

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

G.R CASE NO: 752/2013

STATE OF ASSAM VERSUS DHAJIRUDDIN SEIKH AND OTHERS

U/S 341/323/506/34 IPC

FOR THE PROSECUTION: MR. R.C.MAHATO, ASST. P.P

FOR THE DEFENSE: MR. S. SARKAR, ADVOCATE

**EVIDENCE RECORDED ON: 26/3/2014, 27/3/2014, 5/6/2014, 10/6/2014,
18/7/2014, 14/8/2014**

ARGUMENTS HEARD ON: 22/10/2014

JUDGMENT DELIVERED ON: 5/11/2014

JUDGMENT

1. The facts and circumstances leading to this case as stated by the prosecution are briefly discussed here. On 2/10/2013 Md. Dhajiruddin Seikh, S/o Late Jamiruddin Seikh of village Fulkumari, Bongaigaon lodged a written ejahar at Bidyapur O.P against his brother Md. Mahiruddin Seikh and his wife Amina Bibi alleging that on 18/9/2013 at about 7 a.m. when his son Bulbul Seikh aged 12 years and daughter Resmina Begum aged 14 years were constructing boundary fencing in their vegetable garden the accused Mahiruddin Seikh and Amina Bibi came out and started to assault them. When his wife resisted them the accused persons assaulted her and disrobed

her. It is also alleged in the ejahar that the accused persons assaulted him too. When the neighbours gathered the quarrel stopped and they were rescued. The FIR was received at Bidyapur O.P vide General Diary entry No. 17 dated 2.10.2013 and was forwarded to Bongaigaon P.S for registering a case which was received and registered as Bongaigaon P.S Case No. 494/2013 u/s 323/325/354/34 I.P.C and investigation was carried on. During investigation a prima facie case was found to be well established under sections 341/323/506/34 I.P.C against accused Mahiruddin Seikh and Amina Bibi and accordingly police submitted charge sheet against them.

2. Cognizance had been taken under sections 341/323/506/34 I.P.C against the accused persons.
3. Upon appearance copies of the relevant documents were supplied to the accused person in compliance with section 207 Cr.P.C.
4. After considering the relevant documents produced by the police and prima facie materials under sections 341/323/506/34 I.P.C having been found to be well established against the accused persons, the particulars of the offences U/S 341/323/506/34 I.P.C were explained to the accused persons to which they pleaded not guilty and claimed to be tried.
5. During trial Prosecution adduced the evidence of seven witnesses and exhibited documents. At the close of prosecution evidence the accused persons were examined U/s 313 Cr.P.C. The accused denied all the allegations levelled against them but declined to adduce any evidence.
6. After considering the relevant documents and after hearing the defence and the prosecution I find that following are the points to be determined in this case:
 - 1) Whether the accused person on 18/9/2013 at about 7 a.m. at village Fulkumari, in furtherance of their common intention, voluntarily obstructed the informant so as to prevent him from proceeding in any

direction in which he has a right to proceed and thereby committed an offence punishable under section 341 IPC?

- 2) Whether the accused person on the same date, time and place, in furtherance of their common intention, voluntarily caused hurt to the informant and his wife and thereby committed an offence punishable U/S 323 IPC?
- 3) Whether the accused persons, on the same date, time and place, in furtherance of their common intention, committed the offence of criminal intimidation and thereby committed an offence punishable under section 506 IPC?

DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

7. PW1 (Dhajiruddin Seikh) deposed that on 18.9.2013 at about 7.30 a.m. his daughter Jesmina Begum and son Bulbul Seikh were putting up a boundary fencing on their vegetable garden in his own land. That, Mahiruddin told them that they were blocking the road. At this, his wife Minara came out and told Mahiruddin that if he has anything to say about the fencing he should talk to her husband. At this, Mahiruddin pulled her hair and trashed her on the ground. That, when PW1 came out accused Mahiruddin assaulted him with a bamboo stick and trashed him on the ground. That, neighbours Nizamuddin, Nur Hussain etc. interfered and stopped the fight. That, he informed at Bidyapur O.P on the same day and he exhibited his ejahar as Exhibit 1 and his signature as Exhibit 1(1). He stated that police sent him for medical check up and that he called a bichar at the village but Mahiruddin did not show up at the bichar and so he lodged the ejahar on 2/10/2013.
8. During cross examination PW1 stated that accused Mahiruddin is his own elder brother and accused Amina Bibi is his sister-in-law. He admitted that he did not hear what Mahiruddin said to his children regarding the fencing

9. PW2 Nizamuddin Seikh stated that about 4 months ago at about 7 a.m. he was taking bath in his house when he heard commotion in the road. That, he went out and saw that both the family members of Dhajiruddin and Mahiruddin were quarrelling among themselves and were about to assault each other. That, he stopped the quarrel and the marpit did not take place.
10. PW3 Mahiran Bewa is the mother of both the informant and the accused. According to her on the date of occurrence both her sons had quarrelled but she did not see any mar pit.
11. PW4 Mazida Begum stated that she does not remember the date of occurrence. That, she came out of her house at about 7/8 a.m. on hearing commotion and saw that the family members of both Dhajiruddin and Mahiruddin were debating on the road with lathi on their hands and she went on her way.
12. PW5 Minara Bibi is the wife of the informant. She stated on 17/9/2013, when her children were putting up bamboo fencing accused Mahiruddin were abusing them with obscene words. That, she told her husband about this when he returned home from work in the evening. That, on the next morning her husband met accused Mahiruddin on the road and told him that if his children have committed any mistake he should tell him and asked him not to abuse them with obscene words. That, at this accused Mahiruddin assaulted her husband with bamboo which his wife had brought him. When she went near, accused Mahiruddin caught hold of her hair and trashed her on the ground.
13. PW6 Akbar Ali stated that he was not present in the place of occurrence at the time of occurrence.
14. PW7 Joychandra Das is the Investigating Officer who submitted the charge sheet. He identified the charge sheet as Exhibit 2 and his signature as Exhibit 2(1).

15. From the evidence of the PWs it is clearly seen that there was indeed a quarrel between the family members of Dhajiruddin Uddin and Mahiruddin. The vital witnesses are PW1 and PW5. Both are husband and wife and relatives of the accused. PW1 is the younger brother of the accused and it can be easily assumed that there is property dispute between both brothers.
16. In **AIR 2007 SC 31 (Avtar Singh versus State of Punjab)**. The Hon'ble Supreme Court has ruled that **“where prosecution case rests on the evidences of eye witnesses who were inimically disposed towards the accused, the rule of caution must strictly be applied”**. PW1 and PW5 are related and admittedly there is enmity between the accused and the informant regarding property. The accused had lodged a case against the informant and his wife which is pending in the same court and is being tried as a cross case. This fact finds mention in the FIR as well as in the evidence of the PWs. Taking into consideration the prevailing enmity between the accused and the PWs, care should be taken while considering their evidences.
17. Moreover one important point to be noted is that there was no immediate reporting of the occurrence. FIR was lodged after the lapse of fourteen days. In fact it is worthwhile to mention that the FIR was lodged only when Dhajiruddin lodged the FIR against the informant and his wife. The delay in lodging FIR should be considered in the light of other facts and circumstances of the case (**Ramdas and Ors. v. State of Maharashtra (2007) 2 SCC 170**). The facts and circumstances of the present case taken as a whole give the impression that the case of the prosecution is a fabricated one. Therefore in my considered opinion the accused persons must be given the benefit of doubt. Hence I find that the accused persons are not guilty.

Order

The accused persons namely Mahiruddin and Amina Bibi are hereby acquitted of the offences and set at liberty forthwith. Bail Bonds are extended to a period of six months. Given under the hand and seal of this court on this the 5th day of November 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

LIST OF WITNESSES:

1. PW1: Dhajiruddin Seikh
2. PW2: Nizamuddin Seikh
3. PW3: Mahiron Bewa
4. PW4: Mazida Begum
5. PW5: Minara Bibi
6. PW6: Akbar Ali
7. PW7: Joychandra Das, IO

LIST OF EXHIBITS:

1. Ext 1: FIR
2. Ext 1(1): signature of the PW1
3. Exhibit 2: Charge Sheet
4. Exhibit 2(1): Signature of PW7

