

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
LAKHIMPUR, NORTH LAKHIMPUR, ASSAM**

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 2734/2016

Under section 294/341/506 of the of the Indian Penal Code

**State of Assam
-Vs-
Sri Sanjib Chetry**

.....Accused

Date of offence explanation : 01.009.2017
Dates of recording evidence of PWs : 09.10.2017, 23.11.2017,
06.03.2019, 01.10.2019,
Date of examination u/s 313, Cr.P.C. : 02.03.2020
Date of Argument : 02.03.2020
Date of judgment : **16.03.2020**

Advocates appeared in the case:-

Sri Prasanta Dutta and Smti. Ajanta Sharma Baruah, Addl. P.P., for the State
Sri Dipak Pokhrel, Advocate, for the accused

J U D G M E N T

1. The factual matrix of the prosecution case is that on 20.10.2016 one Sri Pradip Sharma had lodged an FIR with the Officer-in-charge of Bihpuria Police Station alleging inter alia that on 19.10.2016 at about 11:00 PM when he went to the house of Arun Subedi at Dongibil to attend a religious rite held for the death of a person in their house, the accused Sri Sanjib Chetry then had verbally abused his friend Sri Raj Kishore Tiwari, had assaulted him with blows and had hit him with chair and lathi for which he sustained injuries and as he tried to intervene the accused had also verbally abused him, assaulted him and had threatened him with life. Hence, the case.

2. On receipt of the ejahar, the Officer-in-charge of Bihpuria Police Station had registered a case vide Bihpuria P. S. Case No. 786/2018, under sections 341/294/506 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under sections 341/294/506 of the Indian Penal Code against accused Sri Sanjib Chetry to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 341/294/506 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused entered his appearance before the Court after receiving the summons. Copies were furnished to the accused as per provision contained in section 207 of the Code of Criminal Procedure. The particular of offence under section 341/294/506 of the Indian Penal Code when being read over and explained to the accused person he pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused on 19.10.2016 at about 11:00 PM had wrongfully restrained Sri Raj Kishore Tiwari, the friend of the informant ?

(b) Whether the accused on 19.10.2016 at about 11:00 PM had verbally abused the informant Sri Pradip Sharma and his friend Sri Raj Kishore Tiwari with vulgar language in public to cause annoyance to him ?

(c) Whether the accused on 19.10.2016 at about 11:00 PM had criminally intimidated the informant Sri Pradip Sharma and his friend Sri Raj Kishore Tiwari by threatening to their life ?

5. During the trial the prosecution side could examine 6 (six) witnesses viz. Sri Pradip Sharma as PW-1, Sri Chiranjeeb Chetry as PW-2, Sri Tikaram Sharma as PW-3, Sri Rebot Chetry as PW-4, Sri Raj Kishore Tiwari as PW-5 and ASI Dibmbeswar Boruah, the I/O as PW-6. The prosecution had exhibited the ejahar as Ext-1 and the signature of the informant therein as Ext-1(1), the rough sketch map of the P.O as Ext-2 and the signature of the I/O therein as Ext-2(1), the charge sheet as Ext-3 and the signature of the I/O therein as Ext-3(1). The defence has cross-examined prosecution witnesses and thereafter all the incriminating materials surfaced in the evidence of the prosecution witnesses against accused was put to his explanation under section 313 of the Code of Criminal Procedure. The defence plea was that of complete denial.

6. I have heard the vociferous final argument of both sides and thereupon come to the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

7. For the sake of convenience all the points for determination are taken up together for discussion. Now to decide the aforesaid points of determination the extract of the core of the PW evidence is reproduced herein below.

8. Now the PW-1 Sri Pradip Sharma the informant of this case testified that on 19.10.2016 at about 11:00 PM he along with his friend Raj Kishore Tiwari had gone to attend the rituals of the father of Arun Subedi at Dongibil in the residence of Sri Arun Subedi. While Raj Kishore Tiwari was lying on a wooden bench in the house of Arun Subedi the accused came and shouted at his friend Raj Kishore Tiwari as 'Oi Bihari', 'Oi Bihari' and thereafter had attacked him with a plastic chair. When Raj Kishore at that tried to protect with his hands he sustained injury in his hands. Thereafter, the accused threw the plastic chair at Raj Kishore Tiwari but it hit the head of Rebot Chetry instead for which he was bleeding from his head.

9. The PW-1 further stated that he along with two other persons took Raj Kishore Tiwari away but after going to a distance of about 100 meters from the house of Arun Subedi they were again confronted by the accused who came with a bamboo stick in his hand. As the PW-1 tried to rescue Raj Kishore Tiwari from the accused he at that assaulted him with his hands and threatened of not sparing him.

10. PW-2 Chiranjeeb Chetry testified that on the date of incident at about 9:00 PM the villagers went to the house of Arun Subedi at Dongibil as his father expired. Some of the villagers at that time were playing cards in the house of Arun Subedi at night and an Arunachali person was also present with him that time. The accused came from a neighbouring house and had asked the villagers not to play cards in the house of Arun Subedi. The informant at that objected by saying who was he to ask them to stop playing cards and thereafter a quarrel took place between Pradip Sharma and accompanying Arunachali person on one side and the accused on the other side and they had separated them both.

11. The PW-2 in his cross-examination had stated that the accused had only asked the informant and other villagers not to play cards and at that the informant had pushed him aside and that no physical fighting had taken place and no unparliamentary words were uttered by the accused at the time of the incident.

12. Now PW-3 Tikaram Sharma also testified that at the time of incident some villagers were playing cards in the house of Arun Subedi whose father had expired and he was also present there that time. The accused came there and had asked the villagers not to play cards and make a hue and cry as a person had expired in that house. The informant was also playing cards that time and an Arunachali person was also present there. As the accused had asked the villagers not to play cards the informant at that had pushed the accused and thereafter a scuffle took place between that Arunachali person and the accused and the villagers had separated them both.

13. The PW-3 in his cross-examination had stated that the accused didn't do any 'maar-pit' (physical fighting) nor had he used any unparliamentary words.

14. Now the PW-4 Rebot Chetry deposed that on the date of incident the villagers went to the house of Arun Chetry whose father expired and the villagers were spending the night by playing cards there. He also at that time was there and was supplying betel nut to the people there. A Bihari man was also present there at that time. The accused came there and was hurling verbal abuses to the said Bihari person and he tried to hit the Bihari person with a chair but it got to hit him (PW-4) for which his head got cracked and he was bleeding from his head. He heard that the accused had taken away that Bihari person outside by beating him and he sustained injury in his head.

15. PW-4 in his cross-examination had stated that he had come along with the informant to depose in the case that day.

16. The PW-5 Raj Kishore Tiwari stated that he on the date of incident visited the house of a relative of the informant as his father expired and on reaching the said house could see few villagers playing cards but as he do not play cards so was sleeping on a bench. At that time the accused came and uttered obscene words to him like 'Mother chod Bihari', 'behan-chod' etc. and directed him to leave that place immediately. The accused had assaulted him with a plastic chair and he raised his hands to protect himself and because of the assault he sustained minor injury in his left hand and buttock. Meanwhile an old who tried to interfere also got injured in his head.

17. PW-5 stated that the informant at that had asked the accused why he was behaving as such and saying so came out of the house towards the road. As they reached near the house of the informant the accused who followed them taking a split bamboo from the boundary fencing assaulted him in his buttock which he tried to ward off with his hand for which he sustained injury in his hand as well. In the mean ime Ghanashyam Sharma and Bhagwan Sharma came there and had

pacified the accused. The PW-5 further stated that the accused while assaulting him had taken away a mobile phone worth Rs. 12,000/- from his pocket.

18. Now the PW-6 ASI Dimbeswar Boruah deposed that he conducted the investigation of this case and on completion of investigation had submitted charge sheet against the accused Sanjib Chetry.

19. The PW-6, I/O in his cross-examination had stated that the witness Pradip Sharma did not tell before him that the accused came shouting 'Oi Bihari', 'Oi Bihari' by targeting his friend Raj Kishore Tiwari. He also stated in his cross-examination that the witness Raj Kishore Tiwari did not tell him that the accused came there and rebuked him by uttering slang words 'Mother-chod Bihari' behan-chod' etc. and that the accused assaulted him with split bamboo while he was going to the house of Pradip Sharma.

20. So, now a look at the ejahar i.e. Ext-1 goes to show that the informant didn't state anything about the accused using words like shouting 'Oi Bihari', 'Oi Bihari' and words 'Mother-chod Bihari' behan-chod' etc. to Raj Kishore Tiwari. Now the PW-1 Pradip Sharma stated about the accused using the word 'Oi Bihari', 'Oi Bihari' while verbally abusing Raj Kishore Tiwari but the PW-5 Raj Kishore Tiwari in fact had stated that the accused had verbally abused by saying 'Mother-chod Bihari' behan-chod' etc. to him. So the abusive words described by the two PWs stating those to have been used by the accused to Raj Kishore Tiwari are contradictory. Further, both the PW-1 and PW-5 in their statements before the I/O didn't state about the accused using those words to Raj Kishore Tiwari. So there is an embellishment found in that regard in the version of PW-1 and PW-5.

21. Also, the PW-2 Chiranjib Chetry and PW-3 Tikaram Sharma who are eyewitnesses in their cross-examination clarified that the accused didn't use any unparliamentary word.

22. So, in the given position it cannot be concluded that the accused had used any vulgar obscene word to the informant and Raj Kishore Tiwari in public.

23. Now the PW-1, PW-4 and PW-5 had stated about the accused assaulting Rebot Chetry but the two eyewitnesses PW-2 and PW-3 had categorically stated in their cross-examination that the accused didn't physically assault anyone. Further, the PW-1 stated that when he came out with Raj Kishore the accused had assaulted both him and Raj Kishore Tiwari but the PW-5 Raj Kishore Tiwari didn't state anything about the accused assaulting the informant Pradip Sharma. So there is a contradiction in their version. Further, the prosecution didn't examine any M/O in this case but however on going through the medical examination report of Sri Raj Kishore Tiwari, Sri Pradip Sharma and Sri Rebot Chetry it goes to show that there is no injury reported in their body in the said medical examination reports. Also, the I/O in his investigation didn't find any such injury for which he had submitted the charge-sheet against the accused only u/s 341/294/506, IPC but didn't insert section 323, IPC or 325, IPC in this case. Further, the PW-2 and PW-3 who are independent eyewitnesses categorically stated in their cross-examination that the accused didn't assault anyone. So in the given position it can no way be concluded that the accused had assaulted anyone.

24. The PWs had also not stated about the accused restraining the informant or Raj Kishore Tiwari by restricting their movement.

25. The PW-1 had stated about the accused threatening him that he will not spare him but the rest PWs didn't support the said version of PW-1 and they didn't state anything about the accused threatening the PW-1.

26. So in the backdrop of the discussion made above it can no way be concluded that the accused had wrongfully restrained the informant and his friend Raj Kishore Tiwari or that he had verbally abused the informant and Raj Kishore Tiwari with filthy and obscene language in

public to cause annoyance to them or that he had threatened the informant or his friend Raj Kishore Tiwari

27. Hence all the aforesaid points of determinations are held in negative.

28. So the prosecution has failed to prove the case against the accused under section 341/294/506 of the Indian Penal Code and as such he is acquitted from the said offences and is set at liberty.

Bail bonds are extended to further 6 (six) months from today.

The judgment is delivered and operative part of the same is pronounced in the open court on this 16th day of March, 2020.

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer

Contd. Appendix

A P P E N D I X**WITNESSES FROM THE PROSECUTION SIDE**

Sri Pradip Sharma (PW-1)
Sri Chiranjeeb Chetry (PW-2)
Sri Tikaram Sharma (PW-3)
Sri Rebot Chetry (PW-4)
Sri Raj Kishore Tiwari (PW-5)
ASI Dibmbeswar Boruah, the I/O (PW-6)

PROSECUTION EXHIBITS

Ejhar as Ext-1
Signature of the informant [Ext-1(1)]
Rough sketch map of the P.O (Ext-2)
Signature of the I/O [Ext-2(1)]
Charge sheet (Ext-3)
Signature of the I/O [Ext-3(1)]

COURT WITNESS

Nil

COURT WITNESS EXHIBIT

Nil

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur