



IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
BONGAIGAON

GR Case No. 1254/16

State

-v-

1. Md. Jahar Ali
2. Md. Hajer Ali
3. Musst. Hanufa Begum
4. Musst. Sajirun Begum
5. Musst. Najiya Begum
6. Md. Julhash Ali
7. Musst. Jeleka Bibi.....Accused persons

Present : B. Borthakur,
Additional Chief Judicial Magistrate,
Bongaigaon

In appearance:

For Prosecution : Ms. Ranjana Rani Dutta, Addl.P.P.

For Defence : Shri Sanatan Sarkar, Advocate

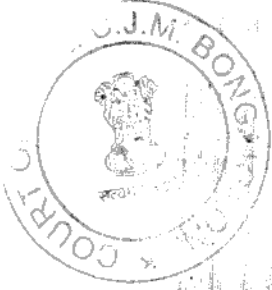
Date of recording evidence : 06-11-17, 08-12-17, 21-12-17

Date of argument : 21-12-17

Date of Judgment : 21-12-17

u/s 147/341/294/323, IPC

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Bongaigaon



JUDGMENT

1. The case of prosecution, in brief, is that on 16-12-16, at around 6:30am, the accused persons, namely - Md. Jahar Ali, Md. Hajer Ali, Musst. Hanufa Begum, Musst. Sajirun Begum, Musst. Najiya Begum, Md. Julhash Ali and Musst. Jeleka Bibi, tied their cow to the haystack of informant Nur Islam. When Sarifun Nessa, wife of the informant, objected to this, there ensued an altercation. On instructions of accused Jahar Ali, accused Hajer Ali hit Sarifun Nessa with a lathi and when Sahidul Islam, son of the informant, daughters-in-law Mafuza Khatoon, Khudeja Khatoon and Nabiran Bibi went to prevent the fight, the accused persons hit them on various parts of their body, as a result of which the son of the informant sustained severe bleeding injury on his head. Nabiran lost a silver chain weighing 5 vori and Mafuza lost a pair of gold earring. The injured person was taken to Manikpur hospital for treatment. FIR was lodged that day itself and hence, the instant case.
2. After completing investigation, police submitted charge-sheet against all the above named accused persons u/s 147/341/294/323, IPC. Copies were furnished to the accused persons on their appearance, as per provisions of Sec. 207, CrPC. Particulars of offence under the said sections of law were explained to them, to which they pleaded not guilty and claimed to be tried.
3. In order to bring home the charge, prosecution examined six witnesses. With nothing incriminating in evidence against the accused persons, their examination u/s 313, CrPC was dispensed with.

POINTS FOR DETERMINATION

4. I have carefully gone through materials on case record and I find that in order to ascertain guilt of the accused person, it is necessary to determine whether:

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- i) The accused persons, by forming an unlawful assembly and in prosecution of the common object of that assembly wrongfully restrained the family members of the informant in order to commit an offence on 16-12-16 at around 6:30am;
- ii) Whether the accused persons, in prosecution of common object that assembly, uttered rebukes in obscene language to them in a public place, to the annoyance of others at that time; and,
- iii) Whether the accused persons, in prosecution of common object of that assembly, voluntarily caused hurt to the family members of the informant at that time.

DECISION, DISCUSSION AND REASONS THEREOF:

5. To arrive at a conclusion on the above point, the evidence adduced has been carefully gone through. **PW1-informant Md. Nur Islam**, revealed that the accused persons are his relatives, being his own brothers, their wives and nephew. He stated that the occurrence took place at around 6:30am one day in the year 2016. At that time, he had gone out for work. He came back and saw the accused persons engaged in an altercation with his family members, some of whom fell down in the push and pull, and got hurt. In anger, he lodged the FIR, P/Ext-1. PW1 stated that they have settled the matter with the accused persons, who are his immediate family members and he does not bear any grudges against them.
6. **PW2-Md. Abdul Majid**, brother of PW1, was on his way to purchase cattle. Then he saw the accused persons engaged in an altercation with the family members of Nur Islam. In the push and pull, some of them fell down and got hurt. At present, they have amicably settled the matter and PW2 stated that he does not bear any grudges against the accused persons.

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7. **PW3-Md. Sahidul Islam**, son of PW1, was in somebody else's house, where he had gone for night stay. He came home and saw the accused persons engaged in an altercation with his family members. He intervened to stop the quarrel. In the push and pull, he fell down and got hurt. His father lodged the FIR in anger. PW3, too, stated that at present they are on fine terms with the accused persons and that they have settled their misunderstanding. He does not bear any grudges against them.
8. **PW4-Musst. Mafuza Begum**, was in her house when an altercation took place between Nur. Islam (PW1) and Hazara Ali because of boundary disputes. Her five year old son was also in the place of occurrence. PW4 went to fetch him and in the push and pull, she fell down and got hurt. PW4 stated that their misunderstanding is settled with the accused persons, who are her immediate family members and that she bears no grudges against them.
9. **PW5-Musst. Sariful Begum**, was in her house at around 7:00am when she got into a fight with her her elder brother-in-law Hazara Ali and the accused persons over hay. There was no maarpit. It was just an argument. She did not get any hurt. At present, she is on good terms with the accused persons. They are from the same family and how much will they keep quarelling, PW5 mused.
10. **PW6-Musst. Khudeja Khatoon**, was in her house when the cow of the accused persons had eaten their hay. Her mother-in-law, Sarifan Nessa, went to tell the accused persons about it. This led to an altercation between both families. PW6 was also there. In the push and pull, she sustained hurt. PW6, too, stated that at present, they are on amicable terms with the accused persons, who are her immediate family members. She does not bear any grudges against them.
11. With nothing incriminating in evidence against them, examination of the accused persons u/s 313, CrPC., was dispensed with.

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12. Heard the rival contentions of learned counsels of both sides and perused record. In this case, it is seen that the victims have nothing to allege against the accused persons save the fact the accused persons got into an altercation with her over the cow of the accused persons eating away the hay belonging to the informant. The victims stated that they suffered injury by falling down in the course of push and pull. They did not state that the accused persons assaulted them or voluntarily caused hurt to them, as alleged in her FIR. With victims not supporting the prosecution story, the charge against the accused persons cannot be established. None of the witnesses spoke about any abusive words being used by the accused persons. That apart, PW5 herself did not support the FIR. The allegations in the FIR and the statement of the victims during evidence do not tally. Under the circumstances, prosecution could not establish its case against the accused persons and they are entitled to acquittal.

13: In the result, I hold the accused persons, namely – Md. Jahar Ali, Md. Hajer Ali, Musst. Hanufa Begum, Musst. Sajirun Begum, Musst. Najiya Begum, Md. Júlhash Ali and Musst. Jeleka Bibi, not guilty u/s 147/341/294/323, IPC, and acquit them accordingly.

14. Judgment is pronounced in open Court.

Given under my hand and the seal of this Court on this, the 21st day of December, 2017.


21-12-17
Bipaakhi Borthakur
ADDL. C.J.M.
Additional Chief Judicial Magistrate,
Bongaigaon.

-Contd-

APPENDIX

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Witnesses examined by Prosecution

PW1 - Md. Nur Islam
PW2 - Md. Abdul Majid
PW3 - Md. Sahidul Islam
PW4 - Musst. Mafuza Begum
PW5 - Musst. Sariful Begum
PW6 - Musst. Khudeja Khatoon

Documents exhibited by Prosecution

P/Ext-1 - FIR.

Witnesses examined by Defence

None

Documents exhibited by Defence

None

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