

**G.R Case No-580 of 2013
(State of Assam Vs Md. Mukaddar Hussain)**

case submitted charge sheet u/s-448/427/354/506 of I.P.C against the above-named accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of Cr.P.C was furnished to the above-named accused person. After hearing both sides, charge of offence u/s-448/354/427/506 of I.P.C. was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused person examined as many as four (04) numbers of witnesses including the informant and the victim in support of this case. Considering the testimonies of the witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused was examined u/s-313 of Cr.P.C and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

ARGUMENT

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case are:-**
- (i.) Whether on 16.03.2013 at the shop of the informant accused person assaulted the victim Must. Ayesha Begum, wife of informant with intend to outrage her modesty at the shop of informant and thereby committed an offence punishable u/s-354 of IPC?
 - (ii.) Whether the accused person on the same date, time and place committed house trespass by unlawfully entering into or unlawfully remaining in the shop of informant with intend to commit an offence of criminal trespass and house trespass and thereby committed an offence punishable u/s-448 of IPC?
 - (iii.) Whether the accused on the same date, time and place committed mischief by causing wrongful loss or damage to the property of the

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informant valued at more than Rs.50/- and thereby committed an offence punishable u/s-427 of IPC?

- (iv.) Whether the accused person on the same date, time and place committed criminal intimidation by threatening the victim with injury to her property with intent to cause alarm to her and thereby committed an offence punishable u/s-506 of IPC?

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

7. It is worth mentioning that, the criminal jurisprudence of the country rests on the principle of proving the guilt of the accused beyond all reasonable doubt by the prosecution. There must not be any shadow of doubt on the truthfulness of the prosecution case. This being the cardinal principle of criminal jurisprudence, we must scrutinize the evidence produced by the prosecution from all possible corners and must also test the veracity of the witnesses. If the witnesses are found as wholly reliable on the point of guilt of the accused then only the accused can be held as guilty of the alleged crime.
8. In this case as per the charges framed against the accused person, the prosecution side got the burden of prove to establish the fact that on 16.03.2013 accused physically assaulted the informant's wife Must. Ayesha Begum and further outraged her modesty by giving threat of dire consequences to cause injury to her property and further the accused damages the wall of the house causing mischief and wrongful loss to the tune of rupees more than 50/-. To prove the aforesaid contention, the prosecution side examined as many as four numbers of witnesses out of which PW-1 is the informant in this case named Md. Jilal Hussain and as per his evidence the incident took place around 3 years back at about 12:30 Noon and at the time of incident, the accused came to his wife's shop and due to some credit related matter both of them involved in a heated altercation. He also testified that accused entered into his house when his wife was alone and accused took a big stone and attempted to throw at her but he failed. The accused threw the stone at the wall of the house which resulted the breaking of the wall and due to that utensil also got destroyed. He had a loss of around Rs.2000/- to Rs.3000/-. Thereafter, his wife informed the incident to him.
9. As per the evidence-in-chief of the informant, the accused went to the house of the informant and attempted to throw stones upon his house and due to that incident the wall

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of his house got damages. The informant in his ejahar categorically pleaded that on the date of incident accused physically assaulted his wife and thereafter, broken the wall of the house. Surprisingly, he in his evidence-in-chief did not support the fact of physical assault upon his wife rather he simply deposed that accused made an attempt to throw stones upon his wife and that stone hit the wall that causes damaged of the wall of his house. The fact which not been supported by informant himself in his evidence in respect of the physical assault of his wife makes the evidence of informant contradictory with the contentions of the ejahar. The informant further did not support the fact of outraging the modesty of his wife by way of deposing any fact in his evidence. Furthermore, as per the ejahar the entire incident took place at the shop of the informant whereas the informant being PW-1 in his evidence deposed that incident took place at his house when his wife was alone at his house. Undeniably, the ejahar being a not substantive piece of evidence cannot make the prosecution case to be fatal on every aspect but the settled provisions of law makes it categorical that the contents of the ejahar may be used for the purpose of contradiction and corroboration in the light of Section-145 of Indian Evidence Act with maker. In this case to taste the veracity of the evidence presented by PW-1, this court has meticulously considered the contents of ejahar in the backdrop of the testimony presented by PW-1 and after its due consideration, it is seen that the informant himself failed to support the contentions of the ejahar and the informant further in his cross-examination admitted that he has not stated the fact of damage of utensil of his house and he did not submit any documents relating to his shop.

10. Now, coming to the evidence presented by PW-2 Md. Amsor Ali, it is seen that he heard from Ayesha that accused damaged the utensil in respect of an incident regarding buying a chocolate on credit in the morning by the son of the accused in the shop of Ayesha. PW-2 had seen the damaged utensils of the informant after returning his house and as per his cross-examination he had not seen the incident. As such, it is seen that the evidence presented by PW-2 appears to be hearsay in nature.
11. PW-3 is Jaitun Nessa and as per her evidence 03 years back after her return, she saw the wall of the informant's house and utensils got damage and Ayesha told her that accused Mukkaddar did this. She in her cross-examination admitted that she has not seen the

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incident. As such, it is seen that the evidence presented by PW-3 appears to be hearsay in nature.

12. PW-4, Must. Ayesha Begum is the victim of this case and as per her evidence in the year 2016 at about 10 AM to 11 AM incident took place and on the date of the incident accused went to her shop and demanded articles on credit and when she denied to give the same on credit, accused caught hold her hand and clothes and dragged. Thereafter, on fear she went inside of a latrine but the accused damaged the door of the latrine and shown fear of setting fire on her house. Thereafter, she informed the incident to her husband and her husband lodged the ejahar.
13. PW-4 being the star witness to the alleged incident, the Court has meticulously perused her evidence in the backdrop of the entire prosecution story as well as the evidence presented by her husband i.e. PW-1. On meticulous appreciation of the evidences, it disclosed before this court that PW-1 being the husband of PW-4 in his evidence claimed that the wall of his house along with utensils got damages throwing of a stone but surprisingly, his wife i.e. PW-4 in her evidence testified that the accused had broken the door of a latrine on the date of incident. She did not support the fact of breaking the wall as well as damaging utensils of her house by the accused. Hence, it is seen that evidence of PW-4 and PW-1 appears to be contradictory with each other in respect of causing damage of the wall or door or utensils. Both the evidences are appears to be contradicting with each other and that makes their evidences doubtful, full with lot of shortcomings and hence, cannot be relied upon.
14. PW-2 and PW-3 in their evidences testified that both of them heard from the victim Must. Ayesha Begum that on the date of incident son of the accused went to the shop of the victim (PW-4) to get chocolate on credit and when she denied out of anger accused had committed the alleged incident. PW-4 has deposed that on the date of incident accused went to her shop to have some articles on credit and when she denied the accused dragged her by holding her hands and clothes and on fear she went inside of a latrine and accused damaged the door of the latrine. If really on the date of alleged incident accused dragged the informant's wife named Must. Ayesha Begum (PW-4) by holding her hands and clothes or if really on the date of alleged incident accused caused damages of the door of the latrine? Then the informant being the husband of the victim Ayesha Begum

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must have contended those facts in his ejahar as well as in his evidence. The fact which not appears to be corroborative and supportive are in respect of the relevant fact of the entire prosecution story and the contradictions that discloses from the evidences on record makes the entire prosecution story doubtful and untrustworthy in nature.

15. Therefore, in the light of all the aforesaid discussion, I am of the opinion that prosecution has failed to prove the charges against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charge u/s-448/354/427/506 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
16. Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court.
Given under my hand & seal of this court on this 10th day of January, 2022 at Tezpur.

(Sri N. J. Haque)
Chief Judicial Magistrate,
Sonitpur: Tezpur

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ANNEXURE

1. Witnesses for Prosecution:-

- PW-1 :- Md. Jilal Hussain, informant
- PW-2 :- Md. Amsor Ali,
- PW-3 :- Must. Jaitun Nessa,
- PW-4 :- Must. Ayesha Begum, Victim

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits: NIL

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

**Chief Judicial Magistrate
Sonitpur, Tezpur**