

In the Court of Addl.Chief Judicial Magistrate ::::::::::;;Dhubri

Present :Smt.T.Hussain  
Addl.Chief Judicial Magistrate  
Dhubri

GR case No.533/11  
u/s 147/ 354/323/149 IPC

State

Vs

1. Delbor Ali
2. Samsul Haque
3. Sahar Ali
4. Sukur Ali
5. Ajijur Rahman
6. Abdul Jalil Sk
7. Nazrul Ali
8. Abdul Haque
9. Khairul Haque
10. Azinur Rahman
11. Kader Ali
12. Sokina Bibi

.....Accused persons

Advocates appeared :

For the prosecution:Mr.K.A.Seikh

For the Defence :Mr.A.U Ahmed

Evidence recorded on :03.07.2014

:16.10.2014

:06.04.2015

:08.07.2015

Argument heard on :10.12.2015

Judgment delivered on :22.12.2015

### Judgment

1. The prosecution case in brief is that on 28.08.11. , one Md Kappur Ali lodged an ejahar with the In-charge ,Agomoni Police Out post ,alleging inter alia that in that evening at around 4 PM ,in his absence the accused persons picked up a quarrel with his wife Hamida Bibi over some domestic matter and entered in to his court yard and thereafter assaulted her causing injuries on several parts of her body..The accused persons further chased her to the house of one Abu Bakker Ali

2. After making the GD entry ,the ejahar was sent to the O/C Golokganj PS for registering a case .Accordingly Golokganj PS case no.431/11 was registered ,investigated in to and finally charge sheet was submitted against the accused persons u/s143/147/148/354/323 IPC .

3. On receiving the summons ,the accused persons made their appearance for facing the trial . Having gone through the materials available in the case record ,the particulars of the accusations punishable u/s 147/354/323/149 IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the course of the trial ,the prosecution examined 6 witnesses . After closing the prosecution evidence the accused were permitted to file WS as provided u/s 313(5) Cr.P.C and to adduce defence evidence .But the accused have declined to do the either . The plea of the defence was of total denial.

#### 5.Points for determination:

I) Whether the accused persons on 28.08.11 at about 4 PM at Sindhurai Part I forming an unlawful assembly common object of which was to commit following offences used forced and thereby committed the offence punishable u/s 147 IPC ?

II) ) Whether the accused persons on the same date ,Place and time being members of the aforesaid unlawful assembly used criminal force to Musstt.Hamida Bibi ,intending to outrage her modesty and thereby committed the offence punishable u/s 354/149 IPC?

III) Whether the accused persons on the same date ,Place and time being members of the aforesaid unlawful assembly voluntarily caused hurt to aforesaid Hamida Bibi and thereby committed the offence punishable u/s 323/149 IPC?

6.Decision and reasons thereof:

I have heard the arguments advance by the Ld counsel for the parties and carefully perused the materials available in the case record. Let us now scrutinize the evidence on record for arriving at just decision.

7. Pw1 Kappur Ali is the informant and he has testified to the effect that the occurrence took place about 3 years back at 4 PM in his court yard.He went to the nearby river for fishing .At that time he heard scream from his house .He immediately returned to his house and saw the accused persons beating his wife .His wife fled away to the house her brother Abu Bakkar in fear.The accused persons also chased her to the house of Abu Bakkar.She became unconscious there.The Pw1 took her to the police station and police sent her to the hospital for medical examination.

In his cross examination Pw1 has admitted that the accused Samsul also filed a case over the same occurrence in which he(Pw1) is one of the accused.

Pw2Hamida Bibi is the wife of Pw1.She is the victim .In her deposition Pw2 has stated to the effect that about 3 years back at 3-4 PM while her husband was not present ,the accused persons dumped some waste in front of their( Pw1,Pw2) house to which she objected .A quarrel took place over that matter following which accused Sokina threw some waste on her person.On instruction of accused Dilbar Ali and Samsul Ali ,the other accused persons caught hold of her ,man handled and gave fist blows on her .They also tore off her wearing apparel.The she fled away to the house of my brother Abu Bakkar out of fear.She became unconscious there.The accused persons also chased her with weapons in their hands but on arrival of her husband they left the place.

It is an admitted fact as brought out by cross examining Pw2

that prior to FIR of this case ,the accused Samsul lodged an FIR against Pw2 and others.

Pw3 Sorban Ali is an independent witness. Pw3 has testified to the effect that nearly three years back at about 4 PM the accused persons entered in to the compound of the informant /Pw1 following a quarrel over dumping of waste and assaulted Hamida Bibi , wife of the informant.The injured Hamida Bibi then rushed to the house of Abu Bakkar for her safety .Thereafter she was sent to Agomoni Hospital for treatment .Pw3 has further said that he saw the said incident.

From his cross examination ,it is found that Pw3 has remained consistent throughout his entire evidence.

Pw4 Giasuddin Sk is another independent witness examined by the prosecution. Supporting and corroborating the testimony of Pw3 ,Pw4 has said that at that relevant time he was on the road near the place of occurrence .A quarrel took place between Hamida Bibi, wife of the informant and the accused.Then the accused persons assaulted Hamida Bibi and out of fear Hamida Bibi rushed to the house of Abu Bakkar for her safety and fell down there. Thereafter she was sent to the hospital .

In his cross examination Pw4 has conceded that there was scuffling between both the parties and that he saw injuries on the head of Samsul's son and Julekha Bibi.

Pw5 Keta Seikh is a hearsay witness .He has simply said that he heard that a quarrel had taken place and accused samsul had assaulted someone. And this evidence of Pw5 can not help the prosecution in proving it case.

Pw6 Dewan Harmuz is the police officer who investigated the case. In his examination in chief Pw6 has stated about the investigation of the case. By cross examining Pw6 the defence has brought out that in his statement recorded by the IO u/s 161 Cr.P,C Pw1 did not state that he saw the accused beating his wife. Pw2 also did not state to the I.O that she took shelter in the house of her brother Abu Bakkar and that at the

instruction of accused Dilbar Ali and Samsul Ali the other accused caught hold of her and that the accused gave her fist blows and tore off her wearing apparel.

It is also said by the I.O in his cross examination that Pw3 did not state to him that Hamida Bibi (Pw2) took shelter in the house of Abu Bakkar.

Thus from the evidence of the I.O ,it is seen that there are some improvements in the evidence of Pw1 ,Pw2 and Pw3 compared to their statements recorded u/s 161 Cr.P.C. Yet the evidence of Pw2 to the effect that following the quarrel , accused persons man handled her remained un demolished. Similarly the testimony of Pw3 to the effect the accused persons entered in to the compound of the informant /Pw1 following a quarrel over dumping of waste and assaulted Hamida Bibi and that Hamida Bibi was injured and that Pw3 saw that incident remain unrebutted.

Admittedly there is a cross case lodged by one of the accused over the same occurrence ,in which the informant is one of the accused. But for that fact the prosecution case which is otherwise supported and corroborated by independent reliable witness can not be discarded. Here in this case Pw3 is found to be a trust worthy independent witness since he is very consistent throughout his entire evidence .By cross examine Pw3 ,the defence could elicit nothing to dislodge his positive evidence to the effect that he saw the accused assaulting Hamida Bibi(Pw2).I do not find any earthly ground for disbelieving the testimony of Pw3 implicating the accused.

Situated thus relying on the evidence of Pw2 supported and corroborated by Pw3 ,the accused persons are found guilty u/s 147 /323/149 I.PC and accordingly they are convicted u/s 147/323/149 IPC. The remaining charge u/s 354 /149 IPC is not proved since the evidence of Pw2(sole evidence in that respect) covering this charge is found to be not acceptable for having contradiction while compared to her previous

statement recorded by the I.O

8. Considering the facts and the circumstances of the case ,nature of the offences , long pendency of the case which itself shows long suffering of the accused persons and that there being nothing on record to show that the convict have any criminal antecedent ,the convict instead of being sentenced to any punishment are released after due admonition u/s 3 of the probation of offenders Act ,1958 for ends of justice. However the convict are directed to pay a sum of Rs.500/-(five hundred ) each to the victim Hamida Bibi as compensation u/s 5(1)(a) of the Act .

A copy of the judgment be furnished to the convict free of cost.

Given under my hand and seal of the court on this 22<sup>nd</sup> day of December 2015.

(T.Hussain)

Addl.C.J.M,Dhubri

Dictated & Corrected by me

Appendix:

Witnesses examined by the prosecution:

Pw1.....Kappur Ali,Informant

Pw2.....Hamida Bibi,victim

Pw3.....Soban Ali

Pw4.....Giasuddin Sk

Pw5.....Keta Sk

Pw6..... Dewan Harmuz,IO

Documents Exhibited by the Prosecution:

Ext-1.....Ejahaar

Ext-2.....Chargesheet