

GR 77/2012
(State of Assam Vs Shanjib Barik& others)

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| <p><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 : -07.09.2022 U/S 353/427/379 of IPCR/W Sec 3 of PDPP Act Details of FIR/Crime and Police Station</p> | |
| Complainant : | State of Assam Or SriDhodhi Mohan Das S/O Lt Meheram Das Vill-Fire Station, Dhekiajuli PS-Dhekiajuli |
| Represented by : | Sri. P. Baruah, Learned Addl. Public Prosecutor |
| Accused : | i) Sri Sanjib Barik S/O Sri Surajit Barik ii) Sri Tatan Dutta S/O Sri Shainat Dutta iii) Tapash Ghosh S/O Sri Badal Ghosh All of R/O- Moinajuli PS-Dhekiajuli |
| Represented by : | Sri Sarat Ch Borah Sri Abhijeet Bhuyah Sri kishore Deka |

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| Date of offence : | 13-01-2012 |
| Date of FIR : | 13-01-2012 |
| Date of Charge sheet : | 30-06-2012 |
| Date of commencement of evidence : | 23-02-16,10-5-19,3-6-19,11-10-19 |
| Date on which judgment is reserved : | 25-08-2022 |
| Date of judgment : | 07-09-22 |
| 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. | Sanjib Barik | 14-01-12 | 10-2-12 | U/S 353/427/379 of IPC R/W Sec 3 of PDPP Act | Acquitted | Nil | Nil |
| 2. | Tatan Dutta | Nil | 26-11-12 | -Do- | Acquitted | Nil | Nil |
| 3. | Tapash Ghosh | Nil | 26-11-12 | -Do- | Acquitted | Nil | Nil |

JUDGMENT

1. The prosecution case in brief is that:

The ejahar was lodged by the informant Dadhi mohan Das, an employee of Fire Brigade situated at Dhekiajuli Fire Station, stating *inter alia* that on 13-01-12 at about 6.12 pm, one Sri Sandip Bhagat had informed to the Fire station, Dhekiajuli over phone from No 9859058084 that a fire had broken out near Moinajuli Debendra School and immediately, on receipt of the said information, they rushed to the place of occurrence in a vehicle bearing registration No AS-30-5926 along with captain Mukut Kalita, and two others namely Paresh Deka and Dwipen Saikia. When they arrived at the place of occurrence, there were several persons who had gathered at that place and out of the same, some persons attacked their Fire Van with lathi, wood and stone and as a result, the vehicle got damaged and captain Naren Barman and driver Mukut Kalita sustained injuries. After arrival of first vehicle, captain Abdul Raik, Dharani Kalita, driver Pabitra Haloi, Manab Roi, Jayanta Baishya, Rupdhan Nath, Achyut Deka went in a second vehicle bearing registration No AS-30-3933 to the place of occurrence but the miscreants caused damage to their official vehicle and water pipes. Hence, this case.

2. On receipt of ejahar, Dhekiajuli PS case no. 21/12 U/S 147/148/149/353/427/379 IPC R/W Sec 3 Prevention of Damage to public property Act was registered and SI S Ahmed was entrusted with the investigation of this case. After completion of investigation the police filed charge-sheet against the accused –i) Sri Sanjib Barik ii) Sri Tutan Dutta iii) Sri Tapash Ghosh u/s- 353/427/379 IPC R/W Sec 3 Prevention of Damage to public property Act. At the relevant point of time, on receipt of summons accused persons appeared before this Court and they were furnished copies as mandated u/s 207 CrPC. Having found a case against the accused persons u/s- 353/427/379 IPC R/W Sec 3 Prevention of Damage to public property Act., charge under said sections of law

was framed, read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

3. In support of its case, the prosecution examined as many as 5 (five) nos of witnesses and defence examined none. Statement of the accused were recorded U/S 313 Cr.P.C. where they stated that the prosecution case is false.

Points for determination :-

- i) Whether the accused persons on 31-01-12 at about 6.12 pm assaulted the employees of the Fire Brigade Department in the execution of their duty as such public servant and thereby committed an offence punishable under Section 353 of IPC ?
- ii) Whether the accused persons on the same day and time committed mischief by causing wrongful loss or damage to the property of the Government valued more than Rs50/- and thereby committed offence punishable U/S 427, of IPC ?
- iii. Whether the accused persons on the same day and time intending to take dishonestly the water pipes out of the possession of the fire brigade, department without their consent, moved it in order to such taking and thereby committed the offence punishable under Section 379, of IPC?
- Iii) Whether the accused persons on the same day and time committed mischief by doing any act in respect of any public transportation and thereby committed an offence punishable under Section 3 of P D PP Act?

DISCUSSION OF EVIDENCE

5. **PW1 SriMukut Kalita** deposed that he knows the informant who was the in-charge of Fire Service Station, Dhekiajuli and he was the driver of the official vehicle of that office. He also stated that the occurrence took place about five years back at about 8/9 pm. At that time, he was on duty as a driver in the Fire Service. He also stated that he does not know the accused persons. On getting information, they went to the place of occurrence to extinguish the fire but the public assaulted him and also damaged their vehicle. He then kept the vehicle there and fled away. He then informed the police and police seized their vehicle. He further stated that he had put his signature as a witness in Ext.1, i.e. the seizure list and identified his signature in the seizure list as Ext.1(1).

In his cross-examination he stated that about more than hundred people had gathered at the place of occurrence before he reached. He also stated that the persons gathered there had damaged their vehicle with excitement. He denied the fact that as they arrived late at the place of occurrence so the incident occurred.

6. **PW2Rupdhan Nath** deposed that on 13.01.12, he was posted at Dhekiajuli Fire station as fire man. He deposed that the informant is known to him but he does not know the accused persons. On the previous day of Uruka of the year 2012, a call was received in their office from Moinajuli informing that fire had broken out in that locality. Immediately after getting the information one fire brigade went to the place of occurrence to handle the situation. After some time they got information that the fire brigade van was caused damage by public. He went in the second fire brigade van and as he was about to spray water over the fire he realized that somebody had disconnected the water supply by way of cutting the pipe. In the mean time, CRP came to the place of occurrence and on enquiry it came to light that public had caused damaged to both the fire brigade vans. Thereafter, with the assistance of CRP, the fire was extinguished and it came into control. After that they left the place of occurrence.

In cross-examination he stated that there was a gathering of 400/500 public at the place of occurrence and the public were in a very excited mood because of late arrival of fire brigades.

7. **Sri Dipen Saikia** is examined as PW3 and he deposed that he does not know the accused. On 13.01.12, he was at Dhekiajuli fire station. On that day in the evening time at about 7-7.30 PM an information was received over phone in their office that fire had broken out in the Moynajuli area. Immediately after receipt of the information he along with Paresh Deka, Naren Barman proceeded to the place of occurrence in the first fire extinguisher vehicle. They reached the place of occurrence on time but public were aggrieved stating that they had arrived late and thereafter started to cause damage to their vehicle by beating with bamboo sticks, uttered obscene words against them. They also began to cut the water pipe connected to their water tank. In the mean time other fire extinguisher vehicle also arrived. Aggrieved public were about to assault them but he cannot distinguish who amongst them was/were more aggressive and violent. Later on, police arrived at the place of occurrence.

In cross-examination he stated that approximately 200-300 people were present at the place of occurrence. He also stated that it was dusk at the time of the incident. He further stated that public had caused damage to their vehicle.

8. **PW4 Sri Tusta Ghosh** deposed that he knows the accused persons as they are his co-villagers. He stated that the incident had taken place almost 5-7 years ago. He stated that she was not present at the place of occurrence later on she came to know that an incident of fire took place wherein a house was burnt.

9. **PW5 Md Abdul Rouf** deposed that on 13-01-12, he was at Dhekiajuli fire station. He stated that he knows the informant but does not know the accused persons. On that day at about 6.30 pm on getting information about fire broke out at Moynajuli area, they went to the place

of occurrence in the second fire brigade. Reaching the place of occurrence, he came to know that 150-200 public gathered at the place of occurrence, had restrained the first fire brigade from spraying water over the affected area. Public also cut the pipes of their fire brigade. In the mean time, police, army came to the place of occurrence. With assistance of police and army they could perform their duty. Police had seized the fire brigade. Ext.1 is the said seizure list wherein Ext.1(1) is his signature.

In cross-examination, he stated that without going through the contents of the seizure list, he had put his signature over there. He had forgotten the place where the seizure list was signed by him. He also stated that at the time of their arrival, public were in a very excited mood. He denied the fact that due to late arrival of the fire brigade, public were offended. He also stated that he cannot say who out of the public had attacked their vehicle.

DECISION AND REASONS THEREOF

13. I have heard the prosecution and defence side. As has been stated earlier, in the instant case, then prosecution has failed to examine the informant Dadhimohan Das, as he was not reachable at the given address and his whereabouts were not known to anyone. Subsequently, the death report of the informant was received and accordingly, his evidence was dispensed with. The prosecution has accordingly adduced evidence offive nos(5) of Pws in support of its casebarring the informant.

Now, in order to arrive at a just decision of the points set for determination, a compared reading of the evidence on record is done, from where it transpires that in the instant case, the **PW1 Sri MukutKalita**, who is a seizure witness and who was the driver of the fire station office at Dhekiajuli had stated in his evidence that he used to know the informant who was the in-charge of Fire Service Station,

Dhekiajuli and on the relevant date, about 8/9 years back, when the alleged occurrence had taken place, on getting information, they went to the place of occurrence to extinguish fire but the public assaulted them and also damaged their vehicle. Then he had kept the vehicle there and fled away and then informed the police.

The Pw-1 did not specifically name any of the accused and he categorically stated that there were more than hundred people, who had gathered at the place of occurrence before they had reached and those persons who had gathered there had damaged their vehicle with excitement.

Similarly, the **PW2 Rupdhan Nath**, who was a Fire man in Dhekiajuli Fire station had also did not mention name of anyone specifically and stated that on 13.01.12, it was the previous day of Uruka of the year 2012, a call was received in their office from Moinajuli informing that fire had broken out in that locality. Immediately after getting the information one fire brigade went to the place of occurrence to handle the situation. After some time they got information that the fire brigade was caused damaged by public. He went in the second fire brigade and as he was about to spray water over the fire he realized that somebody had disconnected the water supply by way of cutting the pipe. The Pw-2 also **supported the version of Pw-1** and stated that on enquiry it came to light that public had caused damaged to both the fire brigade vehicles and that there was a gathering of 400/500 public at the place of occurrence and the public were in a very excited mood because of late arrival of fire brigades.

Pw-3 **Sri Dipen Saikia** also stated that they had reached the place of occurrence on time but public were aggrieved stating that they had arrived late and thereafter started to cause damage to their vehicle by beating with bamboo sticks, uttered obscene words against them. They also began to cut the water pipe connected to their water tank. The Pw-3 also stated that **approximately 200-300 people were present at the**

place of occurrence and that it was dusk at the time of the incident and the **public had caused damage to their vehicle.**

8. Pw-4 **PW4 Sri Tusta Ghosh** did not state anything specifically of which mention may be made of. She stated that she was not present at the place of occurrence later on she came to know that an incident of fire had taken place wherein a house was burnt.

9. **PW5 Md Abdul Rouf** also stated that about 150-200 public had gathered at the place of occurrence, and had restrained the first fire brigade from spraying water over the affected area. Then public had also cut the pipes of their fire brigade. In the mean time, police, army came to the place of occurrence and with the assistance of police and army they could perform their duty.

Thus, it is seen that the prime allegations levelled against the accused persons are that they had caused damage to the fire brigade vans and had also cut the water pipes of the fire vans, as the fire brigade had reached late at the place of occurrence, but the said allegation has not been raised against any of the accused persons specifically and all the Pws had unanimously stated that at the time of the alleged incident, hundreds of people had gathered at the place of occurrence and out of those people it was next to impossible to definitely say who had caused damage to the Fire Vans or to their water pipes. As such none of the PWS could prove that it is the accused persons who had caused damage to the Public/Govt. properties.

Now, it is a well-accepted canon of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubts and that the accused is to be presumed innocent until he is proved guilty. In the case of **Kaliram Vs State of Himachal Pradesh reported in AIR 1973 SC 2773**, Hon'ble Supreme Court had held inter alia that whenever the court finds reasonable doubt about the guilt of an accused, the accused must get the benefit of such doubt.

In the light of the above judgment, it is seen that the prosecution could not bring home the guilt of the accused persons beyond reasonable doubt under the alleged sections.

As such it can be safely held that the prosecution failed to establish the charge levelled against the accused person u/s-353/427/379, IPC R/W sec-3 of P.D.PP. Act as alleged. As such, the accused persons are acquitted of the charge u/s-353/427/379, IPC R/W sec-3 of P.D.PP. Act and is set at liberty forthwith.

The bail bond furnished by the accused is hereby extended for six months from today (07.09.2022).

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

15. Judgement is delivered and pronounced in open court.

16. Given under my hand and seal of this court on this 07th day of September, 2022.

The instant case is accordingly disposed of.

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 MukutKalita | Other |
| PW2 | Rupdhan Nath | Other |
| PW3 | Sri DipenSaikia | Other |
| PW4 | Sri Tusta Ghosh | Other |
| PW5 | Md Abdul Rouf | 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

1. Prosecution:

| Sr. No | Exhibit Number | Description |
|---------------|-----------------------|--------------------|
| 1 | Ext.1 | Seizure list |

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 |