

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

**:::DIBRUGARH:::ASSAM:::**

**G.R. Case No. 2354/14**

**U/S.448/323 OF IPC**

State of Assam

**-Vs-**

Palash Das. ....Accused

*PRESENT* : A.K. BARUAH, LL.M., AJS.  
Chief Judicial Magistrate,  
Dibrugarh.

**APPEARANCE:**

Advocate for the Prosecution : Smti.Debojani Gogoi, Ld. APP.

Advocate for the Defence : Mr. J. Bordoloi

Date of evidence : 18-06-16, 20-7-17,  
18-12-17, 18-02-19

Date of argument : 23-04-2019.

Date of judgment : 6-5-19

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

1. The case of the prosecution in brief is that on 13.09.2014, the accused Shri Polash Das and along with some persons, went to the house of the complainant namely Bonti Prava Das and the accused, assaulted the complainant and thereby seriously injured her. The complainant namely Smti. Bonti Prova Das, lodged one FIR in the Milan Nagar Police Out Post , regarding

the incident.

2. On the basis of the FIR lodged by the complainant, a case, being Dibrugarh P.S Case No. 734/14 was registered u/s 448/325 IPC. Police conducted investigation into the case and filed charge sheet against the accused person namely Palash Das u/s 448/323 IPC .
3. The accused person appeared in this case. Copies were furnished to him u/s 207 CrPC. The particulars of offences u/s 341/323 IPC were explained to the accused to which, he pleaded not guilty and claimed to be tried.
4. During the trial of the case, the prosecution side examined 5(Five) P.W's in this case. The defence plea is of total denial. The defence did not adduce any evidence. The statement of the accused u/s 313 Cr PC was recorded.
5. I have heard the learned counsel for the accused and learned Asst. P.P for the State. Having heard both sides and after perusing the materials on record, the following points for determination are framed for the just decision of the case :-

6. **POINTS FOR DETERMINATION :-**

- i. Whether on 13-09-142016 at about 12:00 P.M, the accused person trespassed into the residence of the complainant?
- ii. Whether on the same date, time and place, the accused person voluntarily caused hurt to the complainant?

**DECISION AND REASON FOR THE DECISION :-**

7. PW1 (Bonti Prova Das) stated in her evidence that on 14.12.14 at about 12/01 P.M, the accused along with 10/12 youths and police came to the house of PW1. Then police asked for the son of PW1 and then PW1 stated that he was present upstairs, then police went upstairs. When PW1 asked the accused why he/accused lodged the case, he assaulted PW1 on head, on her face and on her back. PW1 identified the FIR as Ext 1 and her signature as Ext1(1).

In cross examination P.W.1 stated that the accused stayed in her house for 7 years . The daughter-in law of PW1 namely Mommita stayed with the accused. PW1 denied the suggestion that she tortured her daughter-in law namely Mommita and when the accused prevented PW1,she lodged this case.

8. PW2:- (Anandi Ram Das) stated in his evidence that on the day of the incident, the accused along with some youths of some organization and police came to their house and tried to take his son and his daughter-in-law to the police station alleging that they tortured their daughter-in-law. When his/PW2s wife enquired the matter to the accused, the accused assaulted his wife and fled away. His wife was injured and later on, she was taken to Sanker Deb Hospital with the help of 108 ambulance by the police. His wife got injury on her face and on head. She was hospitalized for two days. The accused also demanded an amount of Rs.30,000/- from the wife of PW2 on account of giving a job to his son namely Ranjit Das at Lepetkata Gas Craker but his wife did not agree to the demand. After releasing from the hospital, his wife lodged this case against the accused.

In cross examination P.W.2 denied the suggestion that they tortured their daughter-in law and a case is pending against them for torturing their daughter-in law .

9. PW3 (Baby Das) stated in her evidence that on 14-09-2014, at about 12.00 O'clock, police came with some youths of some

organization to her house. Police enquired her mother about her brother Mintu Das and his wife. When her mother asked the police regarding requirement of her/PW3s brother and his wife, police replied that there is a case pending filed against her brother Mintu Das. Police and the youth of some organization came upstairs to their house and the boy who had filed the case was waiting down stairs whom her/PW3s mother recognize as Palash Das. She also followed her mother and came down and saw the accused assaulting her mother with a bamboo and hand when her mother asked the reason to the accused for filing of the case. Her mother sustained injury on her left eye and blood was oozing out. PW3 informed the police about the incident but the accused fled away when the police arrived there. After that, police brought 108 ambulance and took her/PW3 s mother for treatment to Sanker Deb Hospital.

In cross examination P.W.3 stated that there are two cases pending ,filed against the brother of PW3 –Mintu Das and among the two cases, filed against the brother of PW3, one was filed for harassing his wife.

- 10.** PW4 (Pooravi Das) stated in her evidence that on 14.09.2014, when a family dispute took place, the accused with police and some youths of some organization had also come there. On that day, police along with one Ratul went upstairs of their house and after that, they came down and then she/PW4 saw the accused assaulting her mother-in-law with bamboo stick. Her mother-in-law sustained injury on her head, under her eyes and on her hand. She/PW4 went upstairs to inform the police. Before police arrived there, the accused fled away. Police brought 108 ambulance and took her mother-in-law to Sanker Dev Hospital for treatment.

In cross examination P.W.3 stated that the accused and her sister-in law are friends.

- 11.** PW5 (Suraj Kr. Das) stated in his evidence that on the day of the incident the accused assaulted his grandmother namely

Banti Prova Das and after assaulting her, the accused left away from the spot. In cross-examination, PW5 deposed that there are some family disputes in their house between his uncle and his wife . At the time of occurrence, police was present in their house . On the basis of the FIR of the aunt of PW5, police came to their house.

- 12.** At the argument stage of the case , the defence side, filed the certified copy of the order of Hon'ble District Judge passed in TS (D) 85/ 16 dated 19-3-19 as per which both the parties of the case have amicably settled the cases between them including this case bearing GR No. 2354/14 and the parties have no claim against each other. The prosecution side also submitted that the complainant has no interest in this case after the amicable settlement.
- 13.** Considering the submission of both the sides in their argument in the light of the evidence on record, I am of the view that this case was filed by the complainant after the filing of the case by her daughter-in law against them and the incident of the case took place in the house of the complainant in presence of police persons when police came to the house of the complainant of this case for the case filed by the daughter-in law of the complainant. Moreover, the PWs of the case are relatives/ family members of the complainant/ PW1 and are interested witnesses of the case and hence I hold their evidence not wholly reliable. From the materials on record, I have not found any convincing corroborative evidence of the PWs of the case. In other words, the case of the prosecution is not proved beyond all reasonable doubt from the evidence on record. Hence ,I hold the points for determination in the negative.
- 14.** In the result, I have not found the accused guilty in this case. Hence, I acquit him from the charges of the case and set him at liberty forthwith. Considering no medical evidence of injury of the victim, the case is not referred for victim compensation.

The bail bond will be in force for 6 (six) months from today.

Given under my hand and seal of this court on this 6<sup>th</sup> day of May, 2019.

(A.K. Baruah)

Chief Judicial Magistrate,  
Dibrugarh::ASSAM

**Appendix**

Prosecution Witness :-

PW1 :- Smti. Bonti Prava Das  
PW2 :- Sri Anandi Ram Das  
PW3 :- Baby Das  
PW4 :- Pooravi Das  
PW5 :- Suraj Kr. Das

Defence witness :-

None

**Exhibits :-**

Prosecution exhibits :-

Exhibit 1 :- FIR.

Defence exhibits :-

None

Court witness :- None.

Court exhibits :- None.

(A.K. Baruah)

Chief Judicial Magistrate,  
Dibrugarh::ASSAM