

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::::: BONGAIGAON.

GR Case No.623/2009.

U/Ss. 294/506/34 IPC.

State of Assam

-Vrs-

- 1. Sri Sachin Sarkar.**
- 2. Sri Boloram Sarkar.**

*Present: Sri A.U. Ahmed, AJS
Chief Judicial Magistrate,
Bongaigaon.*

Name of the informant:

*Smt. Asha Devi Mahato,
W/o Sri Khabaria Mahato,
Vill-B.T. Road, Ward No.1,
PS & Dist-Bongaigaon.*

Advocates appeared:

For the Prosecution: *Mr. T. Bhowmick, Assistant PP.*

For the Defence: *Mr. M. Jain.*

Argument heard on: **29.05.2013.**

Judgment Pronounced & Delivered on: **03.06.2013.**

J U D G M E N T

1. The prosecution case in brief is that on 26.11.2009 the informant lodged a written complaint before this court stating inter-alia that on 22.11.2009 at noon in absence of the informant the accused persons lifted the boundary fencing and constructed new fencing after encroaching her land while Dhunu Mahato was in the house. While seeing the accused persons constructing fencing after

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encroaching land, Dhunu Mahato raised an objection the accused person Bolo Sarkar felled her on the ground by holding of her neck and threatened to kill her if she would raise further objection. During that time on getting information the informant came. While she raised objection the accused persons after abusing her with filthy words chased her to assault her and entered into her house compound. She fled to her house and closed the door. On receipt of the complaint, Bongaigaon PS registered a criminal case U/Ss. 447/354/427/506/34 CrPC. On completion of investigation the charge sheet was submitted U/Ss.294/506/34 IPC against the accused persons. Hence the prosecution case has come up.

2. On completion of appearance of the accused persons, copy was supplied to them. The particulars of the offence U/Ss. 294/506/34 IPC was duly explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. During trial the prosecution has examined as many as 7 (seven) prosecution witnesses in support of its case. The accused

persons have been examined under section 313 CrPC. The Defence has examined none. Plea of defence is of total denial.

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4. **-.POINTS FOR DETERMINATION:-**

i) Whether the accused persons uttered obscene towards the informant or his family members in furtherance of common intention?

ii) Whether the accused persons made criminal intimidation to the informant in furtherance of common intention?

5. **-.DECISION AND REASONAS THEREOF:-**

I have very carefully gone through the arguments duly put forward by the Ld. Lawyers of both sides as well as evidence on record. let us see evidence on record before coming to any conclusion.

6. PW1 is Smt Asha Devi Mahato who is the informant of this case. She has stated in her testimony that coming back from work she saw constructing new boundary fencing after lifting her boundary fencing there on. While she raised objection, the accused person Boloram Sarkar abused her with filthy words and chased her to assault her.

7. PW2 is Sri Babu Lal Mahato. According to him, on the day of occurrence at 10:30 AM hearing shouting after coming home back on being asked his wife informed him that since the morning

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both the informant and the accused persons were making quarrel regarding bound fencing. There after coming out from the house he found the accused person Boloram Sarkar making quarrel holding a lathi with the informant. Evidence is silent regarding presence of the rest accused in the PO and his participation in the alleged occurrence. According to PW1, she was not available in the house she came home back at 1 PM from work. There is doubt that PW2 saw the occurrence.

8. PW3 is Sri Abhijit Roy who has stated in his testimony that the informant informed that the accused persons constructed fencing on her land. In the cross-examination he has admitted that he had not visited the PO. His evidence is based on evidence of PW1. PW4 is Smt. Lakhmi Mahato who has stated in her testimony that while she was coming home back at 11:00/12:00 AM, she saw the informant and the accused persons abusing each

other and the accused person Boloram was holding a lathi. Her evidence is silent regarding construction of boundary fencing by the accused persons. PW6 is Smt. Rita Devi. PW7 is Smt. Rita Shah. Both of them have stated in their testimony that they saw the informant and the accused persons abusing each other. Their evidence is silent regarding construction of boundary fencing by the accused persons.

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9. PW5 is Smt. Banu Mahato who is the tenant of the informant. She has stated in her testimony that seeing the accused persons constructing boundary fencing after lifting the fencing of the informant she asked the accused persons to construct the fencing after arrival of the informant. Thereafter while the accused person Boloram Sarkar chased her with lathi, she took shelter in the house. At that time the informant came home back. The accused persons also chased her to assault. Her evidence is silent regarding utterance of obscene words by the accused persons towards to the informant.

10. There is no whisper in the evidence on record regarding criminal intimidation towards to the informant. It is evident that the accused persons are boundary living neighbouring people. It is seen that both the informant and the accused persons

uttered obscene words. There is no evidence on record showing that the PO is either public place or it is/was near public place.

11. *In the result, I find that the prosecution has failed to prove its case beyond all reasonable doubts against the accused persons U/Ss. 294/506/34 IPC. Hence on benefit of doubt, the accused persons are hereby acquitted from the charges brought against them and they are set at liberty forthwith. The bail bonds stand cancelled. Accordingly, the case is disposed of on contest.*

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12. The Judgment is pronounced and delivered in the open Court on this 3rd June, 2013 under my hand and seal of this Court.

(Sri A. U. Ahmed)
Chief Judicial Magistrate,
BONGAIGAON.

Dictated & corrected by me.....

(Sri A. U. Ahmed)
Chief Judicial magistrate,
BONGAIGAON.
