

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
UDALGURI :: BTAD :: ASSAM.**

**G.R. CASE NO. 762 of 2019
(PRC NO. 1113/2019)**

**Present: Sri Mridul Kumar Saikia.
Chief Judicial Magistrate
Udalguri, BTAD, Assam.**

STATE

-VS-

DIPAK BORO.

-----Accused.

For the Prosecution : Mr. M. Khaklary, Addl. PP.

**For the Defence : Mr. Thipul Basumatary & Miss
Rishma Jyoti Tirkey , Advocate.**

Date of prosecution evidence : 07-03-2020.

Date of argument & judgment : 07-03-2020.

U/S- 447/354(B) I.P.C.

J U D G M E N T

1. The prosecution case, in brief, is that on 08-08-2019, the complainant Smt. Nirmai Boro lodged an ejahar before the I/C Khakrabari O/P inter-alia stating that on the last night at about 11 PM, one Sri Dipak Boro, a co-villager came to her house along with four-five unknown persons armed with "da", lathi, dagger in their hands. She was caught hold of her hair by them and dragged her out from her house. In the process of dragging her, she was disrobe. Meanwhile, her son Sri Sorang Boro approached to prevent them to which the accused physically assaulted him too. They somehow redeemed themselves from their clutch and took shelter at her sister residence.

2. On receipt of the ejahar to the effect aforesaid Dimakuchi PS case no. 96 of 2019 was registered U/S 147/447/354(B)/323 I.P.C. and on completion of the investigation the I/O submitted the charge sheet against the accused persons alleging commission of the offences U/S 447/354(B) I.P.C.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused persons before the court. Accordingly all the accused appeared before the Court to answer the charges and the necessary copies of all relevant papers and documents were furnished to the accused in compliance with the provisions of Section 207 CrPC. Finding a prima-facie case for commission of offence, particulars of offence U/S 447/354(B) I.P.C. were read over and explained to the accused persons to which the accused pleaded not guilty and claimed to stand trial.
4. In order to bring home the charges, the prosecution examined as many as two(2) Pws including the complainant in the form of:
PW 1 Sri Nirmai Boro &
PW 2 Sri Surang Boro.

The prosecution also exhibited the following document in the form of:

Ext. 1 – Ejahar.

5. After recording the prosecution witnesses the accused persons were examined U/S 313 Cr.P.C. All the incriminating circumstances which appeared in evidence against the accused were put to them for his explanation. The accused denied all the circumstances and pleaded his innocence. Further the accused declined to adduce any evidence in defence.
6. I have heard the argument put forward by the learned Addl.P.P. and the learned advocate appearing for the accused. I have also carefully gone through the entire evidence available with the case record.

7. **POINTS FOR DETERMINATION OF THE CASE :** To ascertain the guilt of the accused on the charges levelled against him, the following points are sorted out for the decision:

I. Whether on 07-08-2019 at about 11 PM at village Naobandha under Dimakuchi P.S. the accused criminally trespassed inside the house of informant Smt. Nimai Boro with intent to commit an offence?

II. Whether on the same day at the same time and place the accused assault or used criminal force to the informant Smt. Nimai Boro and disrobed her or compelled her to disrobe?

DISCUSSION, DECISION AND REASONS THEREOF:

9. To decide the above points, let us make a scrutiny of the evidence led by the prosecution in support of its case. PW-1 Nimai Boro is the complainant of this case. She has stated that in last August, one day at about 11.45 PM, while she was sleeping at home, the accused entered into her room and therefore, due to misunderstanding she had an altercation and scuffle with him. Later on, she filed the ejahar against the accused. At present, they have no dispute and they are living peacefully and she expressed her unwillingness to proceed with the case further. She has proved his ejahar Ext. 1 by identifying her signature Ext. 1(1) thereon.
10. During cross-examination PW 1 has stated that, she has no objection if the accused get acquitted in the case and the accused did not disrobe her any way. She sustained no injury in the scuffle.
11. PW 2 Sri Surang Boro has stated that complainant is her mother and in the summer, one day at night, the accused came to her home. Then, due to misunderstanding they had an altercation and scuffle with him. Later on, his mother filed the ejahar against the accused. Presently, they have no dispute and they are living peacefully.

12. During cross-examinations, PW 2 stated that he has no objection if the accused is acquitted in the case.
13. After perusing the evidence on record, it is clear that there was no such occurrence as alleged in the ejahar. Further, the complainant herself does not want to proceed with the case and clearly stated that she has no objection, if the accused get acquitted from the charges. Altogether, it gives the impression that the complainant noway incriminated the accused with the alleged offences. As the PW 1 the complainant and PW 2 her son have deposed before the court voluntarily, the evidence of PW 1 & PW 2 are accepted. It appears that the instant case arose out of misunderstanding only as admitted by the complainant and the victim.
14. Thus, from the above appraisal, appreciation of evidence on record, and the application of law, I find that the prosecution has failed to establish the offences U/S 447/354(B) I.P.C. against the accused person beyond all reasonable doubt. In the result, the accused is not found guilty U/S 447/354(B) I.P.C. Hence, the accused Sri Dipak Boro is acquitted from the charges U/S 447/354(B) I.P.C. on benefit of doubt and set him at liberty forthwith.
15. Bail bond shall remain in force for next 6 months as per provisions of Section 437 A CrPC.
Given under the hand and seal of this Court on this 7th day of March, 2020 at Udalguri, BTAD, Assam.

Dictated and corrected by me:

(Mridul Kumar Saikia)
Chief Judicial Magistrate
Udalguri, BTAD, Assam.

(Mridul Kumar Saikia)
Chief Judicial Magistrate
Udalguri, BTAD, Assam.

APPENDIX

- A. Prosecution witnesses : PW 1 Smti. Nimai Boro &
PW 2 Sri Surang Boro.
- B. Defence witness : Nil.
- C. Documents exhibited : Ext. 1 – Ejahar.

(Mridul Kumar Saikia)
Chief Judicial Magistrate
Udalguri, BTAD, Assam.

Typed and transcribed by me:

(Poonam Rajbongshi /Stenographer)