

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
BILASIPARA.**

GR 2414 OF 2015

U/S 341/352/506/34 I.P.C.

STATE OF ASSAM.....PROSECUTION SIDE.

-Versus-

1. HAZRAT ALI

2. MAHAMUDA BIBI.....DEFENCE SIDE.

PRESENT: - SMTI SANGITA HALOI, AJS

Sub Divisional Judicial Magistrate (M),
Bilasipara.

COUNSELS:

FOR the Prosecution: - SRI SOHRAB ALI SEIKH, Ld. APP.

FOR the Defence:- SRI AJIBAR RAHMAN, Ld. Counsel.

EVIDENCE recorded on:- 23.05.19, 19.09.19 & 14.02.2020.

STATEMENT DEFENCE recorded on:- 03.03.2020.

ARGUMENT heard on: – 18.03.2020 & 04.11.2020.

JUDGMENT delivered on: – 04.11.2020.

J U D G M E N T

1. **THE PROSECUTION STORY** as unfolded by the ejahar filed by Sri Ansar Ali is that on 16.06.15 at about 9 PM when he was at his home then the accused persons namely Abdul Aziz, Hazrat Ali and Mahamuda Bibi entered into his house at Azara Salmara and assaulted him physically. Accordingly he got injured on his body. When he started hue and cry then accused persons fled away from his house and on the same day accused Mahamuda also assaulted him physically. Finding no alternatives, he left his house and now he is residing at Kalipara as because the accused persons several times threatened him to kill him. About few

days prior to filing this case the accused persons again threatened to kill him. Hence, he filed this case.

2. On receipt of the FIR, Bilasipara P.S Case No.1568/15 u/s 341/323/506/34 I.P.C. was registered and I/O A.R. Mondal investigated into the case. Subsequently the charge sheet was filed u/s 341/352/506 IPC against the accused persons.

3. After receipt of Charge-sheet cognizance was taken against the charge sheeted accused persons under above-mentioned sections and then after compliance with S.207 Cr.P.C and on hearing Id. Counsels for both sides, particular of offences u/s 341/352/506/34 I.P.C were read and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Prosecution examined 4(four) witnesses in support of this case. The evidence of the prosecution side closed. Statement of the accused persons are recorded u/s 313 Cr.P.C. where defence took the plea of complete denial and denied to adduce evidence.

Points for Determination

I. Whether the accused persons on 16.06.15 at about 9 PM at Azara Salmara under Bilasipara P.S.in furtherence of their common intention wrongfully restrained the informant and thereby committed an offence punishable u/s 341/34 IPC?

II. Whether the accused persons on same date, time and place in furtherence of their common intention assaulted or used criminal force to the informant otherwise than on grave provocation and thereby committed an offence punishable u/s 352/34 IPC?

III. Whether the accused persons on same date and place in furtherence of their common intention threatened the informant and thereby committed an offence punishable u/s 506/34 IPC?

4. Heard Id. Counsels for both sides. Perused evidences on record. My decisions with reasons on the above framed points are as follows:-

DISCUSSION, DECISION AND REASONS THEREON

5. **PW1 Ansar Ali** deposed that he is the informant. Accused Mahamuda Bibi is his wife and other accused is his neighbour. In 2015 one day at 8/9 PM when he was at home at Azara then one person called him. Then his brother-in-law Abdul Aziz, Mahamuda Bibi and Khalilur Rahman had verbal altercation with him. Then they assaulted him with hands. Then they left. Then he filed this case. Ext.1 was FIR & Ext.1(1) was his signature.

In his cross-examination he has stated that he does not know contents of FIR. Occurrence took place in June 2015. He does not remember exact date. FIR is dated 10.12.15. FIR does not reflect reason of delay. He did not file any case against Khalilur as he did not assault him. His wife filed 125 case against him. He solemnized second marriage and he stays with his second wife at Kalipara.

6. **PW.2 Opia Bibi** deposed that informant is her nephew-in-law and one accused is her husband and other is her niece. She knows nothing.

7. **PW.3 Mustafizur Rahman** deposed that informant is his father. One accused is his mother and another is his grand father. He heard that there was dispute between his parents and thereafter his father left their house.

8. **PW.4 Safior Rahman** deposed that he knows the informant and accused persons. He does not know what kind of dispute took place between them.

APPRECIATION OF EVIDENCES

9. Before going to the appreciation of evidences of this case I have perused the FIR filed by the informant and it appears that there is a delay of six months in filing this case. In the FIR the information mentioned that the incident occurred on 16.06.15 at about 9 PM but the complainant did not cite any reason as to why he filed this case on 10.12.2015 i.e. after 6 months of the incident. Further, there is also no medical report attached with the case record showing injury of informant-cum-victim of this case.

10. Now going to the evidence on record, the prosecution examined as many as four numbers of witnesses which includes informant/PW.1 as the prime witness. The other witnesses were the independent witnesses in this case. On

perusal of the testimony of the PW.1 it appears that accused Mahmuda Bibi was his first wife and the other accused was his neighbour. From his cross-examination it appears that the accused Mahmuda Bibi and informant were having some domestic spat owing to his/PW.1's second marriage. He admitted that he stayed along with his 2nd wife separately at Kalipara. He also said about the pending case u/s 125 Cr.P.C. against him.

11. Now from the Exh.1 it appears that at the time of occurrence he started hue and cry and then accused fled away from the place of occurrence. Hence, from the facts and FIR it can be presumed that some of his neighbour have appeared in the place of occurrence. From the sketch map found with the case diary it appears that the place of occurrence was a densely populated area and the I/O has recorded the statement of few witnesses u/s 161 Cr.P.C. from the place of occurrence. Now out of those listed witnesses PW.2, PW.3 & PW.4 were examined as independent witnesses. But they did not corroborated with the testimony of PW.1 regarding any sorts of assault caused by the accused upon the informant/PW.1.

12. Thus from the above discussion it appears to me that both sides had some family dispute and incident was the result of that dispute. However the testimonies of the prosecution witnesses are not found sufficient to establish the case against the accused persons. As such the accused persons are acquitted of all the accusations and set at liberty forthwith.

13. Bail bond of accused persons to remain in force for six months as per section 437-A Cr.P.C.

14. Given under my hand and seal of this Court on this the 4th day of November, 2020 at Bilasipara.

(Smti. Sangita Haloi)

SDJM(M), Bilasipara.

APPENDIX

Prosecution Witnesses:-

PW.1:- Ansar ali

PW.2:- Opia Bibi

PW.3:- Mustafizur Rahman

PW.4:- Safior Rahman

Prosecution Exhibits:-

Ext.1:- FIR

Defence Witnesses & Exhibits:-

Nil

Court Witnesses:-

Nil

(Smti. Sangita Haloi)

SDJM (M), Bilasipara.