

**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. 1791/2013

Under section 294/323 of the of the Indian Penal Code

State of Assam

-Vs-

Smti. Konbhani Borgohain

.....Accused

Date of offence explanation : 25.04.2014
Dates of recording evidence of PWs : 20.05.2016, 14.06.2019,
15.07.2019, 26.08.2019,
23.10.2019, 14.11.2019
Date of examination u/s 313, Cr.P.C. : 30.11.2019
Date of Argument : 05.02.2020
Date of judgment : **10.02.2020**

Advocates appeared in the case:-

Sri Prasanta Dutta and Smti. Ajanta Sharma Baruah, Addl. P.P., for the State
Sri Aditya Baruah, Advocate, for the accused

J U D G M E N T

1. The factual matrix of the prosecution is that on Smti. Sikhmoni Baruah on 14.11.2013 had lodged an FIR with the Officer-in-charge of Boginadi Police Station alleging that on that day at about 5:30 PM while she was waiting in front of the Namghar at Kadamial Bongali Gaon then the persons namely viz. Smti. Konbhani Borgohain had met her and hurled verbal abuses to her. She caught hold of her by her hair and pulled her down to ground and thereafter had assaulted her with a bamboo 'lathi' on her back causing severe injuries to her and it was her sister-in-law Moni Baruah who had rescued her. Hence, the case.

2. On receipt of the ejahar, the Officer-in-charge of Boginadi Police Station registered a case vide Boginadi P.S. Case No. 134/2013, under section 294/325/34 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 294/323 of the Indian Penal Code against accused Smti. Konbhani Borgohain to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 294/323 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused entered her appearance before the Court after receiving the summons. Copies were furnished to the accused as per provision contained in section 207 of the Code of Criminal Procedure. The particular of offence under section 294/323 of the Indian Penal Code when being read over and explained to the accused person she 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 accused at about 5:30 PM on 14.11.2013 at Kodomial Bangali Gaon in front of the Namghar there had verbally abused the informant Smti. Sikhamoni Baruah with vulgar language in public to cause annoyance to her ?

(b) Whether accused at about 5:30 PM on 14.11.2013 at Kodomial Bangali Gaon in front of the Namghar there had voluntarily caused hurt to the informant ?

5. During the trial the Prosecution side could examine 6 (six) witnesses viz. Smti. Sikhamoni Baruah (PW-1), Sri Biliyan Kandulana (PW-2), Smti. Moni Baruah (PW-3), Dr. Jagadish Goswami (PW-4), Smti. Rimpi Konch Dutta (PW-5) and ASI Bolindra Baruah (PW-6). The

prosecution had exhibited the ejahar as Ext-1, Ext-1(1) as signature of informant-victim (PW-1) therein, Ext-2 the injury certificate and Ext-2(1) is the signature of the M/O (PW-4) therein, Ext-3 as the sketch map of the place of occurrence and Ext-4 as charge-sheet and Ext-3(1) and Ext-4(1) are the signatures of the I/O (PW-6) therein respectively. The defence has cross-examined prosecution witnesses and thereafter all the incriminating materials surfaced in the evidence of the prosecution witnesses against accused was put to her explanation under section 313 of the Code of Criminal Procedure. The defence plea was in completed denial.

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

DISCUSSION, DECISION AND REASONS THEREOF:

7. For the sake of convenience both the points for determination are taken up together for discussion.

8. Now taking up the evidence of the PW-1 Smti. Sikhamoni Baruah i.e. the informant and victim of this case first it can be seen that she testified that the accused who is her husband's relative one day in the evening about two years back had pulled her down to the ground by holding her hair and had assailed her with hands and a split bamboo for which she sustained injury on her right sole and head.

9. Now it is to be seen that whether the other PWs have corroborated the evidence of PW-1 or not. It can be seen that the PW-2 Biliyan Kandulana deposed in her evidence that the incident occurred about two years back and she had witnessed the incident with her own eyes as the informant Sikhamoni had assaulted the accused with a bamboo lathi on the road nearby her house and she interfered between them and had rescued the accused.

10. PW-2 Biliyan Kandulana in her cross-examination stated that the informant is in the habit of filing cases on people for which the

inhabitants of their village fear to even go through the front of her house.

11. Now also having a look at the evidence of PW-3 Smti. Moni Baruah it can be seen that she has testified that on the date of incident in the evening while she returned from the paddy field to her house and was taking bath she could hear a hue and cry between the informant and the accused and coming out she could hear from the villagers that the informant had physically assaulted the accused.

12. So, both the PW-2 and PW-3 have totally contradicted the PW-1 and have in fact stated that it was the informant who had rather beaten the accused. The PW-2 was an eyewitness to the incident and from her evidence it also transpires that the informant was a litigation loving lady and was in the habit of filing cases against the people.

13. The PW-5 Smti. Rimpmi Kanak Dutta has stated in her evidence that she had heard something to have happened between the informant and the accused but was not aware about the incident and didn't know what had happened.

14. So none of the PWs had corroborated the PW-1 and rather have totally contradicted her.

15. It can also be seen that the PW-1 though in her ejahar i.e. Ext-1 had stated that the accused had verbally abused her with filthy language but in her evidence-in-chief didn't even utter anything about that. None of the other PWs also stated anything about the accused verbally abusing the informant with filthy language.

16. Now PW-4 Dr. Jagadish Goswami who examined the informant Sikhamoni Baruah stated that he could only detect tenderness over the back of chest in the middle part but no injury marks were found and he also could find lateral malleolus of right ankle joint but no injury mark was found.

17. Now it can be seen that the M/O couldn't detect any injury mark on the body of the informant. Now the informant i.e. PW-1 had stated

that the accused had beaten her with a split bamboo. Now had it been so it was most likely that she would have got some injury mark on being beaten up with such object but no injury mark could be detected on her body. Moreover, from the ocular evidence on record it goes to show that none of the PWs have corroborated the informant i.e. PW-1 and have rather totally contradicted her. They even narrated in the evidence that it was the informant who had in fact assailed the accused.

18. So, in the given position the evidence of PW-1 is found not to be credible at all and cannot be relied upon. So, it can no way be concluded that the accused had verbally abused the informant with filthy language and had voluntarily caused hurt to her.

19. Hence, both the aforesaid points for determination are held in negative.

20. So the prosecution has failed to prove the case against the accused under section 294/323 of the Indian Penal Code and as such she is acquitted from the said offences and is set at liberty.

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

The judgment is delivered and operative part of the same is pronounced in the open court on this 10th day of February, 2020.

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

Dictated & corrected by me-

(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**

Smti. Sikhamoni Baruah (PW-1)
Smti. Biliyan Kandulana (PW-2)
Smti. Moni Baruah (PW-3)
Dr. Jagadish Goswami (PW-4)
Smti. Rimpi Konch Dutta (PW-5)
and ASI Bolindra Baruah (PW-6)

PROSECUTION EXHIBITS

Ejahaar (Ext-1)
Signature of PW-1 [Ext-1(1)]
Injury Certificate (Ext-2)
Signature of PW-4 [Ext-2(1)]
Sketch map (Ext-3)
Signature of PW-6 [Ext-3(1)]
Charge sheet (Ext-4)
Signature of PW-6 [Ext-4(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

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