

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,

MORIGAON

G. R. Case No: 2595/16

U/s 341/323/294/34 IPC

State

Vs

1. Md. Joynal Abedin

S/o Late Abul Hussain, R/o Mohmari Pathar, P.S. Laharighat, Morigaon, Assam.

2. Md. Gias Uddin

S/o Late Mia Hussain, R/o Mohmari Pathar, P.S. Laharighat, Morigaon, Assam.

3. Musstt. Safia Khatun

W/o Md. Joynal Abedin, R/o Mohmari Pathar, P.S. Laharighat, Morigaon, Assam.

.....Accused persons

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

Advocates appeared

For the State: Smti. Banti Devi

For the accused persons: Mr. J. Rahman

Evidence recorded on: 23.5.2019 and 28.6.2019

Argument heard on: 28.6.2019

Judgment delivered on: 28.6.2019

JUDGMENT

1. The informant Md. Asmot Ali lodged an ejahar before the Laharighat PS on 6.10.2016 stating inter alia that on 1.10.2016 at about 8 pm the accused persons entered into the house of Musstt. Afiya Khatun illegally, abused her with filthy language and beat her with blows of punches, kicks, elbows etc. The accused persons beat Afiya Khatun with bamboo stick by pushing her onto ground and caused grievous injuries on her body. When the husband of Afiya Khatun wanted to take her to hospital for treatment then the accused persons obstructed him from doing so. Informant hence was aware of the fact on 6.10.2019 and then filed this case immediately.

2. The ejahar was received and registered as Laharighat PS case No. 431/16 u/s 448/341/294/354/325/34 IPC.
3. The I/O after due investigation of the case submitted charge sheet u/s 341/323/294/34 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 341/323/294/34 of IPC were found 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 she pleaded not guilty and claimed to be tried.
6. The prosecution has examined three witnesses including the informant and the victim. 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 1.10.2016 at about 8 pm, in furtherance of their common intention, wrongfully restrained the daughter of the informant namely Musstt. Afiya Khatun by voluntarily obstructing her 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 Sec. 341/34 IPC?
 - ii) Whether the accused persons on 1.10.2016 at about 8 pm, in furtherance of their common intention, voluntarily caused hurt to the daughter of the informant namely Musstt. Afiya Khatun and thereby committed an offence punishable under Sec. 323/34 IPC?
 - iii) Whether the accused persons on 1.10.2016 at about 8 pm, in furtherance of their common intention, uttered obscene words in or near a public place to the annoyance of others, and thereby committed an offence punishable under Sec. 294/34 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 is discussed below.

DISCUSSION, DECISION AND REASONS THEREOF:

8. PW1 Md. Fakar Uddin who is the son-in-law of the informant deposed that the accused persons are known to him. The incident took place about 2 years prior to his deposition. That on the day of incident his wife Afiya Khatun had some verbal altercations and push-backs with the accused persons when Afiya

sustained a bit of injury by falling on the ground and had to undergo treatment in Laharighat hospital. In cross-examination PW1 stated that at present, they have amicably settled the matter between them.

9. PW2 Md. Asmot Ali who is the informant deposed that the accused persons are known to him. The incident took place about 3 years prior to his deposition at his house. That on the day of incident he had some verbal altercations with the accused persons. This case was filed out of misunderstanding. At present, they have amicably settled the matter between them; hence he does not want to proceed with this case anymore. Afiya Khatun is his daughter who died on 21.6.2019 regarding which a gaonburha certificate is deposited. Ext-1 is the ejahar where he put thumb impression. In cross-examination PW2 stated that he does not have any objection if the accused persons are acquitted of this case.
10. From the deposition of PW1 and PW2 it appears that there is nothing incriminating against the accused persons. PW2 who is the informant himself has not supported the case. In his deposition he stated that he had some verbal altercations with the accused persons and then this instant case was filed. 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 341/323/294/34 IPC.
11. In view of the above I am of the opinion that the prosecution has failed to establish the charges u/s 341/323/294/34 IPC against the accused persons. Accordingly the accused persons namely Joynal Abedin, Gias Uddin and Safiya Khatun are acquitted of the alleged offences leveled against them and set at liberty.
12. Bail bond and affidavits furnished by the bailor is extended for a period of six months from today.
Given under my hand and seal of this Court on the 28th day of June, 2019 at Morigaon.

Lohit Kumar Sarmah
SDJM(S), Morigaon

APPENDIX

Prosecution witnesses:

PW1- Md. Fakar Uddin

PW2- Md. Asmot Ali (Informant)

Exhibits for the prosecution:

Ext-1 : Ejahar

Defence witness :

Nil

Exhibits for defence:

Nil

Lohit Kumar Sarmah
SDJM(S), Morigaon