

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE  
AT NORTH LAKHIMPUR**

C.R CASE NO: 15 OF 2016  
COMPLAINANT: MD. ABDUL HAMID Vs  
ACCUSED: MD. NEKBAR ALI & 2 ORS

DISTRICT: NORTH LAKHIMPUR  
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, AT NORTH LAKHIMPUR

C.R CASE NO: 15 / 2016

U/S 447/294/506/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. NEKBAR ALI & 2 ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE COMPLAINANT: MD. T. RAHMAN  
ADVOCATE FOR THE ACCUSED : SRI B. BORAH

OFFENCE EXPLAINED ON : 07/11/2016  
EVIDENCE RECORDED ON : 15/11/2017

ARGUMENT HEARD ON : 03/04/2019  
JUDGMENT DELIVERED ON : 03/04/2019

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's in brief as it reveals from the complaint petition is that on 02.05.2016 at about 12.00 A.M in the night, the accused persons named in the complaint petition along with some other unidentified persons entered into the homestead of complainant Md. Abdul Hamid without any permission and thereafter rebuked the complainant and his family members by using obscene language. The accused persons also caused destruction of the bamboo wall of the house of

complainant by cutting the same with a "Dao". The accused persons have also cut down trees standing on the homestead of complainant. The complainant and his family members then came out with a torch light and have been able to see the accused persons. The complainant thereafter raised hue and cry. At that time the accused persons threatened the complainant by showing 'Dao' and 'lathi'. Thereafter, the people nearby gathered there and the accused persons fled away. The accused persons while going away from the spot threatened to set fire on the house of complainant. The complainant has thereafter filed this complaint petition before the Court of Id. CJM, Lakhimpur, North Lakhimpur.

2. On receipt of the complaint petition, by the court of learned CJM, Lakhimpur, a case was registered and complainant was examined on oath u/s 200 CrPC. Thereafter, inquiry was conducted u/s 202 of CrPC. On completion of inquiry, sufficient ground was found for proceeding further against accused Md. Nekbar Ali, Md Sahab Uddin and Md. Akbar Ali for the offences punishable under section 447/506/34 of I.P.C. Accordingly, the appearance of above named three accused was secured and they were allowed to remain on bail. Considering the relevant documents and after hearing both the parties, particulars of offences under section 447/294/506/34 of I.P.C were read over and explained to the above named three accused persons to which they pleaded not guilty and stood to face the trial.

3. The complainant in support of his case examined himself as the only witness, whereas the accused persons did not examined any witness in support of their defence. The accused persons are examined under section 313 of CrPC. Defence case is of total denial as it reveals from the statements of accused u/s 313 of CrPC and the tenor of cross-examination of prosecution witness by defence. I have heard the arguments of learned counsel for defence. Complainant side remained absent on the date of arguments.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons on 02.05.2016 at about 12.00 AM, in furtherance of their common intention, entered into the homestead of complainant Md. Abdul Hamid with the intent to commit an offence or to intimidate, insult or

annoy the complainant and his family members who were in possession of that homestead, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether the accused persons on 02.05.2016 at about 12.00 AM, in furtherance of their common intention, uttered obscene word in or near any public place to the annoyance of the complainant and his family members, and thereby committed an offence punishable u/s 294/34 of IPC?

(iii) Whether the accused persons on 02.05.2016 at about 12.00 AM, in furtherance of their common intention, threatened the complainant and his family members with injury to their person with the intent to raise alarm, and thereby committed an offence punishable u/s 506 of IPC?

**DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:**

6. For the sake of convenience, and as because the point no.1, 2 & 3 are inter-connected, hence they are taken up herein together for discussion & decision as follows.

7. As regards the aforesaid points for determination, complainant Md. Abdul Hamid as PW-1 in his evidence-in-chief has stated that on 02.05.2016 at about 12.00 A.M in the night, the accused persons entered inside his homestead and thereafter cut the bamboo wall of his house. He then came out of his house and the accused persons threatened to kill him. Thereafter, he raised hue and cry due to which Abdul Jalil, Azizur Rahman, Abdul Khalil and Jubedul Islam came there. The accused persons then fled away from the place of occurrence.

8. During his cross-examination, PW1 has stated that he lodged the case in police station on the day of occurrence itself. He did not filed the case on 12/05/2016. The accused persons have filed a civil case against him and his witnesses. The said civil case is now pending. The accused persons have also filed another case for cancellation of mutation of his name with respect to his land. Another case is pending with respect to the land on which he is now residing. His house is about 10 Kilometres away from the house of accused Akbar.

9. On going through the evidence deposited by PW-1 as narrated above, it is seen that as per PW-1/complainant, only the above named three accused persons entered into his homestead at the time of occurrence. PW-1 has not mentioned

about any other unidentified persons accompanying the accused persons at the time of occurrence. In this respect, perusal of the complaint petition shows that the complainant has mentioned therein that some other unidentified persons also accompanied the accused persons at the time of occurrence to his the homestead. Therefore, it is seen that the statement made by PW-1/complainant in his evidence is inconsistent with his statement in the complaint petition as regards the number persons who allegedly came to his homestead at the time of occurrence.

10. In my opinion, the number of persons of who allegedly entered into the homestead, is a material part of the alleged occurrence. Hence, had the occurrence took place as alleged, then the PW1/complainant, who claims to have seen the occurrence, should have been able to say consistently the actual number of persons he saw entering into his homestead. Therefore, the aforesaid inconsistency in the version of PW1 create doubts as regards the truthfulness the statements made by him in his evidence in chief.

11. Besides the above, though PW-1/complainant has alleged that the accused persons caused destruction of the bamboo wall of his house by cutting the same, but the PW1/complainant has not produced the damaged bamboo wall before this Court, or any photograph thereof. In my opinion, the complainant could have taken steps as per law for production of the damaged bamboo pieces, or photograph thereof, before this Court to prove the alleged destruction.

12. Moreover, through PW-1/complainant has stated that Abdul Jalil, Azizur Rahman, Abdul Khalil and Jubedul Islam came to the place of occurrence after hearing hue and cry raised by him, but the complainant has not examined any of them to prove the alleged occurrence. In fact, the complainant has not examined any other witness in support of his allegations. In my opinion, the complainant should have been able to produce the above named witnesses or the allegedly damaged articles before this court, had the occurrence took place as alleged. Therefore, failure of the complainant to examine those witnesses and also to produce the allegedly damaged article or the photograph thereof before this Court, in my opinion, creates doubt regarding the truthfulness of the allegations made by PW-1 in his evidence-in-chief.

13. Besides the above, perusal of case record shows that this case was filed by the complainant on 12.05.2016. Therefore, apparently there is a delay of 10 days

in filing the complaint. In this respect, PW-1/complainant has not adduced any evidence to show the reason for delay in lodging the complaint petition. Under such circumstances, and having regard to the admitted fact that there is a Civil case pending between both the parties with respect to the homestead of the complainant, I am of the opinion that it is not safe to base any conclusive opinion against the accused persons only on the basis of sole evidence of PW-1/complainant.

14. Therefore, considering the entire discussion made above, I find that the complainant has failed to adduce reliable evidence to prove beyond reasonable doubts that the accused persons have committed the offence as alleged.

*DECISION: Point no.1, 2 & 3 are therefore decided in the negative and goes against the prosecution.*

#### **ORDER**

15. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the complainant has failed to prove beyond reasonable doubts that accused Md. Nekbar Ali, Md Sahab Uddin and Md. Akbar Ali have committed the offences punishable under section 447/506/34 of I.P.C as alleged, and as such, the said accused persons are acquitted of the charge under section 447/506/34 of I.P.C on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 03<sup>rd</sup> day of April, 2019.

The case is disposed of on contest.

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur

**APPENDIX**

(A) **PROSECUTION EXHIBITS**

Nil

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

P.W. 1 – Md. Abdul Hamid

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur