

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, UDALGURI

G.R. CASE NO. 1270/2017

U/S-294/323/34 IPC

State

Vs.

Smti. Dubeswari Boro & Ors.

Present before : **Kumari Arti, AJS**
For Prosecution : Sri. A. Paurel.
For Defence : Sri D. K. Boro
Date of Evidence : 26.04.18, 13.06.18, 04.10.18, 30.01.19,
22.02.19, 04.05.19, 21.06.19,
Date of argument : 26.07.2019
Date of Judgment : 09.08.2019

JUDGMENT

1. Prosecution case in brief is that accused persons were cutting their tree which was situated on the opposite side of the gate of the informant and branches fell on the tin gate of the informant and damaged the same. On this when informant tried to stop them then accused Smti. Dubeswari Boro and her husband came out and started abusing him and accused Smti. Dubeswari Boro slapped him on his face and she also slapped the wife of the informant. Hence this case.

Compliance of Sec- 207 Cr.P.C.

2. Copies of relevant documents were furnished to the accused persons in accordance with Sec-207 Cr.P.C.

Offence explanation

3. During trial particulars of offence u/s-294/323/34 Indian Penal Code read over and explained to the accused persons to which they pleaded not guilty and claimed to face trial.

Evidence Adduced

4. Prosecution has examined eleven witnesses. Examination u/s-313 Criminal Procedure Code of accused persons recorded as per law and kept with the record.

Points for determination

5. (i) Whether the accused persons could be hold accountable for the offences levelled against them?
(ii) Whether the prosecution established its case beyond all reasonable doubt?

Discussion, Decision and Reasons thereof

6. **PW1** namely, Sri Niren Boro deposed that he is the informant and he can recognize the accused persons. The occurrence took place on 12.11.17 at about 10.30 am. On the relevant day accused persons were cutting tree situated in their premises by employed labourer and severed branches felled down on his gate and then he came out and asked to cut the tree with due indulge then after five minutes accused persons came and started abusing him and calling by his name. Accused Dubeswari Boro came and slapped him on his face and pelted stone on him when his wife came they assaulted her too. Police took him for medical treatment. Ext-1 is the FIR and Ext-1(1) is his signature.

In the cross examination he stated that there is a cross case given by accused against him and in that case he has been appearing as accused. His house is situated in the north direction of the house of accused. There is a Kachcha road between their house measuring 12 feet wide. The tree which was being cut on the relevant day is on the land belongs to accused persons. He does not remember the name of the labour who was cutting the tree. Chandra Mandal, Uttam Mandal and Jugesh Rava have their house near the place of occurrence and they were present at the place of occurrence at the relevant time. It is not a fact that accused persons abused him and accused Dubeswari Boro slapped him and also assaulted his wife. It is not a fact that he misbehaved with accused persons and indulge in Mar-pit with them and his tin gate was not damaged. Police visited the place of occurrence and seized the damaged tin gate.

7. **PW2** namely, Smti. Binita Boro deposed that informant is her husband and she can recognize accused persons. The occurrence took place on

12.11.2017 at about 10.30 am. At the relevant time accused persons were cutting their tree by employed a labourer and severe branches fell down at her gate thereafter her husband went to stop but accused persons started abusing in dirty language and accused Dubeswari Boro slapped her husband and assaulted her and she pelted stone on her husband and caused hurt.

In the cross examination she stated that her gate is situated at a distance of 10 feet from the main road. Neighbours were present at the time of occurrence and have witnessed the incident. Two labourers were employed to cut the tree but she does not know the name of those two labourers. Police went there and inspected the damaged gate but did not seize it. It is not a fact that accused persons neither abused them nor assaulted them and pelted stone on her, in fact they went to the place of occurrence and indulged in fight. It is not a fact that her gate was not damaged due to felling the branches of tree. There is a cross case filed by accused persons against her husband and they filed this case in order to save themselves from the cross case.

8. **PW3** namely, Sri Kanak Ch. Boro deposed that he can recognize both parties. On the relevant day accused persons were cutting the tree which is situated in their boundary through labourer and informant objected and told them they should be careful in cutting the branches of the tree as it was falling on his gate and damaging the tin, over this both parties indulged into quarrel and this case was filed. Later on again quarrel took place between them in which accused Dubeswari Boro slapped on the face of the informant.

In the cross examination he stated that his house is situated in the same line where informant`s house is situated and accused persons house is opposite to their house. At the relevant time 10/12 persons were present at the place of occurrence and they also have witnessed the occurrence. Tree which was being cut on the relevant day is situated on the land of accused persons and gate of the informant is situated at a distance of 12 feet from the tree. He does not know the name of labourer who was employed to cut the tree. Police had interrogated him on the day of occurrence at about 4PM. It is not a fact that he mentioned before police that during the time when police was interrogating him informant came

and slapped on the face of accused Dubeswari Boro. He came to the court along with the informant. It is not a fact that he has deposed false evidence for the sake of the informant.

9. **PW4** namely, Smti. Pratima Boro deposed that she can recognize both parties. On the relevant day accused persons were cutting the tree which is situated in their boundary through labourer then informant objected and told them, they should be careful in cutting the branches of the tree as it was falling on his gate and damaging the tin, over this both parties indulged into quarrel and this case was filed. Later on, again quarrel took place between them in which accused Dubeswari Boro slapped on the face of the informant.

In the cross examination she stated that at the relevant time accused Khagendra Basumatary was removing the fallen branches of the tree from the road. Police interrogated her and her husband on the day of occurrence at 3 PM. It is not a fact that she mentioned before police that accused Dubeswari Boro had slapped the informant. At the time when incident took place 5/6 persons were present there. She cannot identify the persons who were engaged in cutting the tree and they were present at the time when incident took place. Her and her husband came along with informant and they have good relation with the informant. It is not a fact that she has deposed false evidence in the interest of the informant. It is not a fact that informant`s tin was damaged by fallen branches of the tree belonging to the accused persons.

10. **PW5** namely, Sri Lakhi Ram Boro deposed that he can recognize both parties. The occurrence took place on 12th November 2017. On the relevant day accused Dubeswari Boro engaged some labourer to cut the branches of tree and branches fell on the tin gate of the informant and damaged the same. Thereafter informant came out of the house and asked labourer to cut the branches of tree with due diligence. Thereafter accused Dubeswari Boro came out and started abusing the informant and she slapped him. After some time husband of the Dubeswari Boro came and he also slapped the informant.

In the cross examination he stated that there are eight houses between his house and accused Dubeswari Boro. Before he reached the place of occurrence many persons were also present there. The tree which

was being cut on the relevant day is situated out of boundary of the accused. There is a space 12 feet between the house of both parties. Tin gate of the informant is very close to the road. Woods were lying on the tin gate and accused lifted it to her house. It is not a fact that he mentioned before police that informant Niren Boro had slapped the accused Dubeswari Boro. It is not a fact that informant Niren Boro misbehaved with accused persons and he has deposed false evidence in favour of the informant.

11. **PW6** namely, Smti. Mamoni Mandal deposed that she can recognize both parties. The occurrence took place on 12th November 2017. On the relevant day accused Dubeswari Boro engaged some labourer to cut the branches of tree and branches fell on the tin gate of the informant and damaged the same. Thereafter informant came out of the house and asked labourer to cut the branches of tree with due diligence. Thereafter accused Dubeswari Boro came out and started abusing the informant and she slapped him.

In the cross examination she stated that she did not mention before police that informant Niren Boro also slapped the accused Dubeswari Boro. She has come to the court along with the informant Niren Boro.

12. **PW7** namely, Sri Sapan Biswas deposed that he cannot recognize the informant but can recognize the accused persons. The occurrence took place about six months ago. On the relevant day he was employed by the accused persons to cut the branches of tree and branches fell on the road thereafter informant threatened them and physically assaulted them. Later on informant came and assaulted the accused Dubeswari Boro.

In the cross examination he stated that Niren Boro and Pani Ram Boro are the same person. At the relevant time no other Person from the village was present other than them. Accused Dubeswari Boro did not abuse and assault the informant in fact informant himself assaulted the accused.

13. **PW8** namely, Sri Bapan Biswas deposed that he can recognize both parties. On the relevant day his brother Sapan Biswas was engaged in cutting the branches of the tree belonging to accused persons and branches fell on the road. In the mean time informant came out and started abusing his brother and accused persons. He also threatened them and caused hurt.

In the cross examination he stated that the branches of tree did not fall on the gate of the informant.

14. **PW9** namely, SI Umesh Bordoloi deposed that on 12.11.17 he was received an FIR from Niren Boro and he entrusted the case to ASI Mukul Ch. Sarma for investigation. After preliminary investigation ASI Mukul Ch. Sarma handed over the CD to him and he submitted charge sheet u/s-294/323/34 IPC against Smt. Dubeswari Boro and Sri Khagendra Basumatary. Ext-2 is the charge sheet. Ext-2(1) is his signature.

In the cross examination he stated that he did not record the statement of witnesses and just submitted charge sheet in this case.

15. **PW10** namely, ASI Mukul Ch. Sarmah deposed that on 12.11.17 he was posted at Khoirabari PS as ASI and on that day the FIR was filed by one Niren Boro and the same was registered by O/C and given to him for pre-investigation. Victim was taken to the hospital for treatment and was examined before filing of the FIR. He recorded the statement of victim as well as witnesses and prepared sketch map of the place of occurrence. He collected the medical report and accused persons were appeared before him and they were released. After completion of investigation CD was handed over to the O/C. Ext-3 is the sketch map. Ext-3(1) is his signature.

In the cross examination he stated that the house of accused persons and the house of informant are situated opposite to each other and there is a road between both the houses and that road is 14 fit wide. During investigation when he reached the place of occurrence he did not find the gate of informant damaged as alleged and neither he seized any stone from the place of occurrence. Informant during his statement mentioned before him that he has slapped the accused Dubeswari Boro. PW2, PW3, PW4, PW5 and PW6 have mentioned before him that Niren Boro has slapped accused Dubeswari Boro on the relevant day. Accused persons have also filed one cross case against the informant and charge sheet has been filed in that case. He did not seize any material in connection with this case.

16. **PW11** namely, Dr. Nayanjyoti Baruah deposed that on 12.11.17 he was posted at Khoirabari Community Health Centre and at 2pm he examined Sri Niren Boro found pain and mild swelling on the left side of forehead measuring 2cm X 2cm. Nature of injury was simple and caused by blunt

object. On the same day at 3 pm he examined Smt. Binita Boro found pain on mandible cheeks, mild bruise on forehead which was visible on close view and injury was not fresh. Nature of injury was simple and caused by blunt object. Ext-4 & Ext-5 are injury reports. Ext-4(1) & Ext-5(1) are his signatures.

In the cross examination he stated that injury report is not given on prescribed format and it did not contain any case reference number. Injured persons may have been sustained injury even falling on earth. Injury of Smt. Binita Boro had not fresh.

17. On discussion of eleven witnesses examined by the prosecution it becomes clear that accused Smti. Dubeswari Boro is held guilty for the commission of offence u/s-323 IPC as evidence on record was found to be sufficient as almost all the witnesses including medical officer whose testimony proves that she is guilty of commission of offence under section 323 IPC. Other witnesses have deposed that when informant tried to stop the falling of the branches of the tree on the tin gate of informant then accused Dubeswari Boro came out and abused him, slapped the informant and his wife. Therefore prosecution was successful to establish its case against accused Dubeswari Boro under section 323 IPC. beyond reasonable doubt. But there are insufficient evidence found against accused Khagendra Basumatary in order to hold him liable for the commission of offence under section 294/323 IPC. Even no material found under section 294 IPC against Dubeswari Boro from the available materials on record.
18. My discussion above propels me to decide both the points for determination in affirmative for accused Smti. Dubeswari Boro only and in negative for accused Sri Khagendra Basumatary. Accordingly the accused Dubeswari Boro held guilty for commission of the offence punishable u/s-323 Indian Penal Code, whereas prosecution has failed to establish its case against accused Khagendra Basumatary.

ORDER

19. Accused persons **Smti. Dubeswari Boro** is convicted for offence punishable **u/s-323 IPC** and is acquitted from offence punishable **u/s- 294 IPC and Sri Khagendra Basumatary is** acquitted of the offence punishable **u/s-294/323** Indian Penal Code and he is set at liberty.

20. I have heard learned counsel for accused Smti. Dubeswari Boro on sentence hearing and he pleaded for leniency on awarding punishment to accused Smti. Dubeswari Boro as she is first time offender. Considering the fact and circumstances of this case I am not inclined to give the benefit of section 3 of Probation of Offenders Act, 1958 and accused Smti. Dubeswari Boro is sentenced to pay fine of Rs. 1000/- under section 323 IPC and in default of payment of fine 15 days S.I. Fine so collected to be payable to Sri Niren Boro and his wife Smti. Binita Boro.

21. Seizure if any be disposed of in accordance with law.

22. Their bail bond shall be in force for six months from the date of judgment delivered.

23. Given under my hand and seal of this court on 09th day of August, 2019.

KUMARI ARTI
JMFC, Udalguri BTAD, Assam

APPENDIX

PROSECUTION EXHIBITS:

Ext-1 is FIR. Ext-1(1) is signature of PW-1.

Ext-2 is charge sheet. Ext-2(1) is signature of PW-9.

Ext-3 is sketch map. Ext-3(1) is signature of PW-10.

Ext-4 & Ext-5 are injury reports. Ext-4(1) & Ext-5(1) are signature of PW-11.

DEFENCE EXHIBITS:

NIL

WITNESSES FOR THE PROSECUTION:

P.W.1Sri Niren Boro

P.W.2.....Smti. Binita Boro

P.W.3.....Sri Kanak Ch. Boro

P.W.4.....Smti. Pratima Boro

P.W.5.....Sri Lakhi Ram Boro

P.W.6.....Smti. Mamoni Mandal

P.W.7.....Sri Sapan Biswas

P.W.8.....Sri Bapan Biswas

P.W.9.....SI Umesh Bordolai

P.W.10.....ASI Mukul Ch. Sarmah

P.W.11.....Dr. Nayanjyoti Baruah

WITNESSES FOR THE DEFENCE:

NIL

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