

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

G. R. Case No.1928 of 2018
PRC No.619/2018
U/S 341/323 of IPC

State of Assam

.....Prosecutor

- Versus-

1. Sri Promud Mahato
2. Sri Rubet Tanti

.....Accused

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

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

For the defence: Sri P. Deb, Advocate

Evidence recorded on: 26.02.2019, 25.03.2019,
23.04.2019, 04.07.2019

Argument heard on: 17.07.2019

Judgment delivered on: 19.07.2019

JUDGMENT

1. The prosecution case in brief as stated in the FIR is that on 06.08.2018 at about 8 PM when the informant was coming from Rajgarh to Tinsukia in a truck bearing registration No.AS-23-AC-3719, near St. Luke's hospital a motorcycle came and uttered obscene words to the informant. In the same time, some other boys came with wooden stick and started to assault the informant and taken away his mobile phone. The informant somehow managed to escape from the PO.

2. On the basis of aforesaid FIR, police registered a case against the accused as Tinsukia PS Case No.1153/2018 U/S 341/323 of IPC. Police investigated the case and on completion of investigation submitted charge-sheet against the accused Sri Promud Mahato and Sri Rubet Tanti U/S 341/323 of IPC.

3. On appearance of the accused Sri Promud Mahato and Sri Rubet Tanti in Court, copies of relevant documents were furnished to them as required U/S 207 of CrPC. Considering the relevant documents and hearing both the parties and having found a prima facie case against the accused U/S 341/323 of IPC, particulars of offences under those sections were duly explained to them to which the accused pleaded not guilty and claimed to be tried.

4. During trial the prosecution side has examined five witnesses and adduced four documentary evidences.

5. At the close of the prosecution evidence, statement of the accused persons U/S 313 of the Cr.P.C. have been recorded with reference to the incriminating circumstances appearing against them in the prosecution evidences. Defence side has adduced no evidence and plea of the accused 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 06.08.2018 the accused had wrongfully restrained the informant near St. Luke's Hospital, Tinsukia?
- ii. Whether the accused had voluntarily caused hurt to the informant, on that day?

DISCUSSION, DECISION AND REASONS THEREOF:

Point (i) & (ii):

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

8. In this case, P.W. 1 and PW 2 are independent witnesses. They stated that they do not know anything about the incident. PW 3 stated that he heard that a quarrel took place between the driver of a car and

the rider of a motorcycle. PW 4 is the informant. He stated that at the relevant time he was coming from Rajgarh towards Tinsukia by truck. When he reached near St. Luke's hospital, one motorcycle had overtook his vehicle by coming with a very high speed. Then he asked the motorcycle rider, not to ride the motorcycle in such a high speed. But suddenly two other boys also gathered there and assaulted him with bamboo stick. For that he sustained injury on his right hand and chest. He stated that local people gave him the names of the accused. During cross-examination he stated that the FIR was written as per his instruction. In the FIR he had not mentioned the reason of delay in filing the FIR. He stated that he had not mentioned in the FIR that he sustained injuries on his chest and right hand.

9. PW 5 is the I/O. During his examination in chief he deposed that he had visited the P.O, drew the sketch map, recorded the statement of the witnesses, collected the injury report and submitted the charge sheet. During cross examination PW 5 stated that the informant had shown him the PO. He did not conduct any TIP. He had not investigated as to who had written the FIR. He stated that PW 4 did not state to him that the motorcycle had overtook and stopped in front of him. PW 4 stated to him that some people came with lathi and assaulted him. He did not state any numbers of persons who assaulted him. PW 4 did not state to him that the name of person or source from whom he came to know the names of the accused persons.

10. These are the evidences adduced by the prosecution sides. From these evidences it is seen that except PW 4, none of the witnesses stated anything against the accused persons. Except PW 4 none is an eye witness of the incident. PW 1 and PW 2 do not know anything about the incident. PW 3 is a hearsay witness. He stated that a quarrel took place between the driver of a car and the rider of a motorcycle but he did not mention the name of the accused. PW 5 is the IO. Apart from that in the FIR it is mentioned that the accused had taken away his mobile phone. But the informant as PW 4 in his evidence or any other witness or the IO stated about the fact. The persons from whom the

names of the accused were collected are not examined. Injury is also not proved. Under such circumstances, I am of the opinion that some more corroborative independent evidence is required to hold the accused guilty. It is also became doubtful as to whether any incident at all had happened. Hence, I hold that the prosecution side failed to prove beyond reasonable doubt that on 06.08.2018 the accused had wrongfully restrained the informant near St. Luke's Hospital, Tinsukia or voluntarily caused hurt to the informant.

Hence Point No. (i) & (ii) are decided negative.

11. From the above discussions I come to the conclusion that prosecution has failed to establish the allegations against the accused. Hence the accused persons Sri Promud Mahato and Sri Rubet Tanti are acquitted from the case. Bail bonds are extended for next six months. I set the accused in liberty forthwith.

Given under my hand and the seal of this Court on this 19th day of July, 2019.

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia

APPENDIX

Witnesses for the prosecution:

P.W. 1: Sri Sanjib Sah

P.W.2: Sri Lal Mohan Sah

P.W.3: Sri Ganesh Gogoi

P.W.4: Sri Ajay Limbu, the informant

P.W.5: Sri Krishna Kanta Gohain, I/O

Witness for the defence:

Nil

Exhibits:

1. FIR Ext. 1
2. Sketch MapExt. 2
3. Medical reportExt. 3
4. Charge sheet.Ext. 4

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia