

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

GR Case No. 3543/2017

Under Sections 447 and 294 of the Indian
Penal Code

The State of Assam

Versus

Arun Baruah

Resident of Tiloi Notun Gaon, Moran

....

Accused Person

Present: Rinku Boro, AJS

Advocate appearing for the State: Learned APP L.N.
Deori

Advocate appearing for the Accused person: Learned
Adv.Purnananda Hiloidhari

Dates of recording Evidence: 15.09.2018, 12.04.2019,
20.06.2019, 09.08.2019, 12.09.2019

Date of hearing Argument: 26.04.2021

Date of delivering Judgment: 10.05.2021

JUDGMENT

CASE OF THE PROSECUTION:

1. The case of the prosecution is that the informant Sri Avinab Gogoi Son of Sri Jugal Kumar Gogoi resident of Khowang Haldhibari Borpathar Gaon under Khowang Police station, Dibrugarh lodged an F.I.R alleging that on 14.10.2017 at around evening 5:00 PM Sri Arun Baruah came in a white colour Alto car and entered to their house when no one was present. He then called out his father and on a simple matter started quarrelling with his father and assaulted his father who is aged about 85 years. After raising hue and cry by his sister -in-law and his elder sister and due to gathering of neighbours Arun Baruah left the place.

ALLEGATIONS:

2. On receipt of the FIR, the Officer-in-charge of Khowang police station registered a case being Khowang P.S. Case No. 111/2017 under Sections 447/323 of Indian Penal Code against the accused persons namely, Sri Arun Baruah. The Investigating Officer ASI Robin Das carried out the investigation in the matter and submitted the case diary to the officer-in-charge. Later officer-in-charge SI Prafulla Kumar Das submitted the charge-sheet. During the course of investigation, the I.O. examined the witnesses u/s 161 Cr.P.C., prepared one sketch map of the place, where the offence was allegedly committed and then after completion of the investigation finally submitted the charge sheet-

finding sufficient materials against the accused person for the offences u/s. 447/294 of IPC.

INVESTIGATION:

3. After completion of investigation and on finding sufficient materials against the accused persons, the investigating officer submitted charge sheet against the accused persons namely, Arun Baruah under Sections 447/294 of the Indian Penal Code and forwarded the accused person to face trial before the Court.

FRAMING OF CHARGES AND OFFENCE EXPLANATION:

4. On issuance of process, as per Section 204 (1) (a) accused persons were called upon to enter trial and copies of all the relevant documents were furnished to them. Upon hearing and on perusal of record, cognizance of the alleged offences under Sections 447 and 294 of the Indian Penal Code were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter summons was issued to the prosecution witnesses.

TRIAL:

5. During the trial of the case, the prosecution side examined 7 (Seven) prosecution witnesses in this case and produced 5 Exhibits. Accused person was examined u/s 313 Cr.P.C. All the incriminating materials found during prosecution evidences were put to the accused

person and the same were of total denial. Defence declined to adduce defence evidence. Heard the argument put forwarded by learned advocates for both sides, gone through the case record and peruse the evidence carefully.

POINTS FOR DETERMINATION:

6. I have heard the learned counsel for the accused and learned assistant public prosecutor for the State. Having heard both sides and after perusing the materials on record, the following points for determination are framed for the just decision of the case: -

- (i) Whether the accused person on 14.10.2017, at around 5:00 PM committed the offence of criminal trespass by entering into the land of the informant with an intent to commit an offence or to annoy or intimidate or insult to the father of the informant and thereby committed an offence punishable under section 447 of IPC?
- (ii) Whether the accused person on 14.10.2017 at around 5:00 PM abused the father of the informant, uttering filthy and obscene words and thereby committed an offence punishable under Section 294 of IPC?

DECISION AND REASONS THERE OF:

REPRODUCTION OF THE EVIDENCES ADDUCED:

7. **PW1 Sri Abhinav Gogoi** in his examination-in-chief deposed that he knew the accused person and he is the informant. The incident occurred on 14.10.2017. On the day of the incident when his father was seated on the verandah and his sister and his sister-in-law were present in the house. On the day of the incident while he was returning from Dibrugarh towards his house, he received a phone call from his elder sister Deepamoni informing that one Sri Arun Baruah came to their house and assaulted their father. When he reached his house, he saw his father was seated on a chair. His brother had expired on 02.10.2017. His father informed him that Arun Baruah came and told him that one of your son had expired why are you still living to eat, why don't you die and on this issue his father had an argument with him and his elder sister and sister-in-law saw the argument. Arun Baruah then hit his father with his hand on his chest and his father fell down on the ground. His sisters intervened and stopped the fight. The accused returned on his Alto car. Thereafter he took his father to Khowang police station and he lodged FIR against Sri Arun Baruah. The police interrogated him and referred his father for medical check-up at Khowang PHC.

Exhibit 1 is the FIR.

Exhibit 1 (1) is his signature.

8. In his cross-examination PW1 Sri Abhinav Gogoi stated that he did not write the FIR and he does not know the

name of the scribe who wrote the FIR. His father is aged around 75 years. His father has a problem of low vision and he wears spectacle. He stated that the colour of the car is not white but silver. During suggestion he denied the fact that the same car do not exist. His father is a retired school teacher but he still engages himself in reading and writing. His father can walk in the compound of the house but during evening it becomes difficult for him while going out. The incident occurred at evening hours at around 5:00 PM. On the day of incident his elder brother was not at home. Their land boundary is attached with the land boundary of the accused person. He denied deposing falsely.

9. **PW2 Jugal Gogoi** in his examination-in-chief stated that he knows the accused person, informant is his son. The incident occurred on 14.10.2017. His daughter Deepamoni and daughter-in-law Moon Moon Gogoi were present in the house during the incident. On the day of the incident during evening hours when he was seated at verandah of his house he saw a person from the lawn of his house waving at him. When he enquired about the person his daughter and daughter in law informed him that the person was calling him. He then walked towards the lawn. When he reached near the person, he could identify him and without any reason the accused person charged him as to why he had planted the big trees towards his side of boundary which gives shadow. Then he told him that his two sons had already died why are

you still alive and punched him on his chest due to which he fell on the ground. When his daughter and daughter-in-law came towards him the accused left the place saying that his work has been done. He stated that he had developed pain on his chest and he went to police station with the informant. Police interrogated him and send him for medical check-up at Khowang PHC.

10. In his cross-examination PW2 Jugal Gogoi stated that the people of the village respect him. He still continues his reading and writing and since last two years he could not see properly. He stated that the accused person came in Alto car but he does not know the registration number of the car and the colour of the car was white. He stated that he did not give any statement to the police that the accused person came along with his nephew. His daughter and daughter-in-law did not give statement to the police that he was called by the accused person. He also did not give the statement to the police that accused person said that his work was done before leaving the premises. He does not know the real name of the accused person and know him by the name he is called in the village. He denies deposing falsely as they have boundary disputes. He denied the suggestion that the accused person did not came at his house on the day of the incident.

11. PW3 Smti Saruphul Gogoi in her examination-in-chief stated that she knows the accused person and the informant. The incident occurred a year ago. Informant is

her neighbour. On the day of the incident at around 5 PM she heard hue and cry from the premises of the informant. On hearing the hue and cry she went to the house of the informant. On reaching the premises of the informant she heard some screaming and the accused person had a stick on his hand and was trying to hit the father of the informant. She stated that she heard the accused person had assaulted the father of the informant inside the house. When she was present Moon Moon Gogoi, Moni Gogoi and daughter of Jugal Gogoi were present. She also stated that the accused person could not hit the informant's father with the stick. There were two more persons in the car and they took the accused person in the car. She knew about the lodging of by FIR and police interrogated her.

12. In her cross-examination PW3 Smti Saruphul Gogoi stated that she does not know the name of the accused person. She knows him by his face as he is also her neighbour. She stated that she is a relative of the informant, her house is situated adjacent to the house of the informant and the boundary of her house is almost the same to that of the informant. During suggestion she denied the fact that since she is a relative of the informant she had deposed falsely. She also denied the suggestion that she have not stated before the police about the slap given by the accused person to the father of the informant. She also denied the suggestion that she

have not stated before the police that the accused person took stick to hit the father of the informant.

13. PW4 Smti Deepa Moni Gogoi in her examination-in-chief stated that she knows the accused person. The informant is her brother. The incident occurred in the month of October 2017. On the day of the incident at around four 4:30-5:00 PM when she and her father and their daughter-in-law were present in the house. A car stopped nearby their house and the accused person came out of his car and waive towards her father to come out and when her father approached the accused person, he told her father that you had killed your son one after another and how many are you going to kill again and asked her father as to why he had planted the trees. Thereafter the accused person threatened her father to slap him but the accused person punched him. The punch hit her father between his shoulder and neck. Her father took a stick and asked him why did he hit him. Thereafter neighbours gathered and the accused person left the place by making noise. Police interrogated her.

14. In her cross-examination PW4 Smti Deepa Moni Gogoi denied the suggestion put to her that she have not stated to the police that the punch given by the accused person to her father hit between shoulder and mouth. She also denied the suggestion that she have not stated before the police about the slap being given by the accused person to her father. She also denied the suggestion that she have not stated before the police that her father fell down

on the ground after being punched by the accused person. She also denied the suggestion that her father did not get any injury. She denied deposing falsely. She stated that she cannot say the registration number of the car.

15. PW5 DR. Ramen Kakoti in his examination-in-chief deposed that he was working as medical officer at Khawang PHC. He stated that he had examined Sri Jagat Kumar Gogoi aged around 75 years and during examination no injury was detected.

Exhibit 2 is the Injury Report. Exhibit 2(1) is his signature in the injury report.

16. His cross-examination was declined by the defence counsel.

17. PW6 Sri Kamal Gogoi in his examination-in-chief stated he knows the accused person and the informant. He came to know that the accused person and the father of the informant Sri Jugal Gogoi had a quarrel and the informant lodged FIR with regard to the quarrel. Police interrogated him.

18. His cross-examination was declined by the defence counsel.

19. PW7 ASI Robin Das in his examination-in-chief stated that on 14.10.2017 he was working as ASI under Khawang Police Station. On that day the informant Sri Abhinav Gogoi filed an FIR which was registered as

Khowang PS case number 111/2017 under Sections 447/353 of IPC and he was handed with the preliminary investigation of the case. In the course of the investigation, he examined the informant at the police station itself, he also found the victim in the police station itself and recorded the statement of the victim and he was referred for medical examination. On the next day i.e on 15.10.2017 he visited the place of occurrence and examined the witnesses, prepared the sketch map, he then searched for the accused person but he was not found, but on 16.10.2017 the accused person himself appeared in the police station. He then seized the vehicle being Alto K10 bearing no. registration no. AS 06 N 5398 which was of silver colour along with its documents. He stated that he had found sufficient evidence against the accused person and the accused person was arrested but as the offence was of bailable nature the accused person was allowed to go on bail and later the accused person was handed with the zimma of the vehicle. He collected the injury report of the victim. Thereafter after completion of the preliminary investigation he submitted the case diary before the officer-in-charge who then filed the charge-sheet.

Exhibit 3 is the Sketch Map. Exhibit 3(1) is his signature in the Sketch Map.

Exhibit 4 is the Seizure list. Exhibit 4(1) is his signature in the seizure list.

Exhibit 5 is the Charge-sheet. Exhibit 5(1) is the signature of OC Prafulla Kumar Das.

19. In his cross-examination PW7 ASI Robin Das denied the suggestion that the FIR mentioned about the heated altercation between the parties. He stated that FIR does not mention about use of filthy language. At the time of examination of the victim he could not find any external injury on the victim. He denied the suggestion that he did not go to the house of accused person and he examined the witnesses. He denied the suggestion that he did not seized vehicle of the accused person. He denied the suggestion that he did not investigate the case properly.

Appreciation of the Evidence:

20. In the course of argument learned counsel for the accused person argued that the accused person is a retired army personnel and he has been implicated falsely. The learned counsel submitted that PW1 Sri Abhinav Gogoi had mentioned in the FIR that on the day of the incident accused person took advantage of no one being present in his house and assaulted his father. However, in his evidence he had mentioned that his sister and sister-in-law were present in the house on the day of the incident. As such there is inconsistency in his evidence. The learned counsel also submitted that PW2 Jugal Gogoi could not identify the colour of the car nor the registration number of the car and he also failed to say the name of the accused person. Further, PW3 Smti Saruphul Gogoi is

not an eye witness but an interested witness as she is a relative of the informant and PW4Smti Deepa Moni Gogoi admitted that there were people inside the house when the incident occurred. PW5 DR. Ramen Kakoti who is the medical officer submitted that no injury was detected on the victim. PW6 Sri Kamal Gogoi stated that there was only a quarrel which he had heard but he had not seen the accused person assaulting the father of the informant. As such the learned counsel stated that the allegations of which the accused person is on trial cannot be made out from the evidence adduced and the accused person is falsely implicated and prayed for his acquittal.

The learned counsel also referred and relied on two judgments in support of his case.

- (i) V. D. Jhingan v. State of Uttar Pradesh AIR 1966 SC 1762
- (ii) State of Madhya Pradesh v. Banshilal Behari AIR 1958 MP

21. Learned APP submitted that as per the evidence of the PW3SmtiSaruphulGogoi the presence of the accused person is being established and although injury is not proved but assault is established.

Now, let me proceed with the first issue which is involved in this case and in this regard let us have a look at the ingredients of section 447 of IPC. I would like to point it out that in order to bring out a case u/sec 447 of IPC the following ingredients are necessary to be fulfilled:

(a)The accused must have entered into or upon the property in the possession of the informant/ another.

(b)The accused must have remained there unlawfully in order to commit an offence or to intimidate or insult or annoy any person in the possession of the property.

22. From the case at hand, it is seen that PW1 Sri Abhinav Gogoi was not present when the alleged incident occurred. He admitted the fact that he did not wrote the FIR himself and also failed to name the name of the scribe of the FIR. When he reached home his father was seated on a chair and he was informed by his father that the accused person hit him with his hand on his chest. PW2 Jugal Gogoi who is the victim stated that the accused person called him and charged him about planting trees and he had an argument with the accused person and also stated that the accused punched him on his chest. But in his cross-examination, he admitted that there was dispute regarding boundary with the accused person. From the evidence of PW3SmtiSaruphulGogoi it is evident that she heard some screaming and when she reached the premises of the informant, there were Moon Moon Gogoi, Moni Gogoi and daughter of Jugal Gogoi present in the house. She did not explain who had screamed and for what reason. Though she stated that the accused person had stick in his hand he could not hit the informant's father with the stick. She also stated that she knew about the lodging of by FIR by the informant. From the evidence of PW4 Smti Deepa Moni Gogoi who is

daughter of the victim and sister of the informant it is evident that the victim had also stick in his hand but PW2 did not disclosed carrying stick. PW6 Sri Kamal Gogoi deposed that he only heard that the accused person and the father of the informant Sri Jugal Gogoi had a quarrel and the informant lodged FIR with regard to the quarrel. Moreover, PW1 Sri Abhinav Gogoi, PW4 Smti Deepa Moni Gogoi and PW 2 Jugal Gogoi who is the victim stated that he was hit on his chest and as such developed pain in his chest but upon examination by the medical officer PW5 DR. Ramen Kakoti no injury was detected. On proper analysis of the material evidence on record it thus not established that the accused person had entered into the premises of the informant with an intention to commit an act to intimidate, insult and annoy when he made the entry.

23. With regard to the second issue, none of the PWs provided any concrete proof as to alleged obscene or filthy language used by the accused person against the victim PW2 Jugal Gogoi. PW7 in his examination-in-chief ASI Robin Das IO of the case also mentioned that no offence under Section 294 of IPC could be made out.

24. Thus, considering all aspects, evidence adduced and materials on record I do not find any ingredients of the offences which attracts the provisions of the Sections 447 and 294 of the Indian Penal Code and accordingly it cannot be proved that the accused person Arun Baruah committed the offence of criminal trespass by entering into the land of

the informant with an intent to commit an offence or to annoy or intimidate or insult to the father of the informant nor the accused person abused the father of the informant, uttering filthy and obscene words.

25. From the above discussion and examination of witnesses, it can be summarised that the prosecution has failed to prove the commission of offences under Sections 447 and 294 against Arun Baruah.

ORDER

26. In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused person Arun Baruah had committed the offence under Sections 447 and 294 of the Indian Penal Code as alleged.

27. As such the accused person Arun Baruah is acquitted of the all the charges under Sections 447 and 294 of the Indian Penal Code and he is set at liberty forthwith.

28. The bail bond of the accused person shall remain valid for six months from today as per section 437 of the Cr.P.C.

29. Pronounced by me on this open Court, this 10th day of
May, 2021 under my hand and seal of this Court.

Judicial Magistrate 1st Class

Dibrugarh

G.R Case No. 3543/2017

State v Arun Baruah

Appendix

Prosecution Witness

PW1 Sri Abhinav Gogoi

PW2 Sri Jugal Gogoi

PW3 Smti Soruphul Gogoi

PW4 Smti. Deepa Moni Gogoi

PW5 Dr. Ramen Kakoti

PW6 Sri Kamal Gogoi

PW7 ASI Robin Das

Prosecution Exhibits

Exhibit – 1: FIR

Exhibit 1(1): Signature of PW1- Sri Abhinav Gogoi

Exhibit 2 Medico Legal Report

Exhibit 2(1) Signature of MO Dr. Ramen Kakoti

Exhibit-3 Sketch Map

Exhibit-3 (1) Signature of the IO Sri Robin Das

Exhibit-4 Seizure List

Exhibit 4(1) Signature of the IO Robin Das

Exhibit 5 Charge-Sheet

Exhibit 5 (1) Signature of the OC Prafulla Kr. Das

Defence Witness

Nil

Defence Exhibits

Nil

Judicial Magistrate 1st Class

Dibrugarh