such circumstances, it is clear that in the case in hand the aforesaid statement deposed by informant's mother/PW-2 has to get preference and is to be believed.

9. Moreover, DW-1 Md. Abdul Kadir in his evidence has also specifically stated that the accused persons went to the house of informant on being invited by

informant's father. Hence, on the basis of above evidence, I find that the accused persons at the time of occurrence entered inside the house compound of informant only because they were invited by informant's father. In that view of the matter, it is clear that such entry of the accused persons was not at all unlawful. Therefore, it now becomes necessary to find out that whether the accused persons after entering lawfully have remained there in an unlawful manner by committing some other offence.

10.As regards the allegation of physical assault, PW-1/informant has stated that all the accused persons assaulted her with their hands and have also bitten on her cheek. They also took away her ear ring and blood oozed out from her left eye. In this context, informant's mother/PW-2 has simply stated that all the accused persons assaulted her daughter due to which her daughter sustained injury in the eye from which blood oozed out. Again, informant's sister-in-law/PW-5 Mustt. Saleha Khatoon has stated that all the accused persons assaulted the informant with "lathi" due to which blood oozed out from informant's eye. The PW-6 Sri Padma Lal Adhikari in his evidence has stated that all the accused persons fell on the body of informant and blood oozed out from informant's eye. Be it noted here that PW-3 has not deposed anything to support the alleged assault and the PW-5 has deposed hearsay evidence.

11. Now, on perusal of the evidence deposed by all the prosecution witnesses as narrated above with respect to the alleged assault upon informant, it is seen that the witnesses have failed to properly corroborate each other on material aspects. To be more particular, though PW-1/informant has stated that the accused persons have assaulted her with hands and have bitten her, but PW-2 has not stated anything about biting by the accused persons and the PW-5 has went a step ahead by adding that the accused persons used "lathi" to beat the informant. Again, PW-6 has interestingly stated that the accused persons simply fell on the body of informant. Therefore, it is clear that the aforesaid witnesses are very much inconsistent with respect to the manner in which the accused persons allegedly assaulted the informant. In my opinion, had the occurrence actually took place as alleged then the above mentioned prosecution witnesses would have been very much consistent as they claim themselves to be eye witnesses.

12. In addition to the above, PW-8 Dr. Bharati Borah, who examined the informant on 03.02.2017 at Nowboicha CHC has deposed that she found black eye on the left, and tender with swelling over right knee joint of the informant. The PW8 has not mentioned anything about oozing of blood from the eye of informant or bite mark on the cheek of the informant. In my opinion, had the accused persons actually bitten the informant as alleged then the M.O/PW8 would have definitely found bite marks on the cheek of informant. Under such circumstances, it is clear that the findings of PW-8 do not properly support the allegations made by informant, and rather create doubt regarding the statement made by PW-1 with respect to alleged assault by the accused persons.

13. Considering the above discussion, I find that the statements made by prosecution witnesses as narrated above with respect to the alleged assault by the accused persons upon informant are not reliable and cannot be believed.

14. As regards the alleged use of obscene words and giving of threat by the accused persons, the PW-2, PW-3, PW-4, PW-5 and PW-6 have not stated anything specifically which can prove or support those allegations. In this context, though PW-1/informant in her evidence-in-chief has stated that the accused persons rebuked her by using slang language but she has not specifically mentioned those slang words allegedly used by the accused persons. In the absence of such specific mention of those alleged slang words, it is not possible to ascertain properly that whether the words, if any, used by the accused persons are actually obscene as required u/s 294 of IPC. Hence, it is clear that the PW-1/informant has failed to prove beyond reasonable doubt that the accused persons have used any obscene word in or near any public place at the time of occurrence. Be it added here that the PW-1 has not specifically stated anything about any threat being given by the accused persons.

15. Considering the entire discussion made above, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused persons have committed the offences as alleged and as mentioned in the aforesaid points for determination.

*DECISION: Point no.1, 2, 3 & 4 are therefore decided in the negative and goes against the prosecution.*

**ORDER**

16. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused persons Md. Sariful Islam, Mustt. Ajifa Khatoon, Mustt. Asma Khatoon, Md. Abdul Kadir and Md. Jalaluddin @ Abdul Jalil have committed the offences punishable under section 447/294/323/506/34 of IPC as alleged, and as such, the said accused persons are acquitted of the charges under section 447/294/323/506/34 of IPC on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 08<sup>th</sup> day of January, 2021.

The case is disposed of on contest.

(F. U Choudhury)  
Additional Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

**APPENDIX****PROSECUTION EXHIBITS:**

- Exhibit.1 – FIR
- Exhibit.2 – Sketch map
- Exhibit.3 – Charge-sheet
- Exhibit.4 – Medical report

**PROSECUTION WITNESSES:**

1. PW-1 – Mustt. Jabeda Khatoon
2. PW-2 – Mustt. Samala Khatoon
3. PW-3 – Md. Samir Ali
4. PW-4 – Mustt. Jorina Khatoon
5. PW-5 – Mustt. Saleha Khatoon
6. PW-6 – Sri Padma Lal Adhikari
7. PW-7 – Sri Diganta Kalita
8. PW-8 – Smt. Bharati Borah

**DEFENCE EXHIBITS:**

NIL

**DEFENCE WITNESSES:**

1. DW-1 – Md. Abdul Kadir

(F. U Choudhury)  
Additional Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur