

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIOGAON, ASSAM.

G.R. Case No. 2242/17

U/S 341/294/323/354-A/506(II)/34 IPC

STATE OF ASSAM

-VS-

1. MD. HASEN ALI, S/O LT. MAMTAZ ALI.

2. MD. ARIF HUSSAIN, S/O MD. HASEN ALI.

BOTH R/O DALBARI, P/S MORIOGAON.

DIST. MORIOGAON, ASSAM

.....ACCUSED PERSONS.

PRESENT: -

SMTI. ANAMIKA BARMAN, LL.M., A.J.S.

JUDICIAL MAGISTRATE FIRST CLASS

MORIOGAON, ASSAM.

FOR THE STATE: -

MR. M. ISLAM, LEARNED A.P.P.

FOR THE ACCUSED: -

MR. HAFIJUR RAHMAN, LEARNED ADVOCATE.

EVIDENCE RECORDED ON: - 19.11.2019.

ARGUMENT HEARD ON: - 19.11.2019.

JUDGMENT DELIVERED ON: - 19.11.2019.

JUDGMENT

1. The brief of the prosecution story is that one Md. Muksidul Islam filed an FIR before the Officer-in-Charge, Morigaon P.S. on 03.09.17, alleging inter alia that on 02.09.17, at about 05:00 pm, in front of the house of one Saraf Ali at Dalbari, the

accused Md. Arif Hussain wrongfully restrained the informant, rebuked him with obscene words and assaulted him with a stick as a result of which the informant sustained injuries. At that time the accused Md. Hussain Ali also came to the place of occurrence and assaulted the informant. On seeing the incident, when the wife of the informant Musstt. Rahmina Begum came and restricted the accused persons, the accused persons assaulted her as well. The accused persons also threatened to kill the informant and his wife. It is also mentioned in the FIR that both the accused persons are the family members of the informant. Hence, the case.

2. On receipt of the ejahar, Morigaon P.S. Case No. 309/17 u/s 341/294/325/354/506/34 IPC was registered and investigated into. On completion of the investigation, I/O filed charge-sheet against the accused persons Md. Hasen Ali and Md. Arif Hussain u/s 341/294/323/354-A/506/34 of IPC.

3. On receipt of summons the accused persons appeared before the court and copies of relevant documents were furnished to the accused persons under section 207 of Cr. P.C. On finding sufficient prima facie materials to presume that the accused persons had committed offences u/s 341/294/323/354-A/506(II)/34 of IPC, charge under the said sections was framed and the same was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined only 2 (two) witnesses. In view of the evidence recorded the Ld. APP verbally prayed to close PWs as the prosecution declined to adduce further evidence. After closure of prosecution evidence, statement under section 313 of Cr.P.C. was dispensed with as found not necessary. Defence declined to adduce evidence. Heard the arguments put forward by the learned Counsels for both the sides as well as gone through the evidences available on record.

5. **Points for determination.**

I. Whether on 02.09.2017, at about 05.00 pm, at Dalbari under Morigaon PS, the accused persons, in furtherance of their common intention, wrongfully restrained the informant Md. Muksidul Islam, and hence committed an offence u/s 341/34 IPC?

II. Whether on the same date, time and place, the accused persons, in furtherance of their common intention, uttered obscene words at or near a public place, and hence committed an offence u/s 294/34, IPC?

- III. Whether on the same date, time and place, the accused persons, in furtherance of their common intention, voluntarily caused hurt to the informant and his wife Musstt. Rahmina Begum, and hence committed an offence u/s 323/34, IPC?*
- IV. Whether on the same date, time and place, the accused persons, in furtherance of their common intention, sexually harassed the wife of the informant Musstt. Rahmina Begum, and hence committed an offence u/s 354-A/34, IPC?*
- V. Whether on the same date, time and place, the accused persons, in furtherance of their common intention, committed criminal intimidation by threatening to kill the informant and his wife, and hence committed an offence u/s 506(II)/34, IPC?*

Discussion, Decision and Reasons thereof:-

6. In this case prosecution examined only 2 (two) witnesses. The informant Md. Muksidul Islam was examined as PW-1 and the victim Musstt. Rahmina Begum was examined as PW-2 to prove the charges against the accused persons.

7. Before going to decide the points for determination, let me describe the evidence in brief. *In his examination-in-chief PW-1/informant*, Md. Muksidul Islam, deposed that he is the informant and he knows the accused persons. The accused Md. Hasen Ali is his brother-in-law and the other accused Md. Arif Hussain is the son of the accused Md. Hasen Ali. He further deposed that the incident had taken place about one and half years prior to the date of his deposition at about 03:00 pm to 03:30 pm at Dalbari near the house of PW-1's father-in-law. On the date of the incident he had a verbal altercation with the accused persons over some family matters and PW-1 filed the instant case in that misunderstanding.

8. *During his cross-examination*, PW-1 stated that he does not have any objection if the accused persons are acquitted.

9. *In her examination-in-chief PW-2/victim*, Musstt. Rahmina Begum, deposed that the informant is her husband and she knows the accused persons. The accused Md. Hasen Ali is her brother-in-law and the other accused Md. Arif Hussain is the son of the accused Md. Hasen Ali. She further deposed that the incident had taken place

about 2 (two) years prior to the date of her deposition at about 05:00 pm at Dalbari near the parental house of PW-2. On the date of the incident they had a verbal altercation with the accused persons over some family matters and PW-1 filed the instant case in that misunderstanding.

10. *During her cross-examination*, PW-2 stated that she does not have any objection if the accused persons are acquitted.

11. On perusal of evidence recorded by the prosecution side, it appears that the PW-1/informant/victim and the PW-2/victim are not willing to proceed with the case further and they stated that the case was filed out of some misunderstandings. Now they do not have any objection if the accused persons are acquitted.

12. In view of the evidence recorded the prosecution declined to adduce further evidence. This being so there is nothing in the evidence of the prosecution warranting conviction of the accused persons u/s 341/294/323/354-A/506(II)/34 IPC as the evidence of the prosecution witnesses is found to be not acceptable and reliable.

13. Considering the above, I came to the safe conclusion that the prosecution has failed to prove the charge u/s 341/294/323/354-A/506(II)/34 IPC against the accused persons beyond reasonable doubt. Accordingly, the accused persons are found not guilty of the offences charged against them and are acquitted.

ORDER

14. In the light of the above decision, the accused persons are acquitted of the charge under section 341/294/323/354-A/506(II)/34 IPC and set at liberty forthwith.

15. The bail bonds of the accused persons are extended for a period of 6 (six) months as per section 437-A, CrPC.

16. Given under my hand & seal of this Court and delivered in the open Court on this 19th day of November, 2019.

Dictated and corrected by me

(ANAMIKA BARMAN)

(Miss. Anamika Barman)

Judicial Magistrate First Class, Morigaon

Judicial Magistrate First Class

Morigaon, Assam

APPENDIX

PROSECUTION WITNESSES:

1. P.W.-1, MD. MUKSIDUL ISLAM.
2. P.W.-2, MUSST. RAHMINA BEGUM.

DEFENCE WITNESSES:

NIL

EXHIBITED DOCUMENTS:

NIL

(ANAMIKA BARMAN)
JMFC, Morigaon
Assam