

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE, MORIGAON**

G. R. Case No: 3185/16

U/s 143/341/323/354(B) IPC

**State**

**Vs**

**1. Md. Rajab Ali**

S/o Late Sahed Ali, R/o Boholamukh, P.S. Moirabari, Morigaon, Assam.

**2. Md. Nizam Uddin**

S/o Md. Rajab Ali, R/o Boholamukh, P.S. Moirabari, Morigaon, Assam.

**3. Md. Azizul Hoque**

S/o Md. Rajab Ali, R/o Boholamukh, P.S. Moirabari, Morigaon, Assam.

**4. Md. Hussain Ali**

S/o Md. Rajab Ali, R/o Boholamukh, P.S. Moirabari, Morigaon, Assam.

**5. Md. Turab Ali**

S/o Md. Rajab Ali, R/o Boholamukh, P.S. Moirabari, Morigaon, Assam.

**6. Md. Nazim Uddin**

S/o Md. Rajab Ali, R/o Boholamukh, P.S. Moirabari, 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. A. Bhuttu

Evidence recorded on: 11.12.2018, 19.1.2019 and 14.3.2019

Argument heard on: 14.3.2019

Judgment delivered on: 14.3.2019

**JUDGMENT**

1. The informant Md. Abdul Kasem had lodged an ejahar before Moirabari PS on 8.12.2016 stating inter alia that on 7.12.2016 at about 6 pm while his relatives namely Md. Abdul Malek along with his wife Musstt. Jahanara Khatun were coming to his house from his father-in-law's house then the accused persons restrained them on the road due to some former personal grudges and caused injuries on their body by inflicting punches, elbows, lathi etc. upon them. On

hearing hue and cry when the wife of the informant namely Musstt. Anuwara Khatun tried to save them from the accused persons then they beat Anuwara too with lathi and caused injury to her. The accused persons also outraged the modesty of the said women by pulling and pushing them publicly. As the informant was waiting for amicable settlement with the accused persons hence got delayed in filing the ejahar.

2. The ejahar was received and registered as Moirabari PS case No. 483/16 u/s 143/341/325/323/354(B) IPC.
3. The I/O after due investigation of the case submitted charge sheet u/s 143/341/323/354(B) 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 143/341/323/354(B) 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 five 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 7.12.2016 at about 6 pm, were a member of an unlawful assembly the common object of which was to cause hurt to the informant and others, and thereby committed an offence punishable under Sec. 143 IPC?
- ii) Whether the accused persons on 7.12.2016 at about 6 pm, wrongfully restrained the relatives of the informant namely Abdul Malek and Jahanara Khatun by voluntarily obstructing them 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 Sec. 341 IPC?
- iii) Whether the accused persons on 7.12.2016 at about 6 pm, voluntarily caused hurt to Abdul Malek, Jahanara Khatun and Anuwara Begum and thereby committed an offence punishable under Sec. 323 IPC?
- iv) Whether the accused persons on 7.12.2016 at about 6 pm, assaulted or used criminal force to Jahanara Khatun and Anuwara Begum with the intention of disrobing or compelling them to be naked and thereby committed an offence punishable under Sec. 354(B) 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. Abu Sahid who deposed that both the parties are known to him. He heard that there was some fight between the parties but he is not aware who beat whom. PW1 was at house while the police were investigating. In cross-examination PW1 stated that he was in Kerala at the time of incident hence he does not know anything about the incident.
9. PW2 Md. Abul Kasem who the informant deposed that the accused persons are known to him. The incident took place about 2 years prior to his deposition at about 6 pm in front of Rajab Ali's house. There were some verbal altercations and push-backs with the accused persons hence this case was filed. At present they have amicably settled the matter hence he does not want to proceed with this case anymore. During the push-backs Jahanara, Malek etc. sustained a bit of injuries. Ext-1 is the ejahar filed by him and Ext-1(1) is his signature. In cross-examination PW2 stated that he does not have any objection if the accused persons are acquitted of this.
10. PW3 Md. Miraj Ali who deposed that the informant is his younger brother and the accused persons are also known to him. The incident took place about 2 years prior to his deposition on the road of Boholamukh. Due to misunderstanding there was bit of verbal altercation between PW3 and the accused persons hence this case was filed. But later the villagers have amicably settled the matter amongst them. PW3 also sustained a bit of injury after falling down at the incident. In cross-examination PW3 stated that he does not have any objection if the accused persons are acquitted of this.
11. PW4 Md. Abdul Malek who deposed that the informant and the accused persons are known to him. The incident took place about 2 years prior to his deposition on the road of Boholamukh. Due to misunderstanding there was bit of verbal altercation between PW4 and the accused persons hence this case was filed. But later the villagers have amicably settled the matter amongst them. PW4 also sustained a bit of injury after falling down at the incident. In cross-examination PW4 stated that he does not have any objection if the accused persons are acquitted of this.
12. PW5 Musstt. Anuwara Begum who deposed that the informant is her husband and the accused persons are also known to her. The incident took place about 2

years prior to her deposition on the road of Boholamukh. Due to misunderstanding there was bit of verbal altercation between PW4 and the accused persons hence this case was filed. But later the villagers have amicably settled the matter amongst them. In cross-examination PW5 stated that she does not have any objection if the accused persons are acquitted of this.

13. From the deposition of PW1, PW2, PW3, PW4 and PW5 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 there was some verbal altercations with the accused persons and then 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 143/341/323/354(B) IPC.
14. In view of the above I am of the opinion that the prosecution has failed to establish the charges u/s 143/341/323/354(B) IPC against the accused persons. Accordingly the accused persons are acquitted of the alleged offences leveled against them and set at liberty.
15. 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 14<sup>th</sup> day of March, 2019 at Morigaon.

Lohit Kumar Sarmah  
SDJM(S), Morigaon

#### **APPENDIX**

##### **Prosecution witnesses:**

- PW1- Md. Abu Sahid
- PW2- Md. Abul Kasem (Informant)
- PW3- Md. Miraj Ali (Victim)
- PW4- Md. Abdul Malek (Victim)
- PW5- Musstt. Anuwara Begum

##### **Exhibits for the prosecution:**

Ext-1: Ejahar.

**Defence witness :**

Nil.

**Exhibits for defence:**

Nil.

Lohit Kumar Sarmah  
SDJM(S), Morigaon