

**IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR.**

GR CASE NO.2192/2018
U/S 342/325 IPC

PRESENT:
SMT. SWEETY BHUYAN
Judicial Magistrate 1st Class
Lakhimpur, North Lakhimpur.

PARTIES:

STATE OF ASSAM

Vs

BIRINCHI BISWAS BORAH @

BIRINCHI BASAB BORAH

..... **ACCUSED PERSON**

Appearance:

For the State: MR. JANGKI DOLEY

For the accused person: MR. ANANDA DUTTA
(LEGAL AID COUNSEL)

Date of Evidence: 18.02.2019, 02.03.2019,
16.03.2019, 30.03.2019,
24.09.2019

Date of Argument: 08.01.2020

Date of Judgment: 04.02.2020

JUDGMENT

- 1.** The accused person, namely, **Birinchi Biswas Borah @ Birinchi Basab Borah**, Son of Bipin Chandra Borah, R/o No.2 Sonapur, Police Station- Laluk, District - Lakhimpur, here in this case, has been put to trial to answer the charges for the offence Punishable under Sections 342/325 of IPC.
- 2.** The brief fact of the prosecution case is that the accused is the son of the informant. On 30.08.2018 at about 9 P.M. the accused tied her mouth with a gamucha and then tied her hands towards her backside and then assaulted her by kicking her, slapping her and punching her. He also attempted to kill her by pressing her neck and stamping on it with his legs. Later on, the informant fled away from her house and saved her life. Hence, the case, and the same was registered as Laluk Police Station Case No.267/2018 under Sections 342/325/307 of the Indian Penal Code against Birinchi Biswas Borah @ Birinchi Basab Borah. The Investigating Officer submitted Charge Sheet against the accused person, namely, Birinchi Biswas Borah @ Birinchi Basab Borah, under Sections 342/325/354B of the Indian Penal Code.
- 3.** After the appearance of the accused, the copy of the relevant document was furnished to him. Upon hearing and on perusal of the case record, it appeared that there is sufficient ground to presume that the accused person has committed an offence under Sections 342/325 of the Indian Penal Code, which this court is competent to

try and adequately punish. Accordingly, charge under the said Sections are framed and the particulars of offence under sections 342/325 of IPC were read over and explained to the accused person to which the accused pleaded not guilty and claimed to be tried.

4. In support of the case, the prosecution has adduced 6 PWs. The statement of the accused person u/s 313 CrPC is recorded in which the accused denied of committing the alleged offence and also denied to adduce evidence in his support.
5. After perusing the case record and hearing both sides the following points for determination are framed:

The Points for Determination:

- (i) Whether the accused, on 30.08.2018 at about 7 P.M. at the residence of Smt. Saraswati Biswas situated at No.2 Sonapur under Laluk police station wrongfully confined her in her house and thereby committed an offence punishable under section 342 IPC?
- (ii) Whether the accused, on 30.08.2018 at about 7 P.M. at the residence of Smt. Saraswati Biswas situated at No.2 Sonapur under Laluk police station voluntarily caused grievous hurt to the informant Smt. Saraswati Biswas and thereby committed an offence punishable under section 325 IPC?

DECISIONS AND REASONS FOR DECISION:

6. I have heard the argument from both sides.

- 7. The first point for determination is *whether the accused, on 30.08.2018 at about 7 P.M. at the residence of Smt. Saraswati Biswas situated at No.2 Sonapur under Laluk police station wrongfully confined her in her house and thereby committed an offence punishable under section 342 IPC?***

The informant in her ejarah alleged that the accused is the son of the informant. On 30.08.2018 at about 9 P.M. the accused tied her mouth with a gamucha and then tied her hands towards her backside and then assaulted her by kicking her, slapping her and punching her. He also attempted to kill her by pressing her neck and stamping on it with his legs. Later on, the informant fled away from her house and saved her life.

It is alleged by the informant that the accused confined her in her house and assaulted her. In her evidence as PW2 she stated that on the day of the incident the informant was watching news on the T.V. and then the accused switched off the T.V. and sat with her on the floor. He operated his mobile phone and showed her photos of two men and told her did she know them, she replied no. Then he asked her that by seeing the pics can she say about the character of a person. Thereafter, he caught hold of her left hand tightly and told her that he will ask her few questions and if she does not answer them correctly then the consequence will be serious. He asked her from where he was brought, why his life was destroyed.

She told him that he is her son. Then he told her that she was telling a lie and he heard that she was not his mother. Thereafter, he slapped her twice over her face (both cheeks). He told her that he is her adopted son. She tried to go away from there. He locked the front door and back door. Then he took her to the kitchen and took out a knife. He tried to cut her throat with that saying that it is not sharp enough. Thereafter, he took her to the bedroom and took a gamucha from the room. After rolling the gamucha, he tied her mouth with the gamucha. She fell down. Then he tried to strangulate her. He entered his hand in her mouth saying that he will remove her jaw. Thereafter while he was putting a piece of cloth in her mouth, she bit in his hand then she tried to flee away from there. He kicked her over her back and after grounding her on the floor, he kicked her again over her stomach. Thereafter, he took her to her bedroom and tied her on her bed. She tried to raise hue and cry, but as her mouth was tied she could not shout. The whole night he assaulted her due to which she had swelling over her face and other parts of the body. On the next day morning at about 6 A.M. the accused took her to his room and told her to sleep on the floor after putting a cloth over the floor. He threatened to kill her if she tried to move away from there. Thereafter, at about 7 A.M. she informed her relative Sri Ramen Gogoi over phone and he took her to the Dolohat Police Outpost.

The PW1 Bipin Chandra Borah who is the father of the accused stated in his evidence that the informant is his second wife

and he stays separately from the informant in a separate house. On the day of the incident, in the house of the informant the accused had an altercation with the informant. He did not see the incident. On the day of the incident the accused rang him and told him to come to the house of the informant. The accused used to stay with the informant as he is her own son. On the next day of the incident, he went to the house of the informant and came to know that the police took the accused with them.

The PW3 Bhabani Paul stated in her evidence that at the time of the incident she was not in the house. On the next day of the incident, she went to the house of the informant for work, then another maid Sitaram Gowala informed her that he heard hue and cry on the last night. After three days of the incident, when the informant came from the hospital, she told that the accused assaulted her. She also showed her the video prepared by the accused in his laptop after calling a boy to operate the laptop as she does not know to do it. The PW3 saw the video footage prepared by the accused in his laptop where she saw him assaulting the informant.

PW5 Ramen Gogoi stated in his evidence that in the year 2018 in the month of August, one day in the morning after the day of the incident the informant rang him and told him to come to her house saying that there is an emergency. When he reached the house of the informant in his car then she came to him by somehow walking. She had swelling over her face. He asked her what

happened. She told him that the accused assaulted her and she told him to take her to the Dolohat Outpost.

8. From the above evidences, it can be known that it is the informant who alleged that the accused confined her inside her house by locking the front door and the back door. The other PWs did not depose about any wrongful confinement of the informant by the accused and neither any of the PWs deposed that they have heard about the confinement of the informant by the accused. As such, due to lack of sufficient corroborating evidence, it can be said that the offence of wrongful confinement could not be established by the prosecution against the accused thereby making the accused not guilty under Section 342 of the Indian Penal Code.

9. The second point for determination is ***whether the accused, on 30.08.2018 at about 7 P.M. at the residence of Smt. Saraswati Biswas situated at No.2 Sonapur under Laluk police station voluntarily caused grievous hurt to the informant Smt. Saraswati Biswas and thereby committed an offence punishable under section 325 IPC?***

The informant alleged that on the day of the incident, the accused assaulted her inside her room and caused grievous injuries on her. The PW1 who is the husband of the informant deposed only about an altercation between the informant and the accused. He does not know how the incident occurred and what happened on that day. The PW3 came to know from the informant

that the accused assaulted her after three days of the incident and she also deposed about a video but the police did not seize any video recording in connection with this case. The PW5 Ramen Gogoi whom the informant claimed to have informed him on phone on the next day of the incident stated that when he reached her house, she came to him by somehow walking and she had swelling over her face and she told him that the accused assaulted her. The defence cross-examined him on the point that he did not state to the police that when he reached the house of the informant she came to him by somehow walking and she had swelling over her face. But from the perusal of his statement given to the police it can be known that he stated before the police that the informant called him on his phone and informed him that her son assaulted her last night without any reason and he immediately went to see her and he saw injuries over her whole body and later on, he took her to the police station.

The PW3 who deposed before the court that the police did not record the statement, but on perusal of the case record, it appears that her statement was recorded and she stated before the police that on 30.08.2018 at about 7 P.M. the accused entered into the room of the informant and assaulted her after quarreling with her. That she works in the house of the informant. That the quarrel of both the parties continued for long and as it did not end she went away to her house. In the morning when she went to the house of the informant, she saw that the accused assaulted her severely and

injured her. But at the time of her deposition before the court, she stated that at the time of the incident she was not in the house and although she deposed about another maid Sitaram Gowala to have informed her that he heard hue and cry on the last night but she did not mention about the same before the police. In her statement before the police she stated to be present in the house of the informant at the time of the incident. Considering the discrepancies in the nature of her statements before the police and before the court, it can be held that her evidence cannot be considered for deciding the guilt of the accused.

10. Hence, particularly from the evidence of the informant and PW5, it can be known that the accused assaulted the informant and the informant was examined on 31.08.2018 at 9:55 A.M., i.e., on the next day of the alleged incident, which took place in the evening at about 7 P.M., however, the medical evidences shows swelling tenderness, bruise mark and bleeding and the victim was advised for X-ray and CT Scan, but there are no opinion of the Medical Officer as to whether the injuries were simple or grievous in nature and the M.O. in her cross-examination admitted that after referring the patient to the NLCH, what treatment was provided to her she cannot say. On perusal of the case record, some photocopies of medical documents of the treatment of the informant are present, but the original medical documents have not been produced by the prosecution, as such, on the basis of medical report exhibited by the

prosecution, i.e., Exhibit 2, it cannot be said that the informant sustained grievous injuries. As such, the informant cannot be punished under the said Section for voluntarily causing grievous hurt to the informant. However, it can be seen from medical report that the injuries mentioned therein seems to be simple in nature. As such, as Section 323 of the Indian Penal Code, i.e., voluntarily causing hurt is a cognate offence, which is a lesser offence that is related to the greater offence which is Section 325 of the Indian Penal Code because it shares several of the elements of the greater offence and is of the same class or category. As such, as the evidences have proved beyond all reasonable doubts that the accused has voluntarily caused hurt to the informant, as such, he is found guilty of the offence under Section 323 of the Indian Penal Code.

11. Hence, considering the above discussions, it can be held that the prosecution has failed in proving that the accused has voluntarily caused grievous hurt to the informant but the prosecution has been able to prove beyond all reasonable doubts that the accused has committed the offence under Section 323 of the Indian Penal Code which is a cognate offence of the offence under Section 325 of the Indian Penal Code thereby making the accused guilty under Section 323 of the Indian Penal Code. **[CONTD.....]**

JUDICIAL FINDING:

In view of the above discussions, it is held that the prosecution has been able to prove the guilt of the accused person **Birinchi Biswas Borah @ Birinchi Basab Borah** beyond all reasonable doubts under Section 323 IPC, and thereby convicted of the said charge.

It is also held that the prosecution has not been able to prove the guilt of the accused person **Birinchi Biswas Borah @ Birinchi Basab Borah** beyond all reasonable doubts under Sections 342/325 IPC, and thereby acquitted of the said charges.

THE PROBATION OF OFFENDERS ACT, 1958:

I have considered the case of the convict under the germane provision of THE PROBATION OF OFFENDERS ACT, 1958. The accused person has been found guilty of assaulting a woman, who is his mother. As such, to curtail the commission of such offences against any woman, I find no reason to release the accused person on probation.

SENTENCE HEARING:

I have heard the convict on the points of sentencing. The convict prayed for mercy on the ground that he is a student and in the year 2017 he was studying in H.S. 2nd year.

I have considered all the aspects together. And conclude my judgment by passing the following order:

ORDER

The judgment is pronounced in the open court today.

The accused, **Birinchi Biswas Borah @ Birinchi Basab Borah**, is hereby held guilty under Section 323 IPC and convicted thereon. The accused is hereby sentenced to simple imprisonment for one year for the said offence. The period of detention undergone by the accused in connection with this case only shall be set off against the sentence of imprisonment pronounced against the accused.

The accused, **Birinchi Biswas Borah @ Birinchi Basab Borah**, is hereby not found guilty under Sections 342/325 IPC and acquitted of the said charges.

The case is disposed of on contest.

Furnish a free copy of the judgment to the accused.

Given under my hand and seal of this court on 4th February, 2020.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC,NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)

APPENDIX

Prosecution witnesses

1. PW1 BIPIN CHANDRA BORAH
2. PW2 SMT. SARASWATI BISWAS
3. PW3 SMT. BHABANI PAUL
4. PW4 DR. PRANITA BORO
5. PW5 SRI RAMEN GOGOI
6. PW6 SRI UTTAM KUMAR DOLEY

Defence witnesses

Nil.

Documents exhibited by the prosecution

1. EXT.1 : EJA HAR
2. EXT.2 : MEDICAL EXAMINATION/INJURY REPORT
3. EXT.3 : SKETCH MAP
4. EXT.4 : CHARGESHEET

Documents exhibited by the Defence

Nil.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)