

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR,
TEZPUR**

Present: **Smti Chitrali Goswami, A.J.S**

Judicial Magistrate First Class,
Sonitpur, Tezpur

GR case no: 1560/15

under Sections- 143/147/148/323/506 of Indian Penal
Code and R/W Section 149 of the Indian Penal Code.

State

vs

Munindra Nath

Tirtha Nath

Lulu Nath

Bubu Nath

Bhaskar Nath

Ajit Nath

Advocate for the Prosecution	Mr AK Sahani
Advocate for the Defence	Promud Ch Sarma, Dulumoni Singha
Date of recording evidence	17.08.2016, 19.01.2018, 06.09.2019, 04.03.2020.
Date of hearing argument	27.01.2021
Date of judgment	06.02.2021

JUDGMENT

1. The Prosecution case in a nutshell is that the instant case was initiated on the lodging of an ejahar dated 24.06.15 by informant Sarat Das alleging due to discord with his wife he has been living separately for the past six months.

They have a son. His wife works for a theatre and keeps on roaming till late night. On 22.06.15 he saw his wife roaming late night with a different man. He scolded her. Thereafter, the accused persons came to his house at 11 pm with an intention to kill him. They also threatened to burn down his house. One of the accused injured him on his hand. Hence the case.

2. The police on receiving the FIR registered Tezpur PS case no no.752/15 dated 26.06.15 under Sections - 147/148/149/506/324 of the Indian Penal Code by SI Biplab Sarkar and after completing the usual procedure of investigation, I/O SI Biplab Sarkar submitted charge sheet vide no 716/15 dated 30.08.15 under Sections 147/148/149/506 /323 of the Indian Penal Code against all the accused persons Munindra Nath, Tirtha Nath, Lulu Nath, Bulu Nath, Bhaskar Nath and Ajit Nath.

3. On receipt of charge sheet, cognizance of offences under Sections - 143/147/148/323/506 of the Indian Penal Code and R/W Section – 149 of the Indian Penal Code were taken as per the provision prescribed under Sections 190(1) (b) of Code of Criminal Procedure.

4. On their appearance, necessary copies were furnished to all the accused persons as mandated under Section 207 Code of Criminal Procedure. Thereafter, charges under Sections 143/147/148/323/506 R/W Section 149 of the Indian Penal Code were explained to all the accused persons by my Learned predecessor-in-office to which they denied the charges and decided to stand for trial.

5. During trial, the prosecution side to prove its case examined 7(seven) witnesses including the informant. After closure of prosecution evidence, the statements of defence of all the accused persons under Section 313 Code of Criminal Procedure were recorded by stating the incriminating materials found against them. Their plea was of total denial. Defence, however, did not adduce any evidence.

6. I have heard the arguments of both sides at length and gone through the case record and evidences thoroughly.

7. **Points for determination:**

(i) Whether all the accused persons in prosecution of their common object on 24.06.15 committed criminal trespass by entering the house of informant Sarat Das and assaulted him being members of an unlawful assembly and thereby committed an offence punishable under Section 143 Indian Penal Code and R/W Section 149 of the Indian Penal Code?

(ii) Whether all the accused persons in prosecution of their common object on 24.06.15 committed rioting him being members of an unlawful assembly and thereby committed an offence punishable under Section 147 Indian Penal Code and R/W Section and 149 of the Indian Penal Code?

(iii) Whether all the accused persons in prosecution of their common object on 24.06.15 committed rioting with deadly weapon upon the informant being members of an unlawful assembly and thereby committed an offence punishable under Section 148 Indian Penal Code Section and R/W 149 of the Indian Penal Code?

(iv) Whether all the accused persons in prosecution of their common object on 24.06.15 voluntarily caused hurt to the informant being members of an unlawful assembly and thereby committed an offence punishable under Section 323 Indian Penal Code Section and R/W 149 of the Indian Penal Code?

(v) Whether all the accused persons in prosecution of their common object on 24.06.15 threatened the informant with an injury to his person being members of an unlawful assembly and thereby committed an offence punishable under Section 506 Indian Penal Code Section and R/W 149 of the Indian Penal Code?

DISCUSSIONS

8. In his examination-in-chief, PW1/informant Sarat Das deposed that he knows the accused persons. There was a personal dispute between him and his wife since 2011. His wife used to leave their child and go for acting on stage. Around 2-3 months back when his wife came back home late, he told her to look after the house as well as him and their child. At that time his wife was with the accused person Munindra Nath. The accused told his wife to come with him. On the next day, 30 persons came to his home at 11 pm and a heated argument took place with him in front of his house. Accused Munindra Nath took out a steel hakunta and held him. The other persons were carrying some stones placed in their gamocha as if they were going to attack him. Thereafter, his sister Chitrlekha Das came and asked those persons why they were behaving in such manner and then those persons went away. Hence he lodged the case.

Exhibit 1 is the ejahar and Exhibit 1(1) is his signature.

9. In his cross-examination, PW1 deposed that it has been 3 years that his wife has been staying apart from him. At the time of lodging this case, his wife used to stay at her parents place. She has filed a maintenance case but he has not paid any maintenance till date. By a search warrant their child was handed over to his wife from him. Also she has filed a divorce case against him where he has not appeared. The accused Munindra Nath is not the paternal uncle of his wife. He does not know whether the accused Munindra Nath is the nephew of his father-in-law. He has not written the ejahar but it was read over to him before signing. Police had interrogated him in connection with this case. He had lodged the case on the date of the alleged incident only.

10. It is not a fact that he has not stated before police and mentioned in Exhibit 1 that on the next day, 30 persons came to his home at 11 pm and a heated argument took place with him in front of his house. Accused Munindra Nath took out a steel hakunta and held him by it. The other persons

were carrying some stones placed in their gamocha as if they were going to attack him. It is not a fact that he is stating about the incident for the first time in the court. Some of the people who reside near his house are Phuleswar Das, Thaneshwari Das, Lakhi Das and Bakul. It was dark on the date of the alleged incident. It is not a fact that when Munindra Nath asked him to clear the maintenance dues of his wife, he filed this false case against him and the other accused persons since they are somehow connected to his wife and to shed his responsibility from the case filed by his wife. It is not a fact that no incident took place around two months back as alleged by him.

In his examination-in-chief, PW2 Lakhi Das deposed that he knows the informant and the accused persons. But he does not know anything about the incident.

Defence, declined to cross-examine him.

11. In his examination-in-chief, PW3 Phuleswar Das deposed that he knows the informant and the accused persons. But he does not know anything about the incident.

Defence, declined to cross-examine him.

12. In his examination-in-chief, PW4 Omprakash Das deposed that he knows the informant and the accused persons. The incident took place 2-3 years ago. He heard that a quarrel took place in the house of Tankeshwar Das.

13. The prosecution prayed for declaring PW4 a hostile witness which was allowed by my Learned Predecessor-in-office. In his cross-examination by the prosecution, PW4 deposed that it is not a fact that he stated before police that on 22.06.15 the informant seeing his wife roaming on a motor cycle spoke to her sternly. Then the accused Munindra came along with party boys armed with dao and lathi to the informant's house. They came with the intention to assault the informant and also threatened to burn down his house. At that time someone from the party caused injury to his hand.

14. He further deposed that he knows Sarat and Mouchami for a long time. Mouchami participates in various drama etc. He does not know if Mouchami participated in any drama. He does not know if Sarat was taken to the hospital for treatment. It is not a fact that as a neighbour he has not disclosed anything regarding the matter though he knew the entire story for the sake of the accused persons.

15. In his cross-examination by the defence, PW4 deposed that Jatin Nath is the father of Mouchami whose husband is Sarat. He knew that Mouchami had been residing at her father's house for a long time. He does not know where Sarat resides presently. Sometimes PW4 sees the informant at his house. He does not know of the cases lodged by Mouchami against Sarat. He does not know if any of the accused persons are relatives of Mouchami. None of the accused persons are his relatives. Sarat is his uncle's son. PW4 deposed that he is not deposing anything which is for or against the accused persons or informant. He has not stated anything to police as asked by the prosecution.

16. In her examination in chief, PW5 Chitralekha Das deposed that she knows Sarat Das, who is her brother. She knows all the accused persons. The incident took place on the night of 23.06.2015. On 22.06.15, Mouchumi Das W/O Sarat Das was on a bike with some person at night and crossed the house of Sarat Das. Then Sarat Das asked his wife to give him divorce and also not to roam in such a way. She went back to her father's house. Later, on the night of 23.06.15 all the accused persons came to the house of Sarat, assaulted him and one Munindra Nath also caused him injury by a sharp weapon. They also threatened to burn the house. They left the place when her uncle and other villagers arrived.

17. In her cross examination, PW5 deposed that she works for Assam police. She was already married at the time of this alleged incident in the same village. Accused Ajit Nath is Mouchumi's uncle. It is about six years ago that Mouchumi and Sarat were married. On 5.11.14, Mouchumi left Sarat's house. There are 5-6 houses between Mouchumi's father's house and Sarat's house. Many villagers participate in village theatre/ drama. Mouchumi participated in theatre/ drama

prior to her marriage and never promised Sarat Das that she would no longer participate in drama/ theatre after their marriage. When Mouchumi left her brother, Sarat did not lodge any case against her. She has not seen on whose bike Mouchumi was. She does not know the vehicle number. Police interrogated her and also recorded her statement.

18. It is not a fact that she has not stated before the police that on 22.06.15, Mouchumi Das W/O Sarat Das was on a bike with some person at night and crossed the house of Sarat Das. Then Sarat Das asked her to give him divorce and also not to roam in such a way. She went back to her father's house. Later, on the night of 23.06.15 at night all the accused persons came to the house of Sarat assaulted him and one Munindra Nath also caused him injury by a sharp weapon. They also threatened to burn the house. They left the place when her uncle and other villagers came to the place. She did not accompany her brother when he lodged the ejarah. It is not a fact that she did not state before the police that she was there in front her mother's house when the incident took place. It is not a fact that she did not state before police that accused Munindra Nath caused injury to Sarat Das with a sharp weapon.

19. PW5 further deposed that since 2007, she has been posted under Tezpur P.S. She does not know whether Munindra Nath is Mouchumi's maternal uncle. She does not know whether Mouchumi lodged any case against Sarat Das. She does not know where Sarat Das now works and resides. She knows about the incident that Sarat took away the child of Mouchumi who was then an infant and later through search warrant the child was recovered from Sarat. She knows about the maintenance case filed by Mouchumi against Sarat. She does not know whether Mouchami is entitled to get any maintenance as ordered by Court. She does not know about any GR case filed by Mouchumi. She knows about filing a divorce case by Mouchumi. It is not a fact that since Mouchami lodged so many cases against Sarat, so Sarat filed this false case against the accused persons. It is not a fact that no such incident took place on that day and that she was also not present in her mother's house. It is not a fact that as per her advice, her brother lodged this false case.

20. In his examination-in-chief, PW6/MO Dr Sanjeev Kumar Medhi deposed that on 24.06.2015, he was posted as Medical and Health Officer-1 at KCH, Tezpur. There was no mention of the examination date of the victim/ injured in the medical report that he was examined on 24.06.2015. On that day he examined Sarat Das, aged about 27 years. There was no mention in the medical report as to whether the victim/ injured was escorted by anyone but the police requisition no Tezpur P.S case no. 752/15 is mentioned in the medical report.

On examination of Sarat Das aged about 27 years the following were found:

1. Linear abrasion over right forearm.

No other injury is seen. Nature of injury is simple caused by blunt weapon.

Exhibit 2 is the medical report conducted by him and Exhibit 2(1) is his signature in the said medical report.

21. In his cross examination, PW6/MO deposed that there is no mention about the time of examination in the medical report. The victim/injured was not identified by any investigating agencies but his name was written as verbally told by him. There is no mention as to whether the injured/victim was examined on police requisition. He personally does not know the victim/ injured. The injury sustained by the injured can be caused by falling or slipping on a hard surface.

22. In his examination-in chief, PW7/IO Sujendra Kr Baruah deposed that on 24.06.15 he was at Tezpur P.S as Second Officer. On that day informant Sarat Das filed a written ejahar which was received and registered by O/C Harim Ch Deka as Tezpur case no.752/15 under Sections 147/148/149/506/324/ of Indian Penal Code vide GD no. 1102 dated 26.06.15. He was given the charge of investigation. Thereafter, on 24.06.15, he sent informant for medical examination. On 26.06.15 he visited place of occurrence, prepared sketch map, recorded statement of witnesses.

He went again to the place of occurrence on 01.07.2015 and not finding the accused persons sent them a notice to be present on 02.07.15. The accused persons appeared. He collected the medical report and after completing the pre-step, he handed the charge sheet to the I/O Biplab Sarkar.

Exhibit 3- Sketch map.

Exhibit 3(i) is his signature.

Exhibit 4 is the charge sheet.

Exhibit 4(i) is the signature of SI Biplab Sarkar which he knows.

SI Biplab Sarkar submitted chargesheet against Munindra Nath, Tirtha Nath, Lulu Nath, Bolu Nath, Bhaskar Nath and Ajit Nath under Sections – 147/148/149/506/323 of Indian Penal Code.

23. In his cross examination, PW7/IO deposed that he went to the place of occurrence at 11:45 am on 26.06.15. On that day, he recorded the statement of four witnesses. He was not given any written direction by the O/C for medical examination of the informant. According to the FIR, the date of occurrence was 22.06.15 but the FIR date was lodged on 24.06.15 and he does not know if it is written as 24.06.14 or 24.06.15 in the FIR. The delay of three days has not been explained. PW1 did not state before him that on the next day, 30 persons came to his house at 11 pm and had a heated argument with him in front his house and that the accused Munindra Nath took out a steel hakunta and held him by it. The other persons were carrying some stone placed in a gamocha as if they will attack him with it. PW5 did not state before him that 22.06.15 Mouchami Das W/O Sarat Das was on a bike at night and crossed the house of Sarat Das who asked her to give him divorce and not to roam and she went back to her father's house. Further she did not state that on the night of 23.06.15 all the accused persons came to the house of Sarat and assaulted him and one Munindra Nath caused him injury with a sharp weapon. They also threatened to burn his house. They left the place when her uncle and other villagers arrived.

Decisions and Reasons Thereof:

24. It is only PW1/informant and PW5 his sister who have supported the prosecution case. PW1 in his ejahar had stated that the incident occurred on the same day i.e on 22.04.16. But in his examination-in-chief he had deposed that the incident occurred on two days. Moreover, neither in his ejahar nor before police he has stated that "30 persons came to his home at 11 pm and a heated argument took place with him in front of his house. Accused Munindra Nath took out a steel hakunta and held him by it. The other persons were carrying some stones placed in their gamocha as if they were going to attack him". This clearly shows that there are vital omissions in the statement made by the informant/PW1 before police under Section 161 Code of Criminal Procedure and the evidence deposed before court on the date of his deposition. No reason is mentioned regarding the delay of lodging the ejahar after two days of the alleged incident.

25. Further, PW5 has also not stated before that the police that "on 22.06.15, Mouchumi Das W/O Sarat Das was on a bike with some person at night and crossed the house of Sarat Das. Then Sarat Das asked his wife to give him divorce and also not to roam in such a way. She went back to her father's house. Later on the night of 23.06.15 all the accused persons came to the house of Sarat assaulted him and one Munindra Nath caused him injury by a sharp weapon. They also threatened to burn the house. They left the place when her uncle and other villagers arrived".

26. PW2 and PW3 both are independent witnesses and reside near the informant's house as stated by informant/PW1. But both the witnesses had no knowledge about the alleged incident. PW4 was declared a hostile witness by the prosecution whose evidence lacks credibility. PW6/MO and PW7/IO both are official witnesses. PW6/MO deposed that there is no mention about the time of examination in the medical report. Further, PW1 was not examined on police requisition. As such it cannot be said that the injury sustained by PW1 is the result of the assault by the accused persons on the day of the alleged incident.

27. In the backdrop of the discussions made above, it is clear that there are inconsistencies and discrepancies in the evidence deposited by the prosecution witnesses. It creates a reasonable apprehension whether any such incident as alleged by the informant had really occurred. It has also created a doubt as to the reliability and the credibility of the evidence deposited by the informant/PW1.

28. The cardinal principle of criminal jurisprudence is that the prosecution must prove its case against the accused persons beyond reasonable doubt and if there arises any doubt, then that favours the accused persons. In the instant case, there is nothing on record which attracts any of the essential ingredients for warranting the conviction of the accused persons under Sections 147/148/506/323 R/W Section 149 of the Indian Penal Code. The prosecution side has failed to establish its case against accused persons Munindra Nath, Tirtha Nath, Lulu Nath, Bulu Nath, Bhaskar Nath and Ajit Nath under Sections 147/148/506/323 and R/W Section 149 of the Indian Penal Code beyond reasonable doubt in the light of the cogent evidence. Hence, the accused persons deserve acquittal.

ORDER

In light of the aforesaid discussion, I hold the accused persons namely, Munindra Nath, Tirtha Nath, Lulu Nath, Bulu Nath, Bhaskar Nath and Ajit Nath are not guilty of offences under Sections – 147/148/506/323 of the Indian Penal Code and R/W Section 149 of the Indian Penal Code. Hence, they are acquitted from the charges leveled against them. The accused persons are set at liberty forthwith.

Their bail bonds are extended for a period of 6(six) months from the date of this order i.e. 06.02.2021 as per as Section 437(A) Code of Criminal Procedure.

The judgment is delivered in the open Court in presence of the accused persons and their engaged Counsels.

Given under my hand and the seal of this court on this 06th day of February, 2021.

Typed by me,

(Smti. Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur.

(Smti Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses :

PW1- Sarat Das

PW2- Lakhi Das

PW3- Phuleswar Das

PW4- Omprakash Das

PW5- Chitralekha Das

PW6- Dr Sanjeev Kr Medhi

PW7- ASI Sujendra Kr Baruah

Prosecution Exhibits:

Exhibit 1- Ejahar

Exhibit 2- Medical report

Exhibit 3- Sketch map

Exhibit 4- Charge sheet

Defence witness:

Nil

Defence Exhibit:

Nil.

Court Exhibit:

Nil

(Smti Chitali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur