

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
KOKRAJHAR**

Present : Munmee Neog

Date of judgment: 31.03.2023

Case No. P.R.C 627/2022
Under Sections 120 B/447/323/506 of I.P.C

Dotma Police Station Case No.25/2022
Registered Under Sections 120
B/294/342/354/447/448/427/325/506 of I.P.C

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	Mr. J. Basumatary, Learned Addl. Public Prosecutor
ACCUSED PERSONS	1. Sri Dhananjay Barman (A1) Son of Sri Nimai Barman 2. Sri Nimai Barman (A2) Son of Late Nagen Barman 3. Sri Moniraj Barman (A3) Son of Late Giridhar Barman 4. Sri Budeswar Barman (A4) Son of Late Bhoti Barman 5. Sri Lalit Barman (A5) Son of Sri Budeswar Barman 6. Sri Sanjit Barman (A6) Son of Sri Mantu Barman 7. Sri Bhisma Barman (A7) Son of Sri Selka Barman 8. Smti. Sinu Barman (A8) Wife of Sri Budeswar Barman 9. Smti. Kasurani Barman (A9) Wife of Sri Atul Barman 10.Smti. Padda Barman (A10)

	Wife of Sri Profulla Barman All are residents of: Sikargaon P.S: Dotma District: Kokrajhar
REPRESENTED BY	Mr. S. Basumatary, Smti. R.Narzary, learned advocates

Date of offence	12.09.2022
Date of F.I.R	13.09.2022
Date of charge sheet	30.09.2022
Date of framing of charge/offence explanation	02.11.2022
Date of commencement of evidence	29.11.2022
Date on which judgment is reserved	Nil
Date of Judgment	31.03.2023
Date of the sentencing order, if any	Does not arise

Accused details:

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Sec. 428 Cr.P.C.A1
A1	Sri Dhananjay Barman	Not arrested	Does not arise	Sections 120 B/447/3 23/506 of I.P.C	Acquitted from the charges	Does not arise	Does not arise

A2	Sri Nimai Barman	“do”	“do”	“do”	“do”	“do”	“do”
A3	Sri Maniraj Barman	“do”	“do”	“do”	“do”	“do”	“do”
A4	Sri Budeswar Barman	“do”	“do”	“do”	“do”	“do”	“do”
A5	Sri Lalit Barman	“do”	“do”	“do”	“do”	“do”	“do”
A6	Sri Sanjit Barman	“do”	“do”	“do”	“do”	“do”	“do”
A7	Sri Bhisma Barman	“do”	“do”	“do”	“do”	“do”	“do”
A8	Smti. Sinu Barman	“do”	“do”	“do”	“do”	“do”	“do”
A9	Smti. Kasurani Barman	“do”	“do”	“do”	“do”	“do”	“do”
A10	Padda Barman	“do”	“do”	“do”	“do”	“do”	“do”

J U D G M E N T

Prosecution Case:

1. On 12/09/2022 at around 6:00 a.m. PW1 by putting her house under lock and key went to work at, Bagmara gaon. At around 7:00 a.m. on being called by A3 over telephone with information that her daughter-in-law had come, PW1 returned home and found that by breaking the lock of the door her daughter-in-law and a boy were sitting inside the house. On being asked she was told by her daughter-in-law that A3 and A5 had broken the lock of her house. When the boy went to the house of A3, the latter being the village headman to call him, A1, A2, A4, A5, A6, A7, A8, A9 and A10- all of them caught her, for which out of fear she started running. A7 attacked her with a lathi, as a result of which she fell down on the road, though she somehow got up and entered into house of a person. The above named miscreants even then chased her, hold her hair and by assaulting her with lathi took her to a club and thereafter had tied her up. PW1 was thereafter kept in that condition since 11:00 a.m. till 8:00 p.m. and during that time

she was assaulted with *lathi* and '*chappal*'. She was not even allowed to have water and was allowed to go for urinating inspite the fact that she requested them for same. She was threatened that she would be dispossessed from her land and that her house would also be destroyed. Thereafter husband of PW1 was called and his signature was taken on a white paper.

2. With regard to aforesaid allegations PW1 lodged Exhibit P-1/PW1 before, Dotma Police Station. Investigating Officer laid charge-sheet under Sections 120 B/294/323/506 of Indian Penal Code (hereinafter be referred to as 'I.P.C') against A1, A2, A3, A4, A5, A6, A7, A8, A9, A10 (hereinafter all together be referred to as 'accused persons').

Proceeding before court:

3. On appearance of accused persons before court they were granted bail and copy under Section 207 of Cr.P.C was furnished to all of them. Particulars of offences under Sections 120 B/447/323/506 of I.P.C were read over and explained to all the accused persons, in reply to which all of them have pleaded not guilty and claimed trial.

4. The prosecution has examined altogether six numbers of witnesses, which included informant cum victim (PW1) and the Investigating Officer (PW6).
5. Statement of accused persons under Section 313 of Cr.P.C is recorded, wherein they have pleaded total denial. All the accused persons have declined to adduce evidence.
6. I have heard argument advanced by learned Addl. Public Prosecutor as well as the learned counsel for defence.

Points for determination:

7. Whether the accused persons on 12/09/2022 at around 7:00 a.m., at, Sikargaon, under, Dotma Police Station, agreed to do illegal acts, i.e. to assault PW1 and that besides the above agreement, you all, in fact, in pursuance to the said agreement, on said date trespassed into the property of PW1 and assaulted her and thereby committed offence under Section 120 B of I.P.C?
8. Whether the accused persons on 12/09/2022 at around 7:00 a.m. at, Sikargaon, under Dotma Police Station, in pursuance to the criminal conspiracy, trespassed into the property in possession of PW1, with intend to

commit an offence or to intimidate or insult or to annoy PW1 and thereby committed offence under Section 447 read with Section 120 B of I.P.C?

9. Whether the accused persons on 12/09/2022 at around 7:00 a.m. at, Sikargaon, under Dotma Police Station, in pursuance to the criminal conspiracy, voluntarily caused simple hurt to PW1 by assaulting her with lathis, hands etc. and thereby committed offence under Section 323 read with Section 120 B of I.P.C?
10. Whether the accused persons on 12/09/2022 at around 7:00 a.m. at, Sikargaon, under, Dotma Police Station, in pursuance to the criminal conspiracy, caused criminal intimidation to PW1 with injury to her person and property by threatening her in various manners and thereby committed offence under Section 506 read with Section 120 B of I.P.C?

Evidence:

11. To establish the culpability of accused persons the prosecution has examined PW1, who in her evidence has deposed that her son, i.e, PW4 inspite of his first wife living had

conducted his second marriage and it was informed to her by A3, A4 and also subsequently by one, Nole, that PW4 had brought his newly married second wife to their house. Witness has stated further that on getting such information when she came home she found lock of the door of her house in broken condition and on being asked she was told that villagers had done that. She further has deposed that A3 asked her to go to the club and while she was going to the club A7 followed her with a lathi on his hand and though she started running out of fear on noticing A7, the latter suddenly hit on her back with the lathi, as a result of which she sustained injury on her back and also fell down on the road. Witness has further deposed that A10 then hold her hair, Kalpana, hold her hand and A8 assaulted her with lathi and that they even by assaulting her took her to the club and thereafter A5 and A6 tied her up with ropes. It is alleged by the witness that A3 then ordered others to assault her and then A9, A10 and A8 along with one, Jyotsna, assaulted her with bamboo lathis, A9 slapped on her face with '*chappal*' and A6 by making a garland of

'chappal' put the same on her neck. PW1 further has alleged that she was not even allowed to urinate and to have water, though she felt for both. As per PW1, she called PW5, her daughter-in-law to come and accordingly she informed police of, Dotma Police Station. Witness also has stated that when PW5 came to the club, then A5 also had assaulted her. It is further alleged by PW1 that till 8:00 p.m. she was kept in the club being tied up with ropes. She has stated also that she was slapped when she refused to put signature on a paper as asked by, Dhanan, and that at 8:00 p.m. when her husband came then his signature was taken. It is further stated by PW1 that A3 threatened her not to lodge any case against them and that for injuries sustained by her she was medically treated. In cross-examination PW1 has admitted that her daughter-in-law, i.e, PW5 lodged a case against her and other family members on allegations of assault caused to her. She has denied that no incident as alleged by her had taken place and that neither, any of the accused persons had assaulted her, nor, any of them had tied her up. It is further denied by the witness that no

accused forced her and her husband to put signature on any paper and that none had slapped on her face or ever had put any garland of '*chappal*' on her neck. She has denied that she demanded Rs.1,50,000/- from villagers and only for greed of money she lodged this false case only.

12. PW2 has deposed in her evidence that one day at around 11:00 a.m. PW1 was assaulted by some villagers of their village though she did not know their names. Witness has claimed witnessing the incident and has claimed further that by using bamboo lathi PW1 was assaulted. It is stated by PW2 that PW4, who was her husband escaped from his house and as such was not available at his house and that had given rise to the incident. In cross-examination PW2 has deposed that prior to her marriage with PW4 she stayed at, Guwahati, for around three months with him without any marriage and thereafter only PW4 came home. Witness has stated that she reached, Shikargaon, with, Romen Ray, at around 11:00 p.m by asking many people the address of PW4 and that even, Romen Ray, was not aware of address of her matrimonial

home. She has admitted that on reaching, Shikargaon, she stayed at house of A3 and even took dinner at his house and that it was decided that a meeting would be held at around 11:0 a.m. of next day on issue relating to her and PW4. She has admitted also that she was not aware of first marriage of PW4 when she stayed with him. She has denied that she did not witness any incident of assault and that PW1 was not assaulted by anyone and further that she has deposed false evidence.

13. It is deposed by PW3 in his evidence that he was one day informed by A3 about arrival of his new daughter-in-law/PW2 on the village and that accordingly when his wife came home, she was assaulted by A1, A3, A4, A5, A8, A9 and A10. Witness has alleged further that PW1 sustained injuries on various parts of her body and that PW1 was assaulted after being taken to a club. He also has claimed that accused persons had took his signature on blank paper and asked him and his family members to leave the village. Witness has denied that, Romen Ray, had brought PW2 to their village and took her to the house of A3

and has claimed that she came with her brother. Witness has denied that PW4 fled away from his house on the date of incident as PW2 came to the village. He has denied that discussion took place at village meeting on issue that PW1 had helped PW4 to escape from the village. He has also denied that PW1 sustained injuries due to assault took place between him and PW1 at their house during quarrel between them. Witness has admitted that PW1 was not willing to except PW2 as her daughter-in-law, however, has denied that as public decided that issue against her, hence, she lodged this case against the accused persons.

14. PW4 has deposed in his evidence that one day he was informed by his first wife, i.e., PW5 that his mother/PW1 was assaulted by public. Witness has stated that PW1 told him not to come by telling that he would get assaulted if he would come home and hence, he did not come. It is admitted by the witness that inspite of his first wife living he brought another wife and hence, the incident occurred. In cross-examination he has denied that he was not willing to accept PW2 as his wife and

as such when she came, he escaped from his house and for same PW2 had to stay at house of village headman. He has denied that he never had stated before police that accused persons had assaulted PW1 and that only for issue relating to him and PW2 quarrel took place between his parents. Witness also denied that as villagers decided the said issue against PW1, hence, this case falsely lodged by PW1. It is admitted by PW4 that PW1 demanded Rs.1,50,000/- from villagers, which includes the accused persons, to withdraw the case against them. He also has admitted that he did not witness who assaulted PW1.

15. In her evidence PW5 has deposed that one day PW4 came home from Guwahati and subsequent to that PW2, who was his newly married wife also came to the house of headman of the village. She has stated further that a meeting was held in the village as PW1 wanted to keep the new lady as wife of PW4, which public opposed due to the fact that PW4 is having a wife living with a child. She has stated further that on that issue quarrel took place between PW1 and her husband/PW2 and the latter assaulted PW1, but, on advice and

direction of, Romesh Barman and Abu Bakkar, this case is falsely lodged by PW1 against many villagers. She has stated further that PW1 was assaulted by PW2 only and not by any other.

16. PW6 has stated that as Investigating Officer he recorded statement of witnesses, sent the victim for medical treatment, collected report thereof, vide Exhibit P-2/PW6 and has laid Exhibit P-3/PW6 against the accused persons. He has denied that without proper investigation he laid Exhibit P-3/PW6 against the accused persons.

Discussion, decisions and reasons thereof:

17. Let us analyze evidences discussed above keeping in the above referred points for determination:
18. With regard to allegation as to any criminal conspiracy on the part of accused persons it appears that none of the witness including PW1 could state any such fact during their evidence, which could show that there was any agreement and prior meeting of minds on the part of all or even few of the accused persons of this case to commit any

illegal act or any legal act by any illegal means against PW1 and thereby subject PW1 to be victim of such act. Materials on record, in my considered opinion, reveal nothing which could show any criminal conspiracy of the part of two or more accused persons of this case and as such it can be said that prosecution has failed to bring any evidence with regard to such allegation raised against accused persons.

19. With regard to allegation as to trespass to the property in possession of PW1 by accused persons, as appears, PW1 has alleged in Exhibit P-1PW1 that when on date of incident alleged she returned home she saw that lock of the door of her house was in broken condition and that her daughter-in-law, i.e, PW5 had informed her that A3 and A5 had broken the same. Whereas, in evidence PW1 never has raised any such allegation against A3, A5, or, also against other accused persons, but, only has claimed that villagers of their village had done such act. On the other hand, silence of PW3, who is husband of PW1, with regard to any such allegation against accused persons together with failure of all other

prosecution witnesses to state anything about such alleged act of accused persons, in my considered opinion, has created some doubt on such allegation as to trespass into any property in possession of PW1 and PW3 by accused persons.

20. Let us analyze materials on record to see as to whether prosecution has been successful in establishing offence under Section 323 of I.P.C against accused persons. It transpires from record that PW1 in Exhibit P-1/PW1 very categorically has claimed that she was assaulted by accused persons severely on the road leading towards the club and also at the club since 11:00 A.M till 8:00 P.M and she in her evidence also substantially has corroborated the same by describing as to how she was allegedly assaulted by the accused persons on the road and also at the club. Further it appears that PW3 also has alleged that PW1 was assaulted by accused persons initially at their house, which as appears, has not even alleged by PW1 either, in Exhibit P-1/PW1, or, in her evidence. In my considered opinion, inspite of the fact that PW3 has claimed his presence at his house when his

wife was allegedly assaulted at their house, his inaction at that time, in my considered opinion, has casted some doubt with regard to such incident.

21. Analyzing further it appears that PW2 though has corroborated the fact that PW1 was assaulted on the date of incident, her evidence that she does not know who assaulted PW1, in my opinion, has shown that this witness has failed to incriminate any of the accused persons with the alleged incident of assault. It appears further that with regard to such alleged incident of assault caused to PW1, her son, i.e, PW4 also has failed to bring anything substantial to record, which could incriminate the accused persons as he admittedly did not witness the incident alleged. It appears further that PW4 though has claimed that he was informed by PW5 that PW1 was assaulted by accused persons, said witness, i.e, PW5 instead of supporting prosecution version has entirely negated all allegations against accused persons by deposing that on issue relating to second wife of son of PW1 and PW3 quarrel took place between PW1 and PW3 and that PW3 only had

assaulted PW1, but, subsequently on advice and direction of, Romesh Barman and Abu Bakkar Siddique, this case is falsely lodged by PW1 against many villagers. In my considered opinion, evidence of PW5 that PW1 was assaulted by her husband only and not by any other, very clearly has negated any incident of assault caused to PW1 by any of the accused persons.

22. With regard to alleged commission of offence under Section 506 of I.P.C by accused persons, materials on record shows that whereas, PW1 has alleged that she was threatened by accused persons not to lodge any case, it is claimed by PW3 that accused person had only asked him and him family to leave the village only, whereas, all other witnesses have not even raised any such allegation as to any kind of threatening allegedly made to PW1 or PW3 by any of the accused persons. Thus, such contradictory versions of witnesses with regard to same alleged incident, makes it difficult to believe any of the witness wholly.

23. The evidences discussed above, thus, show that with regard to allegations raised

against accused persons, inconsistent and contradictory versions of all prosecution witnesses, has made it quite difficult to believe on version of anyone wholly to determine alleged guilt of the accused persons. Besides, as stated earlier, evidence of PW4, who was not declared hostile by prosecution that this case is falsely lodged against accused persons, together with the admission of PW4, who is, in fact, son of PW1, that PW1 had demanded an amount of Rs.1,50,000/- from villagers, which includes the accused persons, in my considered opinion, has made it very difficult to believe the allegations raised against accused persons.

24. Thus, based on foregoing discussion it can be said that prosecution has failed to prove beyond reasonable doubt the allegations raised in Exhibit P-1/PW1. In the result, I find and hold that the prosecution side has failed to prove charges under Sections 120 B/447/323/506 of I.P.C. against the accused persons with sufficient evidence beyond all reasonable doubt. I find all of them not guilty and acquit them forthwith. The accused persons are set at liberty and validity of bail

bond shall extend for a period of six months from today.

25. Given under my hand and seal of this court on this 31st day of, March, 2023, at, Kokrajhar.

(Sd/-Smti. Munmee Neog)
Addl. Chief Judicial Magistrate
Kokrajhar

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES**A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE
PW1	Mrs. Bimala Barman	Informant cum victim/direct evidence
PW2	Smti Anjana Das	Direct & hearsay evidence
PW3	Mr. Dhaneswar Barman	Direct & hearsay evidence
PW4	Mr. Haripada Barman	Direct & hearsay evidence
PW5	Mrs. Kunja Barman	Direct & hearsay evidence
PW6	Md. Nur Islam Sarkar	Investigating Officer

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
	NIL	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution:**

Sl. No.	Exhibit Number	Description
1	Exhibit P-1/PW1	F.I.R with signature of PW1
2.	Exhibit P-2/PW6	Medical report collected by PW6
3.	Exhibit P-3/PW6	Sketch Map with signature of PW6
4.	Exhibit P-4/PW6	Charge-sheet with signature of PW6

B. Defence:

Sl. No.	Exhibit Number	Description
	NIL	

C. Court Exhibits:

Sl. No.	Exhibit Number	Description
	NIL	

D. Material Objects:

Sl. No.	Exhibit Number	Description
	NIL	

(Sd/-Smti. Munmee Neog)
Addl. Chief Judicial Magistrate
Kokrajhar