

P.R.C.CASE NO: 368 of 2018
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SARUWAR HUSSAIN & ORS

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DISTRICT: NALBARI
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL MAGISTRATE:::::NALBARI

P.R.C.CASE NO:368/18
U/S 447/294/323/506/34 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: (1) SRI SARUWAR HUSSAIN
(2) SRI MATIUR RAHMAN
(3)SRI MAINUDDIN
(4)SRI DILBAR ALI
(5) SMTI CHABILA KHATUN
(6) SMTI MAFIDA BEGUM

PRESENT : SHALMA AZAZ, S.D.J.M., (S) NALBARI.

ADVOCATE FOR THE PROSECUTION: Smti. M. Chakroverty.

ADVOCATE FOR THE ACCUSED: Sri J.Abedin

OFFENCE EXPLAINED ON: 01.11.18

EVIDENCE RECORDED ON: 15.02.19

ARGUMENT HEARD ON: 22.02.19

JUDGMENT DELIVERED ON: 22.02.19

JUDGMENT

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of the Daulasal Police outpost, by the informant/victim, Miss Noorjahan Begum on 08.05.18, against the accused persons, Md. Saruwar Hussain, Matiur Rahman, Mainuddin, Dilbar Ali, Chabila Khatun and Mafida Begum to the effect that, on 08.05.18 at about 3 p.m, with the intention to kill her and her husband, the accused Saruwar arms with iron rod in his hand, accused Matiur Rahman arms with dao in his hand and other remaining accused persons armed with lathi, entered into her dwelling house, and the accused Saruwar gave blow on her head with iron rod and the other accused persons beat her husband, as a result of which her head cracked, and she and her husband sustained grievous injury. Further , the accused Chabila Khatun snatched away her earring .
2. The police upon receipt of the ejahar registered it as Mukalmua Police Station case No.166/18 under sections 447/325/379/34 IPC and started investigation in the case. After completion of the investigation the police submitted charge sheet against the accused persons namely, Md. Saruwar Hussain, Matiur Rahman, Mainuddin, Dilbar Ali, Chabila Khatun and Mafida Begum under section 447/323/294/506/34 IPC.
3. The accused persons were called upon to enter trial and after causing their appearance the copies of the relevant documents were furnished to the accused. On perusal of record prima facie materials, against the accused persons were found under section 447/323/294/506/34 IPC , hence the particulars of the said offences were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined two witnesses, the informant and victim of the case . The prosecution prayed to close the evidence of prosecution side, as the principal witnesses, i.e the informant and the victim did not support the case of the prosecution and the examination of the other witnesses is not required. I have perused the record and it appears that the informant and the victim were the principal witnesses for the prosecution; hence when they have not supported the case of the prosecution then further examination of other witnesses would

merely be a futile exercise as it will not change the merit of the case; as such the evidence of the prosecution side is closed.

5. As there is no incriminating material against the accused persons, the statement of the accused persons under section 313 of CrPC, is dispensed with.
6. I have heard both the parties. I have heard the learned counsel for the accused who submitted that there is no material against the accused persons; as such the accused persons need to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following points for determination-
 - (1) Whether the accused persons, on 08.05.18 at about 3 pm, in the evening, at village Bonpura under Mukalmua P.S., in furtherance of their common intention, criminally trespassed into the property of the informant Smti. Nurjahan Begum with intent to commit an offence and thereby committed the offence under section 447/34 of IPC?
 - (2) Whether the accused persons, on 08.05.18 at about 3 pm, in the evening, at village Bonpura under Mukalmua P.S., in furtherance of their common intention, voluntarily caused hurt to informant Smti. Nurjahan Begum and her husband Md. Zinnat Ali Ahmed , and thereby committed the offence under section 323/34 of IPC?
 - (3) Whether the accused persons, on 08.05.18 at about 3 pm, in the evening, at village Bonpura under Mukalmua P.S., in furtherance of their common intention, used obscene language against the informant and the in a public place, causing annoyance to the public and thereby committed the offence under section 294/34 of IPC?
 - (4) Whether the accused persons, on 08.05.18 at about 3 pm, in the evening, at village Bonpura under Mukalmua P.S., in furtherance of their common intention, criminally intimidated the informant Smti. Nurjahan Begum and her husband Md. Zinnat Ali Ahmed, by

threatening to injury to their person, and thereby committed the offence under section 506/34 of IPC?

8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

POINT FOR DETERMINATION NOS.1, 2, 3 & 4:

9. All the points for determination are taken together for discussion as they are intricately connected to each other.
10. The prosecution has examined two witnesses in support of its case, i.e the alleged informant and the victim .
11. The PW1, Smti. Nurjahan Begum, who is the informant/victim of this case, has stated that the accused persons are her own brother-in-law and nephew and they live in the same compound. The PW1, further stated that the incident occurred around 10 months ago, at around 4 p.m., and at that time she was in her house, and regarding a prior land dispute an altercation took place between her and the accused persons, and a lot of people gathered and tried to stop the altercation and the parties shoved each other, and later on out of anger and misunderstanding she lodged the ejahar against the accused persons and the accused persons also lodged an ejahar against her. Later on, after talking with each other their misunderstanding was resolved and the land dispute was also resolved.

In cross examination, the PW1 admitted that she does not know what is written in the ejahar, as she does not know to read and write. The PW1 also admitted that the accused persons and she live in the same compound and the incident took place in the same compound, and that accused persons did not assault her nor threatened her, nor used obscene word.

12. The PW2 Md. Zinnat Ali Ahmed, who is the victim of this case, has stated that , at the time of incident, he was in his house and regarding a prior land dispute he had an alternation with the accused persons and a lot of people

gathered and tried to stop the altercation and the parties shoved each other and later on out of anger and misunderstanding his wife lodged the ejahar against the accused persons and the accused persons also lodged an ejahar against him. Later on, after talking with each other their misunderstanding was resolved and the land dispute was also resolved.

In cross-examination the PW2 admitted that the accused persons did not assault him nor threatened him, nor used obscene word.

13. On perusal of the case record, it is seen that the accused persons and the informant are from the same family and live in the same compound, and they had an altercation regarding land dispute. The perusal of the evidence of the PW1 and the PW2, reveals that they had not at all supported the prosecution version and according to them, PW1 had lodged the ejahar out of anger and in misunderstanding. The PW1 and PW2 has specifically admitted that the accused persons did not commit the alleged offences, rather they only had an altercation; hence it is held that the prosecution has failed to establish the charges against the accused persons.
14. In view of the above discussion it is held that the prosecution has failed to prove the points for determination.
15. *DECISION:* The prosecution has failed to prove the charges against the accused persons under section 447/323/294/506/34 of IPC, and therefore, the point for determinations are answered in negative, in favour of the accused persons.

ORDER

16. In view of the discussions made above and the decision reached therein it is held that the prosecution has failed to prove the charges against the accused persons, namely Md. Saruwar Hussain, Matiur Rahman, Mainuddin, Dilbar Ali, Chabila Khatun and Mafida Begum; as such the accused persons are acquitted of the charges under section 447/323/294/506/34 IPC and they are set at liberty.
17. The bail bond of the accused persons and their surety shall remain in force for six months from today.

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18. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 22nd day of February,
2019 at Nalbari.

Shalma Azaz,
S.D.J.M., (S),
Nalbari.

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APPENDIX

PROSECUTION EXHIBITS:

EXHIBIT 1 : EJA HAR

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) SMTI NURJAHAN BEGUM.
- 2) MD ZINNAT ALI AHMED.

DEFENCE WITNESSES

NONE

SHALMA AZAZ,
S.D.J.M., (S), NALBARI.

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