

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,  
NALBARI**

**P.R.C. Case No.1515/2013**

u/s 353 I.P.C

State of Assam

-Vs-

Sri Samin Deka .....Accused

**PRESENT** : Smti Sorbani Bhattacharjee, A.J.S,

Additional Chief Judicial Magistrate, Nalbari.

**ADVOCATES APPEARED:**

For the state : Mr. Arjun Barman, Ld. A.P.P,

For the accused : Mr. Raju Choudhury , Ld. Defence Advocate,

Dates of evidence : 11.09.15, 31.10.15, 27.05.16, 17.04.19,30.05.19 &  
27.06.19.

Date of argument : 19.10.2020

Date of judgment : 19.10.2020

**J U D G M E N T**

**PROSECUTION CASE:**

1) The prosecution case in brief as unfolded from the 'ejahar' is that on the previous day of lodging the FIR at about 2 p.m., when the informant along with his colleagues went for patrolling at Makaldowa then on the way, at Bahajani (Kadamtol) they found a Pick up van bearing registration No.AS-01/EC-0992 lodged with Pin Wood. When

he asked for required documents such as departmental pass, permit from the truck driver then the truck driver Sri Riju Baishya could not show him any pass or permit in this regard. When the informant asked him about the wood/ tin bar then Riju Baishya told him that he brought the wood from Barnibaramil (Meghalaya) without any valid documents illegally and he called one Samin Deka. When Samin Deka came to the place of occurrence along with some other persons then he started abusing them using obscene words. He also threatened him and tried to attack him. Samin Deka took the truck inside his campus and unloaded the truck. Having no other alternatives the informant fled away from there to save his life.

2) The said 'ejahar' was received and registered as Nalbari P.S case No.828 u/s 353/379/34 I.P.C., r/w section 40/41 A.F.R. Act dated 06.10.13. After completion of investigation charge-sheet No.263/2014 dated 31.07.2014 was submitted against accused Sri Samin Deka u/s 353 I.P.C. Copy was furnished to the accused person and particulars of offence u/s 353 I.P.C was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3) **POINTS FOR DETERMINATION:**

I. Whether on 05.10.2013 at about 2:00 pm, at Bahjani (Kadamtol) under Nalbari P.S., used criminal force upon informant Harun Al-Rasid, Deputy Ranger, Forest Range Office, Nalbari, a public servant, in the discharge of his duty as such public servant and that you thereby committed an offence u/s 353 I.P.C?

4) **DISCUSSION, DECISION AND REASONS THEREOF:**

The prosecution side examined six (6) witnesses. The defence declined to adduce any evidence. The statement in defence of the

accused person u/s 313 Cr.P.C was recorded wherein he took the plea of innocence. I have heard the arguments advanced by learned counsels of both the sides and also perused the evidence available on record, my findings with reasons are as follows:

5. The evidence of PW 1 Sri Thaneswar Barman reveals that he knows the accused as well as the informant. He works in the Forest Office, Nalbari. One day in the year 2013, he along with the informant went to Makaldua for official duty then at Bahjani they saw a pick up van loaded with woods and when the informant asked the driver of the van to stop the van and accordingly the driver stopped the van and the informant interrogated him. After few moments the accused person arrived at the place of occurrence. The informant and the accused person discuss something and thereafter an altercation was took place between the accused person and the informant. Thereafter, they returned back to the office.

6. PW1 during cross-examination deposed that he works in Forest Office, Nalbari as fixed pay employee. The informant was working as the Deputy Renger of the office. One Altaf Choudhury was also the Deputy Renger of the office but he could not say whether the area of both Rengers are different. He further deposed that the informant talked with the accused person and after few moment an altercation was took place between the informant and the accused person. The informant interrogated about the documents relating the pick up van.

7. From the evidence of PW2 Munindra Baishya reveals that he does not know the informant but he knows the accused person. He further deposed that when a vehicle came to their village then he came out of his house and police asked him to put signature on a paper. He further deposed that he had forgotten what kinds of vehicle was that. He further deposed that except that he could not say anything.

8. Cross-examination declined by defence.

9. PW3 Gopal Barman deposed that the informant was the Deputy Ranger of their office. He further deposed that he knows the informant. The occurrence took place about two and half years ago. On the day of incident, he along with staff and Deputy Ranger went to Bahjani Makaldua and they met a pick up van loaded with woods at Makaldua Chowk. The vehicle was coming towards Nalbari and they asked to stop the vehicle. The driver of the van stopped and the Deputy Ranger asked for the challan of the woods for the driver of the vehicle but the driver was unable to show the challan and on asking them they told that the woods belong to accused Samin Deka. The driver of the vehicle called Samin Deka over telephone and accused Samin Deka came to the Makaldua Chowk. The Deputy Ranger asked the accused Samin Deka to show the permit of the woods but the accused person was unable to show it and for that reason an altercation was took place between the informant and the accused person. Thereafter, they returned to the office and the informant lodged the FIR. Police interrogated him.

10. PW3 during cross-examination deposed that the van was coming from the opposite direction and they gave signal to the vehicle to stop and accordingly the driver stopped the vehicle. He further deposed that he could not say what kind of talk was going on between the informant and the accused person. He was sitting inside the vehicle. He further deposed that if the Deputy Ranger committed altercation with the accused person or demanded donation from the accused person then he could not say. There was two/four people were present at the place of occurrence.

11. Cross-examination declined by defence.

12. PW 4 Md. Harunal Rashid is the informant of this case. From his deposition it reveals that on 06.10.13, he was working as Nalbari Forest Range Officer. The incident took place on 06.10.13. He along with his staff namely Yakub Ali and two other staff went to Bahjani. They saw

one pick up van carrying wood. The driver of the vehicle could not show any valid documents and he called the accused over phone. The accused came along with other persons and threatened them and did not allow them to record the statement of the driver of pick up van. The accused had a timber shop. The driver of the pick up van unloaded the woods in the timber shop of the accused person. He along with his staff came back and informed the incident to Nalbari P.S. He filed the ejahar. Ext 1 is the ejahar and Ext 1(1) is his signature. Police recorded his statement.

13. During cross-examination the PW4 deposed that on 06.10.13, he was going from Nalbari to Makaldowa. The pick up van was found within the shop premises of the accused. It is not a fact that the driver of the pick up van was loading the woods from the timber shop of the accused person. He saw that the driver of the pick up van was trying to unload the woods from the pick up van. There are many houses near the timber shop of the accused person. He denied the suggestion put forwarded by the Ld. Defence Counsel that when he was interrogating the driver of the pick up van, accused was not present. He admitted that he had not showed any identity card to show that he was an employee of Forest Department. There was 'hulla' at the place of occurrence and neighboring people came hearing 'hulla'. He did not remember whether accused person verbally abuse him. He was going to Makaldowa on duty. He denied the suggestion put forwarded by the Ld. Defence counsel that accused did not intervened while performing their duty. He had not stated in his ejahar the reason why he was going to Makaldowa.

14. The evidence of PW5 Md. Sirajul Haque. Reveals that he knows the informant Harunal Rashid. He did not not remember the accused person. On 06/10/13, he was posted at Nalbari P.S as Sub-Inspector. The informant filed one ejahar before the O/c Nalbari P.S which was registered as Nalbari P.S case no. 828/13 u/s 353/379/34 I.P.C R/w 40/41 of the Assam Forest Regulation. He was endorsed to investigate

the case on 06/10/13. He recorded the statement of the informant at the P.S. Thereafter, he went to the P.O on the same day and recorded the statement of witnesses. He searched the timber shop of the accused person. He prepared one search and seizure list. He drew the sketch map. Ext 2 is the sketch map and Ext 2(1) is his signature. During the course of his investigation, he was transferred and as such he submitted the case diary to the O/c Nalbari P.S.

15. Cross-examination declined by defence.

16. PW6 S.I., Bishnu Ram Kalita deposed that on 04/11/13, he was endorsed to investigate the case from O/c Nalbari P.S. One requisition was made to the D.T.O Nalbari to ascertain the owner of the pick up van bearing registration number AS 01 EC 0992. He submitted the case diary to O/c Nalbari P.S on 28/12/13 as he was transferred.

17. Cross-examination declined by defence.

18. In this case the accused face trial for committing offence u/s 353 of IPC. Let us now see what are the ingredients of offence u/s 353 of IPC.

19. Ingredients of offence.- The essential ingredients of the offence under section 353 are as follows:-

- (1) Accused assaulted or used criminal force to a public servant;
- (2) Such public servant was then acting in the discharge of his duty;
- (3) Accused assaulted with the intention of preventing or deterring such public servant from discharging his duty, or
- (4) It was used in consequence of anything done or attempted to be done by the said public servant.

The informant in the ejahar had alleged that while he was on patrolling duty on the day of incident he stopped a pick up van along with his staff at Makaldowa. He asked for the necessary documents from the driver but the driver Riju Baishya could not show the documents. Riju Baishya called accused Samin Deka to come to the place of occurrence. The accused Samin Deka along with some other persons came there and abused them, threatened them and attempted to attack them due to which they had to fled away from there to save their lives. Now, if we go through the evidence of the informant (PW4) it is revealed that on the day of incident he along with his staff namely Yakub Ali and two others went to Bahajani. They saw one pick up van carrying wood. The driver of the vehicle could not show any valid documents and he called the accused over phone. He alleged that the accused came there along with other persons, threatened them and did not allow them to record the statment of the driver of the Pick up van. The evidence of independent witnesses of the case namely Thanesar Barman, Munindra Baishya and Gopal Barman reveals that they have not alleged the accused of obstructing the informant from discharging his lawful duty. The evidence of PW1 and PW3 are also employees of the Forest Department reveals that on the day of incident only an altercation took place between the informant and the accused. PW1 and PW3 are also eye witnesses of this case who acceompnied the informant on the day of incident when the informant went to Makaldowa for his official duty. These two eye witnesses have nowhere stated or alleged the accused of assaulting or using criminal force to the informant. The evidence of PW2 reveals that he put some signatures on a paper as asked by police and he has no knowledge about the incident. The version of the informant regarding the incident is not supported by the independent eye witnesses. There is nothing to show that independent witnesses (PW1 and PW3) had any enmity with the informant to depose in favour of accused and not to support the case of informant. Prosecution failed to examine the driver of the pick

up van Rijju Baishya who was present at the place of occurrence at the time of incident. PW5 and PW6 are the investigating Officers of this case and they deposed regarding investigation done by them in this case. The evidence of informant is not supported by any other witnesses in this case. The evidence of informant is not wholly reliable to convict the accused on the basis of his sole evidence as there is no cogent evidence to show that the accused used any criminal force or assaulted the informant while he was discharging his duty as a public servant with the intention of preventing or deterring him from discharging his duty or that it was in consequence anything done or attempted to be done by the informant. In this case prosecution has miserably to prove the ingredients of offence u/s 353 of IPC beyond all reasonable doubt.

20. Accordingly, the accused person namely Sri Samin Deka is held not guilty u/s 353 of I.P.C and hence, he is acquitted and set at liberty forthwith. Bail bond of the accused person and his surety shall remain in force for a further period of six months as per amended CrPC. The articles seized (if any) be disposed of in due course as per law. Given under my hand and seal of this court on this 19<sup>th</sup> day of September, 2020.

Smti Sorbani Bhattacharjee, A.J.S,  
Additional Chief Judicial Magistrate,  
Nalbari, Assam

**APPENDIX**

**Prosecution witness:**

PW1-Sri Thaneswar Barman.

PW2- Sri Munindra Baishya.

PW3- Sri Gopal Barman.

PW4- Harunal Rashid (victim of this case)

PW5- Mr. Sirajul Haque.

PW6- Sri Bishnu Ram Kalita (I.O., of this case)

**Prosecution Exhibits:**

Ext 1 - Ejahar,

Ext 1(1) - Signature of the informant Md. Harunal Rashid,

**Defence witnesses :**

Nil

**Defence Exhibits :**

Nil

**Court Witness:**

Nil

**Court Exhibits :**

Nil

Smti Sorbani Bhattacharjee, A.J.S,  
Additional Chief Judicial Magistrate,  
Nalbari, Assam