

THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH

G.R. CASE NO.- 2956/2012

U/S 294/325 OF THE IPC

STATE

VS.

SRI BHAGIRATH CHOUDHRY
S/O SRI PASUPATY CHOUDHRY
R/O DIBRUGARH RAIL LINE
P.S. DIBRUGARH
DISTT. DIBRUGARH

PRESENT:- KAUSHIK KAMAL BARUAH
JUDICIAL MAGISTRATE FIRST CLASS
AT DIBRUGARH

APPEARANCES:- SMT. LAKHIMI MOHAN.....FOR STATE

SRI ASHOK SAHU
AND
SRI S. SEAL.....FOR ACCUSED

DATE OF EVIDENCE:- 17/12/14, 17/03/15, 12/11/15, 15/03/16,
17/05/16, 06/09/16, 17/11/17, 09/11/18.

EXAMINATION OF ACCUSED:- 26/12/18.

DATE OF ARGUMENT:- 03/05/19.

DATE OF JUDGMENT:- 15/05/19.

JUDGMENT

1. Accused Bhagirath Choudhry stood trial for offences punishable under sections 294/325 of the Indian Penal Code, 1860 (the IPC for short).
2. Criminal law was set into motion against the accused named above on the strength of a First Information Report (FIR for short) filed by Lal Babu Yadav, wherein the informant alleged that on 07/12/12 at about 07:00 AM,

when he was standing in the threshold of his house, located at Dibrugarh Rail Line, above named accused came from behind and without any rhyme or reason jostled him, thereby, causing him to fall in the adjoining drain where he was manhandled by the latter. Shortly, the accused was joined by his family members, namely, Nichuki Choudhry, Pasupaty Choudhry, Ratan Choudhry, Panna Choudhry, Mira Prasad and Binod Prasad who badly manhandled him but was rescued by nearby people from further assault. In addition to being manhandled, the accused persons also threatened him with dire consequences if he ever happened to walk past their house.

3. On the same day, informant, Lal Babu Yadav, lodged a written FIR before the In-Charge of Borbari Outpost which was forwarded to the Officer-in-Charge of Dibrugarh Police Station for taking necessary action. On receipt thereof the same was registered and numbered as Dibrugarh P.S. Case No.1147/2012 under sections 143/325 of the IPC. During the course of investigation, the investigating officer visited the place of occurrence, recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for short), made a rough sketch map of the place of occurrence, collected injury report of the victim, arrested accused Bhagirath Choudhry and released him on bail.
4. After completing the investigation, the Investigating Officer submitted charge-sheet to prosecute accused Bhagirath Choudhry for offences under sections 294/325 of the IPC. Rest of the FIR-named accused were not sent up for trial.
5. Court processes were issued and on his appearance the accused was allowed to go on bail. Copy of relevant documents was furnished to the accused person in compliance with section 207 of the Cr.P.C. Particulars of the offences under sections 294/325 of the IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. Prosecution examined eleven witnesses and evidence stood closed vide order dated- 09/11/18. Thereafter, accused was examined under section

313 of the Cr.PC. by putting questions to him from all incriminating evidence appearing against him on record, thereby, giving him an opportunity to explain the same. In response, he denied the allegations levelled against him *in-toto* and also declined to adduce evidence in his support.

7. Heard arguments advanced by learned Assistant Public Prosecutor and learned defence counsel.

POINTS FOR DETERMINATION

- a) Whether the accused, on 07/12/12 at about 07:00 AM at Dibrugarh Rail Line within Dibrugarh PS, uttered obscene words to the annoyance of others?
- b) Whether the accused on the same day, time and place voluntarily caused grievous hurt to Lal Babu Yadav?

DISCUSSION, DECISION AND REASONS THEREON

8. In order to establish the allegations against the accused person, prosecution examined Lal Babu Yadav, Mahtab Khan, Rimi Das, Sita Devi, Maya Das, Sohan Raut, Mina Jha, Fakaruddin Khan, Istiak Khan, Noor Hussein and Wazidur Rahman as PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 respectively and closed evidence.
9. In the case at hand, PW1, Lal Babu Yadav, was the informant. He was examined on 17/12/14 and in his examination-in-chief, he deposed that the occurrence took place on 07/12/12 between 07:00 AM to 07:30 AM. At that time he was standing on the culvert right in front of his house. Abruptly, the accused came from behind, held his neck, jostled him and thundered as to why his boundary wall was demolished. Consequently, he fell in the adjoining drain. Shortly, the accused was joined by his family members, namely, Nichuki Choudhry, Ratan Choudhry, Panna Choudhry, Mira Prasad and Binod Prasad who were armed with sticks and started to

beat him. He was rescued by his wife and neighbors. As a result of the occurrence he sustained a cut injury on the middle finger of his right hand and also his left leg was battered. Thereafter, without any loss of time he went to the PS and filed FIR against the accused complaining about the occurrence. Ext.1 is the FIR and Ext.1(1) is his signature thereon. He was taken to the nearest hospital for examination where stitches were applied to his finger and his leg was plastered.

10. In his cross-examination, he testified that in respect of the same occurrence the accused had also filed an FIR against him and the said case is pending trial vide GR Case No- 2955/12 which is earlier in time than his own FIR. He testified that he fell in a drain maintained by the Municipality and that there are a number of households in and around the place of occurrence including that of Mahtab Khan, Asfaq Khan, Allauddin, Mamtaz Khan, Ajit Das, Surendra Singh, etc. He further testified that that the culvert from which he fell was made of wood and that he had himself constructed it.
11. Thereafter, defence led a few suggestions which he flatly denied. He, thus, denied the suggestion that no occurrence had taken place as alleged by him and of falsely implicating the accused.
12. He denied the suggestion of not stating to the investigating officer that **"At that time he was standing on the culvert right in front of his house. Abruptly, the accused came from behind, held his neck, jostled him and thundered as to why his boundary wall was demolished. Consequently, he fell in the adjoining drain. Shortly, the accused was joined by his family members, namely, Nichuki Choudhry, Ratan Choudhry, Panna Choudhry, Mira Prasad and Binod Prasad who were armed with sticks and started to beat him. He was rescued by his wife and neighbors. As a result of the occurrence he sustained cut injury on the middle finger of his right hand and also his left leg was battered"**.
13. He also denied the suggestion of not stating to the investigating officer that **"He was rescued by his wife and neighbors"**.

14. Mahtab Khan was examined on 17/03/15 as PW2. In his examination-in-chief, he deposed that on 07/12/17 between 07:30 AM to 08:00 AM he was working in his garden adjoining the road. From there he could see the informant and the accused arguing with each other on the road. On that day, road construction work was going on and some canes were strewn on the road. From among those, the informant picked up a cane and flung it towards the accused person. A scuffle ensued and the informant fell in the nearby drain. Thereafter, he and nearby people arrived at the spot broke-off the fight and sent the informant and the accused to their respective homes. Further, he expressed his ignorance if either of the two sustained injuries.
15. In his cross-examination, he stated that the accused had not manhandled the informant and that the accused was not at fault.
16. PW3 and PW4, namely, Rimi Das and Sita Devi were examined on 12/11/15.
17. Rimi Das, in her examination-in-chief, testified that the informant and the accused are her neighbors. However, she had not implicated the accused of any overt act rather she expressed her complete obliviousness about the occurrence. The defence, on its part, declined to cross-examine her.
18. Sita Devi, in her examination-in-chief, testified that the informant is her husband. On 07/12/12, at about 07:00 AM, she was busy with her household chores. At that time, when her husband was standing in front of their house, he was manhandled by the accused and his family members. Immediately she went to his rescue. As a result of the assault, her husband sustained injuries all over his body except his head, especially on the middle finger of his right hand and right leg. She also received injuries on her shoulder. In the meantime, neighbors arrived at the spot who took her husband to the nearby hospital for treatment.
19. In her cross-examination, she testified that she was inside her house when the fight started and admitted that the accused had also filed an FIR against her husband in respect of the same occurrence. She further deposed that the adjoining road was under construction at the time of the

occurrence and, as such, it became filled with potholes. The adjoining drain was also dug deep. Thereafter, the defence led a few suggestions which she denied. She, thus, denied the suggestion of falsely implicating the accused and that her husband had suffered no injuries on his person. She also denied that no occurrence had taken place as alleged by her.

20. However, Sita Devi admitted that she omitted to state to the investigating officer about the occurrence as she had testified in her examination-in-chief. She admitted that she had not stated to the investigating officer that **"her husband sustained injuries all over his body except his head, especially on the middle finger of his right hand and right leg. She also received injuries on her shoulder"**.

21. PW5 and PW6, namely, Maya Das and Sohan Raut, were examined on 15/03/16. Both Maya Das and Sohan Raut testified that the contending sides are their neighbors. They deposed nothing against the accused. From others they learnt that the informant and the accused had a brawl but expressed their ignorance if any of them suffered injuries on their person. Sohan Raut further deposed that as per his information, it was the informant who assaulted the accused.

22. Mina Jha was examined on 17/05/16 as PW7. She too, in her examination-in-chief, had not implicated the accused in any manner. She rather testified that on 07/12/12, between 07:00 AM to 08:00 AM, she saw the accused and the informant arguing with each other and suddenly the informant picked up a cane and manhandled the accused. The informant tried to flee from the spot on seeing a crowd gathering but fell in the adjoining drain. In her cross-examination, she deposed that she learnt later on that the informant sustained some injuries on his person.

23. Fakaruddin Khan was examined as PW8 on 17/05/16. He testified that on the date of the occurrence he was returning home from some place when he saw the accused and the informant fighting with each other on the road side. Neighbors broke-off the fight and sent the informant to his house. Later on, he saw blood on informant's hands.

24. In his cross-examination, Fakaruddin Khan testified that on the date of the occurrence the road was under construction and the adjoining drain was dug deep by the Municipality. He admitted that he had not stated to the investigating officer about the occurrence as he had deposed in his examination-in-chief and also expressed his ignorance if the accused had filed an FIR against the informant in respect of the same occurrence. He denied the suggestion that no occurrence took place as alleged by him.
25. PW9, Istiak Khan, was examined on 07/09/16. In his examination-in-chief, he deposed that on the date of the occurrence between 07:00 AM to 07:30 AM, as he came out of his house, he saw that the accused was physically assaulting the informant in front of the latter's house. Soon thereafter, brother of accused, Ratan Choudhry, arrived at the place of occurrence who also landed a punch on the informant. As a result, the informant went tumbling down the adjoining drain resulting in to injury on the middle finger of his right hand. Later on, accused person's sister and brother-in-law, Binod, arrived at the spot and started to beat the informant.
26. In his cross-examination, Istiak Khan admitted that he had not stated to the investigating officer about the occurrence as he had deposed in his examination-in-chief. He denied the suggestions that he had falsely implicated the accused and that the accused or his family members had not manhandled the informant. He further denied the suggestion that no occurrence had taken place as alleged by him.
27. Examined on 17/11/17, PW10, Noor Hussein, also deposed that the warring sides are his neighbors. On the date of occurrence, between 07:30 AM to 08:00 AM, he was sitting beside the Dibrugarh Rail Line along with Mahtab Khan and Mohan Raut. At that time accused approached them, took a cigarette from a nearby shop and proceeded towards the informant. The informant was standing in front of his house at that time. Both had an exchange of words and a scuffle followed after which he saw the informant falling down in the adjoining drain. Shortly, thereafter, the accused was joined by his brother, Ratan Choudhry, who came running to the spot brandishing a cane and struck the informant with it. He tried to intervene

and break-off the fight but to no avail. Informant's wife came running to his rescue beseeching the accused persons to stop but the latter persisted with the assault. Informant's wife was also roughed up by the accused. As a result of the occurrence, the informant sustained injuries on his left leg and a cut injury on the middle finger of his right hand.

28. In his cross-examination, Noor Hussein testified that he saw both sides fighting and that the accused had also filed an FIR against the informant regarding the same occurrence. Residences of Rimi Das, Maya Das, Mina Jha, Mahtab Khan, Mamtaz Khan, etc. are located in and around the place of occurrence. Suggestions were led to him by the defence which he promptly denied. Thus, Noor Hussein denied the suggestion that he had not stated to the investigating officer that **"he was sitting beside the Dibrugarh Rail Line along with Mahtab Khan and Mohan Raut. At that time accused approached them, took a cigarette from a nearby shop and proceeded towards the informant"**. He also denied of not stating to the investigating officer that he saw the accused and the informant **"had an exchange of words and a scuffle followed after which he saw the informant falling down in the adjoining drain. Shortly, thereafter, the accused was joined by his brother, Ratan Choudhry, who came running to the spot brandishing a cane and struck the informant with it. He tried to intervene and break-off the fight but to no avail. Informant's wife came running to his rescue beseeching the accused persons to stop but the latter persisted with the assault. Informant's wife was also roughed up by the accused"**. He also denied of falsely implicating the accused person.
29. Lastly, PW11, Wazidur Rahman, was the investigating officer who was examined on 09/11/18. In his examination-in-chief, he deposed that on 07/12/12 Lal Babu Yadav filed a written FIR complaining about the occurrence. GD Entry No- 205 was made and the FIR was forwarded to Sadar PS for necessary action. Task of conducting preliminary investigation was invested on him. Accordingly, he recorded statements of the informant and the accused in the police station premises and forwarded them to the

nearest hospital for examination. Thereafter, he proceeded to the place of occurrence, prepared a rough sketch map thereof and recorded statements of witnesses. In the meantime, the FIR was registered and numbered as Dibrugarh PS Case No- 1147/12 under sections 143/325 of the IPC and he was invested with the duties of investigating the occurrence. Accused Bhagirath Choudhry appeared in the PS on 09/12/12. He placed him under arrest and allowed him to go on bail. During the course of the investigation he also collected injury report of the victim and after completing the investigation he submitted charge-sheet against the accused under sections 294/325 of the IPC. Ext.2, Ext.3 and Ext.4 are the sketch map, medical report and the charge-sheet whereon he had affixed his signatures vide Ext.2(1) and Ext.4(1) respectively.

30. Now, as unfolded by the prosecution, accused Bhagirath Choudhry stood trial for uttering obscene and filthy words at the informant, Lal Babu Yadav, in a public place and is, thus, liable to punishment as provided under section 294 of the IPC. Towards this end, prosecution examined as many as 10 probable eye witnesses, including Lal Babu Yadav. All of them unwaveringly testified that the entire occurrence happened on the Municipality Road. Evidence of the investigating officer, especially, the sketch map, vide Ext.2, shows that the occurrence took place on the Road alongside the Dibrugarh Railway Line which is an 18 feet wide public road.
31. Thus, the fact that the occurrence took place in a public place was established by prosecution beyond doubt. But, whether the prosecution succeeded in bringing the accused within the net of section 294 of the IPC? In this respect, the prosecution, in addition to the above, must prove beyond doubt that the accused uttered obscene words, effect of which was to cause annoyance to others.
32. But, as transpires from the ocular evidence available on record, neither the informant, Lal Babu Yadav, nor, the remaining witnesses examined by the prosecution testified anything even to remotely suggest that the accused uttered any obscene, or, uncouth words. Neither in Ext.1, nor, in his testimony had Lal Babu Yadav alleged anything to this extent. But, to

constitute an offence under section 294 of the I.P.C., it is absolutely necessary to mention the exact obscene words that were uttered in the FIR and also in the oral evidence. But neither in Ext.1, nor, in his oral testimony had Lal Babu Yadav mentioned the obscene words that were supposedly uttered by the accused person.

33. In my considered opinion, prosecution has no evidence worth the name against accused Bhagirath Choudhry for the offence under section 294 of the IPC.
34. In addition to the above allegation, accused Bhagirath Choudhry was also prosecuted for causing grievous hurt to Lal Babu Yadav. Now, the offence of grievous hurt is defined under section 320 of the IPC. The said provision of law is reproduced verbatim hereunder:-

'S. 320. The following kinds of hurt only are designated as "grievous":

First.- Emasculation.

Secondly.-Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.-Privation of any member or joint.

Fifthly.-Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.-Fracture or dislocation of a bone or tooth.

Eighthly.-Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.'

Thus, section 320 of the IPC lays down eight kinds of injuries as "**grievous**" and if any of them were caused by the assailant voluntarily, then in that event, he would be liable to be punished under section 325 of the IPC.

35. Towards this end, prosecution proved the injury report vide Ext.3. Perusal thereof shows that Lal Babu Yadav was examined by Dr. Sushanta Baruah, Medical Officer, Registrar of the Department of Orthopedic Surgery, AMCH,

Dibrugarh. Lal Babu Yadav was escorted by Home Guard Kukheswar Gogoi. His examination revealed following injuries, namely, contusion over right arm measuring 4 cm X 4 cm; grazed abrasion over right fore-arm; lacerated wound over third finger measuring 3cm; contusion over the neck measuring 4 cm; and linear abrasion over left side of back measuring 3 cm X 5 cm. Opinion as to the nature of the injuries is not mentioned therein.

36. Now, the above set of injuries as reflected by Ext.3 do not, in my opinion, fall within any of the eight categories of hurt as designated under section 320 of the IPC. At best, those injuries can be termed in general parlance as bruises and scratches caused by a bump, or, on being grazed with a rough surface and the same can be regarded as simple but not grievous.
37. Even assuming that the accused had voluntarily caused simple hurt to Lal Babu Yadav which is a "***minor offence***" compared to the one under section 325 of the IPC, yet, in my opinion, prosecution case does not stand beyond reproach.
38. Though, prosecution examined 10 probable eye witnesses, yet it could manage to procure only two who implicated the accused of manhandling the informant, that is, Sita Devi and Noor Hussein. But, an overall view of the testimony tendered by Sita Devi palpably demonstrates that she had needlessly exaggerated it. She had not spoken a word about the occurrence to the investigating officer as revealed from her cross-examination. Thus, even though, she thoroughly implicated the accused of hurting her husband, the defence successfully contradicted her, thereby, throwing doubt on her reliability.
39. As regards Noor Hussein, he denied the suggestions led by the defence. But, when the investigating officer was confronted by the defence, he admitted that Noor Hussein omitted to state to him that "***he was sitting beside the Dibrugarh Rail Line along with Mahtab Khan and Mohan Raut. At that time accused approached them, took a cigarette from a nearby shop and proceeded towards the informant***". Had Noor Hussein stated this fact and admitted by the investigating officer then, in that event, it would have shown that he was

present at or near the place of occurrence when the incident took place. This omission to state the above fact by Noor Hussein significantly contradicted his stand that he was present at the place of occurrence and saw the incident before his own eyes. In my opinion, testimony of Noor Hussein is also bereft of any credibility.

40. Besides, Mahtab Khan, who was supposedly present with him when the occurrence took place, testified totally opposite to what Noor Hussein had deposed. If both were present at the same place and at the same time then they ought to have deposed in the same breath. But there is a sea of difference between their respective testimonies. Tersely put, there appears large scale inconsistencies between their ocular evidence. Besides, evidence of Istiak Khan also shows on its face that he did nothing but applied embellishments upon an already exaggerated version tendered by Sita Devi and Mahtab Khan.

41. In addition to the above contradiction and inconsistencies, the investigating officer, in his cross-examination, further admitted that the informant had not stated to him that **"At that time he was standing on the culvert right in front of his house. Abruptly, the accused came from behind, held his neck, jostled him and thundered as to why his boundary wall was demolished. Consequently, he fell in the adjoining drain. Shortly, the accused was joined by his family members, namely, Nichuki Choudhry, Ratan Choudhry, Panna Choudhry, Mira Prasad and Binod Prasad who were armed with sticks and started to beat him. He was rescued by his wife and neighbors. As a result of the occurrence he sustained cut injury on the middle finger of his right hand and also his left leg was battered"**. This testimony of the investigating officer goes on to show that the informant himself had not implicated the accused in any manner during the course of the investigation. In fact, the informant had omitted to state all material particulars constituting the offences to the investigating officer. This testimony demonstrates that the informant, Lal Babu Yadav, testified everything but the truth.

42. Furthermore, the injury report does not corroborate the testimony of Lal Babu Yadav. His testimony that his leg was plastered and stiches were applied to his finger ought to have been reflected in the injury report. But, Ext.3 is totally silent about those injuries. Rather, the prosecution version is replete with evidence that both the informant and the accused went tumbling down the drain adjoining the road, which was being recently dug deep, immediately after a heated argument that ensued between them. Thus, there is every likelihood that Lal Babu Yadav suffered the injuries mentioned in Ext.3 as a result of the fall in the ditch and not because of any assault as alleged.
43. To cut a long story short, prosecution had failed to establish the allegation levelled against accused Bhagirath Choudhry for offence under section 325 of the IPC, or, under section 323 of the IPC beyond all reasonable doubt.
44. The points for determination are decided in the negative.

ORDER

45. As such, from the observation and discussion done hereinbefore, I arrive at the conclusion that the prosecution had failed to establish the allegations against accused Bhagirath Choudhry for the offences under sections 294/325 of the IPC beyond all reasonable doubt. As such, the accused is acquitted of the offences under the sections of law indicated above.
46. Accused person be set at liberty forthwith. Bail bond of the accused person stands cancelled. The accused person may obtain copy of the judgment without payment.
47. Instant case is disposed of on contest.

Given under my hand and Seal of the Court this 15th day of May, 2019.

Typed and corrected by me and every page bears my signature.

Judicial Magistrate First Class,
Dibrugarh.

THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH
G.R. CASE NO.- 2956/12
APPENDIX

1) Prosecution exhibits:-

Ext.1:- FIR

Ext.1(1):- Signature of Lal Babu Yadav

Ext.2:- Sketch map

Ext.2(1):- Signature of Wazidur Rahman

Ext.3:- Injury report

Ext.4:- Charge sheet

Ext.4(1):- Signature of Wazidur Rahman

2) Prosecution witnesses:-

PW1:- Lal Babu Yadav

PW2:- Mahtab Khan

PW3:- Rimi Das

PW4:- Sita Devi

PW5:- Maya Das

PW6:- Sohan Raut

PW7:- Mina Jha

PW8:- Fakaruddin Khan

PW9:- Istiak Khan

PW10:- Noor Hussein

PW11:- Wazidur Rahman

3) Defence exhibits.- NIL

4) Defence witnesses.- NONE

Judicial Magistrate First Class,
Dibrugarh.