

GR Case No. 1538 of 2015
(State of Assam Vs. Sri Son Hazarika)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

G. R. Case No. 1538 of 2015
(Under Section-341/323 of I.P.C)

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

State of Assam

–Vs–

Sri Son Hazarika

S/O:- Late Bankhidhar Hazarika

R/O:- Bahuakuri, Nakhongkar

P/S:- Sootea

Dist:- Sonitpur, Assam.....Accused Person

Advocate appeared:

Mrs. Nibha Devi, Addl. P.P..... For the State

Mrs. Dulumoni Sinha, Ld. Advocate..... For the accused person

Evidence recorded on :- 07.09.2018, 18.03.2019, 09.09.2019
& 06.02.2021

Date of Statement of defence :- 06.02.2021

Argument heard on :- 06.02.2021

Judgment delivered on :- 06.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution's case appears to be in a narrow campus is that on 24.06.2015 one Smt. Bun Hazarika, lodged an ejahar before the Officer-In-Charge of Sootea Police Station alleging inter alia that on 23.06.2015 at about 3 PM, when she went to her parents house situated at Bahuakuri Gaon, her brother i.e. accused named Sri Son Hazarika due to some previous enmity locked their toilet's door. It is also stated that when she asked the accused as to why he locked their toilet, the accused started quarrelling with her and also physically assaulted her by way of giving punches and kicks upon her and due to that she sustained injuries. It is further stated that there

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was dashing pushing took place between the accused and her mother for which her mother fell down and sustained injury.

"INVESTIGATION"

2. On receipt of the ejahar, Sootea P.S Case No. 105 of 2015, u/s-341/325/34 of IPC was registered and investigated into and on completion of the investigation, the I.O has submitted charge-sheet against the above-named accused person u/s-341/323 of I.P.C.

CHARGE & TRIAL

3. In pursuant to the court process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of CrPC was furnished to the above named accused person. After hearing both side, particulars of offences u/s-341/323 of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the case, examined as many as 05 (Five) numbers of witnesses including the informant of this case. Considering the testimonies of all the material witnesses on record, the prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused was examined u/s-313 of CrPC and his pleas of denial are recorded in separate sheet and the same kept with the case record. Accused person declined to adduce evidence for their defence.

ARGUMENT

5. I have heard arguments of both sides and travelled through the entire case record in the backdrop of evidences on the record.
6. **The points for determination in this case are:** -
 - (i.) Whether on 23.06.2015 at about 03:00 PM at a place called Bahuwakuri Gaon under Sootea PS, the accused person wrongfully restrained the informant Smt. Bun Hazarika to commit an offence and thereby committed an offence punishable u/s-341 of IPC?

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- (ii.) Whether on the same date, time and place, the accused person caused voluntarily simple hurt upon the body of informant named Smt. Bun Hazarika by way of beating her through kicks and punches and thereby committed an offence punishable u/s-323 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. Prosecution side adduced both ocular as well as documentary forms of evidences. For the sake of proper appreciation of evidences on record, let us reproduce the evidences briefly. PW-1, Smt. Boon Hazarika Devi, being the informant-cum-victim of this case deposed that she knows the accused person of this case, who is her own brother. She further deposed that the incident took place on 23.06.2015 at about 03:00 PM and on the day of incident, the accused locked the door of their toilet and when she asked him about his act, the accused physically assaulted her by way of giving slaps and also assaulted her with lathi. She deposed that the accused also pushed her mother. Later, she lodged the ejahar against the accused. She identified her ejahar as Ext-1 and Ext-1(1) is her signature.
8. PW-1 in her cross-examination testified that she has two brothers and one sister. She also deposed that her mother filed a maintenance case against the accused and her another brother named Bichitra Hazarika. Now, her mother was died. She also deposed that she and her sister named Malaya lodged one civil case against the accused and Bichitra Hazarika for their ancestral property. She deposed that her sister Malaya was solemnized around 13 years back and she was solemnized around 04 years back prior to this incident and after marriage she sometime went to her parent's house. She also deposed that she sustained cut injuries on her ear due to physical assault with lathi for which she treated at Biswanath Chariali Civil Hospital. She deposed that blood was oozing from her ear and due to that her clothes filled with blood. She also deposed that the houses of Hiranya Bora, Bidheswar Hazarika and Diganta Hazarika just adjacent to their house. He also deposed that when she arrived at her parental house, she found their toilet was under locked and key. She also admitted that she had not seen when and who locked their toilet.

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9. PW-2, Sri Bidheswar Hazarika deposed that he knows the accused person of this case. He also deposed that the incident took place in the year 2015 at about 3:30 PM and on the day of incident, there was an altercation took place between the accused and the informant due to overflow of their latrine. Thereafter, he being as a neighbour he went there and separated them from each others. PW-2 in his cross-examination testified that the informant and the accused are brother and sister in relation. He further deposed that due to deodorant coming from the toilet of the informant the village people told them to lock their toilet and accordingly, they closed the door of their toilet. He deposed that informant had an altercation with the accused by alleging that the accused had closed their toilet's door.
10. PW-3, Sri Jyoti Hazarika deposed before this court that he knows the accused and the informant of this case. He also deposed that the incident took place around three years back and on the date of alleged incident, one day at around 3 PM due to overflow of their latrine the villagers told them to lock their latrine. In connection with the same, there was a quarrel took place between them. PW-3 in his cross-examination testified that his house is situated in front of the house of accused and the informant. He admitted that as per the suggestions given by the villagers, the accused locked the toilet of the informant.
11. PW-4, Sri Dhan Chama deposed before this court that he knows the informant and the accused of this case. He also deposed that the incident took place in the year 2015. He admitted that he had not seen the alleged incident but he heard that there was a quarrel took place between the informant and the accused. PW-4 in his cross-examination testified that the accused and the informant are brother and sister in relation and there were many cases pending between both parties. He further deposed that he came to know that the informant and her sister Malaya Hazarika filed different types of cases against the accused. He admitted that the villagers locked the mud toilet of the accused and the informant due to overflow.
12. PW-5 Sri Hiranya Borah deposed that he knows the informant and the accused of this case. He also deposed that he does not know why he has been summoned as witness in this case. He admitted that he does not know anything about the incident.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

13. In the foregoing discussions, it already disclosed that the Criminal law sets in motion against the accused person on the basis of ejahar lodged by the informant Smt. Boon Hazarika. In the light of accusations levelled against the accused person in this case the prosecution side has got the burden of prove that on 23.06.2015 at about 3 PM, when she went to her parental house situated at Bahuakuri Gaon, her brother i.e. accused named Sri Son Hazarika due to some previous enmity locked their toilet's door and when she asked the accused as to why he locked their toilet, the accused started quarrelling with her and also physically assaulted her by way of giving punches and kicks upon her and due to that she sustained injuries on her person.
14. For the sake of proper appreciation of indications accessible before this court, let us deliberate all the facts for fortitude composed in the background of the evidences on record. On cautious and scrupulous scrutiny of the evidence on record, it disclosed before this court that PW-1 is the informant of this case and she appears to be inconsistent with her version as she contended in her ejahar vide Ext-1. PW-1 in her ejahar empathically pleaded that on the date of alleged incident, she was physically assaulted by way of giving punches and kicks and due to that she sustained injuries although she in her evidence-in-chief claimed that accused physically assaulted her by giving slaps and also assaulted her with lathis. The fact as deposed by the informant in her evidence-in-chief had not been pleaded in her ejahar. If really, the accused physically assaulted her with lathi, she might have pleaded such fact in her ejahar. The informant-cum-victim also failed to support her own version that accused wrongfully restrained her on the date of alleged incident. PW-1 further claimed in her evidence-in-chief as well as in her ejahar that the accused had locked the door of their toilet but she in her cross-examination categorically admitted that she had not seen who locked their toilet's door. PW-1 even though in her cross-examination deposed and claimed that she had sustained cut injury on her ear due to physical assault by accused but she failed to whisper any single word to that effect in her evidence-in-chief. Even, if the medical officer who examined the victim not examined in this case. But the medical report found

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enclosed with the case record and the report not unveiled any short of injuries from the body of the victim as she claimed in her evidence-in-chief as well as in her ejahar. Hence, it seen that informant appears to be contradictory with her own version regarding causing injuries on her ear by the accused person.

15. The settled propositions of law never claimed the ejahar to be a substantive piece of evidence. In **'Ram Kumar Pande vs The State Of Madhya Pradesh AIR 1975 SC 1206,'** the Hon'ble Supreme Court observed that an FIR is not a substantive piece of evidence and it can only be used to corroborate the statement of the maker u/s-157 of Indian Evidence Act or to contradict it u/s-145 of Indian Evidence Act. It can only be used for corroboration and contradiction purposes that to when FIR was lodged by a person having direct knowledge about the occurrence. In this case, informant herself admitted that she had lodged the ejahar. If so, then the contradictions disclosed from her evidence makes her version to be contradictory.
16. PW-2, Sri Bidheswar Hazarika deposed that in the year 2015 at about 3:30 PM, there was an altercation took place between informant and accused regarding overflowing of their latrine and he being a neighbour went there to separate both the parties. PW-2 in his cross-examination testified that due to smell coming from the toilet of the informant the village people told them to lock their toilet and accordingly, they closed the door of their toilet. He deposed that informant had an altercation with the accused by alleging that the accused had closed their toilet's door.
17. The evidence presented by PW-2 appears to be more categorical and he being the neighbour and the eye witness of the incident makes it crystal clear that there was only an altercation took place between the informant and the accused due to smell coming from the toilet, so that, the village people told the informant to lock the toilet. The testimony of PW-2 appears to be a direct in nature and relates to the material fact of this case and his statement being relevant in nature cannot be thrown out rather his evidence makes the entire version of informant contradictory. Hence, it is seen that PW-1's version regarding her physical assault by the accused on the date of alleged incident appears to be not supportive from the version of

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PW-2, who has witnessed the alleged incident. That being so, the version of PW-1 appears to be not supportive, corroborative and coherent with the version of other eye witnesses of the alleged incident and in presence of such contradiction, the entire prosecution story appears to be doubtful in nature.

18. PW-3, Sri Jyoti Hazarika deposed before this court that on the date of alleged incident at about 3 PM due to overflow of the latrine of the informant, the villagers told the informant to lock her latrine and thereafter, in connection with the same a quarrel took place between the informant and the accused person. However, from the cross-examination of PW-3 clearly testified that as per the suggestions given by the villagers, the accused locked the toilet of the informant. To sum up the evidence on record, it disclosed that the version of PW-1 and PW-3 are appears to be contradictory with each other's version and those contradictions made their version to be doubtful. PW-3 has not deposed anything against the accused. As such the court finds the oral evidences of all three witnessed to be contradictory in nature.
19. PW-4, Sri Dhan Chama simply deposed before this court that he only heard that there was a quarrel took place between the informant and the accused but he had not seen the same. PW-4 in his cross-examination testified that the villagers locked the mud toilet of the accused and the informant due to overflow. PW-5 does not know anything about the alleged occurrence which took place between both the parties.
20. The evidences presented by other independent witnesses i.e. PW-3 and PW-4, it indicates that there was only an altercation which took place between the informant and the accused person of this case. The PW-4 clearly testified that he has not seen the incident personally and he only heard about the same. PW-3 & PW-4 are not clear about the involvement of accused person with the alleged incident as disclosed from their own testimonies. Hence, in absence of any direct evidence it is very difficult to determine that the accused person actually was involved with the alleged incident. The evidences presented by PW-3 & PW-4 not only makes the version of the informant (PW-1) doubtful but also creates a reasonable contradiction which cannot be thrown away. More also, the evidences offered by the prosecution

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side appears to be full with lots of shortcomings and those being contradictory in nature cannot be relied upon.

21. To sum up the evidences on record, it disclosed that the testimonies of all five witnesses are appears to be contradictory with each other and that makes their evidences doubtful and untrustworthy in nature. This court not finds any single witness to be truthful rather their testimonies found to be full with lot of shortcoming. Hence, this court is unable to put its reliance upon the testimonies of all four witnesses.
22. Therefore, in the light of aforesaid discussion this court is constrained to opine that the prosecution side failed to prove the guilty of the accused person beyond any shadow of doubt. Hence, the accused person is acquitted from the charge's u/s- 341/323 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
23. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 06th day of February, 2021. Accordingly, the case is disposed of.

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

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ANNEXURE

1. Witnesses for Prosecution: -

PW-1:- Smt. Boon Hazarika Devi, the informant,

PW-2:- Sri Bidheswar Hazarika,

PW-3:- Sri Jyoti Hazarika

PW-4:- Sri Dhan Chama

PW-5:- Sri Hiranya Borah

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

Ext-1(1) :- Signature of Informant

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**