

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

**P. R. Case No. 878 of 2019 U/s 341/294/352/34**  
**of the Indian Penal Code**

State of Assam

**-Vs-**

**1. Md. Abdul Kalam**

S/o- Late Bosir Mondal

**2. Md. Surab Ali**

S/o- Late Salim Uddin

**3. Mustt. Hazera Khatoon**

W/o- Md. Abdul Kalam

**4. Mustt. Sur Banu**

W/o- Late Salim Uddin

All are residents of Vill.- Padmapukhuri

P.S.- Rowta,

Dist.- Udalguri, Assam ..... **Accused Persons.**

**Present:-** Sri D. K. Kalita, A. J. S.

*Addl. Chief Judicial Magistrate,*

*Udalguri, Assam*

**Appearance:**

For the State : Mr. J. Daimari, Asst. P.P.

For the Defence : Smt. B. Saharia, Adv.

Dates of Evidence : 13.11.19, 25.11.19,  
06.03.21 & 08.10.21  
Date of Argument : 23.11.21  
Date of Judgment : 03.12.21

### **J U D G M E N T**

1. Prosecution case, in brief, is that on 22.06.2019, one Abdul Jalil lodged an ejahar with the In-Charge, Lalpool O.P. under Rowta P.S. against Md. Abdul Kalam, Md. Surap Ali, Mustt. Hazera Khatoon, Mustt. Sur Banu and Md. Sahjahan Ali alleging inter-alia that on 20.06.2019, one vehicle of people went to Bombay for work from Namati Chariali. His daughter and son-in-law also went and he came to know that daughter of the accused persons also went with Tara Bhanu, the daughter of Ismail Sheikh of their village. On 22.06.2019, at about 07:00 a.m., when he was sitting on the road adjacent to his house, accused persons, in a group, rushed towards him and entered into an altercation and rebuked him with filthy language. They held him and assaulted him with hands and with stones from road causing severe injuries on different parts of his body. When Nazrul Islam and Basiran Nessar went forward to resist, accused persons assaulted them with stones causing injuries on various parts of their bodies. On intervened by witnesses, his life was saved. The accused persons committed the incident

levelling allegations against him when their daughter went to Bombay and they also intimidated him.

2. On receipt the said ejahar, the In-Charge, Lalpool O.P. made Lalpool O.P. G.D. Entry No. 303 dated 22.06.2019 and forwarded the ejahar to the Officer-in-Charge, Rowta P.S. for registering a case under proper sections of law. Accordingly, upon such forwarding of the ejahar, the Officer-in-Charge, Rowta P.S. registered Rowta P.S. Case No. 91/2019 under Sections 294/341/323/34 I.P.C. and same was investigated into. On completion of the investigation, the Investigating Officer submitted charge-sheet under Sections 341/294/352/34 I.P.C. against the accused persons namely Md. Abdul Kalam, Md. Surab Ali, Mustt. Hazera Khatoon and Mustt. Sur Banu.

3. In pursuance to the court process, the accused persons appeared before the court and thereupon, necessary copies were furnished to them and on being explained the particulars of offences under Sections 341/294/352/34 I.P.C, the accused persons pleaded not guilty and claimed to stand trial.

4. In support of its case, prosecution side examined as many as six witnesses. One court witness has also been examined. On closure of prosecution evidence, accused persons have been examined under Sec. 313 Cr.P.C. wherein they took the plea of denial. Defence has adduced no evidence.

5. I have heard arguments of the learned counsels for both the sides at length, gone through the case record and perused the evidence carefully.

**POINTS FOR DETERMINATION ARE:**

6. (i) *Whether the accused persons, on 22.06.2019, at about 07:00 a.m., at Padmapukhuri under Rowta P.S., in furtherance of their common intention, wrongfully restrained the informant Md. Abdul Jalil and thereby committed an offence punishable under Sec. **341/34** IPC?*

(ii) *Whether the accused persons, on the same day, time and place above, in furtherance of their common intention, rebuked the informant Md. Abdul Jalil with obscene words in or near public place to the annoyance of others and thereby committed an offence punishable under Sec. **294/34** IPC?*

(iii) *Whether the accused persons, on the same day, time and place above, in furtherance of their common intention, assaulted the informant Md. Abdul Jalil, Nazrul Islam and Basiran Nessa or used criminal force to them and thereby committed an offence punishable under Sec. **352/34** I.P.C.?*

**DISCUSSION, DECISION AND REASONS THEREON:**

7. Before I going to decide the points for determination, let me briefly describe the evidence of the prosecution witnesses. *P.W.-1, Abdul Jalil*, is the informant

who has stated in his evidence that the incident took place about 2 months ago, at about 07:00 a.m. About 2 days prior to the incident, Sahida, niece of Kalam went to Mumbai with his neighbor Tarabhanu for work. Then mother of Sahida came and when she asked him why Sahida went to Mumbai with Tarabhanu, he told that he did not know. On the day of occurrence, in morning hours, the accused persons restrained him at road and forced him to bring their girl. Then, altercation took place between both the sides. Then accused Sorhab grounded him by pushing him and accused Abdul Kalam asked Sorhab to assault him. Accused persons assaulted him. When his son Nazrul Ali and Basiran Nessa went forward to save him, accused Abdul Kalam threw one stone which hit chest of Basiran Nessa and sustained injury. He sustained injury on leg. On the day of incident, he lodged ejahar. Ejahar has been exhibited as Ext.1 and his signature thereon as Ext.1(1). *In his cross-examination*, he has stated that he did not remember the day and date of the occurrence. Abdul kalam is his brother-in-law in relation. Sahida Begum is the sister of Sorhab Ali. Name of his son-in-law is Jamal Hussain and name of his daughter is Jarina Begum. He does not know why his son-in-law took Sahida Begum to Mumbai. He has denied the suggestions of defence.

8. *PW-2, Md. Nazrul Islam*, has stated in his evidence that the incident took place about 3 months ago

from the day of his deposition. Before the incident, Sahida begum, niece of Kalam, went to Mumbai with Tarabhanu for work. Then, on the following day, accused persons went to their house and asked his father why Sahida went to Delhi. On the day of incident, accused persons restrained his father at road and then accused Abdul Kalam asked Sorhab Ali to assault his father. All of the accused persons assaulted his father. When he went forward, accused persons also assaulted him. When his sister-in-law Basiran Nessa went forward, accused Abdul Kalam threw stone and Basiran sustained injury on her chest. After that, his father lodged ejahar. He has seen the incident. *In his cross-examination*, he has stated that residence of the accused persons is at a distance of about 200/300 meters from his residence. He cannot remember the date and time of the incident. He cannot remember when Sahida went to Mumbai. He has denied the suggestions of defence.

9. *PW-3, Mrs. Basiran Nessa*, has stated in her evidence that informant is her father-in-law and accused persons are her co-villagers. About three months ago from the day of her deposition, Sahida Begum, niece of Abdul Kalam went to Mumbai with Tarabhanu for work. On the day of occurrence, in evening hours, accused persons restrained her father-in-law at road and asked where Sahida Begum went and entered into an altercation with him asking him to bring Sahida Begum. At that time, she

was at home. On the following day, on hearing hue and cry outside her house, she went out and saw the accused persons restraining her father-in-law and accused Abdul Kalam assaulting him. Then, when she and Nazrul resisted, accused Abdul Kalam assaulted Nazrul and threw stone on her chest. She sustained injury on chest. Her father-in-law sustained injury on knee and his finger got torn. *In her cross-examination*, she has stated that she cannot remember the day and date of the occurrence. Her house is at a distance of about 300 meters from the house of the accused persons. She has denied the suggestions of defence.

10. *P.W.-4, Md. Ajijul Haque*, has stated in his evidence that he knows the informant as well as the accused persons. At the time of occurrence, he was at home and then he saw altercation taken place between both the sides. But he does not know the reason of altercation. No incident of assault took place. *In his cross-examination*, he has stated that he cannot remember the day and date of the occurrence. The occurrence took place in day time. No incident or harassment took place between both the sides. He has denied the suggestion of defence.

11. *PW-5, Md. Rafikul Islam*, has stated in his evidence that he knows the informant as well as the accused persons. On the day of incident, he was at home. On hearing hue and cry outside, he went out and saw

altercation taken place between both the sides. No incident of assault took place. *In his cross-examination*, he has stated that he cannot remember the day and date of the occurrence. Informant is his co-villager. He has denied the suggestion of defence.

12. *PW-6, S.I. Sarafat Ali*, is the Investigation Officer who has stated in his evidence that on 22.06.2019, he was posted as in-Charge, Lalpool O.P. under Rowta P.S. On that day, one Md. Abdul Jajil appeared in the outpost and lodged an ejahar and accordingly, he made Lalpool O.P. G. D. Entry No. 303 dated 22.06.2019 and forwarded the ejahar to the Officer-in-Charge, Rowta P.S. to register a case under proper sections of law. On the basis of the said ejahar, the then Officer-in-Charge, Rowta P.S. registered Rowta P.S. case No. 91/2019 under Sections 294/341/323/34 I.P.C. and entrusted him to conduct the investigation of the case. Upon such entrustment, he recorded the statement of the informant and sent the victims to Rowta Model Hospital for medical examination. On that day itself, he went to the place of occurrence, inspected the place of occurrence as shown by the informant, drew the sketch-map of the place of occurrence and recorded statements of the available witnesses including the victims. He arrested the accused persons and released them on bail. He collected medical reports of the victim on 28.06.2019. On completion of investigation, he

submitted charge-sheet against the accused persons namely Md. Abdul Kalam, Md. Surab Ali, Mustt. Hazera Khatoon and Mustt. Sur Banu under Sections 341/294/352/34 I.P.C. *In his cross-examination*, he has stated he has not seized anything in connection with the case. He inspected the place of occurrence on the day of lodging the ejahar. He did not record the statement of Nazrul Islam. He has denied the suggestions of defence.

13. *CW-1, Dr. Devakanta Ramchiary*, is the Medical Officer who has stated in his evidence that on 22.06.2019, he was posted as M&H.O., Rowta Model Hospital. On that day, at about 09:42 a.m., he examined one Abdul Jalil, aged about 75 years, one Nazrul Islam, aged about 27 years and one Mustt. Basiran Nessa, aged about 25 years. Upon examination of Abdul Jalil, he found abrasion on left knee and leg. In his opinion, injury was recent, simple caused by blunt weapon. Upon examination of Nazrul Islam and Mustt. Basiran Nessa, he found no injury. Medical Reports have been exhibited as Ext.3, Ext.4 and Ext.5 and his signatures thereon as Ext.3(1), 4(1) and 5(1). *In his cross-examination*, he has stated that he found only minor injury. He did not find any fracture injury.

14. Learned Asst. P.P. has submitted that it is well established from the evidence of the prosecution witnesses that the accused persons wrongfully restrained the informant (PW-1) and assaulted him and thereafter, when

PWs 2 & 3 went to save the informant, the accused persons also assaulted them. He has also contended that the accused persons caused injuries to the informant. Thus learned Asst. P.P. has submitted that the prosecution has succeeded to prove the case against the accused persons beyond all reasonable doubt and as such, accused persons are liable to be convicted and sentenced in accordance with law. *On the other hand*, learned counsel for the accused persons has submitted that prosecution has failed to prove the case against the accused persons beyond all reasonable doubt in as much as evidence of the informant (PW-1) and victims (PWs 2 & 3) has not been supported corroborated by other independent prosecution witnesses. He has contended that though PWs 1, 2 & 3 have stated in their evidence that the accused persons assaulted them and caused injuries, but, other independent witnesses has stated that no incident of assault took place and only altercation took place between both the sides. Thus, learned counsel for the accused persons has submitted that the accused persons are liable to be acquitted of the alleged offences.

15. Point for determination no. (i) relates to commission of offence of wrongful restraint by the accused persons. Wrongful restraint has been defined under Section 339 of the Indian Penal Code which says that whoever voluntarily obstructs any person in such a way as

to prevent him from proceeding in any direction in which he has a right to proceed, commits wrongful restraint of that person. According to this section, the obstruction must be voluntary and the person obstructed must be prevented to proceed in any direction in which he has a right to proceed. PW-1 is the victim who has stated in his evidence that on the day of occurrence, in the morning, the accused told him to bring their girl by restraining him at road. PW-2 has stated in his evidence that on the day of occurrence, the accused restrained his father at road. PW-3 has stated in her evidence that on the day of occurrence, in evening hours, the accused persons restrained her father-in-law at road and asked where Sahida Begum went. PW-4 has stated in his evidence that at the time of occurrence, he was at home and he saw altercation taken place between both the sides. PW-5 has stated in his evidence that on the day of occurrence, he was at home. Then he went out hearing hue and cry outside and saw altercation taken place between both the sides. Thus, it is found from the evidence of PWs 1, 2 & 3 that the accused persons restrained PW-1 at road. Defence has not proved any contradiction as regards restraining PW-1 at road. But, PW-1 and PWs 2 & 3 have not specifically stated whether PW-1 was proceeding in any direction and the accused persons prevented him from proceeding to such direction by restraining him. In absence of specific evidence as regards

proceeding to any direction by PW-1 and obstructing him to proceed to such direction, mere statement of restraining at road cannot be said to be wrongful restraint. Moreover, in the ejahar (Ext.1) it is stated that the incident took place when the informant (PW-1) was sitting at road adjacent to his house. PWs 4 & 5 have not supported the evidence of PWs 1, 2 & 3. In view of the above discussion, I am of the considered opinion that the prosecution has failed to prove the offence under Section 341 of the Indian Penal Code against the accused persons.

16. Point for determination no. (ii) relates to commission of offence of rebuking the informant with obscene words by the accused persons. It is found from the evidence of the prosecution witnesses that none of them has stated that the accused persons rebuked the informant or uttered any obscene words. Having regard to lack of evidence, I am of the considered opinion that the prosecution has failed to prove the offence under Section 294 IPC against the accused persons.

17. Point for determination no. (iii) relates to commission of offence of assault or using criminal force to the informant (PW-1) or Nazrul Islam (PW-2) and Basiran Nessa (PW-3) by the accused persons. It is found from the evidence of PW-1 that Sorhab Ali felled him by pushing him and Kalam Ali asked Sorhab Ali to assault him. All the accused persons assaulted him and he sustained injury on

his legs. His son (PW-2) and Basiron Nessa (PW-3) went forward to save him and then Kalam threw a stone which fell on the chest of Basiron and she sustained injury. It is found from the evidence of PW-2 that accused Abdul Kalam asked Sorhab Ali to assault his father (PW-1). All of the accused persons assaulted his father (PW-1). When he went forward, accused persons also assaulted him. When his sister-in-law Basiran Nessa (PW-3) went forward, accused Abdul Kalam threw stone and Basiran sustained injury on her chest. It is found from the evidence of PW-3 that accused Abdul Kalam assaulted PW-1 and when she and Nazrul (PW-2) resisted, accused Abdul Kalam assaulted Nazrul and threw stone on her chest. She sustained injury on chest. Her father-in-law (PW-1) sustained injury on knee and his finger got torn. It is found from the evidence of the Medical Officer (C.W.1) and Medical Reports (Ext.3, Ext.4 & Ext.5) that PW-1 sustained abrasion on left knee and leg and PWs 2 & 3 sustained no injury. Thus, it is appeared from the evidence of the informant (PW-1) and victims (PWs 2 & 3) that the accused persons assaulted them causing injury to PW-1. But, their evidence has not been supported by other independent eye witnesses. PWs 4 & 5 are eye witnesses to the occurrence and they have not corroborated and supported the evidence of PWs 1, 2 & 3 as regards assaulting or using criminal force to PWs 1, 2 & 3. They have even not

stated anything about sustaining any injury by PW-1. It is found from the evidence of PWs 4 & 5 that only altercation took place between both the sides and no incident of assault took place. Moreover, it is found from the evidence of PWs 1, 2 & 3 that the accused Abdul Kalam threw a stone which fell on the chest of Basiron Nessa (PW-3). But, from the evidence of Medical Officer (CW-1) and Medical Report (Ext.5), it is appeared that she does not sustain any injury. Had she been assaulted with stone on her chest, she would have sustained injury. Thus, a doubt arises as regards assaulting or using criminal force to PWs 1, 2 & 3 by the accused persons. In view of the above discussion, I am of the considered opinion that the prosecution has failed to prove the offence under Sec. 352 of the Indian Penal Code against the accused persons beyond all reasonable doubt.

18. From the discussion made in foregoing paragraphs, I am of the considered opinion that the prosecution has failed to prove the offences under Sections 341/294/352/34 of the Indian Penal Code against the accused persons beyond all reasonable doubt and as such, accused persons deserve acquittal.

### **ORDER**

19. In view of the conclusion made above, I hold the accused persons not guilty of the offences U/s 341/294/352/34 I.P.C. and hence, they are acquitted of

the said offences. Accused persons are set at liberty forthwith.

20. The bail-bonds of the accused persons shall remain in force for a period of six months from the date of this order.

21. The judgment is delivered in the open Court in presence of the accused persons and their learned Counsel.

*Given under my hand and the seal of this court on this 3<sup>rd</sup> day of December, 2021.*

(D. K. Kalita)

Addl. C.J.M., Udalguri

Dictated and corrected by me,

(D. K. Kalita)

Addl. C.J.M., Udalguri

**APPENDIX**

## 1. Prosecution Witnesses:

- P.W.1- Md. Abdul Jalil
- P.W.2- Md. Nazrul Islam
- P.W.3- Mustt. Basiran Nessa
- P.W.4- Md. Aijul Haque
- P.W.5- Md. Rafikul Islam
- P.W.6- S.I. Sarafat Ali (I/O)

## 2. Prosecution Exhibits:

- Ext.1- Ejahar
- Ext.2- Sketch-map
- Ext.3- Medical Report
- Ext.4- Medical Report
- Ext.5- Medical Report
- Ext.6- Charge-sheet

## 3. Court Witness:

- C.W.1- Dr. Devakanta Ramchiary (M/O)

4. Defence Witness: Nil

5. Defence Exhibit: Nil

(D. K. Kalita)

Addl. C.J.M., Udalguri