

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.407/2015

State

Vs.

- 1. Md. Dildar Hussain
Son of Md. Abbas Ali**
- 2. Md Anarul Islam
Son of Md Jalaluddin**
- 3. Md. Nazrul Islam
Son of Late Ismail Ali
All are residents of village: Karchuwabori
Kolbari**
- 4. Md Saddam Hussain
Son of Md. Saifuddin Ahmed
Resident of village: Karchuwabori Boramari
P.S.- Jagiroad,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.
For the defense: Md. J.A. Bhutto, Advocate

Charge framed u/s: 341/323/506(II)/34 of IPC
Evidence recorded on: 14-10-2019
Argument heard on: 14-10-2019
Judgment delivered on: 14-10-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Nizamuddin (son of Late Samsul Hoque) filed a complaint in the court of Chief Judicial Magistrate, Morigaon against the accused persons namely Md. Dildar Hussain, Md Anowar Hussain, Md. Saddam Hussain and Md. Nazrul Islam alleging therein that on 12-2-2015 at about 7.30 p.m. Md. Rofiqul Islam, who is the younger brother of the complainant, was coming home from Karchawabori Kalbari to Boramari. While he was so coming by using the road between

the two villages, the aforesaid accused persons, with a preplan laid ambush for Md. Rofiqul Islam, restrained him on the road and in order to kill him, inflicted dagger blows on his head and body causing injuries. The accused persons also snatched away Rs.2000/- in cash, one mobile handset (wing) and a gold ring weighing 5 annas. The accused persons also took Md. Rofiqul Islam to the house of the accused Md. Dildar Hussain and Md. Anowar Hussain and tried to kill him there. However, one Md. Nizamuddin (s/o- unknown) saved Md. Rofiqul Islam. Without his intervention, the accused would have killed Md. Rofiqul Islam. On arrival of the remaining witnesses, who were named in the complainant, the accused persons fled away. While so fleeing away from the scene, the accused persons threatened to kill. Due to the action of the accused persons, there was loss of Rs.20,000/-. The complainant saw the occurrence and also knew about the same. There was some delay in lodging the ejahar due to medical treatment of the injured.

2. The said complaint was forwarded, as per prayer of the complainant, to the Officer-in-Charge of Jagiroad police station for registration of a case, for investigation and submission of report under section 173 CrPC. Accordingly, the complaint was received in the Jagiroad police station on 20-2-2015 and a Jagiroad police station case No.64/2015 under sections 341/342/326/307/379/506 IPC was registered and one assistant sub inspector of police Sri Krishna Mohan Hazarika was assigned to take the preliminary steps of the investigation of the case and another sub inspector of police Sri Ramen Bordoloi, was assigned to complete the investigation by the officer in charge of the said police station. On completion of investigation police submitted charge sheet against the accused persons Md. Dildar Hussain, Md. Anarul Islam, Md. Nazrul Islam and Md. Saddam Hussain, under sections 341/323/506/34 IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused persons under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offences under sections 341/323/506(II)/34 IPC being found against the above mentioned accused persons, formal charge under sections 341/323/506(II)/34 IPC was framed, which was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 2 (two) witnesses namely Md. Nizamuddin, who is the informant of the case, as PW-1 and another witness namely Md.

Rofiqul Islam, who is the alleged victim of the case, as PW-2. The ejahar is exhibited as exhibit-1 and the signature of the informant is proved as exhibit-1(1). Examination of the accused persons under section 313 CrPC was dispensed with for lack of incriminating materials. Defense side refused to adduce any evidence.

5. I have heard the arguments of Mrs. Alakananda Kakati, learned APP as well as the argument of Md. Julfikar Ali Bhutto, learned defence counsel. I have also perused the case record and considered the same. The points for determination are as under:

- i. Whether the accused persons, on or about 12-2-2015 at about 7.30 p.m. on the road from village Karchawabori Kalbari to Boramari, under Jagiroad police station, in furtherance of their common intention, wrongfully restrained Md. Rofiqul Islam, so as to prevent him from proceeding in any direction in which he had a right to proceed and thereby committed an offence punishable under section 341 IPC read with section 34 the IPC?
- ii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, voluntarily caused hurt to Md. Rofiqul Islam and thereby committed an offence punishable under section 323 of IPC, read with section 34 IPC?
- iii. Whether the accused persons, on or about the same date, time and place, in furtherance of their common intention, threatened to kill Mr. Rofiqul Islam with intent to cause alarm to him and thereby committed an offence punishable under section 506(II) of IPC, read with section 34 IPC?

Discussion of evidence, decision and reasons therefor:

6. The witnesses in their depositions have not supported their case and did not implicate the accused persons with the offences alleged. They deposed that the matter has already been amicably settled amongst them at the intervention of villagers and the family members. According to the witnesses the case was lodged due to misunderstanding and as such, they no longer want to proceed with the case.

7. It is seen that there is absolutely nothing in the evidence of witnesses against the accused persons to implicate them with the alleged offences. The key witnesses did not implicate the accused persons with the alleged offences. In view of the deposition of the witnesses, the prosecution side did not proceed further to summons and examine the

remaining witnesses as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

8. For the aforesaid reasons and discussion the points for determination are answered in the negative.

9. The prosecution has failed to prove the case against the accused persons. As such, the accused persons are acquitted of the offences under sections 341/323/506(II)/34 IPC alleged against them. They be set at liberty forthwith. Their bail bonds are extended for a period of six months from today in view of section 437A CrPC.

10. The judgment is pronounced in open court and given under my hand and seal on this 14th day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-1: Ejahar

Ext.-1(1): Signature of Md. Nizamuddin

(B) DEFENCE EXHIBITS:

None

(C) EXHIBITS PRODUCED BY WITNESSES:

None

(D) COURT EXHIBITS:

None

(E) PROSECUTION WITNESSES:

P.W.-1: Md Nizamuddin

P.W.-2: Md. Rofiqul Islam

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon