

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :::::::::: BONGAIGAON.

GR CASE No. 730/2012.

U/Ss.447/341/354/506 IPC.

State of Assam

-Vs-

Sri Santosh Barman.

Present: **Smt. N. Talukdar, AJS**
Chief Judicial Magistrate,
Bongaigaon.

Advocates appeared:

For the Prosecution: **Mr. T. Bhowmik, Assistant PP.**

For the Defence: **Mr. Kamal Chakroborty.**

Argument heard on: **16.07.2014.**

Judgment pronounced & delivered on: **28.07.2014.**

J U D G M E N T

1. The prosecution case in brief is that, on 05.12.2012 at about 6:00 PM the informant Pramila Barman returned home after finishing her work and while she entered into the courtyard of her house, the accused Santosh Barman suddenly attacked her finding her alone and muffled her mouth, enraged her and fall her on the ground and sat on her chest made her naked and inflicted blows on her person and strangled her neck. While the informant raised hue and cry, her neighbourer Basanti Barman and Purnima Barman rushed to the place of occurrence and then the accuse left the informant and flee away. Thereafter, her neighbourer Joykrishna Barman also came to the place of occurrence. After fleeing away from the place of occurrence,

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accused Santosh Barman along with Sukheswar Barman again came to the place of occurrence taking stick and axe and scolded the informant and threatened her with dire consequences. Hence, the informant lodged the FIR. On the basis of the FIR, Bongaigaon PS Case No.460/12 U/Ss.323/354/500/506/34 IPC was registered and the investigation was set into motion. After completion of investigation, police submitted charge-sheet U/Ss.447/341/354/506 IPC against the accused person. Hence, the instant case has come up.

2. On completion of appearance of the accused person, copy was furnished to him. The particulars of the offence U/Ss.447/341/354/506 IPC is duly read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. During trial the prosecution has examined only 5(five) prosecution witnesses. The accused person has been examined U/S. 313 CrPC. The defence has examined none. The plea of defence is of total denial.

4. : **POINTS FOR DETERMINATION** :

(a) Whether on 05.12.2012 at about 6:00 PM, at Bagulamari Bilaspur Bazar, the accused person committed criminal trespass by entering into the courtyard belonging to the informant and thereby committed an offence punishable U/S. 447 IPC?

(b) Whether on 05.12.2012 at about 6:00 PM, at Bagulamari Bilaspur Bazar, the accused person wrongfully restrained the informant and

**thereby committed an offence punishable
U/S. 341 IPC?**

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(c) Whether on 05.12.2012 at about 6:00 PM, at Bagulamari Bilaspur Bazar the accused person used criminal force to the informant with intent to outrage her modesty and thereby committed the offence punishable U/S.354 IPC?

(d) Whether on 05.12.2012 at about 6:00 PM, at Bagulamari Bilaspur Bazar the accused person committed criminal intimidation by threatening with injury to the informant in her courtyard and thereby committed the offence punishable U/S.506 IPC?

: DECISION AND REASONS THEREOF :

5. I have heard the Ld. Counsels for both parties. Ld. Counsel for the prosecution submitted that the prosecution has proved the case beyond all reasonable doubts. All the prosecution witnesses have adduced cogent, reliable and consistent evidence to prove the charges leveled against the accused. On the other hand, Ld. Defence Counsel has submitted that there a delay in 23 days in filing the FIR. There is no explanation as to why the FIR was filed belatedly which is fatal to the prosecution case. Ld. Defence Counsel has also submitted that the police has not examined any other person who is staying in the neighbouring area of the informant in the instant case. Police has also examined the witnesses whose name was cited in the FIR lodged by the informant. The entire prosecution case is a concocted story. If the other persons staying in the neighboring area of the informant were examined, the actual fact would have come out. Ld. Defence Counsel has also submitted that the accused is an innocent person and he has falsely implicated in the present case by the informant.

6. At this stage, it is expedient to cast a glance at the evidence of prosecution side. The prosecution to prove the case

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examined 5(five) witnesses. PW1 is informant-cum-victim Smt. Pramila Barman. In her evidence, PW1 has deposed that about 8 months back at about 6:00 PM the incident had happened. At that time, after finishing her work, she returned her home and while she entered into the courtyard of her house, the accused coming from backside embraced her and caused her fall down on the ground and strangled her neck. Then, PW1 raised hue and cry. The accused muffled her mouth. On hearing hue and cry, the witnesses Purnima Barman and Basanti and Bipuli came to the place of occurrence. Then, the accused left then place of occurrence. Thereafter, PW1 filed the case.

In cross-examination, PW1 has revealed that there were about 10/12 houses in her village. The house of Hiren, Joykrishna, Anil etc. were situated near her house. At a distance of 10 cubits from her house, the house of Manaranjan & Suren were situated. On hearing hue and cry, about 16 persons including Arati, Sthiti, Mamani and Joymati came to the place of occurrence. PW1 has also revealed that after 10 days of the incident she filed the case before the Court. She had denied the suggestion that after 23 days of the incident, she filed the case and no explanation was given for delay in filing the case. PW1 has also revealed that accused person's elder brother filed a case against her. She denied the suggestion that she filed a case against the accused out of grudge. She has also

denied the suggestion that she did not state before the police that accused caused her fall down on the ground and strangled her neck and while she raised hue and cry, accused muffled her mouth. PW1 has also denied the suggestion that the accused did not embrace her from the backside.

7. PW2 is Smt. Purnima Barman. In her evidence, PW2

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has deposed that about one year back at about 6:00 PM the incident happened. At the time of occurrence, PW2 was in her house. From her house, she heard the shouting of the informant and then she came to the PO and found that the informant was lying in the courtyard of her house and the accused was sitting upon her and he muffled the mouth of the informant. Then, PW2 called her mother Basanti Barman and when her mother came to the place of occurrence, the accused left away.

In cross-examination, PW2 has revealed that she was studying in Class-VI. The distance between her house and the house of the informant is 500 cubits. The house of PW2 was situated backside of the house of the informant. The house of Hiren, Joykrishna, Anil, Suren etc. were situated near the house of the informant. At the time of occurrence, Hiren, Joykrishna, Anil, Suren and others came to the place of occurrence. PW2 has denied the suggestion that she stated before the police that having seen the incident, she came back to her house and informed her mother about the incident and then her mother went to the place of occurrence. She has denied the suggestion that she did not state before the police that the informant was lying in the courtyard of her house and the

accused was sitting upon her and the accused muffled her mouth. PW2 has denied the suggestion that she deposed falsely and that she did not see the incident.

8. PW3 is Smt. Basanti Barman, the elder sister of the informant. In her evidence, PW3 has deposed that about one year back at about 6:00 PM the incident happened. At that time, she was in her house. On hearing hue and cry from the house of the

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informant, she sent her daughter-PW2 to the place of occurrence. Then, her daughter went to the place of occurrence. From there she called PW3. Then, PW3 also came to the place of occurrence and while she arrived at the courtyard the accused, who was sitting on the chest of the informant, fled away.

In cross-examination, PW3 has revealed that she had not seen Hiren, Joykrishna, Anil etc. in the place of occurrence. PW3 has denied the suggestion that she did not state before the police that her daughter PW2 called her and then she came to the place of occurrence and when she arrived at the courtyard the accused who was sitting on the chest of the informant fled away. PW3 as revealed that Mohan Barman was the elder brother of the accused. There was dispute between the family of Mohan Barman and the informant. PW2 has denied the suggestion that she had deposed falsely.

9. PW4 is Smt. Bipuli Barman. In her evidence, PW4 has deposed that about one year back at about 6:00 PM, she was

near the house of the informant. Then, she heard hue and cry of the informant. She went to the house of the informant. The informant told PW4 that the accused sit on her chest and strangled her neck.

In cross-examination, PW4 has revealed that the house of Hiren, Adhir Barman, Anil, Jadu and Joymati were situated between her house and the house of the informant. The people of those houses came to the place of occurrence. After 5 days of the incident, police recorded her statement at Bidyapur PS. The informant took her to Bidyapur PS. PW4 has denied the suggestion that she did not state before the police that the informant told her that accused sit on her chest and strangled her neck. She has denied the

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suggestion that she had not seen the accused running away from the house of the informant. PW4 has also deposed that the complainant is her cousin. At the time of occurrence, there was a dispute between the complainant and wife of the accused. PW4 has denied the suggestion that she had deposed falsely for the sake of the informant.

- 10.** PW5 is IO Jahir Uddin Mollah. In his evidence PW5 has deposed that he has investigated the case, visited the place of occurrence, recorded statement of the witnesses and after completion of investigation, he submitted charge-sheet U/Ss. 341/447/354/506 IPC against the accused Santosh Barman. Ext-1 is the charge-sheet and Ext1(1) is the signature of PW5. Ext-2 is the

FIR lodged by the informant Pramila Barman and Ext-2(1) is the signature of O/C Khirod Dey whose signature is familiar to PW5.

In cross-examination, PW5 has deposed that on 29.12.2012 the FIR was received by the police. On 05.12.2012 the incident happened. On 03.01.2013, PW5 recorded the statement of the witnesses. PW5 has revealed that PW1 Pramila Barman did not state before him that accused caused her fall down on the ground, strangled her neck and muffled her mouth. PW2 Purnima Barman did not state before PW5 that while she came to the place of occurrence, she had seen the informant lying in the courtyard and that the accused was sitting upon the informant and muffled her mouth. PW5 has also revealed that PW3 Basanti Barman did not state before him that she came to the place of occurrence on call of her daughter and while she arrived at the courtyard, having seen her, the accused who was sitting on the chest of the informant, fled away. PW5 has also deposed that PW4 Bipuli Barman did not state before him that the informant told

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her that the accused sat on her chest. PW5 has also revealed that there were other houses near the place of occurrence.

- 11.** In the instant case I have carefully scrutinized the evidences of prosecution witnesses. PW 1, the informant and victim of the case, deposed incriminating evidence against the accused. PW1 has stated in her evidence that at the time of occurrence, when PW 2, 3 and 4 came to the place of occurrence, the accused fled away. But from the evidence of PW 4, Bipuli Barman, it is found

that she had not seen the alleged incident of assault. She was only reported about the incident by the victim.

- 12.** PW1 has revealed in cross examination that at the time of incident on hearing her shouting 16 persons including Sthiti, Mamani, Arati and Joymoti came to the place of occurrence. But none of them were examined by the Investigating Officer during investigation. None of those persons, who are neighbours of the victim but not related to her, are shown as witness in the complaint (FIR) filed by the victim before the court. It is also found that there is delay of 23 days in filing the FIR. There is no explanation at all as to why the complaint was filed after delay of 23 days. Though delay in all cases is not fatal to the prosecution case but in the instant case the people present in the place of occurrence other than the relative of the victim are not made witness by the victim/complainant. Those persons are also not examined by the police during investigation of the case. Only the related witnesses of the victim except PW 4, who has not seen any incident, were examined by the police and the prosecution. There is inordinate delay in filing the complaint in the

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instant case and as material witnesses are withheld by the police and the prosecution, therefore, a reasonable doubt arose as to the truthfulness of prosecution case. That apart in the complaint the complainant/victim exaggerated the prosecution story. In her evidence before the court she did not make any whisper about the facts stated in the complaint that the accused made her naked and

after fleeing away from the place of occurrence he again came to the place occurrence with one Sukheswar Barman.

- 13.** PW 2 and 3, the eye witnesses of the incident, are the near relatives of the PW 1. Though evidences of the witnesses cannot be discarded merely because of the fact that they are near relatives of the victim but their evidences need to be scrutinized more carefully. In a catena of judgment, Honorable Supreme Court has observed that evidence of related witness can be relied upon provided it is trustworthy. Mere relationship does not disqualify a witness. Witnesses who are related to the victim are as competent to depose the facts as any other witness but such evidence is required to be carefully scrutinized and appreciated before reaching to a conclusion on the conviction of the accused in a given case. On careful scrutiny of the evidence of PW 2 and 3, it is found that both the witnesses exaggerated in their evidence. PW 1, the victim, has not deposed in her evidence that the accused sat upon her. But both PW2 and 3 have deposed that the accused was sitting upon the person of PW1. Moreover, the inordinate delay in filing the FIR and withholding of material witnesses being examined in the case reasonably cast a doubt as to the truthfulness of the testimony of PW 2 and 3. The possibility of both the witnesses being tutored cannot be ruled out. The burden

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of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In the instant case, the prosecution has

failed to discharge its burden of proof by adducing acceptable evidence to prove the case beyond all reasonable doubt.

14. In the result, I find that the prosecution has failed to prove its case against accused person beyond all reasonable doubt. Hence, the accused Sri Santosh Barman is found not guilty U/Ss. 447/341/354/506 IPC and hereby acquitted from the charges under said sections and set him at liberty forthwith. The bail bond of the accused stands cancelled and the bailor is discharged from the bail bond liabilities.

15. The Judgment is given under my hand and seal of this Court on this **28th day of July, 2014.**

Sd/-
(Smt. N. Talukdar)
Chief Judicial Magistrate
BONGAIGAON.

Dictated and Corrected by me.....

Sd/-
(Smt. N. Talukdar)
Chief Judicial Magistrate,
BONGAIGAON.
