

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,
MORIGAON

G. R. Case No: 2684/16

Under section 323/354(A)/34of Indian Penal Code

State

Vs

Md. Abdul Hasim @ Piku Ali

S/O- Late Hifjur Rahman, R/o Torabori, P.S. Mikirbheta, Morigaon
.....Accused person

Present: Lohit Kumar Sarma, SDJM(S), Morigaon

Advocates appeared

For the State: Ms. B. Devi

For the accused person: Mr. N. U. Ahmed and Ms. S. Shah

Evidence recorded on: 19.11.2018, 12.3.2019, 1.8.2019 and 13.9.2019

Argument heard on: 6.11.2019

Judgment delivered on: 18.11.2019

JUDGMENT

1. The informant Md. Sahed Alihad lodged an ejahar before officer in charge ofMikirbhetaPolice Station on 16.10.2016against Babu Ali and Pike Ali stating inter alia that on 23.9.2016 at about 12noonwhile the daughter of the informant namely Arsifa Begum went out then the accused restrained her in front of Akbar Ali's house on the government road, kicked on her breast, dragged her on the ground holding her hair and outraged her modesty by tearing her clothes. Hence the informant had filed this case.
2. The ejahar was received and registered as MikirbhetaPolice Station case No. 366/16 under section341//325/354(B)/34of the Indian Penal Code.

3. Police started investigation to trace the root of the case. The Investigating Officer after due investigation of the case submitted charge sheet under section 323/354(A)/34 of the Indian Penal Code against the accused persons namely Abdul Hasim @ Piku Ali and Jiauddin Ahmed @ Babu Ali. **However, the case against Jiauddin Ahmed was abated vide order dated 27.4.2018 as he was reported dead on 1/11/17.**
4. The accused person appeared and entered trial. Copies of the relevant documents were furnished to the accused person as per section 207 of the CrPC.
5. During trial, after hearing the parties a formal charge under section 323/354(A)/34 was framed against the accused person and the offences were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. The prosecution has examined six witnesses i.e., including the informant and the victim. The statement of the accused person under section 313 CrPC was recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

- i) Whether the accused person along with Jiauddin @ Babul Ali on 23.9.2016 at about 12 noon, in furtherance of their common intention, voluntarily caused hurt to the daughter of the informant namely Arsifa Begum and thereby committed an offence punishable under Sec. 323/34 of the Indian Penal Code?
- ii) Whether the accused person on 15.2.2016 at about 9 am in furtherance of their common intention assaulted or used criminal force to the daughter of the informant Miss Arsifa Begum, intending to outrage her modesty or knowing it to be likely that you would thereby outrage her modesty by such assault or criminal force and thereby committed an offence punishable under Sec. 354(A)/34 of Indian Penal Code?

7. I have heard the oral arguments put forward by both the Counsels. I have also gone through the entire evidence available on record. My discussion and reasons for the decision are discussed below.

DISCUSSION, DECISION AND REASONS THEREOF:

8. PW1, Md. Sahed Ali who is the informant deposed that he filed this instant case and the accused person is known to him. The incident took place in the year 2016 at around 1/1.30 pm. The villagers informed PW1 that the accused threw his daughter Arsifa Begum after physically assaulting her nearby the Reserve at Dangoriagaon. One namely Raja beat Arsifa. But PW1 does not know by which weapon Raja beat his daughter. Arsifa was treated in Charaibahi hospital by the police and then she was referred to Morigaon civil. Ext-1 is the ejahar Ext-1(1) his signature.
9. During cross-examination, PW1 stated that the one namely Raja has expired who was PW1's co-villager. On the day of incident PW1 filed the ejahar. PW1 reached the place of occurrence after about one hour from the incident. On reaching the place of occurrence PW1 met around 20/30 people there of which Habi, Sahab, Sahab's wife, Soufat and Soufat's wife were also there. It was not a fact that he filed this case after 22 days of the incident.
10. PW2 Miss Arsifa Begum who is the victim deposed that the informant is her father and the accused person is known to her. She stated that the incident took place about 3 years ago at around 2 pm prior to her deposition at a 5 km distant place from her house nearby the Reserve on a government road. On that day she went to bring her sister. Babu Ali proposed PW2 but she was not convinced. On that day, she was going on a cycle but when Babu Ali asked her to stop she did not, then Babu Ali stopped his bike on PW2's way. Babu Ali stepped out of his bike and beat PW2 on her breast and belly when she fell down. Piku Ali was holding PW2 while Babu Ali was beating her. Babu Ali went to his house to bring a dao to cut PW2 when she became senseless. From the police station she was taken to Charaibahi for treatment and then she was referred to Morigaon civil.

11. During cross-examination PW2 stated that Babu Ali has already expired who was PW2's co-villager. Piku Ali's house is at Torabori which is about 5/6 km away from PW2's house. Piku Ali did not disturb PW2 at all, he only held her. On the same day, PW2 was taken to the police station. Though the police was inquiring her but she could not say as much. At the time of incident there was no person present. The rest just some suggestions to which PW2 denied.
12. PW3, Md. Akbar Ali who deposed that both the parties are known to him. PW3 heard that the deceased accused (people call him Babu) had quarreled with one girl namely Rousnara. Rousnara is informant's daughter. The incident is about two years old. PW3 is not aware what the accused (present in the court) had committed. PW3 had not seen the incident. The learned defense counsel declined to cross-examine PW3.
13. PW4, Musst. Rousnara Begum who deposed that the informant is her husband and the accused is known to her. Many years have passed since the incident happened. Her elder daughter Arsifa Begum went to bring her sister back home from her school when the accused Babu (deceased) and the accused standing in the dock beat Arsifa on the road. Still her daughter feels pain on her chest and she bleed through her nose and mouth. PW4 took her daughter first to the police station when she was taken to the Charaibahi hospital, from there to Morigaon, Nagaon and then she was referred to GMCH.
14. During cross-examination PW4 stated that first she met her daughter in her house after the incident. The incident happened on the road connecting from Dangoriagaon to Borsola. Blood stains were seen on her daughter cloth which was torn. The police saw her daughter bleeding. PW4 told the doctor that she bleed. The police seized the blood stained cloth. On the same day PW4 filed the ejarah in the police station. PW4 did not witness the incident herself. The accused standing in the dock resides in Torabori village. One must go in the opposite direction from Borsola to reach Torabori. Her daughter went to the Borsola School. Her daughter was beaten by Babu but not sure whether she was also beaten by the accused standing in the dock or not. The rest are just some suggestions to which PW4 denied.

15. PW5 Dr. Naba Kr. Das who is the medical officer deposed that on 23.9.2016 he was posted as M&HO in Charaibahi SD and on that day at 4.30 pm he examined the victim Miss Arshifa Begum aged 14 years in connection with police requisition escorted and identified by HG DimbeswarBordoloi. On examination of Arshifahe found the following findings: she complained about pain on chest and abdomen with breathing difficulty. Type of weapon was blunt. Nature of injury was simple injury. The patient was received under emergency number 27/September/2016. The victim was referred to Morigaon Civil Hospital for further needful. Ext-2 is the Medical report and Ext-2(1) is his signature.
16. During cross-examination PW5 stated that there was no external injury detected on victim's body. His finding was only difficulty in breathing. Nervousness, anxiety, bronchospasm and anemia may cause breathing difficulty.
17. PW6 ASI Muzamil Hazarika who is the investigating officer deposed that on 16.10.2016 he was working as Asst. Sub-Inspector at Mikirbheta PS. On that day Md. Sahed Ali filed an ejahar which was received and registered by the then Officer-in-Charge under Mikirbheta PS Case No.366/16 u/s 341/325/354(B)/34 of IPC and he was entrusted with the preliminary investigation of the case. The incident occurred on 23.9.2016 and on verbal information by the victim who was present in the police station, sent to medical hospital. If any GDE was done by the then OC, the extract copy is not found in the case diary. On 16.10.2016 he recorded the statement of the informant and the victim at the police station; he visited the place of occurrence on the same day, prepared the sketch map and recorded the statements of witnesses. On the same day, the accused Jiaur Ahmed and Abdul Hasim @ Piku were arrested and released on bail. On his transfer he handed over the case diary to the then OC Utpal Kr. Nath who later on submitted charge sheet against the accused persons u/s 323/354(A)/34 IPC. From the case diary it is learnt that the medical report was collected by the then OC Utpal Kr. Nath. Ext-3 is the sketch map and Ext- 3(1) is his signature. Ext-4 is the charge sheet and Ext-4(1) is the signature of Utpal Kr. Nath which he can recognize.

18. During cross-examination PW6 stated that GDE number was not mentioned in the column 3(a) of the FIR. The cause of delay has not been mentioned in the column 8 of the FIR. He has not recorded the statement of Nabab Ali. Prior to the filing of the ejahar, there was information regarding the alleged incident.
19. Let me first analyse the basis of the prosecution story. The incident was occurred on 23/9/16 but the ejahar was filed on 16/10/16. The cause of delay in filing the ejahar has not been explained by the prosecution. As such the court must be cautious while weighing the evidences of the prosecution. With this note let me analyse the evidences adduced by the prosecution.
20. In reference to the alleged offences, the informant alleged in the ejahar thaton 23.9.2016 at about 12 noon while the daughter of the informant namely Arsifa Begum went out then the accused restrained her in front of Akbar Ali's house on the government road, kicked on her breast, dragged her on the ground holding her hair and outraged her modesty by tearing her clothes. During deposition as PW1 he stated that the villagers informed PW1 that the accused threw his daughter Arsifa Begum after physically assaulting her nearby the Reserve at Dangoriagaon. One namely Raja beat Arsifa. During cross examination he stated that Raja was already died. Thus the informant has made no allegation against the accused Abdul Hasim @ Piku Ali. PW3 and PW4 were not the eyewitnesses of the incident. Hence let me analyse the deposition of the victim. The victim Arsifa Begum deposed thaton that day, she was going on a cycle but when Babu Ali asked her to stop she did not, then Babu Ali stopped his bike on PW2's way. Babu Ali stepped out of his bike and beat PW2 on her breast and belly when she fell down. Piku Ali was holding PW2 while Babu Ali was beating her. During cross examination she stated that the accused Piku Ali did not disturb her at all. Thus neither the informant nor the victim implicated the accused Piku Ali in the said incident. They only implicated Babu Ali who was reported already dead and the case has already been abated against him. Hence the prosecution is failed to prove the offences alleged against the accused Piku Ali beyond reasonable doubt.

21. Therefore the points for determination are decided in negative and in favour of the accused.
22. In view of the above, it is held that the prosecution has failed to establish the charges under section 323/354(A)/34 of the Indian Penal Code against the accused person Abdul Hasim @ Piku Ali. Accordingly the accused person is found not guilty and is acquitted of the alleged offences under section 323/354(A)/34 of the Indian Penal Code labelled against him and he is set at liberty.
23. Bail bonds and affidavits submitted by the bailor are extended for a period of six months as per amended Cr.P.C.
24. The case is disposed of on contest.
25. Given under the hand and seal of this court on the 18th day of November, 2018 at Morigaon.

(Lohit Kumar Sarma)
Sub Divisional Judicial Magistrate(S),
Morigaon

APPENDIX

Prosecution witnesses:

PW1- Md. Sahed Ali (Informant)

PW2- Miss Arsifa Begum (victim)

PW3- Md. Akbor Ali

PW4- Musstt. Rousnara Begum

PW5- Dr. Naba Kr. Das (M.O.)

PW6- ASI Muzamil Hazarika (I.O.)

Exhibits for the prosecution:

Ext-1: Ejahar

Defence witness :

Nil

Exhibits for defence:

Nil

Lohit Kumar Sarma
SDJM(S), Morigaon