

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. 1343 of 2013

State

Versus

Rajesh Parbat

(Under section 341/352/294/506 IPC)

Offence Explained on: 11.12.2014

Evidence recorded on: 17.08.2015, 14.10.2016, 10.03.2017,
24.05.2017

Statements recorded on: 21.05.2019

Arguments heard on: 21.05.2019

Judgment delivered on: 28.05.2019

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

Advocate for the Accused: Mr. Paramjit Singh Sethi and Associates

J U D G M E N T

Prosecution Case in brief:

1. Accused person stood for trial for committing offences u/s 341/352/294/506 IPC.

2. Prosecution case is initiated on the basis of the written ejahar dated 10.06.2013 stating inter alia that on that day at about 10 a.m., when he was heading towards Gorubandha in his bike, the

accused person who was in red colour indica car stopped his vehicle near his own house and without any reason restrained and slapped the informant and also gave him blows resulting in injury. The accused person also uttered obscene slang words and languages to the informant and threatened to kill him. Hence this case.

3. On receipt of the ejahar, officer in charge of Missamari Police Station has registered a case as Missamari P.S. Case no 65/13, u/s 341/323/294/506 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 341/352/294/506 of the IPC against the accused.

4. Thereafter, cognizance has been taken and summon have been issued to the accused person. 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 substance of accusation u/s 341/352/294/506 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. Cross examination of P.W-1 was kept reserved but despite several efforts prosecution failed to bring P.W-1 for cross examination and accordingly his evidence was closed and the case proceeded as per law.

6. Examination of accused u/s 313 Cr.P.C. is dispensed with since no incriminating materials are found 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 10.06.2013 at about 10 a.m wrongfully restrained the informant while he was on his way to Gorubandha in and thereby committed the offence punishable under Section 341 of the IPC?

Point No.2: Whether the accused person on the same day, at same time and place assaulted or used criminal force to the informant and thereby committing an offence punishable under section 352 of the IPC?

Point No.3: Whether the accused person on same day, same time and same place uttered obscene slang words and languages to the informant and thereby committed the offence punishable under Section 294 of the IPC?

Point No 4: Whether the accused person on same day, same time and same place voluntarily caused hurt to the informant 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, Md Ubeidullah (informant)** deposed in his evidence in chief that on 10.06.2013 at about 10:30 a.m., he was heading toward Gorubanda from his house in his bike. The vehicle of the accused without having a number plate was also plying after his bike. The vehicle of the accused overtook the bike of the informant and thereafter the accused stopped the informant and restrained him. It is also deposed by P.W-1 that the accused slapped and gave blows to the informant and also threatened to kill him. Thereafter P.W-1 lodged the ejarah.

9. Cross examination of P.W-1 was kept reserved but he did not appear before the court to face his cross examination.

10. P.W-2 Md Samed Ali deposed in his evidence in chief that he knows both the parties. This incident took place three years ago. When he was travelling in a passenger vehicle from Gorubandha to Dhekiajuli he saw that an altercation was taking place between the parties and they were surrounded by a lot of people. It is further deposed by P.W-1 that the accused is the panchayat counselor of Bahbera and the informant is his neighbour. Thereafter P.W-2 left the place of occurrence.

11. Cross examination of P.W-2 is declined.

12. P.W-3 Md Jahur Ali deposed in his evidence in chief that he knows both the parties. The incident took place two and half years ago. When he was selling his fishes he saw that some fights took place between the parties. P.W-3 also deposed that the accused slapped the informant on his face near his house which he witnessed and when the mobile phone of the informant fell down, he picked it up for him. Thereafter he left the place of occurrence.

13. During cross examination P.W-3 deposed that he cannot state the reason as to why fight took place between the parties. Police interrogated him in connection with this case after two days of the occurrence of the incident. There was a vehicle at the place of occurrence and people gathered near the accused but he cannot say the number of the said vehicle. P.W-3 denied suggestion put forth by the defence stating that it is not a fact that no such alleged incident took place near the house of the accused. P.W-3 stated that he does not remember if he stated before the police that the mobile phone of the informant fell down. P.W-3 cannot say where the informant sustained to injury. He also cannot say if there are any houses near the house of the accused. P.W-3 denied suggestion put forth by the defence stating that it is not a fact that no fight took place between the parties. He also cannot say who were present at the time of occurrence of the incident.

14. P.W-4 Shyamanta Das deposed in his evidence in chief that he knows both the parties. He knows nothing about the incident but he wrote the ejahar as narrated to him by the informant.

15. During cross-examination P.W-4 deposed that his shop is near Missamari P.S and people comes to his shop for writing ejahar. He did not witness the incident. The distance between his shop and the place of occurrence is 300 meter. Police did not interrogate him in connection with this case. P.W-4 further deposed that in the ejahar the time of occurrence of the incident is mentioned as 10: 30 a.m. P.W-4 denied suggestion put forth by the defence stating that it is not a fact that police recorded his statement and he stated that at 12: 45 p.m., the informant came to him and asked him to write the ejahar.

16. Now let me try to decide the above points on the basis of evidence available in the case record. In order to establish an

offence under section 341, India Penal Code, the prosecution must be able to establish that the accused voluntarily obstructed a person and thereby prevented him from proceeding in a direction in which he had a right to proceed. The learned defence counsel has argued that the complainant's case suffers from inherent incongruities and inconsistencies.

17. It is clear from the above evidence of prosecution's witnesses that, none of the witnesses deposed anything regarding wrongful restrain caused to the informant. The cross-examination of P.W-1 could not be conducted due to his absence. So, the prosecution has failed to prove the offence u/s 341 IPC.

18. To bring home the offence u/s section 352 IPC, the prosecution should prove that, (i) That there was assault or use of criminal force against any person; (ii) That such assault or use of criminal force was otherwise than on grave and sudden provocation given by that person. In the instant case, none of the witnesses have deposed about any criminal force. P.W-1 has deposed that the accused slapped and gave blows to him. P.W-2 and P.W-4 have not deposed the accused person slapping and giving blows to the informant. Although P.W-3 deposed that the accused slapped the informant on his face near his house which he witnessed but during his cross examination he narrated different versions which makes me disbelief his testimony. It also appears that, one of the essential ingredients of assault is that the accused person must cause a reasonable apprehension of harm in the victim. In this case, it does not appear from the evidence of witness that the accused person caused a reasonable apprehension of harm to the informant and the evidence of P.W-1 is also not corroborated by the evidence of P.W-2 and P.W-3. Scanning through the evidence of P.W-4 it is seen that he knows nothing about the incident but wrote the ejahar as narrated to him by the informant.

19. Now Section 294 IPC states that, "Whoever, to the annoyance of others does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both". Although P.W -1 in his ejahar stated that the accused uttered obscene slang words and languages to him but that in itself is not enough to attract the ingredients of Section

294 of IPC. No such words are stated by P.W-1 as well as other witnesses which was used by the accused against the informant and hence the court cannot determine whether the words said were obscene or not. It is an accepted principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubt and in case of any doubt, the benefit of doubt has to be given to the accused. Hence, from that evidence available on record, it is found that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt in respect of the alleged offence u/s 294 IPC and this point also stands negative.

20. Section 506 Indian Penal Code prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 Indian Penal Code is as under: Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. In the present case, P.W-1 deposed that the accused person threatened to kill him. The witnesses have not deposed about any threat caused to the informant. So, it appears to me that only this much evidence is not sufficient to prove the offence under section 506 IPC. The prosecution has failed to prove that the accused person had intention to cause alarm to the informant or to cause the informant to do any act which she is not legally bound to do as the means of avoiding the execution of such threat, or to cause P.W-1 to omit to do any act which P.W-1 is legally entitled to do so as the means of avoiding the execution of such threat. From the evidence available on record, it is found that the prosecution has failed to prove the guilt of the accused person beyond reasonable doubt in respect of the alleged offence u/s 506 IPC and this point also stands negative.

21. From the above discussion, I come to the safe conclusion that the prosecution has failed to bring home the charge against the accused person under 341/352/294/506 IPC.

ORDER

22. In view of the above, I am of the considered opinion that no case is made out against the accused person for commission of offences as alleged. Hence, I find no ground for holding the accused person Rajesh Parbat guilty of committing the alleged offences u/s 341/352/294/506 IPC. As such the points for determination are answered in the negative in favour of the accused person.

23. Set the accused at liberty forthwith.

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

25. The case is disposed of on contest accordingly.

Given under my hand and seal on this 28th 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: Md Ubeidullah (Informant)
2. P.W-2: Md Samed Ali
3. P.W-3: Md Jahur Ali
4. P.W-4: Shyamanta Das

B. EXHIBITS OF PROSECUTION:

1. Exhibit.1: FIR.
2. Exhibit. 1(1): Signature of the informant.
3. Exhibit. 1(2): Signature of the P.W-4 as writer of the ejahar

C. WITNESS OF DEFENSE: NIL

D. EXHIBITS OF DEFENSE: NIL

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