

GR CASE NO 876/2007
PROSECUTOR: STATE OF ASSAM
ACCUSED: SRI LILA BASUMATARY & ANR

DISTRICT: SONITPUR

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

GR CASE NO 876/2007

(Arising out of Rangapara PS Case No 96/2007)

U/S 448/387/140/511 r/w 34 IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: 1.) SRI LILA BASUMATARY

2.) SRI ANSUMA@ GAHAN BASUMATARY

PRESENT: Ms Meenakshi Sarmah, AJS

Judicial Magistrate First Class

Tezpur

APPEARED:

ADVOCATE FOR THE PROSECUTION: SHRI J ADHIKARI, Asst PP

ADVOCATE FOR THE ACCUSED: SHRI S SHARMA & ANR

CHARGE FRAMED ON: 23/3/2010

EVIDENCE RECORDED ON: 6/09/2013, 19/08/2014 & 11/12/2014

ARGUMENT HEARD ON: 20/4/2015

JUDGMENT DELIVERED ON: 18/05/2015

TYPED: MS M SARMAH, AJS
JMFC, TEZPUR

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J U D G M E N T

1. The prosecution in this case is launched by lodging of an ejahar with the Rangapara PS on 26/5/2007 to the effect that on 16/5/2007 at Bagijuli village, while Bihu function was going on two unidentified persons wearing uniform entered into the house of one Sri Stifan Munda and demanded Rs 1000 from him and asked him to give the said money within one month. Thereafter these two persons again entered into the house of the Prem Bahadur Limbu (*hereafter referred to as informant*) at around 8:30 pm and asked him to arrange Rs 50,000/- within one month. Further those persons threatened the informant not to inform this matter to the NDFB people and if he does so, they threatened to kill the informant in the jungle. Finding no other option the informant informed the matter to the village and the villagers arranged a meeting and contacted the NDFB persons who denied making any such demand. Thereafter on 25/5/2007 the two unidentified persons came to the house of Stifan Munda and asked him to arranged Rs 1000/- and give the same by 30/5/2007. These two unidentified persons again went to the house of informant and then the villagers caught them as planned in the meeting and identified them as Lila Basumatary and Ansuma@Gahan Basumaraty (*hereafter referred to as accused persons*) and handed them over to the police.

2. The police upon receipt of the ejahar registered Rangapara Police Station case no: 96/2007 under section 448/387/140 r/w 34 of the Indian Penal Code (IPC) and started investigation in the case. Upon completion of the investigation, the police submitted chargesheet against the accused persons namely; Sri Lila Basumatary and Ansuma @ Gahan Basumatary under section 448/387/140 r/w 34 IPC.

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3. It would be pertinent to mention herein that the accused persons Sri Ansuma @Gahan Basumatary could not be found and was declared absconder; after which the case was filed against them.
4. The remaining accused person, Sri Lila Basumatary (**hereafter referred as accused**) was called upon to enter trial and accordingly the said accused person appeared and the copies of the relevant documents were furnished to him. The formal charge under section 448/387/140/511 r/w 34 IPC was framed against the accused person and the same was read over and explained to him, to which they pleaded not guilty and claimed to be tried.
5. The prosecution in support of its case examined as many as five witnesses and exhibited one documents; whereas the defence declined to adduce evidence.
6. Since there were incriminating materials against the accused Sri Lila Basumatary he was examined under section 313 CrPC.
7. 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 on 16/5/2007 and 25/5/2007 at around 7:30 pm and 8:30 pm the accused persons entered into the property of the informant and Stifan Munda to commit offence in furtherance of their common intention and thereby committed offence under section 448 r/w 34 IPC?

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(ii.) Whether the accused persons on the same date, time and place attempted to put the informant and Stifan Munda in fear of death or grievous hurt for committing extortion of Rs 50,000/- and Rs 1000/-respectively in furtherance of their common intention and thereby committed offence under section 387 /511 r/w 34 IPC?

(iii.) Whether the accused person on the same date, time and place worn any garb or token resembling that of a soldier in furtherance of their common intention and thereby committed offence under section 140 r/w 34 IPC?

DISCUSSION, DECISION AND REASONS FOR THE

DECISION:

8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.
9. **PW 1, Sri Prem Limbu** had stated in his evidence that in the year 2007 at around 7 pm while the accused persons were being chased by public, the accused persons entered in his house and thereafter the public caught them and handed them to the police. He further stated that he only knows this much about the alleged incident. He proved Exhibit 1 as the ejahar.

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10. **PW 2, Sri Mihiram Boro** who had been declared hostile witness by the prosecution had stated in his evidence that on the alleged date of incident he came home after seeing bhauna. He denied making any statement before the police and has stated that whatever he had stated in the Court is truth.

11. **PW 3, Sri Loknath Boro** had stated in his evidence that on the alleged date of incident while he along with his four five friends were coming towards home he heard hue and cry from the house of the informant and stopped there. Thereafter when he reach the house of the informant he came to know that NDFB personnel's had come and demanded money from him. After that police reach the spot and took away those persons. The police then called them and took their signatures. He proved Exhibit 2 as the seizure list; however he had clearly stated that he has not seen what was seized.

12. **PW 4 Sri Stifan Munda** who had been declared hostile by the prosecution had stated in his evidence that he got a paper demanding Rs 1000/- from him. In his cross examination he had clearly stated that he had never made any statement before the police.

13. **PW 5, Sri Nitul Boro** had stated in his evidence that he had heard that someone had demanded money and thereafter he had informed the police. He further stated that after he informed the police, the police came and took away the accused persons.

14. It is pertinent to mention that the Investigating Officer could not be examined in this case since report has come stating that he had expired as such on the basis of the said report, the evidence of the Investigating Officer was dispensed with.

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15. Thus after going through the above evidences on record, it is important to say that what is stated in Exhibit 1, it is totally different from that of what has been stated by the informant who is examined as PW 1 in his evidence. As per Exhibit 1, the informant had stated on 16/5/2007 two unidentified persons who were later examined as the said accused persons came in his house and demanded Rs 50,000/- from him and thereafter again on 25/7/2007 when the said persons came in his house the villagers caught them. However, the informant had stated a totally different story in his evidence that the accused persons came running to his house while they were being chased by public and then they were caught by the public and taken away. PW 1 had nowhere uttered in his entire evidence that he was demanded any money from anyone. Also after the perusal of the evidence of the PW 1, it has also come out clear that he nowhere has knowledge about the fact that any kind of demand was made from any Stifan Munda also.
16. Further PW 1 had stated in his evidence about one day incident wherein the accused persons were apprehended by public while they were being chased. On the other hand in Exhibit 1 the dates of incidents had been stated to be 16/5/2007 and 25/5/2007; that is incident occurring of two dates. Thus it is quite surprising as to which of the version of the story is true. It is not possible for any person to casually state in his or her evidence about the manner of incident in such a casual manner as if nothing had happened so serious when he himself had filed the case.
17. Although PW 1 had stated that the accused persons entered in his house but nowhere in his evidence had he stated that the accused person entered in his house to commit offence; in fact he had clearly stated that the accused persons while being chased by public entered in his house. It is quite obvious that while being chased by public anybody out of fear can enter anywhere in order to save him. Also PW 1 had remained silent on the part about whether the accused were wearing any uniform.

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18. With regard to the evidence of PW 2, who had been declared hostile by the prosecution; he had clearly stated that after seeing bhauna he came back home. As such there is no question of him knowing anything about the alleged incident. There is nothing in his evidence which could be stated the manner in which the alleged incident took place. In fact he denied making any kind of statement before the police.
19. Further PW 3 although had stated that NDBF persons came and demanded money from the informant and later police came and took away those persons ; had himself diminished his evidence when he had clearly admitted in his cross examination that the time of incident it was dark and there was almost 400-500 people present at the spot. Therefore there is no question of him identifying who are the real culprits. Further though PW 3 had proved Exhibit 2 as the seizure list, but he had clearly stated that he do not know what was seized since he was not shown the seized articles. As such what was seized and the non production of the said material exhibit in the Court if any, by the prosecution gives a serious blow to the case of the prosecution to prove the charges against the accused person. Further when the informant had denied of any demand to him, so for what reason and how PW 3 had come to know about any demand is questionable.
20. Further PW 4 , Stifan Munda though had been declared hostile by the prosecution ; the only material thing that is found in his evidence that he admits that demand was made to him of Rs 1000/-. But he had clearly stated in his evidence that the demand was made through paper. He had nowhere stated that any person came to make the aforesaid demand.
21. Moreover in my opinion the evidence of PW 5 holds no weigh since he have only heard about the incident and thereafter informed the police. Thus what appears

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from his evidence that his only role in this case was that he informed the matter to police. He has no personal knowledge about what is the real manner of incident.

22. Thus it has clearly come out that none of the witnesses could state what the real incident is. Each of them had stated their version of the story and none of them have corroborated each other. As such due to this serious loophole of the case of the prosecution, the benefit goes to the accused.

23. There are absolutely no materials on record which could remotely suggest that the accused person is involved in this case.

24. The prosecution thus has failed to prove the charges leveled against the accused person Sri Lila Basumatary.

25. **DECISION:** The prosecution has failed to prove that the accused person Sri Lila Basumatary have committed the aforesaid offences in furtherance of their common intention at that relevant point of time as alleged in the ejahar, as such the point for determinations are answered in the negative, and in favour of the accused person.

ORDER

26. In view of the discussions made above and the decision reached in the foregoing points for determination it is held that the prosecution has failed to prove the charges against the accused person namely Sri Lila Basumatary; as such the said accused person is acquitted from the charges under section 448/387/511/140 r/w 34 IPC and is set at liberty.

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27. The bail bond of the accused person and his surety shall remain in force for six months from today.

28. The case is disposed of on contest without cost.

Given under my hand and seal of this court on this 18th day of May, 2015.

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

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APPENDIX

PROSECUTION EXHIBITS

1. EAHAR
2. SKETCH MAP

DEFENCE EXHIBITS

NONE

COURT EXHIBITS

NONE

PROSECUTION WITNESSES:

- 1.) SHRI PREM LIMBU
- 2.) SRI MIHIRAM BORO
- 3.) SRI LOKNATH BORO
- 4.) SRI STIFAN MUNDA
- 5.) SRI NITUL BORO

DEFENCE WITNESS

NONE

COURT WITNESSES

NONE

(Ms Meenakshi Sarmah)

Judicial Magistrate First Class,

Tezpur, Sonitpur.

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