

**IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI**

**Sessions Case No. 50/2016**

U/s.341/323/507/34 IPC

G.R. No.806/2010

**State of Assam**

**- Vs -**

**1.Johirul Islam**

**2.Hazarat Ali**

Committing Magistrate : Sri B. Medhi, Judicial Magistrate 1<sup>st</sup> Class-cum- Munsiff No.1, Dhubri.

Present : Sri Rajib Goswami, AJS  
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.  
Sri Shaiyeb Ali, Advocate for the defence.

Date of Evidence : 30-08-2013, 03-01-2014, 24-06-2014, 29-10-2014, 20-08-2015,  
and 25-07-2016.

Argument Heard : 07-11-2016 & 22-11-2016

Date of Judgment : 25-11-2016

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

The prosecution case in brief is that one Ujufa Khatun had lodged the FIR at Mankachar P.S. to the effect that on 04-02-2010 at around 6 p.m. accused Hazarat Ali over phone had hurled obscene abuses at the married daughter of the informant threatening to kidnap her. Again on 06-02-2010 accused Hazarat Ali over phone had threatened to kidnap her daughter and also had threatened to assault her son-in-law. On the same day at around 9 a.m. when the younger brother of the informant had gone to their land, accused persons armed with both sharp edged and blunt weapons had confronted her brother, Momirul and started assaulting him. Her brother was saved at the timely intervention of persons present in the neighbourhood at the relevant point of time.

2. Upon the FIR a case was registered by the O.C, Mankachar P.S. vide Mankachar P.S. Case No.39/2010 u/s.147/148/149/341/447/326/507 of IPC against the accused persons namely (1) Hazarat Ali (2) Mostafa Sk (3) Geda Sk (4) Joynal Abedin (5) Zahirul Islam (6) Ismail Hussain (7) Moktar Hussain and (8) Abu Siddique. After investigation charge sheet was filed u/s.341/323/507/34 of IPC against accused persons namely Johirul Islam, Joynal Abedin and Hazarat Ali.

3. Accused persons namely Johirul Islam, Joynal Abedin and Hazarat Ali appeared before the Court. Particulars of offences had been explained to accused persons u/s.341/323/507/34 of IPC since all these offences were summons procedure to which, accused persons pleaded not guilty and claimed to be tried. The charges against the accused Joinal Abedin abated on his death.

4. Prosecution had examined as many as 9 (nine) P.Ws including I.O. & M.O. Accused persons were examined generally on the circumstances coming up against them in the evidence of P.Ws u/s.313 of Cr.PC. The accused persons pleaded total denial and declined to adduce any evidence in their defence. Since a cross case No.131/2015 u/s. 302 of IPC had been pending for trial in the Court of Sessions resulting from the same incident, the present case had also been committed to the Court of Sessions, Dhubri to be tried simultaneously.

Heard learned advocates.

5. **Points for determination:**

*1. Whether accused persons in furtherance of their common intention had wrongfully restrained informant Momirul Islam @ Mubarak Hussain, the younger brother of informant Ujufa Khatun on his paddy land at village Namargaon?*

*2. Whether the accused persons in furtherance of their common intention voluntary caused hurt to Momirul Islam, the younger brother of informant.*

*3. Whether the accused persons in furtherance of their common intention gave criminal intimidation through anonymous communication?*

#### **DECISIONS AND REASONS THEREOF**

6. PW-1 Ujufa Khatun is the informant in the case. According to PW-1 initially one day in the evening hours accused persons had disconnected the electric connection to their house and attempted to kidnap her daughter Fulbhanu. She having raised alarm accused persons had fled away. Two days later when Momirul, her younger brother had gone to plough the paddy land , accused persons had assaulted him and for which Momirul had undergone treatment at Mankachar hospital.

In her cross-examination PW-1 had admitted not having seen the incident since at the relevant point of time she was at her house located two kilometer away from the place of occurrence. One person had died in the incident and deceased was a relative of accused persons. According to PW-1 accused persons had also filed a case against her

family members on the same incident. She denied the suggestion that she had not stated about Khaleque and Jahirul threatening her over phone and later about accused persons disconnecting electricity of her house in the evening in order to kidnap her daughter. Now the evidence of PW-1 is hearsay evidence.

7. PW-2 Fazlur Rahman known to both accused persons and informant. On the day of the alleged occurrence Molu, the younger brother of the informant and accused persons had got into a clash on the land of accused Jahirul. Later when he had gone to the place of occurrence he had seen Jahirul, Hazarat are lying injured on the ground.

8. PW-3 Nur Bhanu Begum @ Bibi had deposed that there had been a clash between Molu and accused persons. But she had not seen the incident.

In her cross-examination she stated about being aware of the death of Saidur, who was the relative of the accused persons.

9. PW-4 Abu Siddique had stated about knowing both accused persons and informant. According to PW-4 there had been a clash between accused persons and Molu on the day of the alleged occurrence and he is aware about the death of one Saidur, a relative of accused persons in the incident.

10. PW-5 Kuddus Ali also deposed about having heard that there had been a clash between the accused persons and Molu on the day of the alleged occurrence. PW-5 also was aware about death of Saidur, a relative of accused person in the said incident.

11. PW-6 Sofior Rahman had been ploughing his land near the place of occurrence on the day of the alleged occurrence and having seen commotion on the land of Jahirul, he had come running to the place of occurrence and had seen Molu with bleeding injuries on his head and his hands were fractured. PW-6 had taken to Kukurmara PHC.

In his cross-examination the PW-6 had said that injured Molu is his son-in-law and the place of occurrence was 500 meters away from his land and there were 20 to 25 persons present on the place of occurrence at the relevant point of time. He denied the suggestion that he had not stated before the I.O. regarding the incident having taken place on the land of Jahirul. According to PW-6 one Saidur Rahman, relative of the accused persons had died in the incident. PW-6 denied having seen the incident and also expressed ignorance as to who were the persons present at the relevant point of time at the place of incident and also admitted being aware of a case that had been filed by accused persons against them.

12. PW-7 Fulbhanu Begum stated being the daughter of informant Usufa Khatun. According to PW-7 Hazarat Ali had hurled obscene abuses over phone at her husband, Abdul Klaleque. Thereafter, her husband on suspicion had subjected her to cruelty. PW-7 having divulged about the conduct of Hazarat Ali to her maternal uncle Momirul, Majar and Fulmiah. They had gone to the house of Hazarat to confront him as to his such conduct. There at the house of Hazrat Jahirul, Joynal, Muktar, Mustafa had assaulted Momirul, Majar and Fulmiah. As a result of which Momirul had received injuries on his head, Majar Ali's hand got fractured.

In her cross-examination she stated being with her parents on the date of alleged occurrence. According to PW-7 she had not known Hazarat earlier. She also stated about being aware of death of Saidur in the said incident. The present FIR had been lodged on the day of the alleged occurrence. She denied the suggestion that she had not stated before the I.O. about her maternal uncle Momirul coming to the house of accused persons in connection with the incident with her and the incident of assault having taken place on the way on the road. PW-7 admitted not having seen the incident but she was aware about accused persons filing a case against her maternal uncle in connection with the death of Saidur Rahman.

13. PW-8 Dr. Sadrul Ula- Khandakar is the M.O. According to him he had issued the injury report on 06-02-2010 he had examined one Mobarak Hussain, aged-34 years at 10:30 a.m. at Mankacher CHC and found one lateral injury on frontal scalp measuring about 2"X 1/2"X1/2" and one lacerated injury on the forearm with size 2 1/2" X 1/2" X 1/2".

In his cross-examination he had admitted to not having examined the injured on police requisition.

Now above is the threadbare discussion on evidence on record.

14. It appears from the evidence above that the evidence of all PWs is hearsay evidence. The only PW to have said that he had been present near the place of occurrence and had seen Molu with bleeding injury on his head is PW-6. But PW-6 later in his cross-examination had admitted to being around 500 meters away from the place of occurrence and also admitted having not seen the alleged occurrence. The prosecution evidence in fact reveals that both Jahirul and Hazarat had been seen lying injured at the place of occurrence and that one Saidur, a relative of accused persons had died in the alleged incident. The evidence of M.O. shows one Mubarak Hussain with injuries in his scalp but none of the PWs

had been able to throw light as to who was the perpetrator of the alleged assault on Mubarak Hussain. The evidence is silent with regard to the identity of injured Mubarak. PW-6 who stated to have seen Molu with bleeding injuries later denied having seen any such incident at all. Considering the prosecution evidence has supported the fact of both accused persons having been seen lying injured on the ground, the fact of the accused persons being involved in the alleged assault on the victim Molu, the younger brother of the informant is remote.

15. Thus the prosecution has failed to establish the case against accused persons namely Jhirul Islam and Hazarat Ali beyond all reasonable doubt. Both the accused persons are acquitted of charges u/s. u/s.341/323/507/34 of IPC against the accused persons and set at liberty forth with.

Given under my hand and seal of this Court on this 25<sup>th</sup> day of November, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

## APPENDIX

A. Prosecution Witnesses.

PW-1 - Musstt. Ujufa Khatun  
PW-2 - Md. Fazlur Rahman  
PW-3 - Musstt. Nur Bhanu Begum @ Bibi  
PW-4 - Md. Abu Siddique  
PW-5 - Md. Kuddush Ali  
PW-6 - Md. Sofior Rahman  
PW-7 - Musstt. Fulbanu Begun  
PW-8 - Dr. Sadrul Ullah Khandakar  
PW-9 - Insp. Tarun Ch. Das

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1 - Charge Sheet.

D. Defence Exhibit

Nil

Sessions Judge, Dhubri