

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.841/2016

State

Vs.

- 1. Mr. Rizabul Islam
Son of Md. Rofiqul Islam**
- 2. Md Ribbul Hoque
Son of Md. Rofiqul Islam**
- 3. Musstt. Rebina Begum
Daughter of Md Rofiqul Islam
All are residents of village: Moirabari,
Ward No.2, P.S.- Moirabari,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.
For the defence: Md. Sofiqul Islam, Advocate

Charge framed u/s: 447/341/294/323/506(II)/34 of IPC on 25-8-2017
Evidence recorded on: 7-12-2017, 2-6-2018, 25-9-2018, 7-3-2019,
27-5-2019 & 4-11-2019
Statement of defense recorded on: 30-12-2019
Argument heard on: 30-12-2019
Judgment delivered on: 10-01-2020

JUDGMENT

1. The prosecution case in brief is that one Musstt. Sahida Khatun lodged an ejahar in the Moirabari police station against the accused persons namely Md. Rizabul, Md. Izazul, Md. Hibjur, Md. Ribbul and Musstt. Rejbina alleging therein that the aforementioned accused persons, out of previous grudge, on 15-4-2016 at about 1.00 p.m., armed with iron rods and sharp weapons illegally entered into the house of the informant and threatened to beat the informant by shouting. When Musstt. Rumena

Khatun and Md. Nazir Hussain, who are the daughter and the son, respectively, of the informant, tried to prevent them; the accused persons beat them with iron rods causing severe injuries on their persons. When the accused persons wanted to kill them, they started a commotion and on hearing their commotions their neighbours arrived at the place of occurrence. On arrival of the neighbours, the accused persons fled from the scene and the informant and her son and daughter was able to save themselves.

2. The ejahar was received in the Moirabari police station on 15-4-2016 and a Moirabari police station case No.96/2016 under sections 143/448/325/506 IPC was registered and one assistant sub inspector of police Md. Abdul Jalil was assigned to take up the preliminary steps of the investigation and the sub inspector of police Sri Shyamal Kr. Bonia, who was the Officer-in-Charge of the said police station, decided to complete the investigation himself. On completion of investigation, police submitted charge sheet against the accused persons namely Md. Rizabul Islam, Md. Ribbul Hoque and Musstt. Rebina Begum under sections 447/341/294/323/506/34 IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused persons under section 207 CrPC. After hearing both sides, after perusing the case record and on prima facie materials of offences under sections 447/341/294/323/506(II)/34 IPC being found against the above mentioned accused persons, formal charge under sections 447/341/294/323/506(II)/34 IPC was framed, which was read over and explained to the accused persons namely Md. Rizabul Islam, Md. Ribbul Hoque and Musstt. Rebina Begum to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 8 (eight) witnesses namely Musstt. Sahida Khatun, Musstt. Rumena Khatun, Md. Nazir Hussain, Musstt. Sarifa Khatun, Musstt. Rinara Begum, Md. Mofidul Islam, Dr. Nagen Dihingia and ASI Md. Abdul Jalil, as PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7 and PW-8, respectively. Prosecution side also exhibited 4 (four) documents including the ejahar and the charge sheet. While under examination under section 313 CrPC the accused persons denied the allegations leveled against them. Defense side refused to adduce any evidence.

5. I have heard the argument of Mrs. Alakananda Kakati, learned APP as well as the argument of Md. Sofiqul Islam, learned defence counsel. I have also perused the case record and considered the same. The following points for determination are formulated:

- i. Whether the accused persons, on or about 15-4-2016 at about 1.00 p.m., at village Moirabari Ward No.2, under Moirabari police station of Morigaon district, in furtherance of their common intention, entered on to the courtyard of the house of Musstt. Sahida Khatun, which was in the possession of the said Musstt. Sahida Khatun, Musstt. Rumena Khatun and Md. Nazir Hussain, with intent to commit an offence or to intimidate, insult or annoy them and thereby committed an offence punishable under section 447 IPC read with section 34 of the IPC?
- ii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, wrongfully restrained Musstt. Sahida Khatun, Musstt. Rumena Khatun and Md. Nazir Hussain, so as to prevent them from proceeding in any direction in which they had a right to proceed and thereby committed an offence punishable under section 341 IPC read with section 34 of the IPC?
- iii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, uttered obscene words in a public place to the annoyance of Musstt. Sahida Khatun, Musstt. Rumena Khatun and Md. Nazir Hussain, and thereby committed an offence punishable under section 294 IPC read with section 34 of the IPC?
- iv. Whether the accused persons, on or about same date, time and place, in furtherance of their common intention, voluntarily caused hurt to Musstt. Sahida Khatun, Musstt. Rumena Khatun and Md. Nazir Hussain, and thereby committed an offence punishable under section 323 IPC read with section 34 of the IPC?
- v. Whether the accused persons, on or about same date, time and place, in furtherance of their common intention, threatened to kill Musstt. Sahida Khatun, Musstt. Rumena Khatun and Md. Nazir Hussain, with intent to cause alarm to them and thereby committed an offence punishable under section 506(II) IPC read with section 34 of the IPC?

Discussion of evidence, decision and reasons therefor:

6. For convenience all the points for determination are taken up together for discussion. We have already noticed the contents of the ejahar which is exhibited as exhibit-1 and the informant put her thumb impression thereon. The informant Musstt. Sahida Khatun, deposed before the court as PW-1. As per the allegation in the ejahar, all the five accused persons named in the ejahar entered into her house, beat her daughter

Musstt. Rumena Khatun and her son Md. Nazir Hussain with iron rods causing severe injuries on their persons and also intended to kill them.

7. While deposing in court, the PW-1 Musstt. Sahida Khatun stated that the occurrence took place in connection with a quarrel regarding damage of cultivation by goat belonging to her. It is stated by her that the accused Md. Izazul told her that he would slap her. On hearing the quarrel between them, her son Md. Zakir Hussain came to the place of occurrence but the accused Md. Izazul threatened him also. This statement was not indicated by her in her ejahar. There is no mention of Md. Zakir Hussain in the ejahar or that he was threatened by accused Izazul. According to her, on hearing the commotion, the mother of Md. Izazul, Md. Hibjur, Ribbul and Musstt. Rebina came to the place of occurrence. There is also no mention of the mother of Izazul in the ejahar. Though it was indicated by her in her ejahar that accused Rizabul was also involved however, his name is not mentioned in her deposition.

8. Thereafter, the mother of the accused Izazul and accused Ribbul caught hold of hair of Musstt. Rumena. This was also not indicated in the ejahar by the informant. Further, it is stated by her that she was beaten with an iron rod on her leg by Ribbul, Izazul and Hibbul when she came to rescue her daughter. This statement does not find any mention in the ejahar. In the ejahar, it was indicated that the accused persons beat Musstt. Rumena Khatun and Md. Nazir Hussain by iron rods. Though it was indicated in the ejahar that Musstt. Rumena Khatun and Md. Nazir Hussain were beaten by iron rod by the accused persons; however, same was not indicated by PW-1 in her deposition rather she stated that it was her who was beaten by iron rods on her legs.

9. Musstt. Rumena Khatun, who is the daughter of the informant, deposed before the court as PW-2. It is stated by her that at the time of the occurrence she was at her house and on hearing the commotion she came out of her house and saw that her elder brother Md. Nazir Hussain was being beaten by Ribbul, Rijajul, Rebina and the mother of Rebina. Accused Rijabul beat Md. Nazir Hussain with an iron rod and remaining accused persons beat her brother with lathi. When she intervened, accused Md. Rijabul beat her on her leg with a stick prepared from betel-nut tree, as a result of which, her two toe nails were torn out and blood oozed out of the injuries. It is noticed in her evidence that there is no indication that she was beaten by accused persons with iron rod as indicated

in the ejahar. Further, though she implicated accused Rizabul of beating her however, her mother did not even utter the name of Rizabul.

10. Though she stated that she was beaten on her leg and she sustained injury, wherefrom blood oozed out; however, when she was examined by PW-7 Dr. Nagen Dihingia on 15-4-2016 i.e. on the date of the occurrence at Moirabari First Referral Unit (FRU), Moirabari; the doctor, however, did not find any external injury on her. The said PW-7 prepared the exhibit-2 injury report wherein he confirmed his signature as exhibit-2(1). Perusal of the injury report reveals that on examination of Musstt. Rumena Khatun as well as Md. Nazir Hussain, no external injury was found on their persons. This medical findings contradict the deposition of PW-1 and PW-2 that they sustained injury. PW-1 was not even examined by the said PW-7.

11. PW-3 Md. Nazir Hussain also deposed that he also came to the place of occurrence on hearing the commotion and saw that the accused persons namely Ribbul, Izazul, Rizabul, Rebina and Hibjur were involved in the beating. He also stated that when his sister Rumena and Momtaz came and intervened the accused persons, the accused persons also beat them. The presence of Momtaz during quarrel was not indicated by PW-1 and PW-2. He stated that he saw the accused persons beating his brother Md. Zakir and when he intervened, accused Rijabul inflicted a blow on his upper back with an iron rod. This infliction of blow, on upper back of Md. Nazir Hussain, was not indicated by PW-1 and PW-2 though the same was indicated in the ejahar. Rather we find from the deposition of PW-4 Musstt. Sarifa Khatun that Md. Nazir Hussain sustained injury on his head and Musstt Sahida Khatun sustained injury on the back side of her shoulder. This statement of PW-4 Musstt. Sarifa Khatun was not even indicated by the said alleged victims Md Nazir Hussain and Musstt Sahida Khatun themselves.

12. Likewise PW-5 Musstt. Rinara Begum also stated that Md. Nazir Hussain sustained injury on his head and other parts of his body. The head injury was not indicated by Md. Nazir Hussain himself. We find from the deposition of the PW-6 Md. Mofidul Islam that Md. Zakir, who is the son of the informant, came to the place of occurrence after departure of the accused persons and took the injured to hospital for medical treatment. If that be so, Zakir was not present during the alleged occurrence and he arrived at the place of occurrence only after the alleged occurrence. This statement of PW-6 Md. Mofidul Islam; therefore, goes against the depositions of PW-1

and PW-3. There is no indication in the deposition of PW-4 Musstt. Sarifa Khatun and PW-5 Musstt. Rinara Begum that Md. Zakir Hussain sustained any injury as indicated by PW-1 or that they saw Md. Zakir Hussain at the place of occurrence.

13. Therefore, from the depositions of aforementioned PWs, we find that there are material discrepancies regarding involvement of the accused persons as well as the alleged injuries sustained by Md. Nazir Hussain and Musstt. Rumena Khatun. In the ejahar, there is no indication that Md. Zakir Hussain was beaten by the accused persons. PW-1 to PW-5 are relatives and members of the same family and hence they are highly interested witnesses. Though the said fact itself insufficient to discard the evidence, however, when depositions of such relatives are marred by glaring material discrepancies, the same creates doubt in the mind of the court and their depositions become shaky and unworthy of trust.

14. If the aforementioned discrepancies read with the medical evidence, we find that the injuries indicated by the PWs were not found by the doctor though he examined two of them on the same day. If Md. Nazir Hussain, Musstt. Sahida Khatun and Musstt. Rumena Khatun were beaten by iron rod, such beating would have left clear visible injury marks and same would have been found by the examining doctor. However, no such marks were found by him. Apart from that the informant Musstt. Sahida Khatun was not even examined by the doctor though she stated that she was also beaten by the accused persons with iron rod on her legs. This beating, as already indicated above, was also not indicated in her ejahar. PW-6 Md. Mofidul Islam stated that he saw the accused persons beating Musstt. Sahida Khatun and Musstt. Rumena Khatun with iron rods and bamboo sticks. Musstt. Rumena Khatun herself did not say she was beaten by iron rod. He also stated that he does not know on which part of the body of Musstt. Sahida Khatun and Musstt. Rumena Begum sustained injury. If he was present at the place of occurrence, there is no reason why he did not see the injury. These discrepancies only shows that his very presence in the place of occurrence is also doubtful.

15. PW-8 ASI Md. Abdul Jalil is the investigating officer and he prepared the sketch map which is exhibited as exhibit-3 wherein he confirmed his signature as exhibit-3(1). Perusal of the sketch map goes to show that the I/O indicated the place of occurrence as the courtyard of the informant, whereas, in the ejahar of the informant it is indicated as her house. He also exhibited the charge sheet as exhibit-4 which was submitted by

the officer-in-charge S.I. Sri Shyamal Kr. Bonia, whose signature is exhibited as exhibit-4 (1) as the signature is known to PW-8. The charge sheet was submitted against the accused persons namely Md. Rizabul Islam, Md. Ribbul Islam @ Hoque and Md. Rebina Begum and not against all the five accused persons as indicated in the ejahar. The preliminary findings by the I/O, therefore, go to show that the I/O also did not find any material against the remaining two accused persons, named in the ejahar. This preliminary findings, if considered in the light of the depositions of PWs, as indicated above, coupled with the medical findings, go to show that the witnesses did not speak in one voice regarding involvement of all the accused persons as well as injury sustained by the alleged victims.

16. From the depositions of witnesses as indicated above, the involvement of the accused persons could not be determined beyond all reasonable doubt. The material discrepancies in the deposition of the key witnesses coupled with the medical findings do not inspire the confidence of the court to come to a definite conclusion regarding the guilt of the accused persons beyond all reasonable doubt.

17. For the aforesaid reasons and discussion the points for determination are answered in the negative.

18. The prosecution has failed to prove the case against the accused persons beyond all reasonable doubt. As such, the accused persons are found not guilty and acquitted of the offences under sections 447/341/294/323/506(II)/34 IPC alleged against them. They be set at liberty forthwith. Their bail bonds are extended for a period of six months from today in view of section 437A CrPC.

19. The judgment is pronounced in open court and given under my hand and seal on this 10th day of January, 2020 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-1: Ejahar

Ext.-2: Injury report

Ext.-2(1): Signature of Dr. Nagen Dihingia

Ext.-3: Sketch Map

Ext.-3(1): Signature of ASI Md. Abdul Jalil

Ext.-4: Charge sheet

Ext.-4(1): Signature of SI Sri Shyamal Kumar Bania

(B) DEFENCE EXHIBITS:

None

(C) EXHIBITS PRODUCED BY WITNESSES:

None

(D) COURT EXHIBITS:

None

(E) PROSECUTION WITNESSES:

P.W.-1: Musstt. Sahida Khatun

P.W.-2: Musstt. Rumena Khatun

P.W.-3: Md. Nazir Hussain

P.W.-4: Musstt. Sarifa Khatun

P.W.-5: Musstt. Rinara Begum

P.W.-6: Md. Mofidul Islam

P.W.-7: Dr. Nagen Dihingia

P.W.-8: ASI Md. Abdul Jalil

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon