

G.R No-1873 of 2017
(State of Assam Vs Md. Horu Babu @ Abdul Hamid)

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

G. R. Case No. 1873 of 2017

Under section-447/294/323/506 of I.P.C

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

State of Assam

-Vs-

Md. Horubabu @ Abdul Hamid

S/O:- Late Abdul Hamid

R/O:- Namoni Gaon

P/S:- Rangapara

Dist:-Sonitpur, Assam

.....Accused Person

Advocate appeared:

Mr. Niranjan Saikia, Asst. P.P..... For the State

Mr. Devasish Borah, Ld. Advocate..... For the accused person

Evidence recorded on :- 01.02.2021

Date of Offence Explanation :- 02.08.2019

Argument heard on :- 01.02.2021

Judgment delivered on :- 01.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that one Md. Rangoo Ali lodged an ejahar before the O/C of Rangapara PS alleging inter alia that on 09.05.2017 at around 5:30 PM, while he was on duty as garden chowkidar at Hathibari garden section No-3C, he found that accused Horubabu cutting shade tree inside the garden section. It is also stated that when he tried to stop the accused from cutting trees, he started abusing him with filthy languages and also physically assaulted him.

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"INVESTIGATION"

2. On receipt of the ejahar, Rangapara P.S Case No- 72 of 2017 u/s-325/294/506 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-447/294/323/506 of I.P.C against the accused person.

CHARGE & TRIAL

3. In pursuant to the court's 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-447/294/323/506 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 guilty of the accused person examined only one witness i.e. the informant-cum-victim in support of this case. Considering the testimony of the informant-cum-victim, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Examination of accused person under section-313 of Cr.P.C is dispensed with as from the testimony of the informant-cum-victim nothing implicating disclosed against the accused person.

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 are:-**
- (i.) Whether on 09.05.2017 at about 5:30 PM at a place called Hathibari Division Nahorani Tea Estate under Rangapara PS, accused entered into the above-named Tea Estate while the informant Rangoo Ali was on duty as Chowkidar with intend to commit an offence and thereby committed an offence punishable under section-447 of I.P.C?

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- (ii.) Whether on the same date, time and place the accused person scolded the victim named Rangoo Ali by using filthy languages and thereby committed an offence punishable under section-294 of IPC?
- (iii.) Whether on the same date, time and place, the accused person voluntarily caused simple hurt to the victim named Rangoo Ali by way of beating him and thereby committed an offence punishable under section-323 of IPC?
- (iv.) Whether on the same date, time and place, the accused person threatened the victim with dear consequences of life and thereby committed an offence punishable under section-506 of IPC?

DECISION AND THE REASONS THEREON:

7. The informant in his ejahar opposed that on the date of alleged incident at around 5:30 PM, while he was on duty as garden chowkidar at Hathibari garden section No-3C, he found that accused Horubabu cutting shade tree inside the garden section. It is also stated that when he tried to stop the accused from cutting trees, he started abusing him with filthy languages and also physically assaulted him. In this case prosecution side to prove the case examined the informant-cum-victim of this case. I have carefully travelled through the testimony of the informant-cum-victim in the backdrop of entire prosecution case and it finds:-
8. PW-1 being the informant-cum-victim of this case deposed before this court that he knows the accused person of this case. He also deposed that in the year 2017, one day he had an altercation with the accused over the matter of tree and due to miss-understanding, he lodged the ejahar against the accused. He admitted that he does not want to proceed further against the accused. Ext-1 is the FIR and Ext-1(1) is his signature.
9. Hence, it apparently appears before this court that the PW-1 being the informant of this case contradicted the entire contentions of the ejahar by way of testifying that the victim had an altercation with the accused person over the

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matter of tree and due to misunderstanding he lodged the instant case and now he does not want to proceed with this case against the accused person.

- 10.**To sum up the testimony of the informant-cum-victim, it reveals before this court that the informant appears to be contradictory with the entire contention of the ejahar and his testimony cannot be relied upon.
- 11.**In view of the above evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charges u/s-447/294/323/506 of IPC and sets at liberty. Surety is extended for six months in view of section-437A of Cr PC.
- 12.**Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 01st day of February, 2021 at Tezpur.

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

ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Md. Rangoo Ali, the informant

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1 : FIR

Ext 1(1): Signature of PW-1

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur