

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.1427/2016

State

Vs.

- 1. Md. Mohammad Ali
Son of Late Ashad Ali**
 - 2. Md. Khajal Uddin
Son of Late Ashad Ali**
- Both are residents of village: Solmari
Ward No.7, P.S.- Bhelowguri,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.
For the defense: Md. A.U. Siddique, Advocate

Charge framed: u/s 341/323/325/294/34 of IPC
Evidence recorded on: 17-6-2019 and 15-11-2019
Argument heard on: 15-11-2019
Judgment delivered on: 20-11-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Abdul Kadir lodged an ejahar in the Bhelowguri police station against the accused persons namely Md. Mohammad Ali and Md. Khajal Uddin alleging therein that on 22-6-2016 at about 9.30 a.m., while the informant was going to his school along the road in front of his house, the aforementioned two accused persons restrained the informant accusing him as to why the informant did not pay scholarship amount to their daughter, inflicted fist blows etc. causing severe injuries on several parts of his

body. The accused persons also hurled obscene abuses at him and thereby damaged his reputation.

2. The said ejahar was received in the Bhelowguri police station on 23-6-2016 and a Bhelowguri police station case No.41/2016 under sections 341/325/294/34 IPC was registered and one assistant sub inspector of police Md. N. Ali was assigned to take up the preliminary steps of investigation and sub inspector of police Md. Rofiqul Islam, who was the then Officer-in-Charge of the said police station, decided to complete the investigation. On completion of investigation police submitted charge sheet against the accused Md. Mohammad Ali and Md. Khajal Uddin under sections 341/323/294/34 of IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused persons under section 207 CrPC. Particulars of offences under sections 341/323/294/34 of IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried. Subsequently, charge under section 325 IPC was added in the already existing charge against the accused Md. Mohammad Ali on the basis of evidence of PW-1. The said accused Md. Mohammad Ali pleaded not guilty and claimed to be tried when the said charge was read over and explained to him.

4. Prosecution in support of its case examined 2 (two) witnesses namely Md. Abdul Kadir, as PW-1, who is the informant cum alleged victim and another witness namely Md. Mustaque Ahmed, who is the son of the informant, as PW-2. The ejahar is exhibited as exhibit-1 and the signature of the informant is proved as exhibit-1(1).

5. Subsequently, after examination of PW-1, the alleged victim Md. Abdul Kadir and the two accused persons by filing a joint petition prayed for compounding of the case on the basis of amicable settlement already arrived at by them. In view of the same, the offences under sections 341/323/325/34 IPC, which were compoundable in nature, were compounded on the basis of the said compromised. However, the offence under sections 294/34 IPC being non-compoundable in nature, the prayer for compounding the same was rejected.

6. Thereafter, the evidence of PW-2 was recorded. For lack of incriminating materials of offence under sections 294/34 IPC, the examination of the accused persons under section 313 CrPC was dispensed with. Defense side refused to adduce any evidence.

7. I have heard the argument of Mrs. Alakananda Kakati, learned APP and the argument of Md. Azad Uddin Siddique, learned defence counsel, perused the case record and considered the same. The following points for determination are formulated:

- i. Whether the accused person on or about 22-6-2016, at about 9.30 a.m. at village Ulubari, Ward No.3, under Bhelowguri police station of Morigaon district, in furtherance of their common intention, uttered obscene words in a public place to the annoyance of Md. Abdul Kadir and thereby committed an offence punishable under section 294 IPC read with section 34 IPC?

Discussion of evidence, decision and reasons therefor:

8. Though PW-1 Md. Abdul Kadir wrote in his ejahar which is exhibited as exhibit-1 that the accused persons hurled obscene abuses at him; however, there is nothing in his evidence to show that the accused persons used obscene words. PW-2 Md. Mustaque Ahmed stated that the matter has already been amicably settled by the parties at the intervention of the local villagers for which he no longer wish to proceed with the case.

9. In view of their deposition prosecution side also did not proceed further to summon and examine the remaining witnesses as their evidence is not likely to improve the prosecution case and closed the evidence and perhaps rightly so.

10. For the aforesaid reasons and discussion the sole point for determination is answered in the negative.

11. The prosecution has failed to prove the case against the accused persons. As such, the accused persons are found not guilty and accordingly acquitted of offence under sections 294/34 IPC alleged against them. They be set at liberty

forthwith. Their bail bonds shall remain in force for six months from today in view of section 437A of CrPC.

12. The judgment is pronounced in open court and given under my hand and seal on this 20th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
Ext.-1(1): Signature of Md. Abdul Kadir
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Md. Abdul Kadir
P.W.-2: Md. Mustaque Ahmed
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
None

Chief Judicial Magistrate, Morigaon