

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. Case No. 2943/2016

State

Vs.

- 1. Md Nurul Islam
Son of Late Saharuddin**
- 2. Md Kazimuddin
Son of Md Nurul Islam**
- 3. Musstt. Ajifa Khatun
Daughter of Md Nurul Islam**
- 4. Musstt. Jamila Khatun
Wife of Md Nurul Islam
All are residents of village: Saharia Pam
Ward No.8, P.S.- Moirabari,
District- Morigaon, Assam**

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

For the State: Mr. D.J. Nath, Asstt. P.P
For the defense: Md. F. Rahman, Mr. R. Roy, Advocates

Charge framed: u/s 447/352/294/506(II)/34 of IPC
Evidence recorded on: 5-4-2018, 28-9-2018, 6-6-2019, 28-8-2019
Statement of defense recorded on: 1-10-2019
Argument heard on: 1-10-2019
Judgment delivered on: 16-10-2019

JUDGMENT

1. The prosecution case in brief is that one Md. Sahjahan Ali lodged an ejahar in the Moirabari police station against the accused persons namely Md. Nur Islam, Md. Kazim Uddin, Musstt. Ajifa Khatun, Musstt. Aktara Khatun and Musstt. Jamina Khatun alleging therein that on 10-11-2016 at about 6.30 a.m., the aforementioned accused persons, armed with dao, lathi illegally entered on to the courtyard of the house of the informant and beat his wife Musstt. Kod Banu causing injuries on her person. The accused persons also abused the informant with obscene language and threatened to kill him.

2. The ejahar was received in the Moirabari police station on 10-11-2016 and a Moirabari police station case No.454/2016 under sections 147/148/323/447/354(B)/294/506 IPC was registered and one assistant sub

inspector of police Sri Tarun Ch. Deka was assigned to take up the preliminary steps of the investigation and the sub inspector of police Sri Bhupen Kalita, who was the Officer-in-Charge of the said police station, decided to complete the investigation himself. On completion of investigation, police submitted charge sheet against the four accused persons namely Md. Nurul Islam, Md. Kazim Uddin, Musstt. Ajifa Khatun and Musstt. Jamila Khatun under sections 447/352/294/506/34 of IPC.

3. On appearance of the accused persons before Court, copies of all relevant documents were furnished to them under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offences under sections 447/352/294/506(II)/34 of IPC being found against the above mentioned accused persons, formal charge under sections 447/352/294/506(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 3 (three) witnesses namely Md. Sahjahan Ali, Md. Baharul Islam and Musstt Sabina Yasmin as PW-1, PW-2 and PW-3, respectively. Musstt Kad Banu Begum, who was the alleged victim of the case was examined as CW-1 as her evidence was deemed necessary for a just decision of the case. The ejahar is exhibited as exhibit-1 wherein the informant put his thumb impression. Examination of the accused persons under section 313 CrPC was dispensed with for lack of incriminating materials. Defence side refused to adduce any evidence.

5. I have heard the argument of Mr. Dhruvajyoti Nath, the learned APP as well as the argument of Md. Faijur Rahman, learned counsel for the defence. 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 10.11.2016 at about 6.30 a.m. at village Saharia Pam, Ward No.8 under Moirabari police station, in furtherance of their common intention, entered into the courtyard of the house of Md. Sahjahan Ali, which was in possession of his wife namely Musstt. Kod banu Begum, with intent to commit an offence or to

intimidate, insult or annoy her and thereby committed an offence punishable under section 447 read with section 34 of IPC?

- ii. Whether the accused persons, on or about the same day, time and place, in furtherance of their common intention, assaulted or used criminal force to Musstt. Kod banu Begum and thereby committed an offence punishable under section 352 read with section 34 of IPC?
- iii. Whether the accused persons, on or about the same day, time and place, in furtherance of their common intention, uttered obscene words in a public place to the annoyance of Musstt. Kod banu Begum and thereby committed an offence punishable under section 294 read with section 34 of IPC?
- iv. Whether the accused persons, on or about the same day, time and place, in furtherance of their common intention, threatened to kill Md. Sahjahan Ali and thereby committed an offence punishable under section 506(II) read with section 34 of IPC?

Discussion of evidence, decision and reason therefor:

6. For convenience all the points for determination are taken up together for discussion. The informant Md. Sahjahan Ali deposed before the court as PW-1. His ejahar is proved as exhibit-1 wherein he put his thumb impression. In his deposition, PW-1 Md. Sahjahan Ali deposed that the matter has already been amicably settled at the intervention of the local villagers and he lodged the case out of misunderstanding for which he no longer wants to proceed with the case. His cross-examination was declined.

7. Similarly PW-2 Md. Baharul Islam also stated that he only heard that a quarrel took place. However, he has not knowledge as to why the quarrel took place. Police also did not record his statement. His cross-examination was also declined.

8. Against the backdrop of the deposition of PW-1 and PW-2, the alleged victim Musstt. Kod banu Begum, who is the wife of the informant, as CW-1, stated that on the day of the occurrence at about 6.00 a.m., while she was inside her house, Nurul Islam, Kazim Uddin, Ajifa, Aktara, Jamila and mother-in-law of Md. Kazim Uddin

entered into her house and Md. Kazimuddin beat her first on her head and thereafter the remaining accused persons beat her. She fell down unconscious. According to her, Md. Kazimuddin beat her on her head with the blunt side of a dao and the remaining accused persons beat her with their hands. It is also stated by her that before beating her, the accused persons broke the almira of her house and took away Rs.4,70,000/- kept in her house. The said amount she received after selling a plot of land. The accused persons also took away household articles. On the day of the occurrence itself, she along with her family members, sold a plot of land and decided to move elsewhere. Subsequently, water was sprinkled on her head after which she regained her consciousness. Thereafter, she went to the police station wherefrom police took her to the Moirabari hospital for medical treatment. She also stated that though her husband has amicably settled the matter she has not settled it as there is likelihood that the accused persons may harass her again. She was cross-examined and in her cross-examination, it is revealed that at the time of the occurrence her husband was also present inside the house and apart from her husband, there was no other person. The amount, which according to her was taken away by the accused persons, belonged to her husband. She has also reiterated in her cross-examination that she has not amicably settled the matter out of fear as the first wife of her husband may cause trouble to her.

9. The deposition of CW-1 is not believable in view of the fact that her husband i.e. PW-1 did not mention regarding looting of any money in his ejahar or in his deposition. The said CW-1 invented the said allegation in order to bolster her case against the accused persons. As per the deposition of CW-1, PW-1 was present inside the house at the time of the occurrence and he saw the accused persons looting away the articles. If that be so, it is highly unlikely that he would settle the matter amicably when his own money amounting to Rs.4,70,000/- was taken away by the accused persons along with other household articles. Further, it seems highly improbable that PW-1 being one of the victims would settle the matter amicably. The fact that that the CW-1 has deposed falsely is also clear from the deposition of PW-3 Musstt. Sabina Yesmin, who went to the place of occurrence and saw Md. Sahjahan Ali and Ajifa, Kod banu and also heard that Kod banu was shouting at that time. She also revealed that Ajifa i.e. one of the accused persons,

is the first wife of the PW-1. She has also stated that there has already been amicable settlement and they have been residing together at present.

10. If the occurrence as narrated by the CW-1 took place, there was no reason that Musstt. Sabina Yesmin would not have seen the said occurrence as she arrived at the scene after hearing a commotion and only saw a few persons but did not see any quarrel at that time. Therefore, evidence of Musstt. Sabina Yesmin, coupled with the evidence of PW-1 and PW-2, negates the accusation of CW-1 and renders the deposition of CW-1 as highly doubtful. There is no indication in the evidence of PW-1 regarding the assault and looting as narrated by CW-1.

11. In view of the deposition of PW-1, PW-2 and PW-3 which contradicted the deposition of CW-1, the prosecution side also did not proceed further to summon and examine the remaining witnesses as their evidence is not likely to improve the prosecution case.

12. It is seen that there is two sets of evidence. CW-1 implicated the accused persons whereas PW-1, PW-2 and PW-3 exonerated them. Furthermore, we have also found that the deposition of CW-1 is not believable in view of the fact that her own husband, whose money, according to her, was taken away by the accused persons, has not uttered a single word against the accused persons. It is highly unlikely that if Rs.4,70,000/- is taken away from a man he would forgive the offenders and exonerate them.

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

14. The prosecution side failed to prove the case against the accused persons. Accordingly, they are acquitted of offences under sections 447/352/294/506(II)/34 of IPC. 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.

15. The judgment is pronounced in open court and given under my hand and seal on this 16th day of October, 2019, at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-1: Ejahar

(B) DEFENCE EXHIBITS

None

(C) EXHIBITS PRODUCED BY WITNESSES

None

(D) COURT EXHIBITS

None

(E) PROSECUTION WITNESSES

P.W.-1: Md. Sahjahan Ali

P.W.-2: Md. Baharul Islam

P.W.-3: Musstt. Sabina Yesmin

(F) DEFENCE WITNESSES

None

(G) COURT WITNESSES

C.W.-1 : Musstt. Kod banu Begum

Chief Judicial Magistrate, Morigaon