

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, DHUBRI

Case no : GR (GKJ) 631 of 2008

State of Assam
-Vrs-
Smti Arati Choudhury
.....Accused person

Present : Shri S. Datta, AJS

Learned Advocates appeared :

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

For the defence ----- Shri A. Roy

Evidence recorded on : 05.10.12, 15.3.13 & 24.9.13

Argument heard on : 21.12.13

Judgment delivered on : 03.01.14

Penal law involved : u/s 341/323 IPC

J U D G M E N T

1. The prosecution-case in brief, as revealed from the ejahar on records lodged by one Rabindra Mohan Pradhan on 20.12.08, is that on that day at about 9-00 AM, when his wife Smti Shikha Pradhan was walking in front of the house of the accused person (named above), the latter quarreled with her and beat her with lathi causing serious injuries on different parts of her body. The accused person also snatched away her gold-ornaments weighing five 'Bharies'.

2. Police, after investigation, submitted Charge-sheet against the accused person and, on her appearance before the Court, the particulars of the offences punishable u/s 341/323 IPC were explained to her by my learned predecessor, after supplying copies u/s 207 CrPC, to which the accused person pleaded not guilty, as the order dated 19.11.11 shows.

3. During trial, prosecution examined four witnesses including the informant & the alleged victim. At that stage, I closed further evidence for the prosecution for the reasons stated in the orders dated 08.10.13 & 23.10.13. The accused person was then examined u/s 313 CrPC ; she denied the allegation 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 20.12.08 at about 9-00 AM the accused person voluntarily obstructed (within the meaning of Sec.339 IPC) Smti Shikha Pradhan in front of her (accused's) house located in Bidyadabri and thereby committed an offence punishable u/s 341 IPC ;

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

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

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Decision & reasons therefor :

5. PW-1 Shri Rabindra Mohan Pradhan, the informant, proved his Ejahar as Ext.1 and testified that the occurrence took place on 20.12.08 at 8-30/9-00 AM when his wife Sikha Pradhan (PW-3) was proceeding towards the market on the path passing by the house of the accused person. PW-1 was in the market at that time. Someone informed him that PW-3 was lying in a pool of blood. PW-1 rushed to the place and found PW-3 lying in front of the house of the accused person ; she had bloodstains all over her body. The people assembled there informed PW-1 that the accused person had beat her. PW-1 took the victim to the Halahura PHC and thence to the Dhubri Civil Hospital where she underwent treatment for five days.

6. PW-3 Smti Sikha Pradhan in the sole alleged victim in this case. She deposed to the effect that on 20.12.08 at 8-00/8-30 AM, when she was walking on the road, the accused person called her and pelted a stone causing injury on her head. The accused person also broke her conch-bangle by means of a lathi and took away the ornaments she was wearing in her neck, ear & hand. The neighbouring people took her to the hospital. PW-3 deposed further that her wearing apparels got stained with blood and she produced the same to the police but the police did not seize the clothes. She admitted during cross-examination that she had not stated to the police (u/s 161 CrPC) that the accused person caused her head-injury by pelting a stone. She also admitted that the accused person had filed a case against her (PW-3's) husband alleging misappropriation of money of a Self Help Group.

7. PW-2 Ajahar Ali testified that one day at 8-00/9-00 AM he saw PW-1 to take PW-3 to the hospital in a rickshaw. During cross-examination he stated that that it was PW-4 whom he saw to take the victim to the hospital. PW-4 Shri Debendra Mohan Prodhan testified that about five years before the date (24.9.13) of his evidence at about 9-30 AM, when he was in his shop, one man reported to him that his relative Sikha (PW-3) was being beaten up. PW-4 rushed to the place and found PW-3 lying on the road with bleeding injuries and learnt from her that the accused person had beat her with a rod. PW-4 took the victim to the Thana and then to the Halakura PHC.

8. PW-3 testified in her examination-in-chief that she was injured by a stone (pelted by the accused person). But, during cross-examination, she admitted that she had not stated so to the police. This is a contradiction (material variation), in my considered opinion, because, a victim would never forget to mention the weapon of assault if she was really hurt. PW-1,2&4 admittedly did not see the occurrence ; their evidence, so far as the actual occurrence & the involvement of the accused person are concerned, are clearly hearsay and, hence, inadmissible in evidence. But, as regards the reporting of the occurrence, their evidence is essentially direct u/s 60 of the Evidence Act, because, an oral reporting is necessarily a matter to be heard and it were deposedly they who heard it. PW-4 testified that shortly after the occurrence he was reported by PW-3 that she had been beaten up with a rod. It makes the evidence of PW-3 further doubtful. Be it noted that the original prosecution-case was that PW-3 was assaulted with a lathi ; however, this FIR-version cannot be used to contradict PW-3 who is not the informant in this case.

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9. PW-1 testified that he took the victim to the hospital. PW-4 claimed that it was he who took her to the hospital. They are even silent about each other's presence at the relevant time & place. PW-2 is again confused on this point. He testified in examination-in-chief that he saw PW-1 take PW-3 to the hospital in a rickshaw but, when faced with cross-examination, he stated that he saw PW-4 take the victim to the hospital. Other PWs have not stated a word about his presence over there and PW-3 herself has not stated anywhere that she saw PW-1,2&3 at the place of the occurrence. It may be noted here that though PW-3 claimed that she lost senses, PW-4 clearly stated in his evidence that she went to the place of the occurrence and found PW-3 lying there who reported him of the occurrence at that very time. Therefore, PW-3 was obviously in a position to see who was/were present at that time & place and PWs being her close relatives, she could hardly miss them if they were really present there. All the PWs are admittedly related to each other and, given the aforesaid contradictions in their evidence coupled with the admitted enmity of PW-1 & the accused person (vide. cross-examination of PW-3), I find reasons to doubt the prosecution-case.

10. Situated thus, I acquit the accused person of the offences punishable u/s 341/323 IPC on benefit of doubt and direct that she be set at liberty forthwith. Her 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 03rd Day of the Month of January in the Year 2014.

Addl. Chief Judicial Magistrate,
Dhubri : Assam