

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

G.R. Case No.399/16

U/S 447/294/323/34 IPC

STATE OF ASSAM

-VS-

- 1. MD. SAHIDUL ISLAM, S/O. MD ABDUL GAFUR.**
- 2. MD. NURUL ISLAM, S/O. MD. ABDUL GAFUR.**
- 3. MD. JEHIRUL ISLAM, S/O. MD. ABDUL GAFUR.**
- 4. MD. AYUB ALI, S/O. OF LT. MIYA HUSSAIN.**

ALL R/O. MAHAMARA, P.S. LAHARIGHAT

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. J. A. BHUTTO AND MR. ALBERD SHANEWAS,
LEARNED ADVOCATES.**

EVIDENCE RECORDED ON: - 10.04.2018, 12.11.2018,

ARGUMENT HEARD ON: - 28.01.2019,

JUDGMENT DELIVERED ON: - 29.03.2019.

J U D G M E N T

1. The brief of the prosecution story is that one Md. Shahjahan Ali filed an FIR before the Officer-in-Charge, Borchola P.P on 27.02.2016 alleging inter alia that on the same date itself at about 5.00 p.m., over a matter of catching fish, the accused

persons, namely, Md. Ayub Ali, Md. Nurul Islam, Md. Sahidul Islam and Md. Jehirul Islam went to the informant's house and rebuked the informant and his family members. Accused Nurul Islam hit the father of the informant on his head with an iron rod thereby causing him severe injuries. When the informant tried to restrict the accused persons, accused Sahidul Islam bit the informant on the figure of his hand thereby causing injuries to the informant. Hence, the case.

2. On receipt of the ejahar, Borchola P.P registered the complaint as GDE No. 467 dated 27.02.10.2016 and forwarded the same to the O/C Laharighat PS. On receipt of the ejahar, Laharighat P.S. registered the case as Laharighat P.S. Case No.77/2016 U/S 447/448/294/326/34 IPC and the case was investigated into. On completion of the investigation, I/O filed charge-sheet against the accused persons, Md. Shahidul Islam, Md. Nurul Islam, Md. Jehirul Islam and Md. Ayub Ali U/S 447/294/323/34 of IPC.

3. On receipt of summons the accused persons appeared before the Court. Copies of relevant documents were furnished to the accused persons under section 207 of Cr. P.C. Particulars of offence u/s 447/294/323/34 of IPC, 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 2 (two) 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, statements of the accused persons U/S 313 of Cr.P.C. were recorded which were of complete denial. 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 27.02.2016, at about 5 pm, the accused persons, in furtherance of their common intention, committed criminal trespass by entering into the campus of the informant's house, which was also in possession of the informant, with intent to commit an offence, and thereby committed an offence punishable u/s 447/34 of IPC?

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

(III) Whether on the same date, time and place, the accused persons, in furtherance of their common intention, voluntarily caused hurt to the informant Md. Md. Shahjahan Ali and his father, and thereby committed an offence u/s 323/34 IPC?

Discussion, Decision and Reasons thereof:-

6. In this case prosecution examined only 2 (two) witnesses. The informant/victim Md. Shahjahan Ali was examined as PW-1 and victim Md. Abul Nasar was examined as PW-2 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, Md. Shahjahan Ali deposed that he is the informant and he knows the accused persons. He further deposed that the incident had taken place about 2 (two) years prior to the date his deposition, at about 5 p.m., at his house. On the date of the incident some people set trap to catch fish in "Uroha Bill" near the house of the informant but some other people caught fishes from that trap and one Rabia alleged that the said information was spread by PW-1. When PW-1 did not accept the said allegation he had a verbal altercation with Rabia. Thereafter, the brother of Rabia, namely, Nur Islam came to PW-1's house and hit his father on his head with a rod. PW-1 got his father medically treated in Nagaon Civil Hospital for about 1 (one) week. He further deposed that he had put his thumb impression on the FIR.

8. During his cross examination PW-1 stated that he does not remember the date of the incident and he also does not know what is written on the FIR. He further stated that his uncle took his father to the Nagaon on the date of the incident and they returned after 1 (one) week. The medical reports issued from Nagaon hospital is at PW-1's house. There are houses of Chan Miya, Mamoni, Rahul and Arsob Ali's near the house of PW-1. Accused person Ayub Ali had also filed a case u/s 354/448/380/307/34 of IPC against him along with Amanullah, Mahadulla, Hussain and Abu Hussain. The victim of that case was Rabia Khatun. It is not a fact that on the date of the incident the accused persons did not enter into his house but it was PW-1 who, along with others, had entered into the house of the accused persons. On the date of the incident Nassar Ali had set trap to catch fish but Khalil and Abdul Hussain caught fish from that trap. There was no reason for the altercation regarding the matter of catching fish as

some people set the trap for fishing while other people caught fish there. It is not a fact that in order to save themselves from the case of outraging the modesty of Rabia filed by the accused persons, PW-1 filed the instant case against the accused persons. It is not a fact that PW-1 falsely stated that Nur Islam had hit his father on his head with a rod. It is not a fact that PW-1 deposed falsely against the accused persons.

9. In her examination-in-chief PW-2/victim, Md. Abul Nasar, deposed that the informant is his son and he knows the accused persons standing on the dock as they are his relatives. He further deposed that the incident had taken place about 2 (two) years prior to the date of his deposition. On the date of the incident his son/informant had a verbal altercation with the accused persons over some family matters and when PW-2 reached the place of occurrence the accused persons argued with him as well. In that misunderstanding his son filed the instant case. Now, he does not have any objection if the accused persons are acquitted. Defence, declined to cross examine this witness on his evidence.

10. On perusal of the evidences on record it is seen that PW 1 had deposed that on the date of the incident PW 1 had a verbal altercation with Rabia after which her brother Nurul Islam assaulted the father of PW 1 with an iron rod. However, the victim/PW 2 deposed in his evidence that PW 1 had a verbal altercation with the accused persons over some family matters and in that misunderstanding PW 1 lodged the FIR against them. Apart from that, the informant/PW 1 stated in the FIR that the accused Nurul Islam assaulted him with the iron rod as well when he went to restrict the accused from assaulting his father/PW 2. In view of the above, I am of the opinion that there are discrepancies in the evidences of the prosecution witnesses which creates doubt about the prosecution's case.

11. Evidence on record does not reveal any materials against the accused person u/s 447/294/323/34 IPC. As such the accused persons deserve acquittal.

ORDER

12. In the light of the above decision, the accused persons are acquitted of the charges under section 447/294/323/34, 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, CrPC.

14. Given under my hand & seal of this Court and delivered in the open Court on this 29th day of March, 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. SHAHJAHAN ALI,
2. P.W.-2, MD. ABUL NASAR,

DEFENCE WITNESSES :

NIL

EXHIBITED DOCUMENTS:

NIL

(ANAMIKA BARMAN)
JMFC, Morigaon
Assam