

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

Tezpur, Sonitpur

PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS

Judicial Magistrate First Class,

Tezpur, Sonitpur

G.R. Case No. 1081 of 2012

State

Versus

Santi Daimary

(Under section 448/325/506 IPC)

Charge framed on: 19.07.2016

Evidence recorded on: 25.10.2016, 18.09.2016, 20.11.2017

Statements recorded on: 21.05.2019

Arguments heard on: 21.05.2019

Judgment delivered on: 29.05.2019

Advocate for the Prosecution: Ms. Neeva Devi and Mr. Tapan Das, Ld. APP's

Advocate for the Accused: Mr. Amiya Saikia

J U D G M E N T

Prosecution Case in brief:

1. Accused persons stood for trial for committing offences u/s 448/325/506 IPC.

2. Prosecution case is initiated on the basis of written ejahar dated 05.05.2012 stating interalia that on 04.05.2012 at about 7.30 p.m., when the informant was about to have her dinner, the accused person without any reason dragged her husband from their house and started to physically assault him at their yard. The accused person even pushed and shoved the informant and further scolded her stating that he will set their house ablaze on fire. Hence this case.

3. On receipt of the ejahar Raikhosmari Outpost forwarded the same to the O.C, Dhekiajuli PS for registering a case, investigating and submit the report in final form. The officer in charge of Dhekiajuli Police Station has registered a case as Tezpur P.S. Case no 212/2012, u/s 448/325/506 of the Indian Penal Code. Thereafter, I/O has launched the investigation of this case. After completion of investigation, I/O has finally submitted charge sheet u/s 448/325/506 of the IPC against the accused person.

4. Thereafter, cognizance has been taken and summon have been issued to the accused persons. On appearance of accused person, necessary documents required u/s 207 Cr. PC have been furnished to him. On perusal of the materials on record formal charges u/s448/325/506 IPC is read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

5. Prosecution, in support of its case has examined only four (4) witnesses.

6. On closure of prosecution evidence accused person was examined u/s 313 Cr.P.C. wherein he denied all the allegations levelled against him. Defence denied adducing evidence.

7. I have heard the arguments advanced by the learned counsel for the accused and Ld. A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

POINTS FOR DETERMINATION:

Point No 1: Whether the accused person on 04.05.2012 at about 7.30 p.m., committed house trespass by entering into the house of the informant and thereby committed the offence punishable under Section 448 of the IPC?

Point No.2: Whether the accused person on same day, same time and same place caused grievous hurt to the informant by assaulting her as well as her husband and thereby committed the offence punishable under Section 325 of the IPC?

Point No 3: Whether the accused person on same day, same time and same threatened the informant with dire consequences and thereby committed the offence punishable under Section 506 of the IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

8. Now let me try to decide the above points by appreciating the evidence available in the case record. I have carefully considered the evidence available in the instant case. **P.W-1, Smt Silika Rabha** (informant) deposed in her evidence in chief that on 05.04.2012 at about 7:30 p.m., accused came along with some unknown persons to her house and pushed and pulled her husband Sri Gajen Rabha. When she tried to intervene the accused person assaulted her, as a result of which she fell down unconscious. It is further deposed by P.W-1 that because of the assault meted to her husband he sustained injury in his mouth as a result of which one of his teeth got broken. Thereafter she lodged this case.

9. During cross examination P.W-1 deposed that at the time of alleged incident she along with her husband and two children were present in their house. Her parents Debo Rabha stays in the eastern side of her house, Bipin Rabha stays in the northern side of my house, Sunil Rabha stays in the southern side of my house and there is a public road on the western side of my house. P.W-1 further deposed that one person stays near the road but she is not acquainted with his name. With regard to some cycle matter the alleged incident has taken place. P.W-1 does not know the persons who had accompanied the accused when he came to my house on the date of alleged incident. At the time of occurrence of the incident it was dark. The moment she came out of her room towards the courtyard she became unconscious and therefore she could not see who assaulted her husband. P.W-1 further deposed that her parents had gone for some wedding in the village at the time of incident. After half an hour of the alleged incident she gained consciousness. P.W-1 further deposed that she does not know the contents of the ejahar since it is written in assamease and she has knowledge of hindi language. P.W-1 further deposed that one person from Raikhasmari OP had written the ejahar and accordingly she has signature. The ejahar was lodged on the next day of the alleged incident. P.W- does not know any Sujit Daimary of their village. The cycle which was lying in their house, the said cycle matter was compromised by the villagers. P.W-1 is not aware if many villagers of their village had come to their house to get this cycle. Her husband had got the cycle and had kept in their house.

10. P.W-2 Sri Sunil Rabha deposed in his evidence in chief that in the year 2012 accused along with some other people came and assaulted the husband of the informant. P.W-2 was watching the incident from some distance but could not intervene because he feared that the accused person and the others will assault him.

11. During cross examination P.W-2 deposed that he was standing near the boundary of the house of the informant at the time of incident. He could not recognize the persons accompanying the accused at the time of incident since it was dark. P.W-2 does not know any person by the name of Sujit Daimary. He also has no knowledge if the husband of the informant has bought cycle belonging to one Sujit Daimary and kept the same in his house. P.W-1 also has no knowledge if the accused had led the villagers to the house of the informant to get the cycle for which reason the informant had falsely lodged this case against the accused person.

12. P.W-3 Mrs. Surabhi Rabha deposed in her evidence in chief that this incident took place five years ago. On hearing hue and cry she came out of her house and moved towards the house of Gajen Rabha and saw that accused fought and beat with the husband of the informant i.e., Gajen Rabha. When P.W-3 told as to why the accused fought with the husband of the informant, the accused chased her away and further told that he will beat her. Later on injured Gajen Rabha was taken to the hospital by 108 ambulance. Gajen Rabha sustained to injuries on his chest and lower jaw of the teeth for which he had to undergo stitches.

13. During cross examination P.W-3 deposed that at the time of occurrence it was dark almost about 4.00 p.m., to 5.00 p.m., P.W-3 deposed that she recognized the accused by his voice. She was not very near to the place of occurrence as the incident took place in the yard of Gajen Rabha. At the time of occurrence of the incident almost 15 people gathered at the yard of Gajen Rabha but she does not know the said persons. P.W-3 deposed that although the informant is her neighbour but the distance between their houses is 20 minutes. One Amulya Rabha who is the brother of Gajen Rabha resides near his house. In the paschim one Parimal Sarkar resides, in the south Ramesh Rabha resides and in the north Bipin Rabha resides. P.W-3 deposed that she cannot say whether the said persons were present at the time of occurrence of the incident or not. P.W-3 deposed that she witnessed the incident from her house. The injured met police at the hospital. P.W-3 denied the entire suggestion put forth by defence regarding the facts she deposed in her chief examination. P.W-3 admitted that she did not allow witness Sunil Rabha to go near the place of occurrence.

14. P.W-4 Amulya Rabha deposed in his evidence in chief that he knows the informant as well as the accused person. This incident took place about 7-8 months ago at the house of the informant. The accused came to her house along with many persons and assaulted the husband of the informant and dragged him outside their house. P.W-4 further deposed that they used lathis (sticks) and their own hands to assault the husband of the informant. The husband of the informant sustained to injuries on his chest, hand and other parts of

his body. His teethes were broken and he had stitches near his lips. He also had medical treatment in Jungle basti hospital.

15. During cross examination P.W-4 deposed that the informant is his sister in law and the victim is his elder brother. P.W-4 submits that he is residing at Bombay for the last seven to eight years and he returned back home about four months back. This incident took place at about 6 p.m., in the evening. At that time it was dark and people could not be properly identified. The accused came along with twenty to thirty persons. Out of fear P.W-4 did not come to the place of occurrence but he has seen the persons in some light. The distance between his house and the place of occurrence is about 80 meters. P.W-4 deposed that had been watching the occurrence from my house and he saw the accused person assaulting the husband of the informant. Police did not record any statement of P.W-4 and for the first time he has narrated the incident before the court. P.W-4 further deposed that he used lathis (sticks) and also their own hands to assault the husband of the informant because of which he sustained injuries in his chest, hand and other parts of his body. His teethes were also broken and he had stitches near his lips. P.W-4 deposed that he had not seen how many other people gathered in the place of occurrence.

16. Now let me try to decide the above points on the basis of evidence available in the case record. On perusal of the above evidences on record, it has come out clear that the informant completely derailed from the allegations levelled against the accused in the ejahar. In her ejahar she stated that on 04.05.2012 at about 7.30 p.m., this incident took place but at the time of evidence she deposed that on 05.04.2012 at about 7:30 p.m. the incident occurred. The informant herself is not aware about the date of alleged incident making the prosecution case doubtful. Also the informant stated that for no reasons the accused dragged her husband for their house and physically assaulted him but during the test of cross examination she stated that relating to some cycle matter the alleged incident has taken place. The informant in her ejahar stated that at the time of the alleged incident the accused was accompanied by some other unknown persons. The question which arises to my mind is that why then the informant failed to mention in her ejahar that unknown persons also entered her house at the time of occurrence of the incident. It appears to me that it is an after thought and the informant brought new facts before the court at the time of evidence. It is seen that the informant herself do not know the persons who had accompanied the accused when he came to her house on the date of alleged incident as it was dark. Infact P.W-1 herself admitted that could not see who assaulted her husband. It is also seen that the informant has no knowledge about the contents of the ejahar. Hence I am not inclined to believe the testimony of the informant.

17. Now P.W-2 and P.W-3 although were aware about the incident but they failed to incriminate the accused person against the allegations levelled against him. P.W-4 who happens to be the brother of the informant stated that the accused came to the house of the informant along with many persons and assaulted his brother and also dragged him outside their house but during cross examination he stated that as it was dark the people could not be properly identified. Also he was watching the entire episode from his house as he never visited the place of occurrence. Also there are lots of contradictions among the testimonies of P.W's and they are found to sing their own versions about the alleged incident. The time of occurrence of the incident mentioned by the witnesses are contradictory to each other. Interestingly it is alleged by P.W-4 that the accused person used lathis (sticks) and hands to assault the husband of the informant but in this regard the informant remained totally silent. Also there is no seizure of any offending weapon by the I.O in this regard. Other witnesses are also silent on this point. However, let me first point out that the prosecution has failed to examine the vital witnesses i.e., the victim as well as the investigating officer of this case keeping various loopholes for the prosecution in proving its case. Several opportunities were granted to the prosecution to bring in the Investigating Officer but in non examination has led to fatality of this instant case.

18. The Medical Officer was also not by examined the prosecution. The general rule is that prosecution has to examine all of the witnesses whose names have been disclosed in the chargesheet but then the same cannot be said to be a rule having universal application. In the instant case, several opportunities were granted to the prosecution to bring in the Medical Officer. However, his attendance could not be secured despite the most assiduous of efforts. On perusal of the case record it is seen that the medical report is available with the Case Record. The medical report is a public document which bears the seal and signature of the Medical Officer and the same is admissible as a public document. The medical report was signed on 21.05.2012 i.e., after seventeen days of the occurrence of the incident. However, there is no requisition to show that the victim i.e, Gajen Rabha was sent for medical check up on the day of lodging the ejahar. I find it a bit hard to believe that a person who was dragged out from his house and physically assaulted that resulted in grievous injuries would go for medical examination after seventeen days. Thus, in light of the aforesaid discussion, it is my considered opinion that the prosecution case which was dependent on the medical report submitted by the Medical Officer suffered a fatal blow qua the guilt of the accused.

19. After careful examination of the evidence on record in this case it is seen that there is nothing on record to show that the accused trespass by entering into the house of the informant and assaulted her as well as her husband. None of the witnesses including the informant stated that the accused threatened the informant in any manner.

Under these circumstances, the irresistible conclusion is that the prosecution has miserably failed to bring home the charges under sections 448/325/506 IPC against the accused person.

ORDER

20. None of the PWs have stated anything indicting the accused person of commission of any offence for which he is being tried. Hence, I find no ground for holding the accused person Sri. Shanti Daimary guilty of committing the alleged offences u/s 448/325/506. As such the points for determination are answered in the negative in favour of the accused person.

21. Set the accused at liberty forthwith.

22. The bail bond for the accused is extended for a further period of six (6) months.

23. The case is disposed of on contest accordingly.

Given under my hand and seal on this 29th day of May, 2019 at Tezpur, Sonitpur.

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Tezpur, Sonitpur

APPENDIX

A. WITNESS OF PROSECUTION:

1. P.W-1: Smt Silika Rabha
2. P.W-2: Sri Sunil Rabha
3. P.W-3: Mrs. Surabhi Rabha
4. P.W-4: Amulya Rabha

B. EXHIBITS OF PROSECUTION:

1. Exhibit.1: FIR.
2. Exhibit. 1(1): Signature of the informant.

C. WITNESS OF DEFENSE: NIL

D. EXHIBITS OF DEFENSE: NIL

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Tezpur, Sonitpur