

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

**DIBRUGARH :: ASSAM::**

G.R. Case No. 717/17

U/S 294/323/352/506/34 OF IPC

State of Assam

**-Vs-**

1. Arfan Naser.
2. Abed Matin and
3. Samir Ali..... Accused

**PRESENT : A.K. BARUAH, LL.M. AJS.  
Chief Judicial Magistrate,  
Dibrugarh.**

**APPEARANCE :**

Advocate for the Prosecution : Miss D. Gogoi, Advocate

For the Defence : Mr D. Chetry.

Date of evidence : 5.1.18, 16.2.18,  
18.04.2019.

Date of argument : 18.04.2019.

Date of judgement : 02.05.2019.

**J U D G M E N T**

1. The case of the prosecution in brief, is that on 02.03.2017, at about 8.45 P.M, when the complainant namely Madud Ahmed and his brother in law Wazid Khan, were standing in front of his shop, situated at Amolapatty Railgate, the accused persons namely Abed Matin, Arfan Naser, Samir Ali and their associates armed with deadly weapons broke the shutter of their shop in order to commit robbery. When the complainant tried to obstruct them, the accused persons assaulted him and his brother in law namely Wazid Khan causing injury to

their person. The accused persons even snatched away one Samsung mobile phone , gold chain and cash amount of Rs 10,000/- from them . The complainant Md. Madud Ahmed, had filed one FIR in the Dibrugarh Police Station, regarding the incident.

2. On the basis of the FIR lodged by the complainant , a case, being Dibrugarh P.S Case No. 247 of 2017, was registered u/s 448/325/326/392 IPC . Police conducted investigation into the case and filed charge sheet against the accused persons namely Arfan Naser, Abed Matin and Sameer Ali u/s 294/352/323/506/34 IPC.
3. The accused appeared in this case. Copies were furnished to them u/s 207 Cr PC. Considering the material on record and hearing both sides, particulars of offences u/s 294/323/352/506/34 IPC were explained to the accused persons, to which, the accused pleaded not guilty and claimed to be tried.
4. During the trial of the case, the prosecution side examined 4 (four) P.Ws in this case. The defence plea is of total denial. The defence did not adduce any evidence. The accused persons were examined u/s 313 Cr PC.
5. I have heard the learned counsel for the accused and learned Asst. P.P 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 :-

6. **POINTS FOR DETERMINATION :-**

- i. Whether on 02.03.2017, at about 8.45 P.M, the accused persons in furtherance of their common intention uttered obscene words against the complainant namely Madud Ahmed and his brother in law namely Wazid Khan in order to annoy them in public in Amolapatty near Rail gate?

- ii. Whether on the same date, time and place, the accused persons in furtherance of their common intention assaulted the complainant namely Madud Ahmed and his brother in law namely Wazid Khan ?
- iii. Whether on the same date, time and place, the accused persons in furtherance of their common intention voluntarily caused hurt to the complainant namely Madud Ahmed and his brother in law namely Wazid Khan ?
- iv. Whether on the same date, time and place, the accused persons in furtherance of their common intention committed criminal intimidation by threatening the complainant namely Madud Ahmed and his brother in law namely Wazid Khan ?

**DECISION AND REASON FOR THE DECISION :-**

- 7.** PW1 (Md. Madud Ahmed) deposed in his evidence that on the day of the incident, in the year 2017, at about 8.00 PM, the accused persons assaulted him, when he was standing alongwith his brother in law Wazid Khan in front of his shop. PW1 identified the FIR lodged by him as Ext1.

In his cross-examination , PW1 deposed that the accused persons did not enter his shop. The accused had filed one case against him (the complainant/PW1).

- 8.** PW2 (Arun Kr Saikia) deposed in his evidence that he heard that some fight took place in the shop of the complainant. Later on, PW2 came to know from the complainant that some nearby youths came to his shop to assault the complainant.
- 9.** PW3 (Wazid Khan) deposed in his evidence that due to some misunderstanding, the complainant (PW1) lodged this case against the accused. PW3 has no allegation against the accused persons.

In his cross-examination, PW3 deposed that he has no objection if the accused persons are acquitted from the case.

- 10.** PW4 (Shri Putu Das) deposed in his evidence that due to some misunderstanding, the complainant (PW1) lodged this case against the accused persons, in result of which, a quarrel took place between the parties. PW4 has no allegation against the accused. In his cross-examination, PW4 deposed that he has no objection if the accused persons are acquitted from the case.
- 11.** From the above discussion, I found that although PW1 being the complainant implicated the accused by stating that the accused assaulted him and his brother-in law Wazid Khan, but Wazid Khan being PW3 deposed that due to some misunderstanding, the complainant (PW1) lodged this case against the accused. PW3 has no allegation against the accused persons. PW3 has no objection if the accused persons are acquitted from the case. Thus , I have found total contradiction between the evidence of PW1 and PW3 who are the victims and eye witnesses of this case. Considering this contradiction, I am of the view that the case or evidence of PW1( the complainant) is not wholly reliable.
- 12.** The case of the prosecution is not established from the evidence of PW2 . Again, PW4 corroborated the evidence of PW3 by stating that due to some misunderstanding, the complainant (PW1) lodged this case against the accused persons. Thus except PW1, other PWs have not implicated the accused. PW3 being one of the victim did not implicate the accused by stating that due to some misunderstanding, the complainant lodged the case. Hence, from the evidence on record, I found no convincing material against the accused. The evidence of PW1 was found to be not wholly reliable and the same is not corroborated by any other cogent evidence. Hence, I hold the points for determination in the negative.

- 13.** In the result, I have not found the accused guilty in this case. Hence, I acquit them from the charge u/s 294/323/352/506/34 IPC and set them at liberty forthwith. Considering the evidence of the victim/PW3, the case is not referred for victim compensation.

The bail bonds will be in force for 6 (six) months from today.

Given under my hand and seal of this court on this 02<sup>nd</sup> day of May, 2019.

(A K Baruah)

Chief Judicial Magistrate,  
Dibrugarh.

**Appendix**

Prosecution Witness :-

PW1 :- Md. Madud Ahmed.

PW2 :- Shri Arun Kr Saikia.

PW3 :- Shri Wazid Khan.

PW4 :- Shri Putu Das.

Defence witness :-

None

Exhibits :-

Prosecution exhibits :-

Exhibit 1 :- FIR.

Defence exhibits :-

None

Court witness :- None.

Court exhibits :- None.

**CJM, Dibrugarh**