

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,
MORIGAON

GR Case No: 235/2017

Under sections 341/294/352/427/506 of Indian Penal Code

State

Vs

Sri Munindra Sarkar

S/o Manmohan Sarkar, R/o 2 No. Botalimari, P.S. Bhuragaon

.....Accused person

Present: Lohit Kumar Sarmah, SDJM(S), Morigaon

Advocates appeared

For the State: Smti. B. Devi

For the accused person: Mr. M. C. Sarkar

Evidence recorded on: 24.9.2018, 20.3.2019, 6.6.2019 and 8.11.2019

Argument heard on: 5.12.2019

Judgment delivered on: 2.01.2020

JUDGMENT

1. The informant Sri Abhiram Sarkar had lodged an ejahar before Bhuragaon P.S. through Court on 18.1.2017 stating inter alia that on 15.8.2016 at around 8.30 am the accused Munindra Sarkar knowingly let his cow to graze in the jute field of informant causing him loss of produce of around 10 lessa land having jute cultivation on that worth of Rs.2000/-. When the informant inquired about the loss and asked Munindra Sarkar then he along with Subhash Sarkar restrained Abhiram and abused him with filthy language, hit him with punches and lathi and also threatened him with dire consequences. Then on 5.1.2017, while the informant along with his wife was going somewhere nearby the house of accused then the accused in earlier personal grudge abused

them and outraged the modesty of informant's wife. Hence the informant had filed this case.

2. The ejahar was received and registered as Bhuragaon Police Station case No. 38/17 under sections 448/323/294/354/506/427 of Indian Penal Code.
3. The investigating officer after due investigation of the case submitted charge sheet under sections 341/294/352/427/506 of Indian Penal Code against the accused person namely Sri Munindra Sarkar showing him as absconder.
4. The accused appeared and entered trial. Copy of the relevant documents was furnished to the accused person as per section 207 of CrPC. During trial, particulars of offences under sections 341/294/352/427/506 of Indian Penal Code were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. The prosecution has examined six witnesses including the informant and victim. The statement of the accused person under section 313 CrPC was recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

- i) Whether the accused person on 5.1.2017, wrongfully restrained the informant and his wife by voluntarily obstructing them so as to prevent them from proceeding in any direction in which they had a right to proceed and thereby committed an offence punishable under Section 341 of the Indian Penal Code?
- ii) Whether the accused person on 5.1.2017, uttered obscene word in or near a public place to the annoyance of others, and thereby committed an offence punishable under Section 294 of the Indian Penal Code?
- iii) Whether the accused person on 5.1.2017, assaulted or used criminal force to the informant and his wife otherwise than on grave and sudden provocation given by them and thereby committed an offence punishable under section 352 of the Indian Penal Code?

- iv) Whether the accused person 15.8.2016 at around 8.30 am, committed mischief and thereby caused loss or damage to the amount of fifty rupees or upwards to the informant's property and thereby committed an offence punishable under section 427 of the Indian Penal Code?
 - v) Whether the accused person on 5.1.2017, threatened the informant and his wife with dire consequences and thereby committed an offence punishable under Section 506 of the Indian Penal Code?
6. I have heard the oral arguments put forward by both the Counsels. I have also gone through the entire evidence available on record. My discussion and reasons for the decision are discussed below.

DISCUSSION, DECISION AND REASONS THEREOF:

7. PW-1 Sri Abhiram Sarkar who is the informant-cum-victim deposed that he had filed this case and the accused was known to him. The incident happened on 5.1.2017. The accused destroys the cultivation of informant by the cows. Upon saying the same to the accused, he abused the informant with filthy language and jumped on him causing him fell on the ground. The accused held on the hand of informant's wife and threatened her saying that he had already committed a murder hence he'll kill her too. Nathuram Sarkar and Umesh Sarkar separated the quarrel. Ext-1 is the ejahar and Ext-1(1) and 1(2) are his signatures.
8. During cross-examination PW1 stated that prior to this incident, the accused had filed a case against PW1 alleging him killing a calf of accused. PW1 filed this case on 14.8.2016. The accused too filed the case against PW1 in the year 2016. The accused filed his case alleging that when his cow destroyed PW1's cultivation then he killed the cow. The accused had filed one more case against PW1 alleging causing the accused injuries on an eye by punching. Both the cases filed against PW1 were filed prior to this case. PW1 informed the Bhuragaon police on 5.1.2017 but the police came on the next day. This case was filed in the Court from where it was forwarded to the police. PW1 did not mention in his complaint petition about informing the Bhuragaon police about the

incident. There are households of Paban, Ratan, Palash, accused Manindra, Subhash etc. nearby the place of occurrence. Paban, Ratan and Palash did not come at the time of incident. The house of Umesh Sarkar is about 1 km away from the place of occurrence. PW1 denied to the suggestion that he neither stated before police nor mentioned in the ejahar that the accused threatened him saying that he had already committed a murder hence he'll kill him too and that the accused jumped on PW1 causing him fell on the ground. PW1's house is about 20/30 nal away from the house of accused and there is no other house in between their houses. The house of PW1 is to the north of accused person's house. The house of accused is about 20/30 nal away from the house of PW1 to the south-east. One road goes to the north and one to the west in front of PW1's house. The house of accused is located after crossing PW1's house at a corner. In this case the incident damaging the jute is of 2016. PW1 filed a separated case in the Bhuragaon PS for damaging his jute. On hearing hue and cry of PW1 when the accused punched him on his eye then Nathuram Sarkar and Umesh Sarkar reached the place of occurrence. Nathuram Sarkar was then going to check his cultivation. Umesh Sarkar was also going towards that side. Umesh Sarkar is PW1's cousin and Nathuram is PW1's brother-in-law. Nathuram's house is to the west of PW1's house at a distance of 100 nal. The house of accused Manindra cannot be seen from the place of occurrence. Nathuram Sarkar reached the place of occurrence first and Umesh reached there after 10/15 minutes. While the accused punched PW1 and fell him on the ground, he was a little sick but was in a position to talk. The rest are just some suggestions to which PW1 denied.

9. PW-2Smti. Malati Sarkar who is a victim deposed that this case was filed by her husband and the incident happened two years prior to her deposition on her cultivable field. The accused is PW2's neighbor. On the day of incident while PW2 along with her husband was working in the field then Manindra Sarkar and Subhash Sarkar abused them with filthy language from the road. When her husband question the accused for such behavior then the accused ran towards him and pushed him on the ground. When PW2 tried to separate them, then the accused pushed her

- too on the ground. When Nathuram obstructed the accused then they left. Then PW2 along with her husband went to the police station.
10. During cross-examination PW2 stated that the accused had filed a case against PW1 prior to this incident alleging him killing a calf of accused. The accused had filed one more case against PW2's husband. This incident happened after the said two cases. There are households of Paban, Subhash, Palan and Ratan nearby the place of occurrence but they did not come to the place of occurrence at the time of incident. The house of Nathuram Sarkar is about one farlong away from the house of PW2. There was no other person at the time of incident. The rest are just some suggestions to which PW2 denied.
 11. PW-3 Sri Nathuram Sarkar who deposed that both the parties were known to him. The incident happened around 2/2.5 years prior to his deposition in a field of Abhiram. PW3 reached the place of occurrence while Abhiram and accused were having verbal altercations. The accused was abusing Abhiram with filthy languages. Abhiram's wife was standing nearby. PW3 sat aside the parties when both the parties moved from there.
 12. During cross-examination PW3 stated that Abhiram is his brother-in-law. The house of Abhiram is about one farlong away from PW3's house. There are households of Mahadev, Basur, Rashid, Kaloi and Joydev nearby the house of Abhiram. The accused had filed a case against Abhiram alleging that he killed one cow of accused and also beat the accused. After which this case was filed. The incident happened at around 3/4 pm. Though people used to pass by the road nearby the incident but on the day of incident no one passed by. The rest are just some suggestions to which PW3 denied.
 13. PW-4 Sri Bhuban Sarkar who deposed that both the parties were his neighbors. He did not know anything about the incident. He told the police that he did not know anything about the incident. The learned defense counsel declined to cross-examine PW4.
 14. PW-5 Sri Umesh Sarkar who deposed that both the parties were known to him. The incident happened around 2.5 years prior to his deposition in the field of Abhiram. On hearing the hue and cry of the parties when PW5 reached the place of occurrence the clash was over. He did not

witness the clash. The informant told PW5 that the cow of accused destroyed the cultivation of informant. Earlier too there was a fight between the parties regarding that incident. PW5 heard that earlier the accused assured to compensate the loss of informant but when the accused did not do so then again there was clash between the parties.

15. During cross-examination PW5 stated that the accused filed a case against the informant alleging killing a cow by the informant. The informant is PW5's cousin. PW5 did not know if the case against the informant was filed prior to this case. The rest are just some suggestions to which PW5 denied.
16. PW-6 Sri Shyamal Kr. Baniyawho is the investigating officer deposed that on 22.1.2017 he was working as OC at Bhuragaon PS. On that day Sri Abhiram Sarkar filed an ejarah which was received and registered by PW6 himself under Bhuragaon PS Case No.38/17 u/s 448/323/294/354/506/427 of IPC and he proceeded with the investigation of the case. He immediately recorded the statements of complainant and witnesses Nathuram Sarkar, Umesh Sarkar and Malati Sarkar in the police station itself. The victim Abhiram Sarkar was sent to Bhuragaon Hospital for Medical Examination. He also collected the medical report of the victim. On the same day at around 1.30 pm he visited the place of occurrence on the same day and prepared the sketch map. He could not find the accused at his house. On completion of investigation he handed over the case diary to Inspector Punaram Bora who later filed charge sheet u/s 341/294/352/427/506 IPC showing accused as absconder. Ext-2 is the sketch map and Ext- 2(1) is PW6's signature. Ext-3 is the charge sheet and Ext-3(1) is the signature of Punaram Bora which PW6 can recognize. Ext-4 is the medical report collected by PW6. In cross-examination PW6 stated that PW1 neither stated before him nor in his ejarah that the accused persons had committed one murder and so threatened to kill him also and he jumped to push the informant to cause him fell down. It is not a fact that the informant did not tell him that the accused pushed the informant to cause him fell down. He did not record the statements of all the witnesses mentioned in the complaint but he recorded the statements of those witnesses found at the place of occurrence. The incident took

place on 15.8.2016 and 5.1.2017. He recorded statements of witnesses as shown by the informant. It is not a fact that all the witnesses recorded by PW6 are relatives of the informant. It is not a fact that no such incident occurred.

17. Regarding point for determination No. 4, the informant alleged in the ejahar that on 15.8.2016 at around 8.30 am the accused Munindra Sarkar knowingly let his cow to graze in the jute field of informant causing him loss of produce of around 10 lessa land having jute cultivation on that worth of Rs.2000/-. However during deposition as PW1, the informant did not state anything regarding causing of loss of his jute produce by the accused. Further the incident was occurred on 15/8/16 but the ejahar was filed on 18/1/17. The informant did not explain the cause of delay in filing the ejahar. PW2, PW3, PW4 and PW5 also did not depose anything regarding causing of any mischief by the accused to cause loss of his produce. Hence the prosecution could not prove any of the ingredients of the offence under section 427 of the Indian Penal Code.
18. Therefore the point for determination No. 4 is decided in negative and in favour of the accused.
19. Regarding the point for determination NO. 5, the informant alleged in the ejahar that on 15/8/16, when the informant inquired about the loss and asked Munindra Sarkar then he along with Subhash Sarkar restrained Abhiram and abused him with filthy language, hit him with punches and lathi and also threatened him with dire consequences. However during deposition as PW1, the informant did not mention anything regarding the threatening by the accused on 15/8/16. Instead the informant stated that the incident happened on 5.1.2017 and the accused held on the hand of informant's wife and threatened her saying that he had already committed a murder hence he'll kill her too. Whatever has been stated in his deposition, the informant did not mention anything regarding the same in his ejahar. Hence the deposition of the informant alone cannot be relied upon. PW2, PW3, PW4 and PW5 did not implicate the accused under section 506 of the Indian Penal Code. Thus the prosecution is failed to prove any of the ingredients of the offence under section 506 of the Indian Penal Code.

20. Therefore the point for determination No. 5 is decided in negative and in favour of the accused.
21. Regarding point for determination No. 2, the informant alleged in the ejahar that on 15.8.2016 at around 8.30 am the accused Munindra Sarkar knowingly let his cow to graze in the jute field of informant causing him loss of produce of around 10 lessa land having jute cultivation on that worth of Rs.2000/-. When the informant inquired about the loss and asked Munindra Sarkar then he along with Subhash Sarkar restrained Abhiram and abused him with filthy language, hit him with punches and lathi and also threatened him with dire consequences. However during deposition as PW1, the informant only stated that the incident happened on 5.1.2017 and on that day, he accused destroyed the cultivation of informant by the cows and when he inquired, the accused abused the informant with filthy language and jumped on him causing him fall on the ground. Thus during deposition as PW1 the informant did not mention anything regarding his abuse by the accused with obscene language. He contradicted his statement in the ejahar during deposition. Hence the informant alone cannot be believed. In this regard, PW2 stated that on the day of incident while PW2 along with her husband was working in the field then Manindra Sarkar and Subhash Sarkar abused them with filthy language from the road. She contradicted with the statement of the informant when she stated that while they were working in the field the incident was occurred but the informant stated that while they were going through the road the incident was occurred. Thus the place of occurrence as well as the time of occurrence are different as to the version of the informant and PW2. Rest of the witnesses did not implicate the accused under section 294 of the Indian Penal Code. Hence, the prosecution is failed to prove any of the ingredients of the offence under section 294 of the Indian Penal Code beyond reasonable doubt.
22. Therefore the point for determination No. 2 is decided in negative and in favour of the accused.
23. Regarding the points for determination 1 and 3, the informant alleged in the ejahar that on 15.8.2016 at around 8.30 am when the informant inquired about the loss cause by the cow of the accused and asked

Munindra Sarkar then he along with Subhash Sarkar restrained Abhiram and abused him with filthy language, hit him with punches and lathi and also threatened him with dire consequences. Then on 5.1.2017, while the informant along with his wife was going somewhere nearby the house of accused then the accused in earlier personal grudge abused them and outraged the modesty of informant's wife. There are two sets of incident as alleged to have been occurred, one was on 15/8/16 and other was on 5/1/17. The informant lodged the ejahar on 18/1/17 but did not explain the cause of delay in lodging the ejahar. Further the informant is silent regarding the incident occurred on 15/8/16 during his deposition as PW1. During deposition as PW1. The informant only stated that the incident happened on 5.1.2017 and on that day, the accused destroyed the cultivation of informant by the cows and when he inquire, the accused abused the informant with filthy language and jumped on him causing him fell on the ground. The accused held on the hand of informant's wife. Thus during deposition he did not allege of any restrain by the accused but stated that he approached the accused to inquire. Thus there are contradictions apparent in the ejahar and in his testimony and so the let me analyse the evidence of other witnesses. PW2 stated that on the day of incident while PW2 along with her husband was working in the field then Manindra Sarkar and Subhash Sarkar abused them with filthy language from the road. When her husband question the accused for such behavior then the accused ran towards him and pushed him on the ground. When PW2 tried to separate them, then the accused pushed her too on the ground. Thus PW2 also mentioned some different cause of the incident. Further the informant stated that the incident was occurred while he along with his wife was going through the road but PW2 stated that the incident was occurred while they were working in the field. The informant alleged of his beating by the accused with lathi and punches but PW2 did not mention any of such incident. PW3 also stated that there was only verbal altercations between the parties. PW4 and PW5 did not depose anything to implicate the accused under section 341 and 352 of the Indian Penal Code beyond reasonable doubt. The defence during cross examination of the witnesses successfully extracted that there was previous enmity between the

parties and several cases have been filed against each other. Hence the previous enmity between the parties also cannot be ruled out. From the analysis of the evidences there remains doubt as to whether any such incident was occurred or not. The principle of criminal justice is that the benefit of doubt must go in favour of the accused. Thus the prosecution is failed to prove any of the ingredients of the offences under section 341/352 of the Indian Penal Code beyond reasonable doubt.

24. Therefore the points for determination No. 1 and 3 are decided in negative and in favour of the accused.
25. In view of the above it is held that the prosecution has failed to establish the charges under sections 341/294/352/427/506 of Indian Penal Code against the accused person Manindra Sarkar. Accordingly the accused person **Sri Manindra Sarkar** is acquitted of the alleged offences labelled against him and set at liberty.
26. Bail bonds and affidavits submitted by the bailor are extended for a period of six months as per amended Cr.P.C.
27. Given under the hand and seal of this court on the 2nd day of January, 2020 at Morigaon.

(Lohit Kumar Sarmah)
Sub Divisional Judicial Magistrate(S),
Morigaon

APPENDIX

Prosecution witnesses:

PW1- Sri Abhiram Sarkar(Informant-cum-victim)

PW2- Smti. Malati Sarkar (Victim)

PW3- Sri nathuram Sarkar

PW4- Sri Bhuban Sarkar

PW5- Sri Umesh Sarkar

PW6- Sri Shyamal Kr. Baniya (I.O.)

Exhibits for the prosecution:

Ext-1 is the ejahar.

Ext-2 Sketch map.

Ext-3 Charge sheet.

Ext-4 Medical report.

Defence witness :

Nil

Exhibits for defence:

Nil

Lohit Kumar Sarmah
SDJM(S), Morigaon