

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR,
TEZPUR**

Present : **Smti Chitrali Goswami, A.J.S**

Judicial Magistrate First Class,
Sonitpur, Tezpur

GR case no: 2535/2015

under Section - 428 of Indian Penal Code

State

vs

Mozamil Haque

Advocate for the Prosecution Mr AK Sahani.

Advocate for the Defence Amit Bora.

Date of recording evidence 10.02.2021

Date of hearing argument 10.02.2021

Date of judgment 18.02.2021

JUDGMENT

1. The prosecution case in a nutshell is that the instant case was initiated on the lodging of an ejahar dated 21.01.2015 by informant Md Nur Alam. He alleged in the ejahar that on 20.09.2015 about 2:30 p.m, the accused persons of the same village had killed two goats out of seven goats and injured the remaining when the few goats who ate some of his jute leaves. Hence the case.

2. On receipt of the ejahar, Sootea P.S. Case No.176/15 dated 21.09.2015 under Section – 429/34 of the Indian Penal Code was registered and investigated by ASI Birendra Nath. On completion of the investigation, the I/O of the case submitted charge-sheet vide charge sheet no. 86/2015 dated 31.09.2015 against

the accused person namely, Mozamil Haque under Section – 429/34 of Indian Penal Code by ASI Lakheswar Handique.

3. On receipt of charge sheet, cognizance of offence under Section – 429 of Indian Penal Code was taken as per the provision prescribed under Section 190(1) (b) of Code of Criminal Procedure.

4. On their appearance, necessary copies were furnished to accused person as mandated under Section 207 Code of Criminal Procedure. Thereafter, charge under Section - 428 of the Indian Penal Code was framed and explained to the accused person to which he denied the charge and decided to stand for trial.

5. During trial, the prosecution side to prove its case examined one witness who is the informant of this case. Since no incriminating materials were found against the accused person, the statements of defence of the accused person under Section- 313 Code of Criminal Procedure was dispensed with.

6. I have heard the arguments of both sides.

7. **Points for determination:**

1. Whether the accused persons on 20.09.2015 committed mischief by killing of two goats and thereby committed an offence punishable under Section - 428 of the Indian Penal Code?

DISCUSSIONS

8. In his examination-in-chief, PW1/informant Nur Alam deposed that the accused is known to him who is of his village. The incident occurred on 21.09.2015 about 2:30 pm. He had one goat.

But who killed it, he does not know. He recovered his dead goat from the accused place. Other neighbors had 6 goats. Out of suspicion, he lodged this ejahar.

Exhibit 1 is the ejahar and Exhibit 1(i) is his signature.

Defence denied his cross examination.

Decisions and reasons thereof:-

09. From perusal of the evidence it is found that the instant case was instituted on the ground of suspicion by the informant against the accused person.

10. As such the prosecution side has failed to prove that the accused person namely, Mozamil Haque has committed the said offence under Section – 428 of the Indian Penal Code against the informant beyond reasonable doubt.

ORDER

In light of the aforesaid discussion, I hold the accused person namely; Mozamil Haque is not guilty of offence under Section – 428 of the Indian Penal Code. Hence, he is acquitted from the charge leveled against him. The accused person is set at liberty forthwith.

His bail bond is extended for a period of 6(six) months from the date of this order i.e. 18.02.2021 as per as Section 437(A) Code of Criminal Procedure.

The judgment is delivered in the open Court in presence of the accused person and his engaged Counsel.

Given under my hand and the seal of this court on this 18th day of February, 2021.

Typed by me,

(Smti. Chitrani Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur.

(Smti Chitrani Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur

APPENDIX

Prosecution witness:

PW1- Md Nur Alam

Prosecution Exhibits:

Exhibit 1 - Ejahar

Defence witness:

Nil

Defence Exhibit:

Nil

Court Exhibit:

Nil

(Smti Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur