

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

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

Judicial Magistrate First Class,

Sonitpur, Tezpur

PR case no: 984/2018

under Sections - 294/323/448/506/34 of Indian Penal Code

State

vs

Dinesh Sundi

Sukdev Sundi

Kuwari Sundi

Babul Sundi

Advocate for the Prosecution

Mr AK Sahani.

Advocate for the Defence

D.Ch Nath.

Date of recording evidence

08.05.2019, 11.07.2019, 28.02.2019

Date of hearing argument

19.01.2021

Date of judgment

02.02.2021

JUDGMENT

1. The prosecution case in a nutshell is that the instant case was initiated on the lodging of an ejarah dated 07.05.17 by the informant Momi Das wherein she alleged that on 06.05.17 around 11.40 pm there was an altercation between Tinku Das and Joymoti Das who are husband and wife on some domestic matters. Her daughter-in-law was about to leave her matrimonial home on her own will. When she was prevented from doing so she started creating tantrums.

The informant then informed her daughter-in-law's family members. Then her daughter-in-law's family members came without informing her and assaulted her son with their hands and lathi. When she and her daughter Sumi Das tried to prevent them, they assaulted her and her daughter with hands and lathi. They uttered obscene words and threatened them with an injury to their person. Hence the case.

2. On receipt of the ejahar, Dhekajuli P.S. Case No.373/17 dated 07.05.17 under Sections – 448/325/294/506/34 of the Indian Penal Code was registered and investigated by SI Dipak Das. On completion of the investigation, the I/O of the case submitted charge-sheet vide charge sheet no. 208/17 dated 31.05.2017 against the accused persons namely, Dinesh Sundi, Sukdev Sundi, Kuwari Sundi and Babul Sundi under Sections – 448/323/294/506/34 of Indian Penal Code by SI Dipak Das.

3. On receipt of charge sheet, cognizance of offences under Sections – 294/323/448/506/34 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 persons as mandated under Section 207 Code of Criminal Procedure. Thereafter the particulars of the offences under Sections- 294/323/448/506/34 of the Indian Penal Code were explained to the accused persons and they denied the charges and decided to stand for trial.

5. During trial, the prosecution side to prove its case examined 8(eight) witnesses including the informant of this case. After closure of prosecution evidence, statements of defence of the accused persons under Section 313 of the Code of Criminal Procedure were recorded by stating the incriminating materials found against them to which their plea was of total denial. Defence, however, did not adduce any evidence in their support.

6. I have heard the arguments of both sides at length and gone through the case record and evidences thoroughly.

7. Points for determination:

- (i) Whether all the accused persons in furtherance of their common intention on 06.05.17 around 11.40 pm uttered obscene words to the informant Momi Das and her daughter in a public place to the annoyance of others and thereby committed an offence under Section 294/34 of the Indian Penal Code?
- (ii) Whether all the accused persons in furtherance of their common intention on 06.05.17 around 11.40 pm voluntarily caused hurt to the informant and her son and daughter and thereby committed an offence under Section 323/34 of the Indian Penal Code?
- (iii) Whether all the accused persons in furtherance of their common intention on 06.05.17 around 11.40 pm committed house trespass in the informant's house and thereby committed an offence under Section 448/34 of the Indian Penal Code?
- (iv) Whether all the accused persons in furtherance of their common intention on 06.05.17 around 11.40 pm threatened the informant and her family with an injury to their person and thereby committed an offence under Section 506/34 of the Indian Penal Code?

DISCUSSIONS

8. PW1 Momi Das in her examination-in-chief deposed that she is the informant of this case. Accused persons are known to her. The incident occurred in the year of 2016. Her son's age was 17 years at that time and he used to stay in the house of Jaymoti. In the month of June, 2016, accused persons assaulted her son and they forcefully handed over Jaymoti to her son.

At that time Jaymoti was pregnant. Her daughter-in-law gave birth to a daughter. On 06.05.17, a quarrel took place between her son and daughter-in-law and she went out of the house and they held her from the road. Her daughter-in-law informed her parents about the incident. Then her mother, father, two brothers including her relatives assaulted them with 'bahoni' and her son lost his consciousness. They also assaulted her and her daughter. They uttered obscene language to her. Due to the injury of her son, she wanted to take him to the hospital but the accused persons obstructed them from going by sitting on the road. Next day, her injured son was taken to the hospital and she lodged an ejahar.

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

9. In her cross-examination, PW1 deposed that she does not know who wrote the ejahar in the P.S. It is not a fact that the accused persons forcefully handed over Jaymoti to her son who was pregnant at that time. The informant called the accused persons over the telephone and asked them to come to her house. It is not a fact that she did not inform the accused persons over telephone. She did not lodge the ejahar in the P.S regarding handing over Jaymoti forcefully to them. It is not a fact that accused persons did not assault her son and obstructed them from going to the hospital. She cannot tell whether she will be keeping her daughter-in-law with her or not. It is a fact that she did not state before police that quarrel took place between her son and daughter-in-law. Her daughter-in-law lodged an ejahar against her son. The case lodged against him is pending in the Court. It is not a fact that they tried to drive away their daughter-in-law by harassing her. It is not a fact that a false case was lodged against the accused persons to save them. It is not a fact that no incident happened as stated by her.

10. PW2 Tinku Das in his examination-in-chief deposed that informant is his mother and he knows each of the accused persons standing in the dock. He had some altercation and fight with Jaymoti Das and she left his house at about 1 am

at night. He bought her back to his house and telephoned her brother Sukdeb Sundi and informed him about the matter. Each of the family members of Jaymoti Das came to his house and without any reason Sukdeb Sundi slapped him. When his mother came and asked as to why they slapped him, Sukdeb Sundi physically assaulted his mother. When he caught hold of Sukdeb Sundi, the father of Jaymoti Das named Babul Sundi hit him on the back of his head with the bamboo stick. When his sister Sumi Das came near him as having losing his consciousness, Kuwari Sundi and Jaymoti Das physically assaulted his sister.

11. The accused persons hit them with stick, torch and by their hands. When his maternal uncle Nabin Sundi came and told as to why they hit them, the accused persons pushed and shoved him. Thereafter his uncle left the house. Accused Sukdeb Sundi came near their yard and kicked him. Thereafter the accused persons left his house. The accused persons threatened them with dire consequences and also restrained them from going to the hospital. The next day his mother lodged the ejahar. After lodging of the ejahar, he was taken for medical treatment.

12. In his cross-examination, PW2 deposed that altercation took place between him and Jaymoti Das because of which she left his house. It is not a fact that he physically assaulted Jaymoti Das. He telephoned the family members of Jaymoti Das and informed them about the fight that took place between them. His mother did not telephone the accused persons. It is not a fact that he did not state before the police that accused Sukdeb Sundi slapped him and Babul Sundi hit him on the back of his head with the bamboo stick. It is not a fact that he did not state before the police that when his maternal uncle Nabin Sundi came and told the accused persons as to why they hit them, the accused persons pushed and shoved him.

13. It is not a fact that he did not state before the police that when his sister Sumi Das came near him as he lost his consciousness, Kuwari Sundi and Jaymoti Das physically assaulted his sister and that the accused persons hit them with

stick, torch and by their hands. Although he had lost his consciousness, he could hear the threatening given by the accused persons and could also make out that they were restraining them from going to the hospital. It is not a fact that he did not lose his consciousness and that he was not meted out with any physical assaults by the accused persons. Police did not seize the stick and the torch light. At the time of occurrence of the incident, he and his mother were only present. Jaymoti Das lodged a case against him which is pending before Court for trial. It is not a fact that in order to save themselves from the case lodged against them by Jaymoti Das, they lodged this case falsely against the accused persons. He does not know the name of his daughter as well as her age. It is not a fact that he did not take the responsibility of Jaymoti Das and their child for which he physically assaulted her and drove her out from their house.

14. PW3 Jaymoti Das in her examination-in-chief deposed that she knows the informant as well as each of the accused persons standing in the dock. The informant and her husband Tinku Das physically assaulted her every day. In the month of May, 2018 (Saturday), the informant and Tinku Das physically assaulted her and drove her out from her matrimonial house at about 12:30 a.m. The villagers informed her family members about the incident and when they all visited her matrimonial house, the informant and Tinku Das did not allow her parents and her elder brothers to enter her house. There took place some pushing and shoving when her parents tried to make the informant and Tinku Das understand the issues of domestic life but no alleged incident as narrated by the informant had taken place. Thereafter she had to come back to her parental house as the informant and Tinku Das were not willing to keep her with them. At present she is residing at her parental house with her daughter.

15. In her cross-examination, PW3 deposed that at the time of occurrence of the incident at about 12:30 a.m, the informant and Tinku Das were present. The villagers informed her parents about the occurrence of the incident and that no telephonic calls were made by the informant as well as Tinku Das. Her parents tried to make the informant and her son understand various issues but no

alleged story as narrated by the informant had taken place. The accused persons never physically assaulted or beat the informant, her son and daughter as alleged by them.

16. PW4 Malati Sutradhar in her examination-in-chief, deposed that she knows both the parties. The incident took place two years ago at about 11 p.m. On hearing hue and cry at the house of the informant, she came out towards the road. She saw the accused persons coming out from the house of the informant.

17. In her cross-examination, PW4 deposed that the police interrogated him in connection with this case. She does not know for what reasons fight took place between the parties. She did not witness the incident.

18. PW5 Renu Sundi in her examination-in-chief, deposed that she knows the parties. Incident took place one year ago. On hearing hue and cry at 11 p.m at the house of the complainant/ informant, she came out towards the road. She saw the accused persons coming out from the house of the informant.

19. In her cross-examination, PW5 deposed that the daughter of the informant was given in marriage to the family of the accused persons and they were on visiting terms. She did not witness the incident and does not know for what reasons fight took place between them.

20. PW6 Sumitra Kurmi in her examination-in-chief deposed that she knows the parties. Incident took place two years ago at about 11 p.m. On hearing hue and cry from the house of the informant, she came out towards the road and saw the accused persons at the house of the informant.

21. In her cross-examination, PW6 deposed that the daughter of the informant was given in marriage to the family members of the accused. She did not witness the incident except seeing the accused persons at the house of the informant. Police interrogated her.

22. PW7 Jayanti Kurmi in her examination-in-chief deposed that she knows both the parties. Incident took place 1^{1/2} to 2 years ago at 11 p.m. On hearing hue and cry at the house of the informant, she came out to the road. A fight took place between the accused persons and the son of the informant but she did not witness the fight. She saw accused persons coming out from the house of the informant.

23. In her cross-examination, PW7 deposed that she did not witness the incident. She saw the accused persons on the road. She did not visit the house of the informant.

24. PW8/MO Dr Kartik Praja in his examination-in-chief deposed that on 07.05.17 he was posted at Dhekiajuli CHC as a medial Health Officer.

On that day he examined Momi Das, 35 years, female, w/o- Milan Kr Das of Keherukhanda Gaon with alleged history of physical assault. On examination, he found bruise, size $\frac{3}{4}$ cm in both extremities and forehead. Nature of injury simple and caused by blunt object. Age of injury is 3-4 hrs. Treatment- conservative treatment

Case no- 373/17 escorted by WHG Kunjalata Kakoti.

Exhibit 2- Injury report and Exhibit2 (i)- his signature.

(2) Case no-373/17 escorted WHG Kunjalata Kakoti.

Victim- Tinku Das, Male, 15 years.

R/O- Kherkhond Gaon, DOE-07.05.17 at 12:30 pm with history of physical assault.

On examination- bruise.

Size of injury-2-3 cm.

Part of the body inflicted back side of chest and neck.

Simple injury caused by blunt object.

Age of injury-3-4 hrs.

Conservative treatment done at CHC.

Exhibit 3 - Injury report.

Exhibit 3(1) - his signature.

25. In his cross examination he deposed that he was on duty from 8:30 am-1:30 p.m at 07.05.17. The injuries are normal and can be caused by following down also. He has written the report himself. He noted this from the medico legal diary. He has not bought the diary as it is required in the hospital. He has not mentioned any identification mark of the patients. The size of injury is written approximately. He does not know whom he had first examined. He has not mentioned the details of the treatment given. According to the form, the signature of the patient needs to be taken but which is absent in the present case. After treating them they were discharged.

Decisions and reasons thereof:-

Point for determination no (i)

26. To attract the penal provisions under Section 294 Indian Penal Code it is necessary that the obscene words must be uttered in a public place causing annoyance to others. Only the informant has deposed that the accused persons uttered obscene words to her without specifying what obscene words. Further the alleged incident occurred in the informant's house which is not a public place an essential requirement under Section 294 Indian Penal Code.

The point for determination under Sections - 294/34 Indian Penal Code is decided in the negative.

Point for determination no (ii)

27. PW4, PW5, PW6 who are independent witnesses only heard hue and cry from the house of the informant and also PW7 did not witness any fight. Moreover, PW8/MO in his cross-examination deposed that the injuries can be caused by following down also. PW3 who is the daughter-in-law of the informant deposed that it was PW1 and PW2 who used to harass and beat her.

The point for determination under Sections - 323/34 Indian Penal Code is decided in the negative.

Point for determination no (iii)

28. Section 448 of the Indian Penal Code deals with the offence of house trespass. All the independent witnesses PW4, PW5, PW6 and PW7 saw the accused persons coming out of the house of the informant but they themselves have not witnessed any incident. PW3 the daughter-in-law of the informant deposed that the accused persons have not committed any such incident as alleged by the informant and her son.

The point for determination under Sections - 448/34 Indian Penal Code is decided in the negative.

Point for determination no (iv)

29. Apart from the informant and PW2 who is her son no other witnesses have deposed that the accused persons threatened the informant and her family members with an injury to their person. PW4, PW5, PW6 and PW7 who are independent witnesses have deposed that they did not witness the incident themselves.

The point for determination under Sections - 506/34 Indian Penal Code is decided in the negative.

30. Further, the daughter of the informant Sumi Das was not examined as a witness who according to PW1/informant was present at the time of incident. Further PW1 deposed in her examination-in-chief that it was PW3 her daughter-in-law who informed her family members about the incident. But in her ejahar and cross-examination, PW1 deposed that it was she herself who called the accused persons over phone to her place. Whereas PW2 deposed that it was he who telephoned her brother Sukdeb Sundi and informed him about the matter. His mother did not telephone the accused persons. As such there is inconsistency and contradictions in the prosecution version of the alleged incident. Further PW3 deposed that it was the villagers who informed her parents about the incident. PW3 deposed that no such incident as alleged by PW1 and PW2 had taken place. PW3 who is the daughter-in-law of the informant deposed that it was PW1 and PW2 who used to harass and beat her and not willing to keep her with them. At present she is residing at her parental house with her daughter.

31. Considering the evidence in its entirety, the prosecution side has failed to prove that the accused persons namely, Dinesh Sundi, Sukdev Sundi, Kuwari Sundi and Babul Sundi have committed the said offences under Sections – 294/323/448/506/34 of the Indian Penal Code against the informant beyond reasonable doubt.

ORDER

In light of the aforesaid discussion, I hold the accused persons namely, Dinesh Sundi, Sukdev Sundi, Kuwari Sundi and Babul Sundi are not guilty of offences under Sections – 294/323/448/506/34 of the Indian Penal Code. Hence, they are acquitted from the charges leveled against them. The accused persons are set at liberty forthwith.

Their bail bonds are extended for a period of 6(six) months from the date of this order i.e. 02.02.2021 as per as Section 437(A) Code of Criminal Procedure.

The judgment is delivered in the open Court in presence of the accused persons and their engaged Counsel.

Given under my hand and the seal of this court on this 02th day of February, 2021.

Typed by me,

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

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

APPENDIX

Prosecution witnesses :

PW1- Momi Das

PW2- Tinku Das

PW3- Jaymoti Das

PW4- Malati Sutradhar

PW5- Renu Sundi

PW6- Sumitra Kurmi

PW7- Jayanti Kurmi

PW8- Dr Kartik Praja

Prosecution Exhibits:

Exhibit 1 – Ejahar

Exhibit 2 – Injury report

Exhibit 3 – Injury report

Exhibit 4 – Ejahar

Defence witness:

Nil

Defence Exhibit:

Nil

Court Exhibit:

Nil

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