

**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. 647/2017

U/s 500 of the Indian Penal Code and Section 67 of the Information
Technology Act, 2000

State of Assam

-Vs-

Sri Indrajit Borah

S/O: Sri Bhogmal Borah

R/O: Majbaon, Boginadi

P/S: Boginadi

District: Lakhimpur, Assam

.....Accused person

Date of framing charge : 26.04.2018
Dates of recording evidence : 24.06.2019
Date of argument : 24.06.2019
Date of judgment : **24.06.2019**

Advocates appeared in the case:-

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

Sri Samiran Chutia, Advocate, for the accused person

J U D G M E N T

1. This case has arisen from an ejahar lodged on 14.03.2017 by informant Sri Achyut Borgohain before the Officer-in-charge, North Lakhimpur Police Station. It is alleged in the ejahar that on 11.03.2017 All Assam Students' Union convened a mass rally of all members of all organizations of Assam (irrespective of cast and creed) in the playground of Government Higher Secondary School, Lakhimpur in protest against the Silapathar issue and accused Sri Indrajit Borah and his associates uploaded some photographs in Facebook and WhatsApp showing participation in the said mass rally by Sri Achyut Borgohain,

Sri Nilamoni Changmai and Sri Kiron Gogoi of All Tai Ahom Students' Union, with negative comments, intending to harm their reputation. Hence, the case.

2. The Officer-in-charge, North Lakhimpur Police Station, on receipt of the ejahar, registered a case vide N.L.P.S. Case No. 274/2017 under section 500 of the Indian Penal Code and section 67 of the Information Technology Act, 2000 and got the investigation into the case commenced. In course of the investigation accused Sri Indrajit Borah surrendered before the Court and he was allowed to go on bail. The investigating officer, after completing the investigation, submitted charge-sheet under section 500 of the Indian Penal Code and section 67 of the Information Technology Act, 2000 against the accused person Sri Indrajit Borah to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 500 of the Indian Penal Code and section 67 of the Information Technology Act, 2000 was taken as per section 190(1)(b) of the Code of Criminal Procedure. Necessary copies were furnished to the accused person as per section 207 of the Code of Criminal Procedure after his appearance before the Court. After considering the materials on record and hearing both the sides, charge under section 500 of the Indian Penal Code and section 67 of the Information Technology Act, 2000 was framed in writing against the accused person. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined only two witnesses namely Sri Achyut Borgohain (PW-1) (informant-cum-victim) and Sri Nilamoni Changmai PW-2) (another victim). In the instant case the informant-cum-victim and another victim have been examined but they have not stated any incriminating materials against the accused person, as such, learned Addl. P.P. prayed for closure of the prosecution evidence. Considering the materials in evidence, the prayer of the prosecution was allowed and the prosecution evidence was closed. The

examination under section 313 of the Code of Criminal Procedure of the accused person was dispensed with as no incriminating circumstance appeared against him in the evidence adduced in this case. Both the sides advanced their respective arguments in this case.

Points for determination:

5. The points which are required to be determined for a just decision of this case are as follows:

(i) Whether the accused person, on or after 11.03.2017, by words intended to be read, made or published imputation concerning Sri Achyut Borgoahin, Sri Nilamoni Changmai and Sri Kiron Gogoi of All Tai Ahom Students' Union, intending to harm, or knowing or having reason to be believed that such imputation will harm, the reputation of such persons, and thereby committed an offence punishable under section 500 of the Indian Penal Code ?

(ii) Whether the accused person, on or after 11.03.2017, published or transmitted in the electronic form, by way of WhatsApp, certain derogatory material (facts), concerning Sri Achyut Borgohain, Sri Nilamoni Changmai and Sri Kiron Gogoi of All Tai Ahom Students' Union, the effect of which is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

Discussion, decision and reasons therefor:

6. At the very outset it is essential to have a brief resume of the version of the witnesses in order to marshal the evidence in right perspective in tandem with the point for discussion.

7. PW-1 Sri Achyut Borgohain, informant-cum-victim, has stated that the occurrence took place in the year 2017. In the playground of Government Higher Secondary School, Lakhimpur, All Assam Students; Union hold an all Organizations (irrespective of casts and creeds) mass rally objecting the Silapathar issue. At that time, some information

showing arrow mark was uploaded in the social media such as Facebook and WhatsApp intending to defame him but he suspected that the accused might have done as such he lodged an ejahar (Ext-1) against him. Later on, he came to know that the accused was not involved with the said occurrence and the same was uploaded by some other WhatsApp Group. In his cross-examination, he has stated that due to misunderstanding and suspicion that the accused might have uploaded such comments he lodged the ejahar against the accused and later on he came to know that the accused was not involved for such act and as such he does not have any objection if the accused is acquitted from this case.

8. PW-2 Sri Nilamoni Changmai, another victim, has stated that on 10.03.2017 a mass rally was held in the playground of Government Higher Secondary School, Lakhimpur, protesting against the Silapathar issue and as such different negative comments were uploaded in the Facebook and WhatsApp Group against them by damaging their reputation. They thought that such act might have been done by the accused and as such they lodged an ejahar against him. In his cross-examination, he has stated that he could not say who was involved for uploading negative comments against them in the Facebook and WhatsApp and later on they came to know that the accused has not at all done such act and as such he does not have any objection if the accused is acquitted from this case.

9. Thus, it is quite apparent from the evidence on record that PW-1 (informant-cum-victim) and PW-2 (another victim) have not at all implicated the accused person and they have not even stated anything about the occurrence as alleged by the prosecution. As per their version, they lodged the ejahar against the accused suspecting that he might have uploaded their photos in the social media such as Facebook and WhatsApp giving derogatory comments against them but later on they came to know that the accused was not at all involved with the said occurrence and the same was committed by some other

WhatsApp Group. In their cross-examination, they have clarified that the case was lodged against the accused arising out of misunderstanding as they suspected that the accused might have committed the offence as alleged but later on they came to know that the same was done by some other WhatsApp Group and hence they do not have any objection if the accused is released from this case. Thus, there is not an iota of evidence to suggest that the accused committed the offence under 500 of the Indian Penal Code or section 67 of the Information Technology Act, 2000 as alleged.

10. In view of the above discussion, I have no hesitation in holding that the prosecution has miserably failed to bring home the charges under section 500 of the Indian Penal Code and section 67 of the Information Technology Act, 2000 against the accused person. As such, the points for determination are decided against the prosecution and the accused person Sri Indrajit Borah is acquitted of the said charges. Consequently, the accused person is set at liberty forthwith. The bail-bond of the accused person stands cancelled and surety stands discharged.

11. Given under my hand and the seal of this Court on this the 24th day of June, 2019.

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

Dictated and Corrected by me:

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

Continued (Appendix)

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Sri Achyut Borgohain (PW-1)

Sri Nilamoni Changmai (PW-2)

PROSECUTION EXHIBIT

Ejhar (Ext-1)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBIT

Nil

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

Transcribed and typed by me:

Narayan Chetri, Stenographer