

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE  
(S), BONGAIGAON**

**PRESENT: S. HANDIQUE, AJS**

**G.R. 339/13  
(U/S 448/323/427/34 IPC)**

**State**

**v.**

**Jiban Mandal**

For prosecution: Mr. S.K. Nath

For defence : Mr. P. Baidya

Evidence recorded on: 25-9-14

Accused examined u/s 313 Cr. P.C on: 14-10-14

Arguments heard on: 28-10-14

Judgment delivered on: 11-11-14

**JUDGMENT**

1. The prosecution story is that Smti Archana Roy, w/o Sri Sanjay Roy, r/o Bhakrivitha under Bongaigaon P.S. lodged an FIR against Jiban Mandal, his two sons Deep and Mithu and his mother on 5-5-13. The informant alleged that the accused were her tenants and were shifting their goods from her house on 5-5-13. She alleges that while the accused were shifting the goods, accused named Jiban Mandal scolded her in obscene words and when she replied him in appropriate words, he along with the other accused came inside her house and assaulted her and pulled her by hair. She further alleged that her husband was also assaulted when he resisted the accused. According to her, the neighbours came and rescued them. She further alleged that the accused pelted stones at their house and broke the glass of the window and damaged the doors of the house. The FIR was registered as Bongaigaon P.S. Case no. 217/13 and after investigation police filed charge sheet against Jiban Mandal and Deep Mandal u/s 447/323/294/34 IPC.
2. The Id. CJM, Bongaigaon took cognizance of the case and transferred it to this court. After receiving the case record, the accused were summoned. However, Deep Mandal was declared to be a juvenile and his case was split up and the separate case record was forwarded to the Juvenile Justice Board, Bongaigaon.
3. Accused Jiban Mandal was furnished with necessary copies u/s 207 Cr. P.C. The particulars of offence u/s 448/323/427 IPC were explained to the accused to which he pleaded not guilty and claimed trial.

4. During trial two witnesses were examined including the complainant and her husband. The investigating officer could not be examined as he expired. The accused was examined u/s 313 Cr. PC which is of total denial. Heard arguments from both the sides. The following points for determination have been framed.

#### **POINTS FOR DETERMINATION:**

1. *Whether the accused on 5-5-13 at 10 A.M. trespassed into the house of the complainant and thereby committed an offence punishable u/s 448 IPC?*
2. *Whether the accused on 5-5-13 at 10 A.M. voluntarily caused hurt to the complainant and thereby committed an offence punishable u/s 323 IPC?*
3. *Whether the accused on 5-5-13 at 10 A.M. voluntarily caused mischief by breaking the window glass and doors of the complainant and thereby committed an offence punishable u/s 427 IPC?*

#### **DISCUSSIONS, DECISIONS AND REASONS THEREOF:**

##### **DECISION ON POINT NO. 1 & 2:**

4. The complainant alleged in the FIR that the accused entered into her house and assaulted her and her husband. During trial the complainant as PW1 deposed that on 5-5-13 the accused Jiban was shifting from their tenanted house to another place. At about 10/10.30 A.M. she asked Deep Mandal, s/o Jiban Mandal to give her mobile back. At this Deep Mandal scolded her in bad language and Jiban came and assaulted her with a lathi. She stated that Jiban came inside her house and pulled her clothes and hair and also assaulted her husband. She exhibited her ejahar as Ext. 1. During cross examination she testified that none of the neighbours came at that time. She admitted that she called Deep as a thief while he was leaving their house. She denied that she assaulted Deep with lathi and scolded him. She also denied that while she was assaulting Deep, his father Jiban Mandal asked her as to why she was beating him and then she and her husband assaulted Jiban with wooden plank and dao. She testified that Jiban Mandal has also filed a case against them. She could not say if Jiban was taken to the hospital after the incident. She denied that she did not state before the police that she asked Deep Mandal to give her mobile so he scolded her in bad language. She also denied that she did not state before the police that Jiban pulled her clothes.
5. **PW2 Sanjay Roy** is the husband of the complainant. He deposed that Deep Mandal had stolen his mobile, so a 'bichar' was held and he was directed to pay compensation. But Deep Mandal again stole his mobile and so asked Jiban's family to leave the house. He stated that the villagers gave them one month to leave but they did not. Ultimately Jiban Mandal and his family shifted on 5-5-13. He stated that while Jiban and his family was shifting Deep scolded Archana (PW1) in foul language. Then Archana asked him as to why was he

- scolding. According to him, she was holding a lathi at that time. Thereafter, Jiban assaulted Archana with a lathi. So he went forward and caught Jiban, but Jiban threw him off and kept on beating Archana. He then dragged his wife inside his house. But Jiban hit him with a lathi. He stated that Jiban kept on assaulting Archana inside their kitchen and pulled off her clothes. Then he closed the door. He denied that he did not state before the police that Deep had stolen his mobile twice and so he was fined. He also denied that he did not state before the police that Deep was scolding his wife in foul language. He could not say if his wife called Deep as a thief and scolded him. He further denied that Jiban asked Archana as to why she was assaulting Deep and then his wife hit Jiban with a wooden plank causing cut injury on his head. He testified that none of the neighbours came and saw the incident. He denied that he did not state before the police that Jiban came inside his house and assaulted his wife and pulled her clothes.
6. Unfortunately the investigating officer could not be examined as he expired. So he could not be confronted with the contradictions brought out by the defence. However, if we compare the FIR and the testimony of PW1 and PW2 it is seen that there is much variance. The complainant (PW1) alleged in the FIR that it was Jiban Mandal who abused her in obscene language and when she replied him, Jiban Mandal came inside their house along with his two sons and mother and assaulted her. She alleged that the accused assaulted her husband too when he came inside. According to her, the neighbours arrived and resisted the accused and that is how they were saved. But during trial she stated a different story. She deposed that when she asked Deep Mandal to give back her mobile, he scolded her in foul language and the Jiban came and assaulted her with lathi. She however, admitted that she had called Deep as a thief when he was shifting. Her husband (PW2) has further improved upon the story by saying that Deep had stolen his mobile twice and village bichar was held and Deep was fined. He too stated that it was Deep Mandal who was scolding PW1 in foul language. He has testified that his wife was holding a lathi when she accosted Deep regarding this.
  7. As regards the allegation of criminal trespass into the house of the complainant we notice that the statements of PW1 and PW2 are contradictory. PW1 stated that the accused first assaulted her and then came inside their house and pulled her clothes and hair and assaulted her husband. But PW2 stated that he rushed towards Archana when the accused assaulted her and caught the accused. At this the accused threw him off. He then took his wife inside. Jiban assaulted him with a lathi and thereafter came inside their kitchen and kept on assaulting his wife. The FIR mentions that both the husband and wife got injured. But there is medical report of PW1 only. Although the medical officer has not been examined but the medical report shows that there were only abrasions on her right arm and shoulder joint.
  8. Admittedly, there is a cross case against them filed by the accused relating to the same incident. The accused during his examination u/s 313 Cr. P.C. has stated that his family was shifting from the complainant's house on that day. According to him, while he was carrying away the goods, Archana came out with a lathi and assaulted Deep Mandal. As he asked her about it, Archana assaulted him on his

legs. When he caught the lathi, she came with a wooden plank. Thereafter, Sanjay caught him from behind and Archana hit him on his head with the wooden plank and Sanjay hit him with a dao on his head. He stated that Archana and Sanjay fled when people arrived. According to him, he was taken to the hospital and afterwards he filed the case. Though PW1 and PW2 have denied to have assaulted Jiban Mandal, but they have admitted that a case has been filed against them in this regard and it is pending before this court only. Both the cross cases are running simultaneously. In fact, PW2 has testified that his wife was holding a lathi at that time. PW1 testified that she had called Deep Mandal as a thief. There is no independent witness in this case. Both PW1 and PW2 have testified that none of the neighbours case, which is contrary to the statement made in the FIR. There were other tenants as well as revealed by PW1 and PW2. But it is surprising that none witnessed the alleged assault. The prosecution has been unable to prove who was the aggressor in this case. Whatever may be the merits of the other case, but it is seen that the prosecution has failed to bring home the charges u/s 448/323 IPC against the accused beyond reasonable doubt in the instant case. Both the points are decided in the negative.

### **DECISION ON POINT NO. 3:**

9. Another allegation against the accused is that he alongwith his son caused mischief in the house of the complainant. For that matter, let me refer to the FIR first. The FIR mentions that the accused pelted stones at their house and broke the glass of the window and damaged the doors. However, it appears that the witnesses are making contradictory statements. The FIR mentions that the accused pelted stones at her house and broke window glasses and doors. PW1 stated in her examination in chief that the accused came inside and broke her gas table, doors and window glass causing Rs 25,000/- damage to them. PW2 added further by saying that Jiban and Deep broke their gas table, bench, window glass, L-drop of a door. He also stated that the accused threw away his LPG regulator, lid of the pressure cooker causing about Rs 25,000 damage to him. The police did not seize any broken pieces as alleged, neither the FIR mentions the cost of the damage. There is no independent witness to corroborate their testimony. I therefore, find that the offence u/s 427 IPC is not proved beyond reasonable doubt. Point no. 3 is decided in the negative.

### **ORDER**

10. In view of the foregoing discussions, I hold the accused not guilty u/s 448/323/427 IPC and he is acquitted. He is set at liberty forthwith. Bail bond stands discharged as per law. Given under my hand and seal of the court on 11-11-14.