

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR(GKJ) 256 of 2009

State of Assam
-Vrs-
Md. Sikander Ali Sheikh
.....Accused Persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

For the prosecution ----- Md. J. Bari Sarkar, APP

For the defence ----- Md. A. Islam

Evidence recorded on : 07.4.11, 12.12.12, 20.3.13, 08.5.13 & 27.6.13

Argument heard on : 05.9.13

Judgment delivered on : 24.9.13

Penal law involved : u/s 341/323/354 IPC

J U D G M E N T

1. The prosecution-case in brief, as revealed from the ejahar, is that on 06.7.09 at about 12-00 noon, when the informant Md. Sirajul Haque was proceeding to the Golakganj market in the company of his sister Mustt. Alima Khatun, the above-named accused person alongwith others (named in the Ejahar) stopped them in North Tokrercherra, beat the informant with lathi causing injuries on different parts of his body, threatened to kill him and tried to take away said Alima forcibly. The informant & his sister raised alarm whereupon the nearby people saved her.

2. Police, after investigation, submitted Charge-sheet against the above-named accused person only and, on his appearance before the Court, the particulars of the offences punishable u/s 341/323/354 IPC were explained to him by my learned predecessor, after supplying copies u/s 207 CrPC, to which he pleaded not guilty & claimed to be tried, as the order dated 12.8.10 shows.

3. During trial, prosecution examined nine witnesses including the informant. The alleged victim namely Alima is neither cited as a witness in the charge-sheet nor examined by the prosecution. She being a material witness on facts has been examined u/s 311 CrPC as a Court Witness. The accused person has thereafter been examined u/s 313 CrPC ; he denied the allegations and declined to adduce any evidence. I have heard the argument of both sides.

4. The **Points for Determination** in this case are :

(i) whether on 06.7.09 at about 12-00 noon the accused person wrongfully restrained the informant Md. Sirajul Haque & his sister Mustt. Alima Khatun in North Tokrercherra on their way to the Golakganj market and thus committed an offence punishable u/s 341 IPC ;

(ii) whether on/at the same date, time & place the accused person voluntarily caused hurt on the informant and thereby committed an offence punishable u/s 323 IPC ;

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(iii) whether on/at the same date, time & place the accused person assaulted or used criminal force to Mustt. Alima Khatun intending to outrage or knowing that he would thereby outrage her modesty and thereby committed an offence punishable u/s 354 IPC ;

And, if so, what punishment the accused person deserves.

Decision & reasons therefor :

5. PW-1 Md. Parbat Ali deposed to the effect that about one year before the date (07.4.11) of his evidence when the accused person was talking to Alima, the sister of the informant, the informant came there and quarrelled with the accused person. PW-1 added that there was a love-affaire between Alima & the accused person. He clarified during cross-examination that there was no infighting between them. PW-2 Md. Mukhtar Ali Sheikh testified to have heard that there was a scuffle between the informant & the accused person. PW-3 Md. Nayan Ali Paramanik also deposed to have heard about an altercation between them.

6. PW-4 Md. Firjul Haque deposed to the effect that about three years before the date (12.12.12) of his evidence at about 12-00 noon, when he was going to the Golakganj market riding his bicycle, he saw a cross-fight on the road in Tokrachora village ; the accused standing on the dock (the order dated 12.12.12 shows that the accused was physically present in the Court on that day) pulled by the hand of a girl.

7. PW-5 Md. Moizuddin Ahmed testified that one day in the year 2009 at 12-00 noon or 01-00 PM, when he was returning on foot from Tokrachora in the company of his wife Jahanara Bibi, sister-in-law Alima, Joynab Bibi & Sirajul and reached near the wooden bridge, the accused person standing on the dock (the evidence of this witness was recorded on 12.12.12 and the order-sheet shows the accused was physically present in the Court on that day) alongwith others stopped them on the way and pulled by the wearing apparels of Alima in order to take her away. During cross-examination PW-5 first stated that police recorded his statement and then deviated from his statement.

8. PW-6 Mustt. Joynab Bibi deposed that one day in the year 2009, when she was returning from her paternal home in the company of her siblings, the accused person pulled by the 'Urna' of her sister. She clarified during cross-examination that they were proceeding towards the Golakganj market and that the occurrence took place near a wooden bridge.

9. PW-7 Md. Abdul Mannan Sheikh testified that about four years before the date (08.5.13) of his evidence at about 12-00 noon he alongwith his wife & sister-in-law Alima & Amina was returning from the house of his father-in-law. The accused person then appeared in a bicycle in the company of some other boys and asked Alima to stop. As Alima did not stop, the accused person pulled by her scarf and tried to take her away.

10. PW-8 Mustt. Amina Bibi deposed to the effect that one day in the year 2009 at about 12-00 noon or 01-00 PM, when she alongwith her sister Alima, Joynab, Mannan & Moziruddin was returning from her paternal house, the accused person caught hold of the hand of Alima on the way and pulled her.

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He also snatched away a golden necklace which Alima was wearing. Hearing the scream of PW-8 & her companions, her brother Sirajul (informant), who was behind them, came and asked the accused person not to make noise. The accused person then assaulted Sirajul with a piece of wood.

11. PW-9 Md. Sirajul Haque is the informant-victim in this case. While proving his Ejahar as Ext.1 he deposed to the effect that one day in the year 2009 at about 12-00 noon, when he was accompanying his sisters namely Amina & Alema on their return from his house, the accused person appeared on the way and pulled by the hand of Alima. PW-9 intervened whereupon the accused person & his 4/5 companions assaulted him causing injuries on the eyes & back.

12. CW-1 Mustt. Alima Bibi is the other alleged victim. She testified that in the year 2009 one day at 01-30/2-00 PM, when she was going to her sister's house being accompanied by her brother Sirajul (PW-9), 4/5 persons including the accused person appeared on the way, pulled by her hand and snatched away her gold-necklace. They also beat PW-9 causing injury on his face.

13. The witnesses gave different versions of the occurrence on the most material points and are not sure of even one another's presence. PW-9 testified that at the relevant time & place he was accompanied by PW-8 & CW-1 only. CW-1 is silent about the presence of even PW-8, not to speak of the remaining witnesses and similar is the evidence of PW-1. PW-7 again deposed that PW-8 & CW-1 alone accompanied him at the relevant time & place ; he has not even wink at the presence of PW-9 & other PWs. So far as the assault on the informant (PW-9) is concerned, PW-8 deposed that he was beaten up by the accused person alone whereas according to CW-1 & PW-9 himself, it was a consorted act of the accused person & his companions. I may note here that the offences were explained to the accused person not with the aid of Sec.34 IPC. PW-4 again testified that he saw a cross-fight between both sides and PW-1 deposed that there was only some altercation between PW-9 & the accused person. PW-5,6&7 are totally silent about any occurrence between PW-9 & the accused person and PW-2&3 admittedly did not see the occurrence at all.

14. So far as the offence punishable u/s 354 IPC is concerned, PW-5,6&7 testified that the accused person pulled by the cloth/urna/scarf of the alleged victim (CW-1) but PW-4,8&9 and CW-1 herself stated in their evidence that he pulled CW-1 by her hand. PW-1 is totally silent on this point, rather deposed that there was a love-affaire between CW-1 & the accused person and they were talking to each other at the relevant time.

15. The offence of wrongful restraint has been defined u/s 339 IPC. The expressions "...voluntarily obstructs any person", as it appears under this Section, when read with its other clause "...so as to prevent that person from proceeding in any direction..." gives a clear impression in my considered opinion that a mere obstruction of any person cannot constitute an offence of wrongful restraint even if it is done voluntarily ; the prosecution must also prove circumstantially (there cannot be any direct evidence of *mens ria* for obvious reason) that the accused did so with the object of preventing the victim from proceeding in a given direction in which the latter has a right to proceed. In the case at hand, there is no specific material in the evidence on records from which it could be gathered that the accused person voluntarily obstructed any of the witnesses *for preventing them to walk further*.

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16. Situated thus, I acquit the accused person of the offences punishable u/s 341/323/354 IPC and direct that he be set at liberty forthwith. His bail-bond shall stand discharged on expiry of six months from today, vide. the spirit of Sec.437-A CrPC.

Dictated & corrected by me and given under my hand and seal of the Court on this 24th Day of the Month of September in the Year 2013.

Addl. Chief Judicial Magistrate,
Dhubri : Assam