

GR CASE NO:-1469/13

(State of Assam Vs Abhijit Barla & others)

<u>IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE</u> <u>SONITPUR, TEZPUR, ASSAM</u> Present : Smti P Chakravarty Addl. Chief Judicial Magistrate Sonitpur, Tezpur Date of judgment :-02-09-2022 U/S 148/448/323/506 of IPC Details of FIR/Crime and Police Station	
Complainant :	State of Assam Or Sri Abraham Kandulana S/O MehniyaKandulana Vill-Shymaguri TE jungle line PS-Dhekiajuli Dist- Sonitpur
Represented by :	Sri. P. Baruah, Learned Addl. Public Prosecutor
Accused :	i. Abhijit Barla S/O Abhiram Barla ii. Nowas Barla S/O Abhiram Barla iii. Abhisalam Bag S/O Niral Bag iv. Prabhudan Kangai S/O Lt Johan Kangi Vill- Shymaguri TE PS-Dhekiajuli Dist- Sonitpur
Represented by :	Sri B Borah

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Date of offence :	22-06-2013
Date of FIR :	23-06-2013
Date of Charge sheet :	24-04-2014
Date of commencement of evidence :	18-5-2016, 8-6-2017, 02-09-2022
Date on which judgment is reserved :	
Date of judgment :	02-09-2022
Date of Sentencing order, if any :	Nil

ACCUSED DETAILS:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
1.	Abhijit Barla	Nil	11-01-16	U/S 148/448/323 /506	Acquitted	Nil	Nil
2.	Nowas Barla	Nil	06-09-16	-Do-	Acquitted	Nil	Nil
3.	Abhisalam Bag	Nil	06-09-16	-Do-	Acquitted	Nil	Nil
4.	Prabhudan Kangai	Nil	06-09-16	-Do-	Acquitted	Nil	Nil

J U D G M E N T

1. The prosecution story emanates from the FIR lodged by one Abraham Kandulana stating inter alia that on 22-06-2013 at about 8 pm, his co-villagers Sri Abhijit Barla, Newas Barla, Sri Biliam Tapno, Sri Abhisalung Bag and Prabhudang illegally entering into his house, quarreled with him regarding some land related matter and assaulted him by causing injuries. It is also alleged by the informant that when his wife protested, they also caused grievous injuries on her head. Accused persons also misbehaved with Sri Mukut Kerketa, Sri Budhani Baba and Sri Suleman Bhuyan and threatened to kill the family members of the informant. Hence this case.

2. On receipt of ejahar, Dhekiajuli PS case no. 256/13 U/S 143/448/323/325/506 IPC was registered and ASI Aditya Baruti was entrusted for investigation of this case. After completion of investigation the police filed charge-sheet against the accused persons Abhijit Barla, Birlium Topno, Sri Abhisalam Bage, Noas Burla and Prabhudon Kangai U/S- 148/448/323/506 IPC. At the relevant point of time, on receipt of summons the accused persons appeared before this Court and they were furnished copies as mandated u/s 207 Cr.P.C. Having found a case against the accused persons u/s- 148/448/323/506 r/w sec-149 IPC, charge under said section of law was framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Thereafter summons was issued to the PWs, but on the dates fixed for evidence, the accused Birlium Topno remained absent without any step on several dates due to which W/A was issued against him. The W/A could not be executed against the said accused despite making several attempts and subsequently for sake of speedy trial for the rest of the accused persons **the case against the accused Birlium Topno was filed vide order dated 02-09-22** and the W/A against him was kept in the standing W/A file of the P/S concerned for future execution. Thereafter, during evidence stage, on 02-09-22, the informant Sri Abraham Kandulana vide petition bearing No 3448/22 has submitted that the case is amicably settled between both the parties outside the court and he is not willing to proceed with the case. Learned Addl. PP Sri P Baruah thereafter, prayed for re-

examination of the informant. Considering the fact that, the dispute between the parties have been amicably settled and also considering the fact that the instant case is an old pending one the prayer of the prosecution for re-examination of the Pw-1 was allowed. Accordingly, the Pw-1 was re-examined, re-cross examined and discharged. The previous evidence adduced by the informant is accordingly not considered for determination of point. Besides Pw-1, the **Pw-2 Mukut Kerketa** also deposed in connection with this case, however, the said witness did not state anything in his evidence which could point towards the guilt of the accused persons under the alleged offences as such his evidence is not considered to be very material for the prosecution case. Moreover the case has been found to have been resolved between both the parties outside the Court, hence, not much reliance is put of the evidence of the Pw-2 for determining the points at issue.

3. After re-examination of the Pw-1, one of the victim Seteng Kandulana was also examined and thereafter upon the oral prayer of the prosecution further prosecution evidence was closed and SD were dispensed with.

The points for determination is :

1. Whether the accused persons on 22-06-2013 at about 8 pm formed an unlawful assembly and being members of the said unlawful assembly armed with deadly weapon or means, in prosecution of the common object of such assembly, committed the offence of rioting with the said weapons, and thereby committed an offence punishable **under Section 148/ r/w-sec-149 of IPC ?**
2. Whether the accused persons, on the same day and time, being members of the said unlawful assembly, armed with deadly weapon or means, in prosecution of the common object of such assembly, committed house trespass by entering into the house of informant used as a custody of property and thereby committed an offence punishable **under section 448**

r/w-sec-149 of IPC ?

3. Whether the accused persons on the same day and time, being members of the said unlawful assembly armed with deadly weapon or means, in prosecution of the common object of such assembly, voluntarily caused injury to the informant and thereby committed an offence punishable **U/S 323r/w-sec-149 of IPC ?**
4. Whether the accused persons, on the same day and time, being members of the said unlawful assembly armed with deadly weapon or means, in prosecution of the common object of such assembly, criminally intimidated the informant and his family members by threatening and thereby committed an offence under **Section 506 of r/w-sec-149 of IPC ?**

DISCUSSION OF EVIDENCE

4. PW1 **Sri Abraham Kandulana** is the informant of this case. He was re-examined on 02-09-22 and in his evidence he has stated that he had previously deposed before this court in connection with the instant case on 18-05-16. He also stated that at the behest of the villagers of their village, the matter was amicably settled outside the court between them and the accused persons. At present, he has no any grievance against all the accused persons namely **Abhijit Barla, Billiam Topno, Abhisal Bage, Nuoas Barla and Prabhudun Kongari**. He further stated that he is not willing to proceed with this case against the accused persons.

5. **PW2 Sri Mukut Kerkata** is a hearsay witness and his evidence is not very material for the prosecution case. Hence, the same is not discussed in detail.

6. **PW3 Smti Sateng Kandulana** deposed that the informant is her husband. She also stated that accused persons are her co-villagers and that in the year 2013 there had been some scuffle between the accused persons and

her husband over some trivial matter and in the heat of the moment her husband had lodged the ejahar against the accused persons. She added that during the said scuffle, she had also sustained mild injury as she tried to disperse both the parties. The Pw-3, while supporting the version of Pw-1 stated that at present, her husband has compromised the matter with the accused persons outside the court and they are in good terms with the accused persons.

DECISION AND REASONS THEREOF

7. I have heard the prosecution and defence side.

8. Let me now analyse how far prosecution side has been able to prove its case beyond all reasonable doubt against the accused persons.

9. For the sake of brevity and convenience, all points for determination are taken up for consideration together.

10. It is seen that PW1 who is the informant of this case has stated that he had previously deposed before this court in connection with the instant case on 18-05-16. Now, at the behest of the villagers of their village, the matter has been amicably settled outside the court between them and the accused persons. As such, at present, he has no any grievance against all the accused persons namely Abhijit Barla, Billiam Topno, Abhisal Bage, Nuoas Barla and Prabhudun Kongari. He further stated that he is not willing to proceed with this case against the accused persons. Similarly, PW3, the wife of the informant stated that there had been some scuffle between the accused persons and her husband over some trivial matter issues and during the said scuffle, she had also sustained mild injury as she tried to disperse both the parties.

11. Upon careful perusal of the evidence of PW1 and PW3, it has come out clearly that no incident took place as alleged in the ejahar. It also appears from the evidence of PW1, the informant, that he had lodged the ejahar out of misunderstanding and at present, he has settled the matter with the accused persons. There is no any incriminating evidence on record against the accused persons to hold them liable under Sections 148/448/323/506 IPC R/W Sec 149

IPC and therefore, it is found that the charge levelled against the accused persons fails.

12. In view of the above aspects, it is hereby held that prosecution has failed to prove its case beyond all reasonable doubt. As such, this court holds that the accused Abhijit Barla, Sri Abhisalam Bag, Noas Burla and Prabhudon Kangaiare not guilty of the offence U/S –148/448/323/506 IPC R/W Sec 149 IPC and they be set at liberty forthwith.

The bail bond furnished by the accused persons is hereby extended for six months from today (02-09-2022).

13. Seized articles if any, be delivered to his lawful owner after proper verification and following the process of law.

14. Judgement is delivered and pronounced in open court.

15. Given under my hand and seal of this court on this 2nd day of September, 2022.

Smti P Chakravarty
Addl. Chief Judicial Magistrate
Sonitpur, Tezpur

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LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Sri Abraham Kandulana	Informant
PW2	Sri Mukut Kerkata	victim
PW3	Smti Sateng Kandulana	other

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. Prosecution:**

Sr. No	Exhibit Number	Description
1	Ext.1	Ejahaar

B. Defence:

Sr. No	Exhibit Number	Description
1	Nil	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Nil	Nil

D. Material Objects:

Sr. No	Exhibit Number	Description
1	Nil	Nil