

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATESONITPUR, TEZPUR, ASSAM

GR CASE NO:- 1895/12

U/S – 447/294/379/34 IPC

State of Assam

Vs

1. Md Rafique Uddin**2. Mustt Samtu Begum****3. Md Jamaluddin****Accused persons**

Present : Sri. Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate

For Prosecution : Sri. P. Baruah, Learned Addl. Public Prosecutor.

For the accused : Smti D.Sinha, Ld Defence Counsel

Evidence recorded on : 06-08-13,05-09-13,10-04-15,06-10-15,02-02-16,
26-12-16, 08-03-17,01-06-17,21-0619

Arguments heard on : 12-02-2021

Judgement delivered on : 20-02-21

J U D G M E N T

1. Prosecution case :-The gravamen of the prosecution case is that on 20-07-12 accused persons debarred the informant to install pucca pillar in her own land and they also threatened her with dire consequences. On 25-07-12 at about 1 pm, the accused persons illegally entered into her land and uprooted the pucca pillar of her boundary and took away iron rods. Hence this case.

2. After completion of investigation the police filed charge-sheet against the accused Md Rafique Uddin, Mustt Samtu Begum and Md Jamaluddin u/s- 447/294/379/34 IPC. At the relevant point of time, on receipt of summons the accused persons appeared before this Court and they were furnished copies as mandated u/s 207 Cr.P.C. Having found a case against the accused u/s- 447/294/379/34 IPC, charges under said sections of law were framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. The prosecution examined 11 (eleven) witnesses and defence examined none. The accused persons were examined u/s-313 Cr.P.C. wherein they stated that the prosecution case is false.

Points for determination

- i. Whether the accused persons on 25-07-12 at about 1 pm in furtherance of their common intention committed criminal trespass by entering into the house of the informant with intent to commit an offence to intimidate and thereby committed the offence punishable under Section 447/34 of IPC?
- ii. Whether the accused persons on 20-07-12 in furtherance of their common intention uttered obscene words and language to the informant to the annoyance of others and thereby committed an offence punishable under Section 294/34 of IPC?
- iii. Whether the accused persons 25-07-12 at about 1 pm in furtherance of their common intention intending to take dishonestly the iron rod of the boundary wall of the informant out of the possession of the complainant, without her consent, moved it in order to such taking, and is liable to be punished under Section 379/34?

Discussion of evidence

4. PW1 Mustt Gulnur Sultana is the informant of this case and she in her evidence has deposed that on 18-07-12 as per order of Circle Officer, she along with one Mandal went to her land and installed four pucca pillars. She purchased the said land from one Abdul Mallik by registered agreement but on 20-07-12 when her labourers went to install boundary wall, accused Md Rafique Uddin, his mother Mustt Samta Begum and other accused persons prevented them and threatened them with dire consequences. On 25-07-12 at about 1 pm, accused persons uprooted four pucca pillars from her land and she was informed about the matter by her mason Ajijul Haque and Innush Ali. Thereafter she lodged the ejahar vide Ext 1 and Ext.1(1) is her signatures.

In cross-examination, she stated that she purchased the land in the year 1988 and the Mandal went to demarcate the boundary of the land on 18-07-12. In the year 1988, boundary pillar was constructed but they did not construct house. Abdul Malik who was

the owner of the said land, is the uncle of the accused Rafique Uddin. She did not verify as to whether Abdul Mlik had the joint pattadar or not. Mandal Hafijur Rahman went to hand over the boundary of the land. She does not submit Dalil of purchasing land before the court. She denied that she did not state before police that when the accused persons uttered obscene words at her and her labourers, her mason Mahmudul informed her over phone. She did not see with her eyes when the accused persons taking away pillars of her boundary. She also denied that she did not state before police that her mason Ajijul Hoque and Iunush Ali witnessed the incident of taking away of the pucca pillars from her boundary.

5. PW2 Sri Naren Hazarika is the husband of the informant and he deposed in tune with PW1.

In cross-examination he stated that in the year 1988, his wife and her sister purchased the land and at that time, boundary of the land was demarcated. On 18-07-12, Circle officer and Lat Mandal went to the land for demarcation as because someone uprooted the pucca pillar of the boundary. On 25-7-13 at about 4 pm, their labourers informed them that the accused persons uprooted the pillar of the boundary. He denied that the Circle Officer and Lat Mandal did not hand over the disputed land to them and they did not install pucca pillar at the boundary.

6. PW3 Mahmudul Hussain is the Raj Mistry and he deposed that in the year 2012 and in the month of July at about 7.30 am, he installed four iron pillars in the boundary of the informant and on the next day, he again with his labourers went to the land for work but Rofique uddin and another person prevented them by saying that the land has a dispute. Thereafter they informed the informant and as per her instruction, they left the place.

In cross-examination, he denied that he stated before police that on the previous day of the occurrence, he installed four iron posts in the land and also that he informed the informant over phone about the matter.

7. PW4 Md Anuwar Hussain is also a Raj Mistry and in his evidence has stated that in the year 2012 in the morning, he installed pucca pillar in the land of the informant and the accused persons standing in the dock, uprooted the pillar.

In cross-examination, he stated that he does not know about the owner of the land, Dag No and Patta number.

8. PW5Md Farooq Abdulla is also a mason and he also deposed in tune with PW3.

In cross-examination, he stated that he does not know who is the owner of the land. When they were prevented from doing their work, they went away. Except this, there was no any incident took place.

9. PW6 Md Ajjur Rahman and PW7 Md Inuus Ali are also a mason and they deposed their ignorance about the matter.

10. PW8 Mustt Rosalin Jahan is the younger sister of the informant and she deposed that in the year 1988, they purchased one katha land being patta No 101 in her name and one katha land in her elder sister's (informant) name at Gotlong from Abdul Malek and installed four pillars in the boundary. On 18-07-12 they started to construct boundary wall and 2/3 days later, when they went to their land, Rafique Uddin, his mother and one boy raised hue and cry and hindered them from entering their land. On 25-7-12 Rafique Uddin, his mother and one boy took away the pillar which they installed. She heard about the fact from her sister/informant.

In cross-examination, she stated that she did not see the incident of uprooting pillar and rod from their land. She was informed by their masons. She denied that the accused persons are the owner of the land which they purchased. The informant lodged a criminal case against the accused persons over the said land.

11. PW9 Md Muzamil Hazarika deposed that he was not present at the time of the occurrence and he does not know about the matter.

12. PW10 Md Abdul Harib is the Lat Mandal, Tezpur Town and he deposed that on 22-6-12, as per order of Circle Officer, Tezpur, he along with Police personnel of Mahabhairab OP, went to the land of the informant at Gotlong for inspection. Accused Rafique Uddin prevented him from demarcate the land saying that a proceeding U/S 145 Cr.P.C is going on in that land but the accused could not show him any document. He returned and informed the Circle Officer, Saranga Pani Sarma. On 18-7-12, he again as per direction of the Circle Officer went to the disputed land and after demarcating the said land submitted his reply. He has identified his report as Ext.2, the letter of Circle Officer as Ext.3 (under objection) and the forwarding report as Ext.4.

In cross-examination, he denied that at the time of the occurrence, he was not the Lat Mandal of Gotlong. He also denied that on 22-6-12 he did not go to enquiry of the land and the accused persons did not prevent him saying that a proceeding U/S 145 Cr.P.C. is going on over the said land.

13. PW11 Inspector Subhash Ch Baishya is the investigation officer and he deposed that on 25-7-12, on receiving an ejahar from one Gulnur Sultana, he was entrusted for investigation of the case. Accordingly, he went to the place of occurrence, examined witnesses including the informant, drew sketch map and collected report from Circle Officer. After completion of investigation, he submitted the charge sheet against the accused persons. He has identified the report of Circle Officer as Ext.3, the sketch map as Ext.5 and the charge sheet as Ext.6.

In cross-examination, he stated that except Md Muzamil Hazarika, he did not record the statement of other residents shown in the sketch map prepared by him as those people only had plots of land near the place of occurrence. He did not seize any broken articles in connection with this case. On the same day, the accused Samata Begum had lodged a case against the informant and her family members. This in nutshell is the evidence on record.

DECISION AND REASONS THEREOF

14. I have heard the prosecution and defence side.

15. Let me now analyse how far prosecution side has been able to prove its case beyond all reasonable doubt against the accused.

16. After going through the evidence adduced by the PWs, it is seen that the incident out of which this case has arisen relates to a land dispute. Again the evidence of the I/O reveals that on the same day of the incident, accused Samata Begum had lodged a case against the informant and her family members. This means that there is animosity between the family of the accused persons and that of the informant. The prosecution evidence also reveals that there is a civil suit pending between the accused and the informant. While going through the ejahar, I find that one of the incidents took place on 20-7-12 whereas ejahar was lodged on 25-7-12. The delay in lodgment of the ejahar has nowhere been explained. In the ejahar the informant has nowhere mentioned the boundary of the land in question. Moreover, the prosecution side also could not prove that the plot of land where the accused persons allegedly trespassed belongs to the informant. Hence, considering the nature of dispute, existence of animosity between the informant and the accused persons, the instant case cannot be said to have been proved beyond all reasonable doubt on the basis of evidence adduced by the prosecution.

17. In view of the above aspects, it is hereby held that prosecution has failed to prove its case beyond all reasonable doubt. As such this court holds that the Md Rafique Uddin, Mustt Samtu Begum and Md Jamaluddin are not guilty of the offence U/S 447/294/379/34 IPC and they be set at liberty forthwith. The bail bond furnished by the accused persons is hereby extended for six months from today (20-02-2021).
18. Seized articles if any, be delivered to his lawful owner after proper verification and following the process of law.
19. Judgement is delivered and pronounced in open court.
20. A free copy of judgment be forthwith given to the accused.
21. Given under my hand and seal of this court on this 20th day of February, 2021.

Sri Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses:-

PW1 Mustt Gulnur Sultana

PW2 Sri Naren Hazarika

PW3 Mahmudul Hussain

PW4 Md Anuwar Hussain

PW5Md Farooq Abdulla

PW6 Md Ajijur Rahman

PW7 Md Inuus Ali

PW8 Mustt Rosalin Jahan

PW9 Md Muzamil Hazarika

PW10 Md Abdul Harib

PW11 Inspector Subhash Ch Baishya

Defence witness:

Nil

Documents exhibited by the prosecution :-

Ext. 1 Ejahar

Ext.2 report

Ext.3 is the letter of Circle Officer

Ext.5 is the sketch map

Ext.6 charge sheet

Documents exhibited by the defence -: Nil

Sri Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur