

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,  
LAKHIMPUR, NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur, Assam

**G.R. 1274/2017**

Under section 341/323/506/34 of the Indian Penal Code

**State of Assam**

**-Vs-**

**1. Smti. Renu Phukan**

W/O: Sri Bipin Phukan

R/O: Haribor

P.S: Laluk

District: Lakhimpur, Assam

**2. Smti. Padumi Phukan**

W/O: Sri Sasadhar Phukan alias Subha Phukan

R/O: Haribor

P.S: Laluk

District: Lakhimpur, Assam

**3. Smti. Kamala Phukan**

W/O: Sri Khagen Phukan

R/O: Haribor

P.S: Laluk

District: Lakhimpur, Assam

.....Accused persons

Date of offence explanation : 01.06.2018  
Date of recording evidence of PWs : 08.11.2018, 27.05.2019,  
06.06.2019, 07.08.2019  
Date of recording statement u/s 313, Cr.P.C : 04.09.2019  
Date of argument : 24.09.2019  
Date of judgment : **04.10.2019**

**Advocates appeared in the case:-**

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

Mr. Arup Borah, Advocate, for the accused persons

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

1. The prosecution case, in brief, is that on 06.05.2017 informant Smti. Puspa Tirkey lodged an FIR with the Officer-in-charge of Laluk Police Station alleging that on 09.04.2017 one Sri Subha Phukan got hold of her and tried to manhandled her for which on 20.04.2017 she lodged an ejahar with the In-charge of Dolahat Police Outpost against said Sri Subha Phukan but on 22.04.2017 the said case was amicably settled between both the parties on the intervention of the In-charge of the Dolahat Police Outpost. But on 06.05.2017 Sri Subha Phukan convened a village 'mel' (meeting) to discuss the incident dated 9.4.2017. After the conclusion of the meeting, when she was returning home through the paddy field, accused persons Smti. Padumi Phukan, Smti. Renu Phukan and Smti. Kamala Phukan wrongfully restrained her and assaulted her with bamboo 'lathi' (stick) causing grievous injuries to her and thereafter, they criminally intimidated her threatening to kill her. Hence, the case.

2. After receiving the ejahar, the Officer-in-charge of Laluk Police Station, registered a case vide Laluk P.S. Case No. 134/2017 under section 342/325/506/34 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted the charge-sheet under section 341/323/506/34 of the Indian Penal Code against the accused persons Smti. Renu Phukan, Smti. Padumi Phukan and Smti. Kamala Phukan to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 341/323/506/34 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 this 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 particulars of the offence u/s 341/323/506/34, IPC were explained

to the accused persons to which 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, on 06.05.2017, at village Horibor Bokanodi under Laluk Police Station, in furtherance of their common intention, wrongfully restrained Smti. Puspa Tirkey, and thereby committed an offence punishable under section 341/34 of the Indian Penal Code?

(b) Whether the accused persons, on 06.05.2017, at village Horibor Bokanodi under Laluk Police Station, in furtherance of their common intention, voluntarily caused hurt to Smti. Puspa Tirkey, and thereby committed an offence punishable under section 323/34 of the Indian Penal Code?

(c) Whether the accused persons, on 06.05.2017, at village Horibor Bokanodi under Laluk Police Station, in furtherance of their common intention, committed criminally intimidation by threatening Smti. Puspa Tirkey with dire consequences, and thereby committed an offence punishable under section 506/34 of the Indian Penal Code?

5. During the trial the Prosecution side examined 7(seven) witnesses, namely, Smti. Puspa Tirkey (PW-1), Sri Tirtha Duwarah (PW-2), Smti. Bandita Duwarah (PW-3), Sri Mridul Borah (PW-4), Sri Santu Duwarah (PW-5), Sri Premoloni Padum (PW-6), ASI Diganta Kalita (PW-7) and exhibited 4 (four) documents (Shown in the Annexure appended below). After the closure of the prosecution evidence the accused persons were examined under section 313 of the Code of Criminal Procedure wherein they denied the incriminating materials put to them from the evidence of the witnesses and declined to adduce evidence in their defence.

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. The evidentiary facts that need to be appreciated in all the three points are intertwined as such let me take up all these three points together for discussion for the sake of convenience. But let me set out for the discussion taking into the facts narrated by the informant-cum-victim of this case.

7. PW-1 Smti. Puspa Tirkey, informant-cum-victim, has stated the occurrence took place at about 8:00 PM on 09.04.2017 and at that time she along with her father-in-law and brother-in-law were in their house. While she was at the backside of their house, Sri Subha Phukan, the husband of accused Padumi Phukan, came to their house and forcibly took her in his arms from behind. She freed herself from him and went inside their house and told her father-in-law about the same. Subha Phukan fled away from there. On the following morning her father-in-law informed the nearby villagers about the incident. A villager named Bholuka Lahon came to their house and discussed with her father-in-law as to what should be done. Later on, accused Padumi Phukan came to their house and threatened her by saying that she would see them and told her that they could file case against her husband if they had desired so. On 20.04.2017 she lodged an ejahar at Doolahat Police Outpost in that connection. But at the instance of the police of Doolahat Police Outpost as well as at the instance of Subha Phukan, she amicably settled the case with Subha Phukan at the police outpost on 22.04.2017. On 06.05.2017 Sri Subha Phukan had called a meeting at Haribor Bukanodi Naamghar where she was asked to attend. Accordingly, she went to the meeting and she narrated the entire incident dated 09.04.2017 before the assemble people and "Naamghariya". After the meeting, she was coming to her home through the paddy field where accused persons Smti. Padumi Phukan, Smti. Renu Phukan and Smti. Kamala Phukan restrained her and assaulted her with bamboo stick for which she sustained injuries in her forehead and back. At that point of time she was accompanied by her deceased father-in-law. She as such lodged an ejahar (Ext-1) in this

connection at the Laluk Police Station. In her cross-examination, she has stated that the instant case is not against Subha Phukan but against the present three accused persons. She has admitted to have not told the police that accused Padumi Phukan came to their house and threatened her by saying that she would see them and dared them to file a case against her husband. According to her on 06.05.2017 the meeting was over by about 3:00-3:30 PM and admitted to have not mentioned the time of the occurrence dated 06.05.2017 in the ejahar but asserted that it took place during the day time. On 06.05.2017 she had lodged the ejahar at Laluk Police Station and the police took her to the Laluk Medical for her medical treatment. She admitted that in the ejahar there is an overwriting in the digit '6' of the date 06.05.2017. She also admitted that on the backside of the ejahar the police has shown to have received and registered this case on 07.05.2017. The police had taken her to Laluk Medical for her medical treatment after she had lodged the ejahar. The occurrence had taken place at about 3:00-3:30 PM after the meeting was dissolved. John Tirkey is the elder brother of her husband. John Tirkey works as a teacher. Their house and John Tirkey's house are different. John Tirkey had come to their house and enquired about the occurrence. John Tirkey had advised her to lodge the case.

8. PW-2 Sri Tirtha Duwarah, an independent witness, has stated that the occurrence took place about 2/2½ years ago (from 27.05.2019) in between 12:00-1:00 PM. He heard commotion on the backside of his house and came to know that that some commotion had taken place between the informant and the accused persons. In his cross-examination, he has stated that he had not seen any 'maar-pit' (physical fighting) taking place between the informant and the accused persons. He had not seen between whom the commotion took place. Only from the police he came to know that there was a commotion.

9. PW-3 Smti. Bandita Duwarah, an independent witness, has stated that the occurrence took place about two years ago (from 27.05.2019) in the second half of the day. At the time of occurrence

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she was not present in his house and had gone to a shop for purchasing some articles. The occurrence took place in the backside of their house in the paddy field. In her cross-examination, she has stated to have come to know of the occurrence of fighting after the arrival of the police.

10. PW-4 Sri Mridul Borah, Medical Officer, has stated that on 06.05.2017, he was working as Medical Officer (Ayu.) at the Laluk Model Hospital and at 7:45 AM on that day, he examined one Smti. Puspa Tirki, daughter of Mr. Philip Dhan, resident of village: Haribor, P.O and P.S: Laluk, Distirct: Lakhimpur on being escorted and identified by WPC Jyostna Dutta and HG Haren Borah at the Laluk Model Hospital and found Swelling with pain and tenderness in forehead which was a fresh but Simple injury caused by blunt object. Ext-2 is the injury certificate wherein Ext-2(1) is his signature with seal. In his cross-examination, he has stated that such type of injury may also be caused by falling on hard substance.

11. PW-5 Sri Santu Duwarah, an independent witness, has stated that the occurrence took place about six months ago (from 06.06.2019) in village Haribor Gaon in the paddy field. At the time of the occurrence he was not present in his house. He came to know from local people that there had been an altercation between Puspa Tirki and the accused persons. He doesn't know why the altercation had taken place or if anybody sustained any injury. In his cross-examination, he has stated that he did not hear of about any physical assault between the informant and the accused persons.

12. PW-6 Sri Premoloni Padum has stated that he knows informant Puspa Tirki who is his brother-in-law's wife. According to her, the occurrence took place on 06.04.2017 at about 3:00 PM in the paddy field on the back side of the house of Tirtha Duwarah and at that time he was in his house. Prior to this occurrence Puspa Tirki lodged an ejahar against Subha Phukan alleging that he committed rape on her. After lodging the FIR a village sitting was held in the 'Naamghar' at

Haribor Naharani wherein the matter was amicably settled. He did not attend the sitting but he heard about the resolution taken in that sitting. After conclusion of the meeting Puspa Tirki and all the attended people of that meeting were returning home and when Puspa Tirki reached the cultivation field on the backside of Tirtha Duwarah's homestead, all the accused persons assaulted Puspa Tirki with bamboo stick. She returned after being clouted by the accused persons and called him over phone and informed the matter. Having come to know of the occurrence she went to the 'Namghar' and informed the local people present out there who had advised her to lodge a case against the accused persons as such taking Puspa along with her she went to the Laluk Police Station and lodged the FIR. The police took Puspa Tirki to the hospital for her medical examination. In her cross-examination, she has stated that she had not seen the occurrence. The police did not examine her nor she told police the facts as narrated by her in her examination-in-chief. She denied to have deposed falsely since victim Puspa is her brother-in-law's wife.

13. PW-7 ASI Diganta Kalita, Investigating Officer, has stated that during the course of investigation, he proceeded to the place of the occurrence and examined informant Puspa Tirki at the place of the occurrence and recorded her statement. In the mean time informant Puspa Tirki had undergone medical treatment at Laluk Model Hospital. Thereafter, he inspected the place of the occurrence and prepared a rough sketch map of the same and examined the witnesses found at and around the place of occurrence and recorded their statements. Arrested the accused persons Padumi Phukan, Renu Phukan and Kamala Phukan and allowed them to go on bail. Thereafter he collected the medical report of the informant/victim and on completion of his preliminary investigation, he submitted the case diary to the I/C of Doolahat Police Outpost whereupon the case was subsequently investigated by SI Dipjyoti Bharali and submitted charge-sheet against the accused persons Padumi Phukan, Renu Phukan and Kamala Phukan under section 341/323/506/34 of the Indian Penal Code. Ext-3 is the sketch map of the place of the occurrence wherein Ext-3(1) is his

signature. Ext-4 is the charge-sheet wherein Ext-4(1) is his signature. In his cross-examination, he has stated that he received the ejahar at 3:00 PM on 07.05.2017. The occurrence took place on 06.05.2017. In the ejahar the time of occurrence is not mentioned. There is overwriting in the date of the ejahar filed by the informant. The distance between the place of the occurrence and the police station is about 5½ kilometers in the northeast side. In her statement under section 161, Cr.P.C. informant Puspa Tirkey had not explained the cause of delay in lodging the ejahar after 24 hours of the occurrence.

### **APPRECIATION OF EVIDENCE**

14. Let me first concentrate upon the 2<sup>nd</sup> point for determination which relates to whether the accused persons in furtherance of their common intention voluntarily caused hurt to victim Puspa Tirky. According to PW-4 Sri Mridul Borah, Medical Officer, he examined victim PUSpa Tirky at 7.45 AM on 06.05.2017 on being escorted and identified by WPC Jyostna Dutta and HG Haren Borah and found Swelling with pain and tenderness in forehead which was a fresh but Simple injury caused by blunt object. He is also of the opinion that such type of injury might also be caused by falling on hard substance.

15. But according to victim Puspa Tirky (PW-1) on 06.05.2017 she was returning from the meeting called by Sri Subha Phukan at about 3 or 3.30 PM when in a paddy field she was accosted by the accused persons and assaulted with a bamboo stick. According to her, she lodged the FIR on the same day whereupon the police got her medically examined by the medical officer. It means the medical examination might have been done after 3.30 PM on 6.5.17, but Ext.2 Injury Report and the assertion of PW-4 Dr. Mridul Borah shows that victim was examined at 7.45 AM on 6.5.17 which is not a probable proposition at any stretch of imagination. PW-7 I/O ASI Diganta Kalita received the FIR at 3 PM on 7.5.17 i.e. one day after the occurrence and there was no explanation for such delay. However, according to PW-7 by the time he received the Ext.1 ejahar the informant had

already got herself medically examined by doctor. But the prosecution has failed to clarify the discrepancy between the version of victim and PW-4 Medical Officer regarding the time of the medical examination of victim. The occurrence allegedly happened at 3.30 PM but the victim was examined at 7.45 AM is not a believable proposition, and as such this discrepancy shakes the credence of the prosecution case to the core.

16. PW-2 Tirtha Duwara, in the backside of whose house the occurrence had taken place has categorically stated that only a hue and cry took place between informant and accused persons. PW-3 Smti Bandita Duwara had heard about the occurrence to have taken place at evening time. PW-5 Santu Duwara had also heard about the occurrence but he heard that no any physical assault took place. PW-6 Premolini Padun came to know of the occurrence from victim after the occurrence had taken place. Thus, it shows that apart from victim Puspa there is another eye-witness to the occurrence and it was PW-2 Tirtha Duwara. But the version of eye-witness PW-2 Tirtha Duwara did not support the version of PW-1 Puspa Tirky regarding the fact of assault to her by accused persons. Further, the occurrence took place in the backside field of one Tirtha Duwara's (PW-2) homestead and the son and daughter-in-law of Tirtha Duwara is examined as PW-5 Santu Duwara and PW-3 Smti Bandita Duwara respectively, but they have affirmed the fact that no physical assault took place. Thus, it has been established that the prosecution case suffers from two infirmities- firstly, the time of medical examination has a mismatch between the version of the medical officer and victim; and secondly, there exists no concrete proof of physical assault being made to victim. Since, the victim had a sour relationship with the husband of accused Padumi Phukan against whom she lodged a complaint of heinous offence of rape, but subsequently amicably settled it, impels me to hold her deposition with circumspection. Moreover, PW-1 Puspa did not tell the fact to the police that Padumi Phukan had previously threatened her and dared to lodge a case against her husband, also do not inspire confidence to take her assertion in face value, given so many

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contradiction in the prosecution case. Situated thus, I am of the considered opinion that the prosecution has failed to bring home the accusation under section 323/34 of the IPC against the accused persons and as such the second point for determination is decided in negative against the prosecution.

17. Now coming to the first point for determination which deals in alleged wrongful restrain by accused persons to victim. From the foregoing discussion it has impeccably proved that the accused persons did not assault the victim, now the question is whether in the paddy field backside the house of Tirtha Duwara the accused persons had wrongfully restrained the victim. From the assertion PW-1 Puspa Tirky it has come out that at the time of the occurrence after a meeting when she along with her deceased father-in-law had been returning home at that time the accused persons had restrained her. PW-2 Tirtha Duwara, his son PW-5 Santu Duwara and daughter-in-law PW-3 Smti Bandita Duwara has also heard about coming across of both the sides at the paddy field on the backside of the house of PW-2 Tirtha Duwara and there was a commotion between them. But whether the accused persons came there to restrain the victim or that they had met by chance and thereupon, picked up a quarrel has not been cleared. Since, there exists a doubt as to alleged physical assault to victim as such the coming across of both the sides does not readily gives out a presumption of restrain in favour of prosecution and as such I am of the conclusive opinion that the prosecution has failed to prove the ingredient of offence under section 341/34 of the IPC against the accused persons and as such the 1<sup>st</sup> point for determination is decided in negative against the prosecution.

18. PW-1 Puspa Tirky has asserted that accused Padumi Phukan had given her threat when she lodged a complain against her husband over an alleged incident of rape dated 9.4.2017 and also dared her to lodge a case against her husband. But PW-1 has admitted to have not told this fact to the police. Thus, this material omission negates her version that accused Padumi Phukan had indeed gave her threat. Further, there

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is no other evidence which specifically states that the accused persons had given threat to the victim. So, the offence under section 506 of the IPC also stands not proved against the accused persons.

**ORDER**

19. In view of the discussion made above, I am of the conclusive opinion that the prosecution has failed to bring home the charge under section 341/323/506 of the Indian Penal Code against the accused persons and as such accused Smti Padumi Phukan, Smti Renu Phukan and Smti Kamala Phukan are acquitted of the accusation under section 341/323/506/34 of the Indian Penal Code and set at liberty forthwith.

20. The bail-bonds of the acquitted accused persons shall remain in force for a further period of six months.

21. The judgment is delivered and operative part of the same is pronounced in the open court on this 4<sup>th</sup> day of October, 2019.

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Transcribed & typed by-

Sri Narayan Chetri, Stenographer

**A P P E N D I X**

**WITNESSES FROM THE PROSECUTION SIDE**

Smti. Puspa Tirkey (PW-1)  
Sri Tittha Duwarah (PW-2)  
Smti. Bandita Duwarah (PW-3)  
Sri Mridul Borah (PW-4)  
Sri Santu Duwarah (PW-5)  
Sri Premoloni Padum (PW-6)  
ASI Diganta Kalita (PW-7)

**PROSECUTION EXHIBITS**

Ejhar (Ext-1)  
Injury certificate (Ext-2)  
Sketch map (PW-3)  
Charge-sheet (Ext-4)

**WITNESSES FROM THE DEFENCE SIDE**

Nil

**DEFENCE EXHIBITS**

Nil

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur