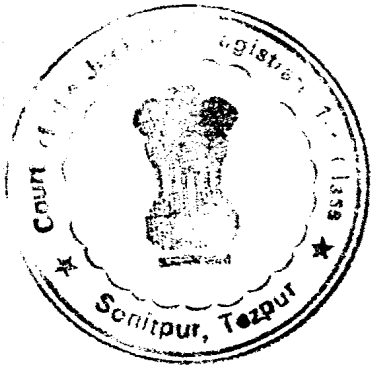


IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS, TEZPUR, SONITPUR

C.R. CASE NO: 782 / 20 08 U/S 341/323/384/34 IPC

PRESENT: : K. K. PATHAK, A.J.S

PARTIES : Padam Bahadur Limboo



-Vs-

1. Padam Kumari Limboo
2. Jyoti Limboo
3. Nil Bahadur Thakuri
4. Indira Limboo

→ Complt.

5. Riway Limboo
6. Juvak Limboo
7. Dipa Limboo

-----ACCUSED

EVIDENCE ON : 04.05.09, 04.10.12, 11.12.12

S/D ON : 15.10.12

ARGUMENTS ON : 21.12.12

JUDGMENT ON : 08.01.12

LAWYERS : Mr. D. Debbarma (for complt.)

Mr. B. H. Debbarma (for accid.)


Judicial Magistrate
1st Class Tezpur

The complainant of this case is one Padam Bahadur Limbu. He filed a complaint in court on 29.09.08. It was alleged that on 21.09.08 when he was returning from church prayers, on the road over no 2 Limbu Chuburi, the accused Nil Bahadur Thakuri caught him and ordered him to come down from the cycle. When the complt asked them/ accused the reasons for this , the accused Indra limbu, Riwaz Limbu and Suresh limbu abused him and pulled him by collar and hand. The other accused allegedly surrounded him and questioned him and accused him of impregnating accused Kalpana Limbu. The accused allegedly asked him to sign over three blank papers and ordered him to accept accused Kalpana as his wife. At this witness no 4(Anita limbu) protested and for which accused no 3(joti limbu) and 4(Nil Bh Thakuri) assaulted her. The complt was forced to sign the documents. It has been apprehended that the documents would be put to bad use.

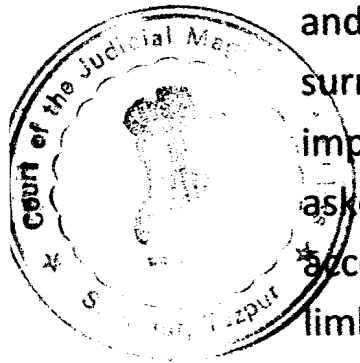
Case was endorsed to this court. Cognizance u/s 384/323/506/34 IPC was taken against the accused after following the due procedure. The accused entered appearance. Since it was a warrant procedure case, evidence before charge was recorded after which charges u/s 341/323/383/34 IPC were framed, read over and explained to the accused to which they pleaded not guilty and claimed to be tried. Thereafter, the pws were cross examined.

S/D of all the accused other than accused Riwaz and Padum Kumari were recorded. Exception was made in respect of these accused on account of absence of incriminating materials. Case was also split up against accused Kalpana Limbu. Defence adduced evidence. Arguments were heard.

POINT FOR DETRMINATION:

1. Whether the accused in furtherance of common intention wrongfully restrained the complainant, committed extortion, voluntarily caused hurt to the victim Anita Limbu


Judicial Magistrate
Ist Class, Tezpur



and also issued threats thereby committing offences u/s 341/384/323/506/34 IPC?

DECISION AND REASONS:

Pw1 is the complainant/victim. He deposed that accused Nil Bahadur Thakuri had asked him to get down from the cycle and accused Indra and Suresh had pulled him by collar and hand. The accused kalpana forcefully took signature on three blank sheets. It was further deposed that accused Jyoti and Dipa had assaulted Anita limbu. He also stated that he was threatened by accused.

Pw2 is Anita Limbu. She as per the prosecution version was assaulted. In court, she deposed that she was assaulted by accused Jyoti and Dipa. During cross examination, she admitted that she had reached p/o on hearing hulla. She also admitted that only her hair had been pulled by accused Jyoti and Dipa.

PW3(Mitra Limbu) stated that all accused had obtained signature of complt over blank paper. He had come to p/o on hearing hulla.

The evidence of the prosecution duly tested by cross examination shows that pw1 has supported the allegations in the complaint petition regarding accused Nil Thakuri as having ordered him to come down from the cycle and accused indra and suresh as having caught him by collar and pulling him by hand. Accused Riwarz was named in the complaint but in the evidence pw1 has not implicated him but this discrepancy cannot be termed as material. It is at best a minor discrepancy. That apart evidence of pw2 shows that it was accused Kalpana(case split up) who had obtained the blank signatures. So the role of others is ruled out. As to assault on pw2, as per her own version only her hair was pulled by Joti and Dipa. In the complaint, accused jyoti and nil have been





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accused whereas in court Joti and Dipa have been implicated. Since name of Dipa has been taken for the first time in court regarding the assault, she deserves to be given benefit of doubt. Also from the evidence of pw2 it at best appears to be a case u/s 352 IPC. Offence u/s 323 IPC is ruled out. Ingredients of section 506 IPC are also missing. Pw 3 has implicated all accused as having obtained signature over blank paper whereas pw1 has named only kalpana. There being material contradiction between best evidence of pw1/ victim and pw3, evidence of pw3 is does not inspire confidence, is not found reliable and is discarded.

So the prosecution case hinges on the evidence of the victims. There is evidence that people near p/o were not examined. But that in itself is not enough to throw away the evidence of the victims. The settled law is that evidence should be weighed and not counted. Only as much evidence as is required for unfolding the prosecution case is needed to be adduced by the prosecution. Each and every eyewitness need not be examined. The evidence otherwise adduced in this case after separating the falsehood from truth has been found to be cogent. The defence evidence does not negate the prosecution case and does not help the defence case.

Thus after going through the evidence in its entirety and after separating the chaff from the grain, I find that offence u/s 341/34 IPC is made out against accused Nil Bahadur Thakuri, Indra Limbu and Suresh Limbu. Offence u/s 352 IPC is made out against accused Jyoti Limbu. They are accordingly found guilty of the stated offences. The other accused are acquitted of all the charges and set at liberty.

Considering the facts and circumstances of the case, benefit of probation is not extended to the accused. On hearing on point of sentence accused present stated that they are poor and be dealt with leniently.


Jyoti Limbu
23/07/2018, 11:47 AM

ORDER

Accused Nil Bahadur Thakur, Indra Limbu and Suresh Limbu having been found guilty u/s 341/34 IPC are sentenced to pay fine of rs 500 each in default 3 days S.I. Co accused Jyoti Limbu is sentenced to pay fine of rs 500 , in default 3 days S.I.

The remaining accused are acquitted of the charges and set at liberty.

Bail bonds are cancelled.

Given under my hand and seal on this the 8th day of January 2013.



JMFC,
SONITPUR
Judicial Magistrate
1st Class, Tezpur