

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,
MORIGAON

G. R. Case No: 540/17

U/s 448/323/34 IPC

State

Vs

1. Md. Nekbor Ali

S/o Late Kasem Ali, R/o Tatikota Pathar, P.S. Moirabari, Morigaon, Assam.

2. Md. Roisuddin

S/o Md. Azimuddin, R/o Tatikota Pathar, P.S. Moirabari, Morigaon, Assam.

3. Md. Mainul Hoque

S/o Md. Azimuddin, R/o Tatikota Pathar, P.S. Moirabari, Morigaon, Assam.

4. Md. Amrajul Islam

S/o Md. Azimuddin, R/o Tatikota Pathar, P.S. Moirabari, Morigaon, Assam.

.....Accused persons

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

Advocates appeared

For the State: Smti. Banti Devi

For the accused persons: Mr. R. Uddin

Evidence recorded on: 22.5.2019 and 10.6.2019

Argument heard on: 24.6.2019

Judgment delivered on: 29.6.2019

JUDGMENT

1. The informant Musstt. Jinara Khatun had lodged an ejahar before Moirabari PS on 23.2.2017 stating inter alia that on 28.1.2017 at about 12 am the accused Nekbor Ali phoned the informant and insisted to come to informant's house with bad intention. Upon arrival at informant's house when the husband of the informant namely Md. Gulzar Hussain questioned the accused that why did he call her wife at night then the accused persons beat him and caused injuries to him. As the informant was busy in her husband's treatment hence got delayed in filing the ejahar.

2. The ejahar was received and registered as Moirabari PS case No. 92/17 u/s 448/325/34 IPC.
3. The I/O after due investigation of the case submitted charge sheet u/s 448/323/34 IPC against the accused persons.
4. Copies of the relevant documents were furnished to the accused persons.
5. On perusal of the case record sufficient ground u/s 448/323/34 IPC were found against the accused persons and accordingly the particulars of offences under the above sections were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
6. The prosecution has examined two witnesses i.e. informant and the victim. The statement of the accused persons u/s 313 CrPC was recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

- i) Whether the accused persons, on 28.1.2017 at about 12 am, in furtherance of their common intention committed house trespass by entering into the house of informant and thereby committed an offence punishable under Section 448/34 IPC?
 - ii) Whether the accused persons on 28.1.2017 at about 12 am, in furtherance of their common intention, voluntarily caused hurt to the husband of the informant namely Md. Gulzar Hussain and thereby committed an offence punishable under Sec. 323/34 IPC?
7. 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:

8. PW1 Musstt. Jinara Khatun who is the informant deposed that the accused persons are her family members. The incident happened about 6/7 months at night prior to her deposition. On the night of incident the accused persons had push-backs at PW1's house. Later, the villagers have amicably settled the matter with the accused persons hence PW1 does not want to proceed with the case. She did not sustain any injuries. Ext-1 is the ejahar filed by PW1 where she put her signature vide Ext-1(1). In cross-examination PW1 stated that she does not have any objections if the accused persons are acquitted of this case.

9. PW2 Md. Gulzar Hussain who is the victim deposed that the informant is his wife and the accused persons are known to him. The incident happened about 5/6 months prior to his deposition at the courtyard of PW2's house. On the day of incident the accused persons had verbal altercations with the PW2 and his wife. He fell down and sustained injuries. Later, the villagers have amicably settled the matter with the accused persons hence PW2 does not want to proceed with the case. In cross-examination PW2 stated that he does not have any objections if the accused persons are acquitted of this case.
10. From the deposition of PW1 and PW2 it appears that there is nothing incriminating against the accused persons. PW1 who is the informant herself has not supported the case. In her deposition she stated that had some verbal altercations with the accused persons and they have amicably settled the matter between themselves; hence she does not have any objection if the accused persons are acquitted of the case. Further PW2 who is the victim himself has not at all implicated the accused persons u/s 448/323/34 IPC.
11. In view of the above I am of the opinion that the prosecution has failed to establish the charges u/s 448/323/34 IPC against the accused persons. Accordingly the accused persons are acquitted of the alleged offences leveled against them and set at liberty.
12. Bail bonds and affidavits furnished by the bailor are extended for a period of six months from today.

Given under my hand and seal of this Court on the 29th day of June, 2019 at Morigaon.

Lohit Kumar Sarmah
SDJM(S), Morigaon

APPENDIX

Prosecution witnesses:

PW1- Musstt. Jinara Khatun (Informant)

PW2- Md. Gulzar Hussain (Victim)

Exhibits for the prosecution:

Ext-1 : Ejahar.

Defence witness :

Nil.

Exhibits for defence:

Nil.

Lohit Kumar Sarmah
SDJM(S), Morigaon