

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GKJ) 594 of 2008

State of Assam

-Vrs-

1. Smti Bulbuli Roy
  2. Smti Kanchan Roy
  3. Shri Sarat Roy
  4. Shri Gouranga Mohanta
  5. Shri Nirod Roy
  6. Shri Nripen Roy
  7. Shri Binod Roy
  8. Shri Dilip Roy
  9. Shri Hiranman Roy
  10. Shri Abinash Roy
  11. Shri Bhebu Roy
  12. Shri Apul Roy
  13. Shri Bipul Roy
  14. Smti Barendi Bala Roy
  15. Smti Namita Roy
  16. Smti Pratima Roy
  17. Smti Nilima Roy
  18. Smti Nani Bala Roy
  19. Smti Bakul Roy
  20. Shri Bombhola Roy
- .....Accused persons

Present : Shri S. Datta, AJS

Learned Advocates appeared :

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

For the defence ----- Md. A. K. Haque, Md. S. Rahman & Md. A. Hussain

Evidence recorded on : 05.10.10, 21.3.11 & 21.10.13

Argument heard on : 02.01.14

Judgment delivered on : 06.01.14

Penal law involved : u/s 448/352/354/342 IPC

J U D G M E N T

1. An Ejahar was lodged on 03.12.08 by one Smti Arati Roy to the effect that at the previous night at about 02-00 O' Clock the above-named accused persons alongwith one Santosh Roy (now dead) trespassed into the house of her mother Smti Sarojini Roy and started to beat the latter & her other daughter (i.e. informant's sister) Smti Renubala Roy. They even tried to outrage the modesty of Renubala. The assailants then forcibly took away Sarojini & Renubala and kept them tied in their house. They also grabbed the land of Sarojini and started building a house over there.

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2. Police, after investigation, submitted Charge-sheet against all the twenty-one assailants (alleged) and, on their appearance before the Court, the particulars of the offences punishable u/s 448/352/354/342 IPC (without any aid of Sec.34/149 IPC) were explained to them by my learned predecessor, after supplying copies u/s 207 CrPC, to which they pleaded not guilty, as the order dated 02.8.10 shows.

3. During trial, prosecution examined five witnesses including the informant & the alleged victims and declined to adduce further evidence. Accused Santosh Roy expired in the midst of trial and, hence, the case stood abated in respect of him vide. order dated 16.8.13. The remaining twenty accused persons have been examined u/s 313 CrPC ; they 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 03.12.08 at about 02-00 AM the accused persons trespassed into the house of Smti Sarojini Roy located in South Tokrercherra (Part-II) for committing the following offences and thereby committed an offence punishable u/s 448 IPC ;

(ii) whether on/at the same date, time & place the accused persons assaulted or used criminal force to said Sarojini and/or her daughter Renubala and thereby committed an offence punishable u/s 352 IPC ;

(iii) whether on/at the same date, time & place the accused persons assaulted or used criminal force to said Renubala intending to outrage or knowing that they would thereby outrage her modesty and thereby committed an offence punishable u/s 354 IPC ;

(iv) whether on/at the same date & time the accused persons wrongfully confined said Sarojini and/or Renubala in their (accused persons') house/s and thus committed an offence punishable u/s 342 IPC ;

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

Decision & reasons therefor :

5. PW-1 Smti Arati Bala Roy, the informant in this case, proved her Ejahar as Ext.1 and deposed to the effect that on 02.12.08 at about 02-00 AM, when she was present in the house alongwith her elder sister Renubala (PW-4) & mother Sarojini (PW-2), the accused persons entered the house and forcibly took away PW-2&4 to the house of accused Santosh (now dead) & Sarat and tied them with a 'Tamal' tree. The accused persons also cut bamboos and tried to build a house on the land of the informant-side. PW-1 saw the entire occurrence from her house and then lodged the Ejahar with the Golakganj PS. Police accompanied her and rescued/untied PW-2&4. PW-2 was assaulted by the accused persons and she was sent by police for medical treatment. PW-1 stated during cross-examination that she had a mobile-phone and was aware of the phone-number of the police station but she did not inform the police at the night of the occurrence. She admitted that there was a land-dispute and consequent civil suit between them & the accused persons. She also disclosed that the house of the accused persons, except that of accused Santosh (now dead) & Sarat, is situated far away from her parents' house. PW-1 stated further that police had seized the rope, clothes, lathi, dao etc.

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6. PW-2 Smti Sarojini Bala Roy is one of the alleged victims. She testified that one night about two years before the date (05.10.10) of her evidence at about 02-00 O' Clock accused Santosh (now dead) & Sarat dragged her & PW-4 to their house and kept them tied with a 'Tamal' tree. Other accused persons were also present with them. The accused persons then cut some bamboo and started building a house in her land ; they also obstructed the path leading to her paddy-land. During cross-examination PW-2 stated that she was kept tied for a minimum of 20-30 minutes.

7. PW-4 Smti Renu Bala Roy is the other alleged victim. She deposed to the effect that on 02.12.08 at about 02-00 AM accused Nripen, Bipul, Nirod & Abinash went to their house and dragged her & PW-2 to the house of accused Sarat, tied them with a betel-nut tree, assaulted them with lathi, fala etc. and tore off their wearing apparels. PW-1 lodged Ejahar whereupon police came and rescued them. PW-4 stated during cross-examination that they were kept tied up from 2-00 AM till the next morning and that police seized their torn clothes.

8. PW-3 Shri Uday Shankar Rai testified that one morning about a year before the date (21.3.11) of his evidence at about 9-30 O' Clock, when he was going to the house of PW-1, he saw both sides quarrelling over some land & path standing on the land between their houses.

9. PW-5 Smti Rakhi Roy is the daughter of PW-4. She deposed that about five years before the date (21.10.13) of her evidence one night at about 02-00 O' Clock, when she was sleeping in their house alongwith PW-1,2&4, accused Santosh (now dead), Sarat, Bipul & Abinash went there and took away PW-2&4 to their house. They also threatened to kill PW-5. Police came and rescued PW-2&4.

10. PW-3 admittedly did not see the occurrence ; everything, perhaps, had been over before he reached the P.O. next morning. Learned defence lawyer has argued that the other PWs are related to each other and, hence, interested witnesses in this case. He also contended that PW-3, the sole independent witness, has not supported the prosecution-case. I respectfully disagree on both counts. The evidence of PWs cannot be brushed aside merely because they are related to each other ; the only requirement in such case is that their evidence has to be "carefully scrutinized and appreciated" ; if their evidence is cogent, credible & trustworthy and has a ring of truth, it can and has to be relied upon. One may refer to the decision of the Hon'ble Supreme Court in Dahari & Others -Vrs- State of UP (Para-9) reported in MANU/SC/0848/2012 in this regard. So far as PW-3 is concerned, he visibly arrived at the P.O. late. Therefore, the question of his supporting or not supporting the alleged occurrence does not arise at all ; he did not say anything negative to the prosecution-case.

11. However, I agree that the PWs differed with each other on some material points. PW-2, one of the alleged victims, testified that accused Santosh (now dead) & Sarat took her & PW-4 to their house. But the other alleged victim i.e. PW-4 claimed that they were taken away by accused Nripen, Bipul, Nirod & Abinash. Such a wide variation between the versions of none other than the alleged victims themselves makes it difficult to fix liability on any of the accused persons. PW-4 testified that the accused persons tore off their wearing apparels but PW-2, the other alleged victim, is totally silent about it.

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11. The Ejahar (Ext.1) shows that PW-1, the informant, was so tensed with the occurrence that she was apprehending that the victims would be killed by the accused persons. But she stated during cross-examination that she did not inform the police (or anybody else) over phone at the time of the occurrence or at that night despite having a mobile-phone and being aware of the phone-number of the police station. Such conduct on the part of the witness/informant is unexplainable to say the least. She claimed that the victims were rescued by the police in the morning ; PW-4&5 also deposed to a similar effect. But PW-2, the other alleged victim, nowhere stated in her evidence that police rescued them ; she rather testified (vide. her cross-examination) that she was kept tied for a 'minimum' of 20-30 minutes. Even if this period of 20-30 minutes is doubled keeping in mind the expression 'minimum' and the probable period of occurrence which took place in the house of the PWs is excluded, it still cannot continue till the winter-morning of December in my considered opinion, given that the occurrence started at 2-00 AM.

12. Given these material variations in the evidence on records, I acquit the accused persons of the offences punishable u/s 448/352/354/342 IPC on benefit of doubt and direct that they be set at liberty forthwith. Their bail-bonds shall stand discharged on expiry of six months from today, vide. the spirit of Sec.437-A CrPC. The seized articles shall be returned to the person from whom seized.

Dictated & corrected by me and given under my hand and seal of the Court on this 06th Day of the Month of January in the Year 2013.

Addl. Chief Judicial Magistrate,  
Dhubri : Assam