

BEFORE THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS , SONITPUR

Present :- Smti Sabita Bharadwaj , AJS

Judicial Magistrate 1st Class Sonitpur, at Tezpur

G.R.CASE NO :-3287/2016

Under section 188/34 IPC

State of Assam

- *VERSUS* -

- 1. Tarjen Basumatary**
- 2. Sankar Jyoti Kachari**
- 3. Sanjay Basumatary**
- 4. Lethu Basumatary**
- 5. Banesh Muchahary**
- 6. Nizum Daimary**
- 7. Birphung Narzary**
- 8. Rabit Basumatary**
- 9. Birkhang Basumatary**
- 10. Swmba Swargiary**
- 11. Suresh Swargiary**

All are residents of Bhalukpong

Police Station- Chariduar

District- Sonitpur

-Accused persons

Appeared

Learned Apps for State..... Smt. Karabi Das

Learned Counsel for Defence..... Sri B.K. Basumatary

Dates of Evidence..... 25.09.2018, 28.02.2019

Date of Argument 16.05.2019

Date of Judgement..... 16.05.2019

JUDGEMENT

- 1.** Accused persons viz. Tarjen Basumatary, Sankar Jyoti Kachari, Sanjay Basumatary, Lethu Basumatary, Banesh Muchahary, Nizum Daimary, Birphung Narzary, Rabit Basumatary, Birkhang Basumatary, Swmba Swargiary and Suresh Swargiary stood for trial for the allegations of committing offences u/s 188/34 IPC.
- 2.** The prosecution case in brief is that on 29.09.2016 the informant viz. Jitumoni Deka the concerned S.I. of Chariduar Police Station lodged an "Ejahaar" before the Officer-in-charge Chariduar Police Station stating inter alia on the same day at around 10:00 A.M. the accused persons came up in the street despite of the Learned Magistrate's order under Section 144 Cr.P.C. at Bhalukpung Bazar area road and obstructed communication and also caused damaged by burning tyre on the road.
- 3.** On the basis of the 'Ejahaar' a case has been registered as Chariduar P.S case no. 149/16 u/s 188/427/34 IPC and investigation was initiated and after completion of investigation charge sheet was submitted against accused Tarjen Basumatary, Sankar Jyoti Kachari, Sanjay Basumatary, Lethu Basumatary, Banesh Muchahary, Nizum Daimary, Birphung Narzary, Rabit Basumatary, Birkhang Basumatary, Swmba Swargiary and Suresh Swargiary u/s 188/427/34 IPC.

4. On the appearance of the above named accused persons before the Court and also after furnishing the copies to them substance of offences u/s 188/34 IPC on being stated to the accused by my learned predecessor in office they pleaded not guilty and claimed trial.
5. The prosecution has examined 3 (three) no's of witness and exhibited 3(three) no's. of documents. The accused are examined u/s 313 Cr.P.C. Defence plea is of complete denial. The accused persons also declined to adduce any evidence in support of their defence.

POINTS FOR DETERMINATION:-

- (I) **Whether on 29.09.2016 at around 10:00 AM at Bhalukpung Bazar Area had the accused persons viz. Tarjen Basumatary, Sankar Jyoti Kachari, Sanjay Basumatary, Lethu Basumatary, Banesh Muchahary, Nizum Daimary, Birphung Narzary, Rabit Basumatary, Birkhang Basumatary, Swmba Swargiary and Suresh Swargiary in furtherance of their common intention knowing that by an order passed under Section 144 Cr.P.C. promulgated by the District Magistrate lawfully empowered to promulgate to the said order whereunder you were directed to abstain from making any obstruction annoyance disobeyed such direction the disobedience of which caused or tended to cause nuisance?**

6. I have carefully perused the entire materials available on case record and heard the arguments advanced by the Learned Counsels of both the sides and proceeded to decide as follows:

DISCUSSION , DECISIONS & REASONS THEREOF:-

7. In this instant case the prosecution has alleged the accused persons have committed offence by disobeying the order promulgated a public

servant i.e. the District Magistrate under Section 144 Cr.P.C. hence, they are liable to be held guilty. Now, to decide whether such allegations has levelled by the prosecution side against the accused persons are sustainable or not the evidences as adduced by the witnesses of prosecution are scrutinized and evaluated to arrive at a proper conclusion. If the testimony as deposed by P.W. 1 Jitumoni Deka is taken into consideration then it is clearly apparent that being the informant of this instant case he narrated the entire prosecution story by levelling allegations that on the day of the alleged occurrence the accused persons had burnt tyre to obstruct Bhalukpung connecting road by disobeying the order passed by District Magistrate under Section 144 Cr.P.C. due to which he had to arrest them. Further, it is also observed by me that P.W. 2 Baneshwar Goiari, the one and only independent witnesses of the prosecution side, also contain no knowledge about the alleged occurrence as he was unaware of the fact that why those accused persons were arrested. Again on going through the testimony as deposed by P.W. 3 Dijumoni Sarma it is clearly apparent that he is the concerned Investigating Officer of this instant case and on the basis of the statements of witnesses recorded by him, he submitted charge sheet against the accused persons. But at the same time it is pertinent to mention here that those witnesses are not produced by the prosecution side sustaining such fact that the accused persons were involved with the offices as alleged against them. Moreover, in his respective part of testimony as deposed by P.W. 3 Dijumoni Sarma, the concerned Investigating Officer of this instant case, it is also disclosed that no announcement of imposing order under Section 144 Cr.P.C. was made at the place of occurrence. Therefore, only on the basis of the testimony as deposed by the concerned informant i.e. P.W. 1 Jitumoni Deka and concerned Investigating Officer i.e. P.W. 3 Dijumoni Sarma, and also in absence of any proper evidence of other independent witnesses of prosecution, it is difficult to arrive at a definite point of conclusion that on the day of alleged occurrence the accused persons were disobeying the order promulgated or public servant by obstructing the road or damaged the articles at the place of occurrence and thereby committed any offence as alleged against them.

- 8.** Therefore, in my considered view, the prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubt and the accused persons are entitled to get the benefit of doubt.

Hence, the point for determination is decided in negative.

- 9.** In result accused Tarjen Basumatary, Sankar Jyoti Kachari, Sanjay Basumatary, Lethu Basumatary, Banesh Muchahary, Nizum Daimary, Birphung Narzary, Rabit Basumatary, Birkhang Basumatary, Swmba Swargiary and Suresh Swargiary are acquitted from the charges u/s 188/34 IPC and set at liberty.

Bail Bonds (if any) shall be valid up to expiry of 6 (six) months from the date of this order and Judgement.

Given under the hand & seal of this Court on this 16th day of May 2019.

Sabita Bharadwaj
Judicial Magistrate 1st Class
Sonitpur, Tezpur

Appendix

Names of the witnesses of Prosecution:-

1. P.W.1- Jitumoni Deka
2. P.W.2- Baneshwar Goiari
3. P.W.3- Dijumoni Sarma

Documents exhibited by Prosecution :-

1. Ext. 1- Ejahar
2. Ext. 1(1)- Signature of Jitumoni Deka
3. Ext. 2- Charge sheet
4. Ext. 2(1)- Signature of Dijumoni Sarma
5. Ext. 3- Sketch map
6. Ext. 3(1)- Signature of Dijumoni Sarma

Names of the witnesses of Defence:- Nil

Documents exhibited by Defence :- Nil

Sabita Bharadwaj
Judicial Magistrate 1st Class
Sonitpur, Tezpur

Dictated & corrected by me

Sabita Bharadwaj
Judicial Magistrate 1st Class
Sonitpur, Tezpur

Typed by

Rahul Kumar, stenographer