

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS, DIBRUGARH, ASSAM**

G.R.CASE NO. 2084/2013

(U/S- 294/506 R/w Section 34 IPC)

**Present: Smti. Sanskrita Khanikar, A.J.S.**  
**Judicial Magistrate First Class,**  
**Dibrugarh**

**State**

**- VS -**

**1. Sri Utpal Borsaikia**

S/O - Late Sadananda Borsaikia

R/O - Saru Abhai Puria

P.S. - Tengakhat

Dist - Dibrugarh, Assam

**2. Sri Nanda Raj Borsaikia**

S/O - Sri Utpal Borsaikia

R/O - Saru Abhai Puria

**G.R.CASE NO. 2084/2013**

P.S. - Tengakhat

Dist - Dibrugarh, Assam

.....Accused persons

Advocate for the Prosecution : Learned Smti. Lakshmi  
Mohan

Advocate for the Defence : Learned Sri Vikash Kumar

Evidence recorded on : 22-06-2015, 18-08-2015,  
16-08-2016, 24-08-2017,  
27-12-2017, 26-09-2018,  
25-08-2021, 22-11-2021

Argument heard on : 07-12-2021

Judgment delivered on : 07-12-2021

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

1. The prosecution case as stated in the F.I.R. dated 12-07-2013 is that on 11-07-2013 at about 11 p.m. in the night at Tengakhat PHC, the accused Sri Nanda Raj Borsaikia and Sri Utpal Borsaikia rebuked the on-duty hospital workers, tried to damage the hospital equipment by kicking chairs and tables and also threatened the on-

duty hospital workers of dire consequences, without any provocation on the part of the on-duty hospital workers.

2. A case was registered at Tengakaht P.S. subsequent to the lodging of this F.I.R. Upon completion of investigation, the police submitted charge-sheet against the accused persons, namely, Sri Nanda Raj Borsaikia and Sri Utpal Borsaikia for the offences under sections 294/506 R/w section 34 of the Indian Penal Code (hereinafter referred to as I.P.C.).

3. The accused persons stood for trial. Copies of the relevant documents were furnished to the accused as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). Upon finding prima facie grounds for presuming that the accused persons committed offences u/sec 294/506 r/w Sec 34 of the IPC, the particulars of the offences under sections 294/506 r/w section 34 of the IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of the case, the prosecution side has examined as many as 10 (ten) witnesses, namely, Dr. Kulen Chandra Gohain, informant of the case as PW-1, Dr. Achyut Krishna Chutia as PW-2, Smti. Queen Barman as PW-3, Sri Purna Chetia as PW-4, Md. Rajibul Ali as PW-5, Smti. Mouchumi Doley as PW-6, Sri Sachin Gowala as PW-

7, Smti. Rekha Ghatowar as PW-8, Sri Robin Neog as PW-9 and Sri Reba Kanta Baruah as PW-10.

The prosecution also took aid of 2 (two) documents which were exhibited as follows:

The ejahar lodged by the informant was exhibited as Exhibit 1 and the xerox copy of the complaint in writing of the hospital workers of Tengakhat PHC as Exhibit 1(A).

After recording the prosecution evidence, the statements of the 2 accused persons were recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused persons claimed innocence. The defence adduced no evidence.

5. I have heard the arguments from both sides and meticulously perused the entire evidence on record.

6. THE POINTS FOR DETERMINATION

(i) Whether the accused persons on 11-07-2013, at about 11 p.m. in Tengakhat PHC, Dibrugarh, in furtherance of their common intention, used obscene and vulgar language on the on-duty hospital workers in a public place and thereby committed an offence punishable u/sec 294 r/w Sec 34 of the IPC?

(ii) Whether the accused persons, at the same time and at the same place, in furtherance of their common intention, subjected the on-duty hospital workers to

criminal intimidation by threatening them to cause injury on their persons and thereby committed an offence punishable u/sec 506 r/w Sec 34 of the IPC?

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. PW-1, the informant deposed in his evidence that he recognises the accused persons. He stated that on 12-07-2013, when he reached his workplace at about 9 a.m. in the morning, eight hospital workers submitted a written complaint against the accused Sri Nanda Raj Borsaikia that on the previous night, he and one of his companions had rebuked the on-duty hospital workers without any provocation, that they tried to damage the hospital equipment by kicking on the chairs and tables and that they threatened the on-duty hospital workers with dire consequences. On the basis of the said written complaint, he lodged an F.I.R. at Tengakhat P.S. The written complaint was enclosed with the F.I.R. He proved Exhibit 1 as the ejahar lodged by him by identifying Exhibit 1(1) as his signature thereon. He proved Exhibit 1(A) as the xerox copy of the complaint in writing of the hospital workers of Tengakhat PHC.

During his cross-examination, he stated that during the incident, he was at his residential quarters. He did not see the incident himself and lodged the ejahar on the basis of the written complaint. His statement was not recorded by the police.

8. PW-2 in his evidence deposed that the informant/PW-1 is known to him. He knows the accused Sri Utpal Borsaikia to be a teacher at a school. The incident occurred in the year 2013 at Tengakhat PHC. On the night of the occurrence, the accused had come to Tengakhat PHC as the accused Sri Utpal Borsaikia's son was suffering from stomach ache. They were also accompanied by few other young men. At that time, he was on duty at the hospital and the injection used in treating stomach ache was not available there. So, he asked the accused to purchase the injection from elsewhere. Then, the companions who had accompanied the accused started verbally abusing him. They were even kicking at the chairs, tables and windows of the hospital. So, he and the other on-duty hospital workers informed the informant about the incident on the phone. On the next day, he and the other on-duty hospital workers submitted a written complaint about the incident to the informant. The informant then lodged the ejahar.

During his cross-examination, he stated that during the time of the incident, the one accused person had gone out of his room and the other accused was sleeping on a bed. He did not hear them verbally abusing him or breaking or damaging anything.

9. PW-3 deposed in her evidence that the informant/PW-1 was the SDMO at Tengakhat P.S. the accused persons

are not known to her. The incident occurred in the year 2013 and it was about 7:00 p.m. at that time. At that time, she was on duty at the labour room. When she came out of the labour room, she heard that there was an argument between PW-2 Dr. Achyut Chutia and some patient. She does not anything else about the incident.

During her cross-examination, she stated that her statement was recorded by the police. The police only asked her name and if she was present at the place of occurrence during the time of the incident.

10. PW-4 deposed in his evidence that the informant was the SDMO of Tengakaht PHC. The accused persons are not known to him. On the date of the occurrence, he was on night duty at Tengakhat PHC when he suddenly heard some noise from the emergency room. He then came to know that that someone had an argument with the doctor who was on duty at the emergency room. He does not know anything else about the incident.

During his cross-examination, he stated that he had not seen the incident. He does not know who were arguing with the doctor. His statement was not recorded by the police.

11. PW-5 deposed in his evidence that the accused persons are from his village. The informant is also known to him. According to him, on the date of the occurrence, he was working as a night chowkidar at Tengakhat PHC

and doing rounds. After coming back from his round, he heard from a co-worker that a patient wanted some medicine and due to the unavailability of the medicine there was an argument. He could not remember between whom the argument took place. The day after the incident he had narrated to the informant/PW-1 what he had deposed today. His statement was not recorded by the police.

During his cross-examination, he stated that on the night of the incident Sri Purna Chetia and Sri Subal Gogoi were on duty with him.

12. PW-6 deposed in her evidence that the accused as well as the informant are known to her. The incident was of the year 2013 when she was working at Tengakhat PHC. On the date of the occurrence, she was on night duty when a patient came to the hospital. The said patient was given a prescription by a doctor of the hospital. The patient then gave them the prescription but one of the medicines in the prescription was not available with them. When they informed the patient about the unavailability of the said medicine, the people who accompanied the patient started to break the table, chairs, the windows etc. in the hospital. At the time of the incident Dr. Achyut Krishna Chutia (PW-2) and nurse Smti. Queen Barman (PW-3) were on duty with her. They immediately informed about the incident to the

informant/PW-1. Subsequently, he lodged an F.I.R. at the police station.

During her cross-examination, she stated that she does not remember the exact time of the incident. According to her, the informant/PW-1 came to the place of occurrence on the next day i.e. the day after the occurrence.

13. PW-7 deposed in his evidence that the informant is a doctor of Tengakaht PHC. The accused persons are not known to him. The incident was of the year 2013 when he was working at Tengakhat PHC as a cleaner. He does not know much about the incident as he suffers from hearing difficulty.

His cross-examination has been declined by the defence.

14. PW-8 deposed in his evidence that the accused persons are not known to him. The informant is the SDMO of Tengakhat PHC. The incident was of the year 2013. On the night of the incident there was a fight in the hospital. Other than that, he knows nothing about the incident.

His cross-examination was declined by the defence.

15. PW-9 deposed in his evidence that on 11-07-2013, he was working as ASI at Tengakhat P.S. On the same day, the informant/PW-1 lodged a written F.I.R. at Tengakhat P.S. which was registered as Tengakhat P.S. Case No. 70/2013 u/sec 294/352/427/511/506 r/w Section 34 of the IPC. He was, then, entrusted with the preliminary

investigation of the instant case. He visited the place of occurrence, recorded the statements of the witnesses there and also prepared a rough sketch-map of the place of occurrence. He proved Exhibit 2 as the sketch map by identifying Exhibit 2(1) as his signature therein. He also recorded the statement of the informant. At first, he could not apprehend the accused as they were in Assam Medical College and Hospital, Dibrugarh. Later on, they both appeared in the police station and he recorded their statements. Subsequently, they were allowed to go on bail as the said offences were bailable in nature. Thereafter, he completed the investigation and handed over the case diary to the Officer in Charge of Tengakhat P.S. The charge-sheet in this case was submitted by Sri Reba Kanta Baruah (PW-10).

During his cross-examination, he stated that he has investigated the case which was lodged vide a written ejahar on 11-07-2013 and not the case which was lodged on 12-07-2013. He did not seize anything during the investigation. He denied the defence suggestion that he recorded the statements of the witnesses at the P.S. and that he did not investigate the matter properly.

16. PW-10 deposed in his evidence that on 12-07-2013 he was working as S.I. at Tengakhat P.S. On the same day, the informant/PW-1 lodged a written F.I.R. at Tengakhat P.S. which was registered as Tengakhat P.S. Case No.

**G.R.CASE NO. 2084/2013**

70/2013 u/sec 294/352/457/511/506 r/w Section 34 IPC. ASI Sri Robin Neog (PW-9) was entrusted with the preliminary investigation of the case. After completing the preliminary investigation, the PW-9 handed over the case diary to the Officer in Charge of Tengakhat P.S. Sri Ranjit Moran who in turn handed over the matter to the PW-10. PW-10 submitted the charge-sheet against the accused persons u/sec 294/506 r/w Section 34 of the IPC based on the investigation carried out by the PW-9. He proved Exhibit 3 as the charge-sheet by identifying Exhibit 3(1) as his signature therein.

During his cross-examination he stated that as the investigation was not conducted by him, he could not say if the charge-sheet had been filed under proper sections.

17. A careful study of the testimonies of the prosecution witnesses reveals that the PW-1 being the informant was not even present at the place of occurrence at the time of the incident. PWs 3, 4 and 5 are hearsay witnesses. PWs 7 and 8 do not know anything about the incident and their cross-examination has been declined by the defence. It was PW-2 and PW-6 who were direct witnesses but PW-2 clearly deposed in his evidence that it was the companions accompanying the accused who started verbally abusing him and kicking on the chairs, tables and windows of the hospital. During his cross-examination, he stated that during the time of the incident, one accused

person had gone out of his room and the other accused was sleeping on a bed and that he did not hear them verbally abusing him or breaking or damaging anything. PW-6 deposed in her evidence that when they informed the patient about the unavailability of the said medicine, the people who accompanied the patient started to break the table, chairs, the windows etc. in the hospital. It, thus, transpires that both the direct witnesses being PWs 2 and 6 deposed about the role of the people who accompanied the accused persons in the incident but neither of them deposed anything which points towards the guilt of the accused persons.

18. None of the witnesses have stated the exact obscene or vulgar words which were uttered by the accused persons at the place of occurrence. It is also not specifically stated by the informant and the other witnesses as to how and in what manner the accused persons had verbally abused or criminally intimidated the on-duty hospital workers on the night of the occurrence.

It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the prosecution case and there is ample scope of reasonable doubt as to the factum of the occurrence alleged. Situated thus, I am not inclined to

**G.R.CASE NO. 2084/2013**

hold the accused persons namely, Sri Utpal Borsaikia and Sri Nanda Raj Borsaikia guilty of the offences u/sec 294/506 r/w Section 34, IPC. As such, the points of determination are answered in the negative in favour of the accused persons.

19. In the light of the above discussion, I am of the opinion that the prosecution has failed to bring home the offences u/Sec 294/506 r/w Section 34, IPC against the accused persons.

**ORDER**

20. In view of the decision made above, the accused persons, namely, Sri Utpal Borsaikia and Sri Nanda Raj Borsaikia are acquitted of the offences under sections 294/506 r/w Section 34 IPC and set at liberty forthwith.

Their bail bonds shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

The case is disposed of on contest.

Given under my hand and the seal of this Court on this 7<sup>th</sup> day of December, 2021 at Dibrugarh.

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh

**APPENDIX**

**A. Prosecution witnesses:-**

- i) Dr. Kulen Chandra Gohain, informant of the case as PW-1
- ii) Dr. Achyut Krishna Chutia as PW-2
- iii) Smti. Queen Barman as PW-3
- iv) Sri Purna Chetia as PW-4
- v) Md. Rajibul Ali as PW-5
- vi) Smti. Mouchumi Doley as PW-6
- vii) Sri Sachin Gowala as PW-7
- viii) Smti. Rekha Ghatowar as PW-8
- ix) Sri Robin Neog as PW-9
- x) Sri Reba Kanta Baruah as PW-10

**B. Defence witnesses:- Nil**

**C. Prosecution exhibits:-**

- i) The ejahar lodged by the informant was exhibited as Exhibit 1
- ii) The xerox copy of the complaint in writing of the hospital workers of Tengakhat PHC as Exhibit 1(A)

**D. Defence exhibits: Nil**

Sanskrita Khanikar  
Judicial Magistrate First Class  
Dibrugarh