

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA:

TINSUKIA

C.R. CASE NO: 81 OF 2015

U/Sec 149/447/352/427 OF IPC

STATE OF ASSAM

..... PROSECUTOR

-Vs.-

1) SRI DEBANANDA TASSA

S/O: LATE RUPNATH TASSA

ADDRESS: No. 2 ALUBARI GAON

P.S.: MARGHERITA, DIST: TINSUKIA, ASSAM

2) SRI HIRA TASSA

S/O SRI ADAL TASSA

ADDRESS: NO. 2 ALLUBARI GAON

P.S.: MARGHERITA, DIST: TINSUKIA, ASSAM

3) SRI ADAL TASSA

S/O LATE LAKHAN TASSA

ADDRESS: NO.2. ALUBARI GAON

P.S.: MARGHERITA, DIST: TINSUKIA, ASSAM

4) SMTI NAMITA TASSA

W/O SRI DEBANANDA TASSA

ADDRESS: NO. 2 ALUBARI GAON

P.S.: MARGHERITA, DIST: TINSUKIA, ASSAM

5) SMTI MINA TASSA

W/O SRI ADAL TASSA

ADDRESS: NO. 2 ALUBARI GAON

P.S.: MARGHERITA, DIST: TINSUKIA, ASSAM

.....ACCUSED

PRESENT: SALEH AHAMMAD, LL.M. AJS
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA,
TINSUKIA

FOR THE COMPLAINANT: Mr. SURJYA KANTA DUTTA, LEARNED ADVOCATE

FOR THE ACCUSED: Mrs. SMITA MAZUMDER, LEARNED ADVOCATE

OFFENCE EXPLAINED ON: 27-09-16

EVIDENCE RECORDED ON: 26-06-19

ARGUMENT HEARD ON: 26-06-19

JUDGMENT DELIVERED ON: 05-07-19

JUDGMENT:

1. The genesis of this case had its roots with the lodging of the First Information Report (in short as FIR) wherein the informant has alleged that the accused Debananda Tassa, Hira Tassa, Adal Tassa, wife of Debannada Tassa, wife of Adal and six others names not known but could be physically identified forming an unlawful assembly entered into their garden land with deadly weapons such as dao, lathi, axe etc and broke away their boundary fencing. When protested they threaten him of dire consequences and chased to kill him with dao and cut away a tree. Out of panic and fear he rush to the police station to inform and seek help for saving lives of himself and members of his family. Hence, he filed this case. The criminal law was set in motion with the lodging of the FIR.
2. In this case the O/C MARGHERITA PS registered as MARGHERITA PS case No. 220/15 U/sec 147/148/149/427/506 of IPC and the case was entrusted to S.I. JATIN SAIKIA for investigation and finally after completion of investigation the final report was submitted by him against the accused persons.
3. Thereafter, the court of my learned predecessor had issued notice to the complainant and after the appearance of the complainant he had objected to the submission of the Final Report and the Final report was rejected. The said case was registered as Complaint case and it was the court of my learned predecessor who had recorded the initial deposition of the witnesses including the complainant and thereby took cognizance of the offences u/sec 149/447/352/427 of IPC. The summons were issued to the accused persons.
4. In this case the accused persons appeared before the court and they were allowed

to go on bail and as per section 207 of CrPC & the offences U/sec 149/447/352/427 of IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. In this case the prosecution has adduced as many as one PW to prove the case. In this case the statements of the accused persons are hereby dispensed with. The defence does not want to adduce any DW's from their side.

5. I have heard arguments of the learned defence counsel and the learned Asst. P.P. I have perused the evidence on record and scrutinized the evidence on record.
6. After hearing both sides the following are determined point of determination.

POINT OF DETERMINATION

POINT FOR DETERMINATION NO.1:

Whether the accused persons on 22/08/15 had committed criminal trespass by entering into the tea garden of the informant and thereby unlawfully remained there with an intent to commit an offence and thereby committed an offence punishable u/sec 447 of IPC?

POINT OF DETERMINATION NO.2:

Whether the accused persons had assaulted or used criminal force towards the informant at about the same time and place and thereby committed an offence punishable u/s 352 OF IPC?

POINT FOR DETERMINATION NO.3:

Whether the accused persons had caused or likely to cause wrongful loss or damage towards the tea garden of the informant & thereby caused damage by mischievous acts at the same time and place and thereby committed an offence U/sec 427 of IPC?

POINT FOR DETERMINATION NO.4:

Whether the accused persons was a member of the unlawful assembly in prosecution of the common object to commit the offence under section 447/352/427 of the Indian Penal Code and thereby committed an offence under section 149 of IPC?

Discussion, Decision and Reasons there on:

For the sake of convenience all the points are clubbed together:

7. PW1 in his evidence has deposed that he is the complainant of this case. He have filed this case against Debananda Tassa, Adal Tassa, Hira Tassa, Mina Tassa and Namita Tassa. The incident took place on 22.8.15 at about 11:00 AM to 11:30 AM. The house of the accused persons are besides their house. On that day the accused

persons entered into his land from behind by breaking boundary fencing and cut 200 to 300 bamboo trees and uriam trees. When he objected them from doing so then they chased him armed with dao, axe, etc. Out of fear he fled from the place of occurrence and took shelter in the house Damanta Sharma. The said incident was witnessed by Damanta Sharma. The house of Damanta Sharma is about 150 mts away from his house and hearing hulla he came and saw the incident. After the said incident he went to the PS and lodged an ejahar. Ext.1 is the ejahar and Ext.1(1) is his signature. The accused persons had taken away the cut bamboos and the trees with them. It is further stated that the disputed land was purchased by his father's mother in the year, 1980. Since then they have been enjoying the land by way of cultivation and also paid land revenues. If he did not escape from the place of occurrence the accused persons would have assaulted him. They threatened him to cut into pieces and so he had filed the case. The case was investigated by police and interrogated both the parties. Afterwards, police had submitted FR in the case and he had objected the FR by filing petition No. 4334/15 dated 7.12.2015 being dissatisfied. Ext.1 is the petition and Ext.2(1) is his signature.

8. During his cross examination has stated that the ejahar was lodged on 22 August. There is no documents of land shown for their possession and title over the land. The suggestions put forward are of total denial.
9. ***I have heard the arguments of the learned Asst.PP & the learned defence counsel.***
10. From the perusal of the evidence on record it appears that there is no denial of the fact that the accused persons had entered into the property of the informant and it is apparent that the land was in the possession of the accused persons. But it has been admitted by the complainant during his cross examination that no such land documents was submitted in connection with this case. It also appears that there is contradiction in the ejahar and the evidence of PW-1. However, there were certain damage to the property of the complainant as well as the accused persons had tried to assault and threatened him. However, this evidence of PW1 had remained static during the cross examination. During the course of evidence on record, it appears that the evidence of PW-1 was recorded once more which was not within the knowledge of the Court as the case was pending since 2015. But it was the duty of the Id. Counsel for the complainant to bring to the knowledge of the Court that the evidence of PW-1 was already recorded and he was discharged. The new evidence

which was recorded cannot be accepted and the said is hereby expunged from this case.

11. This court has also recorded the statements of the accused persons u/s 313 of CrPC and it appears that they have amicably settled the matter and all the issues are sorted out in connection with this case.
12. This court is also the opinion that on perusal of the statements made by the accused persons u/s 313 of CrPC clearly shows that they have amicably settled the matter. Even if it appears that the accused persons are implicated in connection with this case. But it is evident that they have amicably settled the matter and there is no such corroboration in the evidence of PW-1 as the complainant side has failed to examine the other PWs in connection with this case.
13. During the evidence of these PW'S none of the ingredients of section 149/447/352/427 of IPC could be brought forward by the prosecution during the course of evidence. Hence, this court finds itself difficult that no such essential elements of the above mentioned sections could be proved by the prosecution beyond reasonable doubt.
14. *The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence. Presumption of innocence is a human right as envisaged under Art.14 (2) of the International Covenant on Civil and Political Rights 1966. Art.11(1) of the Universal Declaration of Human Rights 1948 also provides that any charged with penal offences has a right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*
15. In the case of **V. D. Jhingan Vs. State of Uttar Pradesh**¹ the hon'ble supreme court has held that it is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lies upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.
16. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.
17. In the light of the above discussion & reasons, I am of the opinion that the prosecution has failed to prove the case against the accused persons beyond

¹ AIR 1966 SC 1762

reasonable doubt. Hence, the accused persons deserves to be acquitted of the offences leveled against them.

ORDER

18. *In view of the above discussions and reasons it is held that the prosecution has failed to prove the charges leveled against the accused persons & as such the accused persons are acquitted of the offences leveled against them under sections 149/447/352/427 of IPC and they are thereby set at liberty.*
19. Make necessary entry in the judgment register.
20. The seized articles be disposed of as per procedure of law.
21. Given under my hand and seal of this court on this the 5th day of JULY, 2019 at MARGHERITA COURT.

SALEH AHAMMAD

SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),

MARGHERITA, TINSUKIA

APPENDIX:

WITNESSES FROM THE PROSECUTION SIDE:

PW1: TIRTHANKAR GHOSH

WITNESSES FROM THE DEFENCE SIDE: NIL

PROSECUTION EXHIBITS:

EXT 1 IS THE FIR

EX1 (1) IS THE SIGNATURE PW-1

EXT 2 IS THE PETITION

EXT2(1) IS THE SIGNATURE OF PW-1

DEFENCE EXHIBITS: NIL

SALEH AHAMMAD

SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),

MARGHERITA, TINSUKIA

