

**IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR.**

GR CASE NO.1598/2012

U/S 448/323/34 IPC.

PRESENT:

SMT. SWEETY BHUYAN
Judicial Magistrate 1st Class
Lakhimpur, North Lakhimpur.

PARTIES:

STATE OF ASSAM

Vs

(1) KISHAN TANTI

(2) SRIRAM NAYAK

(3) EMIL MUNDA

..... ACCUSED PERSONS

Appearance:

For the State: MR. JANGKI DOLEY

For the accused person: MR. N.C. DUTTA

Dates of Evidences: 02.03.2019, 05.04.2019

Date of Argument: 05.04.2019

Date of Judgment: 05.04.2019

JUDGMENT

- 1.** The accused persons, namely, **Sri Kishan Tanti**, Son of Atiram Tanti, R/o Johing Amgariline, Police Station- North Lakhimpur, **Sriram Nayak**, Son of Sri Manual Munda, R/o Johing Pakaline, Police Station- North Lakhimpur **and Emil Munda**, Son of Sri Bola Nayak, R/o Johing No.1 Line, Police Station- North Lakhimpur, in the District of Lakhimpur, here in this case have been put to trial to answer the charges for the offence Punishable under Sections 448/323/34 of the Indian Penal Code.
- 2.** The brief facts of the prosecution case is that on 14.11.2012 at about 8 P.M. the accused persons alongwith 25/30 persons unlawfully trespassed into the Bungalow of the welfare Saheb at Joyhing and when the informant, who is the chowkidar of the bungalow restrained them, they slapped and punched him and caused grievous injuries on him. Hence, the case, and the same was registered as North Lakhimpur Police Station Case No.753/2012 under Sections 143/447/325 of the Indian Penal Code against Kishan Tanti, Sriram Nayak and Emil Munda named in the ejahar. The Investigating Officer submitted Charge Sheet against the accused persons, namely, Kishan Tanti, Sriram Nayak and Emil Munda under Sections 447/323/34 of the Indian Penal Code.

3. After appearance of the accused persons, the copies of the relevant documents were furnished to them. Upon hearing and on perusal of the case record the particulars of offence under sections 448/323/34 of IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. In support of the case, the prosecution has adduced 2(two) PWs, including the informant/victim. Defence adduced none. The statement of the accused persons u/s 313 CrPC is dispensed with due to lack of incriminating materials.
5. After perusing the case record and hearing both sides the following points for determination are framed:

The Points for Determination:

- (i) Whether the accused persons, on 14.11.2012 at about 8 P.M. at Joyhing, in furtherance of their common intention, entered into the Bungalow of the welfare Saheb of the informant without his permission and thereby committed house trespass, and thereby committed an offence punishable under section 448/34 of the Indian Penal Code?
- (ii) Whether the accused persons, on 14.11.2012 at about 8 P.M. at Joyhing, in furtherance of their common intention, entered into the Bungalow of the welfare Saheb of the informant and voluntarily caused hurt to the informant/victim, and thereby committed offence under Section 323/34 of IPC?

DECISIONS AND REASONS FOR DECISION:

6. I have heard the argument from both sides.
7. Both the points for determination are decided together for the purpose of convenience.

The informant stated in his ejahar that on 14.11.2012 at about 8 P.M. the accused persons alongwith 25/30 persons unlawfully trespassed into the Bungalow of the welfare Saheb at Joyhing and when the informant, who was the chowkidar of the bungalow restrained them, and they slapped and punched him and caused grievous injuries on him.

The informant in his evidence before the court as PW2 stated that the incident took place in the year 2012 at the Tea Bungalow of the Tea Garden at about 8 P.M. Many people gathered in the bungalow and asked whether his saheb was present, he told them no and at that time he was on duty as a chowkidar of the bungalow and after that there were quarrel between them and pushing and pulling and the informant fell down and hurt himself on his chest. He lodged the case against the accused persons out of anger as they were present in the crowd and he knew them personally. Nobody assaulted him.

In cross-examination the PW2 stated that at the time of the incident, it was dark and he did not see who pushed him. He himself fell down and got hurt. He has no objection if the accused persons are acquitted. He has no grievances against the accused persons.

The PW1 stated in his evidence that the incident took place about 6/7 years ago in the Bungalow of the Tea Estate at about 7-8 PM. He heard noises outside his house and he came out and from his gate and he saw 10 to 15 persons who were making noises. Later on, he heard that the Welfare Sahab D.J. Neog did not allow to run cinema in the Joihing field and those persons were retaliating such act of the officer. He does not know anything else. Those people shouted and made noises and left.

The PW1 stated in his cross-examination that at the time of the incident it was dark. He does not know who were making the noises. He has not seen who assaulted whom as he was standing far away. How many persons were there he does not know. He does not know the date of the incident.

From the evidences of PW1 and PW2, it can be known that there was only an altercation between the informant/victim with the accused persons and he lodged this case out on anger. And, it can be seen that the informant/victim did not state about any offence committed by the accused persons, as such, the prosecution has failed to establish the guilt of the accused persons u/s 448/323/34 the Indian Penal Code beyond reasonable doubt, thereby making them not guilty under the said Sections.

(Contd....)

ORDER

As this court finds the accused persons, namely, **Kishan Tanti, Sriram Nayak and Emil Munda** not guilty of the offence u/s 448/323/34 of IPC, the accused persons are acquitted of the charges u/s 448/323/34 of IPC.

The accused persons are set at liberty forthwith.

The bail bonds of the two accused Kishan Tanti and Sriram Nayak, are extended for 6 (six) months from today.

As the accused Emil Munda is in judicial custody, the jail authorities are directed to release him after following the proper procedure of law. **Issue release order accordingly.**

The judgment is pronounced in the open court.

Given under my hand and seal of this court on 5th of April, 2019.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)

APPENDIX

Prosecution witnesses

1. PW1: KUSHAL GOGOI
2. PW2: BINOD TANTI

Defence witnesses

Nil.

Documents exhibited by the prosecution

1. Ext.1: Ejahar

Documents exhibited by the Defence

Nil.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

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(SMT. SWEETY BHUYAN)
JMFC,NORTH LAKHIMPUR

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Kumar Gaurav (Stenographer)