

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

**G.R. CASE NO. 923 of 2020
(PRC NO. 923/21)**

U/S- 447/294/323 I.P.C.

**Present: Smti. Ranjita Agarwalla,
Chief Judicial Magistrate,
Udalguri, Assam.**

STATE

-VS-

MD. TOIB ALI

----- Accused.

For the Prosecution : Mr. M. Khakhlari, learned Additional PP

For the Defence : Mr. Nikumoni Baglari, learned Advocate.

Date of Prosecution Evidence : 23-12-2021.

Argument heard on : 23-12-2021.

Judgment delivered on : 23-12-2021.

J U D G M E N T

- 1.** The brief facts of the prosecution story are that on 19-08-2020 one Md. Anowar Hussain of Panikhaity village under Rowta police station lodged a written ejahar before the In-Charge, Lalpool police outpost stating inter-alia that he got married about 45 days back and after his marriage, he was kept separated by his father to lead an independent life. He found the accused at about 12 midnight or 1 P.M. standing outside his house touching walls with bad intention. On 28-07-2020 his father unlawfully assaulted his wife Miss Parbina Begum, his mother-in-law and him too for which he sustained injuries on various parts of his body. When the matter was apprised to the villagers, they said that they would settle the matter amicably as it was relating to differences between father and son. It is also stated

that his father scolded his mother-in-law with filthy language and used to see his wife with bad eyes. Hence, he lodged this case praying for taking necessary action against the accused person.

- 2.** After receiving the ejahar to the effect aforesaid, the In-Charge, Lalpool police outpost made a GD Entry bearing Lalpool OP GD Entry No. 286 dated 19-08-2020 and forwarded the same to the Officer-in-Charge, Rowta Police Station for registering a case under proper section of law. Accordingly, after receiving the aforesaid ejahar, the Officer-in-Charge, Rowta Police Station registered Rowta PS case no. 126/20 U/S 447/323/294 I.P.C. and on completion of the investigation, the Investigating Officer submitted the charge sheet against the accused person namely Md. Toib Ali alleging commission of offences U/S 447/294/323 I.P.C.
- 3.** On the basis of the charge sheet, cognizance of offences was taken under Section **190 (1)(b)** of the Cr. PC. The processes were issued for causing appearance of the accused person before the Court. Accordingly, the accused appeared before the Court and on his appearance, necessary copies of all relevant papers and documents were furnished to him. Finding a prima-facie case for commission of offences, the particulars offences U/S 447/323/294 I.P.C. were stated and explained to the accused person to which he pleaded not guilty and claimed to stand trial.
- 4.** In order to bring home the case, the prosecution examined as many as two(2) PWs in the form of:

PW 1 Md. Anowar Hussain (informant)

PW 2 Musst. Parbin Begum.

The prosecution has also exhibited the following document in the form of:

Ext. 1 Ejahar.

- 5.** After recording the prosecution witnesses the accused is exempted from recording their statements U/S 313 Cr.P.C. as not implicated. Further the accused person declined to adduce any evidence in defence.
- 6.** I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused person. I have also carefully gone through the entire evidence available with the case record.

7. POINTS FOR DETERMINATION:

- (I)** Whether on 28-07-2020 at village Panikhaity under Rowta Police Station the accused committed criminal trespass by entering into the compound of the informant Md. Anowar Hussain with intent to commit an offence and thereby committed an offence punishable U/S 447 of I.P.C.?
- (II)** Whether on the same day at same place, the accused person uttered obscene words to the mother-in-law of the informant which caused annoyance to others and thereby committed an offence punishable U/S 294 of I.P.C.?
- (III)** Whether on the same day at the same time and place the accused person voluntarily caused hurt to the said informant, his wife Miss Parbin Begum and his mother-in-law and thereby committed an offence punishable U/S 323 I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** Now, let us have a glimpse on the evidence on record. The star witness **PW1 Md. Anowar Hussain**, who is the informant of this case, stated in his deposition that the accused person is his father. On 28-07-2020 he had an altercation with his father regarding some domestic affairs and also slight jostling took place and in that jostling, he sustained minor injuries by way of falling. As such, due to misunderstanding he lodged this instant against his father. **Ext. 1** is the ejahar and **Ext. 1(1)** is his signature.
- 9.** **PW 2 Musst. Parbin Begum**, one of the alleged victim of the case deposed that the informant is her husband and the accused is her father-in-law. On 28-07-2020 her husband had an altercation with her father-in-law regarding domestic affairs and there was slight jostling too. She also present there at that time. Later on, due to misunderstanding, her husband lodged this instant case against the accused. Subsequently, the matter had negotiated between them being family dispute.

- 10.** Now, from the material available in the case record it reveals that although in this case the particulars of offences **U/S 447/294/323** of **I.P.C.** were stated and explained to the accused person, but the informant (**PW1**) who is the star witness of the case, has disclosed in his examination-in-chief regarding the offence **U/S 447 I.P.C.** that the accused person is his father. Moreover, he averred that on 28-07-2020 he had an altercation with his father regarding some domestic affairs and also slight jostling took place between them and in that jostling he sustained minor injuries by way of falling. In cross examination, PW 1 stated that the case was lodged due to misunderstanding only and the same has been sorted out. **PW 1** does not want to proceed further with the case. He has no grievances against the accused person if he gets acquittal from the case as the accused is his father and are living with him in the same compound. Moreover, **PW 2 Musst. Parbin Begum** one of the alleged victim of the case also stated in her evidence that on 28-07-2020 her husband had an altercation with her father-in-law(accused) regarding some domestic affairs and there was slight jostling too where she also present there which is not debarred by the prosecution. But she expressed that due to misunderstanding only, though her husband lodged this instant case against the accused but the same has been amicably sorted out. Moreover, as per cross version of PW 1, i.e. the informant, they are living under the same compound being family members. As such, the accused person unlawfully entering into the compound of the informant does not arise here.
- 11.** Pertaining to the offence **U/S 294 IPC** i.e., uttering obscene words, both the **PW1 & PW 2** in their evidences are mum about the same. Although, **PW1** in the FIR stated that the accused person scolded his mother-in-law in filthy language but he has not mentioned about the said scoldings uttered by the accused person in his evidence.
- 12.** Likewise, regarding offence under Section **323 I.P.C.** i.e. causing hurt, both the PWs are silent. To attract the offence **U/S 323** the definition of hurt is defined in **Section 319** of **Indian Penal Code** wherein pain is one of the ingredients of such hurt. Both **PW 1 & PW 2** have stated in their examination in chief that there was slight jostling took place between the accused and PW1 and in that process, PW 1 sustained minor injury by way of falling. None of the PWs have stated anything about the assault or attack made by the accused person on them. Rather, they stated that the accused is their father/father-in-law and PW 1

admitted that in the process of jostling he sustained injury by way of falling only. Nowhere the informant i.e. PW 1 or the PW 2 stated about any kind of assault caused by the accused to them. Considering the above aspects, I come to the conclusion that the prosecution has failed to prove the case against the accused person.

- 13.** Thus, from the above discussion, I find that the prosecution has miserably failed to establish the offences U/S 447/294/323 I.P.C. against the accused person. In the result, the accused person is not found guilty U/S 447/294/323 I.P.C.

ORDER

- 14.** The accused person namely Md. Toib Ali is acquitted from the offences U/S 447/294/323 I.P.C. and he is set at liberty forthwith.

Bail bond shall remain in force for next 6 months as per provisions of Section 437(A) Cr.P.C.

Given under the hand and seal of this Court on this 23rd day of December, 2021 at Udalguri, Assam.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

Dictated and corrected by me:

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

APPENDIX

A. Prosecution witnesses : **PW 1 Md. Anowar Hussain**
PW 2 Musst. Parbin Begum.

B. Defence witness : Nil.

C. Documents exhibited : **Ext. 1 FIR**

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.