

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 630/2010

STATE OF ASSAM VERSUS RAHIM BASHAH AND OTHERS

U/S 509/354/323/34 I.P.C

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

FOR THE DEFENSE: MR. P.K.DAS, LEARNED ADVOCATE

EVIDENCE RECORDED ON: 25/4/2012, 15/5/2012, 31//8/2012

ARGUMENTS HEARD ON: 5.9.2014

JUDGMENT DELIVERED ON: 5.9.2014

JUDGMENT

1. The facts and circumstances leading to this case as stated by the prosecution are briefly discussed here. On 23/9/2013, an ejahar was lodged with North Bongaigaon P.P by Msst. Khabiron Khatun, D/o Md. Khaleque Seikh of Bhaulaguri, alleging that on the same day at about 1 pm when she was going to the shop, Rahim Badshah, Burjat Ali and Batal Ali with intention to outrage her modesty made obscene gestures to her and Rahim Badshah caught hold of her hand and tore her clothes and Burjat Ali and Batal Ali assisted Rahim Badshah in this. When she raised alarm Md. Nabser Ali and Md. Weser Ali came forward but the above named accused persons assaulted them. The ejahar was received at North Bongaigaon P.P vide General Diary entry No. 464 dated 23.9.2010 and forwarded to Bongaigaon P.S for registering a case which was received and registered as Bongaigaon P.S Case No. 453/2010 u/s 509/376/511/34 I.P.C and investigation was carried

on. During investigation a prima facie case was found to be well established under sections 509/354/323/34 I.P.C against accused Rahim Badshah, Burjat Ali and Batal Ali and accordingly police submitted charge sheet against them.

2. Cognizance had been taken under sections 509/354/323/34 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 509/354/323/354/34 I.P.C having been found to be well established against the accused persons, the particulars of the offences U/Ss 509/354/323/354/34 I.P.C 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 and exhibited documents. The accused Burjat Ali and Rahim Badshah remained absent without steps for several months. Warrants of arrest were issued against them and on the basis of the report of W/A Proclamation and Attachment order was issued against them. But the accused Batal Ali was in attendance and so the case is split up and the accused is examined U/s 313 Cr.P.C. The accused person Batal Ali denied all the allegations levelled against him 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 person on 23/9/2010 at about 1 pm, intending to insult the modesty of the informant, uttered any word, made any sound or gesture or exhibited any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman and thereby committed an offence punishable u/s 509 IPC?
- 2) Whether the accused persons on the same date, time and place assaulted or used criminal force to the informant, intending to outrage or knowing it to be likely that he will thereby outrage her modesty and thereby committed an offence punishable under section 354 IPC?
- 3) Whether the accused persons on the same date, time and place, voluntarily caused injury to the informant and thereby committed an offence punishable U/S 323 IPC?

DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

7. PW1 Khabiran Khatun stated that at about 10.30 am on the date of occurrence she went to the grocery shop to buy puffed rice. That, accused Rahim Badshah was waiting on the road. That, Rahim Badshah caught hold of her hand and tried to take her to his home. That, Rahim Badshah touched her breast and when Junu Begum came on hearing her alarm the accused went away. That, she told about what happened to her brother at home and when her brother Nabser Ali went to ask about the occurrence accused Rahim Badshah, Burjat Ali and Batal Ali assaulted him. PW1 exhibited the Ejahar as Exhibit 1 and her signature as Exhibit 1(1).

8. During cross examination PW1 stated that her brother has previous enmity with Rahim Badshah.
9. PW2 Nabser Ali stated in his evidence that the informant is his sister. That, at about 1 pm on the date of occurrence he was at home when some small children informed him that Rahim Badshah is dragging his sister on the road. At this he went to meet the guardian of Rahim Badshah i.e. Khalil Ali with his brother Kobsher Ali. Then the accused Rahim Badshah, Batal Ali and Burjat Ali assaulted them.
10. During cross examination PW2 stated that he has no enmity with Rahim Badshah.
11. PW3 Moinullah Seikh stated in his evidence in chief that he does not know anything about the occurrence.
12. PW4 Junu Bibi stated that at about 1 pm on the date of occurrence when Khabiran Khatun was going home after buying puffed rice accused Rahim Badshah caught hold of her hand and tried to drag her. But during cross examination she stated that she did not see anything with her own eyes. She also stated that she saw Kobsher Ali assault Rahim Badshah and that Batal Ali and Burjat Ali stopped the quarrel.
13. PW5 Prabin Ray stated that he heard that when Khabiran Khatun was going home from the shop accused Rahim Badshah dragged her. During cross examination he stated that he has not seen anything.
14. PW6 Dr Meenakshi Kalita examined Nabser Ali aged 21 years old on 23/9/2010 at Civil Hospital and found the following injuries:
 - i. Mild tenderness present around right knee joint over patella and also over the base of right index finger.

PW6 stated that the victim was advised X-Ray of right knee joint and right index finger and was referred to General Surgeon. Regarding the nature of injury PW6 stated that as the X-Ray report is not received the nature of injury cannot be determined. She also examined Khabiran Khatun on the same date and found no external injury on her body.

PW6 examined Khabser Ali on the same date and found the following injuries:

i. Tender swelling of around 2 cm in diameter at the base of right thumb.

ii. Restriction of movement of right thumb present. Patient was advised X-Ray of right hand APN Lateral view. She stated that patient was referred to general surgeon and that nature of injury cannot be determined as X-Ray report not found.

PW6 exhibited the reports as Exhibits 2, 3 and 4 and her signatures as Exhibits 2(1), 3(1) and 4(1).

15. From the evidence it is seen that the accused person Batal Ali did not insult the modesty of the informant as there is no evidence against accused Batal Ali that he intending to insult the modesty of the informant, uttered any word, made any sound or gesture or exhibited any object intending that such word or sound shall be heard, by the informant or that such gesture or object shall be seen by her.

16. There is no evidence against accused Batal Ali that he assaulted or used criminal force to the informant, intending to outrage or knowing it to be likely that he will thereby outrage her modesty.

17. PW1 stated in her evidence that the occurrence took place at 10.30 am while PW2 stated that the

occurrence took place at 1 pm. According to PW1 she informed her brother at home but according to PW2 he heard about the incident from some small children. According to PW4 Junu Bibi who is an eye witness accused Batal Ali stopped the quarrel. Again PW1 stated in her cross examination that her brother Nabser Ali had previous enmity with accused Rahim Badshah. Therefore I am of the considered opinion that it would be not safe to rely on the evidence of PW1 and PW2.

18. The Hon'ble Supreme Court of India in **AIR 2007 SC 31 (Avtar Singh versus State of Punjab** has ruled that **"where prosecution case rests on the evidences of eye witnesses who were inimically disposed towards the accused, the rule of caution must strictly be applied"**. PW1 and PW2 are related witnesses and admittedly there is enmity between the accused persons and their family. Hence care should be taken while considering their evidences. Therefore in my considered opinion the accused must be given the benefit of doubt. Hence I find that the accused person Batal Ali is not guilty.

Order

The accused person namely Batal Ali is hereby acquitted of the offences. Bail Bond is extended to a period of six months. Given under the hand and seal of this court on this the 5th day of September 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

LIST OF WITNESSES:

- 1.PW1: Khabiran Khatun
- 2.PW2: Nabser Ali
- 3.PW3: Moinullah Seikh
- 4.PW4: Junu Bibi
- 5.PW5: Prabin Roy
- 6.PW6: Dr. Meenakshi Kalita

LIST OF EXHIBITS:

- 1.Exhibit 1: Ejahar
- 2.Exhibit 1(1): Signature of PW1
- 3.Exhibit 2, 3, 4: Medical Report
4. Exhibit 2(1), 3(1) 4(1): Signature of PW6