

IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE::BAKSA

G.R. Case No. 978 of 2018

Under Section 341/354 IPC

Present :- Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.

The State of AssamProsecution.

-Vs-

Prafulla NathAccused Person.

Evidence recorded on : - 29-04-2019, 29-06-2019,
27-12-2019, 12-03-2020.

Argument heard on : - 08-07-2022.

Judgment delivered on : - 20-07-2022.

Advocate Appeared :-

Mr. **Ranjit Basumatary**..... A.P.P. for the State of Assam

Mr. **Sadagar Ramchiary**.....Advocate for the accused person.

J U D G M E N T

1. The prosecution story in brief is that on 06-05-2013, informant Uday Nath lodged an FIR at Labdangguri PP under Gobardhana PS to the effect that on 20-04-2013, Assamese 6th Bohag, the informant's grand-daughter Mitali Nath went to pick up miscellaneous Sak (leafy vegetable) near house due to the occasion of 7th Bihu. The accused told Mitali to

give him little Sak. As such, while Mitali was returning after plucking Sak with her maternal aunt, the maternal aunt told Mitali to give the Sak at the house of the accused and kept waiting on the road. When Mitali was about to come out after giving the Sak, the accused told her that there are bitter gourd, Jika etc. in the kitchen and asked Mitali to bring out the same. As Mitali refused to bring out the vegetable, the accused chased her and engulfed her. But Mitali had tried to free herself and after freeing herself when she wanted to run, she got slipped and badly injured her leg. The informant along with few prominent villagers went to the house of the accused to know about the incident and for discussion, but the accused did not give importance; rather said it to be a normal matter.

2. Labdangguri P.P. GD entry No. 53/16 dated 06-05-2013 was made in respect of the FIR. Gobardhana P.S. Case No. 42/13 u/s 341/354 IPC was registered. After completion of investigation, charge-sheet was submitted against accused Prafulla Nath u/s 341/354 IPC.
3. Charge u/s 341/354 IPC was framed against the accused person and contents of the charge were read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.
4. The prosecution examined 6 (six) nos. of PWs.
5. The accused person is examined u/s 313 Cr.P.C. The accused person has declined to adduce evidence.

6. I have heard argument of the learned Asst. P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

7. POINTS FOR DETERMINATION:

1) Whether the accused person had wrongfully restrained Mitali Nath?

2) Whether the accused person had assaulted or used criminal force to Mitali Nath with intent to outrage her modesty?

8. DISCUSSIONS, REASONS & DECISION THEREFOR-

9. Point No. 1 & 2:

10. PW1 Uday Nath (informant) said that about five years ago at around 3 PM the accused tried to molest his granddaughter Mitali at his residence. The accused grabbed her and accordingly she sustained injury also. His granddaughter informed the matter to his wife Khabahi Nath and his wife informed him the same.

11. PW2 Mitali Nath (victim) said that on 20-04-2013 at about 10 AM while she was in the kitchen garden to pluck vegetables, the accused came and asked for some vegetables. As she went to his home, he told her to keep vegetable in the kitchen and take the remaining vegetable from his kitchen. As no one else was present at that time, she refused to enter his kitchen. At that moment, the accused came and groped her from behind around her chest. She shoved him and fell on the ground. As such,

she sustained minor injury and subsequently she left the place. She returned home and informed her grandparents about the incident.

12. PW3 Khabahi Nath said that the informant is her husband. About 7 years ago one day at around 11 AM her granddaughter Mitali Nath went to the house of the accused to give Sak. The accused asked Mitali to keep them in the kitchen and take some of the vegetable which were kept there. As Mitali refused to go inside, the accused threatened her and she started to run. The accused chased her. Mitali fell on the ground and she sustained injury on her legs. At that time, she was not in home. On the following day, when she returned home, Mitali narrated the incident to her. She informed the matter to her husband also.
13. Apart from the above witnesses, the prosecution has examined three other witnesses. But PW4 Rohini Nath and PW6 Mahendani Nath expressed ignorance about the alleged incident. PW5 Satrughana Nath simply said that he heard that the accused misbehaved grand-daughter of the informant.
14. PW1 is the informant and grand-father of the alleged victim. PW3 is the grand-mother of the alleged victim PW2. The age of the alleged victim is not written in the FIR. The victim has said her age as 18 years when she adduced evidence before the Court in 2019. The alleged

incident is of 2013. So, the age of the alleged victim may be 13 years at the time of the occurrence.

15. The informant is an illiterate person. The prosecution has failed to produce the IO. The prosecution could not exhibit the FIR. It is written in the FIR that maternal aunt of the victim was waiting for the victim on the road of the accused person. The prosecution had examined all the witnesses who were cited as PW in the charge sheet. The IO has not examined any maternal aunt of the victim.
16. The FIR is lodged after about 15 days of the alleged occurrence. No cause of the delay in lodging the FIR is written in the FIR. The victim was a small girl at the time of the alleged occurrence. The accused was about 55 years old at the time of the occurrence.
17. The victim said that the accused groped her from backside. This is the single sentence about the act of the accused which is under scrutiny whether it amounts to outraging modesty of the victim or not.
18. There is no evidence that the accused used to do such act with the victim earlier also. There is no evidence that the image of the accused is not so good in the society and his character is not good. There is no earlier incident of the accused committing similar deeds with other girls in the village.
19. The accused is an aged person at the time of the offence. PW1 has said in his cross-examination that the victim calls

the accused "ata" means grand-father. The accused has three sons and his wife in the house. The accused during his examination u/s 313 Cr.P.C. has said that the victim had not attended puberty at the time of the incident.

20. The grand-mother of the victim has not said that the accused groped her grand-daughter. As the victim was quite young and did not attend puberty at the relevant time, the accused even if, had hugged her from back side around her chest, that may be out of innocent love for the small children and same should not be viewed/considered to be an act triggered with some other motive.
21. There is no witness of the alleged incident except the victim girl. There is no apparent reason of imputing false allegation on the accused. The accused had admitted that the victim came to his house to give him Sak. The accused has also admitted that the victim ran and as there was water on the courtyard, she slipped and sustained injury on the heel. The accused had denied other allegation.
22. There is unexplained delay of 15 days in lodging the FIR. Hence, the truthfulness of the incident comes under question.
23. I find that there is lack of sufficient evidence against the accused that he wrongfully restrained the victim and he assaulted or used criminal force to the victim with intent to outrage her modesty.

24. From the above discussion, I find that it is not proved that the accused person had wrongfully restrained Mitali Nath **AND** the accused person had assaulted or used criminal force to Mitali Nath with intent to outrage her modesty. So, the accused person cannot be held guilty u/s. 341/354 IPC.
25. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt u/s 341/354 IPC. So, I acquit the accused person Prafulla Nath of the charges u/s 341/354 IPC and is set at liberty.
26. Given under my hand and seal of this Court this 20th day of July, 2022.

Typed by me—

D. Boro
CJM, Baksa

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APPENDIX

PROSECUTION EXHIBITS: NIL.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1- Uday Nath.

PW2- Mitali Nath.

PW3- Khabahi Nath.

PW4 - Rohini Nath.

PW5- Satrughana Nath.

PW6- Mahendani Nath.

DEFENCE WITNESSES : NIL.

COURT WITNESSES: NIL.