

**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. 2271/2016

Under section 341/294/352/34 of the Indian Penal Code

State of Assam

-Vs-

(1) Smti. Dipti Konch

(2) Smti. Runu Konch

.....Accused persons

Date of offence explanation : 03.06.2017
Date of recording evidence : 03.10.2018, 08.07.2019,
18.09.2019
Date of examination u/s 313, Cr.P.C. : 16.10.2019
Date of argument : 10.02.2020
Date of judgment : 15.02.2020

Advocates appeared in the case:-

Mr. Prasanta Dutta and Smti. Ajanta Sharma Baruah, Addl. P.P., for the State
Mr. Suren Borah, Learned Defence counsel for accused persons

J U D G M E N T

1. The brief sketch of the prosecution case is that one Smti. Maajoni Saikia had lodged an ejarah before the In-charge, Simaluguri Police Outpost under Bihpuria Police Station on 05.09.2016 alleging inter alia that on 04.09.2016 at about 9:30 AM while she was returning home after dropping her son to the music school then on the way Smti. Runu Konch and her daughter Smti. Dipti Konch had restrained her on the road and had verbally abused her with filthy language. Thereafter, both of them had assaulted her by scratching her face and pulling

her down to ground by holding her by her hair and they also tore the clothes worn by her. Hence, the case.

2. After receiving the ejahar, the then In-charge of Simaluguri Police Outpost effected a G.D. Entry vide Simaluguri O.P. G.D. Entry No. 59 dated 05.09.2016 and forwarded the ejahar to the Officer-in-charge of Bihpuria Police Station to register a case under proper section of law. On receipt of the ejahar, the Officer-in-charge of Bihpuria Police Station, registered a case vide Bihpuria Police Station Case No. 650/2016 under section 341/294/354/323/34 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 341/294/352/34 of the Indian Penal Code against accused persons Smti. Dipti Konch and Smti. Runu Konch to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 341/294/352/34 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. On receipt of summon, accused persons appeared before the Court and necessary copies were furnished to them as per section 207 of the Code of Criminal Procedure. The particulars of the offence under section 341/294/352/34 of the Indian Penal Code were explained to the accused persons to which they pleaded not guilty and claimed to face the trial.

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 on 04.09.2016 at about 9:30 AM had wrongfully restrained the informant Smti. Maajoni Saikia on the road ?

(b) Whether the accused persons with common intention on 04.09.2016 at about 9:30 AM had hurled verbal abuses using vulgar and obscene language to the informant in public to cause annoyance to her ?

(c) Whether the accused persons with common intention on 04.09.2016 at about 9:30 AM had used criminal force against the informant ?

5. During the trial, the prosecution examined altogether 5(five) witnesses, viz. Smti. Maajoni Saikia, the informant and the victim as PW-1, Sri Anil Saikia as PW-2, Smti. Maatu Das as PW-3, Smti. Mridula Saikia as PW-4 and Inspector Sushil Kumar Bhuyan, the I/O as PW-5. The statements under section 313 of the Code of Criminal Procedure of the accused persons were recorded and they declined to adduce evidence in defence.

6. The prosecution has exhibited the ejahar as Ext-1, the signature of the informant as Ext-1(1), the G.D. Entry extract as Ext-2, the rough sketch map of P.O. as Ext-3 and the signature of the I/O therein as Ext-3(1), the injury report as Ext-4 and the charge sheet as Ext-5 while the signature of the I/O therein as Ext-5(1).

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

DISCUSSION, DECISION AND REASONS THEREFOR:

8. At the very outset it is essential to have a brief resume of the version of the witnesses in order to marshal the evidence in right perspective in tandem with the points for discussion.

9. Taking up the evidence of the PW-1 Smti. Maajani Saikia, the informant as well as the victim of the case first it can be seen that she testified that on the date of incident at about 9:30 AM while she was going towards her house from the music school along with her son Akash Saikia then on the way on the PWD Raod at Durpang the accused persons viz. Smti. Dipti Konch and Smti. Runu Konch came from behind and the accused Dipti Konch had caught hold of her hair and threw her down to the ground and pushed her to the drain besides the road. Thereafter, both the accused persons had assaulted her with their hands by giving fist blows on her body and also scratched on her face with their nails

because of which there was bleeding on her face. They also tore her clothes (Chador).

10. PW-1 further stated that the accused persons had uttered slang/obscene words to her such as 'Bonori' and 'Rendi'. The accused persons also tried to disrobe her but at that time Smti. Maatu Das who was also returning from the music school along with her son and was coming along with her had rescued her from their clutches. She stated that the accused persons thereafter had left the place of occurrence.

11. Now the PW-1 mentioned about Smti. Maatu Das accompanying her at the time of incident and that she had rescued her from the clutches of the accused persons. The prosecution side had examined the eyewitness Smti. Maatu Das as PW-3 in this case. Let us have a scrutiny of the evidence which she deposed in the Court as PW-3. It can be seen that the PW-3 Smti. Maatu Das stated that the incident occurred about two years back at about 8:30 AM on the road and there was only a simple verbal altercation between the informant and the accused Runu Konwar. She on seeing the said verbal altercation had moved away from the place of occurrence. She further in her cross-examination stated that she doesn't know that why the informant had lodged this case.

12. So, it can be seen that the PW-3 Smti. Maatu Das the eyewitness of this case has totally contradicted the version of PW-1 and didn't support her. The PW-3 stated that all that had happened between the informant and the other side was a mere verbal altercation and she didn't state anything about the accused persons assaulting her by getting hold of her by her hair and pushing her to the drain besides the road and assaulting her with fists and blows on her body and scratching her body with nails which caused her to bleed from her face. The PW-3 also did not state anything about the accused persons tearing the clothes of the informant or that of the accused persons using slang words like 'Bonori' and 'Rendi' to the PW-1. She also didn't state that she rescued the PW-1 from the clutches of the accused persons.

13. So the version of the eyewitness i.e. PW-3 goes to create a serious doubt on the version of the PW-1 as she didn't support her at all.

14. Now the PW-2 Sri Anil Saikia stated about his wife Maajoni Saikia calling him over phone and informing him about the assault on her by the accused person on the road and accordingly he went to his house and saw his wife i.e. PW-1 to be bleeding from her face and her 'Chador' was in torn condition.

15. The learned Counsel of the defence at the time of argument contended that the version of the PW-1 and PW-2 cannot be relied upon as there is embellishment in their version as whatever they deposed in their evidence-in-chief in the Court was not narrated by them before the I/O in their statements u/s 161 of the Code of Criminal Procedure and in fact whatever the said two PWs deposed in the Court was a newly made after thought statement.

16. Now a look at the cross-examination of PW-5 the I/O goes to show that he stated that the PW-1 Maajoni Saikia in her statement before him u/s 161 of the Code of Criminal Procedure didn't tell that the accused Dipti Konch and Runu Konch pushed her from backside for which she fell on the drain and that they assaulted her and tore her wearing garments.

17. The I/O also stated that the PW-1 didn't state before him that the accused persons had uttered slang words like 'Bonori', 'Rendi' to her and that they both tried to disrobe her but Smti. Maatu Das had saved her from their clutches.

18. The PW-5 the I/O in his cross-examination further stated that the PW-2 Sri Anil Saikia also didn't state before him in his statement u/s 161 of the Code of Criminal Procedure that his wife made phone call to him informing that the accused persons had assaulted her on the road and that he on returning home saw his wife to be bleeding from her cheek and her clothes to be torn.

19. So it can be clearly seen that whatever the PW-1 and PW-2 had deposed in their evidence-in-chief were not deposed by them in their statement before the I/O.

20. The PW-5 i.e the I/O in his evidence-in-chief had stated that he had collected the medical report of the informant and has exhibited the said report as Ext-4. Now going by the said medical report i.e. Ext-4 it can be seen that it has been recorded in the said report about no external injury being detected in the body of the informant Smti. Maajoni Saikia at the time of her examination.

21. So the medical report also goes to totally contradict the version of PW-1 and PW-2 regarding the assault on PW-1 by the accused persons and that she was bleeding from her cheeks as narrated by both PW-1 and PW-2 since the medical report shows no external injury on examination of PW-1 i.e. the informant.

22. Another witness of this case i.e. PW-4 Smti. Mridula Saikia had also stated that she had heard only about a verbal altercation taking place between the informant and the accused persons.

23. So she too didn't support the version of PW-1 and PW-2. It can be seen that all the rest PWs have failed to support and corroborate the version of PW-1 and PW-2. The PW-3 Smti. Maatu Das who is in fact an eyewitness of this case didn't support the version of the PW-1 and PW-2 about the accused persons restraining the informant or physically assaulting her or telling slang words like 'Bonori' and Rendi' to her. She in fact had stated that all that had happened was a mere altercation between the informant and the accused persons and nothing else. The medical report i.e. Ext-4 also totally goes to contradict the version of PW-1 and PW-2 as discussed above.

24. In the given position the version of PW-1 and PW-2 are found not to be credible at all and deserves to be discarded. Hence, from the materials on record it can no way be concluded that the accused persons with common intention had wrongfully restrained the informant or had verbally abused her with filthy

language in public to cause annoyance to her or that of the accused persons using criminal force against the informant.

25. Hence, all the aforesaid points for determination are held in negative.

26. The prosecution as such has failed to prove the case against the accused persons under section 341/294/352/34 of the Indian Penal Code and as such they are acquitted from said offences and 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 15th day of February, 2020.

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

Dictated and Corrected by me:

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

Transcribed and typed by me:
Narayan Chetri, Stenographer

Continued..... (Appendix)

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Smti. Maajoni Saikia (PW-1)

Sri Anil Saikia (PW-2)

Smti. Maatu Das (PW-3)

Smti. Mridula Saikia (PW-4)

Inspector Sushil Kumar Bhuyan (PW-5)

PROSECUTION EXHIBIT

Ejahaar (Ext-1)

Signature of PW-1 [Ext-1(1)]

G.D. Entry extract (Ext-2)

Sketch map of the P.O (Ext-3)

Signature of PW-5 [Ext-3(1)]

Medical report (Ext-4)

Charge sheet (Ext-5)

Signature of PW-5 [Ext-5(1)]

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

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