

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

North Lakhimpur, Lakhimpur

PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS

Judicial Magistrate First Class,

Lakhimpur, North Lakhimpur

G.R. Case No.105/2015

State

Versus

Sri Sum Saikia and others

(Under sections 447/341/323/34 IPC)

Offence explained on : 04.03.2016
Evidence recorded on : 08.04.2016, 27.07.2016, 06.03.2019,
Statements recorded on : 19.06.2019
Arguments heard on : 23.04.2021
Judgment delivered on : 03.05.2021
Advocate for the Prosecution : Mr. Jangki Doley
Advocate for the Accused : Mr. Torit Dutta, Mr. Munin Saikia
Mrs. M.D. Gohain Boruah.

J U D G E M E N T

1. Accused stood for trial for commission of offence u/s 447/341/323/34 IPC.

2. Prosecution case in brief is that the informant Madhab Dutta lodged an ejahar stating *interalia* that on 14.01.2015 at about 11:00 p.m., the accused persons entered into the cultivation of the informant by breaking the bamboo fencing and started plucking bitter gourd and bottle gourd. The informant woke up and with the help of torch light, he saw the incident. The informant thereafter went forward and asked the accused persons the reason for such causing such damage. The accused no. 2, 3 and 4 came and grabbed him and accused no.1 gave a blow on the left side of the head of the informant with three feet long iron rod. On hearing his cries the mother Lakhimai Dutta of the informant came forward. At this, the accused persons fled away from the place of occurrence. The informant accompanied by his parents went to the police station and police send him to hospital for treatment. Further it is alleged that on their return from the police station the accused persons threatened them with dire consequences if they approached police. Hence this case.

3. On receipt of the ejahar, the Officer-in-Charge of North Lakhimpur Police Station registered the case as North Lakhimpur Police Station Case No.52/2015 u/s 447/427/341/325/506/34 IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 447/341/323/34 of the Indian Penal Code against the accused persons namely Sri Sum Saikia, Sri Ratul Dutta, Sri Papu Dutta and Sri Kalia Dutta.

4. Thereafter, cognizance has been taken and summons have been issued to the accused persons. On appearance of accused persons, necessary documents required u/s 207 Cr.P.C have been furnished to them. On perusal of the materials on record

substance of accusation u/s 447/341/323/34 IPC is read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. Prosecution in support of its case has examined only four (4) witnesses.

6. Accused persons are examined under section 313 Cr.P.C., wherein they denied the allegations levelled against them. Accused denied adducing evidence in defence.

7. I have heard the arguments advanced by the learned counsel for the accused and Ld. A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following points for determination are formulated for proper adjudication of this case.

POINTS FOR DETERMINATION:

Point No 1: Whether the accused persons in furtherance of common intention 14.01.2015 at about 11:00 p.m., trespassed into the cultivation of the informant by breaking the bamboo fencing and thereby committed an offence punishable under section 447/34 IPC??

Point No 2: Whether the accused persons in furtherance of common intention on the same date, time and place restrained the informant and thereby committed an offence punishable under section 341/34 IPC?

Point No 3: Whether the accused persons in furtherance of common intention on the same date, time and place voluntarily caused hurt to the informant and thereby committed an offence punishable under section 323/34 IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

8. Now let me try to decide the above points by appreciating

the evidence available in the case record. I have carefully considered the evidence available in the instant case. The accused persons are facing trial for commission of offence u/s 447/341/323/34 IPC.

9. P.W-1 Madhab Dutta is the informant of this case. He stated that the incident occurred on 14.01.2015 on the eve of Uruka. While the informant was having a feast, he heard somebody breaking the bamboo fencing. He went forward and saw the accused persons breaking the bamboo fencing and plucking bitter gourd and bottle gourd from his cultivation. At that time accused Ratul Dutta, Papu Dutta and Sum Saikia started assaulting him and accused Koliya Dutta gave a blow on his head and he fell down in a ditch. P.W-1 raised hue and cry and saved himself from getting second blow by holding his hand up. Thereafter police recorded his statement and got his medically examined.

In his cross examination P.W-1 stated that he was having a feast at a distance of 6 "rosi" away (1 rosi=80 feet). The defence gave suggestion that the brother of the informant Jugal Dutta is a deaf and dumb person and he was having feast with the accused persons and during this time he was removing the bamboo fencing which accidentally fell on the informant.

The informant though in the ejahar stated that after his assault by accused Koliya Dutta he fell on the ditch and cried for help and his mother came forward. At this the accused persons fled away. In his evidence P.W-1 remained silent that his mother came to rescue him. According to the ejahar Lakhimai Dutta, the mother of the informant is an eyewitness to the occurrence of the incident but she has been withheld by the prosecution.

10. P.W-2 Ananda Dutta stated that the informant cum victim is his son. He stated that on 14.01.2015 while he along

with his family were having uruka feast, they heard someone breaking their bamboo fencing. His son went forward and saw the accused persons breaking the bamboo fence and plucking bitter gourd and bottle gourd from their cultivation. On being asked the accused Papu Dutta grabbed him and other accused persons restrained him and accused Koliya Dutta assaulted him with an iron rod. On hearing hue and cry P.W-2 reached the place of occurrence and saw the accused persons assaulting his son and thereafter went away from the place of occurrence.

P.W-2 in his evidence clearly stated that on hearing the cries of his son he reached the place of occurrence and saw the accused persons assaulting his son but in his cross examination he stated that he has not seen the assault on his son. Thus, his evidence appears to be hearsay evidence. Moreover, the informant also remained silent that at the time of occurrence P.W-2 (his father) reached at the place of occurrence to rescue him. P.W-2 being the father of the informant cum victim is a highly interested witness and hence his evidence cannot be accepted without due corroboration from other independent witnesses.

11. P.W-3 Babita Dutta is an independent witness and she stated that she does not know anything about the incident. Thus, P.W-3 did not support the prosecution case.

12. P.W-4 Dipjyoti Bharali is the investigating officer of this case. He described the steps taken by him during investigation and proved the sketch map marked as Exhibit 2 and chargesheet marked as Exhibit 3. The investigation officer at best can support the prosecution case but he alone cannot prove the guilt of the accused.

13. In the instant case the prosecution has failed to prove that the accused persons entered the cultivation of the informant by removing the boundary fence and assaulted the informant-

cum-victim. The evidence of P.W-1 and P.W-2 cannot be accepted as they are highly interested witnesses as the sole independent witness also did not corroborated their evidence. Admittedly, the informant and P.W-2 were having a feast with others and therefore many persons would have seen the occurrence. However, none could be examined by the prosecution. Considering the evidence in entirety it appears that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, the accused persons deserve to be acquitted and are accordingly acquitted.

ORDER

14. In view of the above discussions, I am of the considered opinion that, prosecution has failed to establish the case against accused persons namely Sri Sum Saikia, Sri Ratul Dutta, Sri Papu Dutta and Sri Kalia Dutta. Accordingly, accused are acquitted of the charge u/s 341/341/323 IPC levelled against them in this instant case.

15. Set the accused at liberty forthwith.

16. The bail bonds for the accused persons are extended for a further period of six (6) months.

17. The case is disposed of on contest accordingly.

Given under my hand and seal on this 03rd day of May, 2021 at North Lakhimpur, Lakhimpur.

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur

APPENDIX**A. WITNESSES OF PROSECUTION:**

1. P.W-1 Sri Madhav Dutta
2. P.W-2 Sri Ananda Dutta
3. P.W-3 Smti. Babita Dutta
4. P.W-4 Sri Dip Jyoti Bharali

B. EXHIBITS OF PROSECUTION:

1. Exhibit 1 : Ejahar
2. Exhibit 1(1) : Signature of P.W-1 in the ejahar.
3. Exhibit 2 : Sketch Map.
4. Exhibit 2(1) : Signature of P.W.4 in sketch map
5. Exhibits 3 : Chargesheet
6. Exhibit 3(1) : Signature of O.C. Sri Sachindra Chandra Sarmah
7. Exhibit 3(2) : Signature of P.W-4 in the Chargesheet.

C. WITNESS OF DEFENCE: NIL**D. EXHIBITS OF DEFENCE: NIL**

(Ms. Sparsita Garg)
Judicial Magistrate First Class
Lakhimpur, North Lakhimpur

