

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,
MORIGAON

G. R. Case No: 2133/16

Under Section 147/447/294/506 of Indian Penal Code

State

Vs

1. Sri Raheshar Bordoloi

S/o Late Kalyan Bordoloi, R/o Udhan Bori, P.S. Morigaon, Morigaon, Assam.

2. Sri Dhiren Bordoloi

S/o Late Nabin Bordoloi, R/o Hariabori, P.S. Morigaon, Morigaon, Assam.

3. Md. Abdul Kalam

S/o Md. Mahijul Islam, R/o Sukatiputa, P.S. Morigaon, Morigaon, Assam.

4. Md. Hasen Ali

S/o Late Ismail Ali, R/o 10 No. Balimukh, P.S. Mayong, Morigaon, Assam.

5. Md. Kamal Uddin

S/o Amsar Ali, R/o 10 No. Balimukh, P.S. Mayong, Morigaon, Assam.

6. Md. Jahur Uddin

S/o Md. Harjat Ali, R/o 10 No. Balimukh, P.S. Mayong, Morigaon, Assam.

.....Accused persons

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

Advocates appeared

For the State: Ms. B. Devi

For the accused persons: Mr. U. C. Roy

Evidence recorded on: 1.10.2019

Argument heard on: 17.10.2019

Judgment delivered on: 17.10.2019

JUDGMENT

1. The informant Sri Charan Das had lodged an ejarah before Jagiroad PS on 27.8.2016 against the accused persons. The brief of the informant's

case is that he took 129 no. Hariya Dawlong Meen Mahal under lease fixing yearly Meen revenue @ Rs.950000/- for the period of 2012-13 till 2018-19 from the Assam Meen Development Nigam Ltd. Accordingly as per the order of the ADC (Revenue), Morigaon; the Circle Officer of Mayong Revenue handed over the said Meen Mahal to the informant and for the first three years the informant without any issue was paying the revenue to the government as per rule. However, the accused persons under the influence of self-indulgence prepared some fake documents where the area of the said Meen Mahal was shown as 14.48 hector only. As such, a portion of profitable area of the said Meen Mahal was occupied by the accused persons illegally and caught fishes worth Rs.2000000/- causing huge loss to the informant. Regarding the incident, the informant had filed WP(C)6328/15 before the Hon'ble Gauhati High Court where the decree was provided in favor of the informant declaring that the Meel Mahal is of 54.48 hector. Accordingly on 8.12.2015 as per the official order of Revenue Department, Morigaon the Circle Officer, Mayong Revenue handed over the complete Meen Mahal to the informant. But the accused persons again on 5.8.2016 armed with dao, lathi, sharp weapons entered into the Meen Mahal of the informant and caught fishes. On being obstructed the accused persons chased the informant and other to kill them after which the informant along with other fisherman returned to their home. Regarding the same incident the informant informed the ADC (Revenue), Morigaon on which the ADC asked the SP, Morigaon to tackle the situation. Accordingly the ADC (Revenue), Morigaon with the help of the OCs of Jagiroad and Mayong PS evicted the accused persons. However, the accused persons caught fish worth Rs.500000/- till then. But on 26.8.2016 at around 2 pm the accused person once again conducted the same mischievous act and tried to kill the informant along with other with the weapons they were armed with. Like this the accused persons have misappropriated fishes of worth Rs.2500000/-. Hence the informant had filed this case as it has become difficult for the accused persons to pay the government revenue.

2. The ejahar was received and registered as Jagiroad Police station case No. 401/16 under section 147/148/149/447/379/506 of Indian Penal Code.
3. Police started investigation to trace the root of the case. The Investigating officer after due investigation of the case submitted charge sheet under section 147/447/294/506 of the Indian Penal Code against the accused persons.
4. The accused persons appeared and entered trial. Copies of the relevant documents were furnished to the accused persons. On perusal of the case record and after hearing Learned APP and Learned Advocate for the accused, particulars of offences under section 147/447/294/506 of the Indian Penal Code were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
5. The prosecution has examined only one witness i.e. the informant-cum-victim. The statements of the accused persons under section 313 CrPC were recorded. The defence side adduced no evidence and pleaded for total denial.

POINTS FOR DETERMINATION:

- i) Whether the accused persons 26.8.2016 at around 2 pm, were members of an unlawful assembly and in prosecution of the common object of such assembly committing the offence of rioting and that you thereby committed an offence punishable under Sec. 147 of the Indian Penal Code?
- ii) Whether the accused persons 26.8.2016 at around 2 pm, committed criminal trespass by entering into the Meen Mahal in the possession of the informant with intent to commit an offence and that you thereby committed an offence punishable under Sec. 447 of the Indian Penal Code?
- iii) Whether the accused persons 26.8.2016 at around 2 pm, uttered obscene words in or near a public place to the annoyance of others, and thereby committed an offence punishable under Sec. 294 of the Indian Penal Code?

- iv) Whether the accused persons 26.8.2016 at around 2 pm, threatened the informant and few others with dire consequences with intent to cause alarm to the informant 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. PW1 Sri Charan Das who is the informant-cum-victim deposed that the accused persons are known to him. The incident took place around 3 years prior to his deposition. On the day of incident PW1 had some verbal altercations with the accused persons and filed this case out of misunderstanding. At present, the villagers have amicably settled the matter between them hence PW1 does not want to proceed with this case anymore. Ext-1 is the ejahar and Ext-1(1), 1(2), 1(3), 1(4), 1(5) and 1(6) are his signatures. In cross-examination PW1 stated that the accused persons live by the bank of the beel. There was a definite boundary of the beel allotted to PW1. During flood the water of the beel flows to the myadi patta land when the villagers amicably did fishing. Regarding the matter of fishing, there were some verbal altercations between the parties. Now PW1 does not have any objection if the accused persons are acquitted of this case.
8. From the deposition of PW1 it appears that there is nothing incriminating against the accused persons. PW1 who is the informant cum victim himself has not supported the case. In his deposition he stated that he had some verbal altercations and then this instant case was filed. He further stated that they have amicably settled the matter between themselves; hence he does not have any objection if the accused persons are acquitted of the case. Further PW1 has not at all implicated the accused persons under sections 147/447/294/506 of Indian Penal Code.

9. In view of the above I am of the opinion that the prosecution has failed to establish the charges under sections 147/447/294/506 of Indian Penal Code against the accused persons. Accordingly the accused persons **Sri Raheshar Bordoloi, Sri Dhiren Bordoloi, Md. Abdul Kalam, Md. Hasen Ali, Md. Kamal Uddin and Md. Jahur Uddin** are acquitted of the alleged offences leveled against them and set at liberty.
10. Bail bond and affidavits furnished by the bailor is extended for a period of six months from today.

Given under my hand and seal of this Court on the 17th day of October 2019 at Morigaon.

Lohit Kumar Sarmah
SDJM(S), Morigaon

APPENDIX

Prosecution witnesses:

PW1- Sri Charan Das (Informant-cum-victim)

Exhibits for the prosecution:

Ext-1 : Ejahar

Defence witness :

Nil

Exhibits for defence:

Nil

Lohit Kumar Sarmah
SDJM(S), Morigaon