

DISTRICT: MORIGAON

IN THE COURT OF ADDL. CHIEF JUDL.MAGISTRATE,

MORIGAON::::::::::ASSAM.

GR Case No. 2752 of 2013

U/S 341/152/224/34 of IPC.

PROSECUTOR: STATE OF ASSAM

-VS.-

ACCUSED: (1) SRI MANIK DAS

(2) SRI RABINDRA NATH DEKA

(3) SMTI. ANJALI DEKA

(4) SRI BIMAL MEDHI

(5) SRI MAKUNDA DEKA

Present : Smti. S. Acharyya, AJS,
Addl. Chief Judicial Magistrate,
Morigaon.

APPEARANCE:

For the State : Mr. P. Hazarika, Ld Addl. Public Prosecutor.

For the accused persons : Mr. B. C. Saikia, Learned Advocate.

Charge framed on : 30.10.2014.

Evidence recorded on : 07.12.2015, 19.05.2016, 11.07.2016, 22.05.2017
& 01.04.2019.

Argument heard on : 24.10.2019.

Judgment delivered on : 07.11.2019.

J U D G M E N T

1. The prosecution case in brief is that the informant Loken Boro lodged an ejahar stating inter alia that on 14.12.2013, in the morning, he along with HG Khalid Hussain and HG Afikur Rahman were coming to Morigaon court by Government vehicle bearing registration No. AS-30-1247 (407 truck) for production of accused persons (i) Rabindra Nath Deka and (ii) Manik Das who

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were arrested u/s 341/354(A)/376/366/511/395/34 IPC in connection with Mayang P.S. Case No. 114//2013. That on the way, at about 10.00 AM, at Doipara village, 25 Nos. of local men and women restrained the vehicle and asked to stop their vehicle. That those people made oral altercation with them asking as to why innocent people were arrested and pulled and pushed them and made the situation worse and taking advantage of the situation, the two accused persons namely Rabindra Nath Deka and Manik Das fled away. Hence the case.

2. On receipt of the 'ejahar' at the police station, the same was registered as Jagiroad P.S. Case No. 280/2013 and the matter was investigated upon.

3. After completion of investigation police filed a charge-sheet against the accused persons (i) Sri Manik Das, (ii) Sri Rabindra Nath Deka, (iii) Smti. Anjali Deka, (iv) Sri Bimal Medhi and (v) Sri Makunda Deka under section 143/341/152/224 IPC.

4. On appearance of the accused persons they were allowed to go on bail. Relevant documents of the case was furnished to them. On perusal of record and after hearing both sides, charge under section 341/152/34 has been framed against the accused Anjali Deka, Bimal Medhi and Makunda Deka and charge under section 224/34 has been framed against the accused Rabindra Nath Deka and Manik Das. The content of said charges has been read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case examined eight witnesses. Whereas, the defence side has not examined any witness in support of its defence.

6. The statement under section 313 Cr.P.C. of the accused persons is recorded. They denied all the allegations.

7. I have heard the argument advanced by the learned counsels for both sides.

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

(i) Whether the accused persons Smti. Anjali Deka, Bimal Medhi and Makunda Deka, on 14.12.2013, at about 10.00 AM, at Doipara village under Jagiroad PS in furtherance of common intention, wrongfully restrained the informant, Home

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Guards, Loken Boro and Khalid Hussain and Afikur Rahman while they were proceeding towards Morigaon Judicial Court in a 407 truck bearing registration No.AS-30/1247 and thereby committed an offense punishable under section 341/34 of IPC?

(ii) Whether the accused persons Smti. Anjali Deka, Bimal Medhi and Makunda Deka, on the same date, time and place, in furtherance of common intention, obstructed Loken Boro, Khalid Hussain and Afikur Rahman in the discharge of their duties as such public servant, used or threatened or attempted to use criminal force to such public servant and thereby committed an offense punishable under section 152/34 of IPC?

(iii) Whether the accused persons Rabindra Nath and Manik Deka, on the same date, time and place, in furtherance of common intention, escaped from lawful custody in connection with Mayong PS Case No. 114/2013 u/s 341/354(A)/376/366/511/395/34 of IPC and thereby committed an offense punishable under section 224/34 of IPC?

DISCUSSION, DECISIONS AND REASONS FOR THE DECISIONS:

9. For the convenience of discussion and for the sake of brevity all the points are discussed together.

10. PW1 Sri Loken Medhi, inter alia deposed that he heard that at about 2 years back, at Doipara PWD road police vehicle was gherowed. He came to the PO by bike. He saw accused Anjali Deka, Bimal Medhi, Mukunda Deka were kept at the police car. He came to know from the police that they gherowed the police vehicle. In his cross examination, PW1 inter alia answered that he came to know about the incident from police. Few days before the incident, Jhargaon Anchalik bihu festival was organized and accused Rabin Deka and Manik Deka were the members of that bihu committee. Two numbers of car from Jagiroad PS went to that bihu function and quarrel took place between the police and the bihu committee.

11. PW2 HG Luhit Bordoloi @ Rohit inter alia deposed that the incident took place in the year 2013. That on the day of incident while he was driving the 407 vehicle bearing registration No. AS-30/1247 carrying the accused persons from Mayong PS to Morigaon court, then at Jhargaon Doi Para 30/40 ladies stopped their vehicle. They asked for two accused persons namely Manik Deka and Rabindra Deka. There were 2/3 male persons along

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with the ladies. Those persons had taken the two accused persons from their vehicle. In his cross examination, PW2 inter alia answered that Major Luken Boro, HG Khalid Hussain and Atikur Rahman were present in the vehicle. There was no police officer along with them in the vehicle. He does not know in which case and by whom Manik and Rabindra were arrested. He did not see any command to bring the accused persons to the court. At the time of incident Ajoy Medhi was second officer at Mayong PS. He does not know whether there was case against Manik and Rabindra at Mayong PS. He denied the suggestions put to him by the Ld. defense counsel.

12. PW3 HG Khalid Hussain inter alia deposed that the incident took place in the year 2013. That on the day of incident when accused Rabindra Deka and Manik Das were taken to Morigaon by 407 vehicle, then at Doipara *tiniali* in front of the house of accused Rabindra Deka, 30/35 ladies and 10/15 male persons restrained their vehicle. Those persons asked for the accused persons and ladies entered inside the vehicle and took the two accused persons. In his cross examination, PW3 inter alia answered that he does not know in which case of Mayong PS, the accused persons Rabindra and Mantu were arrested. He had not seen command. He denied the suggestions put to him by Ld. defense counsel.

13. PW4 Sri Arup Medhi inter alia deposed that in the year 2013, at morning time, when he was going to school, he saw two persons were kept with handcuff at police vehicle. He had seen accused Rabindra Deka and Manik Das in handcuff at Bilimara *Tiniali*. As it was a market-day, there was gathering at the road and hence the police vehicle stopped. Then ladies asked the policemen. In his cross examination, PW4 inter alia answered that when he had entered into a shop at *tiniali* police took two persons in handcuff by vehicle.

14. PW5 Sri Bubul Deka inter alia deposed that in the year 2013, on one market day when he was going to market, he saw accused Rabindra and Manik with handcuff in the police vehicle. Accused Mukunda Deka and Bimal Medhi were standing nearby. There were many people. They were asking the police. In his cross examination, PW5 inter alia answered that he knows sub-inspector Ajoy Medhi of Mayong PS. Before the incident, wife of

accused Rabin Deka namely Faguni Deka instituted a case against Ajoy Medhi at Morigaon Court. He does not know the status of that case. Other people except the accused persons were also asking the police.

15. PW6 SI Birendra Bordoloi inter alia deposed that on 14.12.2013 he was working as attach officer at Jagiroad PS. On that day, O/C on getting ejahar from the constable Luken Boro gave charge of investigation to him. He visited the PO on 14.12.2013 and recorded the statement of the informant and three home guards on the PO. He had drawn sketch map and he arrested the accused persons and released them on bail. After investigation, he submitted charge sheet against the accused persons u/s 143/341/152/224 of IPC. He exhibited the sketch map as Ext.1 and his signature as Ext.1(1). He exhibited the charge sheet as Ext.2 and his signature as Ext.2(1). He exhibited the ejahar as Ext.3 and signature of O/C Jiabur Rahman as Ext.3(1). In his cross examination, PW6 inter alia answered that O/C lodged the ejahar on 14.12.2013 at about 10.00 AM and O/C gave the charge of investigation to him at 10 A.M. The accused persons were arrested and taken in a case of Mayong PS bearing number 114/2013. He did not take details of the arrest of the accused persons in Mayong PS case. He did not collect documents of the Mayong PS case of the accused persons. Police officer required to arrest person. He knows that O/C Bharat Konwar arrested. But he did not record his statement. Accused persons were taken to court. The accused persons were arrested u/s 341/354(A)/376/366/511/395/34 IPC. The accused persons went to home after taking bail from him. After getting the ejahar, he arrested the accused and released them on bail. SI Bharat Konwar was along with him when he arrested the accused persons, who is the I/O of Mayong PS case No. 114/13. He does not know that wife of an accused filed a CR case in the year 2012 against SI Ajoy Medhi. He denied the suggestions put to him by Ld. defense counsel.

16. PW7 Sri Luken Boro, who is the informant inter alia deposed that he forgot the name of the ejahar writer. Ejahar was written at Jagiroad PS. In the year 2013, they were bringing two rape accused persons from Mayong PS to the court by a vehicle. On their way at Jhargaon, some people blocked the road by sitting on the road. Thereafter, some women entered into

their vehicle along with accused Anjali Deka. They pulled him out from the vehicle and caused some injuries at hand. He was accompanied by two home guards apart from the driver of the vehicle. Accused persons were 30/35 in number. They forcefully took the rape accused persons from their custody. Their driver made telephone call to O/C sir and he came and searched for the accused persons. But he could not find them. They failed to produce the rape accused persons at the court because of intervention by the accused persons. He forgot the name of rape accused persons whom they were taking to Morigaon Court. He took medical treatment at Jhargaon hospital for his minor injury. He resisted the force for taking the raped accused persons for which he sustained injuries. He forgot the names of the Home Guards, who accompanied him. Anjali Deka was present at that time and she went inside their 407 vehicle to take the rape accused out of their custody. He exhibited the ejahar as Ext-3 and his signature as Ext-3(2). In his cross examination, PW7 inter alia answered that he forgot the number of the vehicle in which they were bringing the rape accused persons to the court. He did not submit the copies of accused challan along with the ejahar. He was posted at Mayong PS. Shri Ajoy Medhi was posted at Mayong PS at a particular time as police officer. He heard that wife of Rabindra Deka filed a case against police officer, Ajoy Medhi. He does not know whether any other person was involved or not. He does not know, which was instituted earlier; this one or that one. He does not know name of the I.O. of the rape case in which they were bringing the rape accused persons to the court. None instructed him to lodge this case. He returned the challan to the PS when he failed to produce the rape case accused to the court. He did not mention about challan number in the ejahar. He denied the suggestions put to him by Ld. defense counsel.

17. The PW8 HG Khalid Hussain inter alia deposed that the incident took place in the year 2013, at the day time. He along with HG Afikur Rahman, the informant and driver Lohit Bordoloi were coming to the court along with the accused persons by a 407 vehicle in connection with a case. On the way, some people restrained them. Later, he came to know that wife of Rabin Deka demanded that the accused persons be handed over to her. The family members of accused Rabin Deka and other persons snatched

away the accused persons from bus and tried to set fire on the bus. In his cross examination, PW8 inter alia answered that around 40/45 persons gathered at the PO. Male and female were present there. He does not know them. He heard from the other persons that wife of Rabin Deka demanded that the accused persons be handed over to her. He does not know the wife of Rabin Deka. He does not know in which case, the accused persons were being brought to the court. He does not know about the case filed by Rabin Deka against the then O/C of Mayong PS. He denied the suggestions put to him by the Ld. defense counsel.

18. I have carefully gone through the evidence on record. From the oral evidence on record it appears that while the accused persons Manik Das and Rabindra Nath Deka were taken to Court for production in connection with Mayang P.S. in police vehicle then on the way the some persons including some women restrained the police vehicle and had taken away the accused persons Manik Das and Rabindra Nath Deka from the custody of police and pulled and pushed police staffs. From the ejahar it reveals that the accused persons (i) Rabindra Nath Deka and (ii) Manik Das were arrested u/s 341/354(A)/376/366/511/395/34 IPC in connection with Mayang P.S. Case No. 114/2013 and they were being taken to Court at the time of alleged incident and on the way other accused persons restrained them and arrested accused persons fled away . But in this case the prosecution side did not produce the ejahar and other documents relating to Mayang P.S. Case No. 114//2013. Hence it is not possible to come to a conclusion that accused (i) Rabindra Nath Deka and (ii) Manik Das were really arrested in connection with Mayang P.S. Case No. 114/2013 u/s 341/354(A)/376/366/511/395/34 IPC and they were taken from the lawful custody of police by other accused persons. Thus documents of Mayang P.S. Case No. 114//2013 u/s 341/354(A)/376/366/511/395/34 IPC are vital documents in this case and non production of documents of Mayang P.S. Case No. 114/2013 throws doubt on the entire prosecution case.

19. In view of above discussion, I am of the opinion that prosecution failed to establish the case against the accused persons beyond all reasonable doubt. Accordingly accused Anjali Deka, Bimal Medhi and Makunda Deka are acquitted of charge under section 341/152/34 IPC and accused Rabindra Nath Deka and Manik Das are acquitted of charge U/S

224/34 of IPC and set at liberty forthwith.

20. Bail bond shall remain in force for next six months.

21. The case is disposed of on contest.

22. Given under my hand and seal, today, the 7th day of November, 2019.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

Dictation taken and
transcribed be me.

Computer Typist.

APPENDIX:

Prosecution witness:

- PW1- Sri Luken Medhi.
- PW2- HG Luhit Bordoloi @ Ruhit.
- PW3- HG Khalid Hussain.
- PW4- Sri Arup Medhi.
- PW5- Sri Bubul Deka.
- PW6- SI Birendra Bordoloi.
- PW7- Sri Luken Boro.
- PW8- HG Khalid Hussain.

Prosecution exhibits:

- Ext.1- Sketch Map
- Ext.2- Charge Sheet
- Ext.3- Ejahar

Defence witness:

Nil.

Defence exhibit:

Nil.

Dictated and corrected
by me.

S. ACHARYYA
Addl Chief Judicial Magistrate
Morigaon.

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Addl Chief Judicial Magistrate
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