

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

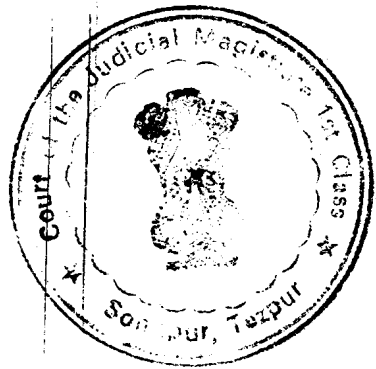
G.R. CASE NO: 580/11 U/S 14B) 447/254/294 IPC.

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

PARTIES : State

-V-

- 1. Hafeezuddin
- 2. Saiedul Jalom
- 3. Amin Haryda.
- 4. Womrat Ali
- 5. Nur Kalom



-----ACCUSED

EVIDENCE ON : 24.05.13, 07.06.13, 14.06.13.

S/D ON : 01.07.13, 06.07.13

ARGUMENTS ON :
JUDGMENT ON : 12.07.13

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

F. Jarram (for accused).

Judicial Magistrate
1st Class, Tezpur

In the matter at hand, an FIR was lodged through court by one Abdul Khalik who alleged about three incidents that took place on 14.03.11, 16.03.11 and 19.03.11. In the first incident there was dispute over preparation of food for which the accused assaulted the informant, his wife and son with bamboo and rod and wife of the informant was misbehaved with and her saree was pulled.

As regards the second incident, it was alleged that the daughter of informant was threatened and words regarding the character of the girl were uttered. The last incident related to assault on the minor daughter of the informant. All three incidents were clubbed together and the present FIR was lodged.

The O/C Tezpur p.s. on receipt of the FIR registered that same and it was numbered as Tezpur p.s. case no 283/11 u/s 326/354/506/34 IPC. Matter was investigated and post investigation charge sheet was laid against the accused u/s 143/447/354/294 IPC. Final report submitted by the I/O in respect of accused Abdul Majid was 'allowed' by the CJM vide order dated 14.07.11.

In respect of other accused, copies were furnished. Substance of accusation u/s 143/447/354/294 IPC was explained to the accused who pleaded not guilty and claimed to be tried. Prosecution adduced evidence. S/D of the accused were recorded. Defence did not adduce any evidence. Arguments were heard.

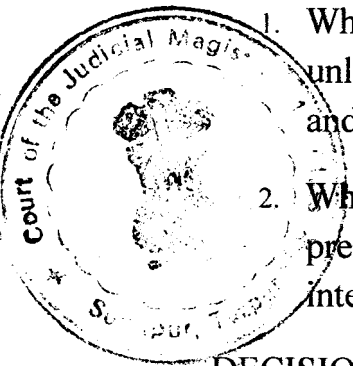
POINTS FOR DETERMINATION:

1. Whether on the dates of occurrence, the accused were members of an unlawful assembly with the common object of committing criminal trespass and other offences?
2. Whether on the dates of occurrence, the accused had trespassed into the premises of the informant, assaulted/ used criminal force on the victim intending to outrage her modesty and also uttered obscene words?

DECISION AND REASONS:

Abdul Khalek/pw1 is the informant. He deposed that his son had a fight with his wife over preparation of food. At this accused Jalil/ his son slapped his daughter Khatemon. At this all the accused who are his relatives came inside their house. Majid ordered Habijuddin to assault. Accused Hamza gave a lathi blow over his head. His son was also assaulted by all the accused. Ext 1/FIR was lodged by him. Pw1 has been corroborated in toto by Jerina Khatun/ pw2 who is his wife. She deposed along the same lines. She stated that she was also assaulted. Khatimon Nessa/pw3 who is the daughter of pw1 only stated that pw1 had been assaulted by Hamza by lathi over head. She did not state about any assault on herself and pw2.

Innas Ali/pw4 is a relative of both sides. He is an eyewitness. As per his version there had only been a push and pull. He did not see any assault by lathi. He was never declared hostile by the prosecution and his version is binding on the prosecution.



Judicial Magistrate
Ist Class Tezpur

S.I. Mukul Kakati/pw5 and A.S.I. Kusheswar Bora/pw7 are the I/Os. Their evidence is only formal in nature. Dr. Hemanta Koch/pw6 had examined pw1, 2 and 3 and had found NO/NIL INJURIES.

So, from the evidence, I find that oral evidence of assault by lathi is not supported by the medical evidence. There are also discrepancies in version of the victims as to who were assaulted though as per their version were all present at p/o. Besides there also appears inconsistencies between the facts as narrated in EXT 1 and the version in court. All these aspects touch on the reliability of the witnesses.

All these aspects apart, I also find that prosecution has led two sets of evidence—one set of evidence of pw1,2 and 3 and the other set being of pw4. Evidence of pw4 negates the prosecution case and evidence of pws 1, 2 and 3. The legal position is that if two sets of evidence are led by the prosecution, the one in favour of accused has to be considered. Keeping that legal aspect in view, if the evidence of pw4 is considered, no offence against the accused is made out.

So, after considering the matter in its entirety and for what has been discussed, I do not find the charges to be proved beyond doubt on the basis of the available evidence. The accused are resultantly acquitted of the charges u/s 143/447/354/ 294 IPC and set at liberty.

Bail bonds stand cancelled.

Given under my hand and seal on 12th of July 2013.




JMFC:TZP
Judicial Magistrate
1st Class Tezpur