

G.R. 608/13
state
vs
Minara Begum

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

Case No. G.R. 608/2013 u/s 120(B)/448/506/34 IPC

STATE

-Vs-

MINARA BEGUM

HUSSAIN Ali

RITU RAJ ALI Accused persons

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Pritima Devi.....for the State.

Mrs Nirmali Patowaryfor the accused.

Date of prosecution evidence – 26.05.16, 15.07.16, 23.09.16

Date of argument – 18.01.20

Date of judgment – 28.2.20

Judgment

1. Md. Nurul Haque Ali filed a complaint petition before the court of learned CJM, Nalbari before on 29.4.13. Prosecution case in brief is that, complainant is a CRPF personnel. Accused No. 1 Minara Begum is married wife of the complainant and accused No. 2 Hussain Ali and accused No. 3 Ritu Ali are his nephew. On 8.2.2000 complainant got married with Minara Begum and out of their wedlock one girl child and one boy child were born. Accused Minara Begum works in No. 3 Kandhabari L.P. School under Mukalmua PS and complainant due to his job had to stay in various places of India like as Shillong, Jharkhand etc. He started living permanently at Mukalmua in the year 2007 for advantage of both of them. The complainant took voluntary retirement in the year

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2007 for the interference of accused Minara Begum and her family. And at the time of retirement he got Rs. 10,000,00/- in the year 2012. Accused Minara Begum on the provocation of her family demanded the said amount to give to accused person Hussain Ali and Ritu Ali for their job. Accused Minara Begum pressurized the complainant to give the amount and when the complainant refused, Minara Begum started to quarrel with the informant. On 23.4.13 accused Minara Begum called accused Hussain Ali and Ritu Ali over phone in the afternoon and after having dinner accused Minar Ali and Ritu Ali threatened the complainant to give money and forced him to sign in the withdrawal form. The complainant spent the whole night in the outside. Next day when he entered into his house, accused Ritu Ali chased with a 'dao' and tried to kill him. Accused Minar Ali and Ritu Ali attacked the complainant and somehow he escaped from the place of occurrence. Now he is taking shelter in his old house at Bihdiya. Accused persons snatched away cash amount 70,000/-, gold ornaments, pension book, insurance documents amounting to Rs. 5,000,00/-. he further stated that complainant's thumb finger was cut due to the blow of dao given by the accused person Hussain Ali. Hence, the ejahar.

2. On receipt of the complaint, same was forwarded to Mukalmua P.S. for registering a case and Mukalmua after receipt of the complaint registered the same as Mukalmua P.S. case No. 104/13 u/s 120(B)/448/326/307/454/506/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused persons Minara Begum, Hussain Ali and Ritu Raj Ali u/s 120(B)/448/506/34 IPC.

3. During trial, accused persons were allowed to go on bail by learned. Relevant documents of the accused were furnished to them u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused persons u/s 120(B)/448/506 IPC and accordingly offences were read over and explained to the accused persons by my learned Predecessor.

4. Prosecution in support of the case examined 4(four) witnesses. Defence side did not examine any witness in support of their claim. Statement of the accused person is recorded u/s 313 of Cr.P.C. Defence case is of total denial. Defence declined to adduce evidence on his behalf.

5. I have heard argument of both sides.

POINTS FOR DETERMINATION

6. Upon hearing and perusal of the record, I have framed the following points for determination:

- Whether the accused persons on 24.04.13 in furtherance of their common intention agreed to do an illegal act and thereby committed an offence punishable u/s 120(B)IPC?
- Whether the accused persons on 24.4.13 in furtherance of their common intention committed house trespass of the informant and thereby committed an offence punishable u/s

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- Whether the accused persons on same date in furtherance of their common intention criminally intimidated the informant and thereby committed an offence punishable u/s 506/34 IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

7. I have carefully gone through the entire evidence on record and materials placed before me.

8. Pw 1 Manit Ahmed stated in his evidence that he knows Nurul Haque who is his uncle. He also knows Minara who is his aunt. The incident took place on 24.4.13. He went to his uncle's house. When he reached courtyard saw that Minara's brother Hussain was chasing his uncle. Blood oozed out of his nose. He stated that Hussain got injury on getting hit with the bamboo. He took Hussain to medical. He has not seen what was happened with uncle. Later he came to know that Hussain Ali and Ritu Ali beat his uncle.

9. During cross examination, Pw 1 stated that his house is at 9 km distance from his uncle's house. He does not know at present where his aunt lives. Now she does not stay with uncle. He heard that she stays at her parental house. Incident took place at around 8-9 am. Accused's house is 6 km from uncle's house. Police interrogated him. He admitted that he took Hussain Ali to medical.

10. Pw 2 Nurul Haque Ali, who is informant of this case, deposed in his evidence that he lodged the ejahar. He knows accused persons. He lodged the case against his wife and her family. The incident took place 3 ½ years ago at around 9 am. He got retirement benefit about Rs. 10,000,00/-. They demanded Rs. 3,000,00/-. On 24.4.13 he wanted rupees for buying gas cylinder but his wife did not pay. She kept her brothers inside the house. Minara asked her brothers to assault him. Hussain strike him with knife. He saved his wife by escaping. Thereafter, he lodged the case through the court. Ext. 1 is his ejahar. Ext. 1(1) 1(2) & 1(3) are his signatures.

11. During cross examination, Pw 1 stated that he lodged case against his wife, brother-in-law and nephew. The quarrel took place at his own house. He admitted that he did not lodge case up to 5 days of the incident. He lodged case before court after five days. Accused persons also lodged case against him within these five days. They lodged case alleging that he has stabbed Hussain Ali on his neck. He was in jail for this case. His neighbour Nurun Begum, Senapati, Well Choudhury and Khaibar came to the spot and saw the incident. He admitted that he has not submitted medical report. He gave statement to the police after 15-20 day. Police interrogated him at police station. He admitted that he has not stated to police that he got Rs. 10,000,00/- on his retirement and they demanded Rs. 3,000,00/-. He has not stated to police that his wife engaged her brothers to beat him.

12. Pw 3 Nur Mahammad Ali deposed in his evidence that informant is his nephew. He knows the accused persons. He was told that incident took place on 23.4.13. Nurul Haque informed him over phone that he was threatened by the accused. He came on 24th and saw that accused persons were pushing and pulling with Nurul. He has not seen anything else. He does not know what happened.

13. During cross examination, Pw 3 stated that his house is at 12 km distance. He got information on the previous day. Nurul's wife lodged case against him.

14. Pw 4 Sahenshah Ali stated in his evidence that he knows Nurul Haque who is from same village. He also knows the accused persons. Incident took place 3 years ago. He has not seen anything after reached there. He heard that quarrel took place between Nurul, Hussain and Ritu. He does not know why the quarrel took place. He heard that Hussain pressed on Nurul's neck and gagged him. He does not know why the quarrel took place.

15. During cross examination, Pw 4 stated that his house at 15 km distance. Nurul is his uncle.

16. Now on perusal of the entire evidence on record the gist of prosecution story sums up as accused person assaulted the informant as the latter denied to fulfil their demand of Rs 30000/- which he received at the time of his retirement. Informant who is examined as Pw 2 in his ejahar stated that on the date of occurrence when he was attacked by the accused persons his nephew Minat Ahmed came for his rescue. On perusal of the evidence of Minat Ahmed as Pw 1 it reveals that he has stated when he reached informant's home he saw Hussain Ali was chasing him. Further he stated that he saw blood oozing out of his nose. But Pw 2 has not stated that he got cut in his nose. He only stated that accused had given him a cut with knife. Moreover he stated in his ejahar that he got cut in his thumb finger. Thus the statement of Pw 1 does not corroborate with that of Pw 2 and also the ejahar. Moreover, there is no medical report furnished by the informant. Pw 3 stated that only altercation took place between them and that he has not seen anything else. Thus evidence of PW 3 is completely hearsay. Pw 4 stated that when he came to the Po he saw accused person pulling informant. But Pw 2 has not stated that Pw 4 was present at the time of occurrence. Rather he stated one Nurun Begum, Senapati, Well Choudhury has seen the occurrence but none of them have been made a witness to the case.

17. Over and above there has been unexplained delay of 5 days in filing the ejahar. Pw 2 further admitted that within that 5 days accused persons has also filed a case against him and that he was in jail with regard to the said case. This raises a doubt to the prosecution case specially when the prosecution story is not established otherwise.

18. Situated thus, I am of the considered opinion that prosecution has failed to prove the guilt of the accused beyond reasonable doubt and accordingly, accused Minara Begum, Hussain Ali and Rituraj Ali are not found guilty of offence punishable u/s 120(B)/448/506/34 IPC. Hence, They are

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acquitted of the said charges and set at liberty forthwith.

19. Bail bonds furnished on behalf of the accused person is extended for a further period of six months.

Given under my hand and seal of this court on this 28th day of February, 2020.

Rubina Yasmin

JMFC, Nalbari

APPENDIX

Prosecution witness:

Pw 1- Manit Ahmed

Pw 2- Nurul Haque Ali

Pw 3- Nur Mahammad Ali

Pw 4- Sahenshah Ali

Prosecution Exhibit:

Ext. 1- Ejahar

Defence witness & Exhibit:

Nil

Rubina Yasmin

JMFC Nalbari