

P.R.C no. 56/2019

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
NALBARI**

P.R.C no. 56/2019

u/s 294/325/384/427/34 I.P.C

State of Assam

-Vs-

(i)Dhan Ali,

(ii)Majani Begum....Accused
persons

PRESENT: K.C Boro, A.J.S.

ADVOCATES APPEARED:

For the state : Mr. D. Talukdar, Ld. A.P.P,

For the accused : Mr. Abdul Mazid, Ld. Advocate,

Dates of evidence : 25/06/19, 24/09/19, 21/01/20,
21/12/20 & 22/11/21.

Date of argument : 11/01/2022.

Date of judgment : 19/01/2022.

J U D G M E N T

PROSECUTION CASE:

1.The prosecution case in brief as unfolded from the 'ejahar' dated 20/06/2017 filed by the informant Bikash Sarma is that he works as a Collectioner of L&T Finance and on 20/06/2017 at about 4 pm, he went to the house of FIR named accused Majani Begum to collect premium and at that time accused Majani Begum and Dhan Ali scolded him with obscene language and assaulted him and later accused Dhan Ali hit him with a torch on his head and caused injury to him. The accused persons also punched him and broke one of his teeth and forcefully kept his finance book and tore three numbers of receipts. Hence the case.

2.The said 'ejahar' was received and registered as Nalbari P.S case no. 412/17 u/s 294/325/384/427/34 I.P.C. After completion of investigation charge-sheet no. 278/17 dated 31/07/2017 was submitted against accused persons Majani Begum and Dhan Ali u/s 294/325/384/427/34 I.P.C. Copy was furnished to the accused persons. Charge were framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3.POINTS FOR DETERMINATION:

(i) Whether on 20/06/2017 at about 4 pm at Nalbari town ward no. 11 under Nalbari P.S, the accused

persons in furtherance of common intention uttered obscene language in or around any public place to the annoyance of informant and thereby committed an offence u/s 294/34 I.P.C?

(ii) Whether on 20/06/2017 at about 4 pm at Nalbari town ward no. 11 under Nalbari P.S, the accused persons in furtherance of common intention voluntarily caused grievous hurt to the informant and thereby committed an offence punishable u/s 325/34 IPC?

(iii) Whether on 20/06/2017 at about 4 pm at Nalbari town ward no. 11 under Nalbari P.S, the accused persons in furtherance of common intention intentionally put the informant in fear of injury and dishonestly induced the informant to deliver any property and valuable security or anything signed which may be converted into valuable security and thereby committed an offence punishable u/s 384/34 IPC?

(iv) Whether on 20/06/2017 at about 4 pm at Nalbari town ward no. 11 under Nalbari P.S, the accused persons committed mischief and caused loss or damage to the informant to the amount of fifty rupees or upwards and thereby committed an offence punishable u/s 427/34 IPC?

4.DECISION AND REASONS THEREOF:

The prosecution examined five (5) witnesses. The defence declined to adduce any evidence. The

statement in defence of the accused persons u/s 313 Cr.P.C was recorded. I have heard the argument advanced by learned counsel of both the sides and also perused the evidence available on record, my findings with reasons are as follows -

5.PW1 Bikash Sarma who is the informant deposed that the incident took place on 20/06/2017 at about 4 pm. Accused Dhan Ali asked him to come to his house to collect premium amount and as such he went to the house of accused persons to collect the same and then the accused persons scolded him and assaulted him. The accused persons hit him with a torch on his head. The accused persons snatched away him premium collecting book and the premium receipts. The accused persons punched on his face. He sustained injury on his face and one of his teeth was broken. One person was present with him. He later filed the ejahar. He took treatment at SMK Civil Hospital, Nalbari.

6.PW1 during cross-examination deposed that they do not have any office at Nalbari. He has not brought any documents regarding collection of premium. Majani Begum was liable to pay two premium amounts. He did not serve any notice to Majani Begum. Majani Begum assaulted him when he went to their house at 4 pm. No other person who resides near the P.O has seen the incident. One person has seen the incident. Dhan Ali has not paid any premium amount with regard to purchase of vehicle.

7.PW2 Bubul Deka deposed that the incident took place in the year 2017 at about 3:30 - 4 pm. He was coming from Bezera and at that time Champak Barman was talking to him over phone. Champak Barman was going to the house of Majani Begum for collecting instalment of a scooty but they were attacked by Majani Begum. The injured persons were sent to hospital from the dealership.

8.PW3 Champak Barman deposed that the incident took place 1 ½ years ago at about 4 pm. The accused persons called them over phone and as such they went to the house of accused at Mallapara. Dhan Ali failed to furnish any premium paying receipt to them. Dhan Ali picked up a torch and when he restrained him, Dhan Ali assaulted him. They informed the matter to their Branch Manager. Later Bikash Sarma filed the ejarah.

9.PW3 during cross-examination deposed that they were provided with list by their branch manager.

10.PW4 who is the M.O deposed that on 20/06/2017 at about 6:20 pm, he had examined Bikash Sarma and upon examination he found cut injury on scalp frontal region, cut injury to lower lip and he had referred the injured person for dental consultation for left 2nd incisor teeth. The injury was grievous in nature caused by blunt object. Ext. 2 is the injury report and Ext.2(1) is his signature.

11.PW5 is the I.O and his evidence is of routine nature depicting the various stages of investigation.

12.PW5 during cross-examination deposed that he did not seize any kind of documents from the informant.

13.From the perusal of the evidence on record it appears that the accused(s) stands tried for the offence u/sec 294/325/384/427/34 OF IPC

14.Now, it is a settled principle of law that to bring home the guilt of the accused under Section 294 IPC, the prosecution witnesses in their evidence have to state the exact words spoken by the accused which caused annoyance to the informant or others present. However, in the present case all the witnesses were silent on this aspect and have not stated anything as to what was spoken by the accused persons during the scuffling. The witnesses did not testify regarding the accused persons uttering obscene words during the occurrence. From the close scrutiny of evidence of PW'S none of the ingredients of section 294/34 of IPC could be made out in this case.

15.It cannot be denied at all that there was an occurrence which took place on the fateful day of 20/06/2017 in the evening. On close perusal of the evidence of PW'S it appears that the accused persons were involved in the commission of the offence and it cannot be denied at all.

16. There is no doubt about the fact that an occurrence took place and the victim had sustained injuries and this cannot be denied at all. However, during the cross examination of PW'S no such fruitful results could be brought to light so as to gain momentum in favour of the accused persons. During the cross examination of the PW'S it appears that the cross examination of the prime witnesses i.e. PW1 & PW3 has been in the form of suggestions only. Suggestions cannot be accepted as part of evidence. The entire occurrence took place in the evening over an issue of collecting premium amount from the accused persons by the informant and thereafter he was assaulted by the accused persons. The evidence of PW1 is having corroboration with the evidence of PW2 and PW3. It was PW3 who saw the injured being taken to the dealership first and thereafter to Civil hospital and it was PW2 who also came to know about the occurrence immediately after the incident. It is true that PW-2 did not know about the occurrence and he has not seen the occurrence but the entire story was informed by PW-3 to PW-2.

17. The evidence of PW-2 & PW3 has much relevancy to the fact in issue and his evidence can be regarded as *res-gestae* under Section 6 of the Evidence Act.

18. The Hon'ble Gauhati High Court in **KAMAKHYA ROY Vs. STATE OF ASSAM Criminal Appeal No. 24 (J) of 2016** has observed, "the principle of law embodied in Section 6 of the Evidence Act is usually known as rule of

res-gestae. The essence of the doctrine is that a fact which though not in issue, if so connected to the fact in issue has to form the said part of transaction became relevant by itself. The rule is an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement on fact admissible under section 6 of the Evidence Act is on account of spontaneity and immediacy of such statement or the fact in relation to the fact in issue. Such statement must have been made contemporaneous with the act which constitute the offence or at least immediately thereafter, without there being any scope for fabrication. For the application of Section 6 it is necessary that the fact must not be too remote but a part of single transaction.”

19.The evidence of PW-2 & PW3 cannot be discarded and set aside only on the ground that they work in the same company with PW-1. Even if PW-2 and PW-3 are interested witnesses of this case their evidence cannot be thrown away.

20.The evidence of such witnesses needs to have more careful scrutiny and with caution. But the law is quite clear on this issue as laid down by the Hon’ble Supreme Court in ***Bolineedi Venkataramaiah Vs State Of Andhra Pradesh 3 AIR 1994 SC 76*** wherein the Hon’ble Supreme Court has held, “...However, since they are interested witnesses, their evidence was

subjected to greater scrutiny and one of the tests applied is whether the specific overt acts are attributed to them so that the omnibus allegations may not be accepted so as to rule out the possibility of implicating some innocent persons. In appreciating evidence of this kind of witnesses, the courts have always considered that such of those accused to whom specific overt acts have been attributed consistently and the same is corroborated by the medical evidence and the circumstances of the case, can safely be convicted...”

21. Further the evidence of Medical Officer requires corroboration and the evidence of PW's are having sufficient corroboration to establish the fact that the accused persons had assaulted the informant and thereby he sustained injuries.

22. During the course of evidence it came to light that the weapon of offence has not been recovered in this case and nor it has been seized in connection with this case. It is an important aspect and the weapon of the offence should be seized by the I/O but the non-seizure of weapon doesn't prove that the prosecution case becomes fatal if the prosecution side has proved the case other wise beyond reasonable doubt.

23. In this regard, I am of the opinion that there is a duty cast upon the investigating agency to recover and seize the weapon of offence but the said differs from case to case and it depends upon the facts & circumstances of

each case. It is evident that the occurrence took place in the evening and it is possible that the weapon of offence i.e. the torch may be thrown away or it might have been easily destroyed.

24. At this juncture, this court is of the opinion that mere no seizure of the weapon of offence from the place of occurrence cannot be a ground to acquit the accused persons when there are sufficient evidence to prove the facts that the accused persons were involved in such activities.

25. In the case of **STATE OF KARNATAKA Vs. V.K.YARAPPA REDDY 4 1999 (4) (CRIME) 171, AIR2000SC185** whereby Hon'ble Supreme Court has held that defect and irregularities in the investigation cannot be granted for acquittal. A similar identical view has also be taken in the case of **DHANAJ SINGH Vs. STATE OF PUNJAB 5 , MANU/SC/0203/2004;** hence in the light of above judgment and judicial pronouncement, I am of the opinion that mere omission to investigation cannot have any reflection in the otherwise proved prosecution story.

26. In my opinion the testimony of PW1, PW2 & PW-3 cannot be discarded in *toto* and it is well settled principle of law that the conviction can be passed on the sole testimony of the victim provided that it must inspire implicit confidence.

27. At this stage it is important to note here that it is quality of the evidence of the witnesses whose testimony has to be testified on the touch core of the credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such prove. It is the quality and not the quantity of the evidence which is necessary for prove and disproving effect which appears in section 134 of the Indian Evidence Act. In the case of **MAHINDRA SINGH Vs. STATE OF MADHYA PRADESH (2007) 3 SCC (CRI) 583** wherein the Hon'ble Supreme Court has held "it is now well settled principle of law that conviction can be based on the basis of the testimony of a sole eye witness."

28. Now at this juncture it needs to be seen whether the accused persons had shared the common intention to commit the offence. It appears during the evidence of PW'S that the accused persons were present in the place of occurrence at the time of commission of the offence. The evidence of PW'S makes it clear on the issue that the accused had shared the common intention to commit the offence and the act was done in furtherance of their common intention.

29. In the case at hand I would like to point it out that the law as per section 34 of IPC it is not necessary that there should be active participation in the commission of the offence and the mere presence of the accused persons at the place of occurrence is sufficient one. But

in this case both the accused persons were actively participating in the commission of the offence and this has been proved from the evidence of PW1 & PW-3.

30.The accused person's stands tried for an offence u/s 294/325/384/427/34 of IPC. However, the injury report i.e. Ext.2 mentioned about blunt object. It is also mentioned in Ext.2 that the victim had sustained cut injury on scalp frontal region, cut injury to lower lip and injury on 2nd incisor teeth. In order to prove an offence u/s 325 of IPC and this Court needs to have a look at the provisions of section 320 of IPC clause 6 i.e. permanent disfiguration of the head or face. But in this case the victim had sustained injury but it does not mentioned about permanent disfiguration of the head or face. Hence, in such a case the injuries can be accepted to be simple in nature rather than grievous in nature as the weapon used is a blunt weapon.

31.The I.O was examined by the prosecution in this case as PW-5. But during the cross examination the Learned Defence side has failed to cross examine PW-5 on the vital issues in connection with this case.

32.This court has also perused the statements of the accused person's u/sec 313 of CrPC and on perusal of their statements it appears that their pleas are of total denial.

33.Section 383 of IPC defines 'extortion' whereas Section 384 IPC is the Penal Section for extortion. The

offence of extortion has been defined by Section 383 IPC, which is read as follows:- 'whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".'

34. Essential Ingredients of Extortion. (i) intention to put a person under fear of injury, (ii) thereby induces dishonestly to (a) deliver any property, or (b) valuable security, or (c) anything signed or sealed which may be converted into a valuable security, (iii) to any person.

35. Sections 24, 43 and 44 of IPC, respectively defines the terms, dishonestly, illegally and injury. In Section 24 IPC, dishonestly has been defined as; 'whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'. Section 43 IPC, lays down that 'the word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action.....'. Section 44 IPC, lays down that, 'the word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

36. On consideration of the above definition and ingredients what appears is that if someone puts the

other intentionally in fear of any injury and thereby dishonestly induce that person who had been put into fear, to deliver to the person any property or valuable security liable to be punished for extortion. The words "induces the person so put in fear to deliver" indicates the voluntariness of act of delivering a particular property on account of being put into fear etc. Thus what is necessary for constituting an offence of extortion is that the prosecution must prove that on account of being put into fear of injury the victim was voluntarily delivering any particular property to the man putting him into fear. If there was no delivery of any property, then the most important ingredient constituting an offence of extortion was not available.

37.The fear of injury contemplated under Section 383 need not necessarily be bodily harm or hurt. It will include injuries to mind, reputation or property of the person. The fear must be of such a nature and extent as to unsettle the mind of the person on whom it operates and takes away from his acts that element of free voluntary action which alone constitutes consent.

38.The 'fear' must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and takes away from his acts, that element of free voluntary action which alone constitutes consent.

39.However from the evidence of PW1, I did not find any fear of such a nature which took away from him the

element of voluntary action. It is pertinent here to mention that another essential ingredient of offence u/s 383 also includes delivery of the property by a person so put in fear.

40. From the above discussion I am of the opinion that the prosecution failed to implicate the accused person guilty of offence u/s 384 of IPC.

41. Finally I am of the opinion that the accused persons are involved in the said crime and all the ingredients U/sec 323/34 of IPC has been proved by the prosecution by relying upon PW's and hence the accused persons are held guilty for an offence U/sec 323/34 of IPC. However, the prosecution side has failed to prove the offence u/sec 294/384/427/34 of IPC.

42. Now let me considered whether the accused persons are entitled to get benefit of probation in this case. From the perusal of the evidence on record it seems clearly that the accused persons had the intention to commit the said offence. In the light of growing crime rate in society and social environment of villages/towns/cities such crime should not go unpunished and the offences being grave and serious one, the accused are not entitled to get any benefit. Considering all aspects I decide that the accused persons will not be released on probation as per sec 3 the Probation of Offenders Act 1960.

HEARING OF POINT OF SENTENCE

43. Now I proposed to pass appropriate sentence after hearing the convicts. I have heard the convicts on the point of sentence. They prayed mercy of the court considering their family and future life as well as being the bread earner of their family. With regard to the point of sentence there is a duty cast upon the courts to keep the following objectives in mind while sentencing accused persons the social interest and consciousness of the society, seriousness of the crime and the criminal history of the accused, the undue sympathy to impose inadequate sentence would do more harm to the public at large, the imposition of inadequate sentence would undermine the public confidence in the efficacy of law and society cannot endure such threats.

44. I have heard the learned defence counsel and the learned Asst. P.P. on the point of sentence. The learned Asst.P.P has submitted that the accused persons should get adequate amount of punishment and the learned defence counsel had submitted that the court may be lenient on the accused persons on the point of sentence as the accused persons are having their family and future life.

45. I have considered few factors mitigating connected to the case of the prosecution, while coming to the decision about what punishment would serve justice in this case. I found that the accused are 28 & 43 years of age and they prayed for some relief. The victim had sustained injury and had undergone treatment.

ORDER

46.As a result the accused persons Dhan Ali and Majani Begum are hereby convicted of the offence levelled against them U/sec 323/34 of IPC. Having regard to the nature of offence submission of the convicts as well as after hearing the learned defence counsel and the learned Asst. P.P and circumstances of the present case, I hereby sentence the accused persons namely Md. Dhan Ali and Majani Begum U/sec 323/34 of IPC to pay a fine of Rs. 1000/- (Rupees one thousand) each I/d undergo simple imprisonment of three (3) months each. However, the prosecution side has failed to prove the offence u/sec 294/384/427/34 of IPC against the accused persons. A total amount of Rs. 2000/- has been imposed upon the accused persons. The fine amount if realized be handed over to the victim.

47.The period of detention already undergone by the accused persons (if any) in judicial custody during the investigation, the enquiry or trial of the instant case shall be "set off" as per provisions of sec 428 of CrPC.

48.Let a copy of the judgment be given to the convicts free of cost under Sec 363 of CrPC immediately. Make necessary entry in the judgment register.

49.Bail bonds shall remain in force for a further period of six months.

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50. Given under my hand and seal of this court on this
19th day of January, 2022.

Chief Judicial

Magistrate

Nalbari

APPENDIX

Prosecution witness:

PW 1- Bikash Sarma (Informant),

PW 2- Bubul Deka,

PW 3- Champak Barman,

PW 4- Dr. Rakesh Kr. Jain (M.O),

PW 5- Anil Kr. Dusad (I.O),

Prosecution Exhibits:

Exhibit 1 - Ejahar,

Exhibit 1(1) - Signature of informant,

Exhibit 2 - Injury report,

Exhibit 2(1) - Signature of M.O,

Exhibit 3 - Sketch map,

Exhibit 3(1) - Signature of I.O,

Exhibit 4 - Charge-sheet,

Exhibit 4(1) - Signature of I.O,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Chief Judicial

Magistrate,
Nalbari