

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

DHUBRI

CR CASE NO 1286/07

SAYUDUR RAHMAN MANDAL

COMPLAINANT

V.

Haidar Hussain & ORS

ACCUSED

[U/S 500/501 IPC]

PRESENT: N.J.SARMA, JMFC, DHUBRI

APPEARANCE:

FOR THE COMPLAINANT: MR. R. K. JAIN, ADV

FOR THE ACCUSED : MR. A. LATIF, MR. A. BAIRAGI , ADV

DATES:

FOR EVIDENCE: 2/3/10, 12/12/11, 4/4/12,

12/6/12, 1/3/13, 30/5/13,

5/7/13.

FOR ARGUMENT: 6/11/13

FOR JUDGMENT: 20/11/13

JUDGMENT

1.The case of the complainant as revealed from the complaint petition shron off unnecessary details is that:the complainat Sayedur Rahman Mandal has filed the instant complaint case stating inter alia on 21/6/07 that he is a ex-service man of B.S.F. and resident of Hatsingimari –Mankachar subdivision area in particular.He is a reputed person of his society having sound family background and occupying eminent positions in several social and political organization. The accused no.1 Haidar Hussain,accused no.2 Manjit Mahanta,accused no.3 Joyanta Baruah, accused no.4 Jatin Choudhury and accused no.5 Sheikh Badruzzaman are the Editor,Executive Editor,Printer and Publisher and reporter of widely read assamese daily paper “Pratidin”.On 9th May,2007 a news item was published in the said daily as under:

ভূমি বিবাদ : আহত ৪

প্রতিদিন সেৱা, মানকাচৰ, ৮ মে’ : ধুবুৰী জিলাৰ দক্ষিণ শালমাৰা-মানকাচৰ মহকুমাৰ হাটশিঙিমাৰীৰ সমীপৰ খাৰুবাৰু আৰক্ষী চকীৰ অন্তৰ্গত শান্তিপুৰ গাঁৱত আজি সংঘটিত ভূমি বিবাদত ৪ জন লোক আহত হয়। ঘটনাৰ বিৱৰণীত প্ৰকাশ যে শান্তিপুৰ নিবাসী ডাঃ ছিৰাজুল ইছলামে বিতৰ্কিত মাটিত বেৰ দিয়া কাম আৰম্ভ কৰোতে বিপৰীত পক্ষৰ লোকে বাধা দিয়ে। এই ঘটনাত উভয় পক্ষ উত্তেজিত হোৱাত ডাঃ ছিৰাজুল ইছলাম, শ্বৰিফুল ইছলাম (ছিৰাজুল ইছলামৰ ভাতৃ তথা শিক্ষক) এ ইউ ডি এফ কৰ্মী চৈয়দুৰ ৰহমান (অৱসৰপ্ৰাপ্ত বি এছ এফ জোৱান) সহ এটা দলে ৰেজাউল কৰিম মোল্লা (৪০), জহিৰুল ইছলাম (৩২)ক চোকা অস্ত্ৰে আঘাত কৰাত দুয়ো আহত হয়। ৰেজাউল কৰিম মোল্লাৰ হাতৰ তলুৱা কাটি ৰক্তপাত ঘটায়। উভয়েই সম্পৰ্কত মানকাচৰ সমষ্টিৰ বিধায়ক ডাঃ মতিউৰ ৰহমান মণ্ডলৰ ভাগিন। এই ঘটনাত মধ্যস্থতা কৰিবলৈ অহা আনছেৰ আলী (৪০) আৰু ৰফিকুল ইছলাম মোল্লা (২৮) সহ চাৰিজন লোক আহত হয়।

2.Thereafter on 13th May,2007 another news item was paublished in the said paper as under:

‘প্রতিদিন’ৰ সংবাদদাতাক
প্ৰাক্তন জোৱানৰ হত্যাৰ ভাবুকি
মানকাচৰ-হাটশিঙিমাৰীত প্ৰতিক্ৰিয়া

প্রতিদিন সংবাদ, গুৱাহাটী, ১২ মে' : সীমান্ত নিৰাপত্তা বাহিনী (বি এছ এফ)ৰ জোৱান পদৰ পৰা অৱসৰ গ্ৰহণ কৰাৰ পিচত বাহুবল প্ৰদৰ্শন কৰি মাফিয়াৰাজ চলাই থকা ছহিদুৰ বহমান নামৰ লোকজনে 'অসমীয়া প্রতিদিন'ৰ মানকাচৰৰ সংবাদদাতা শ্বেখ-বদৰুজ্জামান ফিৰদৌছীক ভাবুকি দিয়াৰ ঘটনাই সমগ্ৰ অঞ্চলটোত প্ৰতিক্ৰিয়াৰ সৃষ্টি কৰিছে। আৰক্ষীয়ে বহমানক এনে কামৰ পৰা আতৰি থকাৰ বাবে সতৰ্ক কৰি দিছে। চাকৰিৰ পৰা অৱসৰ গ্ৰহণ কৰাৰ পিচত মানকাচৰ আৰু হাটশিঙিমাৰী এলেকাত বাহুবল প্ৰয়োগ কৰি চলোৱা মাফিয়াৰাজৰ জৰিয়তে সৰ্বসাধাৰণ ৰাইজৰ মাজত ত্ৰাসৰ সৃষ্টি কৰা লোকজনে আন কেইবাজনো লোকৰ সৈতে লগ হৈ বলপূৰ্বক মাটি দখলৰ বাবে চলোৱা চেষ্টাৰ বাতৰি 'অসমীয়া প্রতিদিন'ৰ ৯ মে' ৰ সংখ্যাত প্ৰকাশ পাইছিল। ইয়াৰ পিছতে লোকজনে 'অসমীয়া প্রতিদিন'ৰ মানকাচৰৰ স্থানীয় সংবাদদাতা ফিৰদৌছীৰ প্ৰতি প্ৰতিশোধৰ মনোভাবেৰে আগবাঢ়ি আহে আৰু তেওঁক প্ৰাণে মৰাৰ ভাবুকি দিয়ে। আনকি বহমানৰ পুত্ৰ দীপক বহমানে যোৱা ১০ মে'ত পুৱা হাটশিঙিমাৰী বজাৰত ফিৰদৌছীৰ ওপৰত আক্ৰমণ চলাবলৈ উদ্যত হয়। কিন্তু স্থানীয় ৰাইজৰ বাবে সেই চেষ্টা ব্যৰ্থ হয়। তেতিয়া ফিৰদৌছীয়ে এই ঘটনাৰ বিষয়ে দক্ষিণ শালমাৰা মহকুমাৰ মহকুমা আৰক্ষী বিষয়া প্ৰদীপ কুমাৰ ব্ৰহ্মক ঘটনাৰ বিষয়ে জনোৱাত বহমান আৰু তেওঁৰ পুত্ৰক মাতি আনি বিষয়টো মীমাংসা কৰিব বিচাৰে যদিও আশ্চৰ্যজনকভাবে বহমানে আৰক্ষী বিষয়াজনৰ সন্মুখতে ফিৰদৌছীক 'হাত কাটি দিম' বুলি ভাবুকি দিয়ে। অৱশ্যে আৰক্ষী বিষয়াজনে হস্তক্ষেপ কৰাত সেয়া শাম কাটে। কিন্তু বি এছ এফৰ অৱসৰপ্ৰাপ্ত জোৱানজনৰ এনে কাৰ্যত সমগ্ৰ অঞ্চলটোত তীব্ৰ প্ৰতিক্ৰিয়াৰ সৃষ্টি হৈছে।

3.The imputations made in the news items against the complainant is false and concocted .The complainant never assaulted Reazul Karim Mollah and Jahirul Islam accompanied by others as reported.The complainant is neither a mafia nor he is running mafiaraj showing muscle power as reported.His son Dipak Rahman neither tried to assault the accused no.5 nor threatened to cut his hands.The complainant sent clarification on 10/5/2007 through courier service and on 19/5/07 by e-mail and on 21/05/07 by Regd with A/D to the accused no.1.But none of aforesaid clarification were published by the accused persons.The aforesaid news items were published with an intention to harm the carrer and reputation of the complainant.The publication of the said news items have caused damage to the repuation of the complainant in the society and and his political career is also effected.So, he has filed the instant case u/s 500/501 IPC against the accused persons.

4.On receipt of the instant complaint case My.Id.prdecessor examined the complainant and his witneeses.Thereafter on finding prima facie materials u/s 500/501 IPC summons were issued against the accused persons.On their appearance the accused persons were supplied all the relevant documents and particulars of offences u/s 500/501 IPC were explained to them to which they pleaded not guilty and claimed to be tried.The complainant in order to establish its case examined as many as 5 witnesses.The accused persons on their examination u/s 313 CRPC denied all the allegations leveled against them.The accused persons have not adduced any evidence, their plea is of total denial.I

have heard the Id.counsels of both the sides at length and perused the evidences available on record carefully to arrive at a just decision of the case.

5.POINTS FOR DETERMINATION:

(i) Whether the accused persons on 9th May, 2007 and on 13th May, 2007 published news in Asomiya Pratidin to cause defamation to the complainant and thereby committed an offence u/s 500 IPC?

(ii) Whether the the accused persons on 9th May, 2007 and on 13th May, 2007 printed matter against the complainant having good reason to believe that the said news were defamatory and thereby committed an offence u/s 501 IPC?

6.DISCUSSION,DECISION AND REASONS FOR DECISION:

Now let us peruse the evidences available on record in order to determine the points at hand.

(i) PW1, Sayedur Rahman Mandal in his examination in chief has stated that he has filed the instant case against the accused persons Hayeder Hussain, Manjit Mahanta, Joyanta Baruah, Jotin Choudhury and Sk Badruzzaman. The first 4 persons are the office bearer of "Asomiya Pratidin" and Badruzzaman is the local reporter of the said paper. The accused persons published news items dated 9/5/2013 and 13/5/2013 against him. Those are Ext1 and Ext2 respectively. Both the said news items are false. He was local president of Assam Gana Parishad (hereinafter referred as AGP) and also related to sports. He also worked as president of Hatsingimari Jatiya Vidyalaya in two terms. Ext6 is the certificate given by the principal of the said school Azior Rahman and Ext6(1) is his signature known to him. He was also the president of Manik Sarkar High School and Ext7 is the certificate given by the head master of the said school. Ext7(1) is his signature known to him. Ext8 is the certificate given to him by headmaster of Hatsingimari High School, Ext9 is the certificate given by AGP and Ext 9(1) is the signature of Ali Hussain the convenor of that party. Ext 10 is the letter given to him by the Asst. Executive Engineer on 16/12/05 as he was a member Mankachar Electrical subdivision co-ordinator committee. He was also a member of the Hatsingimari Sakha sahitya sabha. Ext11 is the certificate issued by Mubarek Ali Sk and Ext11(1) is his signature. He is associated with several social organization. The publication of Ext1 and Ext2 have harmed his reputation in the society. He has sent letter regarding publication of the Ext 1 and Ext2 to the accused no.1 seeking clarification but he has not done anything. The Ext 3 and the Ext4 are the letter written to the accused persons and Ext3(1) and Ext4(1) are his signatures. He has sent the Ext3 by e-mail and Ext5 is the said e-mail receipt. So he has filed the instant case. On his cross examination he has admitted that he is class (ix) passed. He worked in B.S.F. He entered the service as constable and retired on 2000 as Havilder. The days of the incident are 9/5/07 and 13/5/07. He does not remember on which date he filed the case but it is mentioned as 21/06/07 in his petition. He has not stated in his complaint petition regarding the delay in filing

the complaint petition. He has admitted that a SSM 99/07 case was registered against him, Dr. Sirajul Islam and Sariful Islam for assaulting Reajul Karim Mullah and Johirul Islam with sharp weapon. He is not aware of the result of the said case. The accused Badriujjaman filed a complaint before the SDPO Hatsingimari that they have tried to kill him. The SDPO called him and his son Dipak due to publication of the news on 8/5/07 in Pratidin to settle the dispute. However, the dispute was not settled. The complaint filed by the accused Badruzzaman was published on 12/05/07 in the pratidin paper. He does not have any proof regarding the receipt of Ext3 and Ext5 by the accused no.1. He has admitted of obtaining the Ext6,7,8,9, and ext11 after the publication of the news items. He has admitted that he does not know the accused persons 1 to 4 prior to filing of the case. They also do not know him. The accused no.5 has built his house in Hatsingimari 15/20 years ago. He does not have any business relationship with him. He knows him as both belong to the same place. He has admitted that he has still holding the membership of H.M. Road suraksha committee, mankachar Electricity co-ordination committee and social forest suraksha committee. He has not been member of other organization due to elapse of time. He has denied all the suggestions put to him.

(ii) Pw2, Anarud Zaman in his examination in chief has stated that he has been practicing as advocate for last 22 years and he knows the complainant for last 22 years. He knows the accused no.5. The complainant worked in B.S.F. and took voluntary retirement. He has a good image in the society and associated with no. of educational institution. He was the president of Manik Sarkar High School, Hatsingimari High School, two times president of Hatsingimari Jatiya Bidalaya and members of A.S.E.B co-ordination committee and social forest committee. He also used to solve local disputes. He is also associated with political party AGP. He is also invited by the S.D.O sometimes. The Pratidin paper published a news item in May, 2007 against the complainant that he was running mafia raj. Another news was published earlier casting aspersion on the complainant. The image of the complainant has suffered due to publication of the said news items. According to him the complainant is not a person as depicted in the said news items. On his cross examination he has admitted that he has been intimidated by the complainant that he worked in the B.S.F and took voluntary retirement. He does not know since when and for how long the complainant was a member of the social organization as stated by him. He knows the complainant as his neighbour. He does not know Reajul Karim and Jahirul Islam by their names. He has heard that a case was registered in the p.s regarding assault by the complainant on Jahirul Islam and Reajul Karima with sharp weapon. He does not know whether the complainant himself went to the police station or police took them. He does not know the no. of the case. He heard that police filed final report on compromise of both the parties but does not have any personal knowledge about the case. He heard from the son of the complainant that a false case was filed against them but he himself did not go to the place of occurrence to know the actual fact. The

Ext1 and Ext2 were published regarding the said matter. He is not a regular reader of Asomiya pratidin and he read the same from a shop in Hatsingimari. He has not written any letter to the Editor seeking explanation of the said news items. He is not associated with any public organization. He also does not know about the name of the members of the public organization in which the complainant is associated. He has denied all the suggestion put to him.

(iii) Pw3, Lutfur Rahman in his examination in chief has stated that he knows the complainant of the instant case Saidur Rahman. He does not know the accused persons Hyder Hussain, Monjit Mahanta, Jatin Choudhury and Joyanta Bora personally but has read their names in the paper. He knows the accused Badruzzaman as reporter of Assamese Pratidin. He earlier worked in "Namani Asom Jatiya Vidyalaya". The complainant is known by almost all the persons of locality. He is associated with many social and educational organizations. He was earlier B.S.F. personnel and after retirement associated with many social organizations. He was also associated with political party A.G.P. The pratidin paper published 3 news items and he read all of them. The ext1 published about a quarrel which never took place and the news published by ext2 is also false. The news published on 13/5/2007 in Asomiya Pratidin mentioned ex-soldier by which they mean the complainant. The said news is false. No such incident took place. The complainant was the president of Sarbajanin Jatiya Vidyalaya and a leader of A.G.P. He is also associated with Hatsingimari H.S. school and social forest. On his cross examination he has admitted that he does not have any document to substantiate his claim that the complainant is associated with any social organization. He does not know when the accused entered in the service in B.S.F. and for how long he worked there. He does not have the knowledge regarding the institutions in which the complainant is associated, he has heard about it from people. Ext1 is of 8th May, 2007 and Ext2 is 12th May, 2007. His house is at Bhutiadanga and it is 6-7 km from the village Santipur. The Ext1 and Ext2 is mentioned about Shantipur village. He has at first admitted that a criminal case was filed against the complainant at Kharuabhandha village. Later on, stated that no case was registered there. He has admitted that he does not know regarding the dag no., patta no., khatian and owner of the land mentioned in Ext1 and Ext2. He does not know the persons Reajul Karim and Jahirul Mollah mentioned as injured in Ext1. He has also admitted that he has not tried to find out the truth of Ext1 and Ext2. He has also admitted of his ignorance regarding the Editor and Publisher of Pratidin paper. He has denied all the suggestion put to him.

(iv) Pw4, Imdadul Islam Mandal in his examination in chief has stated that he knows the complainant and he has filed the case against the accused persons Editor Hyder Hussain, publisher Jayanta Barua and local correspondent of Mankachar Sk. badruzzaman Firdausi. The complainant earlier works in B.S.F. After retirement he was engrossed in social work. On 8/5/07 there was dispute regarding land matter between Dr. Sirajul Islam, Jahirul Islam and Reajul Karim Mollah. On 9/5/07 the accused published a news imputing the

complainant i.e Ext1. On 10/5/07 the son of the complainant called the accused Badruzzaman and the accused without stopping there gave complaint to the S.D.P.O that Dipak threatened him to assault. The SDPO called Dipak to his quarter and he, the complainant, Dipak and some other persons went to SDPO. After that the Ext 2 was published. He then has stated about Ext12 i.e news published in Azir Dainik Batori and Ext13 is the news published on 14/2/2009 stating that Ext1 and Ext2 are false. He has also stated about a photocopy in which Ajit Kr. Bhuyan has discharged Badruzzaman from the local correspondent of Mankachar. On his cross examination he has stated that he is an Asst. teacher of Gotabari L.P school. He has admitted that he is not ordered by the court to bring the papers he has brought. He has brought the papers to prove the case of the complainant. The school in which he works is at a distance of 7-8 km. He was not present in the place of occurrence as mentioned in Ext1. He has admitted that he does not know from which source the editor has got the news and published them. He does not have any document that the news were published by the local correspondent. He has admitted that at present the accused Badruzzaman has been giving news in PRATIDIN paper. He does not know who published the Ext12. He has denied the suggestion put to him.

(v) Pw5 Mubarak Ali Sk in his examination in chief has stated that he knows the complainant and he read Asomiya Pratidin. The complainant worked in B.S.F. After retirement he is associated with many social organization. He is the president of Hatsingimari Sarbajanin Jatiya Vidyalaya, president of Hatsingimari Jatiya Vidyalaya and also associated with Hatsingimari Sakha Sahitya Sabha and many social organization. He noticed the news in Ext1 but did not notice the news in Ext2. He has felt that in Ext1 adverse remark was passed against the complainant. He is unaware about the implication against the complainant in Ext1 as he was not present in the place of occurrence. On his cross examination he has admitted that he does not know what news item was published in Asomiya Pratidin in the year 2007. He has denied the suggestion put to him.

7. Now, let us first understand what defamation is:

Defamation—also called **calumny**, **vilification**, or **traducement**—is the communication of a false statement that harms the reputation of an [individual](#), [business](#), [product](#), [group](#), [government](#), [religion](#), or [nation](#). Most jurisdictions allow legal action to deter various kinds of defamation and retaliate against groundless criticism.

Under [common law](#), to constitute defamation, a claim must generally be false and have been made to someone other than the person defamed.^[1] Some [common law](#) jurisdictions also distinguish between spoken defamation, called **slander**, and defamation in other media such as printed words or images, called **libel**.^[2]

8. In Indian Penal Code Defamation is defined in sec 499 IPC as:

Section 499 in The Indian Penal Code, 1860

499. Defamation.-- Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says-" Z is an honest man; he never stole B' s watch", intending to cause it to be believed that Z did steal B' s watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B' s watch. A points to Z, intending to cause it to be believed that Z stole B' s watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B' s watch, intending it to be believed that Z stole B' s watch. This is defamation, unless it fall within one of the exceptions. First Exception.- Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.- Public conduct of public servants.- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.- Conduct of any person touching any public question.- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration It is not defamation in A to express in good faith any opinion whatever respecting Z' s conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested. Fourth Exception.- Publication of reports of proceedings of courts- It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. Explanation.- A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section. Fifth Exception.- Merits of case decided in Court or conduct of witnesses and others concerned. It is not defamation to express in good faith any opinion whatever respecting

the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further. Illustrations

(a) A says-" I think Z' s evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z' s character as it appears in Z' s conduct as a witness, and no farther.

(b) But if A says-" I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which expresses of Z' s character, is an opinion not founded on Z' s conduct as a witness. Sixth Exception.- Merits of public performance.- It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther. Explanation.- A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public. Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z-" Z' s book is foolish; Z must be a weak man. Z' s book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z' s character only so far as it appears in Z' s book, and no further.

(e) But if A says-" I am not surprised that Z' s book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z' s character is an opinion not founded on Z' s book. Seventh Exception.- Censure passed in good faith by person having lawful authority over another.- It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates. Illustration A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception. Eighth Exception.- Accusation preferred in good faith to authorised person.- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject- matter of accusation.

Illustration If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z' s master; if A in good faith complains of the conduct of Z, a child, to Z' s father- A is within this exception. Ninth Exception.- Imputation made in good faith by person for

protection of his or other's interests.- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good. Illustrations

(a) A, a shopkeeper, says to B, who manages his business-" Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception. Tenth Exception.- Caution intended for good of person to whom conveyed or for public good.- It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

The punishment defined in sec 500 as under:

500. Punishment for defamation.-- Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 501 in The Indian Penal Code, 1860:

501. Printing or engraving matter known to be defamatory.-- Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

9. On careful reading of the relevant provisions of defamation it is evident that to attract the offence of the defamation the complainant must prove the following ingredients:

1. **The statement must be defamatory:**
2. **The statement must refer to the complainant:**
3. **There must be publication and**
4. **The statement must be false.**

10. In the instant case the ld.counsel for the complainant has relied on the following Judgments to buttress his claim:

- (i) 2012(6) Guwahati Law Journal (NOC) 270;
- (ii) AIR 1952 MYSOREB 123;
- (iii) 1994 CRLJ 3510 Kant;
- (iv) 1962(2) CrLj 142;
- (v) AIR 1971 SC 1567;
- (vi) (1970) 1 SCC 590;

The ld.counsel for the accused has also relied on following Judgments to prove his contention that the accused persons not guilty u/s 500/501 IPC.

- (i) 2009 CRI L.J (NOC) 222(BOM);
- (ii) 2008 CRI L.J. 2301;
- (iii) 2008 CRI L.J 4221;
- (iv) 2008 CRI L.J. 845;

(v)AIR 1988 SUPREME COURT 1274;

10.Now,let us appreciate the evidences adduced by the complainant vis a vis the points at hand in the light of the Judgments relied on by the ld.counsels of both the parties.In the instant case the complainant has based his case on the basis of Ext1 and Ext2 i.e News published in Asomiya Pratidin.On careful perusal of Ext1 it is evident that it refers to an incident regarding dispute of the complainant with some people.From Ext2 it is evident that it refers to an incident involving the complainant and his son with the accused no.5 Badruzzaman and it also speaks about happening of the incident in front of S.D.P.O of that locality.Let us have glance on Ext1 and Ext2 before deciding the points for determination in proper perspective.

Ext1 is as under:

ভূমি বিবাদ : আহত ৪

প্রতিদিন সেৱা, মানকাচৰ, ৮ মে' : ধুবুৰী জিলাৰ দক্ষিণ শালমাৰা-মানকাচৰ মহকুমাৰ হাটশিঙিমাৰীৰ সমীপৰ খাৰুবাৰু আৰক্ষী চকীৰ অন্তৰ্গত শান্তিপুৰ গাঁৱত আজি সংঘটিত ভূমি বিবাদত ৪ জন লোক আহত হয়। ঘটনাৰ বিৱৰণীত প্ৰকাশ যে শান্তিপুৰ নিবাসী ডাঃ ছিৰাজুল ইছলামে বিতৰ্কিত মাটিত বেৰ দিয়া কাম আৰম্ভ কৰোতে বিপৰীত পক্ষৰ লোকে বাধা দিয়ে। এই ঘটনাত উভয় পক্ষ উত্তেজিত হোৱাত ডাঃ ছিৰাজুল ইছলাম, শ্বৰিফুল ইছলাম (ছিৰাজুল ইছলামৰ ভাতৃ তথা শিক্ষক) এ ইউ ডি এফ কৰ্মী চৈয়দুৰ ৰহমান (অৱসৰপ্ৰাপ্ত বি এছ এফ জোৱান) সহ এটা দলে ৰেজাউল কৰিম মোল্লা (৪০), জহিৰুল ইছলাম (৩২)ক চোকা অস্ত্ৰে আঘাত কৰাত দুয়ো আহত হয়। ৰেজাউল কৰিম মোল্লাৰ হাতৰ তলুৱা কাটি ৰক্তপাত ঘটায়। উভয়েই সম্পৰ্কত মানকাচৰ সমষ্টিৰ বিধায়ক ডাঃ মতিউৰ ৰহমান মণ্ডলৰ ভাগিন। এই ঘটনাত মধ্যস্থতা কৰিবলৈ অহা আনছেৰ আলী (৪০) আৰু ৰফিকুল ইছলাম মোল্লা (২৮) সহ চাৰিজন লোক আহত হয়।

Ext2 is as under:

‘প্রতিদিন’ৰ সংবাদদাতাক
প্ৰাক্তন জোৱানৰ হত্যাৰ ভাবুকি
মানকাচৰ-হাটশিঙিমাৰীত প্ৰতিক্ৰিয়া

প্রতিদিন সংবাদ, গুৱাহাটী, ১২ মে' : সীমান্ত নিৰাপত্তা বাহিনী (বি এছ এফ)ৰ জোৱান পদৰ পৰা অৱসৰ গ্ৰহণ কৰাৰ পিচত বাহুবল প্ৰদৰ্শন কৰি মাফিয়াৰাজ চলাই থকা ছহিদুৰ বহমান নামৰ লোকজনে 'অসমীয়া প্ৰতিদিন'ৰ মানকাচৰৰ সংবাদদাতা শ্বেখ-বদৰুজ্জামান ফিৰদৌছীক ভাবুকি দিয়াৰ ঘটনাই সমগ্ৰ অঞ্চলটোত প্ৰতিক্ৰিয়াৰ সৃষ্টি কৰিছে। আৰক্ষীয়ে বহমানক এনে কামৰ পৰা আতৰি থকাৰ বাবে সতৰ্ক কৰি দিছে। চাকৰিৰ পৰা অৱসৰ গ্ৰহণ কৰাৰ পিচত মানকাচৰ আৰু হাটশিঙিমাৰী এলেকাত বাহুবল প্ৰয়োগ কৰি চলোৱা মাফিয়াৰাজৰ জৰিয়তে সৰ্বসাধাৰণ ৰাইজৰ মাজত ত্ৰাসৰ সৃষ্টি কৰা লোকজনে আন কেইবাজনো লোকৰ সৈতে লগ হৈ বলপূৰ্বক মাটি দখলৰ বাবে চলোৱা চেষ্টাৰ বাতৰি 'অসমীয়া প্ৰতিদিন'ৰ ৯ মে' ৰ সংখ্যাত প্ৰকাশ পাইছিল। ইয়াৰ পিছতে লোকজনে 'অসমীয়া প্ৰতিদিন'ৰ মানকাচৰৰ স্থানীয় সংবাদদাতা ফিৰদৌছীৰ প্ৰতি প্ৰতিশোধৰ মনোভাবেৰে আগবাঢ়ি আহে আৰু তেওঁক প্ৰাণে মৰাৰ ভাবুকি দিয়ে। আনকি বহমানৰ পুত্ৰ দীপক বহমানে যোৱা ১০ মে'ত পুৱা হাটশিঙিমাৰী বজাৰত ফিৰদৌছীৰ ওপৰত আক্ৰমণ চলাবলৈ উদ্যত হয়। কিন্তু স্থানীয় ৰাইজৰ বাবে সেই চেষ্টা ব্যৰ্থ হয়। তেতিয়া ফিৰদৌছীয়ে এই ঘটনাৰ বিষয়ে দক্ষিণ শালমাৰা মহকুমাৰ মহকুমা আৰক্ষী বিষয়া প্ৰদীপ কুমাৰ ব্ৰহ্মক ঘটনাৰ বিষয়ে জনোৱাত বহমান আৰু তেওঁৰ পুত্ৰক মাতি আনি বিষয়টো মীমাংসা কৰিব বিচাৰে যদিও আশ্চৰ্যজনকভাৱে বহমানে আৰক্ষী বিষয়াজনৰ সন্মুখতে ফিৰদৌছীক 'হাত কাটি দিম' বুলি ভাবুকি দিয়ে। অৱশ্যে আৰক্ষী বিষয়াজনে হস্তক্ষেপ কৰাত সেয়া শাম কাটে। কিন্তু বি এছ এফৰ অৱসৰপ্ৰাপ্ত জোৱানজনৰ এনে কাৰ্যত সমগ্ৰ অঞ্চলটোত তীব্ৰ প্ৰতিক্ৰিয়াৰ সৃষ্টি হৈছে।

The pw4 has also exhibited a news published in Asomiya pratidin i.e Ext13. On careful perusal of the cross examination of Pw1 i.e the complainant he has admitted that a SSM 99/07 case was registered against him, Dr. Sirajul Islam and Sariful Islam for assaulting Reajul Karim Mullah and Johirul Islam with sharp weapon. He is not aware of the result of the said case. The accused Badriujjaman filed a complaint before the SDPO Hatsingimari that they have tried to kill him. The SDPO called him and his son Dipak due to publication of the news on 8/5/07 in pratidin to settle the dispute. However, the dispute was not settled. The complaint filed by the accused Badruzzaman was published on 12/05/07 in the pratidin paper. From cross examination of Pw2, pw3 and pw4 the said fact was revealed. The pw4 though has exhibited the Ext 13 but failed to prove the same by adducing evidence. In this regard the ld. counsel for the accused have relied on the Judgment reported in AIR 1988 SUPREME COURT 1274. In the said Judgment the HON'BLE APEX COURT observed that "**We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspapers is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspapers report cannot be treated as proved of the facts reported therein.**

33. It is now well-settled that a statement of fact contained in a newspapers is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. The accused should have therefore produced the persons in whose presence the seizure of the stolen money from appellant No. 2's house at Mangalore was

effected or examined the press correspondents in proof of the truth of the contents of the news item. The question as to the admissibility of newspaper reports has been dealt with by this Court in Samant N. Balakrishna v. George Fernandez and Ors. MANU/SC/0270/1969 : [1969]3SCR603 . There the question arose whether Shri George Fernandez, the successful candidate returned to Parliament from the Bombay South Parliamentary Constituency had delivered a speech at Shivaji Park attributed to him as reported in the Maratha, a widely circulated Marathi newspaper in Bombay, and it was said:

A newspaper report without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. “

11. In the instant case if for argument sake if we assume the Ext1 and Ext2 are produced from proper custody and thus admissible in evidence u/s 81 Evidence Act, but the accused persons are also entitled to get benefit of First Exception in sec 499 IPC . Now, let us have look at the First Exception as described in sec 499 IPC:

First Exception.- Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.”

12. In the instant case from the testimonies of the pws it is evident that Ext1 and Ext2 is based on certain true facts and as the same is related to the complainant who is related to different social organization directly related to people .The term “public” includes any class of the public or community. Thus ,public men such as generals, judges, members of the public bodies, authors, lawyers, doctors, and in fact all other professional men, whose acts concern the welfare of the public would come under it, so that the publication of truth concerning them would be protected if it is for public good.” In the instant case the complainant has himself stated that he associated with social organization and his acts concern the welfare of public. On the basis of above discussion ,I am of considered opinion that the accused persons are entitled to get benefit of doubt and thus acquitted from the charges u/s 500/501 IPC .They are set at liberty forthwith .The bail bonds are extended to six months from today.

13. Pronounced by me in this open Court under the hand and seal of this Court on this 20th day of November, 2013.

(NAYAN JYOTI SARMA)