

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE::KOKRAJHAR

PRESENT: SMTI. SHIVANI HANDIQUE, AJS

G.R CASE NO. 1424/2015

(u/s) 294/448/323/34 IPC)

State

Vs-

1. Eyasin Ali

2. Amina Bibi.....accused

Counsel for prosecution: Mr. J. Basumatary, Ld.APP

Counsel for defence: Mr. S.K Dey

Date of evidence: 28.08.2017,19.12.2017

Date of examination of accused u/s 313 Cr.P.C: 09.01.2018

Date of argument: 09.01.2018

Date of judgment: 12.01.2018

JUDGMENT

1. The brief facts of this case are that:- On 12.11.2015 at about 1.00 pm, accused Eyasin Ali's four numbers of ducks entered the fishery of informant Nur Ahmed. Nur Ahmed shoed away the ducks. At this accused Eyasin Ali and his wife Amina Bibi got enraged and trespassed into his house and accused Eyasin Ali attacked his wife Rabia Bibi and dragged her and both the accused persons beat her up. The accused persons also outraged the modesty of his wife. When the informant went out of the house and resisted the accused, he was also assaulted. Accused Eyasin Ali trampled him on the neck and tried to kill him and also snatched away his golden ring. When the neighbouring people arrived hearing hue and cry the accused persons fled. The FIR was lodged by the informant on 15.11.2015 which was registered as Fakiragram P.S case no. 93/2015 u/s 294/448/354/325/341/506/379 IPC and investigated

upon. After investigation, the charge sheet was filed against accused Eyasin Ali u/s294/448/354/323 IPC.

2. After filing of the charge sheet, the Id.CJM, Kokrajhar took cognizance of the case and transferred the case to this court. The accused appeared in the court after receiving the summons and was released on bail. The necessary copy was supplied to the accused and after perusal of the materials on record, the particulars of the offence u/s 294/448/354/323 IPC were explained to the accused to which he pleaded not guilty and claimed for trial. However, during trial accused Eyasin Ali's wife Amina Bibi was also found to be co-accused in this case. Therefore, she was impleaded as a co-accused in this case as per Section 319 of the Cr.PC and summoned to appear in the court. Accused Amina Bibi appeared and she was also released on bail. The substance of accusations u/s 294/448/354/323 were explained to her to which she pleaded not guilty and claimed for trial. The case then proceeded for trial against both Eyasin Ali and Amina Bibi.
3. During trial the prosecution examined as many as six witnesses in this case. The accused were examined in this case u/s 313 Cr.PC wherein they declined all the incriminating questions put to him. Accused persons also declined to adduce evidence. I have heard arguments from both the parties. The following point for determination has been framed against the accused person in this case.

POINT FOR DETERMIANTION

- i. Whether the accused persons in furtherance of their common intention on 12.11.2015 at 1.00 pm in Kodaldhowa village committed criminal trespass in the house of the complainant Nur Ahmed and abused him and his wife in obscene language and also caused voluntary hurt to the complainant and his wife and thereby committed an offence punishable u/s 294/448/323/34 IPC?

DISCUSSIONS DECISIONS AND REASONS THEREOF

4. Now let me peruse the evidence led by witnesses. **PW.1 Monowar Hussain** stated that about one year ago, when the ducks of Eyasin Ali entered the pond of Nur Ahmed, then Nur Ahmed tried to shoo away the

ducks by throwing mud balls at them. One duck got injured and thereafter both the parties got into a verbal dual. Thereafter, Eyasin Ali entered the house of Nur Ahmed and started assaulting Nur Ahmed and his wife. He went to the place of occurrence hearing hue and cry and tried to pacify the parties. In cross examination, he stated that his house and the house of the informant are separated by the national highway. He stated that he did not see Nur Ahmed's wife throwing mud balls at the ducks. He testified that he appeared on the scene after the first session of the quarrel was over. He heard about the altercation between the parties. When he reached there, the fighting was going on. According to him, Nur Ahmed was not at home when the verbal altercation took place. He stated that he was called by Nur Ahmed's family and he went there as he is the village headman.

5. **PW.2 Nur Ahmed** is the complainant of this case. He stated that more than one year ago, while he was away from home for his work, Eyasin Ali's ducks were swimming in his pool. His wife shooed away the ducks and then a quarrel started between Eyasin's wife and his wife. He reached home after ten minutes of the incident and came to know about the quarrel. Eyasin beat him up and therefore, he lodged this case. He also stated that his daughter Najima sustained injury in the incident. Ext.1 is the FIR lodged by him. In cross examination, he stated that he and Eyasin are next door neighbours. He was not present when his wife tried to shoo away the ducks. He stated that Eyasin pressed his neck and punched him on the chest and shoulder. He stated that the accused persons assaulted his wife and tore off her clothes. He also alleged that the accused pulled his wife's hair causing injury on her hands and chest. He stated that his brother Nur Jamal was present at the place of occurrence and he was not assaulted. He denied that his wife was not assaulted. According to him, his daughter fell down and started crying. He admitted that a cross case has been filed by the accused against him. He denied that he called his brother and other people after arriving home and then they all went to Eyasin's house. He also denied that they assaulted Eyasin when he did not come out in spite of being called.

6. **PW.3 Abu Bakkar Ali** stated that about one year ago, Eyasin Ali's ducks were swimming in Nur Ahmed's fishery. Nur Ahmed's wife was trying to shoo away the ducks. On the date of the incident, Nur Ahmed's wife was throwing mud balls at the ducks and therefore, a quarrel took place between the parties. According to him, Eyasin assaulted Nur Ahmed's wife and when Nur Ahmed reached home, he was also assaulted. In cross examination, he stated that he saw Nur Ahmed's wife throwing the mud balls at the ducks. He stated that he and Nur Ahmed were present when his wife tried to shoo away the ducks. Then the parties started quarreling. According to him, Eyasin Ali came and assaulted Nur Ahmed. He denied that he and Nur Ahmed were not present when Nur Ahmed's wife was throwing mud balls at the ducks. He denied the fact that Nur Ahmed was not present at home when the quarrel started.
7. **PW.4 Rabia Bibi** stated that they have a fishery and Eyasin's ducks used to swim in that fishery. She had asked the accused not to let their ducks swim in the fishery. On the date of the incident, she threw mud balls at the ducks. Thereafter, Eyasin and his wife came to her place and assaulted her. The accused threw her baby on the ground. Eyasin's wife first hit her and then Eyasin joined in the assault. When her husband came home, he too was assaulted. In cross examination, she stated that one duck was slightly injured. She threw mud balls and then a verbal altercation took place. According to her, Nur Ahmed was not present at home at that time. When her husband returned home, she told him about the incident. Then, they went to Nur Jamal's residence and told him about the matter. Then Nur Jamal and others came and they called Eyasin. At first, Eyasin did not come out. When Eyasin came out after a while, a scuffle ensued between the parties. She stated that she was not that injured and Nur Jamal was also examined by the Doctor. She stated that Eyasin lodged a cross case first. She also stated that her daughter fell down and was not injured.
8. **PW.5 Nur Jamal Sheikh** stated that about one year ago, while he was relaxing at home, the complainant and his wife came to his house and narrated the incident. They told him that the accused namely Eyasin Ali

assaulted them following a quarrel regarding some ducks. Then, he along with few villagers came to Nur Ahmed's house and scolded Eyasin as he did not come out of the house. The village headman tried to pacify the parties but Eyasin had already filed an ejahar. In cross examination, he stated that he was not present when the quarrel started. He was called by Nur Ahmed and his wife and when he went there Eyasin did not come out on being called.

9. **PW.6 Bakiyat Ali** stated that Nur Ahmed has a small fishery and Eyasin Ali's ducks used to swim there. Therefore, Nur Ahmed's wife threw mud balls at the ducks. Eyasin's wife saw it and informed her husband. Then Eyasin went to Nur Ahmed's house. They heard Rabia's scream. When Rabia came out, Eyasin pushed her. She and her baby fell down. She saw the incident and scolded Eyasin but he got angry. Then Eyasin called the police and lodged the FIR. In cross examination, he stated that he saw Eyasin pushing Rabia once and Eyasin was standing at the boundary and Nur Ahmed came later.
10. After going through all the evidence on record, it transpires that the main reason behind the alleged incident is frolicking of few ducks in the fishery of Nur Ahmed. The evidence reveals that on that particular day a verbal altercation took place between Nur Ahmed's wife and the accused regarding the ducks and then a fighting or minor scuffle took place. PW.1 was not present in the first session when the verbal altercation took place. From his evidence, it appears he reached the scene when the fighting was going on. He is the village headman and therefore, he was called there. He tried to pacify the parties and later on heard that the parties lodged a cross cases.
11. PW.2 is the informant and he stated that he reached home after ten minutes of the first incident. According to him, the accused and his wife came to his house and assaulted his wife and thereafter on his arrival he was beaten up. According to him, his daughter was also injured. He was not present when the quarrel first started. But Ext.1 (FIR) reveals that he was the person who shoed away the ducks and then, the accused persons abused them and assaulted. As per the FIR he was very much present in his house. In his cross examination, he stated that Eysin

pressed his neck, punched him on the chest and tore of his wife's clothes and her hair was pulled. But these facts are not corroborated by his wife (PW.4). PW.3 on the other hand, stated that he and Nur Ahmed (PW.2) were present even during the first incident. According to him, Eyasin Ali came and assaulted Nur Ahmed suddenly. But this fact is not corroborated by PW.2 himself. Therefore, evidence of PW.3 seems doubtful. PW.4 who is the wife of the informant stated that when she threw mud balls at the duck Eyasin and his wife came to her house and assaulted her and they threw her baby on the ground. According to her, Pw.2 (her husband) arrived later and he was assaulted. In cross examination, she testified that when she threw mud balls only a verbal altercations took place and her husband was not at home then. When he arrived home, she told him about the incident and then she and her husband went to Nur Jamal's house and then they all went to call Eyasin. According to her, the scuffle ensued between the parties when Eyasin came out. It is, therefore, seen that she had controverted her own testimony during cross examination. PW.5 testified that the complainant and his wife came to him and narrated him about the incident. He is the brother of PW.2. He stated that when they went to Nur Ahmed's house, nothing happened. He only scolded Eyasin for not coming out. According to PW.5, no such incident of scuffle or fighting took place when they called Eyasin to come out. PW.6 Bakiat Ali stated that when he heard Rabia's scream, and when Rabia came out, Eyasin pushed her hair. She and her baby fell down and he scolded Eyasin for this. In cross examination, he stated that he saw Eyasin pushing Rabia and at that time, Eyasin was standing at the boundary whereas in his evidence in chief, he stated that Eyasin had gone to Nur Ahmed's house. In my opinion, evidence of PW.6 is also not fully reliable. Further, after comparing the evidence of PW.1, PW.2, PW.3, W.4 & PW.5, it is seen that the witnesses have contradicted each other as to the alleged incident. Therefore, I have reservations to rely on their evidence. Moreover there was delay of three days in lodging the case which is not explained satisfactorily. The delay is therefore held fatal in this case. Point for determination is decided in negative.

ORDER

12. In view of the discussions made above, I hold the accused persons not guilty u/s 294/448/323/34 IPC and acquit them. Accused are set at liberty forthwith. Surety extended for six months. Judgment is delivered in the open court. Case is disposed of. Given under the hand and seal of the court on 12.01.2018.

(Typed and transcribed under my dictation

by Mainao Basumatary, Stenographer)

Addl. CJM

Kokrajhar

APPENDIX

PROSECUTION SIDE

PW1..Monowar Hussain

PW2.. Nur Ahmed

PW3..Abu Bakkar Ali

PW4..Rabia Bibi

PW5..Nur Jamal Sheikh

PW6.. Bakiyat Ali

EXHIBITS...FIR

DEFENCE EVIDENCE..NONE