

IN THE COURT OF SUB-DIVISIONAL JUDICIAL
MAGISTRATE (S), GOALPARA

GR No. 49 of 2017
u/s 341/323/34 IPC

State

v.

1. Abbas Ali
2. Asraf Ali
3. Jahangir Alom

.....accused

persons

Present: Anne Baruah, A.J.S.

Evidence recorded on : 20.04.18, 18.03.19,
01.07.19, 28.08.19, 24.10.19.

Arguments heard on : 01.11.2021

Judgment delivered on: 07.12.2021

Appearing for Prosecution : N.S. Pathak, Assistant
Public Prosecutor

Appearing for Defence : A. Hussain, Learned
Counsel

JUDGMENT

1. The case of the prosecution in brief is that the complainant, Jahida Bewa lodged an ejahar alleging that on 05.01.17 at about 6.30 PM while she along with her sister in law Rina Bewa, nieces Neha Begum, Pinky Begum and Safiyara Begum, went to the house of the accused persons to bring back Asma Khatun, all the three accused persons physically assaulted them. Hence the case.

2. Upon receipt of the ejahar, an FIR to that effect was registered by the O/C, Krishnai P.S. and a case was registered as Krishnai P.S. Case No. 09/2017 under section 341/325/34 IPC. After completion of investigation, charge sheet was submitted against the accused person under sections 341/323/34 IPC.

3. Thereafter, cognisance of offences under sections 341/323/34 IPC being taken by the Learned Chief Judicial Magistrate, Goalpara, against the accused persons, the instant case has been received by this Court for disposal.

4. Upon appearance of the accused person before this Court, particulars of offences under

section 341/323/34 IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. The prosecution brought 8 witnesses in its support and exhibited 7 documents. After completion of recording of the prosecution evidence, statement of the accused persons under section 313 of the CrPC was recorded. The defence adduced declined to adduce evidence on their part. The plea of the defence was of total denial as to the involvement of the accused persons in the alleged offences. I have heard the arguments of both sides. I have also perused the evidence on record carefully.

6. POINTS FOR DETERMINATION:

- (i) Whether the accused persons in furtherance of their common intention obstructed the informant, her sister in law and nieces from proceeding in a direction in which they had the right to proceed and thereby wrongfully restraining them?
- (ii) Whether the accused persons in furtherance of their common intention, by physically assaulting the informant, her sister in law and nieces voluntarily caused hurt to them?

DISCUSSION, DECISION AND REASONS THEREOF:

7. PW1, Jahida Bewa, the informant, deposed in her evidence that on the day of the occurrence, when she along with her sister in law Rina Bewa, nieces Pinki Begum, Neha Begum and Safinara Begum, went to the house of the accused persons, being the paternal house of Asma Khatun, to enquire about her daughter in law Asma Khatun, the accused persons physically assaulted her sister in law Rina Bewa, nieces Pinki Begum, Neha Begum and Safinara Begum. PW1 deposed that when she saw the accused persons assaulting the victims, she went forward. PW1 also deposed that in consequence of such assault, her sister in law and nieces were injured. PW1 exhibited the FIR as Ext 1 and her signature as Ext 1(1).

In cross examination, PW1 reiterated that her sister in law Rina Bewa was injured on her leg in consequent of the occurrence as she was assaulted by the accused persons with a rod. PW1 also deposed that she saw that her nieces Pinki Begum, Neha Begum and Safinara Begum were injured on the head, back and legs respectively owing to the assault committed upon them by the accused persons.

8. PW2, Rina Bewa deposed in her evidence that when she along with Neha Begum, Pinki Begum and Moushumi Begum went to the

house of the accused to bring back Asma Khatun, the same being her parental house, the accused persons assaulted them.

In cross examination, the evidence of the PW2 as regards the accused persons assaulting the victims could not be rebutted. The other depositions made in cross examination of PW2 is not discussed and discarded as not relevant.

9. PW3, Rafikul Ali, deposed in his evidence that he was altercation and fighting, described as him as 'mar-pit' at the place of occurrence. PW3 deposed that he did not know the reason for which the altercation took place.

10. PW4, Pinki Begum, deposed in her evidence that on the day of the occurrence, when she along with the informant Jahida Bewa, Rina Bewa, Moushumi Begum and Safinara Begum went to the house of the accused, which is the parental house of the Asma Khatun, the daughter in law of the informant, and when they enquired about the whereabouts of Asma Khatun, the accused persons physically assaulted them.

In cross examination, PW4 deposed that the accused Abbas Ali assaulted her with a cricket bat on her left leg and that the other accused persons threw things onto them.

11. PW5, Safinara Begum, deposed in her evidence that on the day of the occurrence, when she along with the informant Jahida Bewa, Rina Bewa, Moushumi Begum, Neha Begum and Pinki Begum went to the house of the accused, and when they enquired about the whereabouts of Asma Khatun, the accused persons physically assaulted them with cricket bat and also threw things onto them.

In cross examination, PW5 deposed that she was beaten on her leg with cricket bat and as such she was injured.

12. PW6, Neha Begum, deposed in her evidence that on the day of the occurrence, when she along with her mother and sisters went to the house of the accused, and when they enquired about the whereabouts of Asma Khatun, the accused persons physically assaulted them in consequence of which she became unconscious.

In cross examination, PW6 reiterated that she was assaulted with hands, feet of the accused persons along with cricket bat and that he was medically examined for her injuries.

13. PW7, Dr. Dipak Kumar Sharma, the Medical Officer, deposed in his evidence that on 05.01.2017, he examined Neha Begum,

Safinara Begum, Pinki Begum and Rina Bewa, who were all produced before him for medical examination by police escort. PW7 deposed that the said persons came with history of assault on that day and on examination, he found injury of abrasion of the person of Neha Begum with the age of injury being 12 hours. PW7 deposed that he did not find injuries on the other victims. PW7 exhibited the medical reports as Ext 2, Ext 3, Ext 4 and Ext 5 and his signatures as Ext 2(1), Ext 3(1), Ext 4(1) and Ext 5(1) respectively.

14. PW8, the Investigating Officer, deposed in his evidence that after lodging of the FIR, he was endorsed with the investigation of the case, and in course of investigation, he caused the victims to be medically examined and collected medical reports thereof, prepared sketch map and recorded statement of witnesses. PW8 deposed that after completion of investigation, he submitted charge sheet against the accused persons. PW8 exhibited the sketch map as Ext 6 and his signature as Ext 6(1). PW8 exhibited the charge sheet as Ext 7 and his signature as Ext 7(1).

15. Perusal of the evidence of the PWs shows that the material PWs being the informant and victims as PW1, PW2, PW4, PW5 and PW6 have unequivocally deposed that when they went to

the house of the accused for enquiring about Asma Khatun, the accused persons physically assaulted the victims. It is seen that there is coherent evidence of the said PWs in respect of the fact that the victims were beaten by the accused persons, as the said fact has been deposed in their examination in chief and has also been reiterated in their cross examination. The evidence of PW1, PW2, PW4, PW5 and PW6 have remained unrebutted in cross examination with regard to the fact that the accused persons assaulted the victims Neha Begum, Rina Bewa, Pinki Begum and Safinara Begum. Also the evidence of the said PWs has been corroborated by PW3, an independent witness, who although did not depose any incriminating material against the accused persons, but deposed to have witnessed fighting (*mar-pit*) at the place of occurrence. This evidence of PW3 supports the version of the Prosecution that an untoward occurrence must have happened at the place and time of occurrence. Again, the evidence of the Medical Officer as PW7 supported by the medical report exhibited as Ext 2 and the same being proved by PW7 vide Ext 2(1) shows that the victim Neha Begum was subjected to bodily pain and accordingly, this Court deem it proper to opine that the said victim was subjected to hurt. Although, the

medical report shows no injury being caused to the other victims, injury being proved to have been caused to one victim, is sufficient to incriminate the accused persons in this case. Now, concerning that question as to who caused the hurt to the concerned victim, the coherent ocular evidence of the material PWs i.e. PW1, PW2, PW4, PW5 and PW6 who are victims as well as eye witnesses of the occurrence, can be relied upon, as they prove the fact that it was the accused persons who had voluntarily assaulted the victim without any grave or sudden provocation and thereby caused hurt to the concerned victim. Furthermore, the cross examination of PW6 (victim) read with the cross examination of the PW8 (Investigating Officer) shows no omission or contradiction being proved in the evidence of PW6 (victim) regarding she being assaulted by the accused persons.

16. In the light of the aforesaid discussion, this Court has safely concluded that prosecution has been able to prove the guilt of the accused persons under Section 323 IPC beyond reasonable doubt. Accordingly, accused persons are hereby held guilty and convicted for offences under Sections 323 IPC. However, no deposition being made regarding the accused wrongfully restraining the victims, the evidence on record does not appear to be

sufficient for incriminating the accused persons u/s 341 IPC. Accordingly, the accused persons are held not guilty and acquitted of offence u/s 341 IPC.

17. I have considered the matter of extending the benefits of the Probation of Offenders Act to the convicts. It is seen that the convicts had wilfully assaulted and injured the victim and such acts have endangered the personal safety of another. As such, this Court does not deem it proper to extent the benefit of Probation of Offenders Act to the convicts.

18. I have heard the convicts on the point of sentence.

19. The convicts have submitted that they are first time offenders and the quarrel between the complainant and the accused persons, pertaining to a family dispute, thereby leniency be maintained in sentencing them.

20. Considering the facts and circumstance of the case, convicts Abbas Ali, Asraf Ali and Jahangir Alom are sentenced to simple imprisonment for 6 months and fine of Rs. 1,000/- each in default to simple imprisonment for 10 days for offence u/s 323 IPC.

21. A copy of this judgement be furnished free of cost to the convicts in pursuance of Section 353(4) Cr.P.C.
22. The convicts are apprised of their right to appeal against the judgment passed by this Court.
23. Given under my hand and the seal of this court on this, the 7th of December, 2021.
24. Instant case is disposed of on contest.

Sub-Divisional Judicial Magistrate (S),
Goalpara

APPENDIX

Prosecution Witnesses:

PW1: Jahida Bewa

PW2: Rina Bewa

PW3: Rafikul Ali

PW4: Pinki Begum

PW5: Safinara Begum

PW6: Neha Begum

PW7: Dr. Dipak Sharma

PW8: Swapan Roy

Defence Witnesses:

Nil

Prosecution Exhibits:

1. Ext 1: FIR
2. Ext.2: Medical report
3. Ext3: Medical report
4. Ext4: Medical report
5. Ext5: Medical report
6. Ext6: Sketch map
7. Ext7: Charge sheet

Defence Exhibits:

Nil

Sub-Divisional Judicial Magistrate (S),
Goalpara