

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

DHUBRI

GR CASE NO 37/07

STATE

V.

MONSUR ALI BEPARI & ORS

ACCUSED

[U/S 341/ 323/354/34 IPC]

PRESENT: N.J.SARMA,JMFC,DHUBRI

APPEARANCE:

FOR THE PROSECUTION:MR.K.ALI SK,APP

FOR THE ACCUSED :MR.A.S.MIA ,ADV

DATES:

FOR EVIDENCE:16/8/13,16/11/13

26/12/13,1/2/14,

26/2/14

FOR ARGUMENT:21/5/14

FOR JUDGMENT:4/6/14

JUDGMENT

1,The prosecution's case as revealed from the FIR is as follows:One Safura Bibi lodged a FIR In the Halakura police outpost on 11/11/2007 alleging inter alia that on 10/11/2007 at 1pm the accused persons namely Mansur Ali,Jamila Bibi,Roshna Bibi,Ali Khatun and Asinma Khatun assaulted her two sons.On getting the information she went to rescue them and the accused persons cut on her head with a dao and in consequence she was seriously injured in her head.The accused persons also assaulted in different parts of her body and outraged her modesty.Hence,she has filed the FIR for taking appropriate action by the police.

2.In pursuant to filing of the FIR a Golakganj p.s.case no.627/07 was registered and investigation was carried out.On completion of investigation the I/O of the

case filed chargesheet u/s 323/354/341/34 IPC against the accused persons Monsur Ali Bepari, Roshna Bibi and Jomila Bibi. Other accused persons were not sent up for trial.

3. In pursuant to appearance of the accused persons they were supplied with the relevant documents u/s 207 CRPC. Particulars of offences u/s 143/323/354/34 IPC were explained to the accused persons by my Id. predecessor to which they pleaded not guilty and claimed to be tried. Later on, the charges were altered to 341/354/323/34 IPC and explained to the accused persons to which they pleaded not guilty and claimed to be tried. The prosecution in order to establish its case examined as many as six witnesses. The accused persons on their examination u/s 313 CRPC denied all the allegations leveled against them. I have heard the Id. counsels of both the sides at length and perused the evidences available on record carefully. The defence has not examined any witness its plea is of total denial.

4. POINTS FOR DETERMINATION:

(i) Whether the accused persons in furtherance of their common intention on 10/11/2007 wrongfully restrained the informant and her sons and thereby committed an offence u/s 341/34 IPC?

(ii) Whether the accused persons in furtherance of their common intention on 10/11/2007 voluntarily caused hurt to the informant and her sons and thereby committed an offence u/s 323/34 IPC?

(iii) Whether the accused persons in furtherance of their common intention on 10/11/2007 outraged the modesty of the informant by using criminal force and thereby committed an offence u/s 354/34 IPC?

5. DISCUSSION, DECISION AND REASONS FOR DECISION:

Let us peruse the evidences available on record to arrive at a just decision of the case.

(i) Pw1, Safura Bibi in her examination in chief has stated that she is the informant of the instant case and has put thumb impression on the FIR. She knows the accused persons. The incident took place 6 years ago at 7 am. Her son Safiur went to Monsur Ali's house to bring his 700 rupees. She was informed by village people that her son was assaulted by the accused persons and when she went to the place of occurrence the accused persons assaulted her. Then someone took her to hospital. On her cross examination she has admitted that she has filed many cases against Monsur Ali Bepari prior to the instant case. She has filed the instant case on the day of the incident. She has filed the instant case in Halakura P.C.P. She has denied the suggestion that she has not stated in her sec 161 CRPC all the statement she has stated in her examination in chief. She has denied all the suggestions put to her.

(ii)Pw2,Rabial Hoque in his examination in chief has stated that he knows the informant and the accused persons.The incident took place in the year 2007.He doesnot remember the time.He has not seen the incident himself.His mother Rupbhan Bibi informed that police came when there was altercation between the sons of Monsur and Safura.On his cross examination he has admitted that Safura is not a good human being.Safura used to file case against the village people if they say something against them.She is related to unsocial activities.

(iii)Pw3, Soleman Ali in his examination in chief has stated that the informant is his mother.He knows the accused persons.He doesnot know the time of the incident.He and his brother Sofior went to Mansur Ali Bepari's house to bring money ,but he refused to pay.They returned and took paddy for husking to rice mill.On their return the accused persons threw the rice to the pond.After that the accused persons Roshna,Rofiquil,Mansur etc assaulted his mother.Then his mother lodged the FIR.On his cross examination he has admitted that the police asked questions to him.He has denied the suggestion that he has not stated before the police what he has stated in his examination in chief.He has admitted that they have differences with Mansur Ali Bepari.His mother has filed many cases against him.He has denied all the other suggestions put to him.

(iv)Pw4,Rahman Ali @ Rahmanur Ali in his examination in chief has stated that his mother is the informant.He knows the accused persons.On the day of the incident he and his elder brother Sofior Rahmanwent to the house of the accused Monsur for money.Then the accused persons Monsur,Roshna,Jamila,Rejina and rekibul assaulted him.After the incident he and his brother Soleman went to rice mill with the paddy for husking it to rice.On their return the accused persons threw the rice in the pond and also put him and his brother in the pond.Then their mother came and the accused persons also assaulted her.On his cross examination he has admitted that he has stated whar he has witnessed.He has denied the suggestion that he has not stated before the police in his sec 161 CRPC statement what he has stated in his examination in chief apart from the assault on his mother by the accused persons.He has admitted that his parents had an old quarrel with the accused persons regarding land dispute.His mother was arrested in a case and was in jail hazot.He has denied all the suggestions put to him.

(v)Pw5,Mubarak Ali the I/O of the case in his examination in chief has stated that on 11/11/2007 he was working in Halakura police outpost .On that day the I/C of Halalkura outpost Purnakanta Bora on receipt of the FIR from Safura Bibi made GD entry and sent to Golakganj p.s and he was entrusted with the preliminary investigation of the case.He went to the place of occurrence ,drew sketch map and examined witnesses.He collected the medical report of the injured and arrested the accused persons and allowed to go them on bail as the offences wereailable in nature.On completion of his preliminary investigation he submitted the CD to the I/C.On the basis of investigation the I/C Purnakanta Bora filed chargesheet u/s341/323/354/34 IPC against the accused persons.Ext 1 is the

said chargesheet and Ext1(1) is the signature of I/C Purnakanta Bora known to him. On his cross examination he has admitted that he has completed the preliminary investigation of the case. He has completed the investigation of the case and the I/C filed the chargesheet. He was entrusted with the preliminary investigation as per endorsement of the FIR. He entered the GD entry and recorded the sec 161 CRPC statements. He drew the sketch map before registration of the case. He has not examined the persons shown in the sketch map and the cause is also not shown for the said act. He has admitted of completing the investigation before registration of the case. He has neither read the FIR nor has received the medical investigation of the victim. The accused has not stated about greivous injury in her statement. He doesnot know that the FIR was registered by the O/C in sec 326 IPC. The case was filed after the day of the incident. He has admitted that the Pw1 Safura Bibi in her sec 161 CRPC statement has not stated what she has stated in her examination in chief before the Court. Pw3 Soleman Badsha and Pw4 Rahman Ali have not stated before him in their sec 161 CRPC statements what they have stated in their examination in chief in the Court. He has denied the suggestions put to him.

(vi) Pw6, Dr Minhaz Choudhury in his examination in chief has stated that on 10/11/2007 he was posted at Halakura C.H.C. On that day he examined one Safura Bibi in connection with Halakura P.C.P GD entry no. 145 dated 10/11/2007. On examination he found following injury:

(i) One small lacerated in left supra orbital region. Nature of injury: Injury is simple and caused by blunt object. Ext2 is the medical report and Ext2(1) is his signature. On his cross examination he has admitted that fresh means less than 24 hours. The injury mentioned in Ext2 may be caused by hitting on hard substance on running positon.

6. Now, let us decide the points at hand in the light of the above evidences available before us. On careful reading of the FIR and the testimonies of the pws it is evident that the instant case was filed by the pw1, Safura Bibi alleging the accused persons for assaulting her with sharp weapon when she tried to save her sons from their assault. The prosecution has examined six witnesses and two of the witnesses are official witnesses. Out of the 4 witnessess the witness pw1, the informant and the witness pw3 and pw4 are her sons. They are thus interested witnesses. Another witness pw2 is independent witness who has not supported the single iota of the prosecution's case. So, to decide the points at hand we have to rely on the three witnesses pw1, pw3 and pw4 alongwith the official witnesses the pw5 the I/O and Pw6 the MO of the case. So, before weighing the veracity of the testimonies of the pws we have to keep in mind the observation of the Hon'ble Apex Court in various cases regarding the credibility of partisan or interested witnesses "In a case in which the evidences consists of only Partisian and inimical witnesses the law is not that they should be disbelieve outright and the case be dismissed. The law only is that their testimony should be taken with

greater case and caution and should be analysed and tested and then accepted". On the basis of the principle mentioned above in the instant case if we carefully peruse the FIR and the testimonies of the pws it is evident that in the FIR it was alleged that the accused persons hit the informant with dao when she went to save her sons from the clutches of the accused persons on the fateful day of the incident. Moreover, the said attack by dao by the accused persons was not stated by the pw1 in her testimony as pw1 before the Court. The pw3 and pw4 are also silent regarding the said fact. Moreover, the pw6 the MO in his examination in chief has stated that the injury caused to Safura by a blunt object and the said injury was simple in nature. Moreover, the pw5 the I/O in his cross examination has categorically stated that the pw1, pw3 and pw4 have not stated before him in sec 161CRPC statements what they have stated in their examination in chief before the Court, thus confirmed the cotradicion of the statements of the pw1, pw3 and pw4. Moreover, the pw1 in her testimony has not stated about throwing of rice from the hands of pw3 and Pw4 her sons by the accused persons on their return from husking the paddy to rice from the rice mill. The pw3 was also silent regarding the assault on them by the accused persons after throwing their rice to the pond as stated by the pw4 his brother. From the above discussion it is evident that the prosecution has failed to establish single iota of its case against the accused persons. The accused persons are acquitted from the charges u/s 341/323/354/34 IPC. They are set liberty forthwith. The bail bonds are extended to six months from today.

7. Promounced by me in this open Court under the hand and seal of this Court on this 4th day of June, 2014.

(NAYAN JYOTI SARMA)