

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE, MORIGAON

G. R. Case No: 2312/16

U/s 341/323/354/34 IPC

State

Vs

1. Md. Basir Uddin

S/o Abdul Subhan, R/o Silpukhuri, P.S. Mikirbheta, Morigaon, Assam.

2. Md. Aptor Ali

S/o Abdul Kadir, R/o Silpukhuri, P.S. Mikirbheta, Morigaon, Assam.

3. Md. Abdus Kuddus @ Kuddus Ali

S/o Abdul Subhan, R/o Silpukhuri, P.S. Mikirbheta, Morigaon, Assam.

.....Accused persons

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

Advocates appeared

For the State: Smti. Banti Devi

For the accused persons: Mr. Z. Islam

Evidence recorded on: 31.12.2018 and 20.2.2019

Argument heard on: 6.3.2019

Judgment delivered on: 6.3.2019

JUDGMENT

1. The informant Md. Azizul Hoque had lodged an ejahar before Boribozar OP on 14.9.2016 stating inter alia that on 14.9.2016 at about 5.30 pm while his younger brother Md. Mahibur Rahman was going to make the payment of Kurhani then the accused persons in Kholopia chariali in a preplanned manner restrained Mahibur and caused grievous injury to him by beating. On hearing the hue and cry, when the informant along with two ladies namely Amena Khatun and Joygun Bibi went to the place of occurrence and tried to save Mahibur from the accused persons then they outraged the modesty of the two ladies and also caused grievous injuries to them. The accused persons dragged Mahibur Rahman on the ground by wrapping a "gamosha" around his neck. When the nearby people came on witnessing the incident then the accused persons escaped from the place. The accused persons also snatched away Rs.21,000/- cash amount that Mahibur brought with him. Hence the informant filed this case.

2. The ejahar was received and registered as Bhuragaon PS case No. 18/16 u/s 143/341/325/354/392 IPC.
3. The I/O after due investigation of the case submitted charge sheet u/s 341/323/354/34 IPC against the accused persons.
4. Copy of the relevant documents were furnished to the accused persons.
5. On perusal of the case record sufficient ground u/s 341/323/354/34 IPC were found against the accused persons and a formal charge under the said sections was framed against the accused persons and accordingly the particulars of offences under the above sections were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
6. The prosecution has examined four witnesses including i.e. informant and the victims. The statement of the accused persons u/s 313 CrPC was recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

- i) Whether the accused persons on 14.9.2016 at about 5.30 pm in furtherance of their common intention, wrongfully restrained the younger brother of the informant namely Md. Mahibur Rahman by voluntarily obstructing him so as to prevent him from proceeding in any direction in which he had a right to proceed and thereby committed an offence punishable under Sec. 341/34 IPC?
 - ii) Whether the accused persons on 14.9.2016 at about 5.30 pm, in furtherance of their common intention, voluntarily caused hurt to the Mahibur Rahman, Amena Khatun and Joygun Bibi and thereby committed an offence punishable under Sec. 323/34 IPC?
 - iii) Whether the accused persons on 14.9.2016 at about 5.30 pm, in furtherance of their common intention assaulted or used criminal force to Amena Khatun and Joygun Bibi, intending to outrage or knowing it to be likely that they would thereby outrage their modesty and thereby committed an offence punishable under Sec. 354/34 IPC?
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. Azizul Hoque who is the informant deposed that the accused persons are his neighbors. That about two years prior to his deposition PW1 had some verbal altercations with the accused persons with regards to some money matter and then out of misunderstanding he filed this case. At present, they have

amicably settled the matter between them; hence he does not want to proceed with this case anymore. He put thumb impression in the ejahar. In cross-examination PW1 stated that he does not have any objection if the accused persons are acquitted of this case.

9. PW2 Md. Mayur Hussain who is younger brother of the informant deposed that the accused persons are his relatives. That about two years prior to his deposition he and his brother i.e. PW1 had some verbal altercations with the accused persons with regards to some money matter and then out of misunderstanding PW1 filed this case. At present, they have amicably settled the matter between them. In cross-examination PW2 stated that he does not have any objection if the accused persons are acquitted of this case.
10. PW3 Musstt. Amena Khatun who is the mother of the informant deposed that the accused persons are her relatives. That, there were some verbal altercations with regards to some money matter. PW3 has forgotten that when the incident happened. This case was filed due to misunderstanding for having verbal altercations with the accused persons. At present, they have amicably settled the matter between them hence does not want to proceed with this case anymore. In cross-examination PW3 stated that she does not have any objection if the accused persons are acquitted of this case.
11. PW4 Musstt. Joygun Nessa @ Bibi who deposed that the accused persons and the informant are known to her. The incident took place about two years prior to her deposition. That they had some verbal altercations and push-backs with the accused persons and then she fell down and sustain a bit of injury for she had to consult a doctor. At present, they have amicably settled the matter between them hence does not want to proceed with this case anymore. In cross-examination PW4 stated that he does not have any objection if the accused persons are acquitted of this case.
12. From the deposition of PW1, PW2, PW3 and PW4 it appears that there is nothing incriminating against the accused persons. PW1 who is the informant himself has not supported the case. In his deposition he stated that had some verbal altercations with the accused persons with regards to some money matter and then out of misunderstanding he filed this case. He further stated that they have amicably settled the matter between themselves; hence he does not have any objection if the accused persons are acquitted of the case. Further PWs have not at all implicated the accused persons u/s 341/323/354/34 IPC.
13. In view of the above I am of the opinion that the prosecution has failed to establish the charges u/s 341/323/354/34 IPC against the accused persons.

Accordingly the accused persons are acquitted of the alleged offences leveled against them and set at liberty.

14. Bail bonds and affidavits furnished by the bailor are extended for a period of six months from today.

Given under my hand and seal of this Court on the 6th day of March, 2019 at Morigaon.

Lohit Kumar Sarmah
SDJM(S), Morigaon

APPENDIX

Prosecution witnesses:

PW1- Md. Azizul Hoque (Informant)

PW2- Md. Mayur Hussain (Victim)

PW3- Musstt. Amena Khatun (Victim)

PW4- Musstt. Joygun Nessa (Victim)

Exhibits for the prosecution:

Nil.

Defence witness :

Nil.

Exhibits for defence:

Nil.

Lohit Kumar Sarmah
SDJM(S), Morigaon