

**N THE COURT OF THE ASSISTANT SESSIONS JUDGE, SONITPUR
AT TEZPUR**

PRESENT : **Sri P. C. Kalita,**
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 58 OF 2014
GR Case No. 582/ 2012

Under Sections 323/436/511 of Indian Penal Code

State of Assam Complainant

–Versus –

Sri Prasanta Hazarika @ Prasanta Das

Son of Pradip Hazarika
Resident of Mokugaon
PS – Sootea
Dist – Sonitpur, Assam

Sri Jayanta Hazarika @ Jayanta Das

Son of Pradip Hazarika
Resident of Mokugaon
PS – Sootea
Dist – Sonitpur, Assam

..... Accused Persons

ADVOCATES APPEARED

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused persons : Sri Debasis Bora
Advocate

Date of evidence : 10– 03– 2015 & 29– 04– 2015

Date of Argument : 06– 05 – 2015

Date of Judgment : 06– 05 – 2015

J U D G M E N T

The prosecution case, inter-alia, in brief, is that informant Sadir Hussain lodged an ejahar in the Kacharigaon OP, under Tezpur PS, alleging that on 12-03-2012, at about 9 p.m., accused Prasanta Das while discharging urine on the way used by the informant, the younger brother of the informant, namely, Sahir Hussain resisted him, then the accused persons quarreled with him and while the informant protested them, both the accused persons assaulted him.

2. After receiving the aforesaid ejahar, the I/C of Kacharigaon Out Post, made a GD Entry and on the basis of said GD Entry by forwarding the ejahar to O/C, Tezpur Police Station for registering a case. Accordingly, the O/C of Tezpur PS registered a case, bearing Tezpur Police Station Case No. 330/12 u/s 325/436/34 of IPC. During the period of investigation, the injured was got medically examined. After conclusion of investigation, the Investigating Officer submitted the Charge sheet against the accused persons u/s 323/436/511 of IPC.

3. After appearance of the accused persons, the learned Sub-Divisional Judicial Magistrate (Sadar), Tezpur, committed the case to the learned Sessions Judge, Sonitpur, Tezpur and thereafter, the case was made over to this Court for disposal. Accordingly, this Court took up the trial of the case. Considering the materials available on case record and case diary, the charges were framed against the accused under Sections 323/436/511 of IPC. Then, the contents of charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

4. In order to bring home the charges, the prosecution has examined as many as 3 (three) PWs, including the injured. Then the accused persons have been examined u/s 313 CrPC. The pleas of the accused persons are of total denial and he has declined to adduce any defence evidence.

5. **Points for determination :**

(1) Whether the accused persons, on 12-03-2012, at about 9 p.m., Kacharigaon, under Tezpur PS, voluntarily caused hurt by assaulting the informant and thereby committed an offence u/s 323 of IPC ?

(2) Whether the accused persons, on the same day, time and place, attempted to commit mischief by fire to the shop house of the informant and thereby committed an offence u/s 436 r/w Section 511 of IPC ?

Discussion, Decision and reasons thereof :-

6. I have carefully perused the evidence and the materials available on the case record. Heard argument of both sides. Now, let us examine the evidence of the PWs to decide the case at hand.

7. PW-1, Jakir Hussain, stated that he knows the accused persons. Informant is his own brother. One day, in 2012, at night, the accused persons made quarrel with the informant and thereafter, made attempt to set fire on the house of the informant, he heard. For this, his brother lodged the ejahar. The informant did not sustain any injury.

8. PW-2, Sahir Hussain stated that he knows the accused persons. Informant is his elder brother. He did not see the occurrence. Later on, he heard that the accused persons made altercation with his elder brother and made attempt to set fire on his house. For this, his elder brother lodged the ejahar. In the meantime, both the parties have amicably settled the matter.

9. PW-3 Sadir Hussain, the informant –cum- injured, stated that the incident took place in 2012. On the night of occurrence, there was an altercation in between his brother Sahir Hussain and the accused persons and while he resisted them, there was 'thela-hesa' and as a result, he sustained injury near his nose. For this, he lodged the ejahar. Police sent him for medical examination and at that time, he heard that the accused persons made attempt to set fire on his house. Then, he lodged the ejahar. Ext.1 is the ejahar and Exts. 1(1) and 1(2) are his signatures.

10. Now, from the evidence on record, it is seen that PWs 1 and 2 are hearsay witnesses and they do not support at all the prosecution case. Rather, during cross-examination, they have stated that they have no objection if the accused persons are acquitted. Out of misunderstanding, the ejahar was lodged.

PW-3, the injured-cum- informant, nowhere stated that he sustained any injury in connection with this case. Rather, during cross-examination, he stated that he has no objection if the accused persons are acquitted. He does not like to proceed further with the case.

Thus, it is seen that the ingredients of offence u/s 323 and 436 read with Section 511 of IPC, are lacking in the present case.

13. In view of the above discussion and considering all aspect, I hold that prosecution has failed to prove the charges u/s 323/436/511 of IPC against the accused persons, beyond all reasonable doubt. Hence, I acquit the accused persons from the said offences, on benefit of doubt.

The accused persons be set a liberty forthwith and their bail bonds stand cancelled.

The seized articles, if any, be destroyed in due course of time.

The case is disposed of accordingly.

Given under my hand and seal of this Court on this day, the 6th day of May, 2015.

P.C. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.

Dictated and corrected by me.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.

Typed and transcribed by me :

(J. K Muru), Steno.

A P P E N D I X

Prosecution witnesses :

PW-1 : Md. Jakir Hussain
PW-2 : Md. Sahir Hussain
PW-3 : Md. Sadir Hussain

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits :

Ext.1 : ejahar

Material Exhibits : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.
