

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

North Lakhimpur, Lakhimpur

PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS

Judicial Magistrate First Class,

Lakhimpur, North Lakhimpur

G.R. Case No.645/2011

State

Versus

Dipak Kumar Sah

(Under sections 323/294/34 IPC)

Offence explained on : 14.08.2012
Evidence recorded on : 17.11.2012, 20.11.2018,
19.01.2019, 03.05.2019
Statements recorded on : 06.01.2021
Arguments heard on : 08.03.2021
Judgment delivered on : 16.03.2021
Advocate for the Prosecution : Mr. Jangki Doley
Advocate for the Accused : Ms. Usha Hazarika

J U D G E M E N T

1. Accused stood for trial for commission of offence u/s 323/294/34 IPC.

2. The informant Amir Ali lodged an ejahar dated 23.05.2011 alleging *inter alia* that in the morning of 23.05.2011 there was an altercation regarding the price of firewoods. The accused persons came together and

engaged in an altercation with the informant and thereafter started to assault the informant for asking high price for the firewoods. As the sister-in-law of the informant came to intervene, the accused persons gave blows with an iron rod on her head causing grievous injuries. Further it is alleged that the accused persons uttered obscene words and languages and later on the villagers came and stopped the fight. Hence this case.

3. On receipt of the ejahar, in-charge of Khelmati Outpost forwarded the same to North Lakhimpur Police Station and thereafter the Officer-in-Charge of North Lakhimpur Police Station registered the case as North Lakhimpur P.S. case no.264/2011 u/s 325/323/294/34 IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 323/294/34 of the Indian Penal Code against the accused persons namely Dipak Kumar Sah and Pramod Kumar Sah.

4. Thereafter, cognizance has been taken and summon have been issued to the accused persons. On appearance of accused persons, necessary documents required u/s 207 Cr.P.C have been furnished to them. On perusal of the materials on record substance of accusation u/s 323/294/34 IPC is read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. Prosecution in support of its case has examined only six (6) witnesses. It is pertinent to mention here that one of the co-accused Pramod Kumar Sah was declared as a proclaimed offender and accordingly, the case was filed against him. The case proceeded against the other co-accused Dipak Kumar Sah.

6. 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 his and also denied to adduce evidence in his support.

7. I have heard the arguments advanced by the learned counsel for the accused person and Ld. A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

POINTS FOR DETERMINATION:

Point No 1: Whether the accused persons in furtherance of common intention on 23.05.2011 voluntarily caused hurt to the informant and his sister-in-law Sarbano Begum and thereby committed an offence punishable u/s 323/34 of IPC?

Point No 2: Whether the accused persons in furtherance of common intention on the same date uttered obscene words and languages to the informant in a public place and thereby committed an offence punishable u/s 294/34 of IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

8. Now let me try to decide the above points by appreciating the evidence available in the case record. I have carefully considered the evidence available in the instant case. Accused Dipak Kumar Sah is facing trial for commission of offence under section 323/294/34 of the Indian Penal Code. Therefore, for the sake of convenience I will discuss the evidence of Medical Officer. **Dr. Jatindra Nath Medak/ P.W-5** examined the victim Sarbano Begum and Md. Amir Ali. P.W-5 deposed that on 23.05.2011 he examined the victims and found lacerated injuries over the left hand of Sarbano Begum and tenderness over the chest of Md. Amir Ali caused by blunt weapon. The injuries were simple in nature.

9. The **informant/ P.W-1 Amir Ali** in the ejahar alleged that on the date of occurrence, he had an altercation with the accused persons regarding purchase of firewoods. He further alleged that the accused persons assaulted him as well as his sister-in-law Sarbanu Begum. In his cross-examination P.W-1 admitted that the accused persons also lodged a case against the informant alleging assault on them. The evidence of P.W-1 is required to be supported by other witnesses including the victim, i.e., P.W-3.

10. P.W-2 Musstt. Surjya Begum and P.W-4 Bokul Ali are independent witnesses and both the witnesses corroborated the facts about the incident and stated that both parties engaged in an incident of marpit. The witnesses could not exactly say who were aggressor in the incident. Both parties went to purchase firewoods where an incident of marpit took place after altercation. It is also admitted that both parties lodged case against each other and the case lodged against the informant side has already been settled on compromise. Further the witnesses stated that both the parties are now living peacefully. In this case P.W-2 and P.W-4 who are independent witnesses clearly stated that they do not know who assaulted whom.

12. Considering nature of offence, the evidence of the victim appears to be very important in order to establish the prosecution case. **P.W-3 Sarbano Begum** is the victim of the alleged incident and in her evidence she stated that both the parties were having an altercation and when she reached the place of occurrence she sustained injuries on her left hand. The witness, however, remained silent that the injuries sustained by her were caused due to assault. Her evidence goes to show that she could not support the prosecution case. There is nothing to hold that the accused caused injuries to the victim since the victim/P.W-3 herself stated that she does not know how she received injuries. Thus, there is nothing to hold that

accused persons caused injuries to the victims.

14. The evidence of the Investigating Officer **Khagen Kalita / P.W-6** can only support the prosecution case but his evidence alone cannot prove the guilt of the accused persons.

15. Considering the matter in entirety, I am constrained to hold that the accused deserves to get the benefit of doubt and is accordingly, acquitted.

ORDER

16. In view of the above discussions, I am of the considered opinion that, prosecution has failed to establish the case against accused namely Dipak Kumar Sah. Accordingly, accused Dipak Kumar Sah is acquitted of the charge u/s 323/294/34 IPC levelled against him in this instant case.

17. Set the accused at liberty forthwith.

18. The bail bond for the accused is extended for a further period of six (6) months.

19. The case is disposed of on contest accordingly.

Given under my hand and seal on this 16th day of March, 2021 at North Lakhimpur, Lakhimpur.

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur

APPENDIX**A. WITNESS OF PROSECUTION:**

1. **P.W-1** : Amir Ali
2. **P.W-2** : Musstt. Surjya Begum
3. **P.W-3** : Sarbano Begum
4. **P.W-4** : Bokul Ali
5. **P.W-5** : Dr. Jatindra Nath Medak
6. **P.W-6** : Khagen Kalita

B. EXHIBITS OF PROSECUTION:

1. **Exhibit 1** : Injury Certificate
2. **Exhibit 1(1)**: Signature of P.W-5 in the injury certificate
3. **Exhibit 2** : Injury Certificate
4. **Exhibit 2(1)**: Signature of P.W-5 in the injury certificate
5. **Exhibit 3** : Sketch Map
6. **Exhibit 3(1)**: Signature of P.W-6 in the Sketch Map
7. **Exhibit 4** : Chargesheet
8. **Exhibit 4(1)**: Signature of Inspector Dimbeswar Roy
9. **Exhibit 4(2)**: Signature of I/C Dinabandhu Bhuyan, which is identified by P.W-6.

C. WITNESS OF DEFENSE: NIL**D. EXHIBITS OF DEFENSE: NIL**

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur