

**G.R No-3052 of 2015
(State of Assam Vs Sri Minutu Baruah & Ors)**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR: TEZPUR

G. R. Case No. 3052 of 2015

Under section 448/294/323/352/506/34 of I.P.C

Present:-**Sri N. J. Hague, AJS,
Chief Judicial Magistrate,
Sonitpur, Tezpur**

State of Assam

-Vs-

- 1. Sri Mintu Baruah**
- 2. Sri Mridul Baruah**
- 3. Sri Rintu Baruah**

**All are R/O:- Pathar Chuburi Dekargaon,
P/S:- Tezpur
Dist:- Sonitpur, AssamAccused Persons**

Advocate appeared:

Mrs. Niva Devi, Addl. P.P..... For the State
Mr. Rose Bhorali, Ld. Advocate.....For the accused persons

Evidence recorded on	: - 20.02.2018, 26.02.2018, 16.08.2018 22.10.2018 & 04.11.2020
Date of Statement of defence	: - 12.11.2020
Argument heard on	: - 12.11.2020
Judgment delivered on	: - 12.11.2020

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that the informant named Dr. Koshy C. George, Managing Director of Baptist Christian Hospital, Tezpur lodged an ejahar before the O/C, of Tezpur PS through I/C of Kacharigaon Police Outpost, alleging inter alia that on 04.11.2015 at about 6:40 PM, one patient named Sri Tilak (Elo) Baruah was brought to the Emergency Department of their hospital with alleged history of being hit by a motorcycle while crossing the road at Dekargaon at 6:30 PM and found severe head injury and was unable to breath. It is also alleged by the informant that the patient was immediately incubated and oxygen was started for the patient and as the

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medical condition of that patient was critical, the patient was referred to Guwahati Medical College for the Neurosurgical management. However, in between 7:30 PM to 7:45 PM, when the patient was being shifted to an Ambulance, the relatives of the patient started abusing obscene words against the hospital and the doctors and also threatened and abused their nurse named Mr. Junul Nitri Guria, who was on duty at that time and the said Junul was pushed against the hospital billing counter and was beaten up by the patient's relatives. He also pleaded that the patient's relatives also beaten up the hospital security guards namely, Tutumoni Borah and Mr Rimu Chetia and thereafter, the relatives of the patient went back to the Emergency Department and verbally abused and manhandled the doctors, namely, Dr. Pritom Doimari and Dr. Shaki Pankiraj.

"INVESTIGATION"

2. On receipt of the Ejahar, Tezpur P.S Case No. 1520 of 2015 u/s 448/294/506/352/34 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s448/294/323/506/352/34 of I.P.C against the accused persons, namely, Sri Mintu Baruah, Sri Mridul Baruah and Sri Rntu Baruah.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s 207 of Cr.P.C was furnished to the above-named accused persons. After hearing both side, particulars of offences u/s- 448/294/323/352/506/34 of I.P.C was read over and explained to the accused persons by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused persons examined as many as 05 (Five) numbers of witnesses including the informant, victims and the investigating officer of this case. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused persons are examined u/s- 313 Cr.P.C and their pleas of denial were recorded in separate sheet and the

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same kept with the case record. Accused declined to adduce evidence on their defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case:-**
 - (i.) **Whether on 04.11.2015 at about 06:40 PM, the accused persons, in furtherance of their common intention entered into Baptist Christian Hospital, Mission Chariali, and Tezpur with intent to commit an offence and thereby committed an offence punishable u/s 448/34 of IPC?**
 - (ii.) **Whether on the same date, time and place, the accused persons, in furtherance of their common intention scolded against the Baptist Christian Hospital, Mission Chariali, Tezpur and the doctors by using filthy languages and thereby committed an offence punishable u/s- 294/34 of IPC?**
 - (iii.) **Whether on the same date, time and place the accused persons in furtherance of their common intention voluntarily caused simple hurt by way of beating the victims, namely, Mr. Junul Nitir Guria, Mr. Tutumoni Borah, Mr. Rimu Chetia and Dr. Pritam Doimari and thereby committed an offence punishable u/s 323/34 of IPC?**
 - (iv.) **Whether on the same date, time and place all the accused persons in furtherance of their common intentions threatened the victims with dear consequences of their lives and thereby committed an offence punishable u/s 506/34 IPC?**
 - (v.) **Whether on the same date, time and place the accused persons, in furtherance of their common intention, used criminal force upon the victims, namely, Mr. Junul Nitir Guria, Mr. Tutumoni Borah, Mr. Rimu Chetia and Dr. Pritam Doimari and thereby committed an offence punishable u/s 352/34 IPC?**

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the Ejahar examined seven numbers of witnesses including informant, victims, medical officer and the investigating officer. Let us reproduce the evidences of prosecution side for the sake of proper appreciation of evidences.

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8. PW-1, Dr. Koshy C. George, Managing Director of Baptist Christian Hospital, Tezpur being the informant deposed that he does not know the accused persons of this case. He deposed that the incident took place on 04.11.2015 at about 7:45 PM and on the day of alleged incident; a patient named Tilal Barman brought to their hospital with severe head injury and was struggling to breath. Thereafter, Emergency doctor and nurses immediately attend the patient and as the condition of the patient was very serious he was referred to Guwahati Medical College after stitching the patient. Seeing the relatives of the patient got angered and their staffs and nurses immediately rushed for dressing the injury of the patient. He further deposed that the relatives of the said patient assaulted the staffs nurses verbally and physically and abusing obscene words towards the hospital and the doctors. He also deposed that the relatives then went inside the emergency room and assaulted their doctor, named, Dr Pritom Doimari, who was on duty at that time. He also deposed that Dr Shaji Pankhiraj, who was also present there, was assaulted and started using abusing words towards him. Further, he deposed that the entire incident was captured in CC TV installed in their hospital. Later, he lodged the ejahar. Ext-1 is the ejahar lodged by him wherein Ext-1(1) is his signature.
9. PW-1 in his cross examination testified that the ejahar was lodged on the same day itself. He deposed that he lodged the verbal complaint on the very day of occurrence, but he lodged the FIR on the subsequent day. He further deposed that at the time of the alleged incident about 50 people gathered at the place of occurrence. He deposed that he don't know the relatives of the patient personally. He also deposed that he was not present at the time of alleged incident. He deposed that police seized the recording of CC TV. Police had asked him about the incident. He denied the fact that he had not stated before the police that the relatives of the patient assaulted Dr. Shaji Pankhiraj by entering into the emergency room. He further denied the fact that no such incident took place as stated by him before the court. He also denied the fact that there is no such recording of assault on their CC TV footage.
10. PW-2, Sri Junul Nitir Guria one of the victim of this case deposed that he knows the informant as well as the accused persons of this case. He deposed that the

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incident took place on 04.11.2015 at about 7:30 PM and at the relevant time; he was present in the counter of their hospital. He further deposed that on the day of incident, one patient named Tilak was treated at their hospital and later, the patient was referred to Guwahati. He further deposed that as per the relatives of the patient, they were not properly treated the said patient and thereafter, the son of the said patient i.e. accused Mintu Baruah pushed him and also gave him blows on his face and due to that he fell down. The security personnel rescued him and later, the managing director and the other staffs of their hospital came at the place of occurrence and informed the police.

11. PW-2 in his cross examination testified that police had interrogated him in connection with this case on the very day of alleged incident. He admitted the fact that he did not state before the I/O that accused Mintu gave blows on his face. He deposed that he was medically examined by the police at their hospital. He denied the fact that no such injury sustained by him. He further deposed that there were 20 to 25 people gathered at the place of occurrence. Moreover, he admitted that fact that he did not know who was the relative of the said patient amongst the people who gathered at the place of occurrence. He denied the fact that no such incident took place as stated by him and he had deposed falsely before the court.
12. PW-3, Dr. Pritam Doimari, the another victim deposed that on 04.11.2015, he was working as Medical Officer at Baptist Mission Hospital, Tezpur and on that day, one patient with a history of Road Traffic accident came to their hospital in between 7 PM to 7:15 PM and thereafter, he examined the said victim as he was working at Emergency unit. He further deposed that as the patient was in a critical condition and was having breathing problem, the patient was referred to Guwahati for better treatment. He also deposed that the attendants who brought the patient got furious on the pretext of not providing proper treatment to the patient and thereafter, they created a commotion at the hospital premises and one of their medical staff named, Mr. Junul Nitir was assaulted by the attendants. The security guard posted at their hospital was also assaulted. He further deposed that the patient was again brought back to their hospital for

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adequate treatment and at that time one of accused named Rinku reoffering to manhandle him.

13. PW-3 in his cross examination testified that about 50-60 people were present at the time of incident. He deposed that he has not mentioned the name of the accused who manhandled him before the I.O. He admitted that he exactly cannot say as to whether the accused he has pointed out before the court is the one who actually manhandled him as many people were present at that time.
14. PW-4, Dr. Asolie Chese, who is the medical officer of this case deposed that on 04.11.2015, he was posted as Medical Officer at Baptist Mission Hospital, Tezpur and on that day, he examined one Mr. Junul Nitir Guria with alleged history of assault by some people at around 7:30 PM, while he was on duty in the emergency room of the hospital. On examination, he found the patient was stable; he had swelling on the right cheek and mandibular region. He further deposed that X-ray did not show any fracture and the nature of injury was simple. He also deposed that on that day, he also examined one Mr. Tutumoni Borah and he has an alleged history of assault by some people at the same time and place. On examination, he found him to be stable. He had pain on his left shoulder and the nature of injury was simple. He also deposed that on that day, he examined Mr. Rimu Chetia with an alleged history of assault by some people while he was on his duty in the emergency room at the hospital. He was allegedly pushed and beaten on his abdomen. On examination, he was found stable. He deposed that no external injury was seen and the nature of injury was simple. Furthermore, he deposed that on the same day, he also examined Dr. Pritam Doimary with an alleged history of assault by some people while he was on duty at the emergency room of their hospital. On examination, he was found stable. No external injury was seen and the nature of injury was simple. He identified his reports of the injured persons as Ext-2, Ext-3, Ext-4 & Ext-5 and Ext-2(1), Ext-2(2), Ext-2(3) and Ext-2(4) are his signatures.
15. PW-4 in his cross examination testified that Ext-2, Ext-3, Ext-4 & Ext-5 were submitted on police requisition and the alleged history of assaults mentioned in Ext-2, Ext-3, Ext-4 & Ext-5 were mentioned as per version of the patients. He

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admitted the fact that patient named Tutumoni Borah told him that he was having pain on his left shoulder and on that basis, he has mentioned the same in Ext-3. He deposed that Ext-2, Ext-3, Ext-4 & Ext-5 were prepared on the basis of their hospital records. He has not brought the hospital records before this court on the basis of which Ext-2, Ext-3, and Ext-4 & Ext-5 were prepared. He denied the fact that the medical reports were prepared by him on the instruction of the informant.

16. PW-5, Sri Padma Kanta Das (Retired SI), who is the investigating officer of this case, deposed that on 05.11.2015 he was posted at Kacharigaon Police Outpost as ASI and on that day, informant named Dr. Koshy C. George lodged an ejahar before the O/C of Tezpur PS through I/C of Kacharigaon Police Outpost. Accordingly, O/C of Tezpur PS registered a case vide Tezpur PS Case No. 1520/15, u/s-448/294/506/352/34 of IPC and he was endorsed to investigate the case. During my investigation, he visited the place of occurrence, recorded the statement of the witnesses, prepared sketch map of the place of occurrence and collected the injury reports of the victims vide Ext-2, Ext-3 and Ext-4. He identified the sketch map as Ext-6 wherein Ext-6(1) is his signature. During investigation, he apprehended the accused persons and forwarded them before the court and on conclusion of the investigation, he has submitted charge sheet against the accused persons, namely, Mintu Baruah, Rintu Baruah and Mridul Baruah u/s 448/294/323/506/352/34 of IPC. He identified the charge sheet as Ext 7 wherein Ext-7(1) is his signature.
17. PW-5 in his cross examination testified that the ejahar was received on 11.11.2015 and he has visited the place of occurrence on the basis of GDE vide No. 105 dated 05.11.2015 prior receiving the ejahar. He deposed that he has not submitted any extract copy of GDE with case record. He further deposed that he has recorded the statement of the witnesses on the basis of the GDE prior receiving the ejahar. He admitted the fact that PW-1 (Informant) did not state before him that the relatives of the patient went inside the emergency ward and assaulted the victim Dr. Shaji Pankhiraj. Moreover, he deposed that he neither seized any CC TV camera nor any CCTV camera's footage from the place of occurrence. He admitted the fact that none of the witnesses have

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mentioned the names of the accused persons in their statements recorded u/s 161 of Cr.P.C. He further deposed that he has visited the place of occurrence on 04.11.2015 at about 7:45 PM and saw many people gathered there. On the day of incident at about 7:45 PM, all the victims appeared before Kacharigaon Police Outpost and in connection with GDE No. 79 dated 04.11.2015 all of them sent for medical examination. Further he deposed that he has collected the medical report of victim Dr. Pritam Doimari in connection with Tezpur PS Case No. 1520/16. He denied the fact that the accused persons are not involved with the alleged incident and he has not properly submitted the charge sheet as per law.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

18. In this case, the prosecution side has got the burden of prove to establish that on 04.11.2015 at about 6:40 PM, when a patient, who sustained severe injury was brought to Emergency ward of Baptist Christian Hospital, Tezpur and as the medical condition of the said patient was critical, he was referred to GMCH for Neurosurgical management and at the time of shifting the patient in an Ambulance, the relatives of the said patient started abusing the doctors, namely, Dr. Pritom Doimari and Dr. Shaki Pankhiraj and also threatened their nurses named Junul Nitir Gauri by alleging that they did not provide adequate treatment to the patient. Further, Junul Nitir Guria was pushed and was beaten by the relatives of the patient. Now for the sake of proper appreciation of evidences on record, let us discuss all the points for determination together.
19. The prosecution side to prove the aforesaid contention examined as many as five numbers of witnesses out of which PW-1 is the informant and he testified in his evidence that on 04.11.2015 at about 7:45 PM, a patient named Tilak Barman brought to their hospital with severe head injury and was struggling to breath. He further testified that as the condition of the patient was very serious he was referred to Guwahati Medical College and on seeing, the relatives of the patient got angered and assaulted the staffs nurses verbally and physically and abusing obscene words towards the hospital and the doctors. Further, the relatives went inside the emergency room and assaulted their doctor, named, Dr Pritom Doimari and Dr. Shaji Pankhiraj and started using abusing words

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towards them. PW-1 in his cross examination testified that he was not present at the time of incident. The evidence of PW-1 appears to be hearsay in nature as admittedly he was not present at the time of incident.

20. PW-1 in his cross-examination acknowledged that police seized the CCTV footage from the place of occurrence and the I.O as PW-5 in his cross-examination affirmed that he had not seized any CCTV footage from the place of occurrence. If, so then version of PW-1 appears to be full with lots of shortcomings and that renders his evidence doubtful in nature.
21. PW-2 is one victim named **Sri Junul Nitir Guria** deposed that on 04.11.2015 at about 7:30 PM, when he was in the counter of their hospital, one patient named Tilak was treated at their hospital and later, the patient was referred to Guwahati. But as per the relatives of the patient, hospital authority not properly treated the said patient and thereafter, the son of the said patient i.e. accused Mintu Baruah pushed him and also gave him blows on his face and due to that he fell down. However, during cross examination he testified that he had not stated before the police that accused Mintu Baruah gave blows on his face. PW-2 being victim of this case failed to state the name of accused Mintu Baruah before the I.O even though his statement was recorded immediately after the incident. Meaning thereby PW-2 stated the name of accused Mintu Boruah before the court for the first time and it quite un-natural that a person who allegedly assaulted by a person failed to utter the name of offender before the police. Hence, the same appears to be a material omission on the part of PW-2 and that makes his evidence to be contradictory with his earlier statement.
22. PW-3, Dr. Pritom Doimary the another victim of this case claimed in his evidence that the attendant assaulted one Junul Nitir and accused Rintu reoffering to manhandled him. PW-3 in his cross examination testified that about 50-60 people were present at the time of incident. He deposed that he has not mentioned the name of the accused who manhandled him before the I.O. He admitted that he exactly cannot say as to whether the accused he has pointed out before the court is the one who actually manhandled him as many people were present at that time. Hence, it seen that PW-3 is not clear about the fact as to whether the accused he has pointed out before the court is the

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one who actually manhandled him as many people were present at that time. The prosecution side failed to examine the victim Junul Nitir before the court and further declined to adduce. The medical report of said Junul Nitir does not disclose any sort of injury. PW-3 further not utters the name of Rintu before the I.O. In this case there is no accused named Rintu.

23. As such it seen that PW-3 of this case failed to give any true accounts of entire alleged incident and his evidence not appears to be implicating against the accused persons. From the aforesaid discussion this court finds that evidences of PW-2 and PW-3 appears to be contradictory in respect of charge of causing voluntary simple hurt upon the bodies of victims. Furthermore, the victims have not deposed anything to support the fact of threatening them with dear consequences of life by the accused.
24. PW-4 on examining the victim not finds external injuries over the victims. He identified his reports of the injured persons as Ext-2, Ext-3, Ext-4 & Ext-5 and Ext-2(1), Ext-2(2), Ext-2(3) and Ext-2(4) are his signatures. PW-6 is the investigating officer of this case, who exhibited the sketch map to be Ext-6 and charge sheet to be Ext-7. In his cross examination admitted that the date of alleged incident was on 07.11.2016 and the ejahar was received on 08.11.2016 and the case was registered on 09.11.2016. The fact of delay in lodging the ejahar was not explained by the prosecution side. The I.O during the cross-examination affirmed that he had investigated the case on the basis of GDE and said GDE Number not produced or exhibited before this court.
25. The investigating officer i.e. PW-5 during his cross-examination affirmed that none of the witnesses have mentioned the names of the accused persons in their statements recorded under section-161 of Cr.P.C. Even in the ejahar there was no mention of names of culprits and when the I.O when to place of occurrence in connection with GDE, he found many people gathered at the place of occurrence. The ejahar of this case disclosed the fact of relatives of injured allegedly committed the offence beating, abusing with filthy language and threatening the staffs and doctors of Hospital. PW-2 says names of accused Mintu Baruah in his evidence and he had not stated such name before the Police and I.O confirmed such fact during his cross-examination. PW-3 is

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not clear about the involvement of accused persons with the alleged incident as disclosed from his own testimony. Hence, in absence of any direct evidence it is very difficult to determine that the accused persons actually were involved with the alleged incident. More also the evidences offered by the prosecution side appears to be full with lots of shortcomings and those being contradictory in nature cannot be relied upon.

26. The prosecution side admittedly failed to examine two numbers of victims of alleged incident on making several attempts and summons returned un-served. The other two victims who were examined before this court failed to depose any incriminating material evidence against the accused persons of this case. Now coming to the charges this court finds that prosecution side failed to adduce any truthful evidence upon which the accused persons may be held guilty of commission of alleged offences punishable under section-448/294/323/506/352/34 of IPC. Neither the informant nor the victims of this case have deposed anything to support that accused persons trespassed the hospital premises illegally to commit an offence, or the accused caused voluntarily simple hurt or assaulted the victims abusing them with filthy languages. The witnesses further failed to depose anything to support that accused persons threatened the victims by showing the dear consequences of their life.
27. To sum up the evidences of record, it unveiled before this court that evidences of PW-1, PW-2 and PW-3 appears not corroborative, coherent, supportive and trustworthy in nature. In this case the prosecution side failed to adduce any probable evidence to substantiate the material allegation against the accused persons and the court not finds anything incriminating from the evidences on record upon which the accused may held guilty of commission of alleged offences.
28. Therefore in the light of aforesaid discussion, this court constrained to opine that prosecution side failed to prove the charges levelled against the accused persons beyond reasonable doubt. Hence, the accused persons are entitled to get the benefit of doubt and consequent to that accused persons are acquitted

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from the charge **u/s- 448/294/323/506/352/34 of IPC** and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

29. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 12th day of November, 2020.

**(Sri N. J. Hague)
Chief Judicial Magistrate,
Sonitpur: Tezpur**

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ANNEXURE

1. Witnesses for Prosecution:-

PW 1: Dr. Koshy C. George, Informant

PW 2: Sri Junul Nitir Guria, Victim

PW 3: Dr. Pritam Doimari, Victim

PW 4: Dr. Asolie Chese, the M.O.

PW 5: Sri Padma Kt. Das, the I.O

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1	:- FIR
Ext 1(1)	:- Signature of PW-1
Ext 2	:- Injury Report of PW-2
Ext 2(1)	:- Signature of PW-4
Ext 3	:- Injury Report of Tutumoni Borah
Ext 3(1)	:- Signature of PW-4
Ext 4	:- Injury Report of Rimu Chetia
Ext 4(1)	:- Signature of PW-4
Ext 5	:- Injury Report of Dr. Pritom Daimari
Ext 5(1)	:- Signature of PW-4
Ext 6	:- Sketch Map
Ext 6(1)	:- Signature of PW-5
Ext 7	:- Charge Sheet
Ext 7(1)	:- Signature of PW-5

5. Defence Exhibits : NIL

6. Material Exhibits : NIL

Chief Judicial Magistrate
Sonitpur, Tezpur