

GR CASE NO: 1887/2013
PROSECUTOR: STATE OF ASSAM
ACCUSED: SRI DEBADHAR NATH &ORS

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

GR CASE NO: 1887/ 2013

(Arising out of Tezpur PS Case No 964/2013)

U/S 341/ 506/ 294 r/w 34 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: 1.) SMT HEMLATA DEVI
2.) SRI HEMARAM NATH
3.) SRI DEBADHAR NATH

PRESENT: Ms MEENAKSHI SARMAH, AJS
JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

APPEARED:

ADVOCATE FOR THE PROSECUTION: SHRI J ADHIKARI, APP
ADVOCATE FOR THE ACCUSED: SHRI N M GOSWAMI

OFFENCE EXPLAINED ON: 26/03/2014
EVIDENCE RECORDED ON: 25/08/2014, 26/09/2014, 27/10/2014 &
5/5/2015

ARGUMENT HEARD ON: 18/5/2015
JUDGMENT DELIVERED ON: 25/5/2015

TYPED BY ME: M SARMAH, AJS
JMFC, TEZPUR

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J U D G M E N T

1. The prosecution in this case was launched by the lodging of a compliant case which was forwarded by the Hon'ble Chief Judicial Magistrate, Sonitpur to the Officer in Charge of the Tezpur Police Station for registering a case on 1/8/2013 is that Smt Banti Devi (*hereafter referred as informant*) deceased father-in law and his ancestors had land in Bihuguri and the said land was given to one Louram Nath about thirty years back on some agreement. The agriculture product of the said land was shared with the informant's family by the said Louram Nath but later on the informant stopped receiving the same. Thereafter on 18.03.2012 the informant made a written agreement with Smt Hemlata Devi, Sri Hemadhar Nath and Sri Debadhar Nath (*hereafter referred as accused persons*) that the said land will be sold to them for Rs.1 lakh and the amount shall be paid within one month of the said agreement. However when the accused persons could not paid the money within the said time, the husband of the informant Sri Pardip Nath and one Sri Hemanta Nath started to plough the said land. However on 30.07.2013 since the husband of the informant was sick and had gone for treatment along with Sri Hemanta Nath, the informant then went to said disputed field where the accused persons were already present and thereafter they forced the informant to return them the photocopy of the written agreement made between them. The accused persons also forced the informant to sign some other papers. The accused persons threatened to kidnap the informant and also kill her.

2. The police upon receipt of the ejahar registered Tezpur Police Station case no: 964/2013 under sections 342/347/348/387/420/209 read with 34 of the Indian Penal Code (IPC) and entrusted SI Sri TM Bordoloi to investigate the case. The I/O then visited the place of occurrence, recorded the statement of the witnesses, arrested the accused persons and enlarged him on bail.

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Upon completion of the investigation, the police submitted chargesheet against the accused persons under section 341/506/294 r/w 34 IPC.

3. The accused persons were called upon to enter trial and accordingly they appeared and the copies of the relevant documents were furnished to them. Particulars of offences under section 341/506/294 r/w 34 IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined only six witnesses and exhibited three documents in support of their case; whereas the defence declined to adduce evidence.
5. Since there were incriminating materials against the accused persons they were examined under Section 313 CrPC. The defence case is of total denial as is evident from the examination of the accused persons under section 313 CrPC.
6. Upon the case set up by the prosecution I have framed the following point for determination in this case in order to arrive at a definite finding as regards the matter in dispute-

(i.) Whether the accused persons on 30.7.2013 in the evening hours voluntarily obstructed the informant and prevented her to proceed in furtherance of their common intention and thereby committed offence under section 341 r/w 34 IPC?

(ii.) Whether the accused persons on the same date, time and place threatened to cause injury to the informant

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and in furtherance of their common intention and thereby committed offence under section 506 r/w 34 IPC?

(iii.) Whether the accused persons on same date and time place uttered obscene words to the informant in public in furtherance of their common intention and there by committed offence under section 294 r/w 34 IPC?

DISCUSSION,DECISION AND REASONS THEREOF:

7. I have gone carefully through the entire evidence and the materials on the record.
8. ***PW 1, Smt Banti Devi (hereafter referred as PW 1)*** had stated in her evidence that the accused persons are her relatives. On 30.07.2013 the alleged incident took place in the evening time when she had gone to check in her paddy field whether cows and goats have entered there or not. Thereafter the accused persons hold her and asked her back some written agreement. However when PW 1 refused to return the same, the accused persons threatened to kill her and also kidnap her. The accused persons had chased her with Dao, axe but somehow PW 1 ran to her house and saved her life. Thereafter the accused persons gave her false information that that her paternal brother Benu Nath and Molia Nath had expired. PW 1 further stated that the accused persons had tried to transfer the land of her deceased father in law in their name. Thereafter when she came to know about it she lodged this case against them. She proved exhibit 1 as the ejahar lodged by her.
9. In ***her cross examination, PW1*** had stated that at the time of incident

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she was present along with her son Sri Nikumoni Nath. The alleged incident took place in the field and many people were working in their respective fields at that time. However, no family member of hers was present in the field at that time. She further stated that the place of incident i.e., the disputed land was in the possession of Late Louram Nath for the last 30 years and it was used for agriculture; the said land was an Eksoniya Mati (a term used to describe Government land). PW1 further stated that she had not filed any civil case although the accused persons were possessing the said disputed land for the last 30 years, being the legal heirs of Late Louram Nath. PW 1 further admitted that she had not seen any original land agreement along with her case record and have also not filed any civil case for getting money from the accused persons as per the said written agreement. PW1 further admitted that the accused Hemlata Devi had filed a police case against the her husband Pradip Nath and one Romoni Nath alleging that on 8.6.2013 both of them had tried to forcibly take possession of the said land from the accused persons and also tried to destroy the written land agreement and have tried to damage crops worth Rs. 1 lakh; presently the said case being pending in court. Further the accused Debodhar Nath had also filed a police case against her husband Pradip Nath and Romoni Nath for burning the said accused's house in the disputed land for which the police were searching to arrest her husband, Romoni Nath and few others. PW 1 further stated that she had not made her son Nitumoni Nath a witness to this case. She further denied the fact that she had filed false case against the accused person because they have also filed case against her husband. PW1 had stated in her evidence that the accused Debodhar Nath works in a Bank and on the alleged date of incident it was a working day. However, she denied the fact that the accused Debodhar Nath who was not present on date of the alleged incident.

10. ***PW2 Sri Komal Chandra Nath (hereafter referred as PW 2)***, has stated in his evidence that the alleged incident took place on 30.7.2013 at about 11 AM when he had gone to grazed his cow. Thereafter, he heard some noise and reached the place from where the noises were coming.

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When he reached there, he saw Smt. Banti Devi and her son where sitting and crying; since he felt bad seeing them crying he went away. PW 2 further stated that he knows the accused persons and on the date of alleged incident he heard the family members of the accused person were abusing Banti Devi. PW 2 had stated that he knew that a written document was made through the Gaon Burah wherein it was stated that the accused persons have purchase the land of the father-in-law of Banti Devi. PW 2 further stated that he has no knowledge about the fact that there is a disputed going on between the accused Debodhar Nath and Pradeep Nath and Hemnath because the accused Debodhar Nath had not made payment of this said land and Pradeep and Hemnath had forcibly tried to snatched the said land.

11. In his ***cross examination***, PW 2 had stated that since he has hearing and eye sight problem he cannot see and hear anything which is beyond 6 to 10 foot. Further PW2 had clearly stated that he was; as such he could not heard and see who all were present at the placed on occurrence. However, when he saw Banti Devi crying and the family members of the accused persons there, he presumed that some incident must have happened between them and so he returned back his home. PW 2 clearly admitted in his cross examination that the accused persons were not present in the placed of occurrence at that time. PW 2 also stated that the accused person has possessed the disputed land for the last 60 years wherein the alleged incident took place and had been doing agriculture there. PW 2 have further clearly admitted in is cross examination the husband and brother-in-law of the informant had forcibly tried to grab the land of the accused persons on 8.6.2013 for which the accused Hemlata Devi had given a police case against the informant and her family members and police have arrested them. He also stated that the accused Debodhar Nath also filed a police case against the informant and her family members for burning his house are located in the disputed land.

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12. ***PW 3 Sri Baneshwar Nath (hereafter referred as PW 3)*** had stated in his evidence that on 29.7.2013 the women committee of their village have arranged the meeting near his house where he was also invited. The said meeting was held to affect a compromise between the informant and the accused persons in connection with their dispute. However in the said meeting the accused Hemlata Devi and her family members did not come due to which the said meeting was dispersed. PW 3 also stated that he has knowledge that there is same dispute going on between the informant and his family members.

13. In his ***cross examination PW 3*** has stated that he has no knowledge about the alleged incident since he has not seen it himself. PW3 further admitted that the accused persons had been doing agriculture in the disputed land for the last 60 years, however it was the informant and her family members who have tried the forcibly grab the land from the accused persons for which the accused Hemlata Devi had filed a list case against the informant and her husband. PW3 also admitted in his cross examination that the accused Debodhar Nath has a house in the said disputed land and the informant and her husband along with their other family members have burn the house of the said accused for which the accused Debodhar Nath have also given a police case against them and PW3 had accompanied the said accused to the police station in connection with the case.

14. ***PW 4 Smt Padma Devi (hereafter referred as PW 5)*** has stated in her evidence that she had heard that there was some land disputed was going on between the informant and the accused persons. She further stated that the informant had arranged village meeting in connection with some rape case against the accused persons; however since the accused Hemalata Devi was not present in the said meeting nothing was sort out in the said meeting. She also admitted that she knows nothing about the alleged incident since she was not present in the village after the next date of meeting.

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15. In her ***cross examination PW 4*** had stated that she knows nothing about the land where the alleged incident took place.
16. ***PW 5 Sri Nikumoni Nath (hereafter referred as PW 5)*** has stated in a evidence that the alleged incident took place on 30.7.2013 at about 10 AM when he was going to their field. Thereafter he heard and saw the accused persons were standing in the field and abusing them in slang words (the words being so obscene, that it is difficult for the said witness to utter them in the court openly). Thereafter he saw the accused person Hemodhar Nath was carrying a Dao and the other two accused persons were carrying lathis (sticks). The accused person Hemlata Devi and Hemodhar Nath were instigating the accused Debodhar Nath to kill him along with his mother. The accused persons surrounded them but however since nearby persons saw them they hid the weapon behind their hand and moved away. Thereafter PW 5 along with his mother ran away to their house. PW 5 have further stated in his evidence that they already had a land dispute along with the accused person since long.
17. In his cross examination PW 5 had stated that the accused person have filed a case against his father and paternal uncle for which police had come to search for his father and paternal uncle. PW 5 further admitted that incident took place on a road and it was witnessed by Komal Chandra Nath Baneswar Nath and Padma Devi; other than them no one else witnessed the alleged incident. He further stated that the alleged incident took place only once at 10 AM.
18. ***PW 6, Sri Tinkumoni Bordoloi ch hereafter referred as PW 6)*** is an investigating officer of this case and his evidence is merely formal in nature. He proved exhibit 2 as the charge sheet filed by him. He further proved Exhibit 3 as the bail Bond of the accused person.
19. On the perusal of the above materials in the record it has come out that

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there are severe contradictions between what have been stated by the PW 1 in her evidence and the ejahar i.e., Exhibit 1 lodged by her. Firstly, PW 1 had stated in her evidence that at the time of incident her son Sri Nikumoni Nath was also present with her; however she have completely omitted the fact that her son was present with her at the time of incident in her Exhibit 1. Nowhere in her Exhibit 1 had she stated that her son was present with her. Secondly, PW 1 has stated in her evidence that the accused persons chased her with Dao, axes and sticks but nowhere in Exhibit 1 had she stated that the accused persons carried any kind of weapon with them. In my opinion any person against whom any offence would have been committed he or she would not omit such an important fact. Thirdly, PW 1 who had stated in her evidence that at the time of incident many people made their working nearby the place of occurrence but she had not mention the name of any such person specifically in her Exhibit 1 who had witnessed the alleged incident; in fact PW 1 had not mention any person's name specifically in her evidence also.

20. Further PW 1 who alleges in her evidence that her son Sri Nikumoni Nath was present with her at the time of incident, but in her cross examination she had clearly admitted that she had not mention her son's name is a witness to her case when she had initially filed the case in the Court. Thus, omission to mention about the alleged manner of incident in the ejahar, according to me is a material omission, and the same leads me to doubt the version of the PW1 and it appears that the PW1 has improved upon her earlier statements.
21. Now coming into the evidence of PW 5, Sri Nikumoni Nath who claims that he was present along with his mother at the place of incident, it has come out from his evidence that the alleged incident took place on the road. If that is so then whose version is to be believed since PW 1 had stated in evidence that the incident happened in the field. Further PW 5 had stated that the accused persons were carrying weapons like Dao, sticks with them and has also surrounded him along with his mother. However if go through

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the entire evidence of PW 1 she had nowhere uttered that the accused persons have surrounded her son also. PW 1 had simply stated that PW 5 was also present with her. It seems she had simply stated the name of PW 5 for the sake of mentioning.

22. Moreover PW 5 claims that Sri Komol Chandra Nath, Sri Baneshwar Nath and Smt Padma Devi had witnessed the alleged incident. Now for the sake of proper scrutiny of the fact whether the aforesaid persons had witnessed the alleged incident or not, let me go through the evidence of the aforesaid persons who are examined as witnesses in this case.

23. On going through the evidence of PW 2 it has come out that although he stated that he saw PW 1 and PW 5 sitting and crying in the place of occurrence, but he had admitted that he had not seen the accused persons present at the said place. In fact he had clearly stated that he had seen the relatives of the accused persons nearby the place of occurrence and saying something to the informant and his son. Further it should be taken into account that the distance between the police where PW 2 was standing and the place of occurrence was almost 30 to 40 foot and when PW 2 had clearly admitted that he cannot see and hear beyond 5 to 10 foot as such there is no point of relying his evidence because he himself is not sure about what he saw and heard. Also there are severe discrepancies in his statements which creates doubt on his version because he has been giving changing statements in his evidence for example once he is stating that when he reached the place of incident he saw the informant and her son crying. Later on he is stating that he cannot hear or see anything beyond 40 foot. Thus all these changing statements make his evidence totally unreliable for proving the prosecution case beyond reasonable doubt.

24. With regard to the evidence of PW 3 and PW 4, it has come out that neither they have witness any incident nor has knowledge about its occurrence. They were only part of the meeting which was held to compromise some dispute that was going on between the parties. As such there is no point of

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expecting any material things from the evidence of the said witnesses. Therefore, on what basis PW 5 had stated that the aforesaid persons have witnessed the alleged incident is quite vague and thinkable.

25. Further PW 1 had stated that the alleged incident took place in the evening hours and PW 5 had stated that the incident happened at 10 AM. It is quite surprising because there is a huge difference between the two timings of the occurrence of the alleged incident. It is quite thinkable to the fact that how there can be so much of difference between the two timings by the persons who alleges themselves to be present at the time of incident.
26. Thus, what has come out clearly that some land dispute had been going on between the informant and the accused persons. But there is no single material evidence on record that would implicate that the accused persons have committed the offences as alleged by the informant in her ejahar on the date of incident. None of the witnesses have stated anything suggesting that the accused uttered obscene words to them. In fact all the witnesses including the informant and her son had stated that the accused persons have also filed police case against the informant and her husband and the failure on the part of the prosecution to examine any material witness casts a shadow of doubt upon the version of the informant with regard to the occurrence of the alleged incident in question.
27. As such in view of the discussions made above it is held that the prosecution has failed to prove that the accused persons have committed the alleged offences of wrongful restraint, criminal intimidation etc in furtherance of their common intention at the relevant time as alleged in the ejahar.
28. **DECISION:** The prosecution has failed to prove that the accused persons have committed the alleged offences of wrongful restraint, criminal intimidation etc in furtherance of their common intention at the relevant

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time as alleged in the ejahar.; as such all the points for determinations are answered in the negative and in favour of the accused persons.

ORDER

29. In view of the discussions made above and the decision reached in the foregoing issues it is held that the prosecution has failed to prove the charges against the accused persons; as such the accused person are acquitted of the charges under section 341/506/294 r/w 34 IPC and is set at liberty forthwith.
30. The bail bond of the accused person and their surety shall remain in force for another six months from today.
31. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 25th day of May, 2015 at Tezpur.

(Ms Meenakshi Sarmah)
Judicial Magistrate First Class,
Tezpur, Sonitpur

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APPENDIX

PROSECUTION EXHIBITS:

1. EAHAR
2. CHARGESHEET
3. BAILBOND

DEFENCE EXHIBITS

NONE

COURT EXHIBITS:

NONE

PROSECUTION WITNESSES

- 1.) SMT BANTI DEVI
- 2.) SRI KOMOL CHANDRA NATH
- 3.) SRI BANSEHWAR NATH
- 4.) SMT PADMA DEVI
- 5.) SRI NIKUMONI NATH
- 6.) SRI TINKOMONI BORDOLOI

DEFENCE WITNESSES

NONE

COURT WITNESSES

NONE

(Ms Meenakshi Sarmah)
Judicial Magistrate First Class,
Tezpur, Sonitpur