

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

G. R. Case No. 2889 of 2015
U/S 341/294/323/427/506/34 of IPC

State of Assam

.....Prosecutor

- *Versus*-

1. Ms. Ashiya Khan
2. Ms. Nurjahan Begum

.....Accused

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

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

For the defence: Sri N. Prasad, Advocate

Evidence recorded on: 03.11.2018, 21.01.2018,
28.01.2019, 23.04.2019,
20.07.2019

Argument heard on: 22.08.2018

Judgment delivered on: 28.08.2018

JUDGMENT

1. The prosecution case in brief as stated in the FIR is that on 23.12.2015 at about 9 AM the informant along with Dibyajyoti Phukan went to dump earth in the plot of land of Anil Bhattacharjee, which is situated near the play ground at Bordoloi Nagar. The accused are tenants of Anil Bhattacharjee. The accused had abused the informant with obscene words, assaulted them with bamboo stick for which they sustained injury. The accused also damaged the NOKIA mobile of Dibyajyoti, chased the informant with a dao. At the time of assault, 2 tola gold chain of Dibyajyoti was missing at the PO.

2. On the basis of aforesaid FIR, police registered a case against the accused as Tinsukia PS Case No.1500/2015 U/S 341/294/323/427/506/34 of IPC. Police investigated the case and on

completion of investigation submitted charge-sheet against the accused persons Ms. Ashiya Khan and Ms. Noor Jahan Begum U/S 341/294/323/427/506/34 of IPC.

3. On appearance of the accused Ms. Ashiya Khan and Ms. Noor Jahan Begum 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 341/294/323/427/506/34 of IPC. Accordingly particulars of offences under those sections are explained to the accused to which they pleaded not guilty and claimed to be tried.

4. During trial the prosecution has examined four six witnesses and adduced six 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 due 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 23.12.2015 the accused, in furtherance of their common intention, had wrongfully restrained the informant and Dibyajyoti Phukan at their courtyard, while the informant went there for dumping the earth?

ii. Whether the accused had abused the informant and Dibyajyoti with obscene words in public place, on that day?

iii. Whether the accused had voluntarily caused hurt to the informant and Dibyajyoti, on that day?

iv. Whether the accused had caused damage to NOKIA mobile phone of Dibyajyoti, on that day?

v. Whether the accused had threatened the informant and Dibyajyoti with dire consequences, 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 discussion.

8. Here, PW 1 stated that on the day of incident when he was going by the road he saw that the accused Ashiya Khan and her family members were resisting the dumpers and workers from dumping the earth on the land of Anil Bhattacharjee. During cross examination PW 1 stated that there is a house over the said land. One Mrinal Dahotia was dumping earth on the land.

9. PW 2 is the informant. He stated that at that time of incident he and Dibyajyoti Phukan were dumping earth on the land of Anil Bhattacharjee. Then the accused abused them with obscene words, assaulted them with bamboo sticks and broken NOKIA mobile phone of Dibyajyoti Phukan. The accused also chased them with dao and bamboo stick. To avoid the situation they fled away. At that time the gold chain of Dibyajyoti fell down. Police seized the power of attorney from him and again gave zimma of the same to him. But the said power of attorney was misplaced. During cross examination he stated that there is a house in the said land where they started to dump earth. They dumped the earth on the vacant land situated in front of the house. He deposed that he stated to police that while they were dumping the earth the accused claimed their ownership over the said land. Anil Bhattacharjee and Amrit Bhattacharjee are recorded pattadar of the said land. He stated that police seized the certified copy of the proceeding instituted before ADC, Tinsukia being case number 28/2015. The aforesaid proceeding was started before filing of this FIR. In the said proceeding

they had stated that the accused had illegally encroached over the land and occupying the same for last one year. They did not take consent from the accused for dumping the earth over the land in their possession. He stated that the accused did not raise any objection in dumping the earth by them in their land. When the door of the house of the accused was closed by earth dumping by them then only the accused had resisted them. He stated that the accused had also filed a case against him and Dibyajyoti. He further stated that the electricity connection of the accused was disconnected. He and Anil Bhattacharjee had visited the electricity board of Tinsukia for disconnecting the electricity connection of the accused. The electricity connection was restored later on by the electricity board, Tinsukia as per court order passed in the civil suit filed by the accused. He stated that the civil court had passed an order in TS No.1/2016 for not disturbing the accused. There are houses of other persons near the house of the accused. The driver and handyman of the dumper were present when the accused had resisted them from dumping earth.

10. PW 3 stated that on the day of incident he was dumping earth in the courtyard of the residence of the accused as per the direction of the informant. The accused had restrained them from dumping earth. The accused had assaulted the informant and one Debajit Gohain with stick. After completion of dumping he left the PO and the informant also went away. During cross examination PW 3 stated that the accused have their own residence in the land. He did not make any enquiry regarding the ownership of the land where he was dumping earth. He did not take any permission for dumping earth from the accused. He stated the accused did not restrain him while dumping earth.

11. PW 4 is the IO. During his examination in-chief he deposed that he had seized the land documents such as one sale deed, electricity bill, power of attorney, one NOKIA mobile, copy of complaint petition filed U/S 107 of CrPC from the informant and Dibyajyoti Phukan, he had collected the injury reports, visited the place of occurrence, drew the sketch map, recorded the statements of witnesses and submitted the

charge-sheet. However, during cross-examination he deposed that the incident occurred in the house of the accused. The informant and Dibyajyoti Phukan went to the house of the accused to dump earth in the land and house of the accused. The informant and Dibyajyoti Phukan without taking any consent from the accused to dump the earth in the land and house of the accused. He did not record the statement of Anil Bhattacharjee. He did not seize the dumper which had dumped the earth in the land and house of the accused. The PO is not a public place. The exact obscene words were not written in the FIR and also not mentioned in the statement of the informant given to him. It is mentioned in the FIR that accused are tenants of Anil Bhattacharjee. He did not verify the aforesaid fact. During his investigation he found that the accused are residing at the PO since long. He did not find any dao or stick at the PO. He stated that there are so many houses near the PO. The PO is adjacent to Bordoloi Nagar road. He did not examine any independent/neighbouring witnesses of the PO.

12. These are the evidences adduced by the prosecution sides. From these evidences it is seen that the accused had restrained the informant as PW 2 and PW 3 from dumping the earth in the land of Anil Bhattacharjee. Again, PW 2 stated that they fled away as the accused had restrained and assaulted them. But PW 3 stated that he had completed the dumping and only after that he left the PO. Apart from that, from the deposition the informant as PW 2, it is seen that there is an order of civil court for not disturbing the possession of the accused. PW 2 has also stated that when the door of the house of the accused was closed by earth dumping, then only the accused had resisted them. Thus this can not be considered as an offence of S.341 of IPC by the accused. PW 1 stated that the accused had abused them with obscene words but he or any of the witnesses has stated what kind of obscene words were used by the accused. PW 1 was also present at the PO but he did not state that the accused had assaulted, abused him and had damaged his NOKIA mobile and his one gold chain fell down at the PO. PW 3 stated that one Debajit Gohain was also assaulted by the accused with a stick. He was not examined by the prosecution side. Anil

Bhattacharjee was also not examined by the prosecution side, according to the prosecution case, who is the title holder of the disputed land. PW 2 and PW 3 stated that the accused assaulted them with lathi but the IO as PW 4 stated that he did not find any stick at the PO. MO was not examined. Injury was not proved. Except the informant the other witnesses have not corroborated the fact of missing the chain or damaging the mobile phone by the accused. From the evidences it is also found that a case was filed by the accused against the informant and Dibyajyoti. This fact along with the facts of the Title Suit and the case before Executive Magistrate, the previous enmity between the parties are apparent. In view of the aforesaid contradictory circumstance I am of the opinion that some more corroborative independent evidence is required to hold the accused guilty. Hence, I hold that the prosecution side has failed to prove beyond reasonable doubt that on 23.12.2015 the accused, in furtherance of their common intention, had wrongfully restrained the informant and Dibyajyoti Phukan at their courtyard, while the informant went there for dumping the earth or the accused had abused the informant and Dibyajyoti with obscene words in public place or the accused had voluntarily caused hurt to the informant and Dibyajyoti or the accused had caused damage to NOKIA mobile phone of Dibyajyoti or the accused had threatened the informant and Dibyajyoti with dire consequences.

Hence Point No. (i), (ii), (iii), (iv) & (v) are decided negative.

13. From the above discussions I come to the conclusion that prosecution has failed to establish the allegations against the accused. Hence the accused Ms. Ashiya Khan and Ms. Noor Jahan Begum are acquitted from the case. Bail bonds are extended for next six months. I set the accused persons in liberty forthwith. The seized documents be returned to the real owners in due course of law.

Given under my hand and the seal of this Court on this 28th day of August, 2018.

(C. Khanikar)
Additional Chief Judicial Magistrate, Tinsukia

APPENDIX

Witnesses for the prosecution:

P.W. 1: Sri Dibyajyoti Phukan

P.W.2: Sri Robin Gohain, the informant

P.W.3: Sri Mrinal Dahotia

P.W.4: Sri Pradip Baruah, the IO

Witness for the defence:

Nil

Exhibits:

1. FIR Ext. 1
2. Seizure list.....Ext. 2
3. Medical reports Ext. 3 & 4
4. Sketch mapExt. 5
5. Charge sheet.....Ext. 6

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia