

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE:
SONITPUR AT TEZPUR**

Present: Sri Debashish Saikia,
Chief Judicial Magistrate,
Sonitpur, Tezpur.

GR CASE NO.2483/13

U/s 455 of IPC.

state

-vs-

Moinul Haque

..... accused

Appearances:

K Gogoi,
Learned Addl PP
& N Saikia, Asstt PP : For the prosecution

U Mahanta
Ld Counsel : For the accused

Date of recording evidence : 24-09-14, 03-05-19

Date of hearing argument : 14-05-19

Date of judgment : 14-05-19

J U D G M E N T

1. The informant's case in brief is that :

The informant Md Abdul Mannan lodged an ejahar on 24-9-13 stating interalia that on 20-9-13 at about 2 am, accused Moinul Haque entered into his house and tried to attack him and when he raised hue and cry, around 100 villagers gathered and some of them assaulted the accused as a result of which, the accused sustained injury and had to take treatment at Kanaklata Civil Hospital, Tezpur. It is also alleged by the informant that the aforesaid accused has committed similar acts prior to the above incident and as such, the ejahar was filed.

2. I/C Borghat OP on receiving the ejahar sent the same to O/C, Tezpur PS who on receipt of the same registered the case as ezpur P.S Case No 1228/13 U/S 455 IPC and started investigation of the same. On completion of investigation, police submitted charge sheet against the accused persons U/S 455 IPC.

3) Cognizance of the offence was taken, and summons was issued against the accused. On appearance of the accused, copy of the case was furnished.

4) The Ld Predecessor vide order dtd 19-11-13, framed charge U/S 455 IPC against the accused which on being read over the accused pleaded not guilty and claimed to be tried.

5) During trial, prosecution has been able to examine only two witnesses instead of getting several opportunity. Further the prosecution after examining the informant's wife declined to adduce further evidence in the instant case and as such, prosecution evidence was closed.

6) The plea of the accused is that of total denial. Statement of the accused was recorded U/S 313 Cr.P.C. in which the accused denied to have committed the offence charged with. Accused however did not examine any witness. I have heard the argument advanced by the learned Counsel of both sides and carefully perused the evidences on record.

7) **The only point for determination is :**

Whether the accused 20-9-13 at about 2 am committed lurking house-trespass in the building in possession of the informant and used as a human dwelling having made preparation for causing hurt to the informant and thereby committed an offence punishable under Section 455 of IPC ?

DISCUSSION, DECISIONS AND REASONS THEREOF:

8) PW1 Md Abdul Mannan is the informant of this case and he in his evidence has stated that on the night of the occurrence, he was sleeping. According to him, during that period, there was a rumour that some persons (Kola Manuh) with a view to commit mischief enters the houses of the villagers at night. PW1 further deposed that on the said night, though he and his wife were in their house, they both were sleeping in two separate rooms and at that time, his wife noticing a movement of a person raised an alarm. Hearing the said alarm, he came out of his room and in the meantime nearby people also came and surrounded his house and saw the accused inside their house. The accused was caught by the villagers assembled there. PW1 also stated that the accused was also beaten up by the villagers and handed over to the police. PW1 identified his ejahar as Ext.1 whereupon he identified his signature as Ext.1(1).

When put to cross-examination, PW1 stated that the accused is not mentally sound. He further stated that he does not want to proceed with the case and he has no grievances against the accused.

9) PW2 Mustt Mallika Khatoon is the wife of the informant and she in her evidence has stated that on the night of the occurrence, accused entered into her house and on alarm being raised by her, nearby villagers assembled at her place and with the help of the villagers, the accused was caught. PW2 further stated that the accused is a mentally ill person and suspecting him to be a thief, her husband lodged the FIR.

10) Defence declined to cross-examine the witness.

11) From the perusal of the evidence, it appears that both the witnesses in their evidence has stated that the accused was a mentally ill person. The above assertion of the two witnesses particularly the informant and his wife has not been challenged by the prosecution side.

12) To establish a charge U/S 455 IPC, prosecution has required to establish that the accused committed (1) lurking house trespass or house breaking 2) he did so after having made preparation for causing hurt to any person or for assaulting any person or for wrongful restraining any person or for putting any person in fear or hurt or assault or wrongful restraint.

13) In the instant case, though the entry of the accused into the house of the informant on the night of the incident has been stated by both the witnesses, the prosecution has failed to lead any other evidence to show that the accused had entered into the house of the informant with the required mens-rea to commit an offence. That being the case and also further considering the fact that both the witnesses have asserted that the accused was a mentally ill person, I am of the measured view that the charge against the accused could not be said to have been established beyond all reasonable doubt. Considering the above witnesses of the prosecution case, I hold that the accused is not guilty of the offence he is charge with.

ORDER

Accused Md Moinul Haque is acquitted of the charge u/s 455 IPC and is set at liberty forthwith.

The liability of the bailor is extended for 6 (six) months from today as per provision of the amended Cr.P.C.

This Judgment is given under my hand and the seal of this Court on this 14th day of May, 2019.

(D Saikia)
Chief Judicial Magistrate,
Sonitpur, Tezpur

Dictated and corrected by me:-

(D Saikia)
Chief Judicial Magistrate,
Sonitpur, Tezpur

A P P E N D I X

Prosecution witnesses

PW1 is Md Abdul Mannan

PW2 Mustt Mallika Khatoon

Defence witnesses

Nil

Documents exhibited by the prosecution

Ext.1 : Ejahar.

Documents exhibited by the defence

Nil.

(D Saikia)
Chief Judicial Magistrate,
Sonitpur, Tezpur