

G.R. CASE NO:813 of 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SMTI RADHA SARMA AND OTHERS

1

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

G.R.CASE NO:813/15
U/S 294/506/34 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: (1) SMTI RADHA SARMA
(2) SRI KAMALESH SARMA

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

ADVOCATE FOR THE PROSECUTION: SMTI M.CHAKROVERTY.

ADVOCATE FOR THE ACCUSED: SRI T.PATHAK

OFFENCE EXPLAINED ON: 19.10.16.

EVIDENCE RECORDED ON: 19.05.17.

ARGUMENT HEARD ON: 19.07.19

JUDGMENT DELIVERED ON:19.07.19

JUDGMENT

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of the Nalbari Police station, by the informant, Sri Kamal Kumar Jain on 04.06.15, against the accused persons, Smti Radha Sarma, Sri Kamalesh Sarma and Sri Chandan Barman, to the effect that, on 28.05.15, when the informant started construction of his wall, then the accused persons forcefully and illegally entered in to the land and broke the wall, and obstructed the workers and labourer from doing their work and threatened to kill them, if they again start work. Hence, the case.
2. The police upon receipt of the ejahar registered it as Nalbari Station case No.390/15 under sections 447/427/506/34 IPC and started investigation in the case. After completion of the investigation the police submitted charge sheet against the accused persons Smti Radha Sarma, Sri Kamalesh Sarma and Sri Chandan Barman, under section 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 persons. On perusal of record the particulars of offence under section 294/506/34 IPC 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 including the informant and one Sri Dharma Das. The evidence of the prosecution side was closed by my learned predecessor, as the other witnesses could not be found, and the prosecution failed to bring the Investigating Officer even after several attempts.
5. It is pertinent to mention herein that, during the pendency of this case the co-accused Sri Chandan Barman, absconded, as such, as per order dated 27.06.19, the accused Chandan Barman, was declared as an absconder, and the case was filed against co-accused Sri Chandan Barman. This case proceeded against the accused Smti Radha Sarma, and Sri Kamalesh Sarma.

6. The statement of the accused persons under section 313 of CrPC, are recorded, and the accused persons denied of committing the alleged offences.
7. 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.
8. Upon hearing and on perusal of record I have formulated the following points for determination-

POINTS FOR DETERMINATION :

- (i) Whether the accused persons, on 28.05.15, at Baruah Road, ward No.06, Nalbari town under Nalbari P.S., in furtherance of their common intention, used language against the informant Sri Kamal Jain, and his employed labours and Mason, in a public place, causing annoyance to the others and thereby committed the offence under section 294/34 IPC ?
 - (ii) Whether the accused persons, on 28.05.15 at Baruah Road, Ward No.06, Nalbari town under Nalbari P.S., in furtherance of their common intention, criminally intimidated the informant and his labours and Mason, by threatening to kill them, and thereby committed the offence under section 506/34 of IPC?
9. 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:

10. Both the points for determination are taken together for discussion as they are intricately connected to each other.

- 11.The prosecution has examined two witnesses including the informant himself and one Sri Dharma Das in support of its case.
- 12.The PW1, Sri Kamal Kumar Jain, who is the informant of this case, has stated that the accused persons are his neighbors, and in the year 2013 the accused Smti. Radha Sarma had lodged a Misc. Case before the Executive Magistrate and stopped the construction work of the wall and when the case was dropped then, on 28.05.15 at about 11 a.m., when he again started constructing the wall of his house by employing labours, at that time, the three accused persons, came and broke the wall and threatened the labours, and he was present at that time, later after five days of the incident he lodged the ejahar against the accused persons. Exhibit.1 is the ejahar and Exhibit.1(1) is his signature.

In cross examination, the PW1 admitted that in T.S.No.56/07, which he lodged against accused Smti. Radha Sarma, before the Hon'ble Munsiff Court, the Hon'ble court has gave judgment against him and in the Appeal also the Hon'ble court gave judgment against him. Further , the PW1, to the answer to the Court question replied that he employed two labours, but now, he do not remember their names.

- 13.The PW2 Sri Dharma Das, is an independent witness, and he has stated that he knows that both the parties are having a land dispute between themselves, and on the day of incident he heard the informant shouting at house, and at that time he crossed the house of the informant in bike.
- 14.On perusal of the case record, it is seen that the prosecution has examined only these two witnesses, and the PW1, in his evidence did not state that the accused persons used obscene language against him or any other person, further the PW1, stated that the accused persons threatened his labours, but he did not mention as to what the accused persons threatened to the labours, moreover , the prosecution did not examine the labours who were allegedly threatened and against whom obscene words were used. The informant himself does not remember the names of the victims.

15. In addition to the above, the prosecution examined the PW2, who heard the informant shouting rather than the accused persons. Hence, from the above it is clear that the prosecution miserably failed to prove the ingredients of the charges against the accused persons under section 294/506/34 IPC.
16. Further, admittedly the PW1/Informant, lodged the case against the accused persons after a delay of 5 days, and he explained that he got delayed because he had to collect some requisite documents, which is not a satisfactory reason, considering the facts of the case which are criminal in nature rather than civil, thus it clearly reflects the informant lodged this case against the accused persons as an afterthought based on concocted facts, and maybe that is the reason the informant does not remember the names of the labours, who are the victims and eye witnesses, of this case, and they could have thrown some light to the exact occurrence that took place.
17. In view of the above discussion it is held that the prosecution has failed to prove the points for determination.
18. DECISION: The prosecution has failed to prove the charges against the accused persons under section 294/506/34 of IPC, and therefore, the points for determinations are answered in negative, in favour of the accused persons.

ORDER

19. 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 Sri Kamalesh Sarma and Smti Radha Sarma; as such the accused persons are acquitted of the charges under section 294/506/34 IPC and they are set at liberty.
20. The bail bond of the accused persons and their surety shall remain in force for six months from today.
21. The case is disposed of on contest without cost.

G.R. CASE NO:813 of 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SMTI RADHA SARMA AND OTHERS

6

Given under my hand and the seal of this court on this the 19th day of
July, 2019 at Nalbari.

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

APPENDIX

PROSECUTION EXHIBITS:

1. Exhibit-1, FIR.
2. Exhibit-2, Signature of informant Sri Kamal Kurmar Jain.

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) Sri Kamal Kumar Jain, informant.
- 2) Sri Dharma Das.

DEFENCE WITNESSES

NONE

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

G.R. CASE NO:813 of 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SMTI RADHA SARMA AND OTHERS

8