

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, KOKRAJHAR::
ASSAM.**

G.R. Case No. 40/2012

U/S. 341/294/323/34 OF IPC

State of Assam

-Vs-

1. Md. Noimuddin Ahmed.
2. Musstt. Omme Salma Khatun.

.....Accused persons.

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

APPEARANCE:

Advocate for the Prosecution : Mr. K.C. Saha, Addl.P.P.
Advocate for the Defence : Mr. M. A. Pradhani.
Date of evidence : 13.12.2013, 28.01.2014, 01.03.2014,
04.04.2014, 24.09.2014 & 16.12.2014.
Date of argument : 26.12.2017
Date of judgment : 09.01.2018

J U D G M E N T

1. The case of the prosecution in brief is that, on 20.01.2012 at about 11.00 A.M., when the complainant namely Ashoruddin Sk. was taking his class in his school namely Chakrasila Bitorai M.E. School, the accused persons namely Noimuddin Ahmed and Musstt. Omme Salma Khatun illegally entered that place and assaulted the complainant. When Md. Sahajuddin Paramanik came forward to stop the fight, he was also assaulted by the

accused. The complainant lodged one FIR at Kokrajhar P.S. regarding the incident.

2. On the basis of the FIR lodged by the complainant, a case being Kokrajhar P.S. Case No. 18/2012 u/s. 448/325/34 of IPC was registered against the accused persons namely; Noimuddin Ahmed and Musstt. Omme Salma Khatun.
3. After registration of the case, police conducted investigation and submitted charge sheet against the above named accused persons u/s. 341/294/323/34 of IPC.
4. The above named accused persons appeared in this case and copy was furnished to the accused u/s. 207 of Cr.P.C.. The particulars of offences u/s. 341/294/323/34 of IPC were explained to the accused to which they pleaded not guilty and claimed to be tried.
5. **POINTS FOR DETERMINATION:**
 - i) Whether the accused persons wrongfully restrained the complainant on 20.01.2012 at about 11.00 A.M. at Chakrisila Bitorai M.E. School in furtherance of common intention?
 - ii) Whether the accused persons uttered any obscene words in or around any public place to the annoyance of the complainant in furtherance of common intention on above mentioned date, time & Place?
 - iii) Whether the accused persons voluntarily caused hurt to the complainant on above mentioned date, time and place in furtherance of common intention?
6. The prosecution side examined as many as 8(eight) P.W.s in this case. The defence plea is of total denial and defence did not examine any witness. The statements of the accused persons u/s. 313 of Cr.P.C. were recorded.
7. I have considered all the materials on record, heard both the sides and I proceed to decide as follows:

DECISION AND REASONS FOR THE DECISION:

8. The evidence of PW.1 is that he is the complainant of this case. PW.1 knows the accused persons. The incident took place about two years back. PW.1 is the Headmaster of the M.E. School and at the time of the incident, he was working there. On the day of the incident, PW.1 was present in his school and he was taking a class and then the accused persons called PW.1 outside the room. Then accused Omme Salma Khatun asked for the teacher attendance register to put signature in the Attendance Register. Omme Salma Khatun got appointment as Addl. Teacher in the year 2005 and she worked there after joining the service. Then the school committee issued show cause to her regarding why she did not attend school and in the year 2010, the school committee discharged her from the school. When PW.1 informed that he cannot give the attendance register, then the accused Omme Salma Khatun gave a blow on his left hand. And thereafter the remaining accused Noimuddin Ahmed pressed the neck of PW.1 by making him fall on the ground by holding the muffler of PW.1 on his neck. Then PW.1 made a hue and cry and then Asstt. Teacher Sahabuddin Parmanik ran to the place and tried to protect PW.1, but the accused Omme Salma Khatun assaulted Sahabuddin Parmanik with her Chappal. Then the VCDC member after seeing the incident ran to the place of occurrence and then the accused persons assaulted him. Then the school students made a hue and cry, as a result of which the villagers came and then the accused left that place. Thereafter PW.1 lodged one FIR at Kokrajhar P.S.. PW.1 was taken to the hospital from the police station. PW.1 identified the FIR as Ext.1 and his signature as Ext.1(1).

In the cross examination, PW.1 deposed that the School Managing Committee Resolution and Proceeding Book of discharging the accused Omme Salma Khatun in the year 2010 were handed over to the police. Abu Bakkar Siddique was the Headmaster prior to PW.1. After the discharge of Omme Salma Khatun, Aijuddin Ahmed was appointed. **Omme Salma Khatun filed one case against them alleging that the proceeding book, joining report and the attendance register were forged.** After the incident of fight, the BEEO issued Show Cause regarding why Omme Salma Khatun was not allowed to put signature on the attendance register. PW.1 does not remember whether Omme Salma

Khatun brought any order from the Hon'ble High Court and whether the BEEO issued any letter to PW.1. **Omme Salma Khatun filed another case against PW.1.** At the time of the fight, PW.1, Sahajuddin, Aijuddin were present along with the accused. PW.1 denied the suggestion that he did not state before the police that when Aijuddin came to the PO, he was also assaulted. About 90/95 students were studying in the school. Among the students, Monowar Hussain, Ambhia Khatun saw the occurrence of the incident. The distance between the school and the Kokrajhar police station is about 25/30 k.m. PW.1 denied the suggestion that he did not state before the police that he was made fall by Noimuddin by holding the muffler on his neck and that he was assaulted. PW.1 denied the suggestion that he himself went to the hospital. At the time of the incident, the neighbours of the school were present among which PW.1 knows Nasir Basumatary. PW.1 does not know the names of the remaining persons. 20/25 persons came there. PW.1 sustained swelling and bleeding injuries. PW.1 denied the suggestion that he filed this case falsely for the case filed by Omme Salma Khatun.

9. The evidence of PW.2 is that he knows the complainant and the accused. The incident took place about two years back at about 11.00 A.M. On the day of the incident, PW.2 was taking a class in his Chakrasila Bitorai M.E. School. On that day, the accused persons came to the school and asked for the teacher attendance register from the Headmaster namely Ashoruddin Sk.(PW.1). Although Omme Salma Khatun worked as an Addl. Teacher in the school, but she was later on discharged from service. The Headmaster did not allow her to put signature as she was discharged and as there was no permission from the superior authority. Then the accused persons abused the Headmaster and Omme Salma Khatun slapped the Headmaster on his face. The accused Noimuddin pressed the neck of the Headmaster with the muffler on his neck. Then PW.2 came to stop the quarrel and then the accused Omme Salma Khatun gave a blow on the back side of the head of PW.2 by removing her chappal. Then a hue and cry was made as a result of which the villagers came and the accused persons left that place. PW.2 was medically examined at Kokrajhar RNB civil hospital. The Headmaster lodged one case regarding the incident.

In the cross examination, **PW.2 deposed that Omme Salma Khatun filed one case against them alleging that they forged the proceeding book, attendance register and that case is being tried in this court.** Omme Salma Khatun was appointed in the school in 2005. PW.2 denied the suggestion that he did not state before police that the Headmaster did not allow Omme Salma Khatun to put signature in the attendance register as she was discharged. The incident took place in the field of school campus. On that day, other teachers namely Binand Mushahary, Intaj Ali Ahmed, Joinuddin, Samidul etc. were present. There were houses of 4/5 persons adjacent to the school and out of them 2/4 persons came there. Bidyut Zamal, Nurul Islam etc. came there. PW.2, Aijuddin separated the quarrel between the parties. At the time of the incident, about 15/16 persons assembled there and when those 15/16 persons came, the accused persons left that place. **On the day of the incident itself medical examination of PW.2 was conducted.** PW.2 went to the hospital with Ashimuddin. **PW.2 denied the suggestion that on the day of the incident no medical examination was done.** PW.2 denied the suggestion that to get rid of the case filed by the accused Omme Salma Khatun, they filed this case falsely on concocted allegation. PW.2 denied the suggestion that he did not state before the police that Noimuddin pressed the neck of the complainant with his muffler. PW.2 also denied the suggestion that he did not state before the police that the accused Noimuddin abused the complainant.

10. The evidence of PW.3 is that he knows both the complainant and the accused. The incident took place about two years back at about 11/11.30 A.M. The complainant is the Headmaster of Chakrasila Bitorai M.E. School. On the day of the incident, the complainant called PW.3 to the School stating that he had to go to the bank due to some school work. Then PW.3 went to the school. At that time, the two accused came to the school and accused Omme Salma Khatun asked for school attendance register from the Headmaster. Then the Headmaster expressed his inability to give that register as Omme Salma Khatun was already discharged. Then Omme Salma Khatun demanded the register by holding the muffler on the neck of the complainant. PW.3 tried to make her

understand the matter. Omme Salma Khatun rebuked the Headmaster by calling him dog (kukur). Then Omme Salma Khatun slapped the Headmaster and some hue and cry was started as a result of which the teachers and the students came out. PW.3 prevented the same and asked for settling the matter in the school committee. Although Noimuddin slapped Ashimuddin, but as PW.3 prevented the same, that blow fell on the shoulder of PW.3. Omme Salma Khatun gave a blow to Sahabuddin by her chappal. When she again tried to give a blow, PW.3 caught her. Then the villagers came out and the two accused fled away. Later on the complainant filed the case.

In the cross examination, PW.3 deposed that police did not record his statement. PW.3 denied the suggestion that police recorded his statement and he told that the two accused came to the school and quarreled with the complainant and PW.3 did not say anything. When Omme Salma Khatun assaulted Sahajuddin, the teachers of the school, the staffs and the students of the school were present. At that time, the villagers did not come. **Omme Salma Khatun filed one case against PW.3 which is being tried in this court.**

11. The evidence of PW.4 is that he is a class X student of Abur Bhui High School. At that time, the complainant was the Headmaster of Chakrasila Bitorai M.E. School. PW.4 knows the accused persons. The incident took place about two years back at about 11.00 A.M. On that day, PW.4 came to the school. The complainant came to the school. On the day of the incident, at about 11.00 A.M., the two accused came to the M.E. school of PW.4 and asked for some khata from the Headmaster. PW.4 did not hear what the Headmaster told. Thereafter Omme Salma slapped the complainant. Then the remaining teacher Sahajuddin Paramanik came forward and Omme Salma assaulted him on the back side of his head on his shoulder by removing her chappal. Thereafter the villagers came and stopped the quarrel, as a result of which the two accused left that place. PW.4 does not know whether Omme Salma worked in the school of PW.4.

In the cross examination, **PW.4 deposed that Sahajuddin Parmanik is his relative maternal uncle.** The marpit took place in front of the school. **At the time of the incident, the complainant was not present in the class and he was sitting outside the office**

room. Sahajuddin Paramanik (PW.2) and the school chowkidar namely Joynuddin saw the occurrence of the incident. The student namely Dilbar and Husaina saw the occurrence of the incident. **Although PW.4 stated before the police about the incident of assault by chappal but he did not state that Omme Salma Khatun assaulted Sahajuddin on his shoulder by chappal.** When Omme Salma assaulted the complainant and Sahajuddin, the remaining teachers and student did not obstruct her. The teachers were sitting in the chair and bench.

12. The evidence of PW.5 is that he knows the complainant and the accused persons. On 20.01.2012, he was working as a teacher at Chakrasila Bitorai M.E. School and he was present in the school on that day. On the day of the incident at 10.30 A.M., the accused Omme Salma arrived at the school along with her husband and asked for the attendance register from the Headmaster/ the complainant. Omme Salma worked in that school as an Addl. Teacher and as she remained absent in the school for many dates, the school managing committee and the village public dismissed her. Then the Headmaster expressed his inability to hand over the attendance register and he asked them to consult the school managing committee. Then one altercation took place and then Omme Salma slapped on the face of the complainant. Then Sahajuddin Parmanik came forward to stop the quarrel and then the accused Omme Salma gave a blow on the back side of his head by removing her chappal from her leg. Thereafter PW.5 and others went to call the public and then the public came there. The incident took place inside the premises of the school.

In the cross examination, **PW.5 deposed that he received notice in a case filed by the accused Omme Salma.** PW.5 denied the suggestion that he did not state before the police that he went to call the public. PW.5 also denied the suggestion that he did not state before the police that Omme Salma assaulted Sahajuddin on his shoulder by her chappal.

13. The evidence of PW.6 is that on 25.02.2012, he was working at RNB civil hospital, Kokrajhar. On that day, PW.6 examined Ashoruddin Sk. and Md. Sahajuddin Parmanik at RNB civil hospital and on examination he found the following injuries.....

- i) For Ashoruddin Sk.
Injury:- Abrasion over body and lower both legs.
- ii) For Sahajuddin:-
Injury: Abrasion injury over the back and head.
- Opinion: simple injury, caused by blunt object.

PW.6 identified the medical report as Ext.2 and his signature as Ext.2(1).

In the cross examination, PW.6 deposed that **there was no any police requisition or police reference case number against the injured persons. The age of injury was not mentioned in his report. At this stage, PW.6 cannot say whether the injury was fresh or recent at the time of examination.** PW.6 denied the suggestion that the injuries were fresh and recent at the time of examination. PW.6 cannot say whether the blunt object is hard or soft.

14. The evidence of PW.7 is that he knows the complainant who is the Headmaster of the school of PW.7. PW.7 knows the two accused. The incident took place about 2/ 2 ½ years back at day time. At the time of the incident, PW.7 was teaching in the school. Accused Omme Salma Khatun worked as a teacher in the school. On that day, accused Omme Salma Khatun came to the school and asked the Headmaster whether he would allow her to put signature in the attendance register, then the Headmaster asked her to inform the committee. On that matter an altercation took place between them and then the accused Omme Salma slapped the complainant. At that time, PW.7, the complainant, Intash Ali, Sakendra Mushahary were present. The complainant did nothing against Omme Salma Khatun. The incident took place inside the premises of the school. **At that time, the husband of Omme Salma Khatun was present outside the boundary of the school. And when he saw the incident, he entered the boundary of the school and took away his wife after calling her.** Sahajuddin arrived there at that time. Thereafter the two accused left that place. Later on, the Headmaster filed the case.

In the cross examination, PW.7 deposed that at the time of the incident, they were sitting in the veranda of the school. At the time of the

incident, no person from the public were present. PW.7 knows about the prior case between the complainant and Omme Salma. PW.7 has heard that the accused Omme Salma filed one case against the complainant regarding the same incident. **PW.7 cannot say who slapped on the face of the complainant.**

15. The evidence of PW.8 is that on 20.01.2012, he was working at Kokrajhar police station. On that day, the complainant filed one written FIR at the police station and the then O.C. of Kokrajhar P.S. after registering a case endorsed the case to PW.8 for investigating. PW.8 identified the signature of Sontosh Kr. Das as Ext.1(1), 1(2), 1(3). PW.8 visited the P.O. and drew the sketch map. PW.8 identified the Sketch map as Ext.3 and his signature as Ext.3(1). The O.C. of Kokrajhar P.S. conducted medical examination of the injured after police requisition. The statement of the witnesses were recorded at the P.O.. The medical report of the injured was collected. The accused persons appeared before the police station after being allowed bail and they were questioned. PW.8 after completing the investigation handed over the case to the O.C.. Thereafter O.C. Sontosh Kr. Das filed C.S. against the two accused u/s. 341/294/323/34 of IPC. PW.8 identified the C.S. as Ext.4 and the signature of O.C. Sontosh Kr. Das as Ext.4(1).

In the cross examination, PW.8 deposed that he cannot say whether he conducted investigation into the case no. GR. 60/2012 filed by the accused persons. As per the FIR ,the date and time of occurrence of the incident is 20.01.2012 at 11.00 A.M.. As per the G.D. Entry dated 21.01.2012, the then O.C. conducted medical examination of the victim prior to lodging of the FIR. No GD entry was made but the M.R. number is written. As per the medical report, the injured was examined at RNB civil hospital on 25.02.2012. It is not written in the FIR that the complainant and his colleague teacher namely Sahajuddin sustained injury as a result of the fight. No incident took place in the varanda of the school. But the incident took place inside the premises of the school. The incident took place at a distance of 12 ft. from the varanda of the school. The Chowkidar of the school namely Joinuddin Sk. was not questioned by PW.8. PW.8 recorded the statement of PW.3 namely Aijuddin Sk. PW.1 did not state in his statement before PW.8 that when Aijuddin came to

the P.O., he was assaulted by the accused persons. PW.1 did not state that he had a muffler on his neck and Noimuddin made him fall on the ground by holding his muffler. PW.2 did not state before PW.8 that as Omme Salma was discharged, hence she was not allowed to put signature on the attendance register. PW.5 did not state before PW.8 that he went to call the public when the fight started. Although PW.5 stated before PW.8 that accused Omme Salma assaulted Sahajuddin with chappal but he did not state that she assaulted him on his shoulder. On 26.04.2012, PW.8 collected the medical report. PW.8 denied the suggestion that he conducted investigation into G.R. case NO. 60/2012 and in that case in order to discharge the accused, he has not deposed in the court as per law.

16. From the above discussion of evidence of the PWs, I have found that PW1, PW2, PW3, PW4, PW5, PW7 have implicated the accused in this case (PW6 is the MO and PW8 is the IO of the case). Hence, there is need to examine the reliability of their evidence and for the same I have carefully gone through the entire evidence on record and I find the following:
- a) Admittedly the accused Omme Salma filed case against the complainant i.e. PW1, PW2, PW3 and PW5 which implies that there is prior quarrel or enmity between the accused and the above mentioned four PWs regarding the discharge of the accused Omme Salma from the school of the complainant.
 - b) PW.1 denied the suggestion that he did not state before the police that when Aijuddin came to the PO, he was also assaulted. PW.1 denied the suggestion that he did not state before the police that he was made fall by Noimuddin by holding the muffler on his neck and that he was assaulted. But PW8 being the I.O. deposed in his evidence that PW.1 did not state in his statement before PW.8 that when Aijuddin came to the P.O., he was assaulted by the accused persons. PW.1 did not state that he had a muffler on his neck and Noimuddin made him fall on the ground by holding his muffler. Thus the Id. Defence counsel has established two material omission between the statement of PW1 u/s 161 CrPC and his evidence before the court which omissions do amount to material contradiction in my

view. Therefore, I am of the view that the evidence of PW1 is not wholly reliable.

- c) PW.2 denied the suggestion that he did not state before police that the Headmaster did not allow Omme Salma Khatun to put signature in the attendance register as she was discharged. But, PW8 being the I.O. deposed in his evidence that PW.2 did not state before PW.8 that as Omme Salma was discharged, hence she was not allowed to put signature on the attendance register. Thus the Id. Defence counsel has established one material omission between the statement of PW2 u/s 161 CrPC and his evidence before the court which omission does amount to material contradiction in my view. Therefore, I am of the view that the evidence of PW2 is not wholly reliable. . As per the evidence of PW2, on the day of the incident itself medical examination of PW.2 was conducted. PW.2 denied the suggestion that on the day of the incident no medical examination was done. But from the evidence of the MO./PW6 and the medical /injury report(Ext2) of PW2, it appears that PW2 was medically examined on 25-2-12 and the date of occurrence is 20-1-12. From this contradictory evidence of PW2 and the MO, I am of the view that the evidence of PW2 is not reliable.
- d) PW.3 deposed that police did not record his statement. But as per the evidence of the I.O./PW8, PW.8 recorded the statement of PW.3 namely Aijuddin Sk. Hence, from the evidence of the I.O., I am of the view that evidence of PW3 is not wholly reliable.
- e) PW.4 deposed that Sahajuddin Parmanik is his relative maternal uncle. Thus, admittedly, PW4 is an interested witness in this case. As per the evidence of PW4, **at the time of the incident, the complainant was not present in the class and he was sitting outside the office room.** But the complainant/PW1 deposed that on the day of the incident, PW.1 was present in his school and he was taking a class and then the accused persons called PW.1 outside the room. Thus ,I find material contradiction between the evidence PW1 ,who is the complainant of this case and PW4 and hence I hold their evidence to be not reliable. PW4 deposed that although PW.4 stated before the police about the incident of assault by chappal but he did not state that Omme Salma Khatun assaulted Sahajuddin on his shoulder by chappal which was stated by PW4 in the court . Hence, there is admitted omission between the evidence of PW4 in the court and his statement u/s 161 CrPC.

f) PW.5 denied the suggestion that he did not state before the police that he went to call the public. PW.5 also denied the suggestion that he did not state before the police that Omme Salma assaulted Sahajuddin on his shoulder by her chappal. But, PW8 being the I.O. deposed in his evidence that PW.5 did not state before PW.8 that he went to call the public when the fight started. Although PW.5 stated before PW.8 that accused Omme Salma assaulted Sahajuddin with chappal but he did not state that she assaulted him on his shoulder.

Thus the Id. Defence counsel has established two material omission between the statement of PW5 u/s 161 CrPC and his evidence before the court which omissions do amount to material contradiction in my view. Therefore, I am of the view that the evidence of PW5 is not wholly reliable.

g) As per the evidence of PW7, at the time of the incident, the husband of Omme Salma Khatun was present outside the boundary of the school and when he saw the incident, he entered the boundary of the school and took away his wife after calling her. But from the evidence of the complainant it appears that both the accused namely Omme Salma and her husband came inside the school boundary and they both assaulted the complainant . Thus, I find material contradiction between the evidence of PW7 and PW1 which render their evidence not reliable. Although PW7 deposed in his examination in –chief that the accused Omme Salma slapped the complainant, but in the cross-examination, PW7 deposed that he cannot say who slapped on the face of the complainant. Thus the evidence of PW7 is found self-contradictory.

h) PW.6 being the MO, deposed that there was no any police requisition or police reference case number against the injured persons. The age of injury was not mentioned in his report. At this stage, PW.6 cannot say whether the injury was fresh or recent at the time of examination. Thus, from the evidence of the MO, the case of the prosecution is not established. Similarly from the evidence of the I.O./PW8, the case of the prosecution is not established.

17. From the above findings, I am of the view that the prosecution failed to establish its case by producing any cogent and convincing evidence or witness. The witnesses of the case are found to be not wholly reliable and there is no reliable evidence to corroborate their evidence. In other words, the case of the prosecution is not established beyond all

reasonable doubt from the evidence of the PWs. Hence, I hold the points for determination in the negative.

18. In the result, I have not found the accused guilty in this case. Hence I acquit them from the charges of this case and set them at liberty forthwith. The bail bonds will remain in force for 6(six) months from today. Considering the evidence of victim and the nature of alleged injuries, the case is not referred for victim compensation.

Given under my hand and seal of this court on the 9th day of January/2018.

(A.K. Baruah)
Chief Judicial Magistrate,
Kokrajhar::ASSAM

APPENDIX**Prosecution witness:**

- PW-1: Md. Ashor uddin Sk.
PW-2: Md. Sahajuddin Paramanik.
PW-3: Md. Aijuddin Sk.
PW-4: Md. Monowar Hussain.
PW-5: Md. Intaj Ali Ahmed.
PW-6: Dr. Parbati Kr. Doley.
PW-7: Mr. Binanda Mushahary.
PW-8: Mr. Sahadat Ali.

Documents exhibited by prosecution side:

- Ext.1: FIR
Ext.2: Medical Report
Ext.3: Sketch map.
Ext.4: Charge Sheet.

Defence witness:

None

(Mr. A.K.Baruah)
Chief Judicial Magistrate
Kokrajhar.