

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GPR) 186 of 2008

State of Assam

-Vrs-

1. Md. Nur Islam
 2. Md. Nur Uddin
 3. Mustt. Maista (Mazida) Bibi
 4. Mustt. Mansira Bibi
-Accused persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution--- Shri U. K. Sarkar, Addl. PP

For the defence----- Md. J. A. Ahmed

Evidence recorded on : 19.5.10, 12.7.10, 16.6.11 & 17.8.11

Argument heard on : 14.5.13

Judgment delivered on : 24.5.13

Penal law involved : u/s 448/323/354/506/34 IPC

J U D G M E N T

1. The prosecution-case in brief, as revealed from the ejahar, is that on 28.6.08 at about 01-00 PM the above-named accused persons entered the house of the informant Mustt. Aleya Bibi and held her neck compressed out of a previous grudge. As the informant raised alarm, accused Mansira dragged her over to the nearby road catching by the tuft of her hair and caused injuries on her person by fist-blows. The son of the informant namely Md. Ali Hussain & his wife Mustt. Sajina Bibi appeared at the scene hearing the commotion whereupon the accused persons beat them with bamboo-sticks & dao causing injuries. They also threatened them with dire consequences.

2. Police, after investigation, submitted Charge-sheet against the accused persons and, on their appearance before the Court, the particulars of the offences punishable u/s 448/323/354/506/34 IPC were explained to them by my learned predecessor, after supplying copies u/s 207 CrPC, to which the accused persons pleaded not guilty, as the order dated 29.3.10 shows. The prosecution, in course of trial, examined six witnesses and declined to adduce further evidence. The accused persons were then examined u/s 313 CrPC ; they denied the allegations and declined to adduce any evidence. I have heard the argument of both sides.

3. The Points for Determination in this case are :

(i) whether 28.6.08 at about 01-00 PM the accused persons, in furtherance of their common intention, entered the house of the informant located in Shyama Charaner Kuthi (Part-I) for committing the following offences and thereby committed an offence punishable u/s 448/34 IPC;

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(ii) whether on/at the same date & time the accused persons, in furtherance of their common intention, voluntarily caused hurt to the informant Mustt. Aleya Bibi, her son Md. Ali Hussain and/or his wife Mustt. Sajina Bibi in their aforesaid house and/or on the road near the house and thereby committed an offence punishable u/s 323/34 IPC ;

(iii) whether on/at the same date, time & place the accused persons, in furtherance of their common intention, assaulted and/or used criminal force to the informant Mustt. Aleya Bibi and/or her daughter-in-law Mustt. Sajina Bibi intending to outrage and/or knowing that they would thereby outrage their modesty and thus committed an offence punishable u/s 354/34 IPC ;

(iv) whether on/at the same date, time & place the accused persons, in furtherance of their common intention, threatened the informant, her son and/or daughter-in-law within the meaning of Sec.503 IPC and hereby committed an offence punishable u/s 506/34 IPC ;

And, if so, what punishment the accused persons deserve.

Decision & reasons therefor :

4. Already noted, the prosecution has examined six witnesses in this case out of whom PW-1 Mustt. Aleya Bibi is the informant-victim (alleged), PW-2 Md. Ali Hussain (son of PW-1) & PW-3 Mustt. Sajina Bibi (wife of PW-2) are the other alleged victims, PW-4 Md. Musfiqur Rahman (nephew of PW-2) & PW-5 Md. Ainul Haque are alleged eyewitness of the occurrence and PW-6 Shri Gaur Chandra Mondal is the Investigating Officer (I.O.).

5. PW-1 deposed to the effect that one day about two years before the date (19.5.10) of her evidence at about 01-00 PM, when she was inside her house, accused Mansira dragged her over to the nearby road catching by her hand whereupon other three accused persons beat her and accused Mansira also gave blow on her by the blunt-side of a dao. PW-1 lost senses whereupon she was taken to the Gouripur Hospital. On the way she lodged ejahar.

6. PW-1 disclosed during cross-examination that the accused persons had a political rivalry with her son Md. Ali Hussain (PW-2) and that accused Mansira lodged an ejahar against her (PW-1) alleging assault. She denied the suggestions that she had not specified to I.O. that accused Nur Islam, Nur Uddin & Mazida beat her or that accused Mansira gave a dao-blow on her by its blunt-side ; I.O. (PW-6) has proved such omissions.

7. PW-2 testified that one day about two years before the date (19.5.10) of his evidence at 11-30 AM / 12-00 noon he was on the bank of a nearby river in the company of accused Nur Islam. PW-2 heard a hue & cry, came back to his house saw accused Mansira catching by the hair of his mother (PW-1) & wife (PW-3). Accused Nur Islam also appeared there, caused PW-1&3 to fall on the ground and assaulted them. Accused Nur Uddin then hit on the hand of PW-2 causing injury on his little finger. PW-2 added that accused Mazida also assaulted them and that accused Mansira hit on the head of his mother (PW-1) by means of a dao.

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8. PW-2 admitted during cross-examination that accused Mansira lodged an ejahar against them (informant-side) alleging assault and that he had not seen the part of the occurrence which took place inside their house. PW-2 denied the suggestions that he had not specified to I.O. that he saw accused Mansira catching by the hair of his mother (PW-1) & wife (PW-3) or that accused Nur Islam caused PW-1&3 to fall or assaulted them ; the I.O. (PW-6), however, testified that PW-2 did not state so to him.

9. PW-3 testified that one day about two years before the date (19.5.10) of her evidence at about 01-00 PM, when she was in their house, accused Mansira dragged her mother-in-law (PW-1) over to an Idgah near the road catching by the tuft of her hair and hit on her by means of a dao. PW-3 went out of her house and saw the occurrence. At that time accused Nur Islam came and caused her to fall on the ground catching by her hair ; other accused persons then beat her. Her husband (PW-2) was coming from somewhere but accused Nur Uddin beat him with a lathi causing an injury on his hand.

10. PW-3 admitted during cross-examination that a case was filed against them (informant-side) alleging assault on accused Mansira. But she denied the suggestions that she had not stated to I.O. that accused Mansira dragged her mother-in-law (PW-1) over to the Iddgah catching by the tuft of her hair or beat her or that accused Nur Islam caused her (PW-3) to fall on the ground catching by her hair or that accused Nur Uddin beat her husband (PW-2) with a lathi. The defence, however, elicited by cross-examining the I.O.(PW-6) that PW-3 did not state any such thing u/s 161 CrPC.

11. PW-4 deposed to the effect that about two years before the date (12.7.10) of his evidence one day at about 12-00 noon he heard a commotion near the house of accused Nur Islam and saw him & his wife (accused Mansira) assaulting Aliya Bibi (PW-1) & the wife (PW-3) of Ali Hussain (PW-2).

12. During cross-examination PW-4 denied the suggestion of the defence that he stated to the I.O. to have not seen the occurrence and this contradiction of his evidence with respect to his statement has been proved by the I.O.(PW-6).

13. PW-5 testified that the occurrence took place about two years before the date (16.6.11) of his evidence in the Idgah-field of their village where he was present at that time. A cross-fight took place between Aleya (PW-1) and accused Nur Islam & his wife (accused Mansira) in course of which accused Nur Islam hit PW-1. The son of PW-1 namely Ali (PW-2) appeared at that juncture and beat accused Nur Islam & his wife (accused Mansira). PW-5 added that none of them sustained any injury (later said, PW-1 sustained a head-injury).

14. There is absolutely nothing in the evidence on record to show that the accused persons intimidated anybody within the meaning of Sec.503 IPC. Hence, the allegation u/s 506/34 IPC falls on its face itself. So far as the offence punishable U/S 354/34 IPC is concerned, the PWs nowhere stated that the accused persons made any sexual assault on PW-1 or PW-3. Hon'ble Supreme Court, in Tarakeswar -Vrs- State [reported in (2006)8 SCC 560], observed that the essence of woman's modesty is her sex, and hence, I am of the considered opinion that assaults of the alleged kind, even if such

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allegation is believed, cannot amount to outrage of modesty as envisaged u/s 354 IPC and, because, these are bereft of any tinge of hurting sexual or womanly feelings of these witnesses.

15. As regards the other two offences, PW-1 deposed that at the relevant time accused Mansira Bibi came inside her house and dragged her over to the nearby road catching by her hand. PW-3, the daughter-in-law of PW-1, who claimed to have been in the same house at that time, supported some parts of these allegation but stated that the accused person dragged the PW-1 catching by the tuft of her hair. PW-2 again deposed that he saw accused Mansira to catch by the hair of PW-1 and PW-3 both, whereas PW-3 herself is silent about such assault on her by the accused Mansira ; she rather implicated accused Nur Islam for that part of the matter. The PWs thus differed materially on the very genesis of this case. I may add here that PW-4&5 had not stated to I.O. (proved by I.O.) that they were present at the time & place of the occurrence and, hence, their evidence before the Court about the occurrence is clearly a material improvement over their statements u/s 161 CrPC. Moreover, they have not implicated the accused Nur Uddin & Mazida at all ; the evidence of PW-5 rather shows that it was a cross-fight between PW-1 and accused Nur Islam & Mansira.

16. PW-3 deposed in such manner as to make an impression that he was present at the scene of the occurrence which took place inside their house. But PW-3 clearly stated in her evidence that he (PW-2) appeared only after the latter part of the occurrence (in Idgah/road) had started. PW-1 claimed that the second part of the occurrence took place on the road, whereas according to PW-3, it occurred in an Idgah. PW-3 again deposed to the effect that the entire incident occurred in their house/homestead. Such a wide variation in their evidence on the point of the place of the occurrence suggests only falsity on the part of the PWs, because, the place of an occurrence is pictorially so mingled with the occurrence itself that a man of ordinary memory claiming to have seen the occurrence should be able, in my considered opinion, to say with precision where he saw it.

17. Given these material contradictions & palpable lies, I am unable to accept the prosecution-case without grains of salt. Hence, I acquit the accused persons of the offences punishable u/s 448/323/354/506/34 IPC and direct that they be set at liberty forthwith. Their bail bonds shall stand discharged on expiry of 6(six) months from today vide. the spirit of the provisions of Sec.437-A CrPC.

18. No order for compensation U/S 357-A CrPC is passed since the occurrence itself is not proved in my considered opinion.

Dictated & corrected by me and given under my hand and seal of the Court on this 24th Day of the month of May in the year 2013 at Dhubri.

Addl.Chief Judicial Magistrate,
Dhubri : Assam