

**In The Court of Addl. Chief Judicial Magistrate ,Dhubri**

**Present:Smt.T.Hussain**

GR case No. 506/10  
u/s 447/352/354 I.P.C

State  
Vs  
Kishori Mohan Ray  
Binapani Ray  
.....Accused persons

Advocates appeared:

For the Prosecution:Mr. K.A.Seikh Asstt.P.P

For the Defence :Mr.Y.A Bepari

Evidence recorded on: 17.04.2015

:09.06.2015

:06.08.2015

Argument heard on :05.11.2015

Judgment delivered on:18.11.2015

Judgment

1.The prosecution case in a nutshell is that on 19.08.10 ,one Smt. Jyostna Roy lodged an ejarah with O/C Gauripur PS alleging inter alia that on 19.07.10 at around 11.30 AM the accused persons came to her house and started altercating with her and thereafter they dragged her out and beat her .Later the neighbouring people arrived there and rescued her.

2. Accordingly Gauripur PS case no.516/10 was registered ,investigated in to and finally charge sheet was submitted against the accused persons u/s 447/352/354 IPC.

3. Copies were furnished to the accused on their making appearance for facing the trial. Having gone through the relevant documents the particulars of

the accusations punishable u/s 447/352/354 I.P.C were explained to the accused to which they pleaded not guilty and claimed to be tried.

4. During the course of the trial the prosecution examined six witnesses. After closing the prosecution evidence accused Kishori Mohan Ray was examined u/s 313 of Cr.P.C and his defence statement was recorded and he declined to adduce evidence. Plea of the defence was of total denial. As there was no incriminating evidence against the co accused Binapani Ray, her examination u/s 313 of Cr.P.C was dispensed with.

5. Points for determination:

I) Whether the accused persons on 18.07.10 at Modhusolmari Part-I at around 11.30AM committed criminal trespass by entering in to the compound of the informant Jyostna Ray with intent to commit the following offences and thus committed the offence punishable u/s 447 IPC?

II) Whether the accused on the same date, time and place assaulted the Informant Jyostna Ray otherwise than on provocation given by her and thus committed the offence punishable u/s 352 IPC?

III) Whether the accused on the same date, time and place used criminal force to the informant with intent to outrage her modesty and thus committed the offence punishable u/s 354 IPC

6. Decision and reasons thereof:

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

Pw1 Jyoshna Roy is the informant. Pw1 has testified to the effect that the accused are her neighbours. The occurrence took place about three /four years back one morning at around 8.30 AM. A quarrel had been taken place between the children of Pw1 and the accused persons and over that matter the accused Kishori came to her place and caught hold of her hair and assaulted her causing injuries. She took medical treatment.

It is there in her cross examination that there are 5/6 dwelling houses near the place of occurrence. Pw1 has not implicated the co accused Binapani Roy in any manner.

Pw2 Jogen Roy is the husband of Pw1-informant. He has simply said that there was a quarrel between them and the accused over some matter relating to the children.

Pw3 Abala Roy has stated in her deposition that she saw the accused Keshari assaulting Pw1.

In her cross examination contradicting her own version, Pw3 has said that she was not present at the time of occurrence and that when she arrived at the place of occurrence, the incident was already over. And in view of such inconsistency in her evidence on material point, Pw3 who is the aunt of the informant -Pw1, is found to be not a trustworthy witness.

Pw4 Kiran Roy has stated in her deposition that about 5 years back one day a quarrel took place between the informant and the accused persons but she does not know the reason behind it. Pw1 has further said that she saw the accused Kishori Mohan Roy inflicting fist blow to the informant -Pw1. In her cross examination it is there that at that relevant time she was in the house of the informant and that no other person came to the place of occurrence though there are many dwelling houses around that place. Pw4 has admitted that she has come to the court with Pw1 -informant and that Pw1 paid her bus fare. It leads to show that though her evidence was recorded on 17.04.15, Pw1 again visited the court on 09.06.15 on which evidence Pw4 was recorded and that she brought Pw4 to the court for deposing in this case. Therefore it appears that Pw4 can not be called in independent witness and the defence plea (put suggestion to that effect during cross examination of Pw4) that Pw4 is a tutored witness can not be ruled out.

Pw5 Sachin Roy is the son of the accused persons. He has deposed the effect that after returning home from his work place he got to know that a quarrel took place the informant and his father. But he does not know the reason behind the quarrel.

Pw6 Sudhansu Dam was the I.O of the case and has stated about the investigation in his evidence .

Admittedly the alleged occurrence took place on 19.07.10 (as per the ejahar) and the ejahar was lodged on 19.08.10 i,e after one month . This inordinate delay of one month in lodging the ejahar has not been explained by the informant in his evidence .Delay in lodging of complaint is normally viewed with suspicion because there is possibility of concoction of evidence against an accused .So it becomes necessary for the prosecution to satisfactorily explain the delay. If there is no explanation for the delay ,court has to be at guard in evaluating the entire evidence on record .

it is already found that the prosecution has not been able to examine any reliable witness to corroborate the evidence of Pw1 implicating the accused kishori Mohan Ray . Here in this case in hand there is delay in lodging the case for which no explanation whatsoever has been tendered by the prosecution and it would certainly affect the bonafides of the prosecution case.And hence the possibility of false story implicating the accused can not be ruled out.

That being the position ,it is found and held the prosecution has failed to prove the case against the accused persons.

In the result the accused persons are acquitted of the offences u/s 447/352/354 IPC and set at liberty forth with.

Bail bonds shall remain in force for the next six months.

Given under my hand and seal of the court on this 18<sup>th</sup> day of November 2015.

(T.Hussain)  
Addl.C.J.M Dhubri

Dictated & corrected by me