

**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.322/2012
U/S 448/354/323 IPC.

PARTIES:

State of Assam

Vs

Sri Basanta Dutta Accused

Appearance:

For the State: MR. JANGKI DOLEY

For the accused person: MR. BROJEN BORUAH

Dates of Evidence: 18.05.2013, 21.09.2013,
08.09.2016, 02.05.2018,
01.08.2019

Date of Argument: 17.09.2019

Date of Judgment: 01.10.2019

JUDGMENT

1. Accused Sri Basanta Dutta, S/o Late Sagar Dutta, resident of village - No.2 Motia Gaon, under 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 448/354/323 of the Indian Penal Code.

- 2.** The brief facts of the prosecution case is that on 05.03.2012 at about 12:30 noon, while nobody was present in the house of the informant, the accused trespassed into the house of the informant by opening the door with obscene intention and gagged the mouth of the informant and threw her on the bed and pulled her. The informant tried to save herself from the accused and as such, she sustained injury on her face, waist and both the knees. Hence, the case and the same was registered as Bihpuria Police Station Case No.58/2012 under Sections 448/354 of IPC against the accused person named in the ejahar. The I.O submitted Charge Sheet against the accused under Sections 448/354/323 of IPC. The accused person took bail from the court and copy has been furnished to the accused u/s 207 CrPC.
- 3.** Upon hearing and on perusal of the case record the particulars of offence under sections 448/354/323 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 u/s 313 of the Code of Criminal Procedure was recorded in which the accused denied all the allegations levelled against him and also denied to adduce evidence in his support.

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 05.03.2012 at about 12:30 noon, while nobody was present in the house of the informant, committed house trespass by entering unlawfully into the house of the informant with the intent to commit an offence, and thereby committed offence under Section 448 of IPC?
- (ii) Whether the accused, on 05.03.2012 at about 12:30 noon, while nobody was present in the house of the informant, assaulted or used criminal force against the informant with intent to outrage her modesty or knowing it to be likely that the accused will thereby outrage her modesty, and thereby committed offence under Section 354 of IPC?
- (iii) Whether the accused, on 05.03.2012 at about 12:30 noon, in the house of the informant, voluntarily caused hurt to the informant, and thereby committed offence under Section 323 of IPC?

Decisions and Reasons for decision:

6. I have heard the argument from both sides.
7. All the points for determination are decided together as they are inter-related as well as from the perusal of the evidences and the other materials on record reveals that all the points should be

decided together.

- 8.** The informant stated in her ejahar that on 05.03.2012 at about 12:30 noon, while nobody was present in the house of the informant, the accused trespassed into the house of the informant by opening the door with obscene intention and gagged the mouth of the informant and threw her on the bed and pulled her. The informant tried to save herself from the accused and as such, she sustained injury on her face, waist and both the knees.
- 9.** The informant stated in her evidence as PW1 that on the day of the incident, while her parents went to a funeral ceremony and while she was sleeping, the accused entered into her room and asked her whether she loved him or not by catching her head forcefully. And when she replied that she did not then the accused assaulted her and caught her hairs and dragged her and punched her and then threatened her and laid her on the bed with bad intention and thereafter, the informant pushed him away forcefully and saved herself by running out of her house.
- 10.** The PW2 who is the father of the informant, stated in his evidence that while they went to a funeral ceremony, the informant was alone in the house as she had exams and was studying. At about 12 noon the accused came and gagged the mouth of the informant and assaulted her. He entered into the house by pushing open the door. As the informant did not love him, he treated her obscenely.
- 11.** The PW3, who is the mother of the informant, stated in her

evidence that on the day of the incident as the informant had exams, she stayed in her house and the PW3 went to a funeral ceremony. The accused finding the informant alone in her house, entered into the room by pushing open the door and as the informant did not love him, he assaulted her severely with the intention to commit obscene act on her.

12.The PW4 stated in his evidence that he was not present at the time of the incident and when he returned to his house, he was informed about the incident by the mother of the informant that while they were away from the house, the accused entered into the house and quarreled with the informant.

13.The informant alleged that the accused trespassed into her house while no one was present and assaulted her and that he had the intention to commit obscene act with her. From the PWs, it can be known that no other PWs were present at the time of the incident. They were informed about the matter later on. Other than the informant, there are no direct evidences to the alleged incident. Moreover, the PW4 stated that he was informed by the mother of the informant that there was a quarrel between the informant and the accused. Nothing in the record sufficiently proves that the accused committed the offences alleged. Although some tenderness are found on the legs and back of the informant, it cannot be said that the same is caused by the accused as there are no witnesses to prove the said facts. Moreover, the informant did not mention in her

ejahar that the accused assaulted her. She also did not state in her ejahar that the accused asked her whether she loved him or not.

14. Considering the above, the prosecution evidences are not found sufficient to hold the accused guilty beyond all reasonable doubts. The allegations of the informant could not be proved by the prosecution and creates web of doubts as to the commission of the offence by the accused. This benefit of doubt goes in favour of the accused thereby making him not guilty under Sections 448/354/323 of IPC.

15. Hence summing up all that has been discussed above the prosecution has failed to prove the guilt of the accused u/s 448/354/323 IPC beyond reasonable doubt.

(CONTD....)

ORDER

As this court finds the accused person Sri Basanta Dutta not guilty of the offence u/s 448/354/323 IPC, the accused person Sri Basanta Dutta is acquitted of the charges u/s 448/354/323 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 1ST day of October, 2019.

(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: SMT. KASHMIRI BHUYAN
2. PW2: SRI KAMAL BHUYAN
3. PW3: SMT. LABANYA BHUYAN
4. PW4: SRI NUMAL CHANDRA BHUYAN
5. PW5: SRI PROBIN KOLITA
6. PW6: DR. DIGANTA SONOWAL

Defence witnesses

Nil.

Documents exhibited by the prosecution

1. EXT.1: EJA HAR
2. EXT.2: STATEMENT OF THE VICTIM U/S 164 CR.P.C.
3. EXT.3: SKETCH MAP
4. EXT.4: CHARGESHEET
5. EXT.5: MEDICAL EXAMINATION REPORT

Documents exhibited by the Defence

Nil.

(Smt. Sweety Bhuyan)
JUDICIAL MAGISTRATE 1ST CLASS
Lakhimpur, North Lakhimpur

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