

**GR 944/2016**  
**State Vs Ahamad Ali.**



DISTRICT: BONGAIGAON  
IN THE COURT OF MUNSIFF CUM JUDICIAL MAGISTRATE FIRST CLASS,  
BONGAIGAON

**G.R. CASE NO. 944/2016 UNDER SECTIONS 341/323/354**  
**IPC**

AHAMAD ALI,  
SON OF JOBBAR ALI  
RESIDENT OF VILLAGE: DANKINAMARI  
POLICE STATION & DISTRICT: BONGAIGAON, ASSAM

**-VERSUS-**

.....**ACCUSED PERSON**

STATE OF ASSAM –

.....**PROSECUTOR**

PRESENT: UTTAM CHETRI, MUNSIFF CUM JUDICIAL MAGISTRATE  
FIRST CLASS, BONGAIGAON

ADVOCATE FOR THE PROSECUTION:  
ADVOCATE FOR THE ACCUSED PERSON:  
CHARGE FRAMED ON:  
EVIDENCE RECORDED ON:

APP, S. MAZUMDAR  
ADV. M. ISLAM  
07.03.2017  
09.05.2017,  
08.06.2017,  
07.08.2017,  
01.09.2017,  
01.12.2017  
11.12.2017  
11.12.2017

ARGUMENT HEARD ON:  
JUDGMENT DELIVERED ON:

**JUDGMENT**

1. The prosecution case in a nutshell is that the informant Khatim Ali lodged an FIR with the North Bongaigaon PP on 22.09.2016 alleging inter alia that on the same day at about 12 PM,

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accused tried to dig a portion of the land situated on his boundary and when his wife Kamiran Begum tried to stop him, accused assaulted her with a shovel due to which she was severely injured.

2. On receipt of the FIR, the police registered Bongaigaon Police Station Case No. 596/16 under Section 326 IPC and conducted investigation into the matter. On completion of the investigation, the police submitted charge-sheet against the accused person namely Ahamad Ali under Sections 341/354/323 IPC.

3. The accused person entered his appearance in response to the process issued. Copies of the relevant documents were furnished to the accused person in accordance with Section 207 Criminal Procedure Code, 1973. Formal charges were, accordingly, framed under Sections 341/354/323 IPC and the same were read over and explained to the accused person to whom he pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined 9 (nine) witnesses and exhibited 3 (three) documents after which the prosecution evidence was closed. The statement defence of the accused person was, accordingly, recorded as per the mandate of Section 313 Criminal Procedure Code, 1973 wherein the accused denied the entire allegations made against him. Defence did not adduce any evidence.

5. Upon hearing both the parties and on perusal of the case record, the following points for determination have been formulated by this Court.

- i) Whether the accused person namely Ahamad Ali on or about the 22<sup>nd</sup> day of September, 2016 at about 12 PM wrongfully restrained the wife of the informant namely Kamiran Begum and, thereby, committed an offence punishable under Section 341 IPC?

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- ii) Whether the accused person namely Ahamad Ali on the same day and time and in the same place voluntarily caused hurt to the wife of the informant namely Kamiran Begum and, thereby, committed an offence punishable under Section 323 IPC?
- iii) Whether the accused person namely Ahamad Ali on the same day and time and in the same place assaulted or used criminal force on the wife of the informant namely Kamiran Begum intending to outrage or knowing it to be likely that he could thereby outrage her modesty and, thereby committed an offence punishable under Section 354 IPC

6. I have heard the learned counsel for both the parties and have gone through the evidence on record which is outlined below.

**EVIDENCE**

7. PW1 in his examination in chief had stated that he is the informant in the present case and he knows the accused person who is standing at the dock; that the incident occurred on 22.09.2016 at about 12:00 PM in the afternoon; that at the relevant time, when he was at Bongaigaon, Sahjahan Ali called him over the phone and told him that his wife was lying in the Lower Assam Hospital in an injured condition; that on hearing the news, he came to Lower Assam Hospital and came to know that accused had hit his wife Kamiran Begum with a spade; that after sometime, he lodged FIR against the accused person in respect of the aforesaid incident. P. Exhibit 1 is the 'ejahar' and P. Exhibit 1 (1) is his signature.

8. PW1 in his cross-examination had stated that he had not written the FIR; that he does not know what was written in the FIR; that he had not seen the incident; that he cannot say how the incident occurred; that the accused is his cousin. PW1 had denied the suggestion that accused had not assaulted his wife.

9. PW2 in her examination in chief had stated that she knows the accused person who is standing at the dock; that the informant is

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her husband; that the incident occurred on 22.09.2016; that on the day of the incident, accused was digging the land situated at their boundary and when she protested, accused hit her with a spade due to which she became senseless.

**10.** PW2 in her cross-examination had stated that the accused is her brother/cousin; that she and accused have a common boundary; that at the time of incident, Hazarat Ali, Tabiran, Fazlur and lots of people were present at the place of occurrence. PW2 had denied the suggestion that accused had not assaulted her. PW2 had further denied the suggestion that she got injury on her own when she tried to snatch the spade from the hands of the accused. PW2 also denied the suggestion that she had deposed falsely.

**11.** PW3 in his examination in chief had stated that he knows the informant and the accused person who is standing at the dock; that the incident occurred on 22.09.2016 at about 12 PM in the afternoon; that on the day of the incident when accused Ahmed Ali was digging soil in the boundary of Ahamad Ali and Khatim Ali, Kamiran Biwi stopped Ahmed Ali from digging the same on which Ahamad Ali hit Kamiran Biwi with a shovel due to which she was severely injured.

**12.** PW3 in his cross-examination had stated that Kamiran Biwi is his elder sister; that Ahmed Ali is his cousin. PW3 had denied the suggestion that he had stated before the police that Kamiran Biwi got injured when she tried to snatch the shovel from the hands of Ahmed Ali. PW3 had further denied the suggestion that he had deposed falsely. PW3 also denied the suggestion that the accused had not assaulted Kamiran Biwi. PW3 had denied the suggestion that a compromise was entered into between the accused and Kamiran Biwi and he had put his signature in the compromise agreement.

**13.** PW4 in his examination in chief had stated that that he knows the informant and the accused person who is standing at the dock; that he had heard that an altercation had taken place between the accused and complainant.

**14.** PW4 in his cross-examination had stated that he had not seen the incident.

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**15.** PW5 in her examination in chief had stated that that she knows both the accused and the informant; that she had heard that an altercation had taken place between the accused and informant.

**16.** PW5 in her cross-examination had stated that she had not seen the incident.

**17.** PW6 in her examination in chief had stated that she knows the informant and the accused person; that she had heard that an altercation had taken place between the informant and the accused.

**18.** PW6 in her cross-examination had stated that she had not seen the incident.

**19.** PW7 in his examination in chief had stated that he knows the informant and the accused person; that he had heard that an altercation had taken place between the accused and the informant.

**20.** PW7 in his cross-examination had stated that he had not seen the incident.

**21.** PW8 in his examination in chief had stated that on 22.09.2016, Khatim Ali lodged an FIR with the North Bongaigaon PP which was sent to Bongaigaon Police Station and the same was registered by O/C, Bongaigaon Dulal Kalita as Bongaigaon Police Station Case No. 596/16 under Sections 326/34 IPC and entrusted him to do preliminary investigation in the case; that on being so entrusted, he went to the place of occurrence on 22.09.2016, prepared the sketch map of the same and recorded the statement of the witnesses; that on 25.09.2016, he collected medical report of Kamiran Begum and submitted his report to I/C, Bongaigaon on 28.09.2016; that on 30.09.2016, Debojit Sarma submitted charge sheet against the accused Ahmed Ali under Section 341/354/323 IPC in the present case. P. Exhibit 2 is the charge sheet and P. Exhibit 2 (1) is the signature of Debojit Sarma.

**22.** PW8 in his cross-examination had stated that PW3 Hazrat Ali had stated in his 161 statement that Kamiran Biwi @ Begum got injured when she tried to snatch the spade from the hand of accused Ahamad Ali. PW8 had denied the suggestion that he had not properly investigated the present case.

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23. PW9 in his examination in chief had stated that on 22.09.2016, he examined Kamiran Begum, aged about 26 years, daughter of K. Ali, resident of Village: Dankinamari, Hapasara, PS & District: Bongaigaon; that the victim was brought with Reference Bongaigaon PS Case No. 596/16 under Section 326/34 IPC and was examined under MRD No. 361731; that the victim was accompanied by Kursed Ali; that on examination, he found soft tissue injury of the scalp and face (hematoma) measuring 3x2x2 cm and 2x2x2 cm; that the injury was simple in nature caused by blunt object. P. Exhibit 3 is the medical examination report and P. Exhibit 3 (1) is his signature. Defence declined to cross-examine PW9.

#### APPRECIATION OF EVIDENCE

24. The informant had alleged in his FIR that on 22.09.2016 at about 12 PM when the accused tried to dig a portion of the land situated on his boundary, his wife Kamiran Begum tried to stop him on which the accused assaulted her with a shovel due to which she was severely injured.

25. The prosecution had examined 9 (nine) witnesses to prove its case out of which PW8 and PW9 are Investigating Officer and Medical Officer respectively.

26. So far the offence under Section 323 IPC is concerned, PW1, PW4, PW5, PW6 and PW7 have deposed that they have heard about the incident from others and this part of their evidence can be discarded as hearsay.

27. Although PW2 (victim) had stated in her examination in chief **that on the day of the incident, accused was digging the land situated at their boundary and when she protested, accused hit her with a spade due to which she became senseless** but PW3 who was allegedly present at the place of occurrence and had witnessed the incident had stated the contrary in his 161 statement. As evident from the cross examination of PW8 (Investigating Officer), PW3 in his 161 statement had stated that

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**Kamiran Biwi @ Begum got injured when she tried to snatch the spade from the hand of accused Ahmed Ali.**

28. Likewise, although PW3 had stated in his examination in chief that **on the day of the incident when accused Ahmed Ali was digging soil in the boundary of Ahamad Ali and Khatim Ali, Kamiran Biwi stopped Ahmed Ali from digging the same on which Ahamad Ali hit Kamiran Biwi with a shovel due to which she was severely injured** but the defence had contradicted the aforesaid statement of PW3 by examining the Investigating Officer who had stated in his cross examination that **PW3, Hazrat Ali had stated in his 161 statement that Kamiran Biwi @ Begum got injured when she tried to snatch the spade from the hand of accused Ahamad Ali.**

29. Thus as discussed above, the material contradiction between the evidence of PW2 and the 161 statement of PW3 on the one hand and the evidence of PW3 in his examination in chief and his 161 statement regarding the circumstances in which PW2 (victim) was injured creates reasonable doubt on the prosecution story, and the accused deserves benefit of doubt in this respect.

30. As regards the offence under Section 341 IPC and 354 IPC are concerned, there are no materials either in the FIR or the evidence of the prosecution witnesses indicting the accused of having committed the offence under Section 341 IPC and 354 IPC and the accused deserves benefit of doubt in this respect also.

31. Situated thus, I am inclined to pronounce the accused clear of all imputations. Accordingly it is held that the prosecution has failed to bring home the charges under sections 341/323/354 IPC against the accused. I find no ground for holding the accused guilty of committing the alleged offences. As such, all the points of determination are answered in the negative in favour of the accused.

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**ORDER**

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused Ahamad Ali had committed the offences punishable under Sections 341/323/354 IPC. As such, the accused is acquitted of the charges under sections 341/323/354 IPC.

The bail bond of the accused and his surety shall remain in force for a period of six months from today in compliance with Sec. 437-A, Criminal Procedure Code.

Case is disposed of on contest.

Given under my hand and the seal of this court on this 11<sup>th</sup> day of December, 2017 at Bongaigaon.

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(Uttam Chetri)  
Munsiff cum Judicial  
Magistrate First Class,  
Bongaigaon

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**APPENDIX**

**PROSECUTION EXHIBITS:**

- P. Exhibit 1: FIR dated 22.09.2016  
P. Exhibit 2: Chargesheet dated 30.09.2016  
P. Exhibit 3: Medical Examination Report 22.09.2016

**DEFENCE EXHIBITS:**

NONE

**PROSECUTION WITNESSES:**

1. PW1- Khatim Ali
2. PW2- Kamiran Nessa
3. PW3- Hazrat Ali
4. PW4- Fazlul Rahman
5. PW5- Akiran Bewa
6. PW6- Tabiran Nessa
7. PW7- Sahjahan Ali
8. PW8- ASI Abdul Samad
9. PW9- Dr. A. Tham

**DEFENCE WITNESS:**

NONE



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