

**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. 469/2016
U/s 447/427, IPC

**State of Assam
-Vs-**

Sri Tulshi Das

S/O: Late Ram Kanta Das

R/O: Naharati

P/S: Bihpuria

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 15.09.2016
Dates of recording evidence of PWs : 20.06.2017, 05.03.2018,
20.12.2018, 11.03.2019
Date of examination u/s 313, Cr.P.C. : 25.03.2019
Date of Argument : 01.04.2019
Date of judgment : **09.04.2019**

Advocates appeared in the case:-

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

Sri Apurbajyoti Sharma, Advocate, for the accused person

J U D G M E N T

1. The factual matrix of the prosecution is that on 02.03.2016 informant Sri Dandi Das lodged an FIR with the Officer-in-charge of Bihpuria Police Station alleging that at about 3:00 PM on 01.03.2016 while no one was present in his house, accused Sri Tulshi Das entered his house compound by breaking the lock of the boundary gate and caused damage to the chair, table and digital electric meter kept in his verandah with 'dao' blows as a result his television which was

connected with the said electric meter got damaged. The accused also cut the walls and doors of the house of the informant and when he was trying to set ablaze the house of the informant, the neighbouring people seeing such act of the accused apprehended him at the place of occurrence and informed the police station and the police came and took away the accused to the police station. Due to the mischief of the accused the informant had to face great loss. Hence, the case.

2. On receipt of the ejahar, the Officer-in-charge of Bihpuria Police Station registered a case vide Bihpuria P.S. Case No. 99/2016, under section 447/427 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 447/427 of the Indian Penal Code against accused person Sri Tulshi Das to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 447/427 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 447/427 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 3:00 PM, on 01.03.2016, at village Naharati, under Bihpuria Police Station, committed criminal trespass by entering into the house compound of Sri Dandi Das with intent to commit an offence, and thereby committed an offence punishable u/s 447 of the Indian Penal Code ?

(b) Whether accused person, at about 3:00 PM, on 01.03.2016, at village Naharati, under Bihpuria Police Station, committed mischief by destroying the chair, table, digital electric box, walls and doors of the house of Sri Dandi Das, and thereby committed an offence punishable u/s 427 of the Indian Penal Code ?

5. During the trial the Prosecution side could examine 5 (five) witnesses namely Sri Dandi Das (PW-1), Sri Phanidhar Das (PW-2), Sri Prafulla Das (PW-3), Sri Purna Das (PW-4) and ASI Krishna Chouhan (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 both the points as such both the points are taken together for discussion for the sake of convenience.

8. PW-1 Sri Dandi Das, is the informant of this case who has deposed that on the day of occurrence, his wife and he had come to North Lakhimpur for medical checkup and in the afternoon he received phone calls, from Chandra Kanta Das and Horen Das and others that accused Tulshi Das had entered his house compound by cutting the bamboo gate and had broken the chairs, tables lying on their verandah. They also informed him over phone that they had intimated the matter to the police and accordingly, the police came and took away Tulshi Das to police station. Thereafter he and his wife went to Bihpuria Police Station directly from North Lakhimpur. The police asked him to go to his house and to see what damages had been done in his

house. Accordingly, they went to their house and saw that the bamboo gate had been cut and damaged and the chair and table had been broken. He also saw damaged electric meter box and cut marks on the door and bamboo wall of their house. The seedlings and plants of his house compound were also cut and damaged. The property worth Rs. 20,000/- to Rs. 25,000/- was damaged as a result of the occurrence. As it was night on that day, so he went to the police station on the following day and lodged an ejahar (Ext-1).

9. In his cross-examination, PW-1 has stated that the distance between his house and that of Bihpuria Police Station is around seven kilometers and it takes about half an hour to reach police station from his house by Tempo or vehicle. He clarified that tempo is available in the night also. He admitted to have not lodge the ejahar on the day of the occurrence and to have written down the ejahar in front of the police station. The police had not seized the broken articles of his house.

10. PW-2 Sri Phanidhar Das has deposed that on the day of occurrence while he was returning home after catching fish, he saw that many people had gathered in the courtyard of Dandi Das. He went there and saw that the police had kept the accused apprehended there. The police took his name and address from him. He saw 10-12 chairs and 2-3 tables in broken condition on the verandah of Dandi Das. The police took away the accused from there. In his cross-examination, PW-2 has stated to have seen only accused being kept apprehended and had not seen the occurrence. He did not know who had broken the tables and chairs on the verandah of Dandi Das.

11. PW-3 Sri Prafulla Das has averred in evidence that on the day of the occurrence while he was going to feed water to his cows, he saw that some tables and chairs were lying in broken condition on the verandah of Dandi Das. He also saw that accused Tulshi Das was kept apprehended there with both his hands tied. He saw the police came there and took away the accused from there. In his cross-examination, PW-3 has clarified to have no knowledge as to why accused Tulshi Das was apprehended there with his hands tied. He admitted to have not

told the police that while going to feed water to his cows, he saw that tables and chairs were lying in broken condition on the verandah of the house of Dandi Das and the accused was also kept apprehending with both his hands tied.

12. PW-4 Sri Purna Das has deposed that on the day of the occurrence while he was returning from work, he saw that many people had gathered in the house of the informant and police personnel were also present out there, but he did not stop as he was feeling hungry. On the following day, he came to know that the police had taken away the accused Sri Tulshi Das to the police station. He does not know why the police had taken away the accused Sri Tulshi Das to the police station. In his cross-examination, PW-4 has stated that he does not know anything about the occurrence.

13. PW-5 ASI Krishna Chouhan deposed that during investigation, he visited the place of occurrence and inspected the same and drew 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 Tulshi Das and released him on bail and on completion of preliminary investigation he submitted the Case Diary to the Officer-in-charge of Bihpuria Police Station. Thereafter, SI Manimay Tamuli investigated the case and submitted charge-sheet against accused Tulshi Das u/s 447/427, IPC. He exhibited the sketch map of the place of occurrence as Ext-2 and the charge-sheet as Ext-3.

14. In his cross-examination, PW-5 has stated that the distance between the place of occurrence and Bihpuria Police Station will be about 7 kilometers. The occurrence took place on 01.03.2016 but the ejarah was filed on 02.03.2016. In connection with this occurrence he did not find any broken article and so he could not seize the same.

APPRECIATION OF EVIDENCE

15. From the evidence of PW-1 informant Sri Dandi Das it has appeared that on 1.3.16 while he was at North-Lakhimpur town for medical check up, he came to know from Chandra Kanta Das, Horen Das and others that accused Tulshi Das had entered his house and

damaged chair, table, boundary fencing wall etc. The people who had witnessed the occurrence had already informed the police and police accordingly took away the accused. On the following day he lodged the case. But the deposition of the I/O (PW-5) has deposed to have come to the place of the occurrence after getting the FIR and apprehended the accused thereafter. It means the assertion of the PW-1 Dandi Das that the accused apprehended on the day of the occurrence itself appears to be doubtful.

16. PW-2 Phanidhar Das, PW-3 Prafulla Das and PW-4 Purna Das have seen the accused apprehended in the house of the informant but they did not know as to why he had been kept confined there. It means that none of them had seen the accused damaging the house of informant Dandi Das. The moot question that comes up now as to who kept accused Tulshi Das confined in the house of the informant. These witnesses have admitted to have seen some furniture of the house of informant lying in damaged condition at the time when accused was kept confined, but none of them have asserted that it was done by accused. The persons named by the informant Dandi Das has not been adduced as witness in this case by the prosecution, nor the police seized any damaged furniture. I/O (PW-5) have stated to have not find any damaged articles in the place of the occurrence for seizing.

17. Thus, it has appeared in evidence that the prosecution has failed to adduce even a single witness who had seen the occurrence despite the fact that many people assembled there. Moreover, as per the version of the PW-1 Dandi Das, the police apprehended the accused on the very day of the occurrence and police reached the police station before his arrival at home. But PW-5 I/O has stated that on the following day of the occurrence after receiving the FIR, he apprehended the accused. These two versions created a cloud of doubt in the prosecution case as these are material contradiction. There is no answer to the prosecution case to who kept accused tied in the compound of informant and for what purpose, except a non-proved allegation of damaging of household articles of informant by accused.

The persons who had telephoned the informant about the incident would have been a vital link for the prosecution case, but their evidence is also missing. To perorate, I am of the conclusive opinion that the prosecution has failed to prove its case beyond all reasonable doubt against accused and as such the points for determination are answered in negative against the prosecution.

ORDER

18. In view of the above discussion, I hereby acquit accused Tulshi Das from the charge under section 447/427 India Penal Code and as such he is set at liberty forthwith. Consequently his bail-bonds stands cancelled and surety stands discharged.

19. The judgment is delivered and operative part of the same is pronounced in the open court on this 9th 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

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

Sri Dandi Das (PW-1)
Sri Phanidhar Das (PW-2)
Sri Prafulla Das (PW-3)
Sri Purna Das (PW-4)
ASI Krishna Chouhan (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