

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

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

GR CASE NO.156/2013
U/S 447/324/323 IPC.

PARTIES:

STATE OF ASSAM
Vs
MUNNU MALLAH ACCUSED

Appearance:

For the State: MR. JANGKI DOLEY

For the accused person: MRS. S.R. BORUAH

Dates of Evidence: 03.05.2018, 02.07.2018,
26.07.2018, 17.01.2019,
12.02.2019

Date of Argument: 12.03.2019

Date of Judgment: 19.03.2019

JUDGMENT

- 1.** Accused Munnu Mallah, S/o Sri Ramen Mallah, resident of – Bihpuria Town, Ward No.4, Bihpuria Police Station, in the District of Lakhimpur here in this case has been put to trial to answer the charges for the

offence Punishable under sections 447/324/323 of the Indian Penal Code.

- 2.** The brief facts of the Prosecution case is that on 01.02.2013 at about 10 P.M., the accused Munu Mallah and Ramen Mallah, trespassed into the house of the informant and assaulted the informant with a mid dao amounting to hand and stomach injury. On hearing her shouts her husband came running and when he tried to save her, the accused persons assaulted him with a mid dao and lathi amounting to grievous head injury. Hence, the case and the same was registered as Bihpuria Police Station Case No.27/2013 under Sections 447/326/34 of IPC against Munu Mallah and Ramena Mallah named in the ejahar. The I.O submitted Charge Sheet against the accused Munu Mallah under Sections 447/323/294/506 of IPC. The accused person took bail from the court and copy has been furnished to the accused u/s 207 CrPC.
- 3.** After perusing CR and hearing the charges u/s 447/324/323 IPC are framed which on being read over and explained to the accused person he pleaded not guilty and claimed to be tried.
- 4.** In support of the case, the prosecution has adduced 7(seven) PWs including the informant and the victim. The statement of the accused person was recorded under Section 313 Cr.P.C. and the accused person denied of committing the alleged offences, and also denied to adduce the evidence in support of his case.
- 5.** After perusing the case record and hearing both sides the following

points of determination are framed:

The Points for Determination:

- (i) Whether the accused, on 01.02.2013 at about 10 P.M. at Bihpuria Town, Ward No.4 have committed the offence of criminal trespass by entering into the courtyard/property of the complainant for commission of offence of Sections 324/323 IPC and annoyance at their home, and thereby committed offence under Section 447 of IPC?
- (ii) Whether the accused, on 01.02.2013 at about 10 P.M. at Bihpuria Town, Ward No.4, voluntarily caused hurt to the complainant's husband Sri Tuntunia Keot with a sharp weapon/dao, and thereby committed offence under Section 324 of IPC?
- (iii) Whether the accused, on 01.02.2013 at about 10 P.M. at Bihpuria Town, Ward No.4, voluntarily caused hurt to the complainant, Smt. Sanu Keot, and thereby committed offence under Section 323 of 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 01.02.2013 at about 10 P.M. at Bihpuria Town, Ward No.4 have committed the offence of criminal trespass by entering into the courtyard/property of the complainant for***

commission of offence of Sections 324/323 IPC and annoyance at their home, and thereby committed offence under Section 447 of IPC?

The informant, Smt. Sanu Keot Das, stated in her ejahar that on 01.02.2013 at about 10 P.M., the accused Munu Mallah and Ramen Mallah, trespassed into the house of the informant and assaulted the informant with a mid dao amounting to hand and stomach injury. On hearing her shouts her husband came running and when he tried to save her, the accused persons assaulted him with a mid dao and lathi amounting to grievous head injury.

For the offence of criminal trespass it has to be proved by the prosecution that the accused entered into or upon property in the possession of another with the intent to commit an offence. In the circumstances of this case, it has to be proved whether the accused entered into the property of the informant with the intent to commit offence under Section 324/323 of the Indian Penal Code.

The informant stated in her evidence as PW5 that the incident took place about seven years ago in her house at about 9:30 P.M. On the day of incident, her husband quarreled with her and assaulted her, as such, she came out of her house towards their backyard and was sitting there. Her husband continued scolding her from inside the house and then the accused came inside her house by carrying mid-dao, and both her husband and the accused quarreled and shouted on each other and the accused struck a blow

with the mid-dao on the head of her husband, as a result of which blood oozed out and she covered his head with her clothes and took him to the Police Station and lodged the case. And thereafter, she took him to the Bihpuria hospital and treated him. While she interfered in the quarrel between both, the accused pushed her away and, as such, she fell down and was slightly hurt.

The PW1 who is the husband of the informant and one of the victim stated in his evidence that on the day of the incident, the accused person came to the front yard of his house and hit on his head with a piece of wood.

The PW3 Rata Sarkar, stated in his evidence that the incident took place on the tiniali (Hospital tiniali Bihpuria) near the house of the accused and that he heard that there was an incident of assault between the accused and the informant. He was informed about the incident when he returned home in the evening.

The PW4 Siyapati Keot, stated in his evidence that the incident took place in the tiniali a little far away from his house. On his cross-examination by the prosecution as he was declared hostile, he admitted that he did not see the quarrel or incident and in the morning he heard from the family members of the accused that someone assaulted someone as people shouted "marile o" and that he does not know who assaulted whom.

The PW6 Smt. Kabita Rajkhowa Gogoi, stated in her evidence that the incident took place in the day time and on the day of incident, the informant was running in the field as she was chased

by the accused with a dao. The accused continuously chased her and the informant crossed her path. When the PW6 saw the accused chasing the informant with a dao and nobody dared to save her, as such, the PW6 picked up a branch of a plant and threw it towards the accused when he was about to cut the informant and thereafter the dao flew away and fell on the ground. Thereafter, the informant was taken to the house of PW6. The accused was taken away by the other people. The informant told PW6 that the accused assaulted her and when she saw the informant, she was wearing a torn blouse and a petticoat.

From the perusal of the above evidence, it can be known that the informant deposed that the accused came inside her house by carrying a mid dao and struck her husband with the dao on his head. While her husband, i.e., PW1 stated that the accused person came to the front yard of his house and hit him on his head with a piece of wood. While the other PWs, i.e., PW3 and PW4 stated that the incident took place in the tiniali and PW6 did not state anything about the accused entering into the property of the informant. Hence, there are serious anomalies in the evidence of the PWs. Moreover, it must also be proved that the accused trespassed into the property of the informant with the intention to cause hurt, but as the trespass alleged to be committed by the accused could not be established by the prosecution beyond reasonable doubts, as such, the intention of the accused while trespassing into the property of the informant does not arise. The various differences in

the evidence of the PWs and the version of the informant and the victim did not receive any corroboration from the other witnesses thereby raising several doubts as to the act of trespass by the accused with the intention to cause hurt. Hence, the prosecution has failed to establish the charge of the accused under Section **447** of the Indian Penal Code, thereby making him not guilty under the said Section.

- 8. The point for determination no.2 is *whether the accused, on 01.02.2013 at about 10 P.M. at Bihpuria Town, Ward No.4, voluntarily caused hurt to the complainant's husband Sri Tuntunia Keot with a sharp weapon/dao, and thereby committed offence under Section 324 of IPC?***

In the ejahar the informant stated that the accused trespassed into her house and assaulted her and thereafter assaulted her husband with a mid dao and lathi amounting to grievous head injury. For the purpose of deciding this point for determination it has to be decided whether the accused caused hurt to the husband of the informant with a sharp weapon/dao.

The informant stated in her evidence that the accused went inside her house carrying a mid dao and both her husband and the accused quarrel and shouted on each other and the accused struck a blow with the mid dao on the head of the husband. While the husband of the informant, i.e., PW1 stated in his evidence that the accused came to the front yard of his house and hit him on his head

with a piece of wood. The PW3 and PW4 did not see the incident and heard about the same, in fact, they do not know who assaulted whom as they did not state specifically about any act of assault by the accused. The PW6 did not state anything about the assault of the husband of the informant by the accused. Hence. From the evidences of the PWs especially from the informant and her husband, there are serious anomalies in their evidences as because the informant stated that her husband was struck with a mid dao while her husband, i.e., PW1 stated that he was struck by a piece of wood by the accused. Although from the opinion formed after medical examination of the husband of the informant, it was medically opined that the injury of the husband of the informant was caused by sharp weapon, but anomalies in the evidences of the informant and her husband creates a doubt as to the commission of the offence of hurt by sharp weapon by the accused. Hence, the prosecution thereby failing to establish the guilt of the accused beyond reasonable doubt, thereby making him not guilty under Section 324 of the Indian Penal Code.

- 9. The third point for determination is *whether the accused, on 01.02.2013 at about 10 P.M. at Bihpuria Town, Ward No.4, voluntarily caused hurt to the complainant, Smt. Sanu Keot, and thereby committed offence under Section 323 of IPC?***

The informant in her ejahar stated that the accused trespassed into her house and assaulted her with a mid dao

amounting to hand and stomach injury. In her evidence before the court as PW5 she did not state about any assault made to her by the accused. Her husband PW1 also did not state about any assault by the accused on his wife, i.e., the informant. Although from the medical report, it can be known that the informant received injury, but lack of evidences by the prosecution on the assault of the informant by the accused creates a doubt as to the commission of any assault and thereby causing hurt to the informant. Moreover when the informant herself did not state that the accused attacked her and thereby caused injury on her. Her husband too was silent about the same. Hence, considering the above, it can be held that the prosecution has miserably failed to establish the charge of the accused under Section 323 of the Indian Penal Code against the informant, thereby making him not guilty under the said Section.

- 10.** Hence summing up all that has been discussed above the prosecution has failed to prove the guilt of the accused u/s 447/324/323 IPC beyond reasonable doubt.

(CONTD....)

ORDER

As this court finds the accused person Munnu Mallah not guilty of the offence u/s 447/324/323 IPC, the accused person Munnu Mallah is acquitted of the charges u/s 447/324/323 IPC.

The accused person is set at liberty forthwith.

The bail bond is extended for 6 (six) months from today.

The judgment is pronounced in the open court.

**Given under my hand and seal of this court on 19th day
of March, 2019.**

(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: TUNTUNIA KEOT
2. PW2: RAM PRASAD PAWE
3. PW3: RATAN SARKAR
4. PW4: SIYAPATI KEOT
5. PW5: SANU KEOT DAS
6. PW6: SMT. KABITA RAJKHOWA GOGOI
7. PW7: SI KAMAKHYA MISHRA

Defence witnesses

Nil.

Documents exhibited by the prosecution

1. EXT.1: EJAHAR, MEDICAL EXAMINATION REPORT.
2. EXT.2: MEDICAL EXAMINATION REPORT.
3. EXT.3: SEIZURE LIST
4. EXT.4: SKETCH MAP
5. EXT.5: CHARGESHEET

Documents exhibited by the Defence

Nil.

(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)