

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

Present: **Smti Chitrani Goswami, A.J.S**
Judicial Magistrate First Class,
Sonitpur, Tezpur

GR case no: 2567/15

under Sections – 294/341/323/34 of Indian Penal Code.

State

vs

Abdul Khalek

Md Nazir Hussain

Musstt Nazima Khatun

Advocate for the Prosecution	Mr AK Sahani.
Advocate for the Defence	Rose Bharali and Barnali Saikia.
Date of recording evidence	28.11.2016, 14.03.2018, 19.12.2018, 09.05.2019, 23.09.2019.
Date of hearing argument	22.01.2021.
Date of judgment	04.02.2021.

JUDGMENT

1. The prosecution case in brief is that the instant case was initiated on the lodging of an ejahar dated 16.01.2017 by informant Ruhul Amin. He alleged in his ejahar that he is engaged in cultivation of matimah in his 1 bigha of land. But the said cultivation was destroyed by the goats of the accused persons.

He asked the accused persons a number of times to tie their goats. On 22.09.15 around 10.30 am 3-4 goats of the accused persons entered their field and again destroyed their cultivation. Then the informant handed over the goats to the accused family and returned home. But the accused persons came to his house armed with lathis and assaulted him with a lathi as a result of which he sustained injuries. They also assaulted his wife Rina Begum, his 1^{1/2} year old nephew Md Sahil Hussain and his uncle Subhan Ali. Hence the case.

2. On receipt of the ejahar, Tezpur P.S. Case No.1268/15 dated 24.09.2015 under Sections – 341/325/34 of the Indian Penal Code was registered and investigated by ASI Pradip Kr Nath. On completion of the investigation, the I/O of the case submitted charge-sheet vide charge sheet no. 1000/2015 dated 31.10.2015 against the accused persons namely, Abdul Khalek, Md Nazir Hussain and Musstt Nazima Khatun under Sections – 294/341/323/34 of Indian Penal Code by ASI Pradip Kr Nath.

3. On receipt of charge sheet, cognizance of offences under Sections - 294/341/323/34 of the Indian Penal Code were taken as per the provision prescribed under Sections 190(1) (b) of Code of Criminal Procedure.

4. On appearance of the accused persons necessary copies were furnished to them as per the provision of Section 207 of the Code of Criminal Procedure. The particulars of the offences under Sections - 294/341/323/34 of Indian Penal Code were explained by my Learned Predecessor-in-office to which they denied the particulars and decided to stand for trial.

5. During the course of trial, the prosecution side to prove its case examined 7(seven) witnesses including the informant. After closure of prosecution evidence, the statements of defence of the accused person under Section 313 Code of Criminal Procedure were recorded by stating the incriminating materials found against them. Their plea was of total denial. Defence, however, did not adduce any evidence.

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 22.09.15 around 10.30 am uttered obscene words to the informant and his family members 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 22.09.15 around 10.30 am voluntarily caused hurt to the informant's family members 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 22.09.15 around 10.30 am wrongfully restrained the informant and her family members and thereby committed an offence under Section 341/34 of the Indian?

DISCUSSIONS

8. In his examination-in-chief, PW1/informant Md Ruhul Amin deposed that he knows the accused persons. The goats of the accused persons used to damage his 'matimah' cultivation as they are left open. He deposed that about a year ago around 10 am, his father had gone to the accused persons house to hand over their goats who damaged his matimah cultivation. Then the accused persons came to the courtyard of his house and assaulted his father by means of stick. They also assaulted his wife Rina Begum who tried to stop the assault. They also assaulted his 1 year old nephew Sahil Hussain and his uncle Subhan Ali. He lodged the ejahar on being informed about the incident by his wife.

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

9. In his cross-examination, PW1 deposed that the accused persons are his neighbours. His other neighbours also have goats. They have a fence surrounding their matimah cultivation. There is space between the fence which is able for goats to enter their matimah cultivation. It is not a fact that he has falsely filed the case against the accused persons. It is not a fact that the goats of my other neighbours have destroyed his matimah cultivation. It is not a fact that he had gone to the house of the accused persons on the date of the incident to hand over their goats. It is not a fact that he has deposed before police that the accused persons assaulted him with stick on the day of the incident. It is not a fact that he has deposed falsely as no such incident took place.

10. In her examination-in-chief, PW2 Musst Rina Begum deposed that the informant is her husband. She knows the accused persons. The goats of the accused persons ate their 'matimah' cultivation. She deposed that her father-in-law Suleman Ali had gone to the accused persons house to hand over their goats. Then the accused persons came to the courtyard of her house and assaulted her father-in-law by means of stick. They also assaulted her when she tried to stop the assault upon her father-in-law and then they went away.

11. In her cross-examination, PW2 deposed that her father-in-law had gone to the accused persons house to hand over their goats. It is not a fact that she has deposed before police that on the day of the incident her husband Ruhul Amin had gone to the accused persons house to hand over their goats. The incident took place on two days, one day it took place at 4pm and the other day at 10 am. It is not a fact that the incident occurred on two days. It is not a fact that she has deposed falsely in Court as no such incident took place.

12. In his examination-in-chief, PW3 Md Subhan Ali deposed that he knows the informant and the accused persons. The goats of the accused persons had eaten the 'matimah' cultivation of the informant. Thereafter, the father of the informant Suleman Ali handed over the goats to them. Next day, the goats of the accused persons again destroyed the 'matimah' cultivation of the informant

and again the father of the informant handed over the goats to them. Then the accused persons started to argue with him and came forward to assault him. When he saw the accused persons coming to assault the informant's father, he raised a hue and cry and reached near him. But before he could reach the place of occurrence the accused persons started to assault Suleman Ali. He tried to stop them and also explained them to sort out the matter. They didn't listen to him and rather they started to assault him. He was assaulted with a bamboo stick by the mother-in-law of the accused person Abdul Khalek as a result blood oozed out from his head. Then he went away.

13. In his cross-examination, PW3 deposed that Ruhul Amin is his nephew. He has come along with the informant in the Court. The informant had earlier informed him that the goats of the accused persons had eaten his 'matimah' cultivation. It is not a fact that he has deposed falsely for the sake of his nephew who is the informant of the instant case and no such incident occurred as stated by him. It is not a fact that he has not stated before the police about the incident. It is not a fact that he has stated before the police that on the day of the incident he was at his shop. It is not a fact that the accused persons have not assaulted him.

14. In her examination-in-chief, PW4 Husna Begum deposed that she knows both the informant and the accused persons. The incident occurred three years ago around 10 am. She heard that the informant and the accused persons had an altercation. She reached the place of occurrence after the incident. She herself does not know the reason of the altercation. She heard that the altercation was due to the reason that the goats ate the cultivation. She witnessed the altercation but she does not know what happened later on.

15. In her cross-examination, PW4 did not witness any assault as she was not present at the time of incident.

16. In her examination-in-chief, PW5/MO Nilakshi Das deposed that on 22.09.15, she was posted at Kanakata Civil Hospital as Deputy Superintendent. On that day she examined Reena Begum aged 19 years, W/O Rahul Amin, Village- Poruwa, PS- Tezpur, Mahabhairab OP. She found old abrasion at right knee. Simple injury by blunt weapon which may be sustained by fall also. On that day she also examined Sahil Hussain aged 11^{1/2} years, S/O Muzibur Rehman. She found no injury on him.

On that day she also examined Sovan Ali aged 42 years, S/O Abdul Gafar, Chonamukh, Poruwa. She found old abrasion at right elbow and nature of injury was simple by blunt weapon which may be sustained due to falling.

Exhibit 2 is the medical report and Exhibit 2(i) is her signature.

17. In her cross-examination, PW5/MO deposed that the injuries sustained by the victims may be due to falling on hard substance.

18. In his examination-in-chief, PW6 Haider Ali deposed that he knows Ruhul Amin. He also knows the accused persons standing on the dock. The incident occurred about a year ago. When he was returning from the market he saw that the complainant and the accused were in an altercation with each other. He scolded them and went way. He does not know what happened thereafter. He did not witness any assault between the parties only an altercation.

In his cross-examination, PW6 deposed that he does not know about the incident.

19. In her examination-in-chief, PW7 Sahera Khatun deposed that she knows the informant and accused persons on the dock. She was not present at the time of the incident. She heard that that was an altercation and assault between both the parties regarding to cultivation.

In her cross-examination, PW7 deposed that she does not know how the quarrel started and who assaulted whom.

Decisions and Reasons Thereof:

Point for determination (i)

20. 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. None of the witnesses have deposed regarding uttering of obscene words to the informant or his family members and thereby causing annoyance to others. Further the alleged incident occurred in the courtyard of the informant's house which is not a public place which is 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 (ii)

21. To bring home an offence under Section 323 Indian Penal Code it is necessary to prove that the accused persons voluntarily caused hurt to the informant and his family members. PW1/informant in his ejahar stated that the accused persons assaulted him with lathi as result of which he has sustained injuries. But in his deposition he stated that the accused persons assaulted his father. Such vital contradiction cast a doubt on the reliability of the testimony of the PW1/informant regarding the occurrence of the alleged incident. The I/O did not make the informant's father a witness in this case who was assaulted by the accused persons. Moreover, the nature of injuries found by PW5/MO on examination of PW2 and PW3 were found to be old abrasions. Moreover no injury was found on the informant's nephew Md Sahil Hussain. PW4, PW6 and PW7 did not witness any assault between the parties.

Point for determination (iii)

22. To bring home an offence under Section 341 Indian Penal Code it is necessary to prove that the accused persons voluntarily obstructed them from proceeding in any direction where they had a right to proceed. PW1/informant, PW2 and PW3 have deposed that the accused persons came to the courtyard of the informant to assault his father. But there is no mention of any wrongful restraint by the accused persons. The other witnesses have no personal knowledge regarding any wrongful restraint caused to the informant's father or his family members.

The point for determination under Section 341/34 Indian Penal Code is decided in the negative.

23. As such the prosecution side has failed to prove that the accused persons namely, Abdul Khalek, Md Nazir Hussain and Musstt Nazima Khatun have committed the said offences under Sections – 294/341/323/34 of Indian Penal Code against the informant beyond reasonable doubt.

ORDER

In light of the aforesaid discussion, I hold the accused persons namely, Abdul Khalek, Md Nazir Hussain and Musstt Nazima Khatun are not guilty of offences under Sections – 294/341/323/34 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. 04.02.2021 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 04th 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- Ruhul Amin

PW2- Musstt Rina Begum

PW3- Md Subhan Ali

PW4- Husna Begum

PW5- Dr Nilakhi Das

PW6- Haider Ali

PW7- Sahera Khatun

Prosecution Exhibits:

Exhibit 1- Ejahar

Exhibit 2- Medical report

Defence witness:

Nil

Defence Exhibit:

Nil.

Court Exhibit:

Nil

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