

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

GR Case No. 11/09

State

-v-

1. Abdul Salim

2. Abdul Latif.....Accused persons

PRESENT : P. Shyam,

Judicial Magistrate, 1st Class,

Sonitpur.

In appearance -

For the Prosecution : Shri Joydeep Dey, APP

For the accused person : Shri Babul Borthakur, Advocate

Date of Prosecution evidence : 26-07-12, 06-09-12, 18-07-13

Date of Argument : 30-09-13

Judgment delivered on : 10-10-13

u/s 447/294/506/323/34, IPC

JUDGMENT

1. Informant Smt. Ankur Rani Sarmah Bhuyan lodged an ejahar in Tezpur PS alleging inter alia that on 2-1-09 at about 2:30 pm accused persons namely Abdul Latif and Abdul Salim along with ten-fifteen persons armed with 'lathi', 'da' etc entered into the land belonging to informant's father-in-law Promod Bhuyan to erect bamboo fencing. It is stated that when informant tried to prevent the accused persons in their act, the accused

persons abused her and threatened to cut her body into pieces and throw in the pond and also hit informant with the stick of the bamboo fencing. It is also alleged that the accused persons thereafter chased informant's husband, mother-in-law and father-in-law and threatened to kill them and put fire in their house. It is also stated that prior to this incident also the accused persons have been trying all means to trespass into their land and on 25-12-08 a case was filed against the accused persons by informant's mother-in-law. Hence this case.

2. A case was registered in Tezpur PS against the accused persons u/s 147/447/294/325/506, IPC. After completing investigation, police submitted charge-sheet against accused persons namely - Abdul Salim and Abdul Latif u/s 447/323/294/506/34, IPC. Copies were furnished to them as per provisions of sec. 207, CrPC. Particulars of offences under the said sections of law were explained to them, to which they pleaded not guilty, and claimed to be tried.
3. In order to bring home its charges, prosecution examined as many as five witnesses, including the I/O. The accused persons were examined u/s 313, CrPC. Their plea was one of total denial.
4. Defence adduced no evidence.

POINTS FOR DETERMINATION

5. I have heard arguments of learned counsels of both sides. I have also carefully gone through the entire evidence available in case record. Upon such examination, I find that to ascertain the guilt of the accused person, it is necessary to determine whether -
 - i) The accused persons in furtherance of their common intention entered into the land of informant to commit offence
 - ii) The accused persons in furtherance of their common intention voluntarily caused hurt to Anku Rani Sharma Bhuyan
 - iii) The accused persons in furtherance of their common intention uttered obscene words at the informant and her family members
 - iv) The accused persons in furtherance of their common intention threatened informant and her family with injury to her body and their property

DECISION, DISCUSSION AND REASONS THEREOF:

6. To arrive at a decision on the above the evidence led by prosecution has been carefully gone through. **PW1-Smt. Ankur Rani Sarmah Bhuyan**, was at home when she the accused persons came to their land to erect bamboo fencing. At that time her husband and father-in-law was not at home. Therefore she and her mother-in-law went and questioned the accused persons. The accused persons shouted abusive words at them and at that time her husband and father-in-law returned home. PW1 stated that she sustained injury on the palm of her left hand when she tried to resist a blow dealt on her by accused Salim with a stick of bamboo fencing. PW1 further stated that the accused persons threatened to kill her husband, father-in-law and mother-in-law when they came forward to rescue her. She continued to state that prior to this incident also accused persons tried to dispossesses them from their land and a case was filed by her mother-in-law against the accused persons on 25-12-08. During cross-examination she stated that on the day of incident itself she went to the police station and reported the matter to police and police recorded her statement. She was accompanied by her husband and mother-in-law. She confirmed that she was sent to Tezpur hospital for treatment of injury sustained in the alleged incident. She further confirmed that the written ejahar was filed on the next day of incident i.e on 3-1-09. She denied the suggestion that the land belongs to the accused persons. She denied that without knowing the result of case u/s 145 Cr.P.C, she chased the accused persons and when she tried to hit the accused persons with a stick bamboo, she sustained injury on her hand. She further denied that accused Salim has not threatened to cut her onto pieces.
7. PW2, Pinku Bhuyan, is the husband of PW1. He stated that the accused persons along with twenty -twenty five persons came to their land to erect bamboo fencing. At that time his wife, PW1 and his mother was present. After sometime he and his father arrived and seeing them, the accused persons came forward with 'da', 'lathi' etc in their hands and also abused them. The accused persons threatened to put fire in their house. While all this were going on, accused Salim assaulted his wife and she sustained a cut injury on her left palm. PW2 stated that he then went to the police station and from there took his wife to hospital for treatment. During cross-examination he denied the suggestion that the pond belongs to government and is not in his name. He denied that he went chasing the accused persons with stick etc.
8. PW3, Promod Ch Bhuyan is the father-in-law of informant. He reiterated the same facts stated by PW2 in his evidence. He stated that on the day of incident the accused persons came to his land to erect bamboo fencing in his land and seeing the accused persons in their act, his wife and daughter-in-law, PW1 tried to prevent the accused persons. He stated that hearing commotion, he and his son i.e PW2 came to the place of occurrence and saw accused Latif hitting his daughter-in-law with 'da' on her hand. As a result PW1 sustained injury and she was taken to hospital for treatment. The matter was reported to police also. PW3 stated that the pond is in his possession since fifty long years. He denied that he has not stated before police that accused Salim and Latif came to his pond to erect bamboo fencing and assaulted his daughter-in-law. He denied the suggestion that he has not seen the incident.

9. PW4, Renu Bhuyan, is the mother-in-law of informant. She narrated the same facts narrated by PW1, in her evidence. She stated that on the day of incident she and her daughter-in-law were at home, when the accused persons came to their pond to erect bamboo fencing. Seeing the accused persons armed with 'da', 'lathi' etc, she and PW1 prevented the accused persons, but the accused persons abused them and threatened to put fire in their house. The accused persons brought some persons with them. She stated that one person hit her daughter-in-law and caused injury on her hand. PW4 continued to state that prior to this case, there is another case filed against the accused persons which is pending trial in the court. During cross-examination she stated that she has no idea that the accused persons had entered their land having the power through power of attorney to enter. She denied the suggestion that the accused persons had not assaulted her daughter-in-law.
10. PW5, Someshwar Boro is the I.O. He narrated the various steps taken by him during investigation. ***The I/O confirmed that PW3 had not told him that the accused persons have assaulted PW1 and caused injury on her hand. The I/O also confirmed that PW3 had not told him that the accused persons threatened them with injury to their property and person. .***
11. The accused persons were examined u/s 313, CrPC. They pleaded total denial.
12. Heard rival contentions of learned counsels of both sides and perused record. Learned counsel for defence highlighted the contradictions in the testimonies of witnesses before the I.O. Prosecution side argued that the defence during cross-examination confirmed the presence of accused persons at the place of occurrence i.e near the pond, on the day of incident and brought into light the fact that the accused persons have come for they are being vested with the power of attorney to do so and therefore there is no doubt that the accused persons are the ones to have committed the offence. This argument holds good as seen from the evidence of witnesses and all throughout the cross- examination of witnesses defence tried to justify the entrance of accused persons into the land where the pond is situated. The pond as revealed from evidence is adjacent to the house of informant and there is bamboo fencing in between the house of informant and pond. Defence brought out during cross-examination that pond is a govt. land and has been give to the accused persons on lease, which against the witnesses denied. The matter regarding the hold over the pond by the informant could not be ascertained from the evidence as the witnesses revealed that there is bamboo fencing between the pond and the house of the informant and to the other side of the pond is the house of the accused persons. Therefore, the offence u/s 447, IPC against the accused persons also could not be established by prosecution beyond reasonable doubt.

13. As far as offence u/s 294, IPC is concerned no witnesses have stated the words uttered by the accused persons. Therefore, with words not mentioned, offence u/s 294, IPC also not established.
14. Next, is offence u/s 506, IPC and prosecution side argued that all witnesses categorically stated that accused persons threatened to put fire in their house. A careful scrutiny of evidence shows that PW1, only testified that accused persons abused them and at that time her husband i.e PW2 and father-in-law i.e PW3 entered home and while PW2 and PW3 moved forward towards the accused persons, the accused persons threatened to kill them. PW2, husband of PW1 again stated that the accused persons threatened to set fire in their house. PW3, who entered house along with PW2 stated nothing in his evidence regarding threats issued by the accused persons. PW4, who was present with the informant i.e PW1, on the other hand stated that the accused persons threatened to throw them into the pond and set their house on fire which I.O confirmed that PW4 has not stated before him. That apart, PW1 i.e the informant has herself not stated such facts in her evidence. Thus it is seen that PW1 and PW4 who were present from the very beginning when the incident occurred did not state anything about the threats issued by the accused persons. It is only PW2, who stated to have been threatened by the accused persons, though again PW3, who was present with PW2, had no mention of threats at all. This raises a doubt and benefit goes to the accused persons. Hence offence, u/s 506, IPC also not establish against the accused persons.
15. Moving onto offence u/s 323, IPC, it is evident from evidence on record that PW1 sustained injury on her left palm. Medical report also reveals the same. All witnesses categorically stated that the accused persons hit PW1 on her head. Infact, defence during cross-examination brought into light that the accused persons indeed entered to erect bamboo fencing and PW1, while trying to chase the accused persons to leave the place, sustained injury on her left palm. Defence though confirmed that PW3 did not state before I.O that the accused persons hit PW1, on her hand, but at the same time defence could not shake the testimony of PW1, the injured in this case. The other witnesses also supported PW1 and defence could not shake their testimony either. Thus, the fact that PW1 was hit on her hand by the accused persons is proved and so is offence u/s 323, IPC. It is obvious from evidence adduced that prosecution has been able to its case against the accused persons of causing hurt to the informant beyond reasonable doubt. They are, therefore, liable to be convicted for the same.

ORDER

16. In the result, I hold the accused persons not guilty u/s 447/294/506, IPC, and acquit them of these charges.

17. I also hold the accused persons namely - Abdul Salim and Abdul Latif guilty u/s 323, IPC, and convict them accordingly.

18. Heard the convicted accused persons on quantum of sentence. They appeared untouched by the judgment of conviction and kept quiet. Learned defence counsel pleaded on their behalf to consider their matter leniently as they have their family. With such conduct and with the fact that they are mature grown up persons who are fully aware of the consequences of their acts, committed the said offence. Therefore, in my considered opinion, they do not deserve the benefits of provision of Probation of Offenders' Act or of section. 360, CrPC. However considering their age and antecedents, the accused persons are sentenced to pay fine of Rs 1000/- u/s 323, IPC which is paid to the victim Anku Rani Sharma Bhuyan as compensation.

19. This judgment is pronounced in open Court.

20. Furnish a copy of judgment to the convicted accused persons free of cost.

Given under my hand and seal of this Court on this, the 10th day of October, 2013,

**Panchali Shyam,
Judicial Magistrate,
1st class, Sonitpur.**