

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.256/2016

State

Vs.

1. Musstt. Hafiza @ Habiza Khatun

Wife of Md. Mofizul Hoque

2. Musstt. Rowzina Khatun

Wife of Md. Jannatul Islam

Both are residents of village: Hahchoragaon

Ward No.10, P.S.- Bhelowguri,

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. Faruk Ahmed, Advocate

Offences explained: u/s 447/341/323/34 IPC
Evidence recorded on: 10-1-2019 and 24-9-2019
Statement of defense recorded on: 24-9-2019
Argument heard on: 24-9-2019
Judgment delivered on: 1-10-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Haidar Ali lodged an ejahar in the Bhelowguri police station against the accused persons namely Md. Mofizul Hoque, Musstt. Hafiza Khatun, Musstt. Rowzina Khatun, Musstt. Mousumi, Husband of Musstt. Mousumi, Musstt. Tamina Khatun, Md. Eyasin Ali and Md. Jannatul Islam alleging therein that on 17-2-2016 at about 5.30 p.m., the aforementioned accused persons, in connection with a dispute regarding a goat, verbally quarreled with Musstt. Hasina Khatun, who was the sister-in-law of the informant, armed with dagger, lathi etc. entered into the residential compound of the informant illegally. Thereafter, the accused persons restrained Musstt. Hajera Khatun, who is the wife of the informant, and Musstt.

Hasina Khatun in the courtyard of the house, inflicted fist blows, kicks etc. on them and thereby caused severe injuries on both their persons. The accused persons also caught hold of their hairs and pulled their clothes and thereby outraged their modesty.

2. The ejahar was received in the Bhelowguri police station on 18-2-2016 and a Bhelowguri police station case No.12/2016 under sections 147/148/447/341/325/354 IPC was registered and one assistant sub inspector of police Md. Nur Uddin was assigned to take the preliminary steps of the investigation of the case and sub inspector of police Mr. Rofiqul Islam, 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 Musstt. Rowzina Khatun, Musstt. Hafiza @ Habiza Khatun and Musstt. Tamina Khatun @ Sumaya under sections 447/341/323/34 IPC.

3. Accused Musstt. Tamina Khatun @ Sumaya was held to be a juvenile in conflict with law and vide order dated 6-6-2018 she was sent to the Principal Magistrate, Juvneile Justice Board, Morigaon. Hence, the case proceeded against the remaining two accused persons.

4. On appearance before court copies of all relevant documents were furnished to the accused persons under section 207 CrPC. The particulars of offences under sections 447/341/323/34 of IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. Prosecution in support of its case examined 3 (three) witnesses namely Md. Haidar Ali, Musstt. Hajera Khatun and Musstt. Hasina Begum, as PW-1, PW-2 and PW-3, respectively. The ejahar is exhibited as exhibit-1 and the signature of the informant is proved as exhibit-1(1). While under examination under section 313 CrPC the accused persons denied all the allegations leveled against them. Defense side refused to adduce any evidence.

6. I have heard the arguments of Mrs. Alakananda Kakati, learned APP as well as the argument of Md. Faruk Ahmed, 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 17-2-2016 at about 5.30 p.m. at village Hahchoragaon, under Bhelowguri police station, in furtherance of their common intention, committed criminal trespass by entering into the residential

compound of Md. Haidar Ali with intent to commit an offence and thereby committed an offence punishable under section 447 IPC read with section 34 IPC?

- ii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, wrongfully restrained Musstt. Hasina Khatun and Musstt. Hajera Khatun, 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 IPC?
- iii. Whether the accused persons, on or about the same date, time and place, voluntarily caused hurt to Musstt. Hasina Khatun and Musstt. Hajera Khatun, and thereby committed an offence punishable under section 323 IPC read with section 34 IPC?

Discussion of evidence, decision and reasons therefor:

7. For convenience all the points for determination are taken up together for discussion. The informant Md. Haidar Ali deposed before the court as PW-1 and his ejahar is exhibited as exhibit-1 wherein he confirmed his signature as exhibit-1(1). Though in his ejahar he stated that the accused persons beat and caused injuries to Musstt. Hajera Khatun, however, in his deposition there is no mention about Musstt. Hasina Khatun or any injury sustained by her. It is also found from his evidence that at the time of the occurrence, he was at Moirabari and therefore did not see the occurrence with his own eyes. After arrival at the house in the evening, he found his wife Musstt. Hajera Khatun lying on the courtyard in critical condition and he took her to Bhowguri police station and wherefrom she was taken to Moirabari hospital.

8. It is found from his statement made while under cross-examination that he was told about the occurrence after about 10 days of the occurrence. Therefore, apart from the fact that he did not see the occurrence with his own eyes, he has no direct knowledge as to who inflicted injury on his wife. Further, his omission to mention anything regarding Musstt. Hasina Khatun also goes to show that he has no actual knowledge about the occurrence.

9. Against the backdrop of the aforesaid deposition of PW-1 Md. Haidar Ali, the two alleged victims Musstt. Hasina Khatun and Musstt. Hajera Khatun did not support the

informant with regard to the allegations against the accused persons and both the said two alleged victims have deposed that the accused persons are their relatives and they have amicably settled the matter. Both of them further stated that due to misunderstanding the case was lodged and therefore, they do not want to proceed with the case.

10. The evidence, as deposed by PW-1, PW-2 and PW-3 clearly shows that the two alleged victims did not implicate the accused persons with the alleged offences. It is a settled position of law that where there are two sets of evidence, one implicating the accused persons and the other exonerating the accused persons, the court has no option but to give the benefit of doubt to the accused persons.

11. In view of the deposition of the two alleged victims the prosecution side did not proceed further to summon and examine the remaining witnesses as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

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

13. 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 accordingly acquitted of the offences under sections 447/341/323/34 IPC alleged against them. They be set at liberty forthwith. Their bail bonds shall remain in force for six months from today in view of section 437A of CrPC.

14. The judgment is pronounced in open court and given under my hand and seal on this 1st day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) **PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
Ext.-1 (1): Signature of Md. Haidar Ali
- (B) **DEFENCE EXHIBITS:**
None
- (C) **EXHIBITS PRODUCED BY WITNESSES:**
None
- (D) **COURT EXHIBITS:**
None
- (E) **PROSECUTION WITNESSES:**
P.W.-1: Md. Haidar Ali
P.W.-2: Musstt. Hajera Khatun
P.W.-3: Musstt. Hasina Begum
- (F) **DEFENCE WITNESSES:**
None
- (G) **COURT WITNESSES:**
None

Chief Judicial Magistrate, Morigaon