

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No. 311/2015

U/s.328 IPC

G.R. No.1492/2014 (Dhubri P.S. Case No.396/2014)

State of Assam

- Vs -

Abdul Karim Sk.

Committing Magistrate : Sri S. Datta, Chief Judicial Magistrate, Dhubri.

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.

Sri N.A. Mondal, Advocate for the defence.

Date of Evidence : 21-03-2016, 03-05-2016, 30-05-2016, 19-08-2016 & 01-09-2016.

Argument Heard : 22-11-2016

Date of Judgment : 30-11-2016

J U D G M E N T

The prosecution case in brief is that one Jobbar Ali had lodged a FIR at Dhubri P.S. to the effect that on 19-04-2014 at around 7 a.m. his wife, Nurjahan Bibi had suddenly fallen ill and he had taken her to the medicine shop of one Karim Ali. On the suggestion of Karim Ali, who is a quack Doctor, he had let Karim Ali administer saline and an injection to Nurjahan Bibi. Following the injection and saline, his wife had suddenly become unconscious and she had to be immediately shifted to Dhubri Civil Hospital. Hence this case.

2. Upon the FIR a case was registered by the O.C, Dhubri P.S. vide Dhubri P.S. Case No.396/2014 u/s.419/328/341/34 of IPC against the accused, Karim Ali. Following investigation charge sheet was filed u/s.419/328 of IPC against accused.

3. Accused Abdul Karim Sk. appeared before the Court. The charge u/s 328 of IPC had been framed against above accused person. The charge had been read over, explained and interpreted to accused person to which, accused person pleaded not guilty and claimed to be tried.

4. Prosecution had examined as many as 8 (eight) P.Ws including I.O. & M.O. Accused person was generally examined u/s.313 of Cr.PC on the circumstances coming up against him in the evidence of P.Ws. The accused person pleaded total denial and declined to adduce any evidence in his defence.

Heard learned advocates.

5. **Point for determination:**

Whether the accused on 19-04-2014 at about 7 a.m. at village Poyestichalakura under Dhubri P.S. administered unwholesome drugs in the form of injection and saline to Nurjahan Bibi, the wife of informant Jabbar Ali knowing it to be likely that it will cause hurt to said Nurjahan Bibi?

DECISIONS AND REASONS THEREOF

6. In order to bring home charge u/s.328 of IPC against the accused the prosecution has to prove that the accused had administered poison (a) with the intention of causing hurt (b) with the knowledge that it is likely to cause hurt (c) to facilitate the commission of an offence.

7. Now coming to the evidence of PW-1 Jobbar Ali in his testimony deposed that he had lodged the FIR against the accused. His wife was under treatment of the accused. The accused had pushed an injection to his wife. Following which, his wife had suddenly taken ill and she had to be shifted to Civil Hospital where she had recovered.

In his cross-examination PW-1 feigned ignorance with regard to the content of the FIR. He feigned ignorance whether the accused had been responsible for the illness of his wife since his wife's relatives had taken her to a Doctor. He was not aware whether the accused had pushed any injection to his wife.

8. PW-2 Musstt. Johura Bewa stated about knowing both accused and the victim. The victim had gone to the accused for her treatment. The accused had administered an injection to the victim. Then victim had suddenly started bleeding following the injection and was taken ill. According to PW-2 her son had filed a case against the accused.

9. PW-3 Md. Abu Bakkar Siddique stated knowing both accused and the victim, Nurjahan Bibi. He was not aware about the alleged occurrence. Later he had heard that accused had treated the victim, Nurkjahan and in this connection there had been a commotion.

10. PW-4, Md. Somer Ali and PW-5, Md. Ali Akbor Prodhani had stated knowing accused and the victim, Nurjahan Bibi but they expressed ignorance about the alleged occurrence.

11. PW-6 Dr. Hafijur Rahman had examined Nur Jahan Bibi, the victim, W/o. Jobbar Ali of village Majerchar, P.S. Dhubri who had been admitted into Dhubri Civil Hospital on 19-04-2014 in FMW at 2:30 p.m. as indoor patient vide registration No.8338/2014. The patient was discharged from the hospital on 22-04-2014. According to PW-6 the patient at the time of admission had become unresponsive following intravenous drip given outside. On examination at the hospital, the patient was conscious, oriented, bizarre movements of all four limbs were seen at times. All systems of the patient were normal. Investigation report with regard to blood parameter, chest x-ray, ECG were found normal. The patient was diagnosed to be meningeal. Treatment given was conservative. Patient's symptoms had improved after treatment and the patient was discharged from hospital on 22-04-2014. Ext-1 is his report bearing his signature ext-1 (1).

In his cross-examination PW-6 had stated about meningeal being a psychological disorder, patient pretending to be sick to derive undue favour from others.

12. PW-7 Musstt. Nurjahan Bibi, the victim's evidence reveals that around three years back she had fallen ill and she had been taken to the Doctor. However, she expressed complete ignorance as to what had happened thereafter.

Now above is the threadbare discussion on evidence on record.

13. Now circumstances coming up in the evidence of PWs do not support the FIR since the informant as PW-1 in his testimony denied knowing the accused. PW-1 had also denied any knowledge whether the accused had administered saline and injection to his wife resulting in his wife's illness. He also denied any knowledge as to why his wife had suddenly taken ill. PW-1 stated having lodged the FIR on being suggested by some other persons.

14. Thus it is evident from the evidence of PW-1 that PW-1 had lodged the FIR not being aware of the incident and who was the accused. Thus the PW-1 proved to have lodged the FIR against the accused on suspicion. Suspicion, however may be strong cannot take the place of evidence. Considering the evidence of PW-1 not being consistent with the prosecution story in the FIR raises ample scope for casting doubt with regard to the involvement of the accused in the offence alleged. The evidence of PW-2, Jahura Bewa and PW-3, Abu Bakkar Siddique is hearsay evidence, having heard about the alleged occurrence from PW-1, Jabbor. Since PW-1, the informant and PW-7, the victim in the case have not supported the prosecution case, PW-4 and PW-5 being completely ignorant about the alleged occurrence, PW-6 Dr. Hafijur Rahman having attributed the cause of illness of the victim to some mental illness, it is clear that none of the ingredients constituting the offence u/s.328 of IPC discussed above stand established.

15. Thus in the light of the entire discussion of the evidence on record, it is clear that the prosecution has failed to establish its case beyond all reasonable doubt against the accused Abdul Karim Sk. Accordingly accused is acquitted and set at liberty forthwith. Considering the facts and circumstances of the case, I am not inclined to recommend the victim for receipt of compensation u/s.357 (A) of Cr.PC not requiring rehabilitation of any kind whatsoever.

Given under my hand and seal of this Court on this 30th day of November, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

APPENDIX

A. Prosecution Witnesses.

PW-1 - Md. Jobbar Ali
PW-2 - Mustt. Johura Bewa
PW-3 - Md. Abul Bakkar Siddique
PW-4 - Md. Somer Ali
PW-5 - Md. Ali Akbor Prodhani
PW-6 - Dr. Hafijur Rahman
PW-7 - Musstt. Nurjahan Bibi
PW-8 - ASI Sona Uddin Mollick

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1 - M. Report
Ext-2 - Sketch Map
Ext-3 - FIR
Ext-4 - Charge Sheet.

D. Defence Exhibit

Nil

Sessions Judge, Dhubri