

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE

SONITPUR, TEZPUR, ASSAM

GR CASE NO:- 1947/15

U/S – 447/323/506/34 IPC

State of Assam

Vs

1. Md Abdul Malek

2. Md Abdul Khalek

3. Mustt Mangal Jan

Accused persons

Present : Sri. Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate

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

For the accused : Sri PC Sarmah, Ld Defence Counsel

Evidence recorded on : 13-10-17,09-05-19,06-08-19,19-01-21

Arguments heard on : 15-02-2021

Judgement delivered on : 18-02-21

J U D G M E N T

1. The prosecution story emanates from the FIR lodged by one Md Ruhul Amin on 28-7-15 stating inter alia that on 27-7-15 at about 6.30 pm, accused Md Abdul Malek, Md Abdul Khalek and Mustt Mangal Jan entered into his house armed with dao, lathi etc and assaulted him and his wife Mustt Rina Begum causing serious injuries. The accused persons also broke fencing of his house and took away cash amount, one silver chain and two gold earnings. Hence, this case.

2. After completion of investigation the police filed charge-sheet against the accused persons u/s- 447/323/506/34 IPC. At the relevant point of time, on receipt of summons the accused 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- 447/323/506/34 IPC, particulars of 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 6 (six) witnesses and defence examined none. The accused persons were examined u/s-313 Cr.P.C. wherein they stated the prosecution case is false.

Points for determination

- i. Whether the accused persons on 27-7-15 at about 6.30 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 the same day and time in furtherance of their common intention voluntarily caused hurt to the informant and his wife and thereby committed offence punishable U/S 323/34 of IPC ?
- iii. Whether the accused persons on the same day and time in furtherance of their common intention committed criminal intimidation by threatening the informant and thereby committed an offence under Section 506/34 of IPC ?

Discussion of evidence

4. PW1 Md Ruhul Amin is the informant of this case and he in his evidence has stated that he knows the accused persons as his neighbours. About two years ago, at about 6.30 pm, the incident took place at his home and at that time he went to the market. His wife was lying ill at home and at about 7 pm when he arrived at home, he heard hue and cry. He saw the accused persons at the verandah and his wife Mustt Rinara Begum, his mother and Halima told him that the three accused persons assaulted his wife and Rs 8000/- was missing from the table. When he interrogated the accused, Abdul Malik kicked him on his stomach. He has identified his ejahar as Ext.1 whereupon Ext.1(1) is his signature.

In cross-examination, he denied that he did not state before police as has been narrated in his examination-in-chief and the ejahar. He stated that knowing that the accused persons will lodge a case against him, he lodged this case against them. After the incident, his wife and he got medically examined by a doctor after sustaining injuries.

5. PW2 Mustt Rinara Begum is the wife of the informant and she in her evidence has stated that on 27-7-15 at about 6.30 pm, the incident took place. Accused persons had advised her to leave her husband and go to her home. On the day of occurrence, accused persons entered into her house and asked her whether she is agree to leave her husband. Thereafter the accused persons started to assault her. At that time her husband was not present but later he arrived home. Accused persons took away her gold earnings and silver chain and cash amount of Rs 8000/-. Accused persons also assaulted her and her husband and her husband took her to Tezpur Civil Hospital.

In cross-examination, she stated she knows about the lodgement of a case against her husband by the accused persons. She denied that she did not stated before police as has been narrated by her in her deposition.

6. PW3 Mustt Halima Khatoon is the mother of the informant and she deposed in tune with PW2.

In cross-examination, she denied that to save her son from the case of the accused persons she deposed falsely.

7. PW4 Md Suleman Ali deposed that the informant is his son and accused persons are his neighbours. On the day of the occurrence, he was at market and on reaching home, he saw the accused persons starting pushing and pulling his son. Accused persons also tried to snatch away silver chain and gold earning from the wife of his son Ruhul Amin.

In cross-examination, he stated that he has no any personal knowledge regarding the incident.

8. PW5 Md Habibur Rahman is a hearsay witness and he did not witness the incident.

9. PW6 Sri Chandra Kanta Phukan is the investigating officer and he deposed that on 28-01-15, while he was working at Tezpur PS as attached officer and on that day on receiving an ejhar from one Ruhul Amin, he was entrusted to investigate the case. Accordingly he went to the place of occurrence, prepared te sketch map, collected the injury report and after completion of investigation, he submitted the charge sheet. He has identified the sketch map as Ext.2, injury report as Ext.3 and the charge sheet as Ext.4.

In cross-examination, he denied that he did not investigate the case as per law. This in nutshell is the evidence on record.

DECISION AND REASONS THEREOF

10. I have heard the prosecution and defence side.

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

12. It is seen from the evidence of the PWs that the accused persons had also lodged a case against the informant which is still pending. This means that the informant as well as the accused persons are already inimically disposed to one another. The prosecution side has examined as many as six witnesses out of which PW1 is the informant himself, PWs 2, PW3 and PW4 are the near relatives of the informant. PWs 2, PW3 and PW4 will naturally have an inclination to support the case of the informant as they are his near relatives. PW5 does not have any personal knowledge about the occurrence. He did not witness the incident himself. PW6 is the investigating officer. Thus, the prosecution side could not examine any independent witness to prove its case against the accused persons. Moreover, in the ejahar, the informant has alleged inter alia that the accused persons took away cash from his house. However, he did not mention the exact amount that was allegedly taken away by the accused persons. On the other hand, in course of his deposition, the informant as well as his near relatives claimed that the accused persons took away Rs 8000/- from their house at the time of the incident. It is not understood as to why this specific amount of cash which was allegedly taken away by the accused persons has not been mentioned in the ejahar. The I/O as PW6 stated in course of his cross-examination that PW Rinara Begum has not stated before him that the accused persons had asked her to leave her husband and also that the accused persons had hit her husband with a dao and lathi in front of her. The I/O further stated that PW Rinara Begum also did not state before him that the accused persons had taken away her gold earnings and silver necklace. Now, omissions on the part of PW Rinara Begum in mentioning these vital facts before the I/O clearly cast a doubt upon their trust worthiness. She has made these allegations

before the court in course of her deposition. However, it is not understood as to why she did not make these allegations before the I/O. PW Rinara Begum is the wife of the informant. Moreover, Ext.3 which is medical examination report of the informant and his wife does not reveal any injury on their body.

13. Considering all the above aspects, this court is of the opinion that the informant and his near relatives who have been examined in connection with this case cannot be said to be trust worthy. As such this court holds that the accused Md Abdul Malek, Md Abdul Khalek and Mustt Mangal Jan are not guilty of the offence U/S 447/323/506/34 and they be set at liberty forthwith. The bail bond furnished by the accused persons is hereby extended for six months from today (18-02-21).

14. Seized articles if any, be delivered to his lawful owner after proper verification and following the process of law.

15. Judgement is delivered and pronounced in open court.

16. Given under my hand and seal of this court on this 18th day of February, 2021.

Sri Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses:-

PW1 Md Ruhul Amin

PW2 Mustt Rinara Begum

PW3 Mustt Halima Khatoon

PW4 Md Suleman Ali

PW5 Md Habibur Rahman

PW6 Sri Chandra Kanta Phukan

Defence witness:

Nil

Documents exhibited by the prosecution :-

Ext.1 Ejahar

Ext.2 sketch map

Ext.3 medical report.

Ext.4 charge sheet

Documents exhibited by the defence -: Nil

Sri Angshuman Bhattacharjee
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur