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G.R No-6033 of 2016
(State of Assam Vs Sri Nayan Jyoti Das & Ors)

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

G. R. Case No. 6033 of 2016

Under section-323/506/34 of I.P.C

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

State of Assam

-Vs-

1. Sri Nayan Jyoti Das
2. Sri Rudra Keot
3. Sri Sanju Sahu
4. Sri Mintu Koch
5. Sri Sandeep Jain
6. Sri Dhananjay Chandra

.....Accused Persons

Advocate appeared:

Mr. N. K. Mishra, Addl. P.P..... For the State

Mr. Rajiv Majumder & Ors, Ld. Advocates.....For the accused persons

Evidence recorded on	:- 30.04.2019
Date of Statement of defence	:- 19.02.2021
Argument heard on	:- 19.02.2021
Judgment delivered on	:- 19.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that on 15.12.2016 one Md. Saju Uddin Ahmed lodged an Ejahar before the O/C, of Tezpur PS alleging inter alia that on 14.12.2016 at about 9 PM, the FIR named accused persons being the manager and staffs of "Vashtram Showroom" physically assaulted him and also abused him by using filthy languages after closing the said showroom. It is also stated that the accused persons did not allow him to take lunch and further threatened him of dire consequences.

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"INVESTIGATION & CHARGE"

2. On receipt of the Ejahar, Tezpur P.S Case No. 2220 of 2016 under section-325/294 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet under section-143/341/294/323/506 of I.P.C against the accused above-named persons.

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-323/506/34 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. During the trial prosecution side able to examine one witness. The informant of this case could not be examined due to his non-appearance. Considering the testimony of witness, prosecution side declined to adduce further evidence before this court and accordingly the evidence of prosecution side is closed. Examination of the accused persons under section-313 of CrPC is dispensed with as no implicating material divulges from the evidence on record. Accused declined to adduce evidence on his 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 14.12.2016 at about 9 PM at a place called Vashtram Showroom situated at Tezpur Main road under Tezpur PS, the accused persons in furtherance of their common intention voluntarily caused simple hurt to the informant named Md. Saju Uddin Ahmed by way of beating him and thereby committed an offence punishable under section-323/34 of IPC?

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- II) Whether the accused persons on the same date, time and place in furtherance of their common intention threatened the informant with dear consequences of life and thereby committed an offence punishable under section-506/34 of IPC?

EVIDENCES OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined only witness of this case. I have carefully travelled through the testimony of the said witness in the back drop of the entire case. PW-1 Sri Manoj Kumar Nath deposed before this court that he does not know the informant and the accused persons of this case. He further deposed that the incident took place around three years back and on the date of alleged incident, one day at night he heard commotion while he was going through the Tezpur Vashtram and thereafter, many people gathered there. He deposed that he does not know what was happening there. The cross-examination PW-1 declined by the defence side.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

8. On perusal of the Ejahar, it divulges that the prosecution side has got the burden to prove that on 14.12.2016 at about 9 PM, the FIR named accused persons being the manager and staffs of "Vashtram Showroom" physically assaulted him and also abused him by using filthy languages after closing the said showroom. It is also stated that the accused persons did not allow him to take lunch and further threatened him of dire consequences.
9. To prove the above said accusation, the prosecution side examined only one witness in support of this case. I have carefully travelled through the testimony of witness Sri Manoj Kumar Nath in the backdrop of entire prosecution case and it finds that PW-1 not deposed anything against the accused persons. He simply deposed that he heard commotion and saw many people gathered at the place of occurrence. But he does not know what was happening there. From the evidence of PW-1, nothing appears to be implicating against the accused persons of this case as he is a hearsay witness.

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10. On meticulous perusal of the entire case record, it disclosed that this court on several occasions issued summons upon the informant Md. Saju Uddin Ahmed and the summons upon the informant properly served for his appearance before the court on different occasion and he failed to appear. Consequent to that BW/A was issued and the same was executed upon the informant Saju Uddin Ahmed on 25.10.2019 and instead of that the informant did not turn up. Thereafter, NBWA was issued to secure the attendance of the informant before this court but till date no report returned in pursuance to the NBWA issued against the informant. It is also disclosed that since from the year 2018 the case is pending for examination of the informant-cum-victim and on several occasion on receiving summons, he failed to appear before the court. Today, the prosecution side declined to adduce further evidence. Hence, considering the absence of the informant even after knowing the fact of pendency of the trial on the basis of his ejahar coupled with the fact of execution of summon and BW/A upon him, it is seen that the informant himself is not willing to proceed further with the case. As such, the evidence of the prosecution is closed by exercising the jurisdiction of Section-258 of CrPC closing the further trial in the form of stoppage for further proceeding.
11. Therefore, in the light of the aforesaid discussion, it is seen that the court and prosecution side on making huge efforts and endeavour failed to bring the the remaining witnesses before the court for their examination and consequently failed to examine them. On scrupulous perusal of the case diary, it disclosed that the statement of the material witnesses recorded u/s-161 of CrPC, also not found to be implicating against the accused persons and as such their non-examination before the court not prejudiced the case of prosecution side.
12. To sum up the evidences on record, this court finds that the prosecution side failed to adduce any probable evidence before this court under which involvement of the accused persons with the alleged incident may be proved. The evidences offered by the prosecution side specifically failed to implicate the accused persons with the alleged incident.
13. Therefore, in the light of above said evidence offered by the prosecution side is not appears to be implicating against the accused persons and trustworthy in

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nature under which accused persons may held guilty for commission of the alleged offence u/s-323/506/34 of IPC.

14. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against all the accused persons beyond reasonable doubt and as such the accused persons are acquitted from the charge u/s-323/506/34 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
15. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 19th day of February, 2021.

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

ANNEXURE

1. Witnesses for Prosecution:-

PW-1 :- Sri Manoj Kumar Nath

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits: NIL

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur