

GR 941/18

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,**  
**DIBRUGARH**

**Present: Smti. Rituparna Sarmah, AJS.**

.....  
**G.R 941/18**

**Under section 294/323/34 IPC**

**State**

.....Prosecutor

V.

**1. Sri Suraj Nayak**

**2. Smti Rumi Nayak**

..... Accused persons

.....  
Evidence recorded on : 05.01.19, 05.03.20, 03.04.21,  
18.11.21

Arguments heard on : 15.12.21

Judgment delivered on : 18.12.21

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Appearing for the Prosecution : Smti. L. Mohan.

Appearing for the Defence : Sri Devendra Kumar Shah

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### **JUDGMENT**

1. The brief facts of the prosecution's case is that on 27.03.18 Smti.Parbati Mirdha had lodged an *ejahar* before the Officer-in-charge of Lahoal P.S alleging *inter alia* that on 26.03.18 when she was at her sister-in-law's house , her son Sri Ahem Mirdha went to Sri Suraj Nayak's house to eat "Nuni"(Mulberry). But he was beaten up by Sri Suraj Nayak and complained the same to his grandmother Smti. Nirbani Mirdha (mother-in-law of the informant). Then his grandmother went to Sri Suraj Mirdha's house to confront him, but his wife abused her with filthy language. In the meantime, the informant arrived at her house at about 12.00 P.M and went to Sri Suraj Nayak's house to confront him. However Sri Suraj Nayak and his wife assaulted her also. Hence this case.
2. On the basis of the said *ejahar*, a case was registered as Lahowal P.S. case number 31/18 under section 294/323/34 IPC and A.S.I Sujit Biswas was entrusted to investigate the case. On completion of the investigation, the Investigating Officer (hereinafter referred as I.O.) submitted the charge sheet against the accused persons Sri Suraj Nayak and Smti. Rumi Nayak under section 294/323/34 IPC.

3. Cognizance was accordingly taken. On appearance by the accused persons the copies of relevant documents of the case were supplied to them in compliance of section 207 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C). The particulars of offence u/s 294/323/34 IPC was read over and explained to the accused persons. On being asked they pleaded not guilty and claimed to be tried.
4. During trial the prosecution has examined as many **7 [seven]** witnesses. The accused persons are examined under section 313 CrPC. The accused persons denied all the allegation leveled against them and also denied to adduce evidence on their behalf.
5. I have heard the argument put forwarded by the learned Assistant Public Prosecutor and the learned Defence Counsel. Thoroughly perused the case record.
6. Upon such hearing and perusal I have framed the following points for just decision of the case.

**POINT FOR DETERMINATION**

7. Whether the accused persons on 24.03.18 at about 12:00 P.M voluntarily caused hurt to the informant in furtherance of common intention and thereby committed an offence punishable under section 294/34 IPC?
8. Whether the accused at the relevant date and time uttered obscene words to the annoyance of others in a public place

in furtherance of common intention and thereby committed an offence punishable under section 323/34 IPC?

**DISCUSSION, DECEISION AND REAONS THEREOF**

9. **P.W-1, Smti. Parbati Mirdha is the informant of this case.** She could not state the date of occurrence. She deposed in her evidence that on the relevant day, while she was not present at her house. After she arrived at her house, her mother-in-law informed her that accused Smti. Rumi Nayak assaulted her son when he went to the accused person's house to eat "Nuni" (Mulberry). Due to which an altercation took place between the accused person and the mother-in-law of the informant. Later on, she met the accused person and asked them as to why they assaulted her. But the accused person Smti Rumi Nayak assaulted her by pulling her hair and accused person Sri Suraj nayak assaulted her with a bamboo on her head. Due to which she sustained severe injury on her head and was taken to Hospital. Subsequently she lodged the ejahar. Ext-1 is the ejahar and Ext-1(1) is her signature.
10. In cross-examination, P.W-1 denied the suggestions put forwarded by Ld. defense counsel.
11. **P.W-2 is Sri Tufan Mirdha** is the husband of the informant. He deposed in his evidence that he knows the accused persons. That on the relevant day of the incident,

he went to Lahowal with his wife i.e. the informant. When they came back, they came to know from his mother that the accused person assaulted his son when he went to their house to eat mulberry. Then the accused person also involved in an altercation with his mother. P.W-2 further deposed that later on, his wife and the accused person Smti. Rumi Nayak entered into a quarrel in his courtyard. When P.W-2 tried to settle the matter, accused person Sri Suraj Nayak also came there and assaulted the informant with a bamboo stick on her head. In cross-examination, P.W-2 stated that he could not remember the date of occurrence.

12. **P.W-3 is Smti. Anjali Kunkal.** She is the neighbour of both the parties. She deposed in her evidence that she does not know anything about the incident. In cross-examination she stated that the police had not examined her.
13. **P.W-4 is Sri Sunil Kunkal.** He deposed in his evidence that he is the neighbour of both the parties. That, he was at his workplace at the time of the incident. Later on, he came to know from his wife that both the parties entered into a quarrel. In cross-examination he stated that he does not know anything about the incident.
14. **P.W-5 is Sri Ajoy Tanti.** He deposed in his evidence that he is the neighbour of both the parties. He deposed that he was not present at the place of occurrence. Later

on, he came to know that there was a quarrel took place between both the parties. In cross-examination, P.W-5 stated that police had failed to examine her.

15. **P.W-6 is the medical officer Dr. Dharanidhar Kalita.** He deposed in his evidence that on 26.03.18 he was working at Lahowal PHC as Medical Officer. On that day, at about 4.55 P.M he examined the informant escorted by HG Bijoy Das of Mohanbari outpost. On examination, he found injury-

- a) ½ inch length injury
- b) Blunt weapon
- c) Injury was 3-4 hours old
- d) Nature of injury-simple

Ext-2 is the medical report. Ext-2(1) is her signature.

16. In cross-examination P.W-6 denied the suggestion put forwarded by the defense counsel.

17. **P.W-7 is the Investigating Officer Sri Sujit Biswas.**

He deposed in his evidence the routine manner of investigation taken up by him. Ext-3 is the sketch map and Ext-3(1) is his signature. Ext-4 is the charge sheet and Ext-4(1) is his signature. In cross-examination P.W-6 stated that he had not examined the P.W-4.

18. Now, appreciating the evidence on record it appears that the place of occurrence is the courtyard of the informant's house and the time of incident is at around 12 P.M. Considering the time and the place of occurrence, it

appears that there must be some independent witnesses who had seen the incident. However, the independent witnesses of the case i.e. the P.W-3,4 &5 who are the neighbors of both the parties; failed to corroborate with the informant. They only deposed in their evidence that the parties entered in to a quarrel. None of the independent witnesses deposed anything so as to establish that the accused person had committed an offence u/s 294/323 IPC.

19. It is a settled position in law that in criminal cases the prosecution has to prove its case against the accused person beyond reasonable doubt. Conviction of a person cannot be based on suspicion. However as already mentioned hereinabove, the prosecution has failed to adduce any convincing evidence to support the prosecution's story.

20. To sum up, this Court finds and holds that the prosecution has failed to prove beyond reasonable doubt that the accused persons had committed an offence punishable u/s 294/323/34 IPC and as such the accused persons are liable to be acquitted.

### **ORDER**

21. Accordingly, the accused person **Sri Suraj Nayak and Smti. Rumi Nayak** are acquitted of the offence under section 294/323/34 IPC and set at liberty forthwith.

22. The bail bond for the accused persons shall be in force for further period of six months in light of section 437-A CrPC.

23. The judgment is delivered and operative part of the judgment is pronounced by me in the open Court today.

*Given under my hand and seal of this court on this 18<sup>th</sup> day of December, 2021.*

**(SMTI RITUPARNA SARMAH)**

Judicial Magistrate First Class, Dibrugarh

## **APPENDIX**

### **PROSECUTION EXHIBITS:**

1. Ext-1: Ejahar
2. Ext-1(1): Signature of P.W-1
3. Ext-2 : Medical report
4. Ext-2(1): Signature of P.W-6
5. Ext-3: Sketch map
6. Ext-3(1): Signature of P.W-7
7. Ext-4: Charge sheet
8. Ext-4(1): Signature of S.I. Ajit Borah

### **DEFENCE EXHIBITS:**

NIL

### **PROSECUTION WITNESSES:**

1. P.W-1: Smti. Parbati Mirdha
2. P.W-2: Sri Tufan Mirdha
3. P.W-3: Smti. Anjali Kunkal
4. P.W-4: Sri Sunil Kunkal
5. P.W-5: Sri Ajoy Tanti
6. P.W-6: Dr. Dharanidhar Kalita
7. P.W-7: Sri Sujit Biswas

### **DEFENCE WITNESSES:**

NONE

**(SMTI RITUPARNA SARMAH)**

Judicial Magistrate First Class, Dibrugarh