

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

**G.R. CASE NO. 1233 of 2019
(PRC NO. 02/21)**

U/S- 447/294/323/506/34 of I.P.C.

**Present: Smti. Ranjita Agarwalla,
Chief Judicial Magistrate,
Udalguri, Assam.**

STATE

-VS-

- 1. MD. FAIJUDDIN ALI**
- 2. MUSST. ANJUMA KHATOON**
- 3. MUSST. ASHIYA KHATOON**
- 4. MD. HABIBUR RAHMAN.**

----- Accused persons.

For the Prosecution : Mr. M. Khakhlari, learned APP

**For the Defence : Mr. Thipul Basumatary and
Miss Reshmajyoti Tirky, learned Advocates.**

Date of Prosecution Evidence : 15-12-2021.

Argument heard on : 15-12-2021.

Judgment delivered on : 15-12-2021.

J U D G M E N T

- 1.** The brief facts of the prosecution story are that on 17-11-2019 one Md. Rahimuddin Badshah of Udalguri Moimonsing village under Orang police station lodged a written ejahar before the Officer-in-Charge, Orang Police Station stating inter-alia that on the previous day i.e. 16-11-2019 at about 3 P.M. when the accused persons namely Musst. Ashiya Banu, Md. Habibur Rahman, Md. Fojjuddin, Md. Amirul Hoque and Musst. Anju Begum, co-villagers of the

informant, were digging a hole to install a tubewell in his land, his mother Musst. Jarina Khatoon obstructed them to which they scolded her with slang language. Then he consoled his mother not to indulge in quarrel with them and went to Silbori market and when returned at about 9-30 p.m. found his mother quarreling with the accused persons to which he again consoled her not to quarrel to which the accused persons pretending that he had threatened them, chased him to their courtyard by pulling and assaulted with a piece of batam on his neck and waist. At that time his brother namely Md. Abul Kalam, after returning home, knowing about the incident went to their courtyard and he too was assaulted by the accused persons with a piece of batam and iron rod on his chest, back and waist for which both of them sustained injuries on their bodies. The accused persons also snatched away Rs. 2000/- (rupees two thousand) from his pocket and Rs. 22,300/-(rupees twenty two thousand and three hundred) from his brother's pocket. It is also worth mentioning that the accused persons without paying any heed to his request build a latrine near his well(kuwa) so that he would not be able to use that well in future. Hence, he lodged this case praying for taking necessary action against the accused persons.

- 2.** After receiving the ejahar to the effect aforesaid, the Officer-in-Charge, Orang PS registered a case vide Orang PS case no. 111/19 U/S 447/341/324/325/379/34 I.P.C. and on completion of the investigation, the Investigating Officer submitted the charge sheet against the accused persons alleging commission of offences U/S 447/294/323/506/34 of I.P.C. with a prayer for discharging the co-accused namely Md. Aminul Hoque from the case as there was no material found against him.
- 3.** On the basis of the charge sheet, cognizance of offences was taken under Section **190 (1)(b)** of the Cr. PC. The processes were issued for causing appearance of the accused persons before the Court. Accordingly, all the accused persons appeared before the Court and on their appearance, necessary copies of all relevant papers and documents were furnished to them. Finding a prima-facie case for commission of offences, the particulars offences U/S 447/294/323/506/34 I.P.C. were stated and explained to the accused persons to which they pleaded not guilty and claimed to stand trial.

- 4.** In order to bring home the case, the prosecution examined as many as two(2) PWs in the form of:

PW 1 Md. Rahimuddin Badshah (informant)

PW 2 Md. Abdul Kalam @ Abul.

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

Ext. 1 Ejahar.

- 5.** After recording the prosecution witness the accused persons are exempted from recording their statements U/S 313 Cr.P.C. as not implicated. Further the accused persons declined to adduce any evidence in defence.
- 6.** I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused persons. I have also carefully gone through the entire evidence available with the case record.

7. POINTS FOR DETERMINATION OF THE CASE:

- (I)** Whether on 16-11-2019 at about 3 P.M. & 9-30 P.M. at village Moimonsing Gaon under Orang Police Station the accused persons in furtherance of their common intention committed criminal trespass by entering into the compound of the informant Md. Rahimuddin Badshah with intent to commit an offence and thereby committed an offence punishable U/S 447/34 of I.P.C.?
- (II)** Whether on the same day at the same time and same place, the accused persons in furtherance of their common intention, uttered obscene words to the informant and his mother which caused annoyance to others and thereby committed an offence punishable U/S 294/34 of I.P.C.?
- (III)** Whether on the same day at the same time and place the accused persons in furtherance of their common intention voluntarily caused hurt to the said informant and his brother namely Md. Abul Kalam and thereby committed an offence punishable U/S 323/34 I.P.C.?

(IV) Whether on the same day at the same time and same place, the accused persons in furtherance of their common intention, committed criminal intimidation to the said informant and his brother by threatening them with dire consequences which cause alarm to them and thereby committed an offence punishable U/S 506/34 of I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** Now, let us scrutinize the evidence on record. The star witness **PW1 Md. Rahimuddin Badshah**, who is the informant of this case, stated in his deposition that the accused persons are known to him as they are his close relatives. On 16-11-2019 in the evening they had an altercation relating to digging the soil to install a tubewell. Therefore, he and his mother asked the accused persons to stop and regarding that incident they had an altercation wherein they had a slight jostling and in that process his brother namely Md. Abul Kalam sustained minor injuries by way of falling. As such, he lodged this instant against the accused persons. **Ext. 1** is the ejahar and **Ext. 1(1)** is his signature.
- 9.** **PW 2 Md. Abul Kalam** deposed that the informant is his brother and the accused persons are also their brothers and sisters. (close relatives). Two years back one day his mother opposed the accused persons regarding digging of soil to install a tubewell. Therefore, he and his brother(**PW1**) asked them to settle the matter, thereby they had an altercation with the accused persons and they also had jostling and in that jostling he got minor injuries by way of falling.
- 10.** Now, from the material available in the case record it reveals that although in this case the particulars of offences **U/S 447/294/323/506/34** of **I.P.C.** were stated and explained to the accused persons, but the informant (**PW1**) who is the star witness of the case, has disclosed in his examination-in-chief regarding the offence **U/S 447 I.P.C.** that the accused persons are his close relatives. Moreover, he averred that the altercation took place between them regarding the digging of soil for installation of a tubewell. In his cross examination, PW 1 stated that the case was lodged due to misunderstanding only and the same has been

sorted out. **PW 1** does not want to proceed further with the case. He has no grievances against the accused persons if they get acquitted from the case as they are his close relatives and are living with them in the same compound. Moreover, **PW 2** the alleged victim of the case also stated in his cross-examination that he sustained minor injuries by way of falling as jostle took place between them which is not debarred by the prosecution. But he expressed his no objection on acquittal of the accused persons from the case as they have already settled the matter amicably the accused persons being their close relatives. Moreover, as per cross version of PW 1, i.e. the informant, they are living under the same compound being close relatives. As such, the accused persons unlawfully entering into the compound of the informant does not arise here.

- 11.** Pertaining to the offence **U/S 294 IPC** i.e., uttering obscene words, both the **PW1** & PW 2 in their cross-examinations negate the same as well as they are in their examination-in-chief are silent in this context. Although, **PW1** in the FIR stated that the accused persons scolded him and his mother with filthy language but he has not mentioned about the said scolding by the accused persons.
- 12.** Likewise, regarding offence under Section **323 I.P.C.** i.e. causing hurt, both the PWs are silent. To attract the offence **U/S 323** the definition of hurt is defined in **Section 319** of Indian Penal Code wherein pain is one of the ingredients of the such hurt. Both **PW 1 & PW 2** have stated in their examination in chief that there was slight jostling took place between them and in that process, **PW 2** i.e. the alleged victim, the brother of the informant sustained injury by way of falling. None of the PWs have stated anything about the assault or attack made by the accused persons on them.
- 13.** In regard to the offence **U/S 506 I.P.C.** the informant as well as **PW 2** are silent in their examination-in-chief and negate as same in their cross-examination too. Although PW 1 mentioned in the **Ext. 1 FIR** that the accused persons threatened them, PW1 did not disclose the same in his evidence. Rather, **PW 1** in cross examination clearly stated that they are living with the accused persons under the same compound being close relatives. Out of misunderstanding only, this instant case was lodged by **PW 1** against the accused persons. Considering the above aspects, I come to the conclusion that the prosecution has failed to prove the case against the accused persons.

- 14.** Thus, from the above discussion, I find that the prosecution has miserably failed to establish the offences U/S 447/294/323/506/34 of I.P.C. against the accused persons. In the result, the accused persons are not found guilty U/S 447/294/323/506/34 of I.P.C.

ORDER

- 15.** The accused persons namely (1) Md. Faijuddin Ali (2) Musst. Anjuma Khatoon (3) Musst. Ashiya Khatoon and (4) Md. Habibur Rahman are acquitted from the offences U/S 447/294/323/506/34 I.P.C. and they are set at liberty forthwith.

Bail bonds shall remain in force for next 6 months as per provisions of Section 437(A) Cr.P.C.

Given under the hand and seal of this Court on this 15th day of December, 2021 at Udalguri, Assam.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

Dictated and corrected by me:

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

APPENDIX

A. Prosecution witnesses : **PW1 Md. Rahimuddin Badshah
(informant)
PW 2 Md. Abul Kalam**

B. Defence witness : Nil.

C. Documents exhibited : **Ext. 1 FIR**

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.