

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

G. R Case No: 1969/2009

U/s 143/341/353/506 IPC

State

vs

Sri Jibon Horo

S/o Junathan Horo, R/o Khalihamari, P.S. Tezpur

.....Accused No.1

Smt. Maya Kaman

W/o Sri Suren Kaman, R/o Khalihamari, P.S. Tezpur

.....Accused No.2

Sri Suren Kaman

S/o Late Kalu Kaman, R/o khalihamari, P.S. Tezpur

.....Accused No.3

Sri Sunil Bhengra

S/o Sri Dilbar Bhengra, R/o khalihamari, P.S. Tezpur

.....Accused No.4

Sri Samuwel Sanga

S/o Late Mangru Sanga, R/o Pongpani, P.S. Tezpur

.....Accused No.5

Present: Bijaya Khakhlary

J.M.F.C. ,Tezpur, Sonitpur

Advocates appeared

For the State: Mr. J. Dey

For the accused persons: Mr. R. Gohain, Ms. B. Boro

Evidence recorded on: 10.09.2013, 03.07.2014, 30.08.2014, 24.02.2015

Argument heard on: 28.04.2015

Judgment delivered on: 12.05.2015

JUDGMENT

1. The complainant Smt. Sushanti Topno filed an ejahar before the Borghat O.P. on 20.10.2009 stating inter alia that on 20.10.2009 at about 9:30 a.m. when they were to enter Mother Teresa Primary School where they used to teach, the accused persons along with some youths and women of the village stood in front of the gate of the school and restrained them from entering the school compound. When they tried to enter the school, the accused persons assaulted them and threatened to cause their death. The complainant and the Assistant teacher Smt. Sangeeta Sharma had to return back in fear of life. It has been further mentioned in the ejahar that the S.I. of School was informed about it and the ejahar has been lodged as per the letter of the office of S.I. of school, letter No. H.C./05/09/1931-32 dated 20.10.2009.

2. The ejahar was received and registered as Tezpur PS case No. 1020/09 u/s 341/353/34 IPC.

3. The I/O after due investigation of the case submitted charge sheet u/s 143/341/353/506 IPC against the accused persons .

4. Copy of the relevant documents were furnished to the accused persons.

5. On perusal of the case record sufficient ground u/s 143/341/353/506 IPC were found against the accused persons and accordingly particulars of offence under the above sections were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. The prosecution has examined four witnesses. The statement of the accused persons are recorded u/s 313 Cr.P.C. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

i). Whether the accused persons on 20.10.2009 at about 9:30 a.m. were a member of an unlawful assembly and thereby committed offence u/s 143 IPC?

ii) Whether the accused persons on 20.10.2009 at about 9:30 a.m. wrongfully restrained Smt. Sushanti Topno and Smt. Sangeeta Sharma and thereby committed an offence u/s 341 of IPC ?

iii) Whether the accused persons on 20.10.2009 at about 9:30 a.m. assaulted or used criminal force to Smt. Sushanti Topno and Smt. Sangeeta Sharma being public servants with intent to prevent or deter them from discharging their duty as such public servant and thereby committed an offence u/s 353 of IPC ?

iv) Whether the accused persons on 20.10.2009 at about 9:30 a.m. threatened Smt. Sushanti Topno and Smt. Sangeeta Sharma to cause their death and thereby committed an offence u/s 506 IPC ?

7. I have heard the oral arguments put forward by both the Counsel. I have also gone through the entire evidence available on record. My discussion and reasons for the decision are discussed below.

8. DISCUSSION, DECISION AND REASONS THEREOF:

9. PW1, Smt. Sushanti Topno who is the complainant of this case deposed that the date of incident is 20.10.2009. She stated that she opened a venture school in the name "Mother Teresa Primary school" in the year 1989, and in the year 1996, Smt. Sangeeta Sharma joined as a second teacher in the school. After that accused Samuel Sanga who was an under Matric, joined as a teacher in the school. In the year 2004 when it was declared that the Government would provide financial help to the school, the accused Samuel Sanga and other accused persons asked PW1 to remove Sangeeta Sharma from the post. As PW1 did not do so, the accused persons restrained her from coming to school. Then she informed the D.I. office, the D.C. and the Gaon Siksha Samitee about it but they did not respond as the school was a venture school. Finding no other alternative she filed a case before the Hon'ble High Court and the Hon'ble High Court gave decision in her favour and gave written order to Director's office and the Director's office gave an order to D.I. office and they were directed to join in the school. Exhibit-1 is the order issued in the name of Deputy Inspector of schools and exhibit-2 is the letter issued in the name of PW1 by the S.I. of schools. When she came to join in the school, a large number of women led by the accused persons stood in front of the gate of the school and restrained her and Sangeeta Sharma from entering into the school. Then they informed the Administration who gave them police help, but with police help also they could not enter the school. Then regarding this they lodged an ejahar in Borghat O.P.

10. In cross examination PW1 stated that during the period of year 2004 to 2009 she was not teaching in the school as she was not allowed to enter in the school and therefore the school teachers did not know her. She denied the suggestion that she had not submitted the copy of order of Hon'ble High Court to the school committee. She admitted that he has not mentioned anywhere that she submitted the copy of order of Hon'ble High Court to the school committee. She stated that the accused persons were the main culprits and therefore she has mentioned their name in the ejahar, though there were about 30 persons. She stated that she does not know the name of other persons. She stated that at present the school has been shifted from kholihamari to Pungpani.

11. PW2, Smt. Sangeeta Sharma deposed that on 20.10.2009 at about 9:30 a.m. when she along with PW1 went to Mother Teresa Primary

school, the accused persons Samuel Sanga, Sunil Bhengra, Jibon Horo, Maya Kaman, Suren Kaman and some other persons restrained them from entering into the school. She stated that they threatened them to beat and to keep them on the road if they entered the school premises. She stated that they went to the school with orders of High Court, D.I. office and Director's office. Thereafter they informed in the office about it. After that both of them lodged an ejahar in Borghat O.P.

12. In cross examination PW2 stated that she was not a teacher in the school during the period 2004 to 2009 as the accused persons did not allow them to enter the school and the school was being run by the accused persons. She stated that she could not say whether or not the seal seen in the ejahar was with PW1 at that time.

13. PW3, Sri Gabriel Kujur deposed that he could not recognize the complainant. He stated that he heard that there was a quarrel in Mother Teresa school, but he could not say between whom the quarrel took place. The prosecution declared him to be hostile. In cross examination by the prosecution PW3 denied the suggestion that the police took his statement and in his statement he stated before police that on 20.10.2009 at about 9:30 a.m. when PW1 and PW2 came to join their duty, the accused Jibon Horo along with 30/35 persons restrained them from joining their duty.

15. The Learned A.P.P. argued that in this case as about 30/35 persons came to restrain PW1 and PW2, there is less likelihood that any of them would give evidence in favour of prosecution and therefore prosecution could not examine more witnesses and that basing on the evidence of PW1 and PW2 the accused persons should be convicted.

16. The Learned defence counsel argued that PW1 and PW2 are not reliable witnesses which could easily be made out from exhibit-2. The allegation by the prosecution that PW1 and PW2 were restrained by the accused persons and were not allowed to enter the school is totally false as PW1 had put seal as "Headmistress" of the school in the ejahar which was not possible if she had not

been allowed to enter the school as she was not working in the school since 2004 till the day of incident i.e.20.10.2009.

17. In the present case no doubt PW1 has been corroborated by PW2. PW3 has stated that he heard that there was some quarrel on the day of incident in Mother Teresa school but has denied having any knowledge between whom the quarrel took place and the reason for it. PW3 has been declared hostile by the prosecution. The prosecution has not examined any other witness. Now coming back to the evidence of PW1 and PW2 it is seen that both of them have stated that on the day of incident i.e., on 20.10.2009, they came to resume their duties with order of Hon'ble Gauhati High Court, order of D.I. office(exhibit-1) and letter of S.I. of schools(exhibit-2), but the accused persons wrongfully restrained them and did not allow them to enter the school premises and the incident took place at about 9:30 a.m. On perusal of exhibit-2 , letter from S.I. of schools it reveals that the same was issued on 20.10.2009 i.e, on the day of incident only. As the incident occurred at 9:30 am., it is hard to believe that the complainant could obtain the letter from the S.I. of schools on the same day earlier to 9:30 a.m., as all Govt. offices generally start functioning from 10:00 a.m. No doubt there might be exception but the prosecution failed to explain the same. On top of that it is revealed from the said letter that the complainant informed the S.I. of schools in writing on the same day and vide the said letter the S.I. of schools allowed them to take police help if necessary. That with this letter the complainant(PW1) and PW2 reached the school at about 9:30 a.m. is not believable in absence of any explanation in this regard from the prosecution side.

18. Again as per the evidence of PW1 and PW2 when they were not allowed to enter the school, they informed the Administration who gave them police help but inspite of police help they could not enter the school and had to return back and then on the same day they lodged an ejahar, exhibit-3 in the police. In exhibit-3, below the signature of PW1 there is seal of the Head Mistress of Mother Teresa L.P. school which shows that PW1 was using seal of Head Mistress of Mother Teresa L.P. school. But PW1, herself has stated in her evidence that she was not working in the school since 2004 till the day of incident and on the day of incident also they were wrongfully restrained and

were prevented from discharging their duty, then how she got the seal of the school raises doubt in the prosecution version.

19. No doubt there are many instances in which the accused persons were convicted based on sole testimony of a reliable witness. The above discussion shows that the testimony of PW1 and PW2 are not wholly reliable.

20. Under the above facts and circumstances, I am of the opinion that the prosecution has failed to establish the case u/s 143/341/353/506 IPC against the accused persons. Hence the accused persons are acquitted from the offences u/s 143/341/353/506 IPC .

21. Bail bond and affidavit furnished by the bailor is extended for a period of six months from today.

Given under my hand and seal of this Court on the 12th day of May, 2015 at Tezpur, Sonitpur.

Bijaya Khakhlary
JMFC, Tezpur

APPENDIX

Prosecution witnesses:

PW1— Smt. Sushanti Topno

PW2—Smt. Sangeeta Sharma

PW3— Sri Gabriel Kujur

PW4—Md. Kazimuddin Ahmed(I.O.)

Exhibits for the prosecution

Ext.1.....order of D.I. of schools, Tezpur dated 16.10.2009

Ext.2.....letter of S.I. of schools dated 20.10.209

Ext.3.....ejahar dated 20.10.2009

Ext.4.....bail bond

Ext.5.....charge sheet

Defence witness :

Nil

Exhibits for defence:

Nil

Smti Bijaya Khakhlar

JMFC,Tezpur