

**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. 497/2015

Under section 448/427 of the Indian Penal Code

State of Assam

-Vs-

1. Md Warish Ansari

S/O: Md. Sattar Ansari

R/O: Kimin Budh Bazar

P/S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 06.10.2015
Dates of recording evidence of PWs : 06.01.2016, 25.04.2016,
08.08.2016, 28.01.2019,
24.06.2019.
Dates of recording statement u/s 313, Cr.P.C : 24.07.2019
Date of argument : 04.09.2019, 11.10.2019
Date of judgment : **11.10.2019**

Advocates appeared in the case:-

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

Mrs. M.D Gohain Baruah, Advocate, for the accused person

J U D G M E N T

1. The vignette of the prosecution case is that on 15.03.2015 informant Sri Ram Manohar Ram lodged an ejahar with the In-charge of Silonibari Police Outpost under North Lakhimpur Police Station alleging that on that day, at about 8:00 AM, when he entered into his house to bring his T.V., accused persons namely, Md. Warish Ansari, Sri Sankar Gurung and Bikram Gurung criminally trespassed into his house and physically assaulted him with bamboo stick/ "Jeura", due to which he

2

sustained injury in various parts of his body. It is further alleged that the accused persons also caused damaged of his household articles and furniture by throwing it outside his house. Hence, the case.

2. The In-charge of the Silonibari Police Outpost, on receipt of the ejahar, effected a G.D. Entry vide Simaluguri O.P. GDE No. 308 dated 15.03.2015 and forwarded the ejahar to the Officer-in-charge of the North Lakhimpur Police Station to register a case under proper section of law. The Officer-in-charge of North Lakhimpur Police Station, on receipt of the ejahar registered a case vide NLPS Case No. 263/2015 under section 448/325/427/34 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 448/427 of the Indian Penal Code against accused person Md. Warish Ansari to stand trial in the Court. The other FIR named accused persons Sri Shankar Gurung and Sri Bikram Gurung are not sent up to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 448/427 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. The particulars of the offence under section 448/427 of the Indian Penal Code were explained to the accused person to which 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 the accused person, at about 8:00 AM, on 15.03.2015, at village Kimin Budd Bazar, under North Lakhimpur Police Station, committed house trespass by entering into the house of informant Sri Ram Monuhar Ram with intent to commit an offence, and thereby committed an offence punishable u/s 448 IPC?

(b) Whether the accused person, at about 8:00 AM, on 15.03.2015, at village Kimin Budd Bazar, under North Lakhimpur Police Station, committed mischief by causing wrongful loss by damaging the household articles and furniture of the informant Sri Ram Manuhar Ram, and thereby committed an offence punishable under section 427 of the Indian Penal Code ?

5. During the trial the Prosecution side examined 6 (six) PWs, namely, Sri Nar Bahadur Gurung (PW-1), Sri Nara Bahadur Mijar (PW-2), Sri Rajendra Sen (PW-3), Md. Khalilur Rahman (PW-4), ASI Sunil Nath (PW-5), Inspector Nikhil Rajkhowa (PW-6) and exhibited 5 (five) documents (Shown in the Annexure appended below). After the closure of the prosecution evidence the accused person was examined under section 313, Cr.P.C. wherein he denied the incriminating materials put to him from the evidence of the witnesses and declined to adduce evidence in defence.

DISCUSSION, DECISION AND REASONS THEREOF:

6. The evidentiary facts that need to be appreciated in all the two points are intertwined as such let me take up both this points together for discussion for the sake of convenience.

7. PW-1 Sri Nar Bahadur Gurung, has stated that he heard that a fighting took place between the informant and the accused. His cross-examination is declined by the defence side.

8. PW-2 Sri Nara Bahadur Mijar, has stated that about one year back (from 25.04.2016), the informant Ram Manohar told him that the accused did not know him and he would make him right. He did not ask anything about the occurrence from the informant. Now, the informant is not residing in their village and he heard that the informant is at present residing at Bihar. In his cross-examination, PW2 stated that he has been doing business in Kimin since 16 years. He only met the informant on the date of the alleged occurrence and thereafter, he did

not see him till date. No house of Ram Bahadur is situated in their village.

9. PW-3 Sri Rajendra Sen, a Seizure witness, has stated in the year 2015, the police had come to the Budh Bazar weekly market and he also came to the said place. He heard that fighting had been taken place between Ram Manohar and the accused. He saw two numbers of steel boxes of Ram Manohar lying in the market. The police opened the boxes and there were some items inside like Parachute, photos of God, Ganja etc. The police of Silonibari Outpost seized the said two boxes with all the articles. He signed on the seizure list in his nick name Raju Sen. Exhibit-1 is the Seizure list and Exhibit-1(1) is his signature. He further stated that on the following day, he saw Ram Manohar for the first time in the market after 30 years. He does not know about his present whereabouts. In his cross-examination by defence, he has stated that he came to know from the police that the boxes belongs to Ram Manohar. He did not see Ram Manohar on the date of Seizure. He did not see the occurrence.

10. PW-4, a Seizure witness, has stated that about two years ago, one afternoon at about 3:00 PM, he had gone to the centre from their Forest Office. He saw that police personnel were standing near the tailoring shop of the accused. He came to know from the police that some fighting had taken place between the accused and one person who was an outsider i.e. not a resident of Kimin. The police took his signature on a piece of paper as a witness. Ext-1(2) is his signature. In his cross-examination by defence, he stated that he had not seen any fighting. The Police took his signature as he had gone there.

11. PW5, ASI Sunil Nath, Investigating Officer, has stated that 15.03.2015, he was working as ASI of Police at Silonibari Police Outpost under North Lakhimpur Police Station. On that day, Ram Manuhar lodged an ejahar at Silonibari Police Outpost. Thereafter, I/C of Silonibari Police Outpost effected a G.D Entry vide Silonibari Police Outpost G.D.E No. 308 dated 15.03.2015 and forwarded to the O/C of

North Lakhimpur Police Station to register a case. Ext-2 is the extract copy of the said G.D Entry. Ext-3 is the FIR received by the I/C of Silonibari Police Outpost. The I/C of Silonibari Police entrusted him with the investigation. Thereafter, he examined the informant Ram Manuhar at the police outpost itself and sent him to Nowboicha PHC for his medical treatment from North Lakhimpur Police Station. Then he along with his staff proceeded to the P.O and inspected the same and thereafter prepared a rough sketch map of the P.O. Ext-4 is the rough sketch map of the P.O. wherein Ext-4(1) is his signature. He also recorded the statements of the witnesses found at and around the P.O. He also seized a tin trunk at the place of occurrence near a room and other articles vide seizure list Ext-1 wherein Ext-1(3) is his signature. Today, he has seen the said tin trunk and other seized articles in the court. Material Ext-1 is the said tin trunk and other seized articles. Thereafter, he went in search of the accused persons but he did not find them. Meanwhile, the O/C of North Lakhimpur Police Station registered a case vide NLPS Case No. 263/2015 u/s 448/325/427/34, IPC and entrusted him with the charge of preliminary investigation of this case. Accused Waris Ansari, Sankar Gurang and Bikram Gurung appeared at the police outpost and they were examined but upon finding incriminating material against accused Waris Ansari, he was arrested but being the offence is bailable as such he was released on bail. He collected the medical report of the victim and thereafter on conclusion of his preliminary investigation he submitted the case diary to the I/C of Silonibari Police Outpost. In his cross-examination, PW5 stated that in the GD Entry No-308 dated 15.03.2015, there is mention about the filing of the written ejahar.

12. PW6 Inspector Nikhil Rajkhowa stated that on 30.03.2015, he was serving as In-charge of Silonibari Police Outpost. On that day ASI Sunil Nath after completing the preliminary investigation of NLPS Case No. 263/205 u/s 448/325/427/34, IPC, submitted the case diary to him. On going through the case diary, it appeared that the investigation of the case had been completed and only charge-sheet had to be submitted. Accordingly, on being satisfied with the investigation conducted by ASI

Sunil Nath, he submitted the charge-sheet against accused Waris Ansari u/s 448/427, IPC. Ext-5 is the charge-sheet wherein Ext-5(1) is his signature. His cross-examination is declined by the defence side.

APPRECIATION OF EVIDENCE

13. In the FIR it has alleged that at the time of the occurrence informant Ram Manohar Lal had been bringing out his T.V from inside his house when the accused had assaulted him. But police had seized one box only containing petty household articles like hair oil, photos of god, ganja (cannabis) etc. PW-3 Rajendra Sen had seen the informant at the place of the occurrence on that date after a gap of thirty years. PW-4 Md. Khalilur Rahman has stated that informant was a stranger to their village. But the witnesses stated to have heard that a fight had taken place between informant and accused without specifying who initiated the fight. Police had seized a box and it has not specified if the box was damaged. The prosecution evidence is silent on the aspect if informant had any dwelling house at the place of the occurrence. In the absence of any dwelling place the offence house trespass under section 448 IPC stands not proved. The absence of any concrete material in the prosecution case about what articles the accused had damaged the offence under section 427 of the IPC also stands not proved.

14. Considering the above lacuna in prosecution story, I am convinced of the fact that prosecution case lacks sufficient force and thus failed to build up a case beyond all reasonable doubt against accused Md Warish Ansari.

ORDER

15. In view of the discussion made above, the points for determination are decided in negative against the prosecution and as such accused Md Warish Ansari is acquitted of the accusation under section 448/427 of the Indian Penal Code. He shall be set in liberty forthwith. Considering the nature of the case, the bail bond of Md Warish Ansari shall remain in force for a further period of six months.

7

16. The Seized articles shall be disposed of in due course of time as per law.

17. The judgment is delivered and operative part of the same is pronounced in the open court on this 11th day of October, 2019.

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

Dictated & corrected by me-

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

Transcribed & types by-
Sri Debashis Bhuyan Stenographer

Contd. Appendix

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Sri Nar Bahadur Gurung (PW-1)

Sri Nara Bahadur Mijar (PW-2)

Sri Rajendra Sen (PW-3)

Md. Khalilur Rahman (PW-4)

ASI Sunil Nath (PW-5)

Inspector Nikhil Rajkhowa (PW-6)

PROSECUTION EXHIBITS

Seizure list (Ext-1)

Extract copy of the GD entry (Ext-2)

FIR received by I/C of Silonibari Outpost (Ext-3)

Sketch map (Ext-4)

Charge-sheet (Ext-5)

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

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