

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.2359/2014

State

Vs.

- 1. Sri Durna Medhi
Son of Late Garsing Medhi**
 - 2. Sri Raju Medhi
Son of Sri Durna Medhi**
 - 3. Smti. Jinti Medhi
Daughter of Sri Durna Medhi**
- All are residents of village:Baghara
Anantapur, P.S.- Morigaon,
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: Mr. N. Kr. Bora, Ms. P. Deka Baishya, Advocates

Charge framed u/s: 447/506/34 IPC

Evidence recorded on: 17-3-2017, 8-3-2019, 2-5-2019

Statement of defense recorded on: 24-9-2019 & 25-10-2019

Argument heard on: 25-10-2019

Judgment delivered on: 8-11-2019

JUDGMENT

1. The prosecution case in brief is that one Sri Chidananda Kalita lodged an ejahar in the Morigaon police station against the accused persons namely Sri Durna Medhi, Sri Raju Medhi and Smti. Jinti Medhi alleging therein that the informant is a simple peace loving person and the accused persons are ruffians by nature. In an area spanning 150 bighas of land, covered by Dag No.1 of Tarani Kolbari Kissam situated at Niz Tetelia Hill under the Niz Tetelia mouza, various types of valuable and extinct trees were planted in a botanical garden by the committee of Ever Green Earth of which the aforementioned informant is the

President. However, the aforementioned accused persons have been trying to damage those trees all the times. Due to the attempts of the accused persons, the informant lodged a case against the accused persons bearing MR No.226/2014 in the court of Deputy Commissioner, Morigaon which is pending at the time of lodging of the ejahar. During pendency of the said case, by disregarding the said case, on 9-11-2014, the accused persons illegally entered into the area reserved for the informant and caused cattle to damage the valuable trees and also threatened to kill the caretaker by showing dao and gun and thereby drove them away. At the time of lodging the ejahar, in absence of the caretaker for the trees, the informant suffered severe loss. Along with the ejahar a photocopy of the order passed on 17-10-2014 in the court of Deputy Commissioner, Morigaon was also annexed with the ejahar.

2. The ejahar was received in the Morigaon police station on 15-11-2014 and a Morigaon police station case no.503/2014 under sections 447/427/506/34 IPC was registered and one assistant sub inspector of police Sri Tarun Ch. Deka was assigned to take preliminary steps of the investigation of the case and the Sub-Inspector of police Md. Muktar Hussain, who was the Officer in charge of Morigaon police station, decided to complete the investigation. On completion of investigation, police submitted charge sheet against the accused persons Sri Durga Medhi, Sri Raju Medhi and Smti. Jinti Medhi under sections 447/506/34 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 447/506/34 of IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 3 (three) witnesses namely Sri Dimbeswar Kr. Das, Sri Lokan Medhi and Sri Pranjal Rajkumar, as PW-1, PW-2 and PW-3, respectively. While under examination under section 313 CrPC the accused persons completely denied the allegations leveled against them. Defense side refused to adduce any evidence.

5. I have heard the argument of Mrs. Alakananda Kakati, learned APP as well as the argument of Mr. Newton Kr. Bora, assisted by Ms. Purabi Deka

Baishya, learned defence counsels. I have also perused the case record and considered the same. The points for determination are as under:

- i. Whether the accused persons, on or about 9-11-2014, at village Tarani Kolbari, under Morigaon police station of Morigaon district, in furtherance of their common intention, entered into or upon the property in possession of Sri Chidananda Kalita with intent to commit an offence or to intimidate, insult or annoy him and thereby committed an offence punishable under section 447 IPC read with section 34 IPC?
- ii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, threatened the caretaker engaged by Sri Chidananda Kalita with intent to cause alarm to the caretaker and thereby committed an offence punishable under section 506 IPC read with section 34 IPC?

Discussion of evidence, decision and reasons therefor:

6. PW-1 Sri Dimbeswar Kr. Das deposed that at the time of the occurrence, he was working as a Chowkidar at a farm being run by accused Durna Medhi. There was a settlement between the informant and the accused Sri Durna Medhi after which there was a dispute between them. According to him, accused Sri Durna Medhi sometimes threatened the labourers who were engaged in the farm. He further stated that the accused Sri Durna Medhi planted some saplings of banana trees. When the said PW informed the informant regarding the same and he (informant) asked him (PW-1) to remove those saplings, accordingly, the said PW removed the said saplings. Subsequently, the accused Sri Durna Medhi and his son Raju blocked the main entry to the farm by erecting a fence. Thereafter, there were some thefts in the farm and some articles were stolen therefrom. On the day of the Lakhi Puja all the kitchen utensils were also stolen from the farm for which the informant lodged the ejahar.

7. The deposition of the said PW does not support the allegation leveled against the accused persons in the ejahar. We have already noticed in the ejahar that the allegation against the accused persons are of damaging trees planted by

the informant as well as of threatening the caretaker of those trees. Whereas, in the deposition of PW-1, it was the informant who instructed the said PW to remove the banana trees planted by the accused persons in his own farm. Therefore, this revelation instead goes against the informant and the prosecution case.

8. Further, it has been revealed in the cross-examination that the farm itself belongs to the accused Sri Durna Medhi who used to cultivate in the said farm for his livelihood. Therefore, in view of the said revelation, the indication by the informant in his ejahar that the area covering 150 bighas of land was reserved for him is entirely false. Further, it has also been revealed that the informant used to run a farm by the name of Ever Green Earth which farm was also involved in other cases also and some owners of land have filed cases against him raising allegation of grabbing of land belonging to other people in the name of the said farm. It has also been revealed by the said PW that the informant used to have good relation with Sri Durna Medhi and his family members and used to stay at his house. It is heard by the said PW that the informant attempted to mutate his own name in land records in place of the accused persons and when those matters surfaced, the relationship between the informant as well as the accused persons soured and visits between them stopped. It is also revealed by PW-1 that the informant did not pay wages to some of the labourers and thereafter he filed the present case. It is further stated by the said PW that he does not know the ground for which the informant lodged this case as he was not consulted at the time of lodging the ejahar.

9. The above revelations by PW-1 entirely negates the allegations leveled in the ejahar rather the said revelations placed the informant in a bad light and it goes to show that the informant lodged the said ejahar by giving the impression that the area covered by 150 bighas of land belonged him wherein he planted trees. Whereas, the deposition of PW-1 reveals that the facts are entirely different from what the informant stated in his ejahar. Further, in the deposition of PW-1, there is no mention of any damage of trees by cows at the instance of accused persons and also no indication that the accused persons threatened to kill the caretaker by showing dao and gun and drove him away.

10. In the backdrop of the aforesaid deposition of PW-1, PW-2 Sri Loken Medhi also stated that he used to work as a labourer under the informant. Though he stated that the occurrence took place in the year 2014; however, he has also expressed his ignorance as to what happened as he was at his house due to death of his mother at that time. He only stated that the informant initiated a scheme to plant trees at Boghara hills. Subsequently, there was dispute regarding the said scheme. His cross-examination was declined. Therefore, the deposition of PW-2 also does not go to support the prosecution story.

11. Likewise, PW-3 Sri Pranjal Rajkumar has also no knowledge regarding the occurrence except the fact that he heard that the informant wanted to open a farm at Satai pahar. His cross-examination was also declined. Therefore, PW-3 also did not support the prosecution story indicated in the ejahar.

12. Though summons were issued repeatedly to the informant; however, not a single summons were returned to the court. Subsequently, in view of the deposition of the three PWs, the prosecution side also did not proceed further to procure the attendance of the informant in court as there is no likelihood that his evidence would improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

13. It may be mentioned here that all the three accused persons in their statement recorded under section 313 CrPC have stated that it was Sri Durna Medhi, who planted the trees which were uprooted. They have also stated that this case was lodged due to spite and grudge. The statement of the accused persons that it was accused Sri Durna Medhi who planted the trees support the statement by PW-1, who also stated that it was accused Sri Durna Medhi, who planted the trees. Therefore, the statements of the said accused persons given under section 313 CrPC appears to be believable and it appears that this case was lodged without any basis only to harass the accused persons.

14. For the aforesaid reasons and discussion the points for determination are answered in the negative.

15. 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

offences under sections 447/506/34 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.

16. The judgment is pronounced in open court and given under my hand and seal on this 8th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

None

(B) DEFENCE EXHIBITS

None

(C) EXHIBITS PRODUCED BY WITNESSES

None

(D) COURT EXHIBITS

None

(E) PROSECUTION WITNESSES

P.W.-1: Sri Dimbeswar Kr Das

P.W.-2: Sri Loken Medhi

P.W.-3: Sri Pranjal Rajkumar

(F) DEFENCE WITNESSES

None

(G) COURT WITNESSES

None

Chief Judicial Magistrate, Morigaon