

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIOGAON, ASSAM.

GR Case No. 2693/18

U/S 447/352/294/34 IPC

STATE OF ASSAM

-VS-

1. MD. JIARUL HOQUE.

2. MD. OMAR FARUQUE.

BOTH S/O MD. JAIDAR ALI,

R/O BARALIMARI, GARIAGAON, P.S. BHURAGAON.

DIST. MORIGAON, ASSAM.

..... ACCUSED PERSONS.

PRESENT: -

SMTI. ANAMIKA BARMAN, LL.M., A.J.S.

JUDICIAL MAGISTRATE FIRST CLASS

MORIGAON, ASSAM.

FOR THE STATE: -

MR. M. ISLAM, LEARNED A.P.P.

FOR THE ACCUSED: -

MR. A. U. SIDDIQUE, LEARNED ADVOCATE.

EVIDENCE RECORDED ON: - 30.10.2019.

ARGUMENT HEARD ON: - 06.11.2019.

JUDGMENT DELIVERED ON: - 06.11.2019.

JUDGMENT

1. The brief of the prosecution story is that one Md. Abdul Hye lodged an FIR before the Officer-in-Charge, Bhuragaon P.S. on 22.10.2017 alleging inter alia on 30.06.2017, at about 11:30 am, the accused persons, namely, Md. Jiarul Islam, Md. Rabbul Islam, Md. Sahabul Ali, Md. Faruk Ali and Musstt. Jeleka Khatun started fighting

with him over a game of carrom board after which the accused persons wrongfully entered the courtyard of the informant with sticks in their hands, rebuked the informant with obscene words, threatened him, wrongfully restrained him and also assaulted him as a result of which the informant sustained serious injuries. Hence, the case.

2. On receipt of the ejahar, Bhuragaon P.S. registered the case as Bhuragaon P.S. case No. 218/17 u/s 447/294/325/34 of the IPC and the case was investigated into. On completion of the investigation, I/O filed charge-sheet against the accused persons Md. Jiarul Hoque and Md. Omar Faruque u/s 447/352/294/34 of the IPC.

3. On receipt of summons the accused persons appeared before the Court. Copies of relevant documents were furnished to the accused person under section 207 of Cr. P.C. On finding sufficient prima facie materials to presume that the accused persons had committed offence punishable u/s 447/352/294/34 of the IPC, particulars of offence under the said sections were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined only 1 (one) witnesses. In view of the evidence recorded, the Ld. APP verbally prayed to close PWs as the prosecution declined to adduce further evidence. After closure of prosecution evidence, statement u/s 313 of Cr.P.C. has been dispensed with as found not necessary. Defence declined to adduce evidence. Heard the arguments put forward by the learned Counsels for both the sides as well as gone through the evidences available on record.

5. **Point for determination.**

(I) *Whether on 30.06.2017, at about 11:30 am, at Baralimari Gariagaon, the accused persons, in furtherance of their common intention, committed criminal trespass by entering into the property of the informant/victim Md. Abdul Hye, which was also in the possession of the informant, with intent to commit an offence, and hence committed an offence u/s 447/34 of IPC?*

(II) *Whether on the same date, time and place, the accused persons, in furtherance of their common intention, assaulted or used criminal force to the informant/victim, and hence committed an offence u/s 352/34 of IPC?*

(III) Whether on the same date, time and place, the accused persons, in furtherance of their common intention, uttered obscene words at or near a public place, and hence committed an offence u/s 294/34 IPC?

Discussion, Decision and Reasons thereof:-

6. In this case prosecution examined only 1 (one) witnesses. The informant/victim Md. Abdul Hye was examined as PW-1 to prove the charges against the accused persons.

7. Before going to decide the points for determination, let me describe the evidence in brief. *In his examination-in-chief* PW-1/informant/victim, Md. Abdul Hye, deposed that he is the informant and he knows the accused persons standing on the dock as they are his neighbours. He further deposed that the incident had taken place about 3 (three) years prior to the date of his deposition. On the date of the incident he had a verbal altercation with the accused persons over a game of carom board and he filed the instant case in that misunderstanding.

8. *During his cross-examination*, PW-1 stated that he does not have any objection if the accused persons are acquitted.

9. On perusal of the evidences recorded by the prosecution side, it appears that the PW-1/informant/victim is not willing to proceed with the case further and he stated that the case was filed out of some misunderstanding. He does not have any objection if the accused persons are acquitted.

10. In view of the evidence on record, the prosecution side declined to adduce further evidence. This being so there is nothing in the evidence of prosecution warranting conviction of the accused persons u/s 447/352/294/34 IPC as the evidence of the prosecution witness is found to be not acceptable and reliable.

11. Considering the above, I came to the safe conclusion that the prosecution has failed to prove the charge u/s 447/352/294/34 IPC against the accused persons beyond reasonable doubt. Accordingly, the accused persons are found not guilty of the offence charged against them and are acquitted.

ORDER

12. In the light of the above decision, the accused persons are acquitted of the charge under section 447/352/294/34 of IPC and set at liberty forthwith.

13. The bail bonds of the accused persons are extended for a period of 6 (six) months as per section 437-A, Cr.P.C.

14. The judgment is delivered in the open Court in presence of the accused persons and their learned Counsel.

15. Given under my hand & seal of this Court and delivered in the open Court on this 6st day of November, 2019.

Dictated and corrected by me

(Miss. Anamika Barman)

JMFC, Morigaon

(ANAMIKA BARMAN)

Judicial Magistrate First Class

Morigaon, Assam

APPENDIX

PROSECUTION WITNESSES:

1. P.W.-1, MD. ABDUL HYE.

DEFENCE WITNESSES:

NIL

EXHIBITED DOCUMENTS:

NIL

**(ANAMIKA BARMAN)
JMFC, Morigaon
Assam**