

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

Present: Shri Narayan Kuri, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 1213/2015
U/s 341/352/294, IPC

State of Assam

-Vs-

Sri Gopal Hazarika

S/O: Late Joygeswar Hazarika

R/O: Suntipur Pichala

P/S: Narayanpur

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 17.12.2016
Dates of recording evidence of PWs : 26.02.2018, 26.11.2018,
28.07.2019
Date of examination u/s 313, Cr.P.C. : 15.03.2019
Dates of Argument : 02.04.2019, 18.04.2019
Date of judgment : **18.04.2019**

Advocates appeared in the case:-

Sri Prasanta Dutta, Addl. P.P., for the State

Smti. Mitali Doley, Advocate, for the accused person

J U D G M E N T

1. The factual matrix of the prosecution is that on 24.06.2015 informant Sri Jitendra Nath Hazaria lodged an FIR with the Officer-in-charge of Narayanpur Police Station alleging that at about 12:30 PM on 24.06.2015 at Bhogpur Chariali in connection with the school work while he was coming after photocopying the pass-books in front of Siva Studio, accused Sri Gopal Hazarika wrongfully restrained him and pushed him by holding his chest and also manhandled him and uttered slang words to him with an allegation that why he had not paid the

money which he had owed to him and threatened him to pay the same within a week otherwise to face dire consequences. Hence, the case.

2. On receipt of the ejahar, the Officer-in-charge of Narayanpur Police Station registered a case vide Narayanpur P.S. Case No. 103/2015, under section 341/323/294/506 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 341/352/294 of the Indian Penal Code against accused person Sri Gopal Hazarika to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 341/352/294 of the Indian Penal Code was taken as per section 190(1)(b), Cr.P.C. The accused person entered his appearance before the Court after receiving the summons. Copies were furnished to the accused person as per provision contained in section 207, Cr.P.C. The particular of offence under section 341/352/294 of the Indian Penal Code when being read over and explained 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 accused person, at about 12:30 PM, on 24.06.2015, at Bhogpur Chariali, under Narayanpur Police Station, wrongfully restrained Sri Jitendra Nath Hazarika, and thereby committed an offence punishable u/s 341 of the Indian Penal Code ?

(b) Whether accused person, at about 12:30 PM, on 24.06.2015, at Bhogpur Chariali, under Narayanpur Police Station, assaulted or used criminal force to Sri Jitendra Nath Hazarika, and thereby committed an offence punishable u/s 352 of the Indian Penal Code ?

(c) Whether accused person, at about 12:30 PM, on 24.06.2015, at Bhogpur Chariali, under Narayanpur Police Station, hurled obscene words to Sri Jitendra Nath Hazarika at and around public place, and

thereby committed an offence punishable u/s 294 of the Indian Penal Code ?

5. During the trial the Prosecution side could examine 5 (five) witnesses namely Sri Jitendra Nath Hazarika (PW-1), Sri Gibon Chandra Borah (PW-2), Sri Narayan Borah (PW-3), Sri Deba Kumar Borah (PW-4) and Sri Jogen Saikia (PW-5). The prosecution has also exhibited 3 (three) documents (Shown in the Annexure appended below). The defence has cross-examined prosecution witnesses and thereafter all the incriminating materials surfaced in the evidence of the prosecution witnesses against accused person was put to his explanation under section 313, Cr.P.C. The defence plea was in completed denial.

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

DISCUSSION, DECISION AND REASONS THEREOF:

7. Since a common thread of facts runs through all the points as such all the points are taken together for discussion for the sake of convenience of discussion.

8. PW-1 Sri Jitendra Nath Hazarika is the informant-cum-victim in this case who has deposed that at the time of the occurrence he had come to the Shivam Studio at Bhogpur Chariali for photocopying the bank pass-books of the teachers of their school. Immediately after he had come out of Shivam Studio after doing the photocopying work, the accused had got hold of his shirt and thereafter took off his sandal and assaulted him with his sandal on his back. Thereafter, the accused gave two blows on his face (cheek) as a result of which his one tooth got dislodged. The accused, thereafter, rebuked him in dirty language by referring to his wife. The accused also threatened him if he did not give him money he would kill him. Thereafter, the shopkeepers came there and separated him from the accused. He then returned to the school and handed over the pass-books to the Assistant of their school and informed the teachers about the occurrence when teacher Khirod Borah accompanied him to his house. On the same day, he went to Narayanpur Police Station and lodged and ejahar (Ext-1) and police got

him medically treated at the Primary Health Centre, Dhalpur, for treatment.

9. In his cross-examination, PW-1 has stated that he did not know why the accused had asked for money from him but he has admitted that accused had a tractor with which he used to plough the field. He clarified that his paddy field was given on 'adhi' basis to other persons, including one Arjun Deori. He does not know if Arjun Deori had ploughed his paddy field with the tractor of the accused. He accepted the fact that he used to give the rent of the tractors used by the 'adhi' cultivators for ploughing his land. He later on clarified that he came to know only after the occurrence that Arjun Deori had used the tractor of the accused for ploughing his land.

10. PW-2 Sri Gobin Chandra Borah deposed that at the time of the occurrence he was in his vegetable and betel-nut shop at Bhogpur Chariali when he saw a gathering of people one shop away from his shop. He came to know that there was some altercation between the informant and the accused regarding some money transaction. But in his cross-examination, PW-2 has stated that he did not see the occurrence but he came to know from others that there was an altercation between the two with regard to some money transaction.

11. PW-3 Sri Narayan Borah has deposed that at the time of the occurrence he had come to Amar Drugs Pharmacy at Bhogpur Chariali and saw that the informant and the accused were quarrelling with each other in front of the pharmacy and there was also a little bit of rough and tumble between them. He separated both of them from each other and thereafter, he went away after taking medicine from the pharmacy. He explained to have no knowledge as to what had happened after his departure.

12. PW-4 Sri Deba Kumar Borah has deposed that at the time of the occurrence he was in his stationery stationary shop which is located some distance away from the place of occurrence, when he heard a quarrel taking place between the informant and the accused. He saw from his shop that Narayan Borah was separating the informant and the accused and was saying to them not to quarrel with each other.

13. In his cross-examination, PW-4 has clarified that he had not seen the occurrence, but had only seen when the accused and the informant were being separated from each other.

14. PW-5 Sri Jogen Saikia was the I/O of this case. According to him during investigation, he examined the informant/victim at the police outpost and recorded his statement and sent him to medical for his treatment, visited the place of occurrence and inspected the same and prepared a sketch map of the place of occurrence, examined the witnesses found at and around the place of occurrence and recorded their statements, arrested accused Sri Gopal Hazarika and released him on bail, collected the medical report of the victim and on completion of investigation submitted charge-sheet against the accused u/s 341/352/294 of the Indian Penal Code. He exhibited Ext-2 sketch map of the place of occurrence and Ext-3 charge-sheet.

APPRECIATION OF EVIDENCE

15. From the evidence on record it has established that indeed at the time of the occurrence accused Gopal Hazarika and informant Jitendra Nath Hazarika had confrontation with each other at a shop near Bhogpur Charali. PW-1 informant Jitendra Nath Hazarika has stated that accused gave him fist blows in his cheek for which one of his tooth cracked. This fact PW-1 did not tell the I/O nor injury of such nature got reflected in the Injury Report available in the record. But PW-3 Naryan Borah who had intervened in their quarrel had stated that in fact both of them had been quarrelling with each other and there was a little bit rough-and-tumbling between them. PW-2 Gobin Ch. Borah whose shop located near the place of the occurrence had also stated that both the parties had been altercating with each other over some monetary transaction. So, none of the eye-witnesses have stated that informant Jitendra Nath Hazarika had sustained injuries in his tooth and as such I am of the reasonable opinion that PW-1 Jitendra Nath Hazarika has resorted to falsehood and embellishment in narrating the offence, as such he being an injured witness, still his evidence to be viewed with circumspection.

16. Be that what it is, let me now concentrate on the reason which led to the confrontation between accused and informant. The Defence

plea was that accused owed some Rs.1600/- from informant on account of using the tractor of accused which he was procrastinating to repay and on the day of the occurrence accused happened to come across informant in a shop at Bhogpur Charali which propped up an altercation between them. PW-1 Jitendra Nath Hazarika denied that he owe any such money to accused but later on admitted that his tenant Arjun Deuri indeed used the tractor of accused for tiling his land. He has also admitted in evidence that he used to pay the rent of the tractor used by his tenant for ploughing his land. PW-5 I/O in his evidence has stated that PW-1 Jitendra Nath Hazarika told him that his tenant Arjun Deuri used the tractor of accused and he had to pay balance amount of Rs. 500/- to accused and for non-payment of this amount that accused manhandled the informant. Thus, it has established in evidence that indeed there was pending monetary transaction between accused and informant which the latter did not clear. As such confronting the informant at the place of the occurrence by the accused to ask for clearing the debt cannot be termed as wrongful restrain, so I am of the reasonable opinion that the prosecution has failed to bring home the charge under section 341 IPC against the accused. Consequently, the Point NO.1 is determined in negative against the prosecution.

17. Except PW-1 Jitendra Nath Hazarika none of the witnesses have averred that accused used any obscene utterance towards against the informant. Since, it has established that informant had made embellishment in his version as such this version of Jitendra Nath that accused used obscene utterance against him lacks corroboration. As a result the offence under section 294 of the Indian Penal Code stands not proved and accordingly Point No.3 is determined in negative against the prosecution.

18. Now coming to the point if accused had used any criminal force against the informant. There is no doubt accused and informant had an altercation with each other over monetary transaction but the eye-witnesses have also seen both of them have indulged in rough and tumbling, as such who initiated the rough-and-tumbling is not clear. So, considering the embellishment made by informant in his evidence and the lack of corroboration, I am not inclined to place reliance on the

version of informant Jitendra Nath Hazarika and as such I am of the reasonable opinion that the prosecution has failed to prove the fact that accused has first used force against informant, as a result the charge under section 352 IPC stands not proved against the accused. In the result I hereby decide Point No.2 in negative against the prosecution.

ORDER

19. In view of the above discussion, I hereby acquit accused Sri Gopal Hazarika from the accusation under section 341/352/294 of the Indian Penal Code and as such he is set at liberty forthwith.

20. The validity of his bail-bonds stands extended for a further period of six months from today.

21. The judgment is delivered and operative part of the same is pronounced in the open court on this 18th day of April, 2019.

(Shri Narayan Kuri)

Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Shri Narayan Kuri)

Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Contd. Appendix

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

Sri Jitendra Nath Hazarika (PW-1)
Sri Gobin Chandra Borah (PW-2)
Sri Narayan Borah (PW-3)
Sri Deba Kumar Borah (PW-4)
Sri Jogen Saikia (PW-5)

PROSECUTION EXHIBITS

Ejhar (Ext-1)
Sketch map (Ext-2)
Charge sheet (Ext-3)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & typed by-
Sri Narayan Chetri, Stenographer