

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON

GR 603 of 2018

U/S 147/447/341/323/427/294 of IPC

State

Vs

- 1. Md. Ajimuddin**
- 2. Musstt. Khateman Nessa**
- 3. Md. Sarifuddin**
- 4. Md. Mohibur Rahman**
- 5. Md. Hanif Ali**

.....Accused Persons

Present: A. Shravan, A.J.S.

Evidence recorded on : 18-01-2020
Arguments heard on : 18-01-2020
Judgment delivered on : 18-01-2020

For the Prosecution : Assistant Public Prosecutor, L. Gohain.
For the Defence : Learned Counsel, Mr. B. H. Talukdar.

Judgment

1. The case of the prosecution in brief is that the informant, Md. Jakir Hussain lodged an *ejahar* on 09.03.2018 before Mayong P.S. stating *inter alia* that on 09.03.2018 at about 10 a.m. the accused persons being armed with Dao, *lathi*, dagar, etc. wrongfully entered into the premises of the informant and damaged various articles. Upon being resisted by the informant, the accused persons verbally abused him with obscene languages, wrongfully restrained him and attacked him on his head by hitting him with a dao. When the brother of the informant came for his rescue, he was also beaten up with bamboo stick on his head. In consequence of the same, both the informant and his brother sustained severe injuries on their head. Hence the case.

2. On receipt of the *ejahar*, the Officer in Charge of Mayong Police Station registered Mayong P.S. Case No- 99/2018 under sections 447/427/294/

341/326/325/34 of Indian Penal Code. The police after investigation submitted charge sheet against the accused persons, Md. Ajimuddin, Musstt. Khateman Nessa, Md. Mohibur Rahman, Md. Sorifuddin and Md. Hanif Ali under sections 147/447/341/323/427/294 of I.P.C.

3. On appearance of the accused persons, copies were furnished to them under section 207 of Cr.P.C. and after hearing and perusal and on finding prima facie materials u/s 147/447/341/323/427/294 of I.P.C, against all the five accused persons, the offences are read over and explained to the accused persons to which they pleaded not guilty and claim to be tried.

4. The prosecution side to prove its case examined the informant, Jakir Hussain as PW-1 and Ibrahim Ali, the brother of the informant as PW-2. The statement of the accused persons under section 313 of Cr.P.C. was not recorded due to the absence of incriminating materials against them.

5. I have heard both the learned Assistant Public Prosecutor and the learned counsel for the accused persons.

6. POINTS FOR DETERMINATION:-

(i) Whether the accused persons on 09.03.2018 at about 10 a.m. criminally trespassed into the house of the informant and thereby committed an offence u/s 447 of IPC?

(ii) Whether the accused persons on the same day, same time and at the same place wrongfully restrained the informant and his brother and thereby committed an offence u/s 341 of IPC?

(iii) Whether the accused persons on the same day, same time and at the same place voluntarily caused hurt to the informant and his brother and thereby committed an offence u/s 323 of IPC?

(iv) Whether the accused persons on the same day, same time and at same place commits mischief and causes loss or damage to the amount of fifty rupees or more of the house of informant and his brother and thereby committed an offence u/s 427 of IPC?

(v) Whether the accused persons on the same day, same time and at the same place rebuked the informant and his brother with obscene languages and thereby committed an offence u/s 294 of IPC?

(vi) Whether the accused persons on the same day, same time and at the same place have committed guilty of rioting and thereby committed an offence u/s 147 of IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:-

7. In the course of the evidence adduced by the prosecution, it emerged that the informant, Jakir Hussain, who was examined as PW-1 did not support the prosecution story. He stated that there was a minor altercation between the accused persons and himself and the matter has already been reconciled with the accused persons with the intervention of the village people. Further stated that he has no objection if the accused persons are acquitted of the case. PW-2, Ibrahim Ali, the brother of the informant has also corroborated the same lines as was stated by PW-1.

8. From the evidence of the prosecution witnesses, it appears that the informant and his brother are not inclined to prosecute the accused persons. It has become apparent that there must have been some minor altercation between the informant, his brother and the accused persons. However, the same appears to have been resolved. Thus, from the little evidence that has been brought before this court in the form of the statements made by the informant and the victim, it is seen that no offence has been made out against the accused persons under any section of law. Situated thus, it is found that the prosecution has failed to implicate the accused persons of any offence.

ORDER

Considering the discussions made above and after all deliberations, it can be safely presumed that the prosecution has failed to drive home the guilt of the accused persons. **Hence, the accused persons, Md. Ajimuddin, Musst. Khateman Nessa, Md. Mohibur Rahman, Md. Sorifuddin and Md. Hanif Ali are acquitted of the offences under sections, 147/447/341/323/427/294 of the Indian Penal Code and set them at liberty forthwith.**

Their Bail bonds are extended for a period of 6 (Six) months from today as per Section 437 A, Criminal Procedure Code.

Given in my hand and under the seal of this court on this 18th day of January, 2020.

Typed by Me:

Ayushree Shravan
Judicial Magistrate First Class, Morigaon

APPENDIX

Prosecution Witnesses:

PW-1: Jakir Hussain

PW-2: Ibrahim Ali

Defence Witnesses:

None.

Prosecution Exhibits:

None.

Defence Exhibits:

None.

Judicial Magistrate First Class, Morigaon