

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
UDALGURI, ASSAM.**

**G.R. CASE NO. 415 of 2018
(U/S 447/294/354(A)/323/506/34 IPC)**

STATE

-VS-

- 1. MD. MAHEJ ALI,**
- 2. MD. MAHURUDDIN**
- 3. MD. HABIJUR RAHMAN**

-----Accused persons.

Present: Smti. Nilakshi Lahkar, A.J.S.

Advocate for the Prosecution : Mrs. N. Narzari

Advocate for the Defence : Mr. M. C Narzari

**Evidence recorded on : 07.05.19, 16.05.19, 28.05.19
and 18.07.19**

Argument heard on : 17.08.2019

Judgment delivered on : 17.08.2019

J U D G M E N T

- 1.** The prosecution case, in brief is that, informant Mamiran Bewa had lodged a complaint petition before the learned Chief Judicial Magistrate, Udalguri by stating inter-alia that on 08.04.2018 in her absence the above named accused persons had entered inside her house and threatened her daughter namely Miss Ajiran Nessa by saying her as to where her mother was going. She further stated in her complaint petition that prior to the incident the accused persons had shown obscene sign towards her sister namely Mahiran Nessa, who is a deaf and dumb girl. Afterwards the informant asked the accused persons as to why they had done that and then the accused persons uttered filthy languages towards the informant and after few days when the informant went for working then the accused persons had entered inside her

house and tried to outrage her daughter's modesty. When the daughter of the informant raised hue and cry then the accused persons escaped from her house. She further stated in her petition that on 10.01.2018 the accused persons had assaulted the daughter of the informant from behind and caused head injury when she was working at paddy field. Hence this case.

2. After receiving the aforesaid FIR the learned CJM, Udalguri had forwarded the FIR to the O/C of Udalguri PS for register a police case under proper sections of law. Accordingly O/C of Udalguri PS has registered a case vide Udalguri PS case no. 97/2018, u/S 447/294/354/307/506/34 IPC. Investigating Officer investigated the case, recorded the statement of witnesses, made the seizure list, collected the medical report, prepared the sketch map and after completing the investigation, IO submitted the charge sheet against the accused persons namely Md. Mahej Ali, Md. Mahuruddin and Md. Habijur Rahman, u/S 447/294/354(A)/506/34 IPC vide CS No. 160/2018 dated 29.11.2018.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused persons before the court. Accordingly the accused persons appeared. The copies of relevant documents were furnished to the accused persons. Considering the materials on record, the charges u/S 447/294/354(A)/506/34 IPC had been framed against the accused persons thereafter the charges so framed was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. During trial the prosecution has examined as many as seven (7) witnesses. The examination of the accused persons u/S 313 of Cr.P.C. has been recorded. The defence case is of total denial. No witness been examined by the defence. Argument had been heard from both sides.
5. I have considered the evidence on record, statement u/S 313 CrPC

and the argument advanced. For the purpose of clarity, the following points for determination is hereby framed:

6. POINTS FOR DETERMINATION OF THE CASE:

(i) Whether on 08.04.2018, the accused persons, in furtherance of common intention had criminally trespassed into the property of the informant Mamiran Bewa and uttered obscene words towards her and thereby committed the offence punishable u/S 447/294/34 IPC?

(ii) Whether on the same date, time and place, the accused persons, in furtherance of common intention had intended to outrage the modesty of the daughter of the informant by making a physical contact with her and advanced involving unwelcome and explicit sexual overtures and thereby committed the offence punishable u/S 354(A)/34 IPC?

(iii) Whether on 10.01.2018, the accused persons, in furtherance of common intention had voluntarily caused hurt to the daughter of the informant and also criminally intimidated the informant and her daughter and thereby committed the offence punishable u/S 323/506/34 IPC?

7. DISCUSSION, DECISION AND REASONS THEREOF: The prosecution has examined as many as seven (7) witnesses:

PW 1 Mamiran Bewa

PW 2 Hajiran Nessa

PW 3 Alaluddin

PW 4 Siraj Ali

PW 5 Ahmed Ali

PW 6 Munnaf Ali and

PW 7 Padma Kt Das

8. PW1 Mamiran Bewa, the informant herein this case has deposed in her evidence that she knows the accused persons. The incident was occurred last year in the month of January. That day her

daughter Hajiran and her deaf and dumb sister Mahiran were staying at home and she went to paddy field. Afterwards the accused Habijur Rahman had hugged her sister with an illegal intention. When her sister made noises then her daughter went and caught the accused Habijur. Habijur was accompanied by other accused persons. The accused persons came and assaulted her daughter. The informant was informed by her one co-villager and accordingly she rushed towards her house and found that Hajiran was sustained leg injury. Hajiran told her that accused persons had assaulted her and also torn her wearing clothes. Thereafter she lodged an FIR at police station through the Court. He has identified the FIR as Exhibit 1 where she put her thumb impression.

- 9.** During cross examination she has stated that on 23.04.2018 she had lodged the FIR through the Court, but she had not written the reason of delay in filing the FIR. Prior to file to this case she had also lodged a CR case against the accused persons regarding the assault of her daughter Hajiran and in that case the accused persons got acquitted. She has denied the suggestion that she had lodged two cases against the accused persons and in that two cases the accused persons got acquitted. She had not seen the incident herself. She has denied the suggestion that she had lodged false case against the accused persons. She has also denied the fact that accused did not do anything which she has deposed in her evidence. When she returned home then Gaji, Siraj, Ahmed Ali, Hasen Bepari were present.

- 10.** PW2 Hajiran Nessa has stated that the informant is her mother and she knows the accused persons. On 07.01.2018 at about 09:00 AM the incident took place. That day her aunty went for urine and the accused Habijur Rahman was hiding with an illegal intention and hugged her aunty. At that time she was taking lunch. After that Habijur Rahman had entered inside their house and hugged her with an illegal intention. Mahiruddin came and caught hold her mouth. Mahej Ali came and assaulted her with lathi. Afterwards she got senseless. After she did not know

anything about the incident.

- 11.** During cross examination she has deposed that her mother had also lodged a CR case regarding the same incident and she had also deposed in her evidence in that case. Prior to this incident there were also lodged two cases against the accused persons. She did not know as to whether the accused persons got acquitted from the CR case or not. On the day of the incident no one present except she and her aunty. That day itself she was medically examined. She has denied the fact that she had not stated before the police that the accused person Mahiruddin had caught hold her mouth and accused Mahej Ali had assaulted her with lathi. She knows Alija Khatoon who is the niece of Mahej Ali. She has denied the fact that on the day of the incident she went to the house of Mahej Ali and entered into an argument with Alija Khatoon. Rests of her cross examination are the suggestions which he has denied.
- 12.** PW3 Alal Uddin has stated in his deposition that he knows the informant as well as the accused persons. About one year ago at about 08:00-09:00 AM the incident was occurred. At that time he was working at paddy field. At that time he had heard noises from the house of the informant and accordingly he went there and found that accused persons had assaulted Hajiran. Hajiran sustained leg injury. Afterwards she was taken for treatment.
- 13.** During cross examination he has deposed that prior to this incident the informant had also lodged a CR case against the accused persons and he had also deposed in his evidence in that case. When he reached at the house of the informant then there was some female persons present there. Prior to this incident the informant had also lodged the case against the accused persons. He has denied the fact that accused persons had not assaulted Hajiran.
- 14.** PW4 Siraj Ali has stated in his evidence that he knows both the parties. The incident was occurred on 07.01.2018. That day he was sitting at his shop. He had had not seen as to what happened

in the house of the informant. Afterwards he heard that Mahej and Mahiruddin had assaulted the daughter of the informant Hajiran. At that time Mamiran was not at home. Samir Ali went to his shop and informed Mamiran about the incident over telephone. His shop was situated in-front of the house of the informant. He heard noises at the house of the informant. When he made phone call to the informant then he found switch off the mobile of the informant. Thereafter he informed the matter to Abed Ali over phone. He did not see any injury on the body of Hajiran.

15. During his cross examination he has stated that he did not know as to how the noises took place at the house of the informant. He also did not know as to who had come at the place of occurrence after hearing noises.

16. PW5 Ahmed Ali has deposed in his evidence that he knows both the parties. About one year ago the incident was occurred. On the day of the incident he was at home. Later on he heard that there was a quarrel took place between the daughter of the informant namely Hajiran and the accused persons. He had not seen any injury on the body of Hajiran.

17. During cross examination he has stated that Mahiran is the elder sister of Mamiran. He did not know as to why the quarrel took place between the daughter of the informant and the accused persons. Later on he heard that the quarrel took place between some female persons.

18. PW6 Munnaf Ali, the IO herein this case has deposed in his evidence that on 28.04.2018 he was posted at Udalguri PS as ASI. That day O/C of Udalguri PS had received an FIR from the informant Mamiran Bewa and registered the case vide Udalguri PS case No. 97/2018 u/S 447/294/354/307/506/34 IPC and endorsed him for investigation. Afterwards he went to the place of occurrence, recorded the statement of the witnesses and drew the sketch map. Thereafter the I/C of Sapmari PS namely Padma Kt Das was endorsed for further investigation. He had handed over

the CD to the O/C, Udalguri PS. He has identified the sketch map as Exhibit 2 and Exhibit 2 (1) is his signature.

19. During cross-examination he has deposed that the incident was occurred on 08.04.2018 as per FIR. Medical report was collected by the I/C of Sapmari OP Padma Kt Das.

20. PW7 Padma Kt Das, the another IO herein this case has stated that 06.07.2018 he was endorsed for further investigation by the O/C, Udalguri PS. After that he had searched the accused persons, but he did not find the accused persons. He had collected the medical report of the victim. The accused persons got anticipatory bail from the Court and appeared before him and accordingly he had allowed the accused persons to go on bail. After completion of investigation he had submitted the charge sheet against the accused persons u/S 294/447/354(A)/506/34 IPC. He has identified the charge sheet as Exhibit 3 and Exhibit 3 (1) is his signature.

21. During cross-examination he has stated that as per the FIR the incident was occurred on 08.04.2018. the FIR was lodged by the informant on 23.04.2018 and the FIR was registered on 28.04.2018. the injury report was collected on 09.07.2018. As per injury report the victim was examined 28.02.2018. the informant had not stated any reason of delay in filing the FIR at the time of recording her statement u/S 161 Cr. PC.

22. Learned APP has submitted that the prosecution witnesses are consistent in their deposition that the accused persons had criminally trespassed into the house of the informant, torn the wearing clothes of the sister of informant and tried to outrage the modesty and assaulted her daughter and sister and uttered obscene languages towards the informant, so he prayed to convict the accused persons as per law. On the other hand the learned counsel of defence submitted that all the witnesses are contradictory to each other. No one of prosecution witnesses have supported the version of the informant. He further pointed out that there is a discrepancy in the evidence of prosecution side

and the investigation of this case is found to be perfunctory, so he prayed to give benefit to the accused persons.

23. Let the case be decided on the basis of the evidence available in this case record. Having perusal of the evidence available on record, it is seen that PW1 Mamiran Bewa, the informant herein this case had deposed in his evidence that on the day of the incident when she went to the paddy field, the accused Habijur Rahman came to her house and hugged her sister with an indecent intention. When her sister made noises, the accused Habijur Rahman then hugged her daughter and all other accused persons assaulted her daughter. PW2 Haziran Nessa has supported the evidence of her mother and narrated the same facts. PW3 Alluddin had deposed in his evidence that on the day of the incident after hearing hue and cry he came to the house of the informant and saw the accused persons assaulting Hajiran. PW4 Siraj Ali and PW5 Ahmed Ali had deposed in their evidence that they only had heard about the quarrel between Hajiran Nessa and the accused persons.

24. An analysis of the FIR and the evidence of PW1 as informant, it is found that the informant in the FIR had stated about different events as caused to be occurred by the accused persons. According to the contents of the FIR, the accused persons in absence of the informant had trespassed into her house, threatened her daughter and preceding to that incident. The sister of the informant Mahiran Nessa was met by the accused persons in the public road and they made a gesture to Mahiran Nessa with an indecent intention. But in her evidence PW1 Mahiran Nessa had deposed that the alleged two incidents as stated in the FIR was occurred on the same day. Thus, the contention as made in the FIR is found to be contradictory to the evidence of the informant as PW1 herein this case. On the other hand, the other prosecution witnesses who are the independent witnesses i.e PW3 and PW4 had not seen the occurrence. They only had heard about the incident. The FIR was lodged on 23.04.2018 whereas the incident was occurred on 08.04.2018

there was no satisfactory reason shown by the informant for delay lodging of the FIR which losses the credibility of the alleged incident. The prosecution has also failed to adduce the evidence of the M/O to prove the injury of the victim herein this case. Hence, I hold that prosecution has failed to prove its case against the accused persons beyond all reasonable doubt.

ORDER

Under the facts and circumstances of the instant case it is found that prosecution has not been able to prove the case u/S 447/294/354(A)/323/506/34 IPC against the accused persons namely Md. Mahej Ali, Md. Mahuruddin and Md. Habijur Rahman beyond all reasonable doubt and hence accused persons are acquitted from the case and set at liberty forthwith.

The bail bonds of the accused persons are extended for a further period of 6 months from today as per provisions of Section 437-A Cr.P.C as amended up to date.

The judgment is given under the hand and seal of this Court on this 17th day of August, 2019.

(N. Lahkar)
Addl. Chief Judicial Magistrate.
Udalguri, Assam.

Dictated and corrected by me:

(N. Lahkar)
Addl. Chief Judicial Magistrate
Udalguri, Assam.

APPENDIX

A. Prosecution witnesses : PW 1 Mamiran Bewa
PW 2 Hajiran Nessa
PW 3 Alaluddin
PW 4 Siraj Ali
PW 5 Ahmed Ali
PW 6 Munnaf Ali and
PW 7 Padma Kt Das

B. Defence witness :Nil.

C. Documents exhibited :Ext. 1 - FIR
Ext. 2 - Sketch map
Ext. 3 - Charge sheet

Addl. Chief Judicial Magistrate
Udalguri, Assam.

Typed by Rupam Das/Stenographer.