

**IN THE COURT OF
THE CHIEF JUDICIAL MAGISTRATE::BAKSA
Case No. : PRC 28/18
Under Section 448/323/294 IPC**

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

The State of Assam.....Prosecution.

-Vs-

Ramesh Basumatary.....Accused Person.

Evidence recorded on :- 03-08-2019, 12-02-2020,
10-01-2022, 26-05-2022.

Argument heard on :- 19-07-2022

Judgment delivered on :- 19-07-2022

Advocate Appeared :-

Mr. Ranjit Basumatary.....APP for the State of Assam.

Smti. Rumi SarmaAdvocate for the accused person.

J U D G M E N T

1. The gist of the case is that on 07-09-2016 informant Anjali Basumatary lodged an FIR at Kumarikata OP under Tamulpur PS to the effect that the accused is her husband. She is taking shelter at her elder sister's house at Latibari village for about 5 months due to torture of the accused. On 04-09-2016 at about

7.30 PM the accused came chasing her there and assaulted her. Seeing this, Champa Basumatary, elder sister of the informant came to resist the accused. Then the accused had slapped, given fist blow to Champa Basumatary also. On hue and cry, the accused fled away threatening to kill them. The delay in lodging the FIR is caused as she was waiting for social trial in the village.

2. Kumarikata GD Entry No. 107 dated 07-09-2016 was made in respect of the FIR. Tamulpur PS Case No. 256/16, u/s 447/325/354/506 IPC was registered and investigated into. After completion of investigation, charge-sheet was submitted against accused Ramesh Basumatary u/s 448/323/294 IPC.
3. Particulars of the offence u/s 448/323/294 IPC were read over and explained to the accused person to which the accused person had pleaded not guilty and claimed to be tried.
4. The prosecution examined 5 (five) nos. of witnesses. The defence has examined none.
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 A.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 committed house trespass?
2. Whether the informant and her elder sister Champa Basumatary had sustained hurt?
3. Whether the accused person had voluntarily caused hurt to the informant and her elder sister Champa Basumatary?
4. Whether the accused person had uttered obscene words in the public to the annoyance of the informant and others?

8. DISCUSSION, REASONS AND DECISION:

9. POINT NO. 1, 2, 3 & 4:

10. According to the informant/PW1, the place of occurrence is her elder sister's house. The elder sister of the informant has not filed any case against the accused. The informant has said that the accused who is her husband came to her elder sister's house and assaulted her. When her sister tried to prevent him, the accused also thrashed her. She and her sister sustained injury. Her elder sister sustained injury on her nose, forehead and fracture on her rib.
11. PW2 Champa Basumatary said that the accused came to her house and fought with his wife/informant. The accused tried to assault her sister. When she prevented the accused, he gave her blows. She sustained injury on face and ribcage. She bled

from her nose and one of her ribs got fractured on left side. After assaulting PW2, the accused went away.

12. PW1 informant said that the accused had assaulted her. But PW2 has said that the accused tried to assault PW1.

13. PW3 Lakhi Basumatary is the daughter of the PW2. She said that her aunt PW1 came to their house after quarrel with her husband. Six months later, one day at around 7 PM, the accused came to their house and asked for the informant. PW3 replied that her aunt is inside the room. Then the accused went there. After few moments, she heard quarrel between the informant and the accused. She went inside the room and found her mother Champa Basumatary bleeding from nose. On being asked, her aunt told that the accused had assaulted her for which she sustained the injuries. PW3 then asked the accused to leave their house. Accordingly the accused went away.

14. PW4 Dr. Arindam Kalita (MO) said that on 04-09-2016 at about 8.45 PM, he examined Champa Basumatary at Kumarikata State Dispensary and found the following-

The patient complains of physical assault. On examination, multiple scratching on forehead, nose and both cheek were found. Active bleeding was present. Nature of injury was simple and was caused by blunt weapon.

On the same day, the MO had examined Anjali Basumatary and found the following-

The patient complains of physical assault, pain over occipital region. No external injury is found. Ext.2 is medical report.

15. PW1 and PW2 have said that PW2 had sustained fracture on ribcage. But there is no medical report in support of such evidence. PW3 Lakhi Basumatary has not said about any fracture sustained by her mother PW2.
16. The MO has not found any external injury on PW1. The PW2 has said that she prevented the accused from assaulting her sister PW1. The PW2 might have sustained the injuries, if any while she prevented the accused from assaulting her sister PW1.
17. The accused has denied of going to Champa Basumatary's house during his examination u/s 313 Cr.P.C. Bitter relationship between the informant and the accused is clear in the evidence. The FIR is lodged after three days of the alleged incident. Delay in lodging the FIR is written in the FIR. But during evidence, the PW1 informant or his elder sister PW2 have not said about any village meeting called by the informant for the alleged misdeed of the accused. As such, it is doubtful whether the accused had in fact gone to Champa Basumatary's house or not.
18. There is no evidence that the accused had uttered any obscene words before the informant or others.
19. I find that the delay in lodging the FIR has not been explained during evidence. The bitter relationship between the

informant and the accused and absence of any medical evidence about rib bone fracture of PW2 Champa Basumatary create doubt about the prosecution allegation.

20. In view of the discussions, I find that it is not proved that the accused person had committed house trespass **AND** the informant and her elder sister Champa Basumatary had sustained hurt **AND** the accused person had voluntarily caused hurt to the informant and her elder sister Champa Basumatary **AND** the accused person had uttered obscene words in the public to the annoyance of the informant and others. So, the accused person cannot be held guilty u/s. 448/323/294 IPC.

21. 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 448/323/294 IPC. So, I acquit accused Ramesh Basumatary of the charges u/s 448/323/294 IPC and is set at liberty.

22. Bail-bond furnished u/s 437(A) Cr.P.C. shall remain in force upto six months from today.

23. Given under my hand and seal of this Court this 19th day of July, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa

APENDIX

PROSECUTION EXHIBITS:

- Ext.1- FIR.
Ext.2- Medical report.
Ext.3- Sketch map.
Ext.4- Charge sheet.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

- PW1- Anjali Basumatary.
PW2- Champa Basumatary.
PW3- Lakhi Basumatary.
PW4- Dr. Arindam Kalita (MO).
PW5- Insp. Pranab Baishya (IO).

DEFENCE WITNESSES :

COURT WITNESSES: NIL.