

IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS ::: NALBARI

**P.R.CASE NO.169 OF 2019**

**U/S 341/294 OF IPC**

STATE OF ASSAM

-vs-

AMBU HAZARIKA ..... ACCUSED

**:PRESENT:**

SMRITI REKHA BHUYAN, A.J.S.

JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS, NALBARI.

ADVOCATE FOR THE STATE : HEM SARMA.

ADVOCATE FOR THE ACCUSED : TULU PATHAK.

EVIDENCE RECORDED ON : 23.07.19, 14.10.19,  
19.03.21, 27.07.21.

ARGUMENTS HEARD ON : 31.07.2021.

JUDGMENT DELIVERED ON : 02.08.2021.

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

1. The silhouette of the prosecution case is that on 28.08.2018, Bhubaneswar Sarma lodged an ejahar to the effect that on 28.08.2018 at about 11:30 A.M., while he was busy in discharging his official duty at Office of the Deputy Commissioner, Nalbari, the

accused misbehaved him and tried to beat him and assaulted him after holding him. At the time of occurrence many official staffs were present there and broke down the quarrel. Then the accused person threatened him and left the place of occurrence. Hence, this case.

2. On receiving the ejahar, the Officer-in-Charge of Nalbari Police Station registered a case as Nalbari P.S. Case No.616/18 u/s 294/353 I.P.C. and started investigating the case. On completion of investigation, the investigating officer submitted the charge-sheet against the accused person namely Ambu Hazarika u/s 341/294 I.P.C.
3. After charge-sheet was filed, cognizance was taken by the court u/s 341/294 I.P.C. and issued summons for appearance of the accused person. All the necessary copies of police report and other documents relating to the case were supplied to the accused person. Finding prima facie materials against the accused person namely Ambu Hazarika u/s 341/294 I.P.C., particulars of offence and substance of accusation was explained to the accused person, to which he pleaded not guilty and claimed to be tried.

4. During the trial of the case, the prosecution side examined as many as 5 (five) witnesses in support of the case.
5. The accused person has been examined u/s 313 of Cr.P.C. His plea was of total denial. The accused declined to adduce any evidence to defend the case.

**POINTS FOR DETERMINATION:**

*(I) Whether the accused person namely Ambu Hazarika on 28.08.18 at 11:30 A.M., in the morning at D.C. Office Campus under Nalbari P.S., wrongfully restrained the informant and thereby committed an offence punishable u/s 341 of I.P.C.?*

*(II) Whether on the aforesaid date, time and place the accused person had uttered or used obscene words to the informant to the annoyance of other and thereby committed an offence punishable u/s 294 of I.P.C.?*

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. This court has heard arguments of both side, perused the case record and considered the same.

7. There are allegations of offence u/s 341/294 I.P.C. against the present accused person in the instant case and this court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.
8. Offence under section 341 of I.P.C. : (punishment for wrongful restraint) The essential ingredients of the offence punishable under section 341 are as follows:
  - (1) Accused obstructed a person;
  - (2) He did it voluntarily;
  - (3) It prevented such person from proceeding in certain direction in which he had the right to proceed.
9. The ingredients of Section 294 I.P.C. are as follows:

Whoever, to the annoyance of others—

  - (1) does any obscene act in any public place, or;*
  - (2) sings, recites or utters any obscene song, ballad or words, in or near any public place.*
10. Let us, find out whether any offence is made out against accused Ambu Hazarika u/s 341/294 I.P.C., satisfying the above mentioned ingredients of the said sections.
11. The evidentiary facts that need to be appreciated in the two points for determination are interlinked; as

such let us take up those together for discussion for the sake of convenience.

12. Now, let us find out whether there is any direct evidence against the accused Ambu Hazarika regarding offence u/s 341/294 I.P.C.? And, whether prosecution has been able to discharge their burden by proving the ingredients of the sections 341/294 I.P.C. against the said accused ?
  
13. Let's have a glance on the following relevant facts as deposed by P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5:
  - (i) P.W.1/the informant namely Bhubaneswar Sarma stated in his examination-in-chief that the accused is his wife's sister's husband. The incident occurred on 28.08.2018 at around 11:00 a.m., in front of the Election branch, DC Office. At that time, he came out of the Land Acquisition Branch and the accused suddenly came and pushed him, he fell on the ground and the accused grabbed his hand and pinned him down in the ground and he caught hold of the hand of the accused and one Bhupen Das saw the incident from the election branch room, and he came running and pushed the accused aside and saved the informant. After that he lodged the ejarah. Actually his wife's father gave his wife and her sister 2 kathas of land to each and the

accused dispossessed his wife from her land and so he lodged a case under section 145 Cr.P.C. and in this grudge the accused attacked him. Ext.1 is the ejahar and Ext.1(1) is his signature. P.W.1 further deposed that he got hurt in his buttock when he fell down.

In his cross-examination, P.W.1 admitted that he did not take a written permission from D.C. to lodge the ejahar against the accused in the police station. He also admitted that in the ejahar he did not mention the reason of the incident and he did not mention that the accused is his relative. He denied the defence suggestion that in his statement u/s 161 Cr.P.C. he did not state that land dispute is going on between them and the accused pushed him and grabbed and pinned him to the ground. He admitted that the accused did not enter his room. He denied that on the day of incident, it was the fixed date of the case he lodged under 145 Cr.P.C. He denied the suggestion that in his ejahar he did not state that the accused threw him to ground and pinned him down by holding his hand. He also denied the defence suggestion that on the day of incident as it was fixed date the accused came to talk to him about compromise and he assaulted the accused and broke his little finger

of left hand and his office staff came and sent the accused away, down the stairs. He again denied the defence suggestion that he had fraudulently mutated the accused wife's land in his wife's name and for wrongful gain he is harassing the accused by lodging false case against him.

- (ii) P.W.2 Bhupen Das has stated that the incident occurred on 28.08.2018 at around 12.00 p.m., in front of the Election branch, DC Office. At that time, he was in the Election Branch and he saw that the accused and the informant both were on the ground and they were assaulting each other and the informant was on the ground and the accused was above him and he went and stopped both of them and stopped the fight and he accompanied the accused down the stairs.

During cross-examination, P.W.2 denied the defence suggestion that in his statement u/s 161 Cr.P.C., he did not state that he saw the accused and the informant both were on the ground and they were assaulting each other, and the informant was on the ground and the accused was above him. He admitted that a lot of people gathered in the place of occurrence. He further admitted that he did not know who assaulted whom. He further

admitted that police did not record his statement.

- (iii) P.W.3 Dwijen Kalita has stated that the incident occurred in the year of 2018 during Lok Sabha election, at around 11:30 a.m., in front of the room of the Election Branch and at that time he was climbing down the stairs and he saw a gathering of people a little away from the room of the Election Office and he went and saw that the accused and the informant were altercating with each other and he stopped the altercation and took away the accused from the place of occurrence. P.W.3 further stated that he did not know the reason of the altercation between both the parties.

During cross-examination, P.W.3 admitted that he did not see the parties fighting with each other or assaulting each other, neither he saw any injury over any of the party. He also admitted that he only saw altercation between the parties.

- (iv) P.W.4 Hitesh Bhatta has deposed that the occurrence took place in the year of 2018 at about 11/11:30 a.m., at D.C. Office, Nalbari. He was working as Office Peon at Election Branch, D.C. Office, Nalbari. At relevant time, he was on

duty in the election branch and then he heard commotion coming from the balcony of the election branch. He then came to the balcony and saw that Bhubaneswar Sarma and a person unknown to him quarreled and argued. However, he did not stop there and went to again on his duty.

In his cross-examination he admitted that he did not see any incident except the altercation.

- (v) P.W.5 Paramesh Deka, the I.O. of the instant case deposed in his evidence that on 28.05.2015, he visited the place of occurrence i.e D.C. office, Nalbari. He drew the sketch map. He recorded the statements of informant at P.S. Also he recorded the statements of other witnesses. On 30-09-2018 on finding materials against accused Ambu Hazarika he filed charge-sheet u/s- 294/341 of IPC against him. Exhibit 2 is the sketch map and exhibit 2(1) is his signature. Exhibit 3 is the charge-sheet and exhibit 3(1) is his signature.

In his cross-examination he admitted that the informant is the employee of D.C. Office, Nalbari. He also admitted that the informant did not mention in his F.I.R that he took permission from concerned D.C., Nalbari to

lodge ejahar in Nalbari police station during office time as he alleged that the incident took place at 11:30 a.m., at D.C. Office, Nalbari. He also admitted that the witnesses of whom he recorded statement u/s 161 of CrPC are the employees of D.C. Office, Nalbari and he did not take any statement of other person u/s 161 of Cr.P.C. He also admitted that he did not collect any C.C.T.V. footage of the place of occurrence. Further, he admitted that the witnesses did not mention any obscene words or language in their statement u/s 161 of Cr.P.C.

14. From the foregoing evidence, it is found that the version stated by the informant/P.W.1 is supported by P.W.2. to a certain extent as he stated that both parties were assaulting each other and the informant was on the ground and the accused was above him. However, in cross-examination, though P.W.2 denied the defense suggestion that in his statement u/s 161 Cr.P.C., he did not state that he saw the accused and the informant both were on the ground and they were assaulting each other, and the informant was on the ground and the accused was above him, yet, at the same time P.W.2 admitted that he did not know who assaulted whom and he further admitted that police did not record his statement. Thus, it is

found that P.W.2 does not fully corroborate the evidence of the informant/P.W.1.

15. Further, it is found that P.W.3 and P.W.4 both stated that there was incident of altercation took place between both parties. In cross examination, P.W.3 clearly admitted that he did not see the parties fighting with each other or assaulting each other, neither he had seen any injury over any of the parties and he only saw altercation between the parties. Further, in cross examination, P.W.4 clearly admitted that he did not see any incident except the altercation. As such, it is found that P.W.2, P.W.3 and P.W.4 did not state that the accused Ambu Hazarika voluntarily obstructed the informant from proceeding in certain direction. From the evidence of P.W.3 and P.W.4, it is found that there was incident of altercation, wherein both the accused and informant involved equally, which is clear from the evidence of prosecution witnesses.
16. Moreover, from the forgoing evidence of prosecution witnesses, it is reflected that none of them mentioned that the accused uttered filthy language and abused the informant and also nowhere mentioned any specific filthy words uttered by the accused person. The evidence of prosecution witnesses totally remained silent regarding any filthy

words uttered or recited by the accused or regarding any obscene act done by the accused at the place of occurrence. Further, in the cross-examination of P.W.5/I.O., it is found that he admitted that the witnesses did not mention any obscene words or language in their statement u/s 161 of Cr.P.C. From the entire evidence-on-record, it is found that the accused had not uttered any offensive/obscene words or done any obscene act in or near any public place. The witnesses did not mention a single word or act, which can be termed as 'obscene' which the accused had uttered or done during the incident of altercation.

17. Thus, this court observes that there are certain inconsistencies and material discrepancies in the evidence of the prosecution witnesses which creates shadow of doubt about the prosecution case and reliability of the evidence of the prosecution witnesses. The accused person had totally denied about the allegations made against them in the statements of defense recorded under Section 313 Cr.P.C., and moreover, from the evidence of prosecution witnesses, it is clear and established that there is lack of substantive evidence against the accused person under the alleged sections of law in the present case. In **Basant Ram V. State of H.P, 2013 (5) RCR (Cr)**, it was held, "*it is not merely one*

*portion of the evidence which is relied upon."* In view of that, this court is of the considered opinion that the testimony of the informant/P.W.1 is not unblemished and inspires confidence. As such, it is found that the prosecution has left some facts under a cloud.

18. The general principle of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and that the accused is entitled to the benefit of a reasonable doubt, are to be borne in mind. Section 3 of Evidence Act while explaining the meaning of the words "proved", "disproved" and "not proved" lays down the standard of proof, namely, about the existence or nonexistence of the circumstances from the point of view of a prudent man. Thus, the golden thread that runs through the web of administration of criminal justice is that if two views are possible on the evidence, one pointing to the guilt and other towards innocence, the view which is favourable to the accused should be accepted. As such, it is settled that if a finding is like the accused might have committed or might not have committed, then the benefit of doubt should be given to the accused. Thus, it is clear that the prosecution has to stand on its own legs and cannot take advantage of the defense put forth by the accused even if he was found to be false or improbable. Having dearth of cogent evidence in the case at

hand, it is not prudent to believe the prosecution story.

19. In view of above, as it is found that there is lack of substantive evidence, which can substantiate the allegation against the accused with regard to the alleged offence u/s 341/294 I.P.C., hence there are clouds of doubt about the prosecution story and reliability of the evidence of the prosecution witnesses.
20. From the discussion made above, this court is of the considered opinion that the prosecution has failed to bring home the offence against the accused person beyond all reasonable doubt. In **Partap Vs. State [AIR 1976 SC 966]**, it has been observed by the Hon'ble Supreme Court that: *"The right of the accused to obtain the benefit of a reasonable doubt is the necessary outcome and counterpart of the prosecution's undeniable duty to establish its case beyond reasonable doubt and that this right is available to the accused even if he fails to discharge his own duty to prove fully the exception pleaded."* It is also a cardinal principle of criminal jurisprudence that if there is a reasonable doubt with regard to the guilt of the accused, the accused is entitled to benefit of doubt resulting in acquittal of the accused.
21. **Consequently, the points of determination no. (I) and II), both are decided in negative and**

**decided in favour of the accused Ambu Hazarika.**

22. To perorate, the prosecution has failed to prove beyond all reasonable doubt the offence under section 341/294 I.P.C of the Indian Penal Code against the accused person. As such, the accused person Ambu Hazarika is hereby acquitted of the offence u/s 341/294 I.P.C.

## **O R D E R**

23. In view of the conclusion made above, as the prosecution has failed to prove the offence beyond all reasonable doubt, this court has considered that the accused Ambu Hazarika is not held guilty of the offence u/s 341/294 of Indian Penal Code. Hence, the accused Ambu Hazarika is acquitted of the offence u/s 341/294 of Indian Penal Code and set at liberty forthwith.
24. The bail-bond of the accused shall remain in force for a period of six months from the date of this order.
25. The judgment is pronounced in the open court.
26. Make necessary entry in the Judgment register.

Given under my hand and seal of this court on  
this 2<sup>nd</sup> day of August, 2021.

(Smriti Rekha Bhuyan)

J. M. 1<sup>st</sup> Class, Nalbari.

Dictated & corrected by me

Smriti Rekha Bhuyan, J.M.F.C., Nalbari.

*Typed by*

*Dhiraj Barman, Stenographer Grade-III.*

## **A P P E N D I X**

### **LIST OF PROSECUTION WITNESS:**

**P.W.1: Sri Bhubaneswar Sarma**

**P.W.2: Sri Bhupen Das**

**P.W.3: Sri Dwijen Kalita**

**P.W.4: Sri Hitesh Bhatta**

**P.W.5: Sri Paramesh Deka I.O.**

### **LIST OF DEFENCE WITNESS:**

**D.W. : NIL**

### **PROSECUTION EXHIBITS:**

- Exhibit 1 : Ejahar**
- Exhibit 1(1) : Signature of P.W.1**
- Exhibit 2 : Sketch-map**
- Exhibit 2(1) : Signature of P.W.5**
- Exhibit 3 : Charge-sheet**
- Exhibit 3(1) : Signature of P.W.5.**

SMRITI REKHA BHUYAN

JUDICIAL MAGISTRATE FIRST CLASS, NALBARI.