

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 849/2010

STATE VERSUS ANANDI BARUAH AND OTHERS

U/S 448/323/506/34 IPC

FOR THE PROSECUTION: MR. R.C.MAHATO, ASST. P.P

FOR THE DEFENSE: MR. N.I SIDDIQUE, ANDVOCATE

**EVIDENCE RECORDED ON: 18.7.2012, 19.12.2012, 18.3.2013,
2.5.2013**

ARGUMENTS HEARD ON: 7.5.2013, 28.5.2013

JUDGMENT DELIVERED ON: 11.6.2013

JUDGMENT

1. Smt. Rinkumoni Barua, W/o Sri Riton Barua lodged a first information at Bongaigaon P.S alleging that on 10.12.2010 at about 8pm in absence of her husband her father-in-law Anadi

Baruah, mother-in-law Sobha Baruah, brother-in-law Mithun Baruah, Gautam Baruah and five other unknown men armed with sharp weapons came in two small cars and trespassed into her rented house at Bhakarivita and criminally intimidated her using the sharp weapons and tried to abduct her. When she raised alarm they punched her, slapped her and kicked her and snatched a gold chain worth Rs. 10,000/- from her neck. She immediately informed her younger sister Deepanjali Baruah and the aggressors fled away in their cars when police arrived there. The ejahar was received and registered as Bongaigaon P.S Case No. 609/2010 u/s 147/148/149/448/323/366/522/506/379 I.P.C and investigation was carried on. During investigation a prima facie case was found to be well established under sections 448/323/506/34 IPC against Anadi Baruah, Sobha Baruah, Mithun Baruah and Gautam Baruah.

2. Cognizance hand been taken under sections 448/323/506/34 I.P.C against the accused persons.
3. Upon appearance copies of the relevant documents were supplied to the accused persons in compliance with section 207 Cr.P.C.
4. After considering the relevant documents produced by the police and prima facie materials under sections 448/323/506/34 I.P.C having been found to be well established against the accused persons, my learned predecessor explained the particulars of the offences U/S 448/323/506/34 I.P.C to the accused persons to which they pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of six witnesses and exhibited documents and materials. At the close of prosecution evidence the accused persons were examined U/s 313 Cr.P.C. Defence pleas is of denial. Accused persons denied adducing any evidence.

6. After considering the relevant documents and after hearing the defence and the prosecution I find that following are the points to be determined in this case:

- 1) Whether the accused persons in furtherance of their common intention committed criminal trespass by entering into or remaining in the rented house of the informant and thereby committed an offence punishable U/S 448 IPC?
- 2) Whether the accused persons in furtherance of their common intention caused injury to the informant and thereby committed an offence punishable U/S 323 IPC?
- 3) Whether the accused persons in furtherance of their common intention threatened the informant and thereby committed an offence punishable U/S 506 IPC?

7. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

8. Before going to the details of the evidence let me point out that out of the six witnesses 3 (three) witnesses were declared hostile by the prosecution.
9. PW1 (Rinkumoni Baruah) is the informant. PW1 stated that two days prior to the incident her husband had left home after beating her and on the date of occurrence she was with her brother and sister at her rented house. According to the PW1 her father in law, mother in law, brother in law and Gautam Baruah and four other men whom she did not recognise came and knocked her door at about 8 pm and when she opened the door they started beating her. She stated that her mother in law started strangling her neck and her father in law assaulted her with fists and blows. She also stated that Mithun Barua and Gautam Barua were carrying a sword and a chain respectively and Mithun tried to hurt her with the sword. When she raised alarm her brother

Bibhash Baruah and sister Dipanjali Baruah came and rescued her. Neighbours gathered there and the attackers fled away in a maruti van and a car. She stated that her sister called police and later on she discovered that her ear rings were missing. After about half an hour police came and she was taken for medical check up about 3 days later. PW1 stated that she lodged F.I.R on the next day and police seized a pair of glasses which belonged to her mother-in-law and a handkerchief from her house.

10. During cross examination PW1 stated that police seized the handkerchief and glasses on the date of occurrence and took her signature two days later. She could not state the names of the other tenants near her rented house. She stated that before this incident she had lodged F.I.R against her husband, father-in-law, mother-in-law and brother-in-law and they were acquitted in that case. PW1 denied that her son Bibek Barua was present at the time of occurrence. She stated that he was at his tuition class but she does not know the name of the teacher.
11. PW2 Bibhash Barua deposed in a similar fashion and stated that Anadi Baruah, Sobha Baruah, Mithun Baruah Gautam Baruah and some other men entered into his sister's house and rebuked his sister for lodging case against her husband and assaulted her. When the raised alarm and people gathered the accused persons fled the place. During his cross examination PW1 also confirmed that before this incident his sister had initiated criminal proceedings against her in laws and husband.
12. PW3 (Murari Das), PW4 (Rekha Debnath) and PW5 (Fulkumari Gupta) all were declared hostile by the prosecution. These witnesses were duly cross examined by the prosecution but prosecution could not shake their credibility. In (2010)4GLR496, it was held by Hon'ble Gauhati High Court that , **once a witness turns hostile the credibility and truthfulness of the statements recorded under 161 Cr.PC becomes unreliable Courts cannot rely on such statements.** I find no reason to not

believe the witnesses declared hostile by the prosecution. Their credibility could not be impeached by the prosecution.

13. The Investigating Police Officer was examined by the prosecution. According to the I.O he seized the spectacles and handkerchief on 12/12/2010 whereas PW1 stated that police seized the articles from her on the day following the date of occurrence. Again there are a number of discrepancies between the contents of the ejahar and the statement of the PW1 during trial. It was written in the ejahar that the informant i.e. PW1 made a phone call to her sister Dipanjali Barua when the attackers assaulted her but in her statement during trial she stated that her brother Bibhash Barua and sister Dipanjali Barua were with her at the time of occurrence and her sister called police. These discrepancies render the prosecution case a weak one. The evidence of the PW1 seems to be full of exaggerations and embellishments. Moreover the independent witnesses did not support the prosecution case. PW1 and PW2 are related and interested witnesses. The evidence of PW1 and PW2 are not corroborated by any independent witnesses. Moreover there is history of litigation between the prosecutrix and the accused persons. Therefore in the absence of any corroborated evidence of independent witnesses except the PW1 and PW2 who are related and therefore highly interested witnesses it is hereby held that prosecution could not establish the guilt of the accused persons beyond all reasonable doubt. Hence accused persons are acquitted of the offences.

Order

The accused persons namely Anadi Barua, Sobha Barua, Mithun Barua and Gautam Barua are hereby acquitted of the offences and set at liberty forthwith. Bail Bonds are extended to a period of six months.

The seized articles be disposed of in due course of law. Given under the hand and seal of this court on this the 11th day of June 2013.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

LIST OF WITNESSES:

1. PW1: Rinkumoni Barua
2. PW2: Bibhash Barua
3. PW3: Murari Das
4. PW4: RekhaDebnath
5. PW5: Fulkumari Gupta
6. PW6: Suren Das

LIST OF WITNESSES:

1. Ext 1: ejahar
2. Ext 1(1): signature of the PW1
3. M. Ex 1: pair of glasses
4. M. Ex 2: handkerchief
5. Ext 3: Charge Sheet
6. Ext 3(1): Signature of the I.O