

**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: 3123/2017

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

State

vs

Ramjan Ali

Advocate for the Prosecution Mr AK Sahani.

Advocate for the Defence Debasish Bora.

Date of recording evidence 29.06.2019, 22.08.2019,
10.01.2020, 16.12.2020

Date of hearing argument 09.02.2021

Date of judgment 25.02.2021

JUDGMENT

1. The prosecution case in a nutshell is that the instant case was initiated on the lodging of an ejahar dated 21.08.17 by the informant Musstt Jaleha Khatun. She alleged in her ejahar that the incident occurred on 21.08.17 at about 9 am. The son and daughter of her neighbor Md Ramjan Ali were cutting a banana plant. Fearing that it may fall upon the electric wire she prevented them from doing it. Then the children went home and told their father Md Ramjan Ali about the incident who then came to her house and dragged her out of her house by pulling her hand and pushed her.

As a result she sustained injuries. He also uttered obscene words to her and threatened her with an injury to her person. Hence the case.

2. On receipt of the ejahar, Rangapara P.S. Case No.131/17 dated 21.08.17 under Sections – 448/325/294/506/ of the Indian Penal Code was registered and investigated by ASI Mahendra Deka. On completion of the investigation, the I/O of the case submitted charge-sheet vide charge sheet no. 77/17 dated 30.08.2017 against the accused person namely, Ramjan Ali under Sections – 448/323/294/506 of Indian Penal Code by ASI Mahendra Deka.

3. On receipt of charge sheet, cognizance of offences under Sections – 448/323/294/506 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 the particulars of the offences under Sections - 448/323/294/506 of the Indian Penal Code were explained to the accused person and he denied the charges and decided to stand for trial.

5. During trial, the prosecution side to prove its case examined 6(six) witnesses including the informant of this case. After closure of prosecution evidence, statements of defence of the accused person under Section 313 of the Code of Criminal Procedure were recorded by stating the incriminating materials found against him to which his 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 the accused person on 21.07.17 around 09:00 am committed house trespass in the informant Jaleha Khatun's house and thereby committed an offence under Section 448 of the Indian Penal Code?
- (ii) Whether the accused person on 21.08.17 around 09:00 am voluntarily caused hurt to the informant and thereby committed an offence under Section 323 of the Indian Penal Code?
- (iii) Whether the accused person on 21.08.17 around 09:00 am uttered obscene words to the informant in a public place to the and thereby committed an offence under Section 294 of the Indian Penal Code?
- (iv) Whether the accused person on 21.07.17 around 09:00 am threatened the informant and thereby committed an offence under Section 506 of the Indian Penal Code?

DISCUSSIONS

8. In her examination-in-chief, PW1/ informant Jeleha Khatun deposed that she knows the accused. The incident occurred in the year 2017 at 9 am. The accused person's son and daughter were cutting her banana plant. She prevented them from doing so that the plant may not fall upon the electric wire. The kids of the accused informed him about the incident. Then the accused came to her house dragged her out and assaulted her and scolded her. That is the reason she lodged the ejahar. She put her thumb impression on the said ejahar.

9. In her cross-examination, PW1 deposed that she is the aunt of the accused. The ejahar was read over to her. She has not written in her ejahar the obscene words uttered by the accused. It is not a fact that she has stated before police in her statement that the accused assaulted her. It is not a fact that son

and daughter of the accused did not seize her banana plant. There was no one at her place at the time of the incident. It is not a fact that she assaulted the son and daughter of the accused.

10. In her examination-in-chief, PW2 Asmina Begum deposed that she knows both the informant and the accused. The incident occurred in the year 2017 at 9 am. There took place a quarrel between the parties. The accused dragged the informant by her hair, physically assaulted her and uttered obscene words to her.

11. In her cross-examination, PW2 deposed that her house is close to the informant. She has come along with the informant. It is not a fact that she has not any witnessed any incident and has deposed as told by the informant. It is not a fact that she has not stated before police that the accused pulled the informant's hair and physically assaulted her.

12. In her examination-in-chief, PW3 Halina Begum deposed that she knows both the informant and the accused. The incident occurred in the year 2017. The accused is the nephew of the informant. There took place a quarrel between the parties. As she was not well she did not witness anything.

Defence, declined to cross-examine her.

13. In his examination-in-chief, PW4 Mannash Ali deposed that he knows both the informant and the accused. The incident occurred two years ago. He heard that there took place a quarrel between them.

Defence, declined to cross-examine him.

14. In his examination-in-chief, PW5/MO Dr. Amrit Kr Saha deposed that on 21.08.17 he was attached as M and HOI in Rangapara PHC. He examined Jaleha Khatoon, 28 years, Female, W/O Md Allaiddin, Vill no 1 Bahumari, PS-Rangapara. She was escorted by Ila Daimary. On examination, he found injury –

- 1) Small contusion on left arm 3-5 nos.
- 2) Scalp tenderness over back approx 1 cm mild swelling.
- 3) Abrasion over face linear right side approx 5 cms.
- 4) Abrasion in the left side maxillary region less than 1 cm approx.
- 5) Abrasion on left hand 4th finger less than 1 cm approx.

Date and time of examination- 21.08.17 at 1.08 pm at Rangapara PCH.

Age of injury- 0-8 hours

Weapon used- Blunt

Nature of injury- Simple

Person was OPD patient advised

CT scan brain P & S, X ray chest

Exhibit 1- Injury report and Exhibit 1(i) is his signature

15. In his cross-examination, PW5/MO deposed that there is no mention of the case number or GD entry in the injury report that he issued. He does not know for which case he issued the report. The injury that she sustained could be on account of falling down on hard surface.

16. In his examination-in-chief, PW6/IO ASI Mohendra Deka deposed that on 21.08.17 he was posted at Rangapara PS as an Attached Officer. On that day, Jaleha Khatun lodged a written ejahar in the PS. It was received and registered vide Rangapara PS case no 131/17 under Sections 448/325/294/506 Indian Penal Code by O/C Khurshed Ali. He was given the charge of investigation. He enquired about the matter from the informant, went to the PO, prepared sketch map, recorded statement of witnesses. He sent Jaleha Khatun for medical and collected the medical report. He interrogated the accused and released him on bail as it was bailable offence. On founding sufficient materials, he filed charge sheet against accused Ramjan Ali under Sections - 448/323/294/506 Indian Penal Code.

Exhibit 2 is Sketch map.

Exhibit 2 (i) is his signature.

Exhibit 3 is Ejahar.

Exhibit 3 (i) is the signature of O/C Khurshed Ali which he knows.

Exhibit 4 is the Charge sheet.

Exhibit 4 (i) is his signature.

17. In his cross-examination, PW6/IO deposed that he received the ejahar at 1.10 pm and went to the PO on 2.10 pm of the same day. He does not know who went with him to the PO. Informant had shown him the witnesses whom he interrogated. He has not mentioned in the sketch map the houses of the witnesses. He had sent for the medical requisition as well as collected the medical report. The injured was escorted by WPC 987 Ila Daimary. PW1 did not state before him in her 161 statement that the accused assaulted her. PW2 did not state before him that the accused dragged the informant by her hair and assaulted her. It is not a fact that he filed charge sheet without proper investigation.

Decisions and reasons thereof:-

Point for determination no (i)

18. Except the informant, no other witnesses have deposed that the accused committed house trespass.

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

Point for determination no (ii)

19. Except the informant no other witnesses has deposed that the accused voluntarily caused hurt to the informant. The I/O in his cross-examination deposed that PW1 did not state before him in her 161 statement that the accused assaulted her. Also PW2 did not state before him that the accused dragged the informant by her hair and assaulted her.

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

Point for determination no (iii)

20. The informant has neither stated in her ejahar nor deposed in Court what obscene words the accused uttered. Further the alleged incident occurred in the house of the informant which is not a public place.

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

Point for determination no (iv)

21. The informant has not deposed about the use of any criminal force by the accused.

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

22. Considering the evidence in its entirety, the prosecution side has failed to prove that the accused person namely, Ramjan Ali has committed the said offences under Sections – 448/323/294/506 of the Indian Penal Code against the informant beyond reasonable doubt.

ORDER

In light of the aforesaid discussion, I hold the accused person namely, Ramjan Ali is not guilty of offences under Sections – 448/323/294/506 of the Indian Penal Code. Hence, he is acquitted from the charges 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. 25.02.2021 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 25th 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 witnesses :

PW1- Jaleha Khatun

PW2- Aspina Begum

PW3- Halima Begum

PW4- Mannash Ali

PW5- Dr Amit Kr Saha

PW6- ASI Mahendra Deka

Prosecution Exhibits:

Exhibit 1 – Injury report

Exhibit 2 – Sketch map

Exhibit 3 – Ejahar

Exhibit 4 – Charge sheet

Defence witness:

Nil

Defence Exhibit:

Nil

Court Exhibit:

Nil

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