

**IN THE COURT OF THE  
CHIEF JUDICIAL MAGISTRATE : BAKSA.**

**GR Case No. 280/18**

**Under Section 294/341/323/354(B)/506/34 IPC**

**Present :- Smti. D. Boro, AJS,**

**Chief Judicial Magistrate, Baksa.**

**The State of Assam.....Prosecution.**

**-Vs-**

**Dinesh Sarma**

**Bhabesh Medhi**

**Madhab Medhi ..... Accused Persons.**

Evidence recorded on :- 22-09-2015, 10-05-2016,  
18-07-2016, 13-12-2016,  
14-03-2017, 10-05-2019.

Argument heard on :- 10-05-2022.

Judgment delivered on :- 10-05-2022.

Advocates Appeared :-

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

Mr. **Tridib Sarma**

Mr. **Amrit Boro**.....Advocate for the accused person.

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

1. The prosecution story in brief is that on 18/10/2014 informant Satish Roy lodged an FIR before O/C of Mushalpur

PS stating inter-alia that on 03/08/2014 at about 10.00 PM taking the opportunity of his absence, accused Dinesh Sharma came to rape his wife. Then she raised hue and cry at which the said accused fled away. Four of the villagers got the matter compromised verbally between the said accused and wife of the informant. The said accused had to pay ₹ 15,000 (Rupees fifteen thousand) only to the wife of the informant as compensation in view of the above compromise. Accused Bhabesh Medhi had taken that amount from accused Dinesh Sharma. On 16/10/2014 accused Bhabesh Medhi and Madhab Medhi were waylaying as per prior planning. At that time, the informant along with Harmohan Sharma, Basanta Roy and Atul Talukdar went to the house of accused Dinesh Sharma to take the money. Then accused Bhabesh Medhi had twisted the four fingers of right hand of the informant and broke them and they had torn his shirt and attacked him in a group. The informant fled away out of fear to the house of the village headman and saved his life. Hearing commotion from the place of occurrence, Dipali Devi went to bring her brother Harmohan Sharma. Accused Bhabesh Medhi and Madhab Medhi had scolded her using indecent language and torn her clothes with intent to nude her. She is saved from being nude with the interference of onlookers.

2. The police registered a case against the accused persons u/s 294/341/323/354(B)/506/34 IPC and after completion of investigation submitted charge-sheet against the accused persons u/s 294/341/323/354(B)/506/34 IPC.
3. Charge u/s 294/341/323/354(B)/506/34 was framed against the accused persons and contents of the charge under the said sections are read over and explained to the accused persons to which the accused persons pleaded not guilty and claimed to be tried.
4. The prosecution examined 9 (nine) Nos. of witnesses and defence examined none.
5. The accused persons are examined u/s 313 Cr.P.C. The accused 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 persons had in furtherance of common intention uttered obscene words in the public to the annoyance of Dipali Devi?
2. Whether the accused persons had in furtherance of common intention wrongfully restrained the informant?
3. Whether the informant had sustained hurt?

4. Whether the accused persons had in furtherance of common intention voluntarily caused hurt to the informant?
5. Whether the accused persons had in furtherance of common intention criminally intimidated the informant?
6. Whether the accused persons had in furtherance of common intention assaulted or used criminal force to Dipali Devi with the intention of disrobing her or compelling her to be naked?

**8. DISCUSSION, REASONS AND DECISION:****9. POINT NO. 1, 2, 3, 4, 5 & 6:**

10. PW 1 Satish Roy (informant) deposed that on 03/08/2014 at about 10.00 PM he went to 'Naam' (religious chanting program) to other place. After returning home at about 01.00 AM, he learnt that Dinesh Sharma came to drink water and when his wife gave water, Dinesh Sarma hold his wife's hand and pulled her to back side of the house with intent to rape her. His wife made hue and cry, then accused Dinesh Sharma fled away. Next day, he said the incident to the neighbors and villagers. The villagers said that they will settle the matter and advised him not to give any case. Discussion was held in the evening and accused Dinesh Sharma had confessed his guilt. The father of accused Dinesh Sharma has committed to pay ₹ 15,000 (Rupees fifteen thousand) only within one month. After expiry of one month when the

compensation was not paid, then as per the advice of the village headman on 16/10/2014, he along with Harmohan Sharma, Basanta Roy, Atul Talukdar went to the house of accused Dinesh and talked with his father. Father of Dinesh said that the money was given to accused Bhabesh Medhi. At that time, accused Bhabesh Medhi and Madhab Medhi came to the house of Dinesh Sharma and scolded him for asking money and pulled and pushed the PW1. Bhabesh Medhi had torn his (PW1) shirt and twisted his right fingers. Madhab Medhi lifted wooden chair and wanted to beat him, then PW1 somehow fled away from there. Dipali Devi, who is the sister of Harmohan Sharma went to the place of occurrence hearing commotion. Later on, he heard that Bhabesh Medhi and Madhab Medhi had misbehaved Dipali and had torn her clothes. He went to the house of village headman and said him about the occurrence. The village headman asked him to file case and he has lodged the case. Ext. 1 is FIR.

- 11.** In cross-examination, PW 1 has said that accused Dinesh Sharma was not present at his home on 16/10/2014. PW6 Atul Talukdar is his father-in-law. He has married victim Dipali (PW5) about one month ago as second wife. PW4 Basanta Roy is his brother-in-law. PW2 Himani Roy is the wife of the informant.
- 12.** PW2 Himani Roy has deposed that accused Bhabesh Medhi had scolded, beaten and had torn the shirt of her

husband. PW2 has not said about any incident with another alleged victim Dipali Devi.

- 13.** From the evidence of PW2, it can be seen that she has not accompanied her husband when he went to ask the money. This means that PW2 has not seen the alleged beating of her husband and tearing of cloth of Dipali Devi.
- 14.** PW3 Harmohan Sharma has said in his examination-in-chief that a settlement took place between Satish Roy and accused Dinesh Sharma in respect of wife of Satish Roy. He has not seen the alleged occurrence. PW3 is one of the persons whom the informant has claimed in the FIR as well as in his evidence that he had taken along with him to the house of accused Dinesh Sharma to ask for the money. PW3 has not said about any other incident.
- 15.** PW4 Basanta Roy is the brother-in-law of the informant. He has deposed that accused Bhabesh Medhi has twisted the hand of Satish Roy. When Harmohan Sharma's sister Dipali Devi came to resolve the dispute, then accused Bhabesh Medhi had torn her salwar.
- 16.** PW5 Dipali Devi is the second alleged victim. She deposed that while she went to tether goat, saw her elder brother Harmohan Sharma sitting in the house of Dinesh Sharma; as such she went to the house of Dinesh Sharma to see as to what had happened. When she went to call her elder brother who was sitting on the veranda, accused Bhabesh Medhi and

Madhab Medhi has said as to who called her there and scolded her using bad language. They said that they know how good she is and accused Bhabesh Medhi has caught her kurta and accused Madhab Medhi had scolded. She ran away therefrom.

- 17.** PW6 Atul Chandra Talukdar is the father-in-law of the informant. He deposed that accused Bhabesh Medhi has rudely behaved with them. Shirt of his son-in-law was caused to be torn and his finger was caused to break. He was also misbehaved and was talked rudely. He ran away therefrom being afraid of getting beaten up at old age. When Dipali Devi reached the place of occurrence, the accused persons had torn her cloth.
- 18.** PW8 Naba Kanta Roy has deposed that he was present at the house of accused Dinesh Sharma. According to him, accused Dinesh Sharma wanted to pay the money, but as accused Bhabesh Medhi and Madhab Medhi had asked Dinesh not to pay the money, quarrel took place. Accused Bhabesh Medhi had torn the kurta of wife of Satish Roy and shirt pocket of Satish Roy.
- 19.** Now, let us scrutinize the evidence of the prosecution witnesses.
- 20.** Dipali Devi is the other victim of our present case. The informant (PW1) has said in his examination-in-chief that he has heard that accused Bhabesh Medhi and Madhab Medhi

had torn the cloth of Dipali Devi. Hence, it is clear that the informant has not seen the alleged tearing of cloth of Dipali Devi by accused Bhabesh Medhi and Madhab Medhi. PW4 Basanta Roy said that accused Bhabesh Medhi had torn the salwar of Dipali Devi. PW5 Dipali Devi has said that accused Bhabesh Medhi had caught her kurta and accused Madhab Medhi had scolded her. PW5 Dipali Devi has not said about any tearing of her cloth by accused Madhab Medhi and Bhabesh Medhi. PW3 Harmohan Sharma who is the elder brother of victim Dipali Devi has not said about any incident taking place with his younger sister Dipali Devi. PW6 Atul Chandra Talukdar is the father-in-law of the informant who has said about tearing of cloth of Dipali Devi by the accused persons. Among the relations, brother-sister relation is the most sacred and caring relation. If the accused persons had in fact torn or caught the kurta of Dipali Devi, her elder brother PW3 Harmohan Sharma who was sitting at the place of occurrence would have protested the same and while adducing his evidence would have said that incident before the Court. But PW3 has neither stated about any incident with informant Satish Roy nor with his younger sister Dipali Devi. It can be understood from the above evidence that when the alleged victim Dipali Devi has not said about tearing of her cloth by the accused, the PWs who have said that the accused had torn the cloth of Dipali Devi has



exaggerated the incident. The silence of PW3 Harmohan Sharma over any incident with his own sister Dipali Devi brings doubt about the happening of any incident with Dipali Devi.

21. The alleged victim Dipali Devi has not said what kind of bad language was uttered by the accused persons. Unless the bad words are stated before the Court, the Court cannot assume the same on its own. The other witnesses have not said that the accused persons had uttered any obscene words.
22. There is no evidence that the accused persons had threatened the informant or anybody. The essential ingredients of S.506 IPC are not found in the evidence.
23. There is no evidence that the accused persons had obstructed the informant or anybody from proceeding in any direction. The prosecution has failed to prove the essential ingredients of S.341 IPC.
24. It can be seen from Exhibit 1 - FIR that the date of occurrence is 16/10/2014 and the place of occurrence is the house of accused Dinesh Sharma. The alleged victims are the informant and Dipali Sharma. From Exhibit 1 as well as from examination-in-chief of PW1, it can be seen that he had taken three persons along with him viz. Harmohan Sharma, Basanta Roy and Atul Talukdar.

- 25.** On careful observation of the evidence of the informant and other PWs, it can be seen that there is no evidence as to what has been done by accused Dinesh Sharma. The informant has neither alleged in the FIR nor has deposed before the Court that accused Dinesh Sharma has beaten him. Rather, PW1 has said that accused Dinesh Sharma was not present at his home at the time of the occurrence. So, it is understandable from the evidence that the name of accused Dinesh Sharma has been given falsely in the FIR as accused.
- 26.** From the FIR as well as evidence of the informant, it can be seen that accused Dinesh Sharma was to pay an amount to the wife of the informant for an incident which was settled in the village itself. The informant has claimed that he accompanied by other three persons had gone to the house of accused Dinesh Sharma to take that money. There is no evidence that accused Madhab Medhi and Bhabesh Medhi are in some way connected with the earlier incident. In absence of accused Dinesh Sharma at his home on the relevant day, accused namely Bhabesh Medhi and Madhab Midhi would go to the house of accused Dinesh Sharma with prior planning of committing any offence against the informant or anybody cannot be thought of as a possibility. Meeting of mind of the accused persons to commit an offence is absent in our present case.

27. So far causing hurt to the informant is concerned, it is alleged in the FIR that his four fingers of right hand were twisted to break. The prosecution has examined the medical officer as PW7 who has opined that he had examined Satish Roy, Dipali Devi and Himani Roy but detected no injury. Exhibit 3 is the injury report. It is understandable that the fact of sustaining injury by the informant was exaggerated in the FIR. The informant has stated in his examination-in-chief that accused Bhabesh Medhi had twisted his finger, but he has not said about any injury sustained by him.
28. Among all the PWs, PW8 is the chance witness. The informant has not said about the presence of PW8 Naba Kanta Roy at the place of occurrence. The presence of PW8 at the P.O. is not confirmed by any of the other PWs. But from the evidence of PW8, it can be seen that there was hot exchange on both sides and there was assault, tussle between both sides. If the occurrence of hot exchange between both parties and tussle between both parties as stated by PW8 is believed, then tearing of clothes on either side is a very common consequence. But the determining question is who made the first move? In our present case, it can be seen that the name of accused Dinesh Sharma is written in the FIR as No.1 accused whereas he was not present on the relevant day at his house. The IO has not examined the father of accused Dinesh Sharma at whose

house the alleged incident had taken place. PW1, 2, 4, 5 & 6 are close relative of each other and are highly interested witnesses. There is lack of clear and convincing evidence against the accused persons.

29. As such, I find that it is not proved that the accused persons had in furtherance of common intention uttered obscene words in the public to the annoyance of Dipali Devi **AND** the accused persons had in furtherance of common intention wrongfully restrained the informant **AND** the informant had sustained hurt **AND** the accused persons had in furtherance of common intention voluntarily caused hurt to the informant **AND** the accused persons had in furtherance of common intention criminally intimidated the informant **AND** the accused persons had in furtherance of common intention assaulted or used criminal force to Dipali Devi with the intention of disrobing her or compelling her to be naked. So, the accused persons cannot be held guilty u/s. **294/341/323/354(B)/506/34** IPC.

30. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt u/s **294/341/323/354(B)/506/34** IPC. So, I acquit the accused persons viz. Dinesh Sharma, Bhabesh Medhi and Madhab Medhi of the charge u/s **294/341/323/354(B)/506/34** IPC and are set at liberty.

Contd...

**GR Case No. :280/18**

*Page No. 13 of 13*

31. The seized articles vide MR No. 75/2014 be destroyed after the appeal period.
32. Given under my hand and seal of this Court this 10<sup>th</sup> day of May, 2022.

Typed by me—

**D. Boro**  
CJM, Baksa

**D. Boro**  
CJM, Baksa

*Typed by me...*

*Contd...*