



IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, BONGAIGAON

GR case No. 399/14

U/S- 294/323/34 I.P.C.

State of Assam

- vs-

1. Shri Soben Nath
2. Shri Dulal Nath.....Accused.

Present:- ***Shri Kaushik Hazarika, A.J.S.,***
Chief Judicial Magistrate,
Bongaigaon, Assam.

Advocates present:-

Mr. Tapan Bhowmick, Ld. Addl. P.P.....For the State.

Mr. Mohidul Islam, Ld. Advocate.....For the Accused.

Evidence recorded on : 20-03-15, 21-05-15, 22-06-15, 19-12-15

Argument heard on : 20-03-18

Judgment delivered on : 28-03-18

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JUDGMENT

1. The prosecution case in brief is that on 17-05-14, one Smt. Sabita Nath lodged a FIR in the Bongaigaon P.S. stating inter alia that on 16-05-14 at about 1:30 PM when her father-in-law, Bolen Chandra Nath had went to the nearby field for feeding water to their cow, accused Soben Nath called him to the house of Shri Rahim Chandra Nath and in the house of Rahim, accused Soben Nath assaulted her father-in-law on his head with a "pira" by restraining him causing injuries and hearing the shouts of her father-in-law, when she ran to the place of occurrence, accused Dulal Nath restrained her on the road and assaulted her by inflicting blows and kicks.

2. On receipt of the ejahar, police registered a case and investigated into the matter. After investigation police submitted charge-sheet against the accused persons u/s 294/323 IPC against accused Soben Nath and u/s 294 IPC against accused Dulal Nath. When the accused persons appeared before the Court, necessary copies were furnished to them and particulars of offence u/s 294/323/34 IPC were explained to the accused persons to which they pleaded not guilty.

POINTS FOR DETERMINATION

- (i) Whether the accused persons on 16-05-14 at about 1:30 P.M. in the house of Shri Rahim Chandra Nath caused annoyance to Shri Bolen Chandra Nath by rebuking him using obscene words in furtherance of their common intention and thereby committed an offence punishable under Section 294/34 IPC?

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- (ii) Whether the accused persons on the aforesaid date, time and place voluntarily caused hurt to Shri Bolen Chandra Nath and Smt. Sabita Nath in furtherance of their common intention and thereby committed an offence punishable under Section 323/34 IPC?

DISCUSSION, DECISION AND REASONS THEREOF

3. The prosecution examined the following witnesses in this case :-

(i)	Smt. Sabita Nath (informant/victim)	_	PW1
(ii)	Shri Bolen Nath (victim)	_	PW2
(iii)	Smt. Jirabati Nath	_	PW3
(iv)	Shri Sachin Nath	_	PW4
(v)	Shri Pabitra Kumar Nath	_	PW5
(vi)	Dr. Gopal Chandra Roy (Medical Officer)	_	PW6
(vii)	Smt. Annapurna Chetri (Investigating Officer)	_	PW7

4. The defence plea is of total denial. The defence did not adduce any evidence in this case. The accused persons were examined u/s 313 Cr.P.C.

5. I have heard the arguments advanced by the Ld. Counsels for both the sides.

6. PW1 (informant/victim) stated in her examination-in-chief that

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about 1 year back, at about 2:00/3:00 PM she was at her home and at that time, her father-in-law Bolen Nath had gone to feed water to the cows and then accused Soben Nath called her father-in-law and took him to the house of Rohim Nath and after asking him to sit, assaulted him with a "Pira" on his head and near his ear. PW1 also stated that when she heard hue and cry, she went to bring her father-in-law and on the road accused Dulal Nath restrained her and then she told him that Soben Nath had assaulted her father-in-law and then Dulal told her that he had asked Soben to beat her father-in-law. PW1 further stated that accused Dulal Nath kicked her with his legs and when her five years old daughter who accompanied her, shouted, then witness Pabitra Nath saw them and came running towards them and then accused Dulal Nath fled and went to the house of Soben Nath and thereafter, she took Bolen Nath to their home. During cross-examination, PW1 stated that she came to know from Jira Nath that accused Dulal had assaulted her father-in-law and that she had not stated in her ejahar or before the police that she knew about the incident from Jira Nath. PW1 also stated that she had not seen accused Soben Nath assaulting her father-in law.

7. PW2 (victim) stated in his examination-in-chief that the occurrence took place on the second day of Bengali month of "Jeth" at about 1:30 PM and at that time when he was going to tie his four cows, accused Soben Nath called him to the courtyard of Rohim Nath and he saw accused Soben Nath was sitting on a "Pira" and accused Soben Nath started to beat him with that "Pira" and he was assaulted three times on his head and two times near his left eye, as a result of which nine stitches had to be put on his head and two stitches near his eye. PW2 also stated that he somehow came to his courtyard by holding his

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head and fell down and became unconscious and that he was not well for 15 days. During cross-examination, PW2 stated that when Soben Nath called him to the courtyard of his house, his wife, Jira Nath was inside the house and that Soben Nath was already sitting in the house of Rohim Nath. PW2 also stated that the house of Rohim Nath was near the place where he ties his cows.

8. PW3 stated in her examination-in-chief that about one year back, one day at about 1:00 PM the occurrence took place and at that time, she was at her home and at that time accused Soben Nath injured Bolen Nath by hitting his head with a "Pira" and when she heard the sound, she saw a "Pira" in the hand of Soben and blood oozing out of the head of Bolen and thereafter, both of them went out from her house. During cross-examination, PW3 stated that she had not seen the occurrence herself.

9. PW4 stated in his examination-in-chief that about one year back, one day at about 12:00/1:00 PM the occurrence took place and that he met Bolen Nath in the field and both of them went to the house of Jirabati (PW3) for drinking water and after drinking water, a quarrel took place between Soben Nath and Bolen and Soben injured Bolen on his head with a "Pira" and blood oozed out. During cross-examination, PW4 stated that Jirabati used to sell country liquor in her house and that Bolen and Soben had consumed country liquor.

10. PW5 stated in his examination-in-chief that one year back, one day, during day time, the occurrence took place and that he came out to the road hearing shouts and Sabita Nath told him that Dulal Nath had assaulted her and

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that he did not know anything more. During cross-examination, PW5 stated that he had not seen Dulal Nath at the place of occurrence and that he had not seen the occurrence himself.

11. PW6 (Medical Officer) stated in his examination-in-chief that on 20-05-14 he was attached in the Bongaigaon Civil Hospital and on that day at 1:35 PM he examined the patient Sri Sabita Nath on police requisition and found the following (i) No injury was detected on her body at the time of examination.
12. PW7 (Investigating Officer) stated in her examination-in-chief regarding the steps she took during investigation of the case. During cross-examination, PW7 stated that PW1 Sabita did not state before her that Dulal told her that he had asked to beat her father-in-law and about kicking with legs. PW7 also stated that PW1 did not state before her that there was a little girl with her and that Pabitra Nath came running towards them and that her father-in-law had gone to feed water to the cows. PW2 Bolen Nath did not state before her regarding the number of stitches that were put on his head.
13. From a meticulous scrutiny of the materials available on record, it is seen that there are omissions and contradictions in the statement of the witnesses in their evidence and with that of the facts stated in the ejahar. It was stated in the ejahar that accused Soben Nath had assaulted father-in-law of the informant (PW1) on his head with a "pira" and the said fact was stated by PW1 in her evidence also. However, the said evidence cannot be firmly believed as she stated in her cross-examination that she had not seen accused Soben Nath assaulting her father-in-law meaning thereby that the evidence of PW1 is hearsay. Moreover, there is room to doubt the prosecution case in as

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much as PW1 had stated that she came to know from Jira Nath (PW3) that accused Dulal had assaulted her father-in-law but such fact was not stated either in the ejahar or before the police by her as admitted by her in her cross-examination. The evidence of Jira Nath (PW3) on the other hand reveals that accused Soben Nath injured Bolen by hitting on his head with a "pira". If the evidence of PW3 is to be believed, then it cannot be so that PW3 had told PW1 that accused Dulal had assaulted victim Bolen Nath (PW2) with a "pira" when she had testified herself in her examination in chief that it was Soben Nath who had injured Bolen Nath. But such evidence of PW3 also cannot be believed in as much as her evidence is also hearsay which can be very much deduced from her cross-examination when she stated that she had not seen the occurrence herself.

14. On the other hand, the other victim, i.e., PW2 though stated that he was beaten by accused Soben Nath with a "pira" yet his evidence was not supported by any eye witnesses. The medical evidence in respect of the injuries caused on the body of PW2 is lacking since there is no evidence of the Doctor(PW6) in respect of the injuries caused on PW2. The evidence of PW4 reveals that Jirabati (PW3) used to sell country liquor in her house and that Bolen and accused Soben had consumed country liquor.

15. Be that as it may, the assault on PW1 by accused Dulal could not be established by the evidence on record in view of the discrepancies in the statement of the victim (PW1) with that of the facts stated in the ejahar. While the informant stated in the ejahar that accused Dulal had assaulted her by inflicting blows and kicks yet she in her evidence as PW1 stated that accused Dulal Nath had kicked her with his legs only which is a clear omission

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that she was inflicted blows by accused Dulal Nath. No other witnesses in this case have supported the evidence of (PW1) in respect of her assault by accused Dulal Nath which raises doubt in believing the version of PW1. PW5, on the other hand, testified in his examination-in-chief that Sobita Nath (PW1) had told him that accused Dulal Nath had assaulted her but in his cross-examination, he stated that he had not seen accused Dulal Nath at the place of occurrence which also proves fatal to the evidence of PW1 and the prosecution case as a whole. The evidence of PW5 reveals that his evidence is hearsay in as much as he had not seen the occurrence himself. The fact that the Doctor(PW6) did not find any injury on the body of PW1(informant/victim) also raises doubt in believing the prosecution case. PW1 not stating before the Investigating Officer (PW7) that accused Dulal had told her that he had asked to beat her father-in-law and that he had kicked her with legs also makes the case untrustworthy.

- 16.** In view of the aforesaid discussions and reasons, I find and hold that the prosecution severely failed to prove the case beyond all reasonable doubt. Hence, accused Soben Nath and Dulal Nath are acquitted and set at liberty. The bail bonds stand cancelled and the bailors are free from all liabilities.

Given under my hand and seal of this Court on this 28th day of March, 2018 at Bongaigaon.


(Shri Kaushik Hazarika)
Chief Judicial Magistrate,
Bongaigaon
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