

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 197OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MUSSTT FATEMA KHATOON
MUSSTT HANUFA KHATOON
MD. UMAR ALI

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 197 / 2016

U/S 447/427/352/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MUSSTT FATEMA KHATOON& 2 ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MD. TAYBUR RAHMAN

OFFENCE EXPLAINED ON : 04.01.2019
EVIDENCE RECORDED ON : 25.07.19, 05.04.21

ARGUMENT HEARD ON : 08.04.2021
JUDGMENT DELIVERED ON : 08.04.2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the FIR is that the cattle belonging to the accused persons named in the FIR often destroy the vegetable cultivation of informant Mustt. Jamela Khatoon. For that reason, the informant on 15.01.2016, at about 8:00 A.M, asked the accused persons to keep their cattle properly. However, the accused persons at that time entered inside the house compound of informant without any authority and thereafter

accused Md. Umar Ali assaulted the informant with a bamboo stick and the remaining accused persons assaulted the informant by hitting blows, kicks etc. The accused persons also assaulted informant's daughter-in-law Mustt. Rahima Khatoon and caused severe injury. Thereafter, the villagers came to the spot after hearing hue and cry, due to which the accused persons left the spot. The informant thereafter lodged an FIR about the occurrence at Silonibari Police Outpost.

2. On receipt of F.I.R, police registered a case being numbered as North Lakhimpur P.S Case No. 103/16. After investigation, I.O of the case submitted charge sheet against accused Musstt. Fatema Khatoon, Musstt. Hanufa Khatoon and Md. Umar Ali for the offences punishable under section 447/427/352/34 of I.P.C. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences under section 447/427/352/34 of I.P.C are read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined three witnesses whereas the accused persons did not examine any witness in support of their defence. The accused persons were examined u/s 313 CrPC. Their statements are recorded in separate sheets and tagged with the case record. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

POINTS FOR DETERMINATION:

(i) Whether the accused persons on 15.01.2016, at about 8:00 A.M, in furtherance of their common intention, unlawfully entered inside the house compound of informant Mustt. Jamela Khatoon with the intent to assault the informant, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether the accused persons on 15.01.2016, at about 8:00 A.M, in furtherance of their common intention, assaulted or used criminal force upon informant Mustt. Jamela Khatoon or her daughter-in-law Mustt. Rahima Khatoon, otherwise than on grave provocation, and thereby committed an offence punishable u/s 352/34 of IPC?

(iii) Whether the accused persons on 15.01.2016, at about 8:00 AM, in furtherance of their common intention, with the intent to cause or knowing that they are likely thereby to cause, wrongful loss or damage to the informant, caused destruction of the crops belonging to the informant amounting to Rs. 50/- (fifty) or upwards, and thereby committed an offence punishable u/s 427/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION, AND REASONS THEREOF:

POINT NO.1, 2 & 3:

5. For the sake of convenience, and as because point no.1, 2& 3 are inter-connected, hence they are taken up herein together for discussion & decision.

6. As regards the aforesaid points for determination, the gist of evidence deposited by informant Musstt. Jamila Khatoon as PW1 in her evidence in chief is that, on the day of occurrence, while she tried to chase the cow of accused persons out of the boundary of her house, at that time, accused Umar Ali pushed her due to which she fell down on the ground. Subsequently, on that day, accused persons again came to her house. Accused Musstt. Hanufa Khatoon then scolded her and pushed due to which she fell down on the ground. Thereafter, on being asked by accused Md. Umar Ali, the remaining accused persons started beating her while she was lying on the ground. Her daughters in law, namely, Rahima Khatoon and Sahida Khatoon then came to save her, but the accused persons assaulted her said daughters in law by pulling their hairs and tearing their cloths due to which they sustained injuries. Musstt. Rahima Khatoon was disrobed by the accused persons.

7. Upon perusal of the above evidence, I am of the opinion that the same attracts the offences punishable under 447/352/34 of I.P.C. Hence, it is necessary to find out that whether the aforesaid evidence can be believed in order to form a conclusive opinion against the accused persons.

8. In order to find out the credibility of the evidence deposited by PW1, at the very outset, perusal of her cross-examination shows that she has specifically mentioned that there took place only an altercation between both the parties at the time of alleged occurrence. This shows that the version of

PW1 in her cross-examination do not support the allegations made in her evidence in chief and the same is totally inconsistent with allegations made in her evidence in chief. Such inconsistency, in my opinion, creates serious doubt as regards the credibility of the version stated by PW1 in her evidence in chief.

9. Besides the above, perusal of the above version deposed by PW1 in evidence in chief shows that she/informant and her daughters in law, namely, Rahima Khatoon and Sahida Khatoon are the victims of the alleged occurrence. Hence, it is obvious that all three of them have witnessed the alleged occurrence and they will corroborate each other's version in every material aspect. Therefore, let me proceed with the discussion to see that whether informant's daughters in law have corroborated the version of informant/PW1.

10. In the above context, perusal of the evidence deposed by informant's daughter in law, namely, PW2 Musstt. Rahima Khatoon and PW3 Musstt. Sahida Khatoon shows that they have not deposed any incriminating material against the accused persons. The PW2 & PW3 have simply stated that they along with the informant had an altercation with the accused persons at the time of occurrence with respect to tethering of cows. Be it noted here that the PW2 & PW3 have added that the matter involved has already been settled amicably for which they are not interested to proceed with this case. Perhaps, for that reason the PW2 & PW3 have refrained from supporting the allegations made by PW1.

11. Be that as it may, the version of PW2 & PW3 does not support the allegations made by PW1/informant at all. Under such, and having regard to the discussion made in previous paragraphs, I find that the allegations made by PW1/informant in her evidence in chief against the accused persons are highly doubtful and cannot be believed.

12. Considering the entire discussion made above, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused persons have committed the offences as alleged.

DECISION: Point no.1, 2&3 are therefore decided in the negative and goes against the prosecution.

ORDER

13. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Musstt. Fatema Khatoon, Musstt. Hanufa Khatoon and Md. Umar Ali have committed the offences punishable under section 447/427/352/34 of I.P.C as alleged, and as such, the above named accused persons are acquitted of the charges under section 447/427/352/34 of I.P.C on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 08th day of April, 2021.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX

(A) **PROSECUTION EXHIBITS**

Exhibit.1 – F.I.R

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

P.W. 1 – Musstt. Jamila Khatoon.

P.W. 2 – Musstt. Rahima Khatoon.

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur