

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

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 731/2013

STATE OF ASSAM VERSUS LAKHINDAR THAKUR AND ANOTHER

U/S 324/506/34 IPC

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

FOR THE DEFENCE: MR.A.ALI, LEARNED ADVOCATE

EVIDENCE RECORDED ON: 24/7/2014, 25/9/2014, 22/10/2014

ARGUMENTS HEARD ON: 5.11.2014

JUDGMENT DELIVERED ON: 19.11.2014

JUDGMENT

1. On 25th September 2013, informant Smt. Bulu Mahato lodged an FIR with North Bongaigaon P.P. The contents of the F.I.R are that on 22nd September, 2013 Moniya Thakur and Lakhindar Thakur beat her eight year old daughter Sukla Mahato in her absence. When she learnt about this on returning home from work at about 4 p.m. she asked the accused persons why they had beaten her daughter and at this Moniya Thakur came out of her house and started to quarrel with her and began pushing her. Suddenly Lakhindar Thakur came with a dao in his hand and stabbed her on the head from behind and caused severe head injury. Neighbours took her to Bongaigaon Civil

Hospital. It is also written in the F.I.R that as she was undergoing treatment there was delay in lodging the F.I.R. The FIR was entered into the General Diary vide North Bongaigaon P.P G.D Entry No. 640 dated 25/9/2013 and was forwarded to Bongaigaon P.S for registering a case where Bongaigaon P.S Case No. 476/13 u/s 323/325/34 I.P.C was registered and investigation was carried on. During investigation a prima facie case was found to be well established under sections 324/354/34 IPC against the accused persons above named and accordingly Police submitted Charge Sheet U/S 324/354/34 IPC against the accused persons above named.

2. Cognizance had been taken under sections 324/354/34 IPC 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 I found prima facie materials under sections 324/354/34 IPC against the accused persons. Accordingly particulars of the offences were explained to the accused persons to which they pleaded not guilty and claimed to be tried.
5. Prosecution adduced the evidence of six witnesses. After closure of prosecution evidence the accused persons were examined under section 313 Cr.P.C in which they denied all the allegations levelled against them but declined to adduce 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 on 22.9.2013 at about 4 pm at New Bongaigaon, Chinese Market at 4 PM, in furtherance of their common intention voluntarily caused hurt to the informant by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow or to receive into the blood, or by means of any animal, and thereby committed an offence punishable under section 324 IPC?

2) Whether the accused persons on or about the same date, time and place, in furtherance of their common intention used criminal force to the informant by pushing her intending to outrage or knowing it to be likely that they will thereby outrage her modesty and thereby committed an offence punishable under section 354 IPC?

7. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

8. PW1 is the informant. She stated that the accused persons are her neighbours. That, about ten months ago one afternoon at about 4 p.m. when she returned from work her daughter Sukla Mahato told her that Moniya Thakur had beaten her. That, on hearing this, she went to ask Moniya why she had beaten her daughter and Moniya started quarrelling and raised hand at her. That, both of them got involved in a scuffle and then Moniya's husband Lakhindar came from behind and stabbed her with a bothi (a long curved knife used for cutting or stabbing). That, she became unconscious and regained her consciousness at the hospital where she stayed for about three days.

9. During her cross examination she stated that the accused persons often get drunk and quarrelled with her.

10. PW2 Mamoni Ghosh stated that both the informant and the accused persons are her neighbours. That, at the time of the occurrence at about 4 p.m. about ten months ago she was at her home when she went outside on hearing quarrel between Bulu Mahato and Moniya Thakur and saw Lakhindar Thakur stab Bulu Mahato on her head from behind. That, Bulu Mahato received injury on her head and her head bled. That, people called ambulance and she also went with Bulu Mahato to the hospital.

11. During cross examination she stated that she does not know the reason of the quarrel. She denied to the suggestion that she deposed falsely to implicate the accused persons.

12. PW3 Dr. Kochi Ali Ahmed stated that on 22/9/2013 at about 5.40 p.m. he examined Mrs. Bulu Mahato and found the following injuries:

- i. Incised wound of 3inch× ½ inch×1/4 inch

13. PW3 opined that the injury is simple in nature caused by sharp weapon and injury was fresh. He exhibited his report as Exhibit 1 and his signature as Exhibit 1(1). He further deposed that the patient was referred to him by Dr. C.R. Hazarika who examined the patient initially and found one cut wound on the back side of head. He exhibited the report as Exhibit 2 and the signature of Dr. C.R. Hazarika as Exhibit 2(1).
14. During cross examination he stated that such kind of injury cannot happen by falling on hard substance.
15. PW4 Manu Ray stated that the occurrence took place about a year ago. That, when he was at the shop he heard that Lakhindar had stabbed Bulu and that he knows that ambulance came to take Bulu to the hospital.
16. PW5 Sikha Dey stated that she knows the informant and the accused persons. That, at the time of the occurrence at about 4 p.m. about ten months ago she was at her home. That, she went outside on hearing commotion and saw that Moniya Thakur and Lakhindar Thakur were quarrelling with Bulu and that she saw Lakhindar stab Bulu Mahato on her head from behind with a bothi. That, her head bled and people called ambulance and took Bulu to the hospital.
17. During cross examination PW5 stated that the place of occurrence is near her house and that she did not see any quarrel between the informant and the accused persons prior to this incident.
18. PW6 Dulal Sarkar is the Investigating Officer who stated that on 25/9/2014 the informant Bulu Mahato lodged an ejahar at North Bongaigaon P.P. He entered it in the General Diary and forwarded the ejahar to Bongaigaon P.S. He further stated that he recorded the statement of the informant immediately and on the next day he visited the place of occurrence and drew the sketch map and recorded statements of witnesses. He collected the medical report of the informant as she had already taken treatment on 22/9/2013. He identified the signature of S.I. D. Sharma as Exhibit 3(1) who submitted the charge sheet i.e. Exhibit 3 against the accused Lakhindar Thakur and Moniya Thakur u/s 324/354/34 IPC.
19. The PW6 stated in his cross examination that when he reached the place of occurrence he met the witnesses there. He also stated that the distance between the houses of the complainant and the accused persons is about 50 metres.

20. I have carefully gone through the ejahar and the evidence of the prosecution witnesses. There is no discrepancy between the contents of the ejahar and the evidence of the PWs. PW1, PW2 and PW5 corroborated each other. Further, the evidence of the PW3 i.e. the Medical Officer lends support to the evidence of the PWs. PW3 even made it clear during cross examination that the kind of injury mentioned in his report cannot take place by falling on hard substance. I find no reason to not believe the PW1, PW2 and PW5 who are the prime witnesses in this case. After a thorough appreciation of the evidence on record I find that the evidence of PW1, PW2, PW3 and PW5 are cogent and trustworthy. Defence could not shake their credibility during cross examination.
21. The Investigating Officer has not seized the weapon of offence but the medical report clearly states that the injury was caused by sharp weapon. According to PW1, PW2 and PW5 the accused Lakhindar Thakur stabbed Bulu Mahato with a bothi which is a sharp knife used in household for cutting and stabbing. All these three witnesses have stated in unison that the weapon used was a bothi. The fact that the IO did not perform his part to attempt to seize the weapon of offence is not fatal to the prosecution case when three eye witnesses have testified regarding the nature of the weapon. Further, in my considered opinion, when there is sufficient just and cogent evidence including medical report regarding the nature of weapon used to inflict the injury, the defect of prosecution, more accurately, the lack of prudence of the IO should not benefit the accused.
22. During her evidence in chief PW1 Bulu Mahato has stated that when she went to ask accused Moniya why she and her husband had beaten her daughter, Moniya Thakur quarrelled with her and she got involved in a scuffle. It becomes clear that Bulu Mahato and Moniya Thakur both quarrelled with each other and therefore I am of the considered opinion that accused Moniya Thakur did not outrage the modesty of Bulu Mahato. Also, there is nothing on record to show that accused Lakhindar Thakur outraged the modesty of Bulu Mahato.
23. I find no material against the accused Moniya Thakur to convict her under section 324 IPC and section 354 IPC. Hence I acquit her and set at liberty. However there is sufficient material on record to convict the accused

Lakhindar Thakur under section 324 IPC. Thus I convict him under section 324 IPC.

24. I have considered the provisions of Probation of Offenders' Act, 1958. I do not find any ground to extend the provision of this beneficial legislation to the accused.

SENTENCE HEARING:

25. Heard the accused on the point of sentence. He pleaded for leniency on the ground that he has a family dependent on him. His plea is recorded in a separate sheet.
26. Considering all aspects accused Lakhindar Thakur is convicted of the offences under section 324 IPC and sentenced to undergo rigorous imprisonment for a period of three months. His Bail Bond stands cancelled.

Order

The accused Moniya Thakur is acquitted of the offence U/S 324/354 IPC and set at liberty. Accused Lakhindar Thakur is convicted of the offences under sections 324 IPC and sentenced to undergo rigorous imprisonment for a period of three months. His Bail Bond stands cancelled. Given under the hand and seal of this court on this the 19th day November, 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

APPENDIX:

Following are the lists of exhibits which were exhibited during the trial:

- 1) Exhibit 1,2: Medical Report
- 2) Exhibit 1(1): Signature of PW3, i.e. the M.O

- 3) Exhibit 2(1): Signature of Dr. C.R. Hazarika
- 4) Exhibit 3: Charge Sheet
- 5) Exhibit 3(1): Signature of S.I. D. Sharma

LIST OF WITNESSES:

1. PW1: Bulu Mahato
2. PW2: Mamoni Ghosh
3. PW3: Dr. Kochir Ali Ahmed
4. PW4: Manu Ray
5. PW5: Sikha Dey
6. PW6: Dulal Sarkar