

P.R Case No-799 of 2019
(State of Assam Vs Smt. Swapna Roy & Anr)

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR

P. R. Case No-799 of 2019

Under section-447/352/294/323/34 of I.P.C

Present:- **Sri N. J. Haque, AJS,**
Chief Judicial Magistrate,
Sonitpur, Tezpur

State of Assam

-Vs-

1. Smt. Swapna Roy
W/O:- Sri Kalipad Roy
2. Sri Kalipad Roy
S/O:- Late Jatindra Roy

Both are R/O:- Bhairab Nagar Tilla
P/S:- Tezpur
Dist:-Sonitpur, Assam

.....Accused Persons

Advocate appeared:

Mrs. Karabi Das, Asst. P.P..... For the State

Mr. Jaydeep Dey, Ld. Advocate..... For the accused persons

Evidence recorded on	:- 04.01.2022
Date of Statement of defence	:- 04.01.2022
Argument heard on	:- 04.01.2022
Judgment delivered on	:- 04.01.2022

J U D G M E N T

History of Prosecution's Case

1. Prosecution's case appears to be in a narrow campus is that one Sri Prasanta Saha lodged an ejahar before the O/C of Tezpur P.S alleging inter alia that on 14.05.2018 at about 10 PM, while he went to his in-law's house, the accused persons taking advantage of his absence illegally went to his house and physically assaulted his sister named Sangita Ghosh, his mother Sabitri Saha and elder sister Ranjita Das and also threatened them of dire consequences of their lives.

"INVESTIGATION"

**P.R Case No-799 of 2019
(State of Assam Vs Smt. Swapna Roy & Anr)**

2. On receipt of the ejahar, Tezpur P.S Case No-974 of 2018 under section-448/352/325/34 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-447/352/323/294/34 of I.P.C against the accused persons.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s-207 of CrPC was furnished to the above named accused persons. After hearing both side, particulars of offences u/s-447/352/323/294/34 of I.P.C. was read over and explained to the accused persons by my Ld. Predecessor in office, on which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused persons examined as many as two numbers of witnesses i.e. the informant and the victim 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. Examination of accused under section-313 of Cr.P.C is dispensed with as from the testimonies of the prosecution witnesses, nothing implicating disclosed against the accused.

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 14.05.2018 at about 10 PM at a place called Garwanpatty under Tezpur PS, the accused persons in furtherance of their common intention illegally entered into the house of the informant with intend to commit an offence and thereby committed an offence punishable u/s-447/34 of IPC?
- (ii) Whether the accused persons on the same date, time and place in furtherance of their common intention

**P.R Case No-799 of 2019
(State of Assam Vs Smt. Swapna Roy & Anr)**

scolded the family members of the informant using filthy languages and thereby committed an offence punishable u/s-294/34 of IPC?

(iii) Whether on the same date, time and place both the accused persons in furtherance of their common intention used criminal force upon the victim, named, Smt. Sabitri Saha and thereby committed an offence punishable u/s-352/34 of IPC?

(iv) Whether on the same date, time and place, both the accused persons in furtherance of their common intention voluntarily caused simple hurt upon the body of victim named Smt. Sabitri Saha and thereby committed an offence punishable u/s-323/34 of IPC?

DECISION, DECISION AND THE REASON THEREOF:

7. In this case, prosecution side has got the burden of prove that on 14.05.2018 at about 10 PM, while he went to his in-law's house, the accused persons taking advantage of his absence illegally went to his house and physically assaulted his sister named Sangita Ghosh, his mother Sabitri Saha and elder sister Ranjita Das and also threatened them of dire consequences of their lives. In this case prosecution side to prove the case examined two numbers of witnesses in support of this case. I have carefully travelled through the testimonies of the prosecution witnesses in the backdrop of entire prosecution case and it finds:-
8. PW-1, Sri Prasanta Saha being the informant of this case deposed before this court that he knows both the accused persons. He also deposed that the incident took place around 2 years back at about 10:00 PM and on the date of incident, they had a quarrel with the accused persons and out of misunderstanding he lodged the ejahar against the accused persons. He further deposed that he has settled the matter with the accused outside the court and therefore, he does not to proceed further against the accused persons. He identified his ejahar as Ext-1 wherein he put his signature as Ext-1(1). The cross-examination of PW-1 was declined by the defence side.

**P.R Case No-799 of 2019
(State of Assam Vs Smt. Swapna Roy & Anr)**

9. PW-2, Smt. Sabitri Saha being the victim of this case deposed before the court that she knows the informant and the accused persons of this case. She also deposed that the incident took place around 2 years back at about 10:00 PM and on the date of incident, informant had a quarrel with the accused persons and out of misunderstanding, the informant lodged the ejahar against the accused persons. She further deposed that informant has settled the matter with the accused outside the court. The cross-examination of PW-2 was declined by the defence side.
10. I have carefully travelled through the testimonies of PW-1 and PW-2 in the back drop of the entire prosecution case and it finds that both the PW-1 and PW-2 in their evidences contradicted the entire contention of the prosecution story by way of not implicating the accused persons with the alleged incident. PW-1 in his evidence categorically deposed that he lodged the ejahar against the accused persons out of misunderstanding and now he does not want to proceed further with this case against both the accused. Both PW-1 and PW-2 in their evidences admitted that the matter has already been settled with the accused outside court.
11. To sum up the testimonies of the prosecution witnesses, it reveals before this court that the prosecution witnesses appears to be contradictory with the entire contention of the ejahar and their testimonies cannot be relied upon.
12. In view of the above evidence on record, I am of the opinion that prosecution side has failed to prove the charges against both the accused persons beyond reasonable doubt and as such the accused persons are acquitted from the charges u/s-447/352/294/323/34 of IPC and sets at liberty. Surety is extended for six months in view of section-437A of Cr PC.
13. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 04th day of January, 2022.

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

**P.R Case No-799 of 2019
(State of Assam Vs Smt. Swapna Roy & Anr)**

ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Sri Prasanta Saha, Informant

PW-2:- Smt. Sabitri Saha,

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext-1 :- FIR

Ext-1(1):- Signature of PW-1

5. Defence Exhibits: NIL

6. Material Exhibits: NIL

Chief Judicial Magistrate
Sonitpur, Tezpur