

**IN THE COURT OF SUB-DIVISIONAL MAGISTRATE (S),  
BONGAIGAON  
PRESENT: S. HANDIQUE, AJS**

**G.R. 364/14  
{u/s 341/294 IPC}**

**State**

**Vs.**

**Kanan Bala Ray**

For prosecution: Mr. S. K. Nath

For defence: Mr. N.I. Siddique

Evidence recorded on 21-11-14, 15-12-14, 22-12-14

Accused examined u/s 313 Cr. P.C. on 22-12-14

Arguments heard on 29-12-14

Judgement delivered on 31-12-14

**JUDGMENT**

1. The prosecution story as revealed from the FIR lodged by Manju Sarkar, w/o Bipul Sarkar is that the informant had come to the

Bongaigaon court on 30-4-14 to meet her husband who was in judicial custody. While she was coming out of the court complex, the accused named Kanan Bala Ray suddenly attacked her and abused her in filthy language. The informant further alleged that the accused dragged her by hair and pulled her clothes and took away Rs 700/- from her. According to her, the accused fled when her mother-in-law came forward. It is further alleged that the accused attacked her with a pre-plan as it was a holiday and there were no one in the court complex.

2. The FIR was registered as Bongaigaon P.S. Case no. 243/14 u/s 294/323/383 IPC and after investigation the charge sheet was filed against the accused u/s 294/341 IPC. The Id. CJM, Bongaigaon took cognizance of the case and transferred the case to this court.
3. After receiving the case record, the accused was summoned. As the accused did not respond to the summons andailable warrants, she was produced before the court on the strength of a nonailable warrant and remanded to judicial custody. In due course of time she was released on bail. The necessary copies were furnished to the accused as per provisions of section 207 Cr. P.C. The particulars of offence u/s 294/341 IPC were explained to the accused to which she pleaded not guilty and claimed trial.
4. During trial three witnesses were examined including the investigating officer. The accused was examined u/s 313 Cr. P.C 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 30-4-14 at about 3 P.M. wrongfully restrained the complainant outside the Bongaigaon Judicial Court Complex and thereby committed an offence punishable u/s 341 IPC?*
2. *Whether accused on 30-4-14 at about 3 P.M. abused the complainant in obscene words in public and thereby committed an offence punishable u/s 294 IPC?*

**DISCUSSIONS, DECISIONS, REASONS THEREOF:**

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

5. Both the points are taken up together for convenience of discussion. The complainant has alleged that the accused attacked her on the road and abused her in filthy language. During trial complainant Manju Sarkar deposed as PW1 that she had come to meet her husband in the court on 30-4-14 who was in judicial custody. She deposed that the accused pulled her sari from behind, and also pulled her hair and snatched away her cash. She stated that her mother-in-law who was with her rescued her from the clutches of the accused. According to her, there was no one on the road as Bongaigaon was Bandh on that day. She stated that the accused abused her in obscene words and called her a “Randy” ( prostitute) and alleged that she sleeps with the policemen. She exhibited her FIR as Ext. 1.
6. During cross examination she testified that her husband has some dispute with the accused and he was in jail in connection with the case filed by the accused. She testified that the FIR was lodged on 3-5-14. She denied that she did not state before the police that the accused snatched away her cash and that it was Bandh on that day.

She testified that the family members of the other jail inmates were present. She denied that the accused did not abuse her in filthy language and that she has lodged the case out of grudge.

7. **PW2 Sanaka Sarkar** is the mother-in-law of the complainant. She too deposed that she and her daughter-in-law were coming back after meeting her son who was in judicial custody. She alleged that the accused restrained her daughter-in-law and dragged her hair. She stated that when she intervened, the accused shoved her. According to her, few people on the road resisted the accused and asked her not to use abusive words.
8. During cross examination this witness could not say if her son was in jail in connection with the case lodged by the accused. She could not say if the security personnel of the court complex were present at that time or not.
9. **PW3 Jagat Sutradhar** is the investigating officer in this case. He stated that he took charge of the investigation as the erstwhile I/O got transferred. He testified that he visited the place of occurrence, interrogated the witnesses. He exhibited the charge sheet as Ext. 2 and the sketch map as Ext. 3. He stated that he did not examine the policemen who were on duty on that particular day. According to him, there is nothing in the case diary suggesting that it was Bandh on that day. He stated that he called the complainant to the place of occurrence and interrogated him. He did not get any other witness apart from the complainant and her mother-in-law.
10. The Id. Defence counsel vehemently argued that the evidence of PW1 and PW2 are contradictory and not reliable. He drew attention of the court that the both the witnesses are related and interested witnesses and the case is motivated by malice. It was

also argued that there was inordinate delay in lodging the case which is not satisfactorily explained.

11. I have carefully perused the evidence of both PW1 and PW2 and the contradictions elicited by the defence side in their testimony. First of all, the informant (PW1) has deviated from her statements made in the FIR (Ext. 1) and as well as before the police. In her FIR she stated that the accused suddenly abused her in obscene language and came charging towards her and dragged her hair and clothes. She had alleged in the FIR that the accused snatched away Rs 700/- from her. But during trial she stated that the accused pulled her saree from behind as soon as she came out of the court complex. She alleged that the accused snatched away Rs 500/- from her. So, I find that these are vital contradictions. Furthermore, she seems to have improved upon her statement during trial. She had not disclosed to the police that the accused snatched away her cash, nor did she disclose to the I/O the exact obscene words uttered by the accused. PW3 (I/O) has confirmed that the PW1 did not divulge what obscene words were used by the accused. As such I have reservations to rely on her statements made during trial regarding utterance of obscene words by the accused. Moreover, PW2 did not corroborate PW1 in this respect. Thus, the offence u/s 294 IPC is not proved beyond reasonable doubt against the accused.

12. In her examination-in-chief PW1 stated that there were no one on the road as Bongaigaon was Bandh on that day. However, during cross examination she admitted that few family members of other inmates were also present that day.

13. Now if we compare her testimony with that of her mother-in-law (PW2) we find that they have contradicted each other. PW2 stated

that the accused wrongfully restrained PW1 and dragged her hair. She did not state that the accused pulled the clothes of PW1. PW2 has gone one step further by stating that the accused shoved her off when she moved forward. But PW1 herself has not stated that the accused shoved her mother-in-law. PW2 stated that there were two/three people on the road who had intervened and asked the accused not to use abusive words. She however could not say if the guards stationed at the court complex were present or not. But PW1 stated that there was no one on the road. It is thus seen that PW1 and PW2 have contradicted each other as to the presence of eye witnesses.

14. The I/O (PW3) has testified that he could not find any other witnesses. He did not even question the guards who were on duty that day. He testified that there is nothing in the case diary suggesting that it was Bandh on that day.

15. The alleged incident happened on 30-4-14. The FIR discloses that it was lodged on 3-5-14 though it was written on 1-5-14. This fact is further strengthened by the testimony of the I/O. The FIR mentions that the case was filed lately as there were no male person in the family and the writer could not be found. PW1 testified that she lodged the case only on 3-5-14. Admittedly, the husband of the informant was behind bars in connection with the case lodged by the accused. So the motive behind lodging of the FIR is suspicious. The delay in lodging the case does not rule out possibilities of manipulations and improvements in the prosecution story. The Hon'ble Supreme Court in *Dilawar Singh v. State of Delhi (2007) 12 SCC 641*, observed :

*"In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case."*

16. In view of the above law laid down by the hon'ble Apex Court, I hold that the delay is not satisfactorily explained in the present facts and circumstances of the case.
17. Moreover, I find that the PW2 is a related as well as interested witness. She is the mother-in-law of the complainant and her son was behind bars in connection with the case lodged by the accused. The Hon'ble Supreme Court in the case of ***Kartik Malhar V. State of Bihar, (1996) 1 SCC 614***, has held that a close witness who is a natural witness cannot be regarded as an interested witness. The term 'interested' postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason.
18. As the evidence reveals, the relation between the parties are not cordial. There is enmity between them. So it cannot be ruled out that the case has been initiated with the sole motive to get the

accused punished, somehow. The accused categorically stated during her examination u/s 313 Cr. P.C that she never met the complainant on that day. Her statement cannot be merely brushed aside because the burden lay on the prosecution to prove its case beyond reasonable doubt. However, I find that the prosecution has miserably failed in this regard. Hence, both the points are decided in the negative.

### **ORDER**

19. In view of the above discussions, I hold the accused not guilty u/s 341/294 IPC and she is acquitted. She is set at liberty forthwith. Bail bond stands discharged as per law. Given under the hand and seal of the court on 31-12-14.

**ANNEXURES**

**PROSECUTION WITNESSES**

PW1..MANJU SARKAR

PW2..SANAKA SARKAR

PW3..SI, JAGAT CH. SUTRADHAR

**DOCUMENTS**

EXT. 1..FIR

EXT. 2..CHARGE SHEET

EXT. 3..SKETCH MAP