

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

**G.R. 366/14**

**(u/s 447/323 IPC)**

**State**

**Vs.**

**Jupuri Begum @ Nur Bhanu**

For prosecution: Mr. S. K. Nath, A.P.P

For defence: Mr. P. Baidya

Evidence recorded on: 24-9-14, 16-10-14

Accused examined u/s 313 Cr. P.C on 21-10-14

Arguments heard on: 21-10-14

Judgment delivered on: 28-10-14

**JUDGMENT**

1. The prosecution story in brief is that Msstt. Sahar Bhanu, w/o Nurul Hussain, r/o Borpathar, New Bongaigaon lodged a complaint before the Id. CJM, Bongaigaon against Rina Khatun, Innus Ali, Majiran Nessa and Jupuri Begum on 4-10-13. The complainant alleged that there is a dispute going on between the parties regarding one plot of land. She further alleged that on 29-9-13 the accused came to her house and assaulted her brother, husband and therefore an FIR was lodged with the Bongaigaon P.S. But the accused have been threatening them with dire consequences since then. It is further alleged that accused Jupuri Begum and Rina Begum came to her house on 2-10-13 from the backside when her daughter Resmina was alone at home and assaulted her with lathis. As a result Resmina fell unconscious and the neighbours arrived hearing hue and cry. According to the complainant, the other accused were guarding her gate while Jupuri and Rina were assaulting her daughter. She alleged that the victim sustained injury on her ear, head and other parts of her body and her hearing power has been affected. It is further alleged that the accused tried to attack her daughter twice before taking advantage of their absence. The complainant also alleged that the accused have blocked the passage on their khass land in order to obstruct the movement of the complainant and her family.
2. The said complaint was forwarded to the Bongaigaon P.S. for investigation and it was registered as Bongaigaon P.S. Case no. 245/14 u/s 326/307/447/506/34 IPC. After investigation the charge sheet was filed against Jupuri Begum u/s 447/323/34 IPC. The Id.

CJM, Bongaigaon took cognizance of the case u/s 447/323/34 IPC against accused Jupuri Begum and transferred the case to this court. A separate file was forwarded to the JJB, Bongaigaon as against juvenile Rina Begum as disclosed from the charge sheet. After receiving the case record, the accused was summoned. The accused appeared and took bail. She was furnished with necessary copies u/s 207 Cr. P.C. The particulars of offence u/s 447/323 IPC were explained to the accused to which she pleaded not guilty and claimed trial.

3. During trial four witnesses were examined including the Investigating Officer (I/O). The accused was examined u/s 313 Cr. P.C which is of total denial. The accused declined to adduce defence evidence. Heard arguments from both the sides. The following points for determination have been framed in this case:

### **POINTS FOR DETERMINATION**

1. *Whether the accused voluntarily assaulted Resmina Begum on 2-10-13 in the evening and thereby committed an offence punishable u/s 323 IPC?*
2. *Whether the accused trespassed into the compound of the complainant on 2-10-13 in the evening hours and thereby committed an offence punishable u/s 447 IPC?*

### **DECISIONS AND REASONS THEREOF**

4. Both the points are taken up together for convenience of discussion. The allegation against the accused is that she entered into the compound of the complainant while she was away from home and assaulted her daughter causing injuries to the victim. Let me examine the evidence on record.
5. **PW1 Sahar Banu** is the complainant. She deposed that the incident occurred one year back while she was in her shop. According to her, she got an information that her daughter Resmina has been assaulted by someone. Thereafter her daughter told her that the accused hit her with bamboo stick while she was lighting lamps in the evening. She stated that her daughter fell unconscious and her sister-in-law Asma Khatun had to sprinkle water on her to bring back her consciousness. She exhibited the FIR as Ext. 1. During cross examination she stated that her other children were at their maternal uncle's house which is 4 houses away. According to her no neighbours were present at that time. She testified that she took her daughter to the hospital but did not find the doctor. She stated that the police interrogated her after 7 months of the incident. She stated that the police did not seize the bamboo stick. She testified that the accused has also lodged a case against them. She admitted that they have a dispute with the accused.
6. **PW2 Resmina Khatun** is the victim of this case. She is 10 years old. She deposed that the incident occurred 1 year back when she was lighting lamps in the evening. She stated that she was alone at that time. She stated that as she was about to leave for her maternal uncle's

- house, Jupuri Begum ( accused ) and her daughter Rina came. She alleged that Jupuri assaulted her with a lathi and Rina slapped her. She stated further that she lost her consciousness and when she regained her consciousness she saw her maternal uncle, aunt, brothers around her.
7. During cross examination she stated that there is a dispute going on between the parties. She testified that there is no electricity at her home and none of the neighbours came. She stated that none witnessed the assault. She stated that the accused assaulted her inside her house. She testified that the police did not ask her. She stated that the accused hit her with a lathi on her back and it was bleeding. She denied that the accused did not assault her and she has been tutored by her mother.
  8. **PW3 Asma Khatun** is the maternal aunt of the victim. She deposed that on the date of occurrence she head hue and cry at about 6/ 6.30 P.M and she rushed to the victim's house and saw that Resmina was lying unconscious. According to her, she sprinkled water on the victim and on regaining consciousness the victim told her that Jupuri and Rina assaulted her. During cross examination this witness testified that there is a disputed going on between the parties regarding a plot of land. She also testified that none of the neighbours were present at that time. From her testimony it appears her house is 4 houses away from the house of the victim. She denied that she did not state before the police that she was told about the incident by the victim.
  9. **PW4** is the investigating officer ASI Phoren Ch. Das. He deposed that he took the charge of the investigation on 3-5-14 on the basis of the FIR forwarded to the police station by the court. He visited the place of occurrence on that day. He stated that the victim had got her medical examination done herself. He stated that the accused surrendered before him on 20-5-14. According to him he filed the charge sheet against the present accused and forwarded the charge sheet against juvenile Rina Begum to the JJB, Bongaigaon. He exhibited the sketch map as Ext. 2. During cross examination he stated that the FIR was lodged on 4-10-13 and he received charge of the investigation on 3-5-14. He too testified that there is a civil dispute going on between the parties. He testified that PW3 did not tell him that the victim told her about the alleged incident.
  10. The accused has denied her involvement in toto during her examination u/s 313 Cr. P.C. After perusal of the testimony of the above prosecution witnesses, it appears that all the three non formal witnesses are related witnesses. There is no independent witness in this case. Although there are neighbours around place of occurrence/the house of the victim, but no one saw her in unconscious state expect her aunt whose house is 4 houses away. The other children of the complainant were in their maternal uncle's house which is 4 houses away, but they were also not present right after the alleged incident. 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.

11. Admittedly, there is a civil dispute going on between the parties and the other side has also lodged a case against the complainant. The witnesses are related witnesses and seemed to be interested witness in the present facts and circumstances of the case.
12. In the present case the victim is 10 years old. She stated that the accused assaulted her with a lathi on her back and it was bleeding. But PW1 and PW3 have not corroborated it. PW1 stated that she took the victim to the doctor but did not find the doctor. On the other hand the victim stated that she was taken to the doctor. In my view these are vital contradictions and fatal to the case.
13. As regards child witnesses the view of the hon'ble Supreme Court can be summarised as follows:

**In Shivasharanappa and Ors. Vs. State of Karnataka & Jagadevappa and Ors. Vs. State of Karnataka and Ors., [MANU/SC/0470/2013](#) (Equivalent Citation: AIR2013SC2144) the hon'ble Supreme Court discussed several case laws and held :**

*“Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, applies to a child witness who is competent and whose version is reliable.”*

In *Dattu Ramrao Sakhare and Ors. v. State of Maharashtra* [MANU/SC/1185/1997](#) : (1997) 5 SCC 341, while dealing with the reliability of witness who was ten years old, the Supreme Court opined that a child witness, if found competent to depose to the facts and reliable, such evidence could form the basis of conviction. The evidence of a child witness and the credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. Thereafter, the Court proceeded to lay down that there is no rule or practice that in every case the evidence of such a witness should be corroborated before a conviction can be allowed to stand but, as a rule of prudence, the court always finds it desirable to seek the

corroboration to such evidence from other dependable evidence on record.

Again in *Panchhi and Ors. v. State of U.P.* [MANU/SC/0530/1998](#) : (1998) 7 SCC 177, it has been held thus: -

*“Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law (vide Prakash v. State of M.P. [MANU/SC/0005/1993](#) : (1992) 4 SCC 225, Baby Kandayanathil v. State of Kerala [MANU/SC/0339/1993](#) : 1993 Supp (3) SCC 667, Raja Ram Yadav v. State of Bihar [MANU/SC/0422/1996](#) : (1996) 9 SCC 287 and Dattu Ramrao Sakhare v. State of Maharashtra (supra).”*

Similar view has been expressed in *State of U.P. v. Ashok Dixit and Anr.* [MANU/SC/0090/2000](#) : (2000) 3 SCC 70.

**14.** In the present case, we cannot ignore the fact that the victim is just 10 years old and prone to tutoring. Apparently, the relation between the parties is sour. Lack of independent and credible witnesses do cast shadows over the prosecution case.

**15.** The alleged incident happened on 2-10-13 but the complaint was filed in the court on 4-10-13. The police station is adjacent to the shop of the complainant, but she chose to lodge the case through the court. No satisfactory explanation has been given by the complainant for the delay in lodging the case and that too in the court. Although the medical officer who examined the victim on 3-10-13 is not examined as a witness, but the said report is on the record which shows there was pain and tenderness on the right ear. But the victim has alleged that she was assaulted on her back and there was blood oozing injury. The medical report is silent in this respect, neither the mother of the victim or her aunt suggested any such blood oozing injury on her back.

**16.** Considering all the above I find that the prosecution has failed to bring home the charge against the accused beyond reasonable doubt. Point no. 1 and 2 are decided in the negative.

### **ORDER**

**17.** In view of the above discussions, I hold the accused not guilty u/s 447/323 IPC and she is acquitted. She is set at liberty forthwith. Bail bond stands discharged. Given under the hand and seal of the court on 28-10-14.