

P.R.C no. 173/2018

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI

P.R.C no. 173/2018

u/s 341/506/34 I.P.C

State of Assam

-Vs-

(i) Dharani Das,

(ii) Sukumar Lahkar.....Accused persons

PRESENT: K.C. Boro, A.J.S.

ADVOCATES APPEARED:

For the State : Mr. D. Talukdar, Ld. A.P.P,

For the accused : Mr. Anisur Rahman, Ld. Advocate,

Dates of evidence : 18/12/18, 13/03/19, 24/04/19, 17/07/19, 30/09/19
& 30/01/20.

Date of argument : 17/11/20.

Date of judgment : 21/11/20.

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the 'ejahar' dated 08/04/2018 filed by the informant, Sri. Dipen Kalita is that on 07/04/18 at around 8:30 pm, while his brother Sri. Kanak Kalita was returning home from Ghograpar chowk, the FIR named accused persons namely Sukumar Lahkar and Dharani Das assaulted his brother with slaps and blows and manhandled him in front of the house of

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Aswhini Kalita. Due to the said assault, his brother sustained injuries over his chest, back, head and forehead. The accused persons thereafter, threatened to kill his family members. Hence the case.

2. The said 'ejahar' was received and registered as Ghograpar P.S case no. 65/18 u/s 341/325/506/34 I.P.C. After completion of investigation, charge-sheet no. 47/18 dated 30/04/18 was submitted against accused persons namely Dharani Das and Sukumar Lahkar u/s 341/506/34 I.P.C. Copy was furnished to the accused persons and particulars of offence u/s 341/506/34 I.P.C was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. **POINT FOR DETERMINATION:**

i. Whether the accused persons on 07/04/18 at around 8:30 pm, at village Katakia under Ghograpar P.S, in furtherance of common intention wrongfully restrained Kanak Kalita so as to prevent him from proceeding in any direction in which he has a right to proceed and thereby committed an offence punishable u/s 341/34 I.P.C?

ii. Whether the accused persons on 07/04/18 at around 8:30 pm, at village Katakia under Ghograpar P.S, in furtherance of common intention threatened Kanak Kalita and his family members with injury to their person with intent to cause alarm and thereby committed an offence punishable u/s 506/34 I.P.C?

4. **DECISION AND REASONS THEREOF:**

The prosecution examined seven (7) witnesses including the informant. The defence declined to adduce any evidence. The statement in defence of the accused persons u/s 313 Cr.P.C was recorded separately and tagged with the case record. I have heard the argument advanced by learned counsel of both the sides and also perused the evidence available on record, my findings with reasons are as follows :

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5. PW 1 Dipen Kalita who is the informant deposed that he filed this case against Dharani Das and Sukumar Lahkar. The incident took place on 07/04/18 at about 8:30 pm during night. Accused Sukumar Lahkar and Dharani Das threatened to kill him and his brother in front of other people at Ghograpar chowk. He heard this from other people. His brother Kanak Kalita was coming from Ghograpar chowk on foot and as he reached the house of Ashwini Kalita, the accused persons assaulted his brother. At the time of incident he was at Ghograpar chowk. Two boys informed him about the said incident and asked him to come to the place of occurrence. After reaching home he saw injuries over the face and back of his brother. Police came after receiving information. He went to the P.S and filed FIR on the next day. He took his brother to Ghograpar medical for treatment. Police recorded his statement.

6. PW 1 during cross-examination deposed that the incident took place while he was at the chowk. He has not seen the incident. The accused persons has filed a cross-case against them with regard to the same incident.

7. PW 2 Ashwini Kalita deposed that he knows both the parties. The incident took place around 10 months ago at about 8:30 pm, in the front-yard of his house. At that time he returned home from work and was in front of his house. One tempo came at that time. Kanak Kalita and Sukumar Lahkar entered into a verbal altercation. Village people assembled and broke the altercation. The tempo belonged to the accused persons. Police recorded his statement. He does not know anything more about the incident.

8. PW 2 during cross-examination deposed that both the parties belong from the same village. The verbal altercation took place due to misunderstanding.

9. PW 3 Bimala Kalita deposed that she knows the accused persons. The incident took place around 3 months ago near her house. At that time a vehicle came and people gathered, but she does not

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know among whom quarrel had taken place. Police recorded her statement. She does not know anything more about the incident.

10. PW 4 Lankeswar Kalita deposed that he knows the informant and the accused persons. The incident took place around 1 year ago at about 8:45 pm. He was watching TV at that time. The incident took place in the opposite side of his neighborhood. He went to the P.O after half an hour and after reaching he came to know that a quarrel took place between Kanak Kalita and the accused.

11. PW 4 during cross-examination deposed that he has not seen the incident. He has only heard about it.

12. PW 5 Kanak Kalita deposed that he knows both the informant and the accused persons. The incident took place on 07/04/18 at about 8:30 pm. He was returning home at that time and as he reached in front of the house of Ashwini Kalita the accused persons restrained him and assaulted him. The accused persons assaulted him with fist and blows and slaps after which he fell down. He sustained injuries over various parts of his body. He also sustained injuries over his face. The accused persons fled away after assaulting him. His elder brother took him to Ghograpar medical for treatment. His elder brother filed ejahar. Police recorded his statement.

13. PW 5 during cross-examination deposed that the incident took place during night hours. Both the accused persons assaulted him. At that time there was electricity. He recognized the accused persons. The accused persons also filed a case against them and the same is pending before court.

14. PW 6 Dr. Nirendra Nath Sarma (M.O) deposed that on 08/04/18 at about 12:20 pm, he examined one Kanak Kalita vide OPD registration no. 48/2018/E at Ghograpar block PHC in connection with Ghograpar P.S case no. 65/2018. The patient had attended self. On examination, he found - (I) no any fresh injury detected.

15. PW 7 Sri. Tarun Barman (I.O) deposed that on 08/04/18, he was working as Sheristadar at Ghograpar P.S. On that day, one Dipen

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Kalita filed an FIR before the O/c Ghograpar P.S. On receipt of the same, Ghograpar P.S case no. 65/18 u/s 341/325/506/34 IPC was registered and he was endorsed with the task of investigation. He visited the place of occurrence, drew sketch map, recorded the statement of witnesses. He sent the victim to medical and later on, collected the medical report of the injured. The accused appeared before him and he recorded his statement, arrested him and allowed him to go on bail as the offences were bailable in nature. After completion of investigation, he filed charge-sheet against accused Sukumar Lahkar and Dharani Das u/s 341/506/34 IPC.

16. PW 7 during cross-examination deposed that he started his investigation from 08/04/18. He recorded the statement of Dipen Kalita. He stated before him that the accused persons threatened to assault him and his brother, but he did not state before him that accused persons were threatening him and his brother from earlier occasions. PW 7 deposed that there is a cross-case. The victim was not escorted by police to medical. The then Officer in charge of Ghograpar P.S informed him that the patient was sent to medical on police requisition.

17. On careful introspection of the evidence on record, it has come to surface that on 07/04/18 at around 8:30 pm, while Kanak Kalita (brother of informant) was returning home from Ghograpar chowk, accused Sukumar Lahkar and Dharani Das assaulted him with slaps and blows and manhandled him in front of the house of Aswhini Kalita and the accused persons also threatened to kill his family members. All the ocular testimonies did not corroborate with the occurrence as perpetrated the offence by the accused persons except that of the informant and the victim. From the evidence of the informant and the victim, it can be known that there was a quarrel between the victim and the accused persons relating to some matter and out of anger, the informant filed the case. Therefore, it transpires that none of the ingredients of the offences punishable u/s 341/506/34 IPC are proved against the accused persons.

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18. In view of foregoing discussions on evidence on record and assessment thereof, this court safely arrived at the conclusion that the prosecution has failed to prove its case against the accused persons beyond all reasonable doubt.

19. In the result, the accused Dharani Das and Sukumar Lahkar are acquitted of the offences punishable u/s 341/506/34 IPC and they are set at liberty forthwith. Bail bonds shall remain in force for another six months as per section 437 A of CrPC. The case stands disposed of on contest.

20. No seizure was made in the instant case.

Given under my hand and seal of this court on this 21st day of November, 2020.

Chief Judicial Magistrate,
Nalbari

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APPENDIX

Prosecution witness:

PW 1- Dipen Kalita (Informant),

PW 2- Ashwini Kalita,

PW 3- Bimala Kalita,

PW 4- Lankeswar Kalita,

PW 5- Pranab Kalita,

PW 6- Nirendra Nath Sarma (M.O),

PW 7- Tarun Barman (I.O),

Prosecution Exhibits:

Exhibit 1- Ejahar,

Exhibit 1(1)- Signature of informant Dipen Kalita,

Exhibit 2 - Injury report,

Exhibit 2(1) - Signature of M.O,

Exhibit 3 - Sketch map,

Exhibit 3(1) - Signature of I.O,

Exhibit 4 - Charge-sheet,

Exhibit 4(1) - Signature of I.O,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Chief Judicial Magistrate,
Nalbari

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21/11/2020

ORDER

Accused persons namely Dharani Das and Sukumar Lahkar are represented by their Ld. Engaged counsel.

Judgment is pronounced and delivered in open court.

On appreciation of the testimony of witnesses and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

The accused persons namely Dharani Das and Sukumar Lahkar are found not guilty u/s 341/506/34 I.P.C and hence, acquitted and set at liberty forthwith. Bail bonds shall remain in force for a further period of six months.

Hence, this case stands disposed of.

Chief Judicial Magistrate,
Nalbari