

IN THE COURT OF JUDICIAL MAGISTRATE
1st CLASS, UDALGURI, ASSAM

G.R. Case No.18/21 (PRC No. 372/21)
u/s 498(A)/447/323 RW Sec. 34 of IPC

State of Assam

-Vs-

1. Sri Moon Deka @Jatin Deka

2. Sri Sanjay Deka

3. Sri Ratul Deka

4. Sri Dhulu Deka @ Harakanta

..... Accused persons.

Present:- Smt. Priyanka Purkayastha, A. J. S.

Judicial Magistrate 1st Class, Udalguri

Advocates appeared:

For the State : Sri Abhoy Poudel

For the Defence : Smti. Latika Das

Dates of Evidence : 18.11.2021

Date of Argument : 03.12.2021

Date of Judgment : 03.12.2021

J U D G M E N T

Initiation of Proceeding:

1. This case was initiated on the filing of a written FIR on **04.01.2021** by the informant **Sri Bashiram Boro** against the accused persons in this case.

Prosecution Story:

2. The prosecution story in brief is that, on **01.01.2021** at about **09.00 PM**, the accused **Sri Moon Deka @ Jatin Deka** and **Sri Sanjay Deka** assaulted **Smti. Jonali Deka**, the daughter of the informant with a stick and strangulated her in order to kill her. The victim was admitted to the hospital at Guwahati for medical treatment in a serious condition. The informant further stated in his FIR that the accused **Sri Moon Deka @ Jatin Deka** used to torture the victim demanding money, articles etc. Hence, this case.
3. On receipt of the aforesaid FIR, the Officer-in-Charge of Panery Police Station registered a case vide Panery PS case no. **02/2021**, u/s **498(A)** of **IPC** and entrusted **ASI Aniram Boro** to conduct the investigation of the case.

4. After completion of the investigation, the Investigating Officer submitted charge-sheet u/s **498(A) of IPC** against the accused **Sri Moon Deka @ Jatin Deka** and u/s **447/323 RW Sec. 34 of IPC** against the accused persons **Sri Sanjay Deka, Sri Ratul Deka** and **Sri Dhulu Deka @ Harakanta**.

Procedure followed:

5. On receipt of the charge-sheet, the cognizance of the said offences were taken u/s **190(1)(b) of Cr.PC**. After furnishing the copies of the relevant documents u/s **207 of Cr.PC** to the accused persons, a formal charge was framed u/s **498(A) of IPC** against the accused **Sri Moon Deka @ Jatin Deka** and u/s **447/323 RW Sec. 34 of IPC** against the accused persons **Sri Sanjay Deka, Sri Ratul Deka** and **Sri Dhulu Deka @ Harakanta** which was on being read over and explained to the accused persons, they pleaded not guilty and claimed to be tried. Hence, this trial.
6. In due course of trial, the prosecution examined two **(2)** nos. of witnesses. The statements u/s **313 of Cr.PC** of the accused persons **Sri Moon Deka @ Jatin Deka** and **Sri Sanjay Deka** were recorded in separate sheets which were in total denial and the same were kept with the case record. The

statements u/s **313 of Cr.PC** of the accused persons **Sri Ratul Deka** and **Sri Dhulu Deka @ Harakanta** were dispensed with. The learned counsel for the accused persons declined to adduce any defence evidence. I have heard arguments from both the learned prosecution and the learned defence counsel.

Points for determination:

- I. Whether the accused Sri Moon Deka @ Jatin Deka on 01.01.2021 at about 09.00 PM, being the husband of the victim, subjected her to cruelty by assaulting her and thereby committed an offence punishable u/s 498(A) of IPC?***

- II. Whether the accused persons Sri Sanjay Deka, Sri Ratul Deka and Sri Dhulu Deka @ Harakanta on 01.01.2021 at about 09.00 PM, in furtherance of their common intention, committed criminal trespass by entering into the property of the victim, at that time in possession of the victim with intent to commit an offence and thereby committed an offence punishable u/s 447/34 of IPC?***

III. Whether the accused persons Sri Sanjay Deka, Sri Ratul Deka and Sri Dhulu Deka @ Harakanta on 01.01.2021 at about 09.00 PM, in furtherance of their common intention, voluntarily caused hurt to the victim and thereby committed an offence punishable u/s 323/34 of IPC?

Decision and reasons for the decision thereon:

- 7.** Let me now evaluate the evidences adduced by the witnesses in the present case in light of law.

- 8.** **PW1, Sri Bashiram Boro**, the informant of this case, stated that he knew all the accused persons. The incident took place on **01.01.2021**. On the day of the incident, his daughter **Smti. Jonali Deka** (the victim) went to a picnic along with the accused **Sri Moon Deka @ Jatin Deka**. After returning from the picnic, the accused **Sri Moon Deka @ Jatin Deka** and **Smti. Jonali Deka** (the victim) entered into a hot altercation regarding the mobile phone of her daughter **Smti. Jonali Deka** (the victim). After that, her daughter **Smti. Jonali Deka** (the victim) called PW1 and later on, this case was lodged against the accused persons. **PW1** identified the FIR as **Ext. 1** and **Ext. 1(1)** as his signature.

9. During the cross-examination, **PW1** stated that the matter is resolved in between the accused **Sri Moon Deka @ Jatin Deka** and his daughter **Smti. Jonali Deka** (the victim). **PW1** further stated that he has no grievance against the accused persons and no objection if the accused persons are acquitted in this case.
10. **PW2, Smti. Jonali Deka** stated that the FIR was lodged by her father (**PW1**). She knew all the accused persons. The accused **Sri Moon Deka @ Jatin Deka** is her husband. The incident took place on **01.01.2021**. On the day of incident, an altercation took place in between her and her husband **Sri Moon Deka @ Jatin Deka** (accused) regarding her mobile phone. After sometime, the other co-accused persons came to the place of occurrence. The accused **Sanjay Deka** is her brother-in-law. A little jostle took place in between **PW2** and her husband **Sri Moon Deka @ Jatin Deka** (accused) and the accused **Sanjay Deka** and as a result, she sustained minor injuries by falling on the ground. After that, **PW2** informed about the matter to her father (**PW1**) and accordingly, this case was lodged. Later on, **PW2** appeared before the Court and her statement was recorded. **PW2 identified the statement recorded u/s 164 of Cr.PC as Ext. 2 and Ext. 2(1) and 2(2) as her signatures.**

- 11.** During the cross-examination, **PW2** stated that this case was lodged on mere anger and the matter is resolved in between **PW2** and the accused **Sri Moon Deka @ Jatin Deka**. **PW2** further stated that she has no grievance against any of the accused persons and no objection if the accused persons are acquitted in this case.
- 12.** The plain reading of the evidences recorded in this case reveal that this case was filed due to a dispute that took place in between **PW2** (the victim) and the accused **Sri Moon Deka @ Jatin Deka**. A hot altercation took place in between them regarding the mobile phone of the victim **PW2** and consequently, the co-accused persons appeared at the place of occurrence. A little jostle took place in between the **PW2** and **Sri Moon Deka @ Jatin Deka** and **Sri Sanjay Deka**. **PW2** further stated that due to the jostle she has fallen on the ground and sustained minor injuries.
- 13.** **PW1**, being the father of the victim, had filed this case against the accused persons on learning about the dispute from the victim herself.
- 14.** The informant and the victim have not

implicated the accused **Sri Moon Deka @ Jatin Deka** for committing cruelty against **PW2** and the other accused persons for committing criminal trespass and hurt to the victim. **PW2** has further stated that this case was filed against the accused persons on mere anger.

15. Moreover, both the witnesses **PW1** and **PW2** have further stated that the matter is resolved in between them and they have no grievance against any of the accused persons.

16. Having so discussed above, the Court is of the opinion that no incriminating materials are found against any of the accused persons to bring home the offence u/s **498(A) of IPC** against the accused **Sri Moon Deka @ Jatin Deka** and u/s **447/323 RW Sec. 34 of IPC** against the accused persons **Sri Sanjay Deka, Sri Ratul Deka** and **Sri Dhulu Deka @ Harakanta** and therefore, the points for determination are decided in negative.

ORDER

17. In view of the above reasons, it is found that the prosecution is unable to prove the case beyond all

reasonable doubts. Hence, the accused **Sri Moon Deka @ Jatin Deka** is held not guilty under section **498(A) of IPC** and the accused persons **Sri Sanjay Deka, Sri Ratul Deka** and **Sri Dhulu Deka @ Harakanta** are held not guilty u/s **447/323 RW Sec. 34 of IPC** and they are acquitted. The accused persons are set at liberty forthwith. The bail bonds shall stand extended for six **(6)** months as per Sec. **437-A** of Cr.PC.

- 18.** The judgment is delivered in the open Court in presence of the accused persons and the learned counsels.

*Given under my hand and the seal of this court on this **03rd December, 2021.***

Dictated and corrected by me,

(P. Purkayastha)
JMFC, Udalguri

(P. Purkayastha)
JMFC, Udalguri

APPENDIX

A. Prosecution witnesses-

- (1) **PW1 Sri Bashiram Boro (informant)**
- (2) **PW2 Smti. Jonali Deka (victim)**

B. Court witness- Nil.

C. Defence Witness- Nil.

D. Documents exhibited:

- (1) **Ext. 1- FIR**
- (2) **Ext. 2- Statement recorded u/s 164 of Cr.PC**

(P. Purkayastha)

JMFC, Udalguri