

G.R no. 1193/2017

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI

G.R no. 1193/2017

u/s 448/294/506/34 IPC.

State of Assam

-Vs-

(i) Anu Talukdar,

(ii) Babita Talukdar,

(iii) Hitesh Talukdar,

(iv) Champak Talukdar,

(v) Mintu Talukdar.....Accused persons

PRESENT: K.C Boro (M.A, L.L.B), A.J.S.

ADVOCATES APPEARED:

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

For the accused : Mr. Prabin Sarma, Ld. Advocate,

Dates of evidence : 30/08/18, 10/10/18, 12/02/19, 16/03/19, 03/05/19,
21/09/19 & 11/12/20.

Date of argument : 23/12/2020.

Date of judgment : 04/01/2021.

J U D G M E N T

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PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the ejahar dated 03/08/2017 filed by the informant Smti. Rita Haloi is that 26/07/2017 at about 3:30 pm, she was coming to home from Nalbari and as she reached in front of the house of accused Anu Talukdar, co-accused Champak Seal along with Anu Talukdar obstructed her way and snatched away her mobile phone from her hand to see whether there were photographs of them in her mobile phone and when the accused persons did not find their photographs, they verbally abused her with obscene words and also threatened her and returned her mobile phone. On 28/07/17 at about 6:45 pm, the accused persons came to call her for attending a village 'bichaar' and when she refused to attend the 'bichaar', the accused persons formed a group and illegally entered into her house and threw her clothes and other items and ransacked her house. The accused persons then attempted to assault her with bamboo 'guj'. The accused persons broke the tin fencing of her boundary and pelted stones and created 'hulla'. Her children on getting afraid called Belsor P.S and later police came to her house and saved her.

2. The said 'ejahar' was received and registered as Belsor P.S case no. 167/2017 dated 03/08/17 u/s 143/447/341/294/506/448/336/427 I.P.C. After completion of investigation charge-sheet no. 107/2017 dated 03/08/2017 was submitted against accused persons Anu Talukdar, Babita Talukdar, Hitesh Talukdar, Champak Talukdar, Mintu Talukdar u/s 448/294/506 I.P.C. Copy was furnished to the accused persons. Particulars of offence and substance of accusation u/s 448/294/506/34 I.P.C was explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION:

(i) Whether the accused persons on 28/07/17 at about 6:45 pm, in furtherance of common intention entered into the house of the

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informant with intent to commit offence or to intimidate, insult or annoy any person in possession of such property and thereby committed an offence punishable u/s 448/34 I.P.C?

(ii) Whether the accused persons on 28/07/17 at about 6:45 pm, in furtherance of common intention verbally abused the informant with obscene words in or around any public place to her annoyance and thereby committed an offence punishable u/s 294/34 I.P.C?

(iii) Whether the accused persons on 28/07/17 at about 6:45 pm, in furtherance of common intention threatened the informant with injury to her person with intent to cause alarm and thereby committed an offence punishable u/s 506/34 I.P.C ?

4. DISCUSSION, DECISION AND REASONS THEREOF:

The prosecution examined seven (7) witnesses while the defence declined to adduce any evidence. The statement in defence of the accused persons u/s 313 Cr.P.C was recorded wherein they denied their involvement with the alleged offences. 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. PW 1 Rita Haloi who is the informant deposed that accused persons are her neighbors. The incident took place on 26/07/17 at around 1 pm. On that day she went to D.C Office for some official work and the accused persons along with some other persons also came to D.C Office. After completion of work she was returning home and at about 3 pm, she crossed the house of Anu Talukdar. At that time Anu Talukdar and Champak Seal who were standing on the gateway in front of the house of Anu Talukdar hurled offensive language to her and snatched her mobile phone from her hands. The accused took her mobile phone to see if she clicked their photographs. She told the accused that she did not take their photographs. On checking the accused persons did not find their photographs in her mobile phone and thereafter, threw her mobile to the ground and broke

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the same. The accused persons scolded her with obscene words and threatened her with dire consequences. Accused Anu Talukdar came to her house on 27/07/17 but could not find her as she had went to Guwahati. On 28/07/17, Anu Talukdar along with other accused persons called a 'bichaar' against her at the village 'naamghar'. At about 6:30 pm, Anu, Babita along with two other came to her house to call her for the 'bichaar' and she told them that she would not attend the 'bichaar' as she did not knew the allegations for which 'bichaar' was called against her. At about 7 pm, all the accused persons came to her house and used obscene language against her and forcefully opened the door and ransacked her house. She created 'hulla' and then the accused persons left her room and broke the tin fencing of her boundary. The accused persons uprooted bamboo 'lathi' of her compound to assault her. She called the O/c Belsor P.S. Hearing 'hulla' Sailen Baishya and Krishna Talukdar came to her house and prevented the accused persons from beating her. Police also reached her house and the accused persons left away. She filed the 'ejahar' on the next morning as her husband was not present in house at night.

6. PW 1 during cross-examination deposed that Anu Talukdar lodged case against her on 28/07/18 alleging that she misbehaved with the members of VDP when they came to call her for a 'bichaar'. She filed case against the accused persons on 03/08/17. She lodged the 'ejahar' after 7 days of the incident. PW 1 deposed that she filed the 'ejahar' on 28/07/18 but the same was registered later on. She has mentioned the reason of delay in filing the 'ejahar'. PW 1 deposed that the accused persons are members of Jagra Satra Committee. She is not a member of the said committee. She has not filed any separate 'ejaha'r with regard to the occurrence of 26/07/17. The 'bichaar' against her was called by the V.D.P but she did not knew why 'bichaar' was called for. She later came to know that 'bichaar' was called against her on allegation that she had taken photographs of accused persons at D.C Office and thereafter, she published to village people that Gokul Dekha asked her to take pictures of them. She does not know if Gokul

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Deka is the secretary of Jagra Satra Committee. The place where 'bichhaar' was held is around 300 meters from her house. PW 1 deposed that at first 5 women came to call her and later local villagers along with accused persons came to her house for calling her to the 'bichhaar'. Police recorded her statement after 4 days of filing the 'ejahar'. Police visited the P.O on 02/08/17 and recorded the statement of her neighbors.

7. PW 2 Mridula Baishya deposed that she knows both the informant and the accused persons. The incident took place 1 year ago during evening time. She heard 'hulla' at the gateway of Rita Haloi. A meeting was going on at Basudev Mandir. She went to the P.O and saw that ladies of the said meeting went to the gateway of Rita Haloi and Rita Haloi scolded the ladies. PW 2 deposed that she does not know the reason of their dispute.

8. PW 2 during cross-examination deposed that the ladies who went to call Rita Haloi were members of village women society. The women did not enter the house of Rita Haloi.

9. PW 3 Gokul Das deposed that he know the informant and the accused persons and they are from the same village. The incident took place in the year 2017. At that time he was the General Secretary of the newly formed committee of Sri Jagra Satra and during that period Govt allotted around Rs. 28 lakhs 16 thousand. He heard that with regard to the allocation of fund, the old committee went to D.C Office and Rita Haloi clicked pictures of the old committee and when the members of the old committee asked Rita Haloi as to why she clicked their photographs, Rita Haloi replied that he asked her to click their pictures. In this regard a village 'bichhaar' was called in Basudev Gosaighor. Both him and Rita Haloi were called for confirmation. He went to the meeting but Rita Haloi did not came to the meeting. He replied in the meeting that he did not knew anything about the photographs and that he did not asked Rita Haloi to take their pictures. Later he heard that ladies present in the meeting went to call Rita Haloi

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and some incident occurred. Accused Hitesh Talukdar was the Secretary of the old managing committee of Sri Jagra Satra.

10. PW 3 during cross-examination deposed that there is a 'Mahila Samiti' in Jagra village and the complaint was given to the 'Mahila Samiti' and the meeting was called by the 'Mahila Samiti'.

11. PW 4 Tapan Das deposed that he know both the informant and accused persons. The incident took place around 1 ½ years ago at about 6:30 pm. He heard noise of altercation from the house of informant and saw a gathering of people. He heard that a meeting was called in the village but the informant did not attend the meeting and thereafter a commotion took place outside the house of the informant.

12. PW 5 Rabin Talukdar deposed that he knows the informant and the accused persons who are from the same village. The incident took place around 1 year ago during evening time. He heard 'hulla' outside and as such he went to the P.O. He saw assembly of village women outside the house of Rita Haloi.

13. PW 6 Sailen Baishya deposed that he know the informant and the accused persons who lives near his house. The incident took place in the year 2017 at about 6 pm in front of the house of informant. On hearing commotion he went to the place of occurrence and saw gathering of people and at that time the informant and accused Anu Talukdar and some other women were altercationing with each other. He later heard that Anu Talukdar and her associates called a meeting but the informant did not attended the meeting and as such they came to call the informant and the altercation took place. PW 6 later deposed that when he went to the place of occurrence he saw VDP secretary, Anu Talukdar, Champak, Hitesh, Babita and some other persons had entered in front of the house of informant and both the parties were using obscene language and were threatening the informant by banging the tin fencing of the informant.

14. PW 6 during cross-examination deposed that he saw the accused persons banging the tin fencing of the informant.

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15. PW 7 Ibrahim Ali Ahmed is the I.O of this case and his investigation is of routine nature and has submitted charge-sheet against the accused persons after completion of investigation.

16. It appears that the 'ejahar' does not quote the verbally abusive words nor the prosecution witness stated the words which were uttered by the accused persons so as to conclude that the same were obscene and abusive. It appears that there is no evidence that the accused persons threatened the informant. It appears that the evidence of other PW's apart from the informant are hearsay. The evidence of PW 1 does not find corroboration by any other witness examined by the prosecution.

17. 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 all reasonable doubt by leading clear, cogent & convincing evidence.

18. The accused persons namely Anu Talukdar, Babita Talukdar, Hitesh Talukdar, Champak Talukdar, Mintu Talukdar are entitled to benefit of doubt and are acquitted of offence u/s 448/294/506/34 I.P.C. Bail bonds shall remain in force for a further period of six months.

19. Given under my hand and seal of this court on this 4th day of January, 2021.

Chief Judicial Magistrate
Nalbari

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APPENDIX

Prosecution witness:

PW 1- Rita Haloi (Informant),

PW 2- Mridula Baishya,

PW 3- Gokul Deka,

PW 4- Tapan Das,

PW 5- Rabin Talukdar,

PW 6- Sailen Baishya,

PW 7- Ibrahim Ali Ahmed (I.O),

Prosecution Exhibits:

Exhibit 1 - Ejahar

Exhibit 1(1) - Signature of informant,

Exhibit 2 - Charge-sheet,

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

Defence witnesses :

Nil

Defence Exhibits :

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Nil

Chief Judicial Magistrate,
Nalbari.