

DISTRICT : GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. :- **Criminal Appeal No. 52/2008.**

Sri Jogeswar Mahanta. Appellant.

-Vs-

The State of Assam. Respondent.

Date of final hearing 19.09.2013.

Date of judgment & Order 01.11.2013.

APEARANCES :

For the appellant Mr. V. Baghe,
Advocate, Golaghat.

AND

For the respondent/State
of Assam. Mr. N.P. Acharjee,
Public Prosecutor, Golaghat.

PRESENT :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT & ORDER :

1. This is an appeal under Sub-section 3 of Section 374 of the Code of Criminal Procedure, 1973 submitted by the accused/appellant Sri Jogeswar Mahanta against the judgment and order dated 30.10.2008 passed by the learned Chief Judicial Magistrate, Golaghat in connection

with G.R. Case No. 984/2007 convicting the accused/appellant u/s 341 of IPC and sentencing him to pay fine of Rs.400/-, and in default of payment of fine, he shall undergo with simple imprisonment of 15 days ; convicting him u/s 323 of IPC and sentencing him to undergo rigorous imprisonment for one month and with fine of Rs.5,00/-, in default of payment of fine, he shall undergo with simple imprisonment for 15 days and further, he is convicted u/s 354 of IPC and sentenced him to undergo rigorous imprisonment for two months and with fine of Rs.500/-, and in default of payment of fine, he shall undergo with simple imprisonment for 15 days more.

2. The facts of the prosecution case, in brief, is that on 20.9.2007, at around 5 P.M., when Smti. Chandana Saikia was returning home after attending her tuition at Marangi Chari-ali, on the way, when she reached near Habigaon Tini-ali, accused/appellant Jogeswar Mahanta restrained her and fell her upon the ground by giving fisting blow on her and with an intention to do evil work with her against her will, the accused/appellant dragged her to a nearby bamboo groves by holding her hands. When she raised hue and cry, the neighbouring people arrived there and accused/appellant managed to escape from there.

3. The I/C of Numoligarh police out Post on receipt of the written ejahar on 21.9.2007 vide Ext-1 from the informant Sri Pronob Saikia, the father of the victim, made the GDE No. 468, dated 21.9.07 and forwarded the said ejahar to the O/C of Golaghat police station for registration of the case. Accordingly, the O/C of Golaghat police station on receipt of the said ejahar, registered the case vide Golaghat P.S. Case No. 436/07 u/s 341/325/354 of IPC and investigated into the case. After completion of investigation, the police submitted the charge sheet u/s 341/323/354 of IPC against the accused Jogeswar Mahanta to face the trial.

4. Trial began in the Court of learned Chief Judicial Magistrate, Golaghat. The accused/appellant pleaded not guilty when the particulars and substance of the offences u/s 341/323/354 of IPC were read over and explained to him and he claimed to be tried. The prosecution adduced the evidence of 6 witnesses to prove the case. The accused person has been examined u/s 313 of Cr.P.C. The plea of the accused/appellant was one of total denial. He declined to adduce defence evidence. After hearing from both the sides, the learned trial court was satisfied to hold that the accused person found guilty u/s 341/323/354 of IPC and accordingly, convicted and sentenced him as mentioned above.

5. Being highly aggrieved by and dissatisfied with the aforesaid impugned judgment and order of the learned trial Court, the accused/appellant has preferred this appeal on the following amongst other grounds :-

That the learned trial Court failed to appreciate the contradiction as appears during the trial between the oral evidence of the prosecution witnesses and the statements as made in the FIR and statements made before the I.O. u/s 161 of Cr.P.C. That the learned trial Court failed to discuss the contradiction in the impugned judgment and order. That the impugned judgment and order is not maintainable or sustainable and hence, pray for setting aside the said impugned judgment and order.

6. Called for case record of G.R. Case No. 984/07 has been received and perused the same.

7. Heard learned counsels of both the sides in length.

8. The point for determination for the purpose of disposal of the appeal is :-

“ Whether the learned trial Court has passed the impugned judgment and order without appreciating the evidence on record properly ?”

DISCUSSIONS, DECISION AND REASONS**THEREOF :**

9. Let me discuss the evidence on record to decide the above point.

10. P.W.2 is the victim person in this case. The whole prosecution case lies on her evidence. Therefore, first of all, we intend to discuss her evidence. The victim (P.W.2) was aged about 19 years at the time of deposing her evidence before the Court. According to her evidence, on 20th September, 2007, while she was returning home by riding on her bicycle from Morongi Chari-ali after attending her tuition, on the way, when she reached near the bamboo groves, the accused/appellant Jogeswar Mahanta fell her bicycle and in the result, she fell upon the ground, Thereafter, the accused/appellant gave fisting blow on her back and dragged her towards the bamboo groves. On hearing hue and cry, Amlan Baruah, Arpana Saikia , Mausum Saikia and including many others reached the place of incident. Thereafter, her father carrying with a gas cylinder from Marangi Chari-ali, reached there. Then accused/appellant Jogeswar Mahanta fled away from there. Her father took her to Numoligarh police Out Post by hiring a car. Thereafter, she was taken to NRL Vivekananda CHC for medical treatment of the injury sustained by her on her head and hands.

She has stated in her cross examination that the police took her statement on the day of incident and also on the next day of incident. She denied the suggestion put by the defence that she had not stated before the police that the accused had given fisting blow on her back. She also denied the suggestion that she had not stated before the police that the accused had fallen her from the bicycle. Further, she denied the suggestion that she had not stated before the police that she sustained injury on her head and hand. All these suggestions had been confirmed by the police (P.W.6) that she had not stated the aforesaid facts before him. All the aforesaid omissions are amount to contradiction which affect the

root of the prosecution case.

11. P.W.1 Sri Pronob Saikia is the father of the victim (P.W.2). According to the evidence of P.W.1, on 20th September, 2007, at around 4'30/5 P.M., when his daughter (P.W.2) was returning home from Habi gaon Tini-ali after attending her tuition, then the accused/appellant gave fisting blow on her back and fell her upon the ground by dashing her with her bicycle and she raised hue and cry when the accused/appellant dragged her by holding her hands. Neighbours Mausumi Saikia and Kalpana Saikia saw the said incident. After some time, when he (P.W.1) arrived there from Marangi Chari-ali carrying with a gas cylinder, he saw gathering there and his victim daughter was weeping. Then he took his daughter (P.W.2) to Numoligarh police Out Post. Police instructed him to lodge the ejahar on the next day as he was sent by the police for enquiry. Ext-1 is the said ejahar.

In cross examination, P.W.1 denied the suggestion that he had not stated before the police that the accused had not dragged his daughter (P.W.2) towards the bamboo groves. P.W.1 did not see the incident. He came to know about the incident from his daughter, P.W.2.

12. P.W.3 Smti. Arpana Saikia on hearing hue and cry raised by P.W.2, rushed to the place of incident and saw while the accused dragging P.W.2 towards the bamboo groves. When she arrived there, the accused person fled away from there. She denied the suggestion that she had not stated the aforesaid fact to the police. The I.O. (P.W.6) had confirmed that P.W.3 had not stated the aforesaid facts to him. Omission to state the aforesaid fact to the police is led me to believe that she made improvement of her evidence during the trial.

13. P.W.4 Smti. Mausumi Saikia has deposed in evidence that on 20.9.2007, at around 4'30/5 P.M., she along with P.W.3 Arpana Saikia were standing there. Then she heard the words “moriloo”, “moriloo” and then she rushed to the place of incident and saw scuffling between the

accused and the victim (P.W.2). People gathered there and then the accused fled away. P.W.2 sustained injury on her knee, hand and face. But P.W.2 did not state that she sustained injury on her hand, face and knee. After some time, the father of P.W.2 arrived there from Marangi carrying with a gas cylinder.

P.W.4 denied the suggestion put by the defence that she had not stated before the police that P.W.2 was dragged by the accused towards the bamboo groves. The I.O. (P.W.6) had confirmed that P.W.4 Mausumi Saikia had not stated the said fact before him.

14. P.W.5 Dr. Bijoy Sarmah has deposed in evidence that on 20.9.2007, he examined the victim (P.W.2) at around 7'40 P.M. on police requisition at V.K. NRL Hospital and found two abrasions, one at left elbow, size – 10 Cm. X 6 Cm. and other at left cheek, size – 2'5 Cm. X 2'5 Cm. The injuries were fresh and simple. As the abrasion was large on the left elbow it may be caused by dragging or pulling over a rough surface. Ext-2 is the injury report, upon which Ext-2(1) is his signature. Ext-2(2) is the signature of Medical Director S.K. Chakravarty of V.K.NRL Hospital.

15. From the aforesaid medical evidence, we find that the victim sustained injury on the left elbow and left cheek. But she did not state the said fact in her evidence. Even, she did not state anything relating to the injury sustained by her.

16. According to the evidence of P.W.3 Arpana Saikia, the victim (P.W.2) sustained injury on her hand, knee and head. But according to Doctor (P.W.5), he did not find any injury on the knee, hand and head of P.W.2. According to the evidence of P.W.2, the accused gave fisting blow on her back. But the Doctor (P.W.5) did not find any symptom of injury on the back of P.W.2.

17. Considering the aforesaid contradictions which affects the root of the case, we find and hold that the prosecution has failed to prove the case against the accused/appellant beyond all reasonable doubt and the benefit of doubt be extended to the accused/appellant.

18. In the result, I find that the appeal has merit and accordingly, the appeal is allowed on contest. The impugned judgment and order, dated 30.10.2008 passed by the learned trial court in G.R. Case No. 984/2007 is, hereby, set aside. The accused/appellant is set at liberty.

19. Send back the case record of G.R. Case No. 984/2007 to the learned trial Court along with a copy of the judgment and order.

Given under my hand and seal of the court on this the 1st day of November, 2013.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictated & corrected
by me.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictation taken & transcribed
by me :- S. Borpatra, Steno.