

**IN THE COURT OF
THE CHIEF JUDICIAL MAGISTRATE::BAKSA
Case No. : GR-92/18
Under Section 341/323/294 IPC**

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

The State of Assam.....Prosecution.

-Vs-

Dipali Roy Kakati.....Accused Person.

Evidence recorded on :- 15-05-2018, 28-09-2018,
05-03-2019, 24-01-2020,
26-07-2021

Argument heard on :- 20-10-2022

Judgment delivered on :- 20-10-2022

Advocate Appeared :-

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

Mr. Swamdan Deury.....Advocate for the accused person.

J U D G M E N T

1. The gist of the case is that on 11-10-2015 informant Nitamoni Dutta Mazumdar lodged an FIR before I/C, Doomni OP to the effect that on 10-10-2015 the informant being a teacher of Ornibil Primary School entered the factory of Doomni Tea Garden along with student and staff with permission on school project. After completion of project work, when they came out at around 9.30 am, the accused wrongfully restrained the informant within the

factory campus and came verbally abusing her to the road. The accused fell the informant to the ground by catching her and had beaten her by hand and umbrella and injured her. The accused had also beaten cook Salmi Xalxo who accompanied the informant.

2. Doomni OP GD Entry No. 154 dated 11-10-2015 was made in respect of the FIR and Mushalpur PS Case No. 156/15, u/s 341/323/294 IPC was registered against the accused person and investigated into. After completion of investigation, charge-sheet was submitted against the accused u/s 341/323/294 IPC.
3. Particulars of offence u/s 341/323/294 IPC are read over and explained to the accused person to which the accused person has pleaded not guilty and claimed to be tried.
4. The prosecution has examined 7 (seven) 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 wrongfully restrained informant Nitamoni Dutta Mazumdar?
2. Whether Nitamoni Dutta Mazumdar and Salmi Xalxo had sustained hurt?

3. Whether the accused person had voluntarily caused hurt to Nitamoni Dutta Mazumdar and Salmi Xalxo?
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. The prosecution has examined the informant-cum-alleged victim as PW1 and her accompany cook, another alleged victim Salmi Xalxo, cook of the informant's school as PW2. PW3 Gloria Gary is independent witness. PW4 Doli Haloi is Head Teacher of the informant's school. PW5 Anima Xalxo and PW6 Maria Ekka are the student of the informant's school. PW7 Dr. Rupjyoti Kalita is the Medical Officer.
11. The essential ingredients of S.341 IPC are---(1) accused obstructs voluntarily, (2) the victim is prevented from proceeding in any direction, (3) such victim has every right to proceed in that direction.
12. Regarding wrongful restraint of the informant, the informant nowhere stated that she was obstructed by the accused from proceeding towards any direction. PW1 Nitamoni Dutta Mazumdar/informant has said that at around 9.00 AM, when they were retuning, the accused abused her and cook of her school at the main gate in filthy language regarding taking some pictures.
13. PW2 Salmi Xalxo is the alleged cook who is claimed to be with the informant at the time of the alleged incident. She has also

said that they came out from the Doomni tea factory at around 9 AM. At that time, the accused arrived there and asked some of the students pointing the informant, "who is she?" The student replied the informant to be their teacher. On that, the accused abused the informant with obscene word.

14. PW4 Doli Haloi said that she was the Head Master of Ornibil Milan Primary School. At that time, she was returning to the school after completion of a project work. The informant was the Asst. Teacher of the school. The informant was also proceeding towards the school. At that time, she saw the accused coming from opposite direction and when she met the informant, both entered into a tussle.
15. PW5 Anima Xalxo (student) said that about five years ago, she was reading in Class-V at Ornibil ME School. One day, during the school period, their teacher Nitamoni took some of the students to Doomni Tea Estate Factory at around 9.00 AM. At that time, the accused came there and entered into a fight with the informant.
16. PW6 Maria Ekka, another student said the same thing as PW5.
17. The above available evidence also do not show that the accused had obstructed the informant from proceeding in any direction. As such, S. 341 IPC is not proved.
18. The points requiring proof u/s 294 IPC are--- (1) that the accused --(a) either did some act in any public place; or (b) sang, recited, or uttered any song, ballad or words in or near any public

place, (2) that it was obscene, (3) that it caused annoyance to others.

19. Section 294 of IPC is meant for punishing persons indulging in obscene act in any public place causing annoyance to others. As such, the places where such obscene act is committed needs to be a public place and meant for use of public at large. Public must have free access to such place so as to call it a public place. The place where public have no right rather a lawful right to enter into, cannot be said to be a public place for invoking the penal provisions of section 294 of IPC.
20. Though PW1 and PW2 have said that the accused had abused the informant in filthy language, the filthy words are not clear in evidence so that the Court may verify whether the words are obscene or not. Moreover, evidence is silent whether anybody was annoyed by the utterance of any such alleged obscene language.
21. Though the sketch map of the place of occurrence is not exhibited, but I have perused the same. From the sketch map, it can be seen that the place of occurrence is the road in front of Doomni Tea Factory which is private to the factory. Hence, I consider that S. 294 IPC is also not proved.
22. S. 319 IPC defines 'hurt' and it says "whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."
23. Regarding physical injury of the informant, the PW7 (MO) had found only abrasion mark on face and swelling and tenderness over right side of neck. Ext.2 is Medical Report.

24. The FIR shows that the informant and accused has same husband. It is learnt from statement of the accused made during her examination u/s 313 Cr.PC. that the accused is the first wife. Her husband has been lying to the accused. According to the accused, the informant is the illegal wife of her husband.
25. The informant has also admitted in her cross-examination that her husband and husband of the accused is same.
26. PW2 said in her cross-examination that both informant and accused verbally abused and used force against each other. The incident took place for the issues relating to their husband.
27. PW3 said that she saw the informant and the accused were tussling with each other.
28. PW4 said in her cross-examination that the informant is the second wife of husband of the accused. For that reason, both of them often fight with each other.
29. The accused said during her examination u/s 313 Cr.PC. that she is a Nurse at the Tea Factory Hospital. She was returning to her quarter at tiffin time. Seeing her, the accused along with the cook attacked her.
30. The evidence shows that the informant went to Doomni Tea Factory on some school project work along with the student and staff. Apparently, neither the informant nor the accused had any planning to commit anything unruly in the public. As both the accused and informant has same husband, evidence shows that the alleged incident took place.

31. We can observe that except PW3 Gloria Gary and PW7 (MO), all PWs are in good relation with the informant and the informant's position is such that she may influence the other PWs to depose in her favour.
32. PW5 and PW6 being a student of Class-V at the time of the alleged incident which took place 5 years ago when they came to depose before the Court are not supposed to remember any incident so accurately, which took place to some other person unless refreshed or tutored.
33. PW4 Doli Haloi has not said that accused made the first step and had beaten the informant.
34. The informant alleged that the accused had beaten school cook Salmi Xalxo. There is no medical report of Salmi Xalxo.
35. As both the informant and accused have same husband and as it has come out in the evidence that both often fight with each other for that reason, it is highly doubtful as to who moved first and started the quarrel/fight.
36. I consider that the prosecution allegation is doubtful. The prosecution evidence is highly doubtful about the first move. Hence, the accused deserves benefit of doubt.
37. From the above discussions, I find that it is not proved that the accused person had wrongfully restrained informant Nitamoni Dutta Mazumdar **AND** Nitamoni Dutta Mazumdar and Salmi Xalxo had sustained hurt **AND** the accused person had voluntarily caused hurt to Nitamoni Dutta Mazumdar and Salmi Xalxo **AND** the accused person had uttered obscene words in the public to

the annoyance of the informant and others. So, the accused person is guilty u/s 341/323/294 IPC.

38. 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 341/323/294 IPC. So, I acquit accused Deepali Roy Kakoti of the charges u/s 341/323/294 IPC and is set at liberty.

39. Given under my hand and seal of this Court this 20th day of October, 2022.

Typed by me—

D. Boro
CJM, Baksa

D. Boro
CJM, Baksa

APPENDIX

PROSECUTION EXHIBITS:

Ext.1- FIR.

Ext.2- Medical report.

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1- Nitamoni Dutta Mazumdar.

PW2- Salmi Xalxo.

PW3- Gloria Gary.

PW4- Doly Haloi.

PW5- Anima Xalxo.

PW6- Maria Ekka.

PW7- Dr. Rupjyoti Kalita.

DEFENCE WITNESSES : NIL

COURT WITNESSES: NIL.