

P.R.C.CASE NO:894 of 2018
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI NAUCHAN BANIYA

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

G.R.CASE NO:894/18
U/S 447/294/352/506 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED PERSON: SRI NAUCHANA BANIYA

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

ADVOCATE FOR THE PROSECUTION: SMTI. M. CHAKROVERTY.

ADVOCATE FOR THE ACCUSED: SMTI R.LAHKAR.

OFFENCE EXPLAINED ON: 13.3.19.

EVIDENCE RECORDED ON: 24.07.19.

ARGUMENT HEARD ON: 24.07.19

JUDGMENT DELIVERED ON: 24.07.19

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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, Smti. Jonali Bania on 14.11.12, against the accused Sri Nauchana Bania to the effect that, on 14.11.12 at about 6:10 p.m., she returned to her house after seeing the dead body of her brother and she was crying after seeing the clothes of her brother and her husband and son were not present in their house, at that moment, the accused person entered into the courtyard and rebuked her and poked her with bamboo stick on her leg, as a result of which she sustained injury on her leg, the accused person also outrage her modesty, and threatened to kill her family members. Hence, the case.
2. The police upon receipt of the ejahar registered it as Nalbari Police Station case No.811/12 under sections 448/294/325/506 IPC and started investigation in the case. After completion of the investigation the police submitted charge sheet against the accused person, Sri Nauchana Bania under section 447/294 IPC.
3. The accused person was called upon to enter trial and after causing his appearance the copies of the relevant documents were furnished to the accused person. On perusal of record the particulars of offences under section 447/294/352/506 IPC were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined two witnesses including the informant/victim of the case. The learned APP prayed to close the evidence of the prosecution side as the principal witness that is the informant/victim of this case did not state any incriminating material against the accused person, as such examination of other PW's are not required. I have perused the evidence of the principal witness, and it is seen that the informant/victim was the principal witness for the prosecution and she have not supported the case of the prosecution ,therefore, the evidence of prosecution side is closed, as examination of other PW's will not change the merit of the case.

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5. As there is no incriminating material against the accused person, the statement of the accused person 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 person; as such the accused person need to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following points for determination-

(i) Whether the accused person, on 14.11.12 at about 6:10 P.M., at village Jajiabari under Nalbari P.S, criminally trespassed by entering into the courtyard of the informant Smti. Jonali Bania, with intent to commit an offence and thereby committed the offence under section 447 of IPC?

(ii) Whether the accused person 14.11.12 at about 6:10 P.M., at village Jajiabari under Nalbari P.S., used obscene language against the informant Smti. Janali Bania , in a public place, causing annoyance to others and thereby committed the offence under section 294 of IPC?

(iii) Whether the accused person, on 14.11.12 at about 6:10 P.M., at village Jajiabari under Nalbari P.S, assaulted the informant Smti. Jonali Bania, and thereby committed the offence under section 352 of IPC?

(iv) Whether the accused person, on 14.11.12 at about 6:10 P.M., at village Jajiabari under Nalbari P.S, criminally intimidated the informant Smti. Jonali Bania, by threatening to kill her family members, and thereby committed the offence under section 506 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. I, ii, iii, & iv:

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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, including the informant/victims of this case.
- 11.The PW1, Smti. Janali Bania, who is the informant/victim of this case, has stated the accused person is her husband's elder brother and the incident occurred around six/seven years ago, at around 4 p.m., at their house. On the day of the incident, her own younger brother died in the train, and she was very distressed and she was crying out loud because she cannot control her grief, and at that time the accused came and he scolded her and told her not to cry so hard and she got hurt with the accused behaviour, and they had an altercation, and later on out of anger and misunderstanding, she lodged the ejahar against the accused person. But later on, after talking with each other their misunderstanding was resolved, they are of the same family and now they are maintaining good relation. Exhibit 1 is the ejahar and Exhibit-1(1) is her signature.

In her cross-examination PW1 admitted that she does not know what is written in the ejahar, she did not read it. The PW1 further admitted that the accused person did not assault her, neither used obscene language, they simply had an altercation and out of misunderstanding she lodged the ejahar.

- 12.The PW2 Smti. Jaymati Bonia, has stated that she is the neighbor of the informant and the accused person , and on the day of incident, the informant's younger brother died in a train accident, and the informant was very distressed and she was crying out loud, by looking at the clothes of her brother, so she told her not to cry and burn the clothes and came home, and after that what happened she does not know, she have no knowledge about the incident.
- 13.On perusal of the case record, it is seen that the accused person and the informant are of the same family, and they had an altercation out of misunderstanding. The perusal of the evidence of the PW1, who is the informant of this case, reveals that she had

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not at all supported the prosecution version and according to her, she had lodged the ejahar out of anger and in misunderstanding. The PW1 have specifically admitted that the accused person did not commit the alleged offences, rather they only had an altercation.

- 14.Hence, in view of the above, it is held that the prosecution has failed to establish the charges against the accused person under section 447/294/352/506 of IPC.
- 15.In view of the above discussion it is held that the prosecution has failed to prove the points for determination.
- 16.DECISION: The prosecution has failed to prove the charges against the accused person under section 447/294/352/506 of IPC, and therefore, the points for determinations are answered in negative, in favour of the accused person.

ORDER

- 17.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 Sri Nauchana Baniya; as such the accused person is acquitted of the charges under section 447/294/352/506 IPC and he is set at liberty.
- 18.The bail bond of the accused person and his surety shall remain in force for six months from today.
- 19.The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 24th day of July, 2019 at Nalbari.

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

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APPENDIX

PROSECUTION EXHIBITS:

- 1) EXHIBIT 1 - EJA HAR

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

- 1) SMTI JONALI BONIA
- 2) SMTI JOYMATI BONIA.

DEFENCE WITNESSES

NONE

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