

GR 280/2016
State Vs Dulal Biswas & Ors.



DISTRICT: BONGAIGAON.
IN THE COURT OF MUNSIFF CUM JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON
G.R. CASE NO. 280/2016 UNDER SECTIONS 447/323/506/34 IPC.

1. DULAL BISWAS,
SON OF LATE RAM KRISHNA BISWAS
2. MADHABI BISWAS
WIFE OF DULAL BISWAS
3. ELA BISWAS
WIFE OF RAHINI BISWAS

ALL RESIDENTS OF NO. 1 DHUPURI, POLICE STATION:
MANIKPUR, DISTRICT: BONGAIGAON, ASSAM

.....**ACCUSED PERSONS**

-VERSUS-

STATE OF ASSAM –

.....**PROSECUTOR**

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

ADVOCATE FOR THE PROSECUTION:	APP, S. MAZUMDAR
ADVOCATE FOR THE ACCUSED PERSONS:	ADV. P.BAIDYA
OFFENCE EXPLAINED ON:	10.04.2017
EVIDENCE RECORDED ON:	02.05.2017, 29.05.2017, 08.11.2017
ARGUMENT HEARD ON:	16.11.2017
JUDGMENT DELIVERED ON:	18.11.2017

JUDGMENT

1. The prosecution case in a nutshell is that the informant Laksi Biswas lodged an FIR with the Manikpur P.S. stating inter alia that on 27.03.2016 at about 10:00 AM in the morning a verbal altercation took place between the accused persons and herself on which the accused persons illegally entered into her house and assaulted her due to which she received injuries on her body. The informant further alleged in her FIR that the accused persons also threatened to assault her in future.

2. On receipt of the FIR, the police registered Manikpur Police Station Case No. 69/2016 under Sections 447/323/506/34 IPC and

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conducted investigation into the matter. On completion of the investigation, the police submitted charge sheet against the accused persons under Sections 447/323/506/34 IPC.

3. The accused persons entered their appearance in response to the process issued. Copies of the relevant documents were furnished to the accused persons in accordance with Section 207 Criminal Procedure Code, 1973. Offences under Sections 447/323/506/34 IPC were read over and explained to the accused persons to whom they pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined 6 (six) witnesses and exhibited 2 (two) documents after which the prosecution evidence was closed. The statement defence of the accused persons was, accordingly, recorded in separate sheets of paper as mandated by Section 313 Criminal Procedure Code, 1973 wherein the accused persons denied the entire allegation made against them. 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 persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas in furtherance of their common intention committed criminal trespass by entering into or upon the property of the informant which was in her possession with intent to commit an offence or to intimidate or insult or annoy the informant and, thereby, committed an offence punishable under Section 447 IPC read with Section 34 IPC?

ii) Whether the accused persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas in furtherance of their common intention on the same day and time and in the same place voluntarily caused hurt to the informant and, thereby, committed an offence punishable under Section 323 IPC read with Section 34 IPC?

iii) Whether the accused persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas in furtherance of their common intention on the same day and time and in the same place committed criminal intimidation by threatening the informant with injury to her person with

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intent to cause alarm to the informant and, thereby, committed an offence punishable under Section 506 IPC read with Section 34 IPC?

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

EVIDENCE

7. PW1 in her examination in chief had stated that she is the informant in the present case and she knows the accused persons who are standing at the dock; that the incident occurred on 27.03.2016 at about 10:30 AM in the morning; that on the day of the incident a verbal altercation took place between the accused persons and herself in respect of her child on which the accused persons illegally entered into her premises and assaulted her with a broomstick due to which she received injuries in her hand; that P.Exhibit 1 is the FIR and P.Exhibit 1 (1) is her signature.

8. PW1 in her cross-examination had stated that accused persons are her relatives; that the accused persons and she live in the same compound; that on the day of the incident 'Baishnav Seva' was organized in her house. PW1 had denied the suggestion that the accused persons had not assaulted her.

9. PW2 in her examination in chief had stated that she knows the accused persons who are standing at the dock and the informant; that the incident occurred on 27.03.2016 at about 10:30 AM in the morning; that on the day of the incident she saw informant Lakhi Biswas being assaulted by all the accused persons; that after the incident informant was taken to Manikpur PS and from there to the hospital.

10. PW2 in her cross-examination had stated that on the day of the incident a 'Baishnav Seva' organized in the house of the victim; that she does not go to the house of the accused persons; that the accused persons and the informant live in the same compound; that she was not invited to 'Baishnav Seva'. PW2 had denied the suggestion that the accused persons had not assaulted the informant.

11. PW3 in her examination in chief had stated that she knows the informant and the accused persons who are standing at the dock; that the incident occurred on 27.03.2016 at about 10:30 AM; that on the day of the incident all the accused persons had assaulted the informant due to which she was injured; that hearing hue and cry

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when she reached the place of occurrence, she saw accused persons assaulting the informant; that although she asked the accused persons to stop assaulting the informant but they did not listened to her requests; that she later on took the informant to hospital for her treatment.

12. PW3 in her cross-examination had stated that the informant is her sister-in-law; that on the day of the incident a 'Baishnav Seva' was organized at the house of the informant. PW3 had denied the suggestion that she had gone to Goalpara on the day of the incident. PW3 had further stated in her cross-examination that the accused persons and informant live in the same compound; that she cannot say whether any Baishnav were present at the place of occurrence at the time of occurrence; that she cannot say whether any Baishnav and the mother-in-law of the informant came to the place of occurrence at the time of occurrence; that the informant presently lives separately in a rented house. PW3 had denied the suggestion that she had deposed falsely.

13. PW4 in her examination in chief had stated that on 27.03.2016 at about 4:25 PM, she examined Lakhi Biswas, wife of Amitab Biswas, aged about 28 years, resident of Patiladaha, P.S. Manikpur, District: Bongaigaon on ML Case No. 35/2016 which was escorted by WHG Kabita Rabha; that on examination she did not find any injury on the body of the victim. P. Exhibit 2 is the Medical examination report and P. Exhibit 2 (1) is her signature. Defence declined to cross-examine PW4.

14. PW5 in her examination in chief had stated that she knows the informant and the accused persons who are standing at the dock; that the incident occurred on 27.03.2016 at about 10:00 to 10:30 AM; that on the day of the incident she was present at the house of Parbati Biswas; that at about 10:00 to 10:30 AM, hearing hue and cry when she came out of the house of Parbati Biswas, she saw Dulal Biswas, Madhabi Biswas and Ilabala Biswas assaulting Lakhi Biswas with a lathi, khukuri and broomstick due to which Lakhi Biswas was severely injured.

15. PW5 in her cross-examination had stated that her house is at a distance of about 1 (one) kilometer from the house of Lakhi Biswas; that the sister of Lakhi Biswas namely Parbati Biswas is her colleague in Anganwadi; that she did not see any 'puja' on the house of Lakhi Biswas; that she had not told the police that she was present in the house of Parbati Biswas at the time of the incident; that she

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had not seen any injury on the body of the victim. PW5 had denied the suggestion that she had deposed falsely.

16. PW6 in his examination in chief had stated that on 27.03.2016, informant Lakhi Biswas lodged an FIR before O/C, Manikpur which was registered as Manikpur PS Case No. 69/2016 under Sections 448/323/506/34 IPC and the same was entrusted to him for investigation; that on being so entrusted, he went to the place of occurrence, prepared the sketch map of the same and recorded the statement of all the witnesses; that on 31.03.2016, on completion of the investigation he submitted charge sheet against the accused persons Dulal Biswas, Madhabi Biswas and Ila Biswas under Section 444/323/506/34 IPC. P. Exhibit 2 is the charge sheet and P. Exhibit 2 (1) is his signature.

17. PW6 in his cross-examination had stated that he had not mentioned the time when he went to the place of occurrence in his CD; that he had not recorded the statement of Dulal Biswas, Kajal Biswas and Santana Biswas whose name is shown in the sketch map; that he had record the statement of Kaishwari Das on 28.03.2016; that he had recorded the statement of Parbati Biswas on 28.03.2016; that he had not recovered any object from the place of occurrence; that all the witnesses are related to the informant. PW6 had denied the suggestion that he had not investigated the case properly.

APPRECIATION OF EVIDENCE

18. The informant had alleged in her FIR that on 27.03.2016 at about 10:00 AM in the morning, a verbal altercation ensued between the accused and her on which the accused persons illegally entered into her house and assaulted her due to which she received injuries in her body. The informant further alleged in her FIR that the accused persons also threatened to assault her in future.

19. I shall begin by assessing the evidence on record with reference to the offence of criminal trespass allegedly committed by the accused persons. Section 441 IPC defines criminal trespass as follows:

'Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property

Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

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Is said to commit criminal trespass'

20. The above definition clearly lays down to indict a person for an offence of criminal trespass there should be an entry of that person into the property which is in possession of another and it must cause annoyance or insult to the person who is in possession of the said property.

21. In the present case although the informant had alleged in her FIR and in her examination in chief that the accused persons illegally entered into her premises and assaulted her but none of the prosecution witnesses including PW2, PW3 and PW5 who were allegedly present at the place of occurrence at the time of occurrence had corroborated PW1 (informant) in this respect. Had the accused persons illegally trespassed into the premises of the informant, PW2, PW3 and PW5 would have surely deposed about the same in their evidence.

22. Thus non-corroboration of the allegations of the informant in respect of the alleged trespass by PW2, PW3 and PW5 who were allegedly present at the place of occurrence creates doubt on the prosecution story as regards the alleged trespass and the accused persons deserve to be given benefit of doubt in respect.

23. So far as the offence under Section 506 IPC is concerned, none of the prosecution witnesses including PW2, PW3 and PW5 who were allegedly present at the scene of crime had corroborated the allegations of the informant that the accused persons threatened to assault the informant in future so as to cause alarm to the informant and the accused persons deserve to be given benefit of doubt in this respect also.

24. Moving on to the allegations of assault and consequent injury on the informant, PW1 (informant/victim) had reiterated in her examination in chief the allegations made by her in her FIR in respect of the alleged assault on her by the accused persons. Although cross-examined, her veracity could not be impeached by the defence and her evidence in respect of the alleged assault has remained intact.

25. PW2, PW3 and PW5 who were allegedly present at the scene of crime have corroborated the allegations pertaining to assault on the informant by the accused persons. Although cross-examined, their veracity could not be impeached by the defence and their

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testimony in respect of the assault on the informant by the accused persons has remained intact.

26. The learned counsel for the defence during the course of the argument has submitted that PW2, PW3 and PW5 being related to the informant, their testimony is of no value and, as such, their evidence is to be discarded.

27. In *Sansab Ali Mondal and Anr v State of Assam* (2009 (3) GLJ 624) it was observed by the Hon'ble Gauhati High Court that **"It is a settled position of law that the evidence of a witness cannot be discarded merely on the ground that he is a related witness, if otherwise his testimony is found to be credible. As because the witness is a related witness, it does not mean that his testimony is to be rejected in totality. The Court, however, is to be more careful in the matter of scrutiny of the evidence of the related and interested witnesses and if on scrutiny, such witness is found to be trustworthy, the same cannot be discarded merely on the ground that the witness is a related or interested witness. The Court normally, in such circumstances, would look for corroboration by any independent witness."**

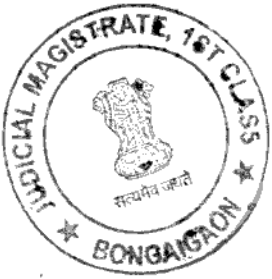
28. In the present case, the testimony of PW1 and the allegations set forth in the FIR in respect of the alleged assault on her by the accused persons has not been corroborated by PW2, PW3 and PW5 and their testimony have been found to be credible and there are no materials on record to doubt the veracity of their testimony in respect of the alleged assault.

29. The learned counsel for the defence had also argued that as the ocular evidence of the prosecution witnesses have not been corroborated by the medical evidence, it would be unsafe to rely on the evidence of the prosecution witnesses in respect of the alleged assault and subsequent injury.

30. In the present case although the medical report suggests that no injury was found in the body of the victim but all the prosecution witnesses have corroborated the informant in respect of the alleged assault. Thus considering the entire evidence on record it can clearly be discerned that the accused Dulal Biswas, Madhabi Biswas and Ela Biswas in furtherance of their common intention assaulted or used criminal force on the informant otherwise than on grave or sudden provocation on 27.03.2016 at about 10:00 AM in the morning who is an offence under Section 352/34 IPC.

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31. Thus, the prosecution having succeeded in proving that the accused persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas had committed the offence punishable under Section 352/34 IPC, accused persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas are, hereby, held guilty of offence under Section 352/34 IPC and convicted for the same by applying the provision of Section 222 (2) Criminal Procedure Code as the accused persons had not been charged under Section 352/34 IPC but under Section 323/34 IPC.

32. I have heard both the sides on the quantum of sentence. The learned APP had submitted that since the offence has been proved against the convicted persons, appropriate sentence should be imposed on the convicted persons considering the facts and circumstances of the present case.

33. The learned defence counsel, however, argued that the convicted persons have no criminal antecedents, so they may be shown a bit of leniency and be let off by imposing a fine of reasonable amount. I have pondered over the rival submissions of both the parties.

34. Considering the nature of the offence (Section 352 IPC is punishable with an imprisonment for a term which may extend to 3 (three) months, or with fine which may extend to Rs. 500/- (Rupees five hundred) only, or with both) and also considering the fact that no previous conviction is proved against the convicted persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas and having regard to the circumstances of the case including the nature of the offence and the character of the offender, I am of the considered opinion that it is expedient to release the convicted persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas after due admonition under Section 3 of the Probation of Offenders Act, 1958 instead of sentencing them to any punishment or releasing them on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958.

35. Accordingly, convicted persons namely Dulal Biswas, Madhabi Biswas and Ela Biswas are released after admonition under Section 3 of the Probation of Offenders Act, 1958.

36. The bail bond of the convicted persons and their surety shall remain in force for a period of 6 (six) months from today in compliance with Section 437-A, Criminal Procedure Code.

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Case is disposed of on contest.

Let a free copy of the order be furnished to the convicted persons.

Given under my hand and the seal of this court on this 18th day of November, 2017 at Bongaigaon.

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(Signature)
Bongaigaon
Judicial
Magistrate First Class,
Bongaigaon

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APPENDIX



PROSECUTION EXHIBITS:


- P. Exhibit 1: FIR dated 30.04.2016
P. Exhibit 2: Charge-Sheet.
P. Exhibit 2: Medical examination report.

DEFENCE EXHIBITS: NONE

PROSECUTION WITNESS:

- PW1- Lakhi Biswas
PW2- Lakhi Das
PW3- Parbati Biswas
PW4- Dr. Medini Barman
PW5- Kishori Das
PW6- Haider Ali Ahmed

DEFENCE WITNESS: NONE


Uman Chetia
Bongaigaon Judicial
Magistrate First Class,
Bongaigaon