

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

G. R. CASE NO: 1684 / 20.02

U/S 147/448/419/342/
323/324/325/506 IPC

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

PARTIES :

State

-Vs-

1. Mr. Rajib

5. Nazimuddin

2. Bappi Nath

Ahmed

3. B Lakshmi Bora

6. Chatu Khan

4. Nazim Hossain

(a) State

ACCUSED

EVIDENCE ON : 20.09.06, 22.09.12, 19.12.11, 07.08.12, 05.09.12

S/D ON : 10.12.12, 14.12.12

ARGUMENTS ON : 18.12.12, 08.01.13, 17.01.13

JUDGMENT ON : 17.01.13

LAWYERS : A.P.P. (for State)

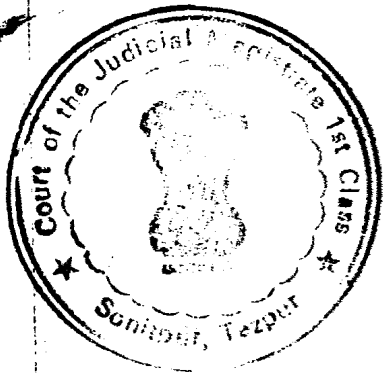
1. Mr. B.M. Sinha

2. Mr. P. Biswas

For accused.

GORS

Judicial Magistrate
1st Class Tezpur



The origin of this case lies in an FIR dated 21.11.02 lodged by one Iswar Sarma before the o/c Tezpur p.s. alleging that on 15.11.02, some 10-15 unknown youths had climbed over the godown wall, entered the premises and asked the chowkidar to open the door. They stated that they were from 'Assam vigilance and cbi' and as such the chowkidar opened the door. The youths then entered the room and assaulted the chowkidar and three others in the room. The chowkidar was then told to open the godown and after entering the godown announced that adulterated cement was kept there and assaulted the persons and video recorded these events. Thereafter, the chowkidar Bir bahadur Chetri was brought in their car to his house. He was watching a cultural event and Bir Bahadur informed him that police officers in the car were calling him. When he went to the car and was taken to the godown where he was detained, money demanded and he was told that if money was not paid, he would be taken to police station. It was alleged that one of the youths was one anowar khan and that in the morning by means of maruti car no DNJ 0916, he was dropped near home. Later on, money was demanded over phone.

Based on the FIR, Tezpur ps case no 809/02 u/s 147/148/419/325/342/384/506/365 IPC was registered and after investigation c/s was submitted against the accused u/s 147/448/342/323/419/384/365/506 ipc.

Case was split up in respect of charge sheeted accused Anowar Khan, Manju Khan and Bablu Hazarika. In respect of others copies were furnished. Charges u/s 147/448/419/342/323/384/365/506 IPC were framed, read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

Prosecution adduced evidence. s/d of accused Bappi Nath, Md. Rafiq, Najimuddin Hussain and Najimuddin Ahmed were recorded. In respect of other accused s/d was dispensed with on account of absence of incriminating materials. Defence did not adduce evidence. Arguments were heard.


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POINTS FOR DETERMINATION:

1. Whether on 15.11.02, the accused had rioted, trespassed into the cement godown premises of Iswar sarma, impersonated as vigilance and cbi officials and voluntarily caused hurt to victims?
2. Whether on the same date and in the same incident, the accused had extorted rs 1 lakh, kidnapped Iswar Sarma and also issued threats?

DECISION AND REASONS:

Iswar sarma, the informant/victim was examined as pw1. He deposed that on the date of occurrence (d/o), he was watching a function. Chowkidar Bir Baahadur came to him and informed him that on account of marpit at godown, police had come and had summoned him. He was pushed inside a vehicle. Accused Anowar Khan was driving and accused najimuddin had pushed him inside the vehicle. He was taken to the godown and accused of adulterating cement. He was assaulted by Najimuddin and Manju khan. 'carrying charge'(money) was demanded from him by accused. During cross he stated that accused were shown to him at police station and then he came to know them. He also admitted that he did not name Najimuddin in his statement u/s 161 crpc.

Minup Das, Pw2 stated that he knew the informant but did not know the accused. As per his evidence, one Samsar Ali had asked him to wash a car which he accordingly did. Police called him and he came to know that there was a 'marpit' over the vehicle which was seized. Ext 3 was the seizure list and ext 3(1) was his signature. During cross examination, he stated that no incident had taken place while he was driving.

Bir bahadur Chetri, Pw3 is also a victim and deposed that on the d/o he was sleeping in the godown. About 10/15 people came and informed him that they were policemen. He opened the door and was assaulted. The godown keys were given to them. The persons said that they were from vigilance. The accused Najimuddin Ahmed was video recording the incident and he and raju sarma were assaulted by accused (not identified in dock). They also asked for manager, Iswar Sarma. He informed him and he was

brought to godown. There accused Nazim Hussain, Bappi Nath, md. Rafi and Najimuddin Ahmed (all identified in dock) beat up the manager and kept him and the manager in another room. During cross, he stated that there had not been TIP and that he didn't know accused from before. He also stated that as there were many people he could not say who assaulted him by hands and lathi.

Raju sarma, pw4 deposed that he did not know any of the accused in dock or any of the accused in this case. He knew the informant. He also stated that about 10/15 people woke him, Dimbeswar sarma and Rabilal Biswakarma. They were all beaten up. He on being asked awoke pw 3. The persons also opened cement bags and took photos of cement bags saying same were duplicate. During cross examination, he stated that he did not know who committed the incident and did not know any of the accused in the dock.

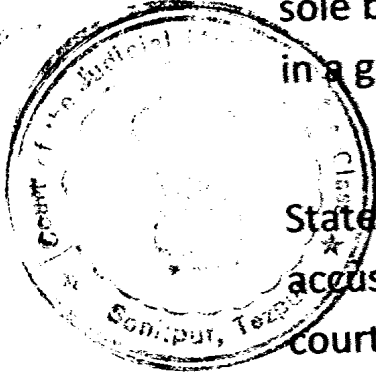
Other than these pws, no other witness was produced by the prosecution. Perusal of the available evidence shows that pw 4 who is a victim has not implicated the accused. There is no whisper in his evidence regarding any of the accused who have also not been identified by him in dock. Pw2's evidence also does not show any incriminating evidence against the accused. Ext 3 shows seizure of a vehicle from pw 2 (Minup Das) who is not an accused. Pw2 in his evidence has nowhere stated that accused used the vehicle. So, I find that evidence of pw2 and pw4 do not incriminate the accused.

As to the remaining evidence, I find that pw1 and pw 3 are both victims. Pw1 in his cross has ruled out presence of accused chotu khan at p/o. As regards the other accused, pw 3 has dock identified accused Nazim Hussain, Bappi Nath, md Rafi and Najimuddin Ahmed as having assaulted the manager/pw1 and that najimuddin was video recording the incident. Pw3 has not identified the other accused. Pw 1 has also identified najimuddin as having assaulted him. Corroboration in respect of manju khan is not there.

In this case, I find that there no TIP was conducted earlier. Pw1 has admitted that he did not name Najimuddin in his statement u/s 161 crpc. As to non holding of TIP, more so in the cases when the accused are not known to the witnesses prior to


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the occurrence (as in the present case), I find that the position of law (see Gauhati High court's decision in the case of Nibaran Borah vs state of Assam reported at 2006 Crilj 4222) is that identification of an accused in dock during trial even in the absence of TIP is an admissible piece of evidence. Absence of TIP does not make inadmissible the identification in trial. It will depend on the facts of the given case whether such evidence can be relied upon as the sole basis of conviction of an accused. The rule of prudence is that in a given case, the court may look for corroboration.




The Supreme Court in the case of Dana Yada @Dahu vs State of Bihar, AIR 2002 SC 3325 had observed that ordinarily if an accused is not named in the FIR, his identification by witnesses in court should not be relied upon especially when they did not disclose the names of the accused before the police. In the present case, only one Anowar khan (case split up) is named in the FIR. Other persons are not named in the FIR. Accused are not named in the police statement or in the statements u/s 164 crpc. In such a case scenario, the identification for the first time by the pws cannot be relied on and cannot be the basis of conviction. There is no other evidence relatable to the accused. Corroboration is thus unavailable.

Considering the facts and circumstances, the evidence on record and the ratios (supra), I am of the considered opinion that the charges cannot be said to be proved beyond doubt on the basis of the available evidence.

Consequently, the accused are acquitted of the charges u/s 147/448/419/342/323/419/384/365/506 IPC and set at liberty. Bail bonds are cancelled.

Given under my hand and seal on this the 17th day of January 2013.



JMFC, SONITPUR
Judicial Magistrate
1st Class, Tezpur