

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, UDALGURI, ASSAM

**P. R. Case No. 1125 of 2019 U/s 341/294/506/34 of  
the Indian Penal Code**

State of Assam

**-Vs-**

**1. Sri Rajib Deka**

S/o- Sri Lohit Deka

R/o. Vill-Borjalah

**2. Sri Bikram Hazarika**

S/o- Sri Uma Kanta Hazarika

R/o. Vill-Bangaon Purandia

Both are under Tangla P.S.

Dist.- Udalguri, Assam ..... **Accused Persons.**

**Present:-** Sri D. K. Kalita, A. J. S.

*Addl. Chief Judicial Magistrate,*

*Udalguri, Assam*

**Appearance:**

For the State : Mr. J. Daimari, Asst. P.P.

For the Defence : Mr. M. Deka,  
Mr. P. Boro, Adv.

Dates of Evidence : 28.02.20, 10.02.21, 02.03.21,  
23.04.21 & 29.10.21

Dates of Argument : 26.11.21, 07.12.21

Date of Judgment : 13.12.21

### **J U D G M E N T**

1. Prosecution case, in brief, is that on 17.06.2019, one Sankar Sarkar lodged an ejahar with the Officer-in-Charge, Tangla P.S. against the accused persons alleging inter-alia that he was the Ward Commissioner of Ward No. 1 of Tangla Town Committee and as a Ward Commissioner, apart from looking after his ward, he looked after the cleanliness and development works of all four wards. On that day, in morning hours, he was cleaning the weekly market under Ward No. 4 by engaging a few numbers of workers. At about 8.30 A.M., when the workers were cleaning in front of the Shiva Temple at the market, the accused persons resisted the workers in cleaning works and when he asked what had happened, the accused persons rushed towards him, touched his body, rebuked him with filthy language and tortured him both mentally and physically and as a result, cleaning works of the weekly market got hampered.

2. On receipt the said ejahar, Tangla P.S. Case No. 72/2019 under Section 353 I.P.C. was registered and investigated into. On completion of the investigation, the Investigating Officer submitted charge-sheet under Sections 341/294/506/34 I.P.C. against the accused persons.

3. In pursuance to the court process, the accused persons appeared before the court and thereupon,

necessary copies were furnished to them and on being explained the particulars of offences under Sections 341/294/506/34 I.P.C., the accused persons pleaded not guilty and claimed to stand trial.

4. In support of its case, prosecution side examined as many as eight witnesses. On closure of prosecution evidence, accused persons were examined under Sec. 313 Cr.P.C. wherein they took the plea of denial. Defence has adduced no evidence.

5. I have heard arguments of the learned counsels for both the sides at length, gone through the case record and perused the evidence carefully.

**POINTS FOR DETERMINATION ARE:**

6. (i) *Whether the accused persons, on 17.06.2019, at about 08:30 A.M., at Weekly Market at Tangla under Tangla P.S., in furtherance of their common intention, wrongfully restrained the informant Sri Sankar Sarkar and thereby committed an offence punishable under Sec. **341/34** IPC?*

(ii) *Whether the accused persons, on the same day, time and place above, in furtherance of their common intention, rebuked the informant Sri Sankar Sarkar with obscene words in or near public place to the annoyance of others and thereby committed an offence punishable under Sec. **294/34** IPC?*

(iii) *Whether the accused persons, on the same day, time and place above, in furtherance of their common*

*intention, threatened the informant Sri Sankar Sarkar to assault him and thereby committed an offence punishable under Sec. 506/34 IPC?*

**DISCUSSION, DECISION AND REASONS THEREON:**

7. Before I going to decide the points for determination, let me describe the evidence of the prosecution witnesses in brief. *P.W.-1, Sri Sankar Sarkar*, is the informant who has stated in his evidence that he knows both the accused persons. On 17.06.2019, at about 08:00-08:30 a.m., he was cleaning Tangla Weekly Market by engaging sweepers of Town Committee. He was standing there and one Diganta Sarma came and they were conversing. One sweeper carried garbage by a handcart and unloaded the same at about 20 meters from them. Accused Bikram came and asked the sweeper why he was felling the garbage. When, he asked him why he resisted the sweeper, he rushed towards him and rebuked him with obscene words and pushed him. He gave a blow on his scooty. Diganta Sarma resisted him. Then, other accused came from backside and held him on his shoulder and pushed him. Thereafter, he went to police station. He lodged ejahar. At the time of incident, he was Ward Commissioner of Tangla Town. Ejahar has been exhibited as Ext.1 and his signature thereon as Ext.1(1). *In his cross-examination*, he has stated that one male sweeper and one female sweeper were present at the time of incident near the place of occurrence. One hotel was near the place of occurrence and

hotel was opened at that time. There is Shiva Temple near the place of occurrence. He has not mentioned obscene words in his ejahar and in his statement recorded by police. Police did not take him to medical for treatment or examination. He has denied the suggestion of defence. He has further stated that at the time of incident, sweepers were near him and Diganta Sarma was with him. No other person went to the place of occurrence at the time of incident.

8. *P.W.-2, Diganta Kumar Sarma*, has stated in his evidence that he knows the informant as well as the accused persons. On 17.06.2019, at about 08:00 a.m., he was going to school from his home and he saw the informant and then he stopped there. Informant was cleaning the market by engaging sweepers and sweepers were felling garbage near Shiva Temple. When he was talking to him about cleaning the market, accused persons came and asked the sweepers not to fell garbage there. When Sankar Sarkar asked them why they resisted the sweepers, one of the accused persons rushed towards Sankar Sarkar and pushed Sankar Sarkar and rebuked him with slang language. He resisted the accused persons and separated them from Sankar Sarkar. Thereafter, he left the place of occurrence. Later on, Sankar Sarkar lodged ejahar and he accompanied him to police station. *In his cross-examination*, he has stated that accused persons asked the sweepers not to fell garbage near temple and in that

context a verbal altercation took place between the accused persons and the informant. There were some other persons at some distance from the place of occurrence. Nobody came to the place of occurrence. Usually garbage was felled near the temple and accused persons asked the sweepers not to fell the garbage near the temple. He has denied the suggestions of defence.

9. *P.W.-3, Bijay Sutradhar,* has stated in his evidence that he knows the informant as well as the accused persons. One day, in morning time, when he opened the shop where he used to work, police came and asked him about the quarrel taken place between the informant and the accused persons. He told that he did not have knowledge about such quarrel. He does not know about the incident. *Defence has declined to cross-examine this witness.*

10. *P.W.-4, Sri Baloram Pathak,* has stated in his evidence that he knows the informant. He also knows both the accused persons. A quarrel took place between the informant and the accused persons at weekly market at Tangla. He heard about such quarrel. He did not see the incident. *In his cross-examination,* he has stated that he does not know why and how the incident took place.

11. *P.W.-5, Sri Tapan Sarkar,* has stated in his evidence that he knows the informant and the accused persons. On the day of incident, he heard that a quarrel took place at weekly market at Tangla. *In his cross-*

*examination*, he has stated that he did not see the incident and he does not know between whom the incident took place.

12. *P.W.-6, Sri Nagindar Basfor*, has stated in his evidence that he knows the informant and the accused persons. About one year ago, one day, at about 07:00 a.m., he went to dump garbage by hand-cart near temple. Then, accused persons came there and asked him not to dump garbage. Then informant who was Ward Commissioner told that he should dump garbage at that place. Then, altercation took place between the informant and the accused persons. *In his cross-examination*, he has stated that accused persons asked him not to dump garbage near temple. No other incident took place except an altercation between the informant and the accused persons.

13. *P.W.-7, A.S.I. Anil Sonowal*, has stated in his evidence that on 31.08.2019, he was posted as Attached Officer at Tangla P.S. On that day, the Officer-in-Charge, Tangla P.S. handed over him the case diary of Tangla P.S. Case No. 72/2019 under Sec. 353 I.P.C. to complete the investigation of the case. Upon such entrustment, he arrested the accused persons and released them on bail as the case was not established under Sec. 353 I.P.C. After going through the case diary, he found that A.S.I. Jiban Deka had already completed the investigation of the case and thereafter, on perusal of the case diary, he has submitted charge-sheet under Sections 341/294/506/34

I.P.C. against the accused persons namely Sri Rajib Deka and Sri Bikram Hazarika. Charge-sheet has been exhibited as Ext.2 and his signature thereon as Ext.2(1). *In his cross-examination*, he has stated that he did not record the statement of any witness during investigation of the case.

14. *P.W.-8, A.S.I. Jiban Chandra Deka*, has stated in his evidence that on 17.06.2019, he was posted as A.S.I. of Police at Tangla P.S. and working as Sheristadar. On that day, one Sankar Sarkar lodged an ejahar before the then Officer-in-Charge, Tangla P.S. and accordingly, Tangla P.S. Case No. 72/2019 under Sec. 353 I.P.C. was registered and the then Officer-in-Charge, Tangla P.S. endorsed the case to him to investigate the same. Upon such endorsement, he recorded the statement of the informant, visited the place of occurrence, inspected the place of occurrence, drew sketch-map of the place of occurrence and recorded statements of other available witnesses. During investigation, he was transferred from Tangla P.S. and accordingly, he handed over the case diary to the then Officer-in-Charge, Tangla P.S. Sketch-map has been exhibited as Ext.3 and his signature thereon as Ext.3(1). *In his cross-examination*, he has stated that he did not record the statement of female sweeper. P.W.-1 Sankar Sarkar did not state before him that the accused Rajib Deka held him from backside and pushed him. P.W.-2 Diganta Kumar Sarma did not state before him that one of the accused persons assaulted Sankar Sarkar.

15. Learned Asst. P.P. has submitted that the prosecution has succeeded to prove the case against the accused persons beyond all reasonable doubt in as much as it is well established from the evidence of the informant cum victim and other witnesses that the accused persons wrongfully restrained the informant, rebuked him and assaulted him. Thus learned Asst. P.P. has submitted that the accused persons are liable to convicted and sentenced in accordance with law. *On the other hand*, learned counsel for the accused persons has submitted that prosecution has failed to prove the alleged offences against the accused persons beyond all reasonable doubt as the evidence of the informant cum victim has not been supported by other witnesses. He has contended that only an altercation took place between the informant and the accused persons in context of felling garbage which is revealed from the evidence of PW-6. Thus, learned counsel for the accused persons has submitted that accused persons are liable to be acquitted of the offences charged.

16. It is revealed from the evidence of the prosecution witnesses that PW-1 is the victim, PWs 2 & 6 are the eye witnesses to the occurrence, PW-3 does not know about the incident and PWs 4 & 5 have only heard about the incident.

17. Point for determination no. (i) relates to commission of offence of wrongful restraint by the accused persons. Wrongful restraint has been defined under Sec.

339 IPC and Sec. 341 IPC is the penal provision of the offence of wrongful restraint. Sec. 339 IPC says that whoever voluntarily obstructs any person in such a way as to prevent him from proceeding in any direction in which he has a right to proceed, commits wrongful restraint of that person. In the instant case, it is found from the evidence of the informant cum victim (PW-1) that he has not stated anything about restraining him by the accused persons. It is revealed from his evidence that the alleged incident took place when he was cleaning the Tangla Weekly market by engaging sweepers and when he was standing with Diganta Sarma and conversation was going on between them. PW-2 has also corroborated his evidence and it is found from his evidence that the alleged incident took place when he was talking to the informant. But, none of them has stated that the informant cum victim was proceeding towards a particular direction and accused persons restrained and obstructed him to proceed to such direction. Moreover, it is found from the evidence of PW-6 that when he went to dump garbage by hand-cart near temple, accused persons went and asked him not to dump garbage and then the informant went and told him that he should dump garbage. Then an altercation took place between the informant and the accused persons. Thus, no evidence is found against the accused persons as regards restraining the informant (PW-1) by the accused persons. Hence, I am of the considered opinion that the prosecution has failed to prove the offence

under Sec. 341 of the Indian Penal Code against the accused persons.

18. Point for determination no. (ii) relates to commission of offence of obscene acts and songs under Sec. 294 IPC. This section requires doing of any obscene act in any public place or singing, reciting or uttering of any obscene songs, ballad or words in any public place or near any public place. In the instant case, it is found from the evidence of the informant cum victim (PW-1) that the accused Bikram rebuked him with obscene words. PW-2 has stated that one of the accused persons rebuked the informant with slang language. But they have not stated the words used in rebuking the informant and informant (PW-1) has admitted in his cross-examination that he has not mentioned obscene words in his ejahar and in his statement recorded by police. In absence of specific evidence as regards the words used in rebuking, it cannot be said the accused persons rebuked using obscene words. Moreover, evidence of PWs 1 & 2 as regards rebuking the informant cum victim by the accused persons has not been supported and corroborated by the evidence of PW-6. In view of the above discussion, I am of the considered opinion that the prosecution has failed to bring home the offence under Sec. 294 IPC against the accused persons.

19. Point for determination no. (iii) relates to commission of offence of criminal intimidation by the accused persons under Sec. 506 IPC. Sec. 503 IPC defines

the offence of criminal intimidation and sec. 506 IPC is the penal provision for such offence. Sec. 503 IPC contemplates that the offender must threaten another with any injury to his person, reputation or property, or to the person or reputation, and not to property, of any one in whom that person is interested and the intention of the offender must be to cause alarm to the person threatened, or to cause the person threatened either to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, as the means of avoiding the execution of such threat. In this case, it is found from the evidence of the informant cum victim (PW-1) that the accused persons told him that they would cut him. But such evidence has not been supported by PWs 2 & 6. Since the evidence of PW-1 has not been supported and corroborated by the evidence of eye witnesses (PWs 2 & 6), a doubt arises as regards threatening the informant cum victim to cut him by the accused persons. Moreover, it is revealed from the evidence of PW-6 that only an altercation took place between the informant and the accused persons. Hence, I am of the considered opinion that the prosecution has failed to prove the offence under Sec. 506 of the Indian Penal Code against the accused persons beyond all reasonable doubt.

20. In view of the discussion made in the foregoing paragraphs, I am of the considered opinion that the prosecution has failed to prove the offences under Sections

341/294/506/34 IPC against the accused persons beyond all reasonable doubt and as such, the accused persons deserve acquittal.

**ORDER**

21. In view of the conclusion made above, I hold the accused persons not guilty of the offences under Sections 341/294/506/34 I.P.C. and hence, they are acquitted of the said offences. Accused persons are set at liberty forthwith.

22. The bail-bonds of the accused persons shall remain in force for a period of six months from the date of this order.

23. The judgment is delivered in the open Court in presence of the accused persons and their learned Counsel.

*Given under my hand and the seal of this court  
on this 13<sup>th</sup> day of December, 2021.*

(D. K. Kalita)

Addl. C.J.M., Udalguri

Dictated and corrected by me,

(D. K. Kalita)

Addl. C.J.M., Udalguri

**APPENDIX**

## 1. Prosecution Witnesses:

P.W.1- Sri Sankar Sarkar

P.W.2- Sri Diganta Kumar Sarma

P.W.3- Sri Bijay Sutradhar

P.W.4- Sri Baloram Pathak

P.W.5- Sri Tapan Sarkar

P.W.6- Sri Nagindar Basfor

P.W.7- A.S.I. Anil Sonowal

P.W.8- A.S.I. Jiban Chandra Deka

## 2. Prosecution Exhibits:

Ext.1- Ejahar

Ext.2- Charge-sheet

Ext.3- Sketch-map

3. Court Witness: Nil

4. Defence Witness: Nil

5. Defence Exhibit: Nil

(D. K. Kalita)

Addl. C.J.M., Udalguri