

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM**

**G.R. CASE NO.231/2016**

**State**

**Vs.**

- 1. Md. Abdul Matalib  
Son of Late Hatem Ali**
  - 2. Md Ebadul Hoque  
Son of Md Abdul Matalib**
  - 3. Musstt. Sulema Khatun  
Wife of Md Abdul Matalib**
  - 4. Md Abdul Mannan  
Son of Late Hatem Ali**
- All are residents of village: Goraimari  
P.S.- Laharighat,  
District- Morigaon, Assam**

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

For the state: Mrs. A. Kakati, Addl. P.P.  
For the defense: Md. A. Salam, Advocate

Offences explained u/s: 341/447/323/294/506(I)/34 of IPC  
Evidence recorded on: 6-4-2018, 19-6-2018, 12-10-2018, 13-12-2018  
and 28-6-2019  
Statement of defence recorded on: 11-7-2019 and 28-8-2019  
Argument heard on: 17-9-2019 & 1-10-2019  
Judgment delivered on: 16-10-2019

**JUDGMENT**

**1.** The prosecution case in brief is that one Md. Isahok Ali lodged an ejahar in the Borchala Police Out Post of Laharighat police station against the accused persons namely Md. Abdul Matalib, Md. Abdul Mannan, Md. Ebadul Islam and Musstt. Sulema Khatun alleging therein that a Laharighat police station case No.288/2013 under section 376 IPC has been pending in the court for trial against the accused persons. On 3-2-2016 at

about 4.30 p.m. when Musstt. Hanufa Khatun, who was the wife of the informant, went to collect clothes, which were hung to dry, at the field near his house, the aforementioned accused persons threatened her to withdraw the aforesaid case and pulled her wearing apparel and beat her with lathi. Thereafter, the accused persons illegally entered into the house of the informant and took away chappals, shoes amounting to Rs.50,000/-, which was kept by the informant for his business.

**2.** The ejahar was received on 3-2-2016 in the Borchala Police Out Post vide Borchala Police O.P. GD Entry No.41 dated 3-2-2016 and the ejahar was forwarded to the Officer-in-Charge of Laharighat police station for registering a case under proper sections of law. In the meantime, the sub inspector of police Sri Premananda Deka, who was the In-charge of Borchala police out post, took up the investigation of the case. Subsequently, the ejahar was received in the Laharighat police station on 4-2-2016 and a Laharighat police station case No.46/2016 under sections 448/354/325/506/392 IPC was registered and the sub inspector of police Sri Premananda Deka, who was the in-charge of the aforesaid police out post, was assigned to investigate the case by the Officer-in-charge of the said police station. On completion of investigation police submitted charge sheet against the accused Md. Abdul Matab, Md. Ebadul Hoque, Musstt. Sulema Khatun and Md. Abdul Mannan under sections 341/447/323/294/506/34 of IPC.

**3.** On appearance before court copies of all relevant documents were furnished to the accused persons under section 207 CrPC. Particulars of offences under sections 341/447/323/294/506(1)/34 of IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

**4.** Prosecution in support of its case examined 6 (six) witnesses namely Md. Isahok Ali, Musstt. Hanufa Khatun, Md. Atabur Rahman, Md. Jiabur Rahman, Dr. Tapan Kumar Nath and sub inspector Sri Premananda Deka, as PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6, respectively. The prosecution also exhibited 5 (five) 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 arguments of Mrs. Alakananda Kakati, learned APP as well as the argument of Md. Abdus Salam, learned defence counsel. I have also perused the case record and considered the same. The points for determination are as under:

- i. Whether the accused persons, on or about 3-2-2016 at about 4.30 p.m. at village Goraimari under Laharighat police station, in furtherance of their common intention, wrongfully restrained Musstt. Sulema Khatun, so as to prevent her from proceeding in any direction in which she had a right to proceed and thereby committed an offence punishable under section 341 IPC read with section 34 the IPC?
- ii. Whether the accused persons, on or about same date, time and place, in furtherance of their common intention, committed criminal trespass by entering into the residential compound of Md. Isahok Ali with intent to commit an offence and thereby committed an offence punishable under section 447 IPC read with section 34 IPC?
- iii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, voluntarily caused hurt to Musstt. Hanufa Khatun and thereby committed an offence punishable under section 323 IPC read with section 34 IPC?
- iv. 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. Hanufa Khatun and thereby committed an offence punishable under section 294 IPC read with section 34 IPC?
- v. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, threatened Musstt. Hanufa Khatun to cause alarm to her and thereby committed an offence punishable under section 506(I) IPC read with section 34 IPC?

**Discussion of evidence, decision and reasons therefor:**

**6.** For convenience the points for determination are taken up together for discussion. The informant Md. Isahok Ali deposed before the court as PW-1. His ejahar is exhibited as exhibit-1 and he confirmed his signature thereon as exhibit-1(1). He has corroborated his ejahar stating that when his wife Musstt. Hanufa Khatun went to collect clothes at the field, the accused persons asked her to withdraw the case. When she

refused, the accused persons beat her and pulled her wearing apparel. However, he has indicated in his deposition that on hearing the commotion when he went to the place of occurrence, the accused persons beat him also with lathi. He did not write about the accused persons beating him in his ejahar. Thereafter, the accused persons took away the chappals, shoes etc. amounting to Rs.50000.00/60000.00 from his house, which he kept for his own business. He was cross-examined and it is revealed in his cross-examination that there is previous enmity with the accused persons and the informant filed a case earlier also in which the accused persons were acquitted. Further, it has also been revealed in his cross-examination that a cross case was also filed by the accused persons against him and his family members.

**7.** In the light of these revelations in his cross-examination and further scrutiny of his deposition given in examination-in-chief, we have noticed that in his ejahar there is no mention that the accused persons beat him with lathi or the fact that he went to the place of occurrence. This fact which he stated in his examination-in-chief being a material one there is no explanation in his deposition as to why he had omitted the same in his ejahar.

**8.** PW-2 Musstt. Hanufa Khatun has stated that when she went to collect the clothes from the field, accused Md. Ebadul asked her to withdraw the case lodged earlier. When she told him that she will not withdraw the case, the said accused pushed and pulled her. At that time her husband was arranging the footwears for selling the same at the market. On hearing her cries, Jiabur, Atabur, Parbin and Md. Abdul Malek came to the place of occurrence. It may be indicated herein that PW-1 only stated that it was him who arrived at the scene and he did not mention about arrival of Jiabur, Atabur, Parbin and Md. Abdul Malek at the place of occurrence. Be that as it may, PW-2 further stated that accused Mataleb, Mannan and Sulema beat her and tore her wearing apparel. While she was so beaten, accused Ebadul went to her house and took away Chappals amounting to Rs.50000/-. According to her, the accused persons beat her with their hands and lathi and she sustained injuries on her upper back and chest. It is also indicated by her that when her husband intervened, the accused persons beat him also.

**9.** It is noticed in her deposition that according to her, it was only accused Md. Ebadul Islam, who went to the house and took away the footwears. However, according to PW-1, it was all the accused persons who took away the chappals. It may be indicated herein that the informant in his ejahar wrote that it was all the four ejahar

named accused persons, who entered into the house of the informant and took away the chappals, shoes etc. However, in the deposition of PW-1 and PW-2 there is no mention that the four accused persons entered into the house and according to PW-2 it was only Md. Ebadul Islam who took away the chappals. There is discrepancy regarding implication of the accused as to who took away the chappal from the house of PW-1.

**10.** We have also noticed that as per statement of PW-2, she sustained injuries on her upper back and chest and according to her the accused persons beat her with their hands and lathi. Dr. Tapan Kr. Nath examined Musstt. Hanufa Khatun on 4-2-2016 at Nagabandha New PHC and prepared the exhibit-2 injury report wherein he confirmed his signatures as exhibit-2 (1). He deposed before the court as PW-5. From the injury report (exhibit-2) and his deposition, we have found that on examination of Musstt. Hanufa Khatun, he did not find any visible external injury on her person. This medical finding by PW-5 contradicts the statement of Musstt. Hanufa Khatun (PW-2) that she sustained injury on her upper back and chest. Lathi blows on her, as stated by her, must have left some marks on her person. But no such marks were found by the doctor. Her cross-examination also revealed the previous enmity with the accused persons and regarding the cross case filed by the accused persons.

**11.** PW-3 Md. Atabur Rahman is the younger brother of the informant. According to him, he was sleeping at his house at the time of the occurrence. When his sister-in-law (PW-2) went to collect clothes, according to him, accused Md. Abdul Matab, Md. Abdul Mannan, Md. Ebadul Islam and Musstt. Sulema Khatun beat Musstt. Hanufa Khatun. According to him, Musstt. Hanufa Khatun sustained injuries on waist, upper back and shoulder joint. It may be indicated that Musstt. Hanufa Khatun herself did not state anything regarding any injury on her waist and shoulder joint. PW-3 further stated that on hearing the commotion he, his elder brother Md. Jiabur Rahman and the informant went out of the house and saw that the accused persons were beating Musstt. Hanufa Khatun. When they prevented the accused persons, the accused persons beat them also with their hands and sticks. It may be mentioned here that neither PW-1 nor PW-2 have deposed that the accused persons beat Md. Atabur Rahman and Md. Jiabur Rahman also. There is no indication in the ejahar also that Md. Atabur Rahman and Md. Jiabur Rahman were beaten by the accused persons. This a material omission under the circumstances. Therefore, so far as accusation against the accused persons is concerned, the same appears to be exaggerated by PW-3. PW-3 further stated that he

sustained injuries on waist, shoulder joint and head and Md. Jiabur Rahman sustained injuries on his waist and head. Further, according to him, the informant i.e. Md. Isahok sustained injuries in the shoulder joint and head.

**12.** Again coming to the deposition of PW-5 Dr. Tapan Kr. Nath, we have found that the said PW also examined Md. Atabur Rahman and found tenderness over right shoulder joint. He also found swelling over parietal region and tenderness over nape of neck of Md. Isahok Ali. However, there is no indication in his deposition that PW-4 Md. Jiabur Rahman was ever examined by him. Md. Isahok Ali himself did not depose anything to indicate that he sustained any injury on his neck. These findings by the PW-5 does not corroborate the narration of injuries given by PW-3 in his deposition. His cross examination also revealed filing of a cross-case by the accused persons wherein he is also an accused.

**13.** PW-4 Md. Jiabur Rahman has stated that it was accused Md. Ebadul and Md. Abdul Mannan who beat Musstt. Hanufa Khatun after coercing her to withdraw the case lodged against the accused persons. There is no mention in his deposition regarding the other two accused persons. He further stated that on hearing commotion, he and his younger brother Md. Atabur went to the place of occurrence and saw that the accused persons were beating Musstt. Hanufa Khatun. When he tried to intervene in the quarrel, he was also beaten by the accused persons. It may be mentioned herein that PW-4 was not even examined by PW-5. Further, it appears from his deposition that it was only him and Md. Atabur Rahman, who went to the place of occurrence on hearing commotion. There is no mention about the informant going to the place of occurrence to save his wife. He also stated that the accused persons beat him with a branch of palm tree on his head, upper back and waist and he sustained more injury on his head. It is not believable that in spite of such beating and such injuries, he would not seek any medical treatment. PW-4 was not even examined by PW-5. Non-examination of PW-4 by any doctor and absence of his medical report in the case record go to show that the injury narrated by him is false and he did not sustain any injury requiring medical intervention. PW-6 SI Sri Premananda Deka was the investigating officer and he deposed, amongst others, that he sent the injured for medical examination. If that be so, Md. Jiabur Rahman would have also be sent for medical examination if he had sustained injuries narrated by him. But he was not sent and not medically examined. PW-4 further stated that the accused persons caught hold of hair of Musstt. Hanufa Khatun and two of them

dragged her by her legs. These facts were not deposed to by Musstt. Hanufa Khatun herself. Therefore, it only appears to be exaggeration by PW-4 in order to bolster the case. He also stated that it was the accused persons who took away the chappals from his house amounting to Rs.50000/-. This statement contradicts the statement of PW-2 who stated that it was only accused Ebadul who took away the chappals.

**14.** Apart from these discrepancies noticed in the deposition of PW-4, it is revealed from his cross-examination that this case was lodged against the accused persons as the accused persons lodged a case against him and his family members. He has further indicated in his cross-examination that had the accused person not lodged any case, they would not have also lodged this case. This revelation in his cross-examination only goes to show that lodging of this case was doubtful and result of deliberation and the occurrence as narrated by the PW-1, PW-2, PW-3 and PW-4, who are the members of the same family, is doubtful. Therefore, their depositions cannot be relied to find the accused persons guilty.

**15.** PW-6 S.I. Sri Premananda Deka prepared the sketch map which is exhibited as exhibit-3 wherein he confirmed his signature as exhibit-3(1). On completion of investigation he submitted the charge sheet which is exhibited as exhibit-4 and confirmed his signature as exhibit-4(1). Exhibit-5 is the page of the case diary wherein the GD Entry number was indicated. He went to the place of occurrence, prepared the sketch map, recorded statement of witnesses and caused medical examination of the injured. There is no indication in his deposition that he sent PW-4 Md. Jiabur Rahman for medical examination.

**16.** In view of the discrepancies already noticed in the deposition of the alleged victims i.e. PW-1 to PW-4, deposition of PW-6 i.e. investigating officer cannot alone go to prove the guilt of the accused persons.

**17.** While examination under section 313 CrPC, all the four accused persons denied the allegations leveled against them. It is indicated by them that it was the informant and his family members, who beat the accused persons. According to accused Md. Abdul Matab, this present case was lodged as the case earlier lodged by the informant was disposed of. It has also been revealed from their statements given under section 313 CrPC that it was them who lodged a case first, after which, the informant lodged the present case. This revelation by the accused persons further goes to support the revelation of the accused persons, while under cross-examination, that it was the

accused persons who lodged the case first against the informant and his family members for which this present case was lodged by them. This confirmation from the statements of the accused persons recorded under section 313 CrPC, indicates that this present case was retaliatory in nature.

**18.** Needless to say that existence of previous enmity between the parties have prompted the informant to lodge the present case and falsely implicate the accused persons. The material discrepancies noticed in the deposition of the alleged victims, who are members of the same family, confirmed such conclusion. No other independent witnesses were examined by the investigating officer though according the PW-4 several others arrived at the scene and intervened in the quarrel. The learned defense counsel has rightly argued these aspects of the case and submitted that the prosecution could not prove the case beyond all reasonable doubt. There is no indication in the deposition of the alleged victims regarding any restraint, utterance of obscene words or criminal intimidation by the accused persons.

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

**20.** The prosecution has failed to prove the case against the accused persons beyond all reasonable doubt. As such, the accused persons are acquitted of the offences under sections 341/447/323/294/506(I)/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.

**21.** The judgment is pronounced in open court and given under my hand and seal on this 16<sup>th</sup> day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon



## **APPENDIX**

**(A) PROSECUTION EXHIBITS:**

Ext.-1: Ejahar  
Ext.-1(1): Signature of Md. Isahok Ali  
Ext.-2: Injury report  
Ext.-2(1): Signature of Dr. Tapan Kumar Nath  
Ext.-3: Sketch map  
Ext.-3(1): Signature of S.I. Sri Premananda Deka  
Ext.-4: Charge sheet  
Ext.-4(1): Signature of S.I. Sri Premananda Deka  
Ext.-5: Page of case diary containing GD Entry no.41 dated 3-2-2016

**(B) DEFENCE EXHIBITS:**

None

**(C) EXHIBITS PRODUCED BY WITNESSES:**

None

**(D) COURT EXHIBITS:**

None

**(E) PROSECUTION WITNESSES:**

P.W.-1: Md Isahak Ali  
P.W.-2: Md Hanufa Khatun  
P.W.-3: Md Atabur Rahman  
P.W.-4: Md Jiabur Rahman  
P.W.-5: Dr. Tapan Kumar Nath  
P.W.-6: S.I. Sri Premananda Deka

**(F) DEFENCE WITNESSES:**

None

**(G) COURT WITNESSES:**

None

Chief Judicial Magistrate, Morigaon