

IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE ::BAKSA.
G.R. Case No. 396 of 2018
Under Section 447/323/506/34 IPC

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

The State of AssamProsecution.

-Vs-

Karna Das

Gobinda Das

Harimati DasAccused Persons.

Evidence recorded on : - 29-12-2018, 20-05-2019.

Argument heard on : - 15-11-2022.

Judgment delivered on : - 15-11-2022.

Advocate Appeared :-

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

Mr. **Nirmal Rajbangshi**,.....Advocate for the accused persons.

J U D G M E N T

1. The prosecution story in brief is that on 28-09-2016 complainant Manik Talukdar filed a complaint in the Court of CJM, Nalbari which was forwarded to the Police Station for registration of a case. The gist of the allegation is that the informant married accused Harimati Das about five years back

and stayed with his old parents along with the accused. Accused Harimati Das had been creating disturbance in his house off and on at the ill advice of the co-accused. The informant was physically and mentally tortured by accused Harimati Das and she used to go away to her parents' house. On 03-09-2016 accused Harimati Das called the other accused persons and pulled out the informant from the house to the courtyard and had beaten the informant by felling him to the ground and his old mother by stick, wooden log carried by them. The informant was made unconscious by kicking on his head. The accused persons had searched the house of the informant and took away Rs.26,500/- from under the table and dragged the informant to the road. Hearing hue and cry, when the neighboring people came forward, the accused persons ran away and when the informant got back his sense, the villagers took him and his mother to local hospital and therefrom to GMCH for better treatment.

2. Tamulpur PS Case No. 288/2016, u/s 447/325/506/323/34 IPC was registered and investigated into. After completion of investigation, charge-sheet was submitted against three numbers of accused persons u/s 447/323/506/34 IPC.
3. Particulars of the offence U/s 447/323/506/34 IPC was 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 4 (four) nos. of witnesses and defence examined none.
5. The accused persons are examined u/s 313 Cr.P.C. The accused persons have 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 committed criminal trespass?
2. Whether informant Manik Talukdar and his mother had sustained hurt?
3. Whether the accused persons had in furtherance of common intention voluntarily caused hurt to Manik Talukdar and his mother?
4. Whether the accused persons had in furtherance of common intention criminally intimidated the informant?

8. DISCUSSION, REASONS AND DECISION:

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

10. PW1 Manik Talukdar is the informant. He said that about two years back at about 5.00 pm he had a quarrel with his wife accused Harimati Das on some domestic affair. On that issue, she along with her brothers/accused Karna Das and Gopal Das assaulted him mercilessly with stick. He sustained injury on his

right ear and his small finger of right hand was broken. As a result, he lost hearing partially. People took him to Nagrijuli police outpost. He spent the night there and on the following morning, his father brought him home. After a week, he filed the case in Nalbari Court. Ext.1 is his complaint petition.

11. PW2 Renu Talukdar is the mother of the informant. She said that about two years ago at around 4.00 pm the wife of her son i.e. accused Harimati and her brothers Karna Das and Gobinda Das assaulted her son/informant with stick, wooden log etc. He sustained injuries on his right ear and other parts of his body. As she tried to prevent, accused Karna also hit her. Thereafter, Harimati left their house with her brothers. Later on, her son took treatment at GMCH after two days of the incident.
12. PW3 Nikhil Biswas is independent witness. He said that about three years back at around 3.00 pm the incident took place at the house of the informant. At that time, people gathered in the house of the informant and seeing that he also went there. He saw the accused persons abusing the informant and hitting him with a branch of a tree. The informant fell on the ground. Later on, he was taken to police station by the accused persons.
13. PW4 Subhash Das is also an independent witness but he knows nothing about the alleged incident.

14. The date of the alleged incident is 11-08-2016 and the complaint case was filed on 28-09-2016 i.e. after 1 month and 18 days of the alleged incident. The PW1/informant has not stated about any assault on his mother by the accused persons. No cause of delay in lodging the FIR/complaint petition is mentioned in Ext.1. No cause of delay in lodging the FIR has come out in evidence.
15. Accused Karna Das has said during his examination u/s 313 Cr.P.C. that the informant had broken the hand of his sister Harimati Das by physical assault and his mother gave her medical treatment by taking her to their house. After recovery, Harimati did not listen to them and again went to the house of the informant to resume conjugal life. The informant again made atrocities. Then they went and brought her back. The village headman consoled the informant. The village headman asked them to take away Harimati and they took her away.
16. From the examination of accused Karna Das, we can see that the informant is not a good husband rather is an atrocious husband. Accused Harimati Das now stays at her parents' house and not in the house of the informant. On careful perusal of the evidence of the PW1, we can see that the informant had a quarrel with his wife accused Harimati Das and on that issue, accused Harimati Das along with her brothers i.e. the co-accused persons had assaulted the informant. The informant

had himself shown a cause for which the accused persons had assaulted him though the accused persons had denied assaulting the informant.

17. No married woman would call her brothers on small matters in her married life unless the situation goes beyond her control. It is very natural that in case of any problem in the matrimonial house of one's married sister, the brothers go to that sister's house to know about the matter. Accused Karna Deka has said during his examination u/s 313 Cr.P.C. that the village headman asked them to take away their sister accused Harimati Das and they had taken her away.

18. From the perusal of the FIR, we would find that the case is filed against village head man too; but CS was not submitted against the village head man.

19. When brothers of a married woman go to her matrimonial house amidst problem going on with that married woman in that house, there may be altercations, argument, even hot argument and there may be even hustle and tussle among the people there. Those are quite natural.

20. The evidence of PW3 Nikhil Biswas that he saw the accused persons abusing the informant and hitting him with a tree branch may be true but same does not mean that informant is clean on his part. It is alleged in the complaint petition that the village headman directed the rest accused persons to take him

out of the house. Question arises, whether village headman will go to somebody else's house in the evening in small day to day domestic quarrel? There is no evidence that the village headman is a neighbor of the informant and as such his presence in his house is also not unusual at that time.

21. We can assume that as village headman was present in the house of the informant, the matter was bigger and as such the brothers of accused Harimati Das who are the co-accused persons in this case came and took away accused Harimati Das from the house of the informant. May be for the same big matter, accused Harimati Das is still staying in her parents' house and not in the house of the informant.

22. PW1 has said in his cross-examination that his wife accused Harimati filed a case against him in Udalguri Court and he is appearing in that case. Unreasonable unexplained delay in filing the FIR/complaint by the informant and filing of case against village headman shows that the informant has filed this case with planning and out of ill feelings. PW2 who is the mother of the informant said in cross-examination, that the whole incident took place for Harimati. May be PW2 is right that the whole incident took place for accused Harimati, but said statement may be a distorted allegation of some other matter which the PW2 might not have disclosed.

23. From the above discussions, I find that the informant is not trustworthy and accordingly the prosecution allegation is also not believable. Hence, I find that it is not proved that the accused persons had in furtherance of common intention committed criminal trespass **AND** informant Manik Talukdar and his mother had sustained hurt **AND** the accused persons had in furtherance of common intention voluntarily caused hurt to Manik Talukdar and his mother **AND** the accused persons had in furtherance of common intention criminally intimidated the informant. So, the accused persons cannot be held guilty u/s 447/323/506/34 IPC.

24. 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 447/323/506/34 IPC. So, I acquit the accused persons viz. Karna Das, Gobinda Das and Harimati Das U/s 447/323/506/34 IPC and are set at liberty.

25. Given under my hand and seal of this Court this 15th day of November, 2022.

Typed by me—

D. Boro
CJM, Baksa

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APPENDIX

PROSECUTION EXHIBITS:

Ext.1- FIR.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1- Manik Talukdar

PW2- Renu Talukdar.

PW3- Nikhil Biswas.

PW4- Subhash Das.

DEFENCE WITNESSES : NIL.

COURT WITNESSES: NIL.