

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
TINSUKIA**

G. R. Case No. 1196/2014
U/S 143/448/427/354/323/379 of IPC

State of Assam

.....Prosecutor

- Versus-

1. Sri Sunil Samu @ Kumar
2. Sri Lakhna Bhagla @ Mura
3. Sri Shib Nath Gose
4. Sri Petua Kumar
5. Sri Gopal Nayaka
6. Sri Bikash Bhumiz

.....Accused

Present: Dr. Chetana Khanikar
Additional Chief Judicial Magistrate, Tinsukia

For the prosecution: Smti. J. Phukan, Addl. P.P.

For the defence: Smti. A. Handique, Advocate

Evidence recorded on: 15.02.2016, 19.03.2016,
19.08.2016

Argument heard on: 09.07.2019

Judgment delivered on: 15.07.2019

JUDGMENT

1. The prosecution case in brief as stated in the FIR is that on 16.06.2014 at about 7.00 PM, the accused came to the house of the informant armed with dao, knife, stick in their hands and made nuisance. The accused had forcefully entered the house by breaking the door and threatened with dire consequences if the informant did not pay money. When the informant refused to give the money the accused had strangled his neck and assaulted the informant and his family members with dao, knife, fist blows badly. The accused tried to disrobe the sister of the informant Marami Karmakar and had assaulted her with stick. The accused had assaulted the mother of the informant Loni Karmakar also. It is further stated that the accused had assaulted the brother of the informant Dilu Karmakar by inflicting blows, stick, knife for which he sustained injuries. They somehow managed to save themselves and took shelter in the tea garden office. Later on, the

informant came to know from neighbours that the door, window of the informant's house as well as boundary wall were broken by the accused and taken away Rs.25,000/-, one bicycle, poultry and water pump.

2. On the basis of aforesaid FIR, police registered a case against the accused as Doom Dooma PS Case No.342/2014 U/S 143/448/427/323/354/379 of IPC. Police investigated the case and on completion of investigation submitted charge-sheet against the accused Sri Sunil Samu @ Kumar, Sri Lakhna Bhagla @ Mura, Sri Shib Nath Gore, Sri Suresh Gore, Sri Petua Kumar, Sri Gopal Nayak and Sri Bikash Bhumij U/S 143/448/427/323/354/379 of IPC.

3. On appearance of the accused Sri Sunil Samu @ Kumar, Sri Lakhna Bhagla @ Mura, Sri Shib Nath Gore, Sri Suresh Gore, Sri Petua Kumar, Sri Gopal Nayak and Sri Bikash Bhumij in Court, copies of relevant documents were furnished to him as required U/S 207 of Cr. P. C. Considering the relevant documents and hearing both the parties sufficient ground is found to presume that the accused had committed offence U/S 143/448/427/354/323/379 of IPC. Accordingly, charge under that section is framed, read over and duly explained to them to which the accused pleaded not guilty and claimed to be tried.

4. During trial the prosecution has examined nine witnesses and adduced ten documentary evidences.

5. At the close of the prosecution evidence, the accused persons were examined U/S 313 of the Cr.P.C. and their answers were recorded on a separate sheets. Defence side has adduced no evidence and plea of the defence is of total denial.

6. After perusing the records, considering the materials produced, hearing the arguments of the learned counsels for both the sides and the accused the following points are taken as POINTS FOR DETERMINATION:

i. Whether on 16.06.2014 the accused by forming an unlawful assembly, entered the house of the informant, with intent to commit an offence thereon?

- ii. Whether the accused had caused damage to the house of the informant and thereby caused damaged of Rs. more than 50/-, on that day?
- iii. Whether the accused had voluntarily caused hurt to the informant and his family members, on that day?
- iv. Whether the accused had used criminal force to the sister of the informant Marami Karmakar, with intent to outrage her modesty, on that day?
- v. Whether the accused persons had dishonestly taken away Rs.25,000/-, one bicycle, poultry and water pump from the informant's house without the consent of the informant, on that day?

DISCUSSION, DECISION AND REASONS THEREOF:

Point (i), (ii), (iii), (iv) & (v):

7. For convenience of discussion and to avoid unnecessary repetition these five points are taken together for consideration.

8. In this case, the prosecution side has adduced total nine witnesses out of them P.W.1 is the informant. He deposed that on the day of incident he went to make payment of daily wage to Rubash Mahra and Subhash Mohra. At that time Sunil pressed his throat. He raised hue and cry, then his mother and sister came and rescued him. He stated that at that time the accused came and broke their tin door and entered his house and dragged him outside and hit him with bamboo stick. He stated that his younger brother Dilu Karmakar came out and then the accused assaulted him and also assaulted his mother and sister Puspa with bamboo and threw his brother Dilu into a drain. He stated that on the following day of the incident in the evening time the accused came and raised hulla and threatened them. He stated that the accused threatened them and uttered obscene words and told that they would rape his sister. He stated that accused Lakhna Mura caught hold of the hair of his sister. He stated that they informed the matter to police and police rescued them from Manager office. He sustained injuries in his ear, neck and shoulders. During cross-examination he stated that the FIR was written by his elder sister

Maromi. The same was not read over to him. He stated that he did not state in the FIR that the accused assaulted his younger brother Dilu and his mother and sister Puspa with bamboo and threw his brother Dilu into a drain and again came in the evening time and raised hulla and threatened them. He stated that all the people of the tea garden was against them and they filed complaint before the garden manager. He stated that his brother Ram Kishore Karmakar committed rape upon the sister of accused Sunil, due to which she became pregnant and a case is pending before the court of Hon'ble Sessions Judge and for that incident the people of the tea garden are against them.

9. PW 2 stated that her younger son Bitu went to make payment in the evening and then the accused Sunil Kumar restrained her son in the road and assaulted him. She stated that her son raised hue and cry and she went for his rescue. She stated that a person named Dubash came out from his house and tried to rescue her son. She stated that she bite Sunil for rescuing her son. She stated that sister of Sunil Dhepsi came to her house and uttered obscene words and thereafter the remaining accused came with dao and cut the outer door, walls of her house and damaged them. She stated that they dragged Bitu and assaulted him, they also assaulted her and her daughter Marami. Her son Dilu came to her house and the accused assaulted him and broke one teeth. She stated that the accused also burnt their house and stole their article. During cross-examination she stated that due to the incident of rape of sister of accused Sunil, the people of the locality was against them and complained before the tea garden manager. He stated that a meeting was held and Ram Kishore confessed his guilt. She stated that she saw that her house was broken and burnt.

10. PW 3 stated that the accused Sunil assaulted the informant with his hand when he went for making payment to Subhash. When the informant came back home the accused Shivnath, Lokhnath, Baldev, brother of Sivnath and Loknath, Biswanath and another person came to their house and assaulted her brother by dragging them outside with bamboo stick. She stated that they assaulted her brother Bitu, Billu, her niece Pushpa and mother Loni. She stated that Lokhnath fell her on

the ground by pulling her hair. Then police came and rescued them. She stated that the accused destroyed their house. She stated that she sustained injury on her right hand and her niece sustained injury on her face. Her elder brother Bitu sustained injury on his ear and all over his body. During cross-examination she stated that her elder brother Ram Kishore was convicted in a case of rape of the sister of the accused Sunil. For that rape case one meeting was held at the T.E.

11. PW 4 stated that he heard that the house of Bitu was destroyed by public. During cross-examination he stated that a few days prior to this incident the sister of the informant had once kicked the sister of the accused Sunil when she was pregnant and for that she had to be hospitalised. The elder brother of the informant Ramkishore had raped the sister of the accused Sunil and for that a case was filed by the accused Sunil Chamu against Ramkishore.

12. PW 5 stated that Subhash Mangra and Rubhash Mangra had worked for him in his field. He sent his brother Bilu Karmakar to the house of Subhash and Rubhash for paying their wages where he was assaulted by the accused. He was informed by his sister Maromi. When he went to save his brother he was also assaulted by the accused persons. He stated that he was assaulted with bamboo stick. He sustained injuries on his face and back. He stated that his mother Loni and sister Morami were also assaulted when they went to save them. During cross-examination he stated that a case with allegation of rape was filed by the accused persons against her brother Ram Kishore Karmakar, which is pending for adjudication in the court.

13. PW 6 stated that on the day of incident the informant Bitu and his family members came to the office of PW 6 and sought justice of assault upon them by people of the village. He stated that the people of the line did not come to settlement and asked him to hand over the informant and his family members to the public. A mob of about 150/200 people gathered outside the factory compound. During cross-examination he stated that he did not see the accused assaulting anyone. He stated that he knows that there was an allegation that one

of the brother of the informant had raped one girl and the said girl became pregnant and another incident had taken place that the sister of the informant had kicked one pregnant woman and he had arranged for the medical treatment in that case.

14. PW 7 stated that on the day of incident she along with her uncle Bitu and her grandmother Noni Karmakar came from the paddy field to their house. When her uncle Bitu went to make payment of the labours in their field, there was a quarrel between her uncle and the accused Sunil. When her grandmother went to save her uncle the accused Sunil pressed her neck and as such she bite his hand to save herself. She further stated that the accused persons came to their house with dao, lathi etc. and destroyed their house and even set their house on fire. He stated that the accused assaulted Bitu, Moromi, Dilu, Anshu and Loni. During cross-examination she stated that There was an allegation that her uncle Ram Kishore Karmakar had raped the sister of the accused Sunil and for that onl the relation between the parties was not good. She stated that she was not assaulted by the accused.

15. PW 8 stated that the sister of the accused Sunil namely Dhepsi was pregnant and there was a meeting regarding that matter. The matter was not settled in the meeting. During cross-examination he stated that a case is pending against the informant's brother Ram Kishore Karmakar for alleged rape on Saraswati. He stated that when Dhepsi came to the house of Bitu, Marami inflicted a kick on her abdomen and she was hospitalized for that. He stated that there were other cases pending in their tea estate against the informant Bitu and his family. He stated that the accused had not broken the house of the informant.

16. P.W.8 is the I/O. He deposed in his examination in chief about the procedure of his investigation. However, during cross examination he deposed that I went to the PO on 17.06.2014 at 2:10 PM. He had not done any investigation on the basis of Doom Dooma PS GDE No.500 and 504 dated 16.06.2014. He had not recorded the statement of the OC Doom Dooma PS Tilak Das. He stated that the people of the line

complained before the Manager of Hilikha T.E. for eviction of the family of the informant from the tea garden as the informant's brother had raped minor sister of the accused Sunil for which she became pregnant. So the people gathered at the office of Manager. He did not record the statements of Sunil Chowtal, Prato Mohorlal, Mangal Mohorlal, Reshmi Budhram, Rajenram Nahor who resides in the vicinity of the PO. He stated that he had not seized anything from the PO. He had not recorded the statements of Dubash and Sunil Gosai. He stated that there are more than 100 people residing in that line. He had not found any eye witnesses to the alleged incident.

17. These are the witnesses adduced by the prosecution side. From the evidences of these witnesses, it is seen that there was a previous enmity between the accused and the family members of the informant. The witnesses stated that the accused had damaged the house of the informant, but nothing was seized in this case. Though two photographs in support of the said damage were given by the IO, the negatives of the photographs, i.e., the original copies of the photographs were not submitted. After scrutinizing the evidences it is found that no witness is an eye witness, except the family members of the informant. No neighbours or people of the line where the informant resides, were examined by the IO. PW 9 stated that the quarrel took place between both sides, but he had not stated about one sided assault. PW 5 stated that so many people were there. PW 4 stated that public committed the incident. PW 8 stated that some persons had committed the incident. PW 6 stated that there gathered about 100-150 people. This being the position, even if the incident took place, it can not be ascertained whether it was caused by the accused. Hence, considering the fact of the previous enmity of the informant with the accused, I think it is not proper to hold the accused guilty on the basis of the evidence of the family members of the informant only, in absence of corroborative independent witness. Thus it appears from the above discussion that the prosecution side has failed to prove that on 16.06.2014 the accused by forming an unlawful assembly, entered the house of the informant, with intent to commit an offence thereon or the accused had caused damage to the house of the informant and

thereby caused damaged of Rs. more than 50/-, or the accused had voluntarily caused hurt to the informant and his family members or the accused had used criminal force to the sister of the informant Marami Karmakar, with intent to outrage her modesty or the accused persons had dishonestly taken away Rs.25,000/-, one bicycle, poultry and water pump from the informant's house without the consent of the informant.

Hence point no. (i), (ii), (iii), (iv) & (v) are decided negative.

18. From the above discussions I come to the conclusion that prosecution has failed to establish the allegations of Section 279/304A of IPC against the accused person. Hence, the accused persons Sri Sunil Samu @ Kumar, Sri Lakhna Bhagla @ Mura, Sri Shib Nath Gore, Sri Suresh Gore, Sri Petua Kumar, Sri Gopal Nayak and Sri Bikash Bhumij are acquitted from the case. Bail bonds are extended for next months. The seized vehicle and the documents be returned to the real owner in due course of law.

Given under my hand and the seal of this Court on this 15th day of July, 2019.

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia

APPENDIX

Witnesses for the prosecution:

- P.W.1: Sri Bitu Karmakar, the informant
- P.W.2: Smti. Loni Karmakar
- P.W.3: Smti. Maromi Karmakar
- P.W.4: Sri Raju Munga
- P.W.5: Sri Dilu Karmakar
- P.W.6: Sri Chandan Jyoti Borchetia
- P.W.7: Smti. Pushpa Karmakar
- P.W.8: Diyan Mukhiya
- P.W.9: Sri Bhadrakanta Gogoi, the I/O

Witness for the defence:

Nil

Exhibits:

1. FIR Ext. 1
2. The extract copy of GDE..... Ext. 2
3. The extract copy of GDE No.500..... Ext. 3
4. The sketch Map Ext. 4
5. Photographs of the house of the victim..... Ext.5 & 6
6. Medical reports.....Ext.7, 8 & 9
7. Charge sheet Ext.10

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia