

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON, ASSAM

Case No. CR 994/17

U/S 447/323/354(B)/34 I.P.C.

**1. MUSSTT. MANIJA BEGUM,
W/O:- MD. BAHARUL ISLAM,
R/O:- SARUSOLA, P.S.:- MOIRABARI,
DIST. MORIGAON, ASSAM**

.....COMPLAINANT.

-VS-

**1. MD. NABI HUSSAIN, S/O. MD. ABDUL MAJID,
2. MD. FARUK ALI, S/O. MD. ABDUL MAJID,
3. MUSSTT. KHAIRUN NESSA, D/O. MD. ABDUL MAJID,
R/O:- SARUSOLA, P.S.:- MOIRABARI,
DIST. MORIGAON, ASSAM.**

..... ACCUSED PERSONS.

PRESENT: -

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

JUDICIAL MAGISTRATE FIRST CLASS MORIGAON, ASSAM.

ADVOCATES APPEARED:

MR. D. AHMED

..... FOR THE COMPLAINANT,

MR. D. C. DAS

..... FOR THE ACCUSED PERSONS,

EVIDENCE RECORDED ON: - 02.04.2018, 12.06.2018, 03.11.2018, 01.04.2019,

ARGUMENT HEARD ON: - 28.06.2016, 14.08.2019,

JUDGMENT DELIVERED ON: - 25.10.2019.

J U D G M E N T

1. The case in brief is that, one Musstt. Manija Begum lodged a complaint on 20.10.2017 before the Learned Chief Judicial Magistrate, Morigaon, stating inter-alia that on 13.10.2017, at about 05-05:30 pm, the husband of the complainant Md. Baharul Islam along with Ainuddin went to their fishery. On seeing them near the fishery, the accused persons, namely, Md. Nabi Hussain, Md. Faruk Ali and Musstt. Khairun Nessa, restrained the husband of the complainant and assaulted him. When the witness Ainuddin raised hue and cry, the complainant went to the place of occurrence. On reaching the place of occurrence, she saw blood oozing out of the face and nose of her husband. When she tried to stop the accused persons, the accused Musstt. Khairun Nessa grabbed hold of her hair from her back, assaulted her, pushed her onto the ground and also tore apart the blouse which she was wearing at that time. Thereafter the

accused Md. Faruk Ali tried to disrobe the complainant by tearing her sari. The witnesses Ainuddin and Abdul Salam rescued the complainant and her husband from the accused persons. Thereafter, the accused persons abused them with obscene languages and also threatened to kill them in the future. Hence, the case.

2. In view of the above allegations, a case was registered and initially transferred to the court of Judicial Magistrate 1st Class for disposal. Accordingly, enquiry was made u/s 200 & 202 Cr.P.C. and process was issued u/s 447/323/354(B)/34 I.P.C against the accused persons.

3. In pursuant to the court-process, the accused persons appeared before the Court and were allowed to go on bail. Thereafter evidence before charge was recorded. After going through the evidence before charge, hearing the learned counsels for both the sides and on finding sufficient prima facie materials to presume that the accused persons had committed offences punishable under section 447/323/354(B)/34 of IPC, charge under the said sections was framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of his case, the complainant Musstt. Monija Begum adduced the evidence of Md. Abdul Salam as PW-1, the evidence of Md. Ainuddin as PW-2 and the evidence of herself as PW-3. After closure of prosecution evidence, the accused persons were examined u/s 313 Cr.P.C. wherein they took the plea of denial. 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.

Points for determination are:

(i) *Whether on 13.10.2017, at about 05-05:30 pm, the accused persons, in furtherance of their common intention, committed criminal trespass by entering into the property of the complainant's husband, which was also in the possession of the complainant's husband, with intent to commit an offence, and thereby committed an offence punishable u/s 447/34 of IPC?*

(ii) *Whether on the same date and time, the accused persons, in furtherance of their common intention, assaulted or used criminal force to the complainant with intent to disrobe her, and hence committed an offence u/s 354-B/34, IPC?*

(iii) *Whether on the same date and time, the accused persons, in furtherance of their common intention, voluntarily caused hurt to the complainant and her husband, and hence committed an offence u/s 323/34 IPC?*

Decision and the reasons thereof:

EVIDENCE BEFORE CHARGE

EVIDENCE OF PW-1:

5. *In his evidence before charge PW-1, Md. Abdul Salam, deposed that he knows the complainant as she is his co-villager. He also knows the accused persons standing on the dock.*

He further deposed that the incident had taken place at Sarusola, about 3 (three) months prior to the date of his deposition at about 05:30 pm-06:00 pm. On the date of the incident he went to the house of the complainant to meet the husband of the complainant Baharul regarding some work. When he reached the house of the complainant he asked the complainant about her husband. The complainant told him that her husband Baharul was near their fishery which is near their house. Then he asked the complainant to call her husband and accordingly the complainant went to their fishery to call her husband. Thereafter, he heard hue and cry near the fishery of the complainant and when he reached the place of occurrence he saw the accused persons assaulting Baharul. When the complainant tried to stop the accused persons, the accused persons grabbed hold of her hair and tore apart her blouse which she was wearing at that time. Ainuddin, who is the brother-in-law of Baharul Islam, was also present at the place of occurrence at the time of the incident and he stopped the quarrel.

6. *In his evidence before charge PW-2, Md. Ainuddin, deposed that the complainant is the wife of his brother-in-law and he knows the accused persons standing on the dock. He further deposed that the incident had taken place about 2 (two) months prior to the date of his deposition at about 05:30 pm near the house of the accused persons which is at Sarusola. On the date of the incident Baharul and he was near the fishery which is near the house of the accused persons. At that time the accused Md. Nabi Hussain and Md. Faruk Ali came there with sticks in their hands and asked Baharul to leave the place. However, the accused persons did not assault Baharul, they only asked him to leave the place. Thereafter, the complainant came to the place of occurrence and raised hue and cry after which accused the Khairun Nessa reached the place of occurrence and pulled the complainant by her hair.*

7. *In her evidence before charge P.W. 3/Complainant, Musstt. Monija Begum, deposed that she is the complainant and she knows the accused persons standing on the dock. She further deposed that the incident had taken place about 4 (four) months prior to the date of her deposition at about 05:00-05:30 pm near her house. At the time of the incident her husband Baharul along with Ainuddin had gone to fishery near their house to see the fishes therein. After some time she heard the noise of hue and cry near the fishery and when she went there she saw that the accused Nabi Hussain and Faruk Ali were assaulting her husband. When she tried to stop them, the accused persons assaulted her as well.*

At the stage of evidence before charge, the defence side reserved their part of cross-examination.

EVIDENCE AFTER CHARGE:

8. *During his cross-examination, PW-1 stated that he does not remember the date, day and time of occurrence. He further stated that the husband of the complainant and he does similar business and the husband of the complainant is his friend. On the date of the incident he called the husband of the complainant over the phone and asked him to stay at home. The house of Khairul Islam is in between the place of occurrence and the house of the complainant but his evidence is not adduced in the instant case. It is not a fact that he has falsely deposed for the sake of his friend. The complainant had asked him if he would adduce his evidence in*

the instant case or not. It is not a fact that he does not know that a case against Baharul Islam is pending trial for outraging the modesty of the accused Khairun Nessa. It is not a fact that in order to get rid of that case the complainant has falsely filed the instant case. He further stated that he did not get any notice from the Court for adducing his evidence in this case. It is not a fact that he has deposed as per the instruction of the complainant and Baharul.

9. *During his cross-examination*, PW-2 stated that before filling the case the complainant had not told him that he had to adduce his evidence in the instant case. He further stated that the incident had taken place about 3 (three) months prior to the date of his cross-examination. He does not know if Baharul Islam on 11.10.2018 at about 07:00 pm – 08:00 pm had entered into the house of Nabi Hussain when no other person was there except the accused Khairun Nessa and misbehaved with her and if any case has been instituted regarding the said matter. It is not a fact that he has stated falsely in favor of the complainant as she is his sister-in-law. It is not a fact that no such incident had taken place on the date of the incident as stated by him in his evidence and that he has falsely only to harass the accused persons.

10. *During her cross-examination*, PW-3/complainant stated that she had filed the instant case after 15 (fifteen) days of the incident. She further stated that a GR case is also pending trial in the Court against her husband because when the accused persons called for a village meeting regarding the incident they did not go to the said meeting. She neither called a village meeting nor filed any case in the P.S regarding the incident. The actual owner of the fishery which is mentioned in the instant case is one Md. Hussain Ali and not the complainant or her husband. She has not adduced the evidence of the people living near the place of occurrence and she has also not adduced any medical documents of her and her husband in this case. It is not a fact that she along with her husband and her brother-in-law Ainuddin had gone to front side of the house of the accused persons and verbally abused them with obscene languages. It is not a fact that she has filed the instant case to get rid of the case that had been filed against her husband. It is not a fact that she has deposed falsely in the Court. PW-1 had gone the place of occurrence.

JUDICIAL DETERMINATION

11. The complainant filed this case alleging that on 13.10.17, at about 5:30 p.m., the accused persons wrongfully restrained her husband Md. Baharul Islam and assaulted him while her husband was near the fishery along with one Ainuddin. When Ainuddin raised hue and cry, the complainant came to the place of occurrence and saw blood oozing out from her husband's face and nose. When the complainant tried to restrain the accused persons from assaulting her husband, the accused Khairun Nessa grabbed hold of her hair from her back, assaulted her, tore apart her blouse and floored her after which the accused Faruk Ali tried to disrobe the complainant. However, Ainuddin and Abdul Salam rescued her from the accused persons.

WITH REGARD TO SECTION 323 IPC:

12. Now, let us see what the prosecution witnesses have deposed in their evidence before the Court. PW 1 deposed in his evidence that at the request of PW 1, the complainant had gone

to the fishery to call her husband and after hearing hue and cry of the complainant, PW 1 went near the fishery where he saw the accused persons assaulting the husband of the complainant. PW 1 further deposed that when the complainant tried to restrain the accused persons from assaulting her husband, the accused persons grabbed hold of her hair and tore apart her blouse. It was Ainuddin who later stopped the quarrel. PW 3/complainant also deposed that the accused persons were assaulting her husband when she went to the fishery to call her husband. She further deposed that the accused persons also assaulted her. However, the evidence of Ainuddin/PW 2 reveals that the accused persons have not assaulted the husband of the complainant. This creates a doubt as to the genuineness of the prosecution's case as well as the reliability and the credibility of the evidence deposed by PW 1 and PW 3. PW 2 only deposed that the accused Khairul Nessa had only pulled the complainant by her hair. But, PW 3/complainant herself had not deposed the same in her evidence.

13. In view of the discussions made above, I am of the opinion that there are discrepancies and inconsistencies in the evidence deposed by the prosecution witnesses. The prosecution side has failed to prove its case against the accused persons u/s 323 IPC beyond reasonable doubt in the light of cogent evidence. Hence, the accused persons deserves acquittal u/s 323/34 IPC.

WITH REGARD TO SECTION 447 IPC:

14. During cross-examination of PW 3/complainant, she admitted that the owner of the fishery is one Md. Hussain Ali and it does not belong to the complainant and her husband. The offence of section 447 IPC arises when a person wrongfully trespasses into the property of another which was also in possession of the latter. The burden was on the prosecution side to establish the fact that the fishery was in possession of the complainant and her husband. But, the prosecution failed to establish the same. In the absence of any evidence on record to prove that the complainant or her husband was in possession of the fishery, I am of the opinion that the accused persons are not guilty u/s 447 IPC. As such, the accused persons deserve acquittal u/s 447/34 IPC.

WITH REGARD TO SECTION 354-B IPC:

15. The complainant in her complaint petition stated that accused Khairun Nessa tore apart her blouse and the accused Faruk tried to disrobe her. PW 1 also deposed that the accused persons tore apart the blouse of the complainant. However, in her evidence deposed before the Court the complainant/PW 3 herself did not state anything of that sort. Even PW 2, who was an eye witness to the whole incident, had not deposed anything which attracts the ingredients of sec 354-B IPC. In view of the above, the accused persons deserve acquittal u/s 354-B/34 IPC.

In the backdrop of the discussions made above, the accused persons deserve acquittal u/s 447/323/354(B)/34 IPC.

O R D E R

In view of the conclusion made above, I hold the accused persons not guilty of the offences u/s 447/323/354(B)/34 and hence, they are acquitted of the offences u/s 447/323/354(B)/34 IPC. The accused persons are set at liberty forthwith.

The bail-bond of the accused persons shall remain in force for a period of six months from the date of this order.

The judgment is delivered in the open Court in presence of the accused persons and their learned Counsel.

Given under my hand and seal of this court on this 25th October, 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. ABDUL SALAM,
2. P.W.-2, MD. AINUDDIN,
3. P.W.-3, MUSSTT. MANIJA BEGUM.

DEFENCE WITNESSES :

NIL

EXHIBITED DOCUMENTS:

NIL

**(ANAMIKA BARMAN)
JMFC, Morigaon
Assam**