

APPENDIX-12

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

**Present: Sri Akhtabul Ala, AJS
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur,**

Assam

(Date of Judgment: 14-03-2022)

**(G.R. Case No.1050/2016)
N.L.P.S Case No.430/2016 dated 09-05-2016**

COMPLAINANT	STATE OF ASSAM
REPRESENTED BY	Sri Prasanta Dutta, Addl. P.P Smti. Ajanta Sharma Baruah, Addl. P.P.
ACCUSED	1. Md. Anuwar Hussain, Son of Late Rajot Ali, Village: Kandurapathar, P.S: North Lakhimpur, District : Lakhimpur, Assam (A1)
REPRESENTED BY	Musstt. Mamtaz Begum, Advocate

APPENDIX-13

Date of offence	06-05-2016
Date of FIR	08-05-2016
Date of Charge Sheet	30-06-2016
Date of Framing of Charges/offence explanation	31-05-2017
Date of commencement of evidence	06-10-2017, 16-11-2018, 30-07-2019, 11-09-2019, 04-10-2019, 11-11-2019, 03-11-2021
Date on which judgment is reserved	28-02-2022
Date of Judgment	14-03-2022
Date of the Sentencing Order, if any	14-03-2022

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
A1	Md. Anuwar Hussain	Nil	Nil	Sec. 341/323 IPC	Convicted	Fine of Rs.1,000/-	Nil

						u/s 323 IPC	
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J U D G M E N T

1. The brief matrix of the prosecution case is that one Musstt. Noor Jahan Begum had lodged an ejahar before the In-charge Silonibari Police Outpost on 08-05-2016 alleging inter alia that on 06-05-2016 at about 7:00 AM while her 'adhidar' was ploughing her paddy field the persons viz. Md. Anuwar Hussain and Md. Abu Mahammad Hussain had called her to the paddy field and as she went there they surrounded her. Then Md. Anuwar Hussain dealt a blow on her hand with a dao and had inflicted injuries to her on several parts of her body and Md. Abu Mahammad Hussain too was pulling her holding her by her hand. Hence, the case.
2. The Officer-in-charge of North Lakhimpur Police Station on receipt of the ejahar had registered a case vide N.L.P.S Case No.430/2016 under section 326/342/354/34 of IPC. The I.O on completion of investigation had submitted charge sheet under section 341/323 of IPC against the accused Md. Anuwar Hussain (A1) only to stand trial in the Court. The other FIR named person viz. Md. Abu Mahammad Hussain was not sent up for trial as no sufficient material was found against him.
3. On receipt of the charge-sheet, cognizance of the offences under section 341/323 of IPC were taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused

Md. Anuwar Hussain (A1) entered his appearance before the Court after receiving the summons. Copies were furnished to the accused as per provision contained in section 207 of the Code of Criminal Procedure. Substance of accusation under section 341/323 of IPC were explained to the accused A1 to which he pleaded not guilty and claimed to be tried.

4. The points which are required to be determined for a just decision of this case are as follows:

(i) Whether the accused A1 on 06-05-2016 at about 7:00 AM had wrongfully restrained the informant Musstt. Noor Jahan Begum in the paddy field ?

(ii) Whether the accused A1 had voluntarily caused hurt to the informant ?

5. During the trial the prosecution side examined as many as 8 (eight) PWs viz. Musstt. Noor Jahan Begum as PW1, Musstt. Abeda Khatun as PW2, Musstt. Anowara Begum as PW3, Md. Rafique Ali as PW4, Md. Azaruddin as PW5, ASI Khagen Borah the I.O as PW6, Inspector Nikhil Rajkhowa another I.O as PW7 and Dr. Kiran Chandra Chetia the M.O as PW8. The prosecution had exhibited the ejahar as Ext-P-1/PW1 and the signature of the informant therein as Ext-P-1(1), the extract copy of the G.D. Entry as Ext-P-2/PW6, the rough sketch map of the place of occurrence as Ext-P-3/PW6 and the signature of the I.O therein as Ext-P-3(1), the charge sheet as Ext-P-4/PW7 and the signature of the

I.O therein as Ext-P-4(1) and the injury report as Ext-P-5/PW8 and the signature of the M.O therein as Ext-P-5(1).

6. The statement under section 313 of the Code of Criminal Procedure of the accused A1 was recorded and he declined to adduce evidence in defence.
7. I have heard the argument of both sides and thereupon come to the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

8. Now to decide the aforesaid points of determination let us have a proper scrutiny of the evidence of the PWs on record. I find it apposite to extract herein below the core of the Prosecution evidence vis-à-vis the defence stand in the cross examination:
9. Now PW1 Musstt. Noor Jahan Begum the informant of this case testified that on the date of the occurrence at about 10:00 AM while she was inside her house Fazar Ali the son of Mofidul had called her outside. She as such went to the road i.e. Rajghar road near Rampur Tiniali. The accused A1 then had attacked her on her head with an iron rod. She as such fell down and became unconscious and had regained her senses in the hospital. She stated that as a result of the occurrence she had been suffering from mental disease.
10. PW1 Musstt. Noor Jahan Begum in her cross-examination testified that she didn't lodge the ejahar on

the day of occurrence and she didn't assign the reason for her delay in lodging the ejahar. She further stated in her cross-examination that she didn't remember that whether or not she had written in the ejahar and that whether or not she had stated before the police that the occurrence took place by the side of Rajgarh road near Rampur Tiniali.

11. PW1 Musstt. Noor Jahan Begum further stated in her cross-examination that one Anuwara Khatun had brought her to her house from the place of occurrence. She further stated in her cross-examination that after the death of her husband, her paternal uncle in-law Mamtaz Ali and her husband's maternal uncle Samad Ali had divided/partitioned their family land. The 'adhidar' was making embankment on her share of land at the time of occurrence. She denied the suggestion of the defence that the accused had asked her 'adhidar' to make embankment in a straight line and at that she went and argued with the accused. She further denied the suggestion of the defence that she had hit the accused on the cheeks with her sandal. She also denied the suggestion of the defence that when she tried to hit the accused with a sandal the accused tried to protect himself with an umbrella and in the course she got injured with his umbrella.

12. PW2 Musstt. Abeda Khatun who is the daughter of the informant (PW1) testified in her evidence that on the

date of occurrence in the year 2016 at about 7:00 PM she was in her house. Rafique Ali at that time was 'adhidar' of their land and at the time of occurrence Rafique Ali had called her mother to the paddy field. When her mother i.e. PW1 was on her way to her paddy field and had reached the road then the accused A1 had beaten up her mother. She (PW2) as such hearing the hue and cry went out of her house and could see the accused Anuwar Hussain assailing her mother by dealing a blow on her head with a rod for which her mother was bleeding profusely.

13. PW2 Musstt. Abeda Khatun as such ran to her mother and Anowara Khatun who was present there also came and hold her mother. PW2 lifted her mother in a Tempo and taken her to Nowboicha Medical for treatment. The doctor had told them that unless the police is informed they will not do any treatment and at that she went to the Silonibari Police Outpost along with her mother and her mother had lodged an ejahar.

14. PW2 in her cross-examination stated that at the time of occurrence Anowara Khatun and Rafique Ali was also present at the place of occurrence and while Anuwara Khatun was bringing her mother she hold her mother.

15. PW2 further stated in her cross-examination that the accused is her own paternal uncle and that the maternal uncle of the accused viz. Samed Ali and the paternal uncle of the accused viz. Mamtaz Ali had divided the land

between them and the accused. The PW2 had denied all the suggestions forwarded by the defence.

16. Now let us take up the evidence of PW3 Musstt. Anuwara Begum. Now the PW3 Musstt. Anuwara Begum in her evidence testified that the incident occurred about 3 years back in the morning time. At that time while she was going to give her husband his breakfast in the paddy field, she saw an altercation taking place between the informant i.e. PW1 and the accused A1. PW3 stated that she could see blood oozing out from the head of the PW1 which rolled down to her chest but she didn't see that who had assailed Noor Jahan Begum (PW1). She also stated that she didn't ask Noor Jahan Begum that how she had sustained the injury. PW-3 stated that while she was bringing the PW1 Noor Jahan Begum the accused stayed back at the place of occurrence.

17. PW3 Musstt. Anuwara Begum in her cross-examination stated that when there was altercation going on between Noor Jahan Begum and the accused she reached there. At the time of incident it was raining and the accused A1 had an umbrella in his hand.

18. PW3 in her cross-examination further stated that at the time of incident there was no one besides her at the place of occurrence and she did not see any fight between the informant and the accused when she reached the spot.

19. Now the PW4 Md. Rafique Ali in his evidence deposed that he had taken the land of the informant Noor Jahan Begum in 'adhi'. About 3 years back the incident occurred. He at that time was ploughing the land. Thereafter the informant Noor Jahan Begum (PW1) and the accused A1 had quarreled between them over some matter but he does not know that how the quarrel took place. Though he didn't know what had happened but he knows that the informant Noor Jahan Begum was taken to the medical. He does not know the reason of the quarrel as he at that time was busy ploughing his field.
20. PW4 Md. Rafique Ali in his cross-examination stated that he didn't witness the incident and does not know the reason for verbal altercation between them.
21. PW5 Md. Azaruddin who is the son of the informant deposed that at the time of incident he was sleeping and on hearing hue and cry he wake up and saw that there was blood oozing out from the body of his mother Musstt. Noor Jahan Begum on being beaten by the accused. His mother sustained injury on her head and thereafter his mother lodged an ejahar at Silonibari Police Outpost.
22. PW5 Md. Azaruddin in his cross-examination stated that he didn't see the occurrence as he was sleeping at that time and does not know how his mother had sustained injury on her head.

23. PW6 ASI Khagen Borah the I.O of this case testified that he was entrusted with the preliminary investigation of this case and in course of his investigation he had examined the informant at the Police Outpost itself and had recorded her statement and thereafter had sent her to the Nowboicha PHC for her medical examination. He drew the rough sketch map of the place of occurrence after visiting the same and had examined the witnesses present there. He also collected the medical examination report of the informant cum victim and later , on completion of his preliminary investigation had submitted the case diary to the then In-charge of the Silonibari Police Outpost who on perusal of the case diary had submitted the charge sheet against the accused A1 under section 341/323 of IPC.
24. PW6 the I.O in his cross-examination stated that witness Abeda Khatun did not tell before him that the accused had assaulted the informant with a rod.
25. PW8 Dr. Kiran Chandra Chetia the M.O of this case testified that on 06-05-2016 while he was working as Sub-Divisional Medical and Health Officer at Nowboicha PHC, Lakhimpur at about 8:30 AM had examined one Musstt. Nurjahan Begum, aged 55 years on being escorted and identified by SPO Kiron Chutia at Nowboicha PHC. He stated that there was a history of assault on the victim that day in the morning and on her medical examination he could detect (i) lacerated injury on forehead right side

of size 1 ½" x ¼" x ¼" and (ii) swelling forehead left of size 2" x 1". The injuries were fresh, caused by blunt object and simple in nature.

26. PW8 the M.O in his cross-examination stated that the injuries which he detected may also result if on being attacked if a person takes out his umbrella in defence by opening it and the assailant hits that umbrella.
27. So now if we go through the entire evidence of the PWs it can be seen that the PW1 Musstt. Noor Jahan Begun had stated that the accused had assailed her on her head with an iron rod for which she fell down and became unconscious.
28. Now if we go through the injury report i.e. Ext-P-5/PW8 and the evidence of PW8 Dr. Kiran Chandra Chetia it can be seen that the injuries detected on PW-1 Mustt Nur Jahan Begum by the M.O as mentioned in the injury report in fact supports the version of the PW1 as the PW1 stated that she was attacked on her head by the accused for which she sustained injury in her head and the PW-8 the M.O also stated to have found lacerated injury on the forehead right side of size 1 ½" x ¼" x ¼" and swelling forehead in the left of size 2" x 1" and the said injuries were fresh, caused by blunt object and were simple in nature. So it is clear that PW1 had sustained injury on her head.

29. Now PW2 Musstt. Abeda Khatun as discussed above stated that on hearing hue and cry she went out and saw the accused hitting her mother with an iron rod but she before the I.O i.e. PW6 didn't state about the accused assailing the informant with an iron road but however the fact remains that she saw the PW1 to be bleeding from her head.
30. PW3 Musst. Anuwara Begum as mentioned above also stated that when she went to the place of occurrence she saw the quarrel between the accused and the informant Noor Jahan Begum and by the time she reached there the PW1 Noor Jahan Begum had already sustained the injury and was bleeding from her head and while she was taking away the PW1 the accused stayed back there at the place of occurrence. She didn't ask the PW1 about the reason for her injury but however it is clear that there was a fight and quarrel going on between the informant and the accused and she had seen the injury on the PW1.
31. PW4 Md. Rafique Ali who is the 'adhidar' of PW1 as it can be seen from his evidence that he also does not know the reason for the quarrel between the informant and the accused but made a point that there was indeed a quarrel between the informant and the accused though he had not seen it and he knows about the informant being sent to the hospital for treatment. Though the PW4 Md. Rafique Ali could not throw much light about the incident yet it is

clear that he too knows about the quarrel between the informant and the accused and he had knowledge about the informant (PW1) being sent to the medical for treatment.

32. PW-5 Md. Azaruddin who is the son of the PW1 in his evidence as it can be seen has also stated that he had not witnessed the occurrence but he could see his mother Musstt. Noor Jahan Begum (PW1) to have sustained injury on her head and blood oozing out from her head.

33. So it can be seen from the evidence on record that all the PWs have categorically supported the PW1 regarding the fact of injury sustained by her on her head and blood oozing out from her head. Further all the PWs though stated about reaching slightly late at the place of occurrence but they could see the quarrel between the informant and the accused and also the injury on the head of the Informant.

34. If we go through the cross-examination of the PWs there also it can be seen that the defence had given suggestion that while the informant Musstt. Noor Jahan Begum (PW1) went to attack the accused he had defended himself with an umbrella and in the process the PW1 got injured. The defence also in the cross-examination of the PW8 the M.O had given the suggestion that such injury detected on the person of the victim Musstt. Noor Jahan Begum may also result if a person

goes to attack someone and the person being attacked take out an umbrella in defence by opening it and the assailant hits the umbrella accidentally.

35. So even from the suggestion of the defence it is clear that the Defence agrees about a quarrel going on between the informant and the accused and that they were both present at the place of occurrence.

36. Now the defence side besides giving mere suggestions has failed to lead any evidence to prove their defence stand that while the informant Noor Jahan Begum (PW1) went to attack the accused he in his defence had taken out his umbrella and the PW1 accidentally got hit with that umbrella and sustained injury.

37. All the evidence of the PWs goes to pinpoint that there was a quarrel going on between the informant (PW1) and the accused and the PW1 had sustained injury and was bleeding from her head. PW1 in her evidence had categorically stated as discussed above that the accused assailed her on her head with an iron rod. The injury report and the evidence of the M.O (PW8) also goes to support the version of the PW1.

38. At this juncture I would like to refer a decision of the Hon'ble Supreme Court in the case of **Sivaligappa Kallayanappa versus State of Karnataka** reported in **1994 Supp 3 SCC 235** wherein it was held that "*the deposition of the injured witness should be relied upon*

unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident”.

39. Also in **State of U.P v. Kishan Chand** reported in **2004 7 SCC 629** a similar view has been reiterated observing that *“the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence”.*

40. Further the **Hon’ble Supreme Court** in the case of **Abdul Sayeed vs. State of M.P (2010) 10 SCC** has held that *“the question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence had been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone”.*

41. Hence, in the instant case the defence has failed to shake the evidence of the PWs. Though the Defence had

thoroughly cross examined the PWs but nothing could be elicited in their testimony in favour of the Defence.

42. I see no reason to disbelieve the PW1 Noor Jahan Begum i.e the informant cum victim of this case. The evidence on record glaringly goes to show that there was a verbal altercation between the informant and the accused over a matter of 'ali' (embankment) in the paddy field and in furtherance of that quarrel the accused A1 had assailed the PW1 Noor Jahan Begum with an iron rod on her head causing injury to her which was though simple in nature.

43. The defence had pointed out in the cross-examination of the PW1 Musstt. Noor Jahan Begum as well as in the cross examination of the PW6 ASI Khagen Das the I.O regarding the delay of two days in lodging of the ejahar which was not explained. Now the Informant and the victim of this case Mustt Nur Jahan Begum (PW-1) is a lady and as it has surfaced from the evidence that she was injured in the incident and so the delay in her lodging the ejahar cannot be hold totally without reason. Moreover when the evidence of the PWs are found credible the mere delay in lodging the ejahar cannot be considered to have punched a hole in the Prosecution case and the entire Prosecution case cannot be thwarted just because of the delay in lodging the ejahar.

44. So from the discussion in the preceding paragraphs it can be concluded that the prosecution has been successful in proving that the accused A1 had assailed the informant PW1 and thereby had voluntarily causing hurt to her. Hence, the second point of determination, which is taken up first for the sake of convenience, is held in affirmative.

45. Now as for the first point of determination that whether the informant Musstt. Noor Jahan Begum was restrained by the accused it can be seen from the evidence of PW1 itself that she nowhere in her evidence had stated about the accused wrongfully restraining her.

46. Now wrongful restraint has been defined in section 339 of IPC as - *whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.*

47. Now the PW1 as well as the rest PWs as a matter of fact had never stated anything about the accused obstructing the way of the informant Musstt. Noor Jahan Begum (PW1) so as to prevent her from proceeding in any direction. Hence, from the evidence of the PWs it can no way be concluded that the accused had wrongfully restrained the PW1 Musstt. Noor Jahan Begum.

48. Hence the first point of determination is held in negative.

49. The prosecution has managed to prove the case against the accused A1 Md. Anuwar Hussain under section 323 of IPC and as such he is convicted under the said section. But, however, the prosecution has failed to prove the case against the accused A1 under section 341 of IPC and as such he is not held guilty under the said section of 341 of IPC.
50. Now considering the nature of the offence where the accused A1 in broad daylight had attacked a woman, I don't find the A1 to be entitled for benefit under Probation of Offender's Act as it would else send a wrong message to the society.
51. Heard accused A1 on the point of sentence and he prays for leniency stating that this is his first offence and he has his family comprising of his wife and three children and sentencing him to imprisonment will cause his entire family to suffer.

ORDER

52. The accused A1 Md. Anuwar Hussain is convicted under section 323 of IPC and as such he is sentenced to a fine of Rs.1,000/- (Rupees One Thousand) under section 323 of IPC in default simple imprisonment for 30 (thirty) days.

53. The fine on being deposited be handed over to the informant cum victim of this case viz. Musstt. Noor Jahan Begum under the provision of section 357 of Cr.P.C.

Let a free copy of this Judgment be furnished to the accused A1 and also a copy of the Judgment be sent to the District Magistrate.

Bail bonds are extended to further six months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this the 14th day of March, 2022.

Sd/-

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

Sd/-

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer

Contd. Appendix

APPENDIX - 14
LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RAN K	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Musstt. Noor Jahan Begum	Eye witness
PW2	Musstt. Abeda Khatun	Other witness
PW3	Musstt. Anuwara Begum	Other witness
PW4	Md. Rafique Ali	Other witness
PW5	Md. Azaruddin	Other witness
PW6	ASI Khagen Borah	Police witness
PW7	Inspector Nikhil Rajkhowa	Police witness
PW8	Dr. Kiran Chandra Chetia	Medical witness

B. Defence Witnesses, if any:

RAN K	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Nil	Nil
DW2	Nil	Nil

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	Nil	Nil
CW2	Nil	Nil

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. Prosecution:**

Sr. No	Exhibit Number	Description
1	Exhibit P-1/PW1	Ejahaar
2	Exhibit P-1(1)	Signature of the informant
3	Exhibit P-2/PW6	Extract Copy of the G.D. Entry
4	Exhibit P-3/PW6	Rough sketch map of the place of occurrence
5	Exhibit-P-3(1)	Signature of the I.O
6	Exhibit P-4/PW7	Charge sheet
7	Exhibit P-4(1)	Signature of the I.O
8	Exhibit P-5/PW8	Injury Report
9	Exhibit P-5(1)	Signature of the M.O

B. Defence:

Sr. No	Exhibit Number	Description
1	Exhibit D-1/DW-1	Nil
2	Exhibit D-2/DW-2	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Exhibit C-1/CW-1	Nil
2	Exhibit C-2/CW-2	Nil

D. Material Objects:

Sr. No	Exhibit Number	Description
1	MO1	Nil
2	MO2	Nil

Sd/-

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur