

IN THE COURT OF
THE CHIEF JUDICIAL MAGISTRATE : BAKSA.

GR Case No. 636/18

Under Section 171(F)/323/143/506 IPC

Present :- Smti D. Boro, AJS,
Chief Judicial Magistrate, Baksa.

The State of Assam.....Prosecution.

-Vs-

Manmahon Kalita
Hemanta Kalita
Kapil Das
Nandeswar Das
Bhagaban Das.....Accused Persons.

Evidence recorded on :- 26-11-2016, 26-12-2016,
18-05-2017, 18-03-2019,
21-05-2019, 21-01-2020,
28-04-2021.

Argument heard on :- 11-03-2022.

Judgment delivered on :- 25-03-2022.

Advocate Appeared :-

Mr. Ranjit Basumatary.A.P.P. for the State of Assam.

Mr. Tralakyajit Goyari.....Advocate for the accused person.

J U D G M E N T

1. The prosecution story in brief is that on 29-03-2015 informant Jiten Das, lodged an FIR before I/C Athiabari OP under Mushalpur PS stating inter-alia that on the same day at about 3.30 PM, the accused persons and some other

persons had affixed posters of "Oboro Suraksha Samittee" candidate Sri Ghanashyam Das on his boundary wall and valuable trees using nail without his permission. On his protest at the said work, he was physically assaulted. His wife Nilima Das was also physically assaulted and her blouse was torn. The group of 40/50 persons that came in 4/5 nos. of vehicles verbally abused using indecent language and threatened to kill by setting fire to the house at night.

2. Police registered a case against three Nos. of accused persons u/s 171(F)/323/143/354(B)/506 IPC and after completion of investigation submitted charge-sheet against all three accused persons u/s 171(F)/323/143/506 IPC.
3. Substances of accusation u/s 171(F)/323/143/506 IPC were read over and explained to the accused persons to which the accused persons pleaded not guilty and claimed to be tried.
4. The prosecution examined 6 (six) nos. of witnesses and defence examined none.
5. The accused persons are examined u/s 313 Cr.P.C. The accused persons have declined to adduce evidence.
6. I have heard argument of the learned A.P.P. as well as the learned defence counsel and perused all the relevant documents available on record.
7. **POINTS FOR DETERMINATION:**
 - 1) Whether the accused persons had committed the offence of undue influence or personation at an election?

- 2) Whether informant Jiten Das and his wife Nilima Das had sustained hurt?
- 3) Whether the accused persons had voluntarily caused hurt to the informant Jiten Das and his wife Nilima Das?
- 4) Whether the accused persons were member of an unlawful assembly?
- 5) Whether the accused persons had criminally intimidated the informant Jiten Das?

8. DISCUSSIONS, REASONS & DECISION THEREFOR –

9. Point No.1, 2, 3, 4 & 5:

- 10.** PW1 Jiten Das (informant) deposed that on 29-03-2015 at about 03.30 PM accused Kapil Das, Nandeswar Das, Bhagaban Das, Manmahon Das, Dulu Kalita etc. had affixed election posters of Oboro Suraksha Samittee on some of his valuable trees within his campus using nail. As he resisted them, they had beaten him. He sustained injuries on head, back, shoulder and two teeth of his lower jaw were loosened. When his wife Nilima Das restrained the accused persons, they had beaten his wife, pulled her cloths and torn her blouse. Ext.1 is FIR.
- 11.** In cross-examination, PW1 said that initially there were 8/10 persons and afterwards 40/50 persons came. He does not know the name of all persons.
- 12.** PW2 Nilima Das deposed that on 29-03-2015 at about 03.00 PM her husband went out of the house. After two minutes, hearing commotion on the road, she came out and saw that some supporters of 'Oboro Suraksha Samittee' were beating

her husband. She could recognise Kapil Das, Bhagaban Das, Nandeswar Das, Manmahon Kalita and Dulu Kalita. She does not know the name of rest persons. There were more than 50 persons. When she went to protect her husband, somebody had beaten on her back by uprooting a bamboo. Dulu Kalita had torn her blouse by pulling. After some time of assault, the persons went away. After some time, police came and took them for medical examination.

- 13.** PW3 Dinesh Medhi deposed that in the year 2015 during election time at around 3.30 PM there was a hue and cry in the house of the informant regarding affixing of poster by accused Kapil Das within the campus of the informant. Hearing that, he went there and saw accused Kapil Das arguing with the informant. As the situation became tensed, he left the spot. Later on, the informant told him that he was assaulted by accused Kapil Das.
- 14.** In cross-examination, PW3 said that the place of occurrence was gathered by 50/60 persons.
- 15.** PW4 Sankar Das deposed that the informant is his younger brother. On 29-03-2015 at about 3.30 PM while he was working in his courtyard he heard people creating noise. Accordingly, he went to the road in front of his house and saw two boys of Ahopa village nailing in the tree within the campus of the informant for affixing a poster of Ghanashyam Das, a candidate of MCLA Election. He tried to prevent and they entered in an argument with him. Then the boys asked one of

them to call Bhagaban Das (accused). Bhagaban Das came and asked the informant what is the lost in nailing in a tree. Accused Dulu Kalita and Nandeswar Das attacked the informant and pushed him aside. They assaulted the informant with fist and blows. Accused Kapil Das chased the informant to assault him. As he tried to prevent him, Kapil Das gave him a blow on his head. As hue and cry raised, the wife of the informant came to rescue her husband. Then accused Dulu Kalita had pushed her and molested her. Thereafter the accused persons left the spot.

- 16.** In cross-examination, PW4 said that the informant is a member of BPF. The accused persons are member of 'Aboro Surakhya Samiti'.
- 17.** PW5 Dr. Syed Ariful Islam (MO) deposed that on 29-03-2015 he examined Mrs. Nilima Das at Athiabari State Dispensary and found—(1) swelling and sinusis, tenderness positive on right forehead near elbow joint, (2) tenderness positive on right clavicular region, (3) tenderness positive on posterior part of left ankle joint. Vital within normal limits. The injuries were caused by blunt weapon and are simple in nature. Ext.2 is the Injury Report. On the same day, he examined Sri Jiten Das and found—(1) two mild erosion on anterior part of left forehand near wrist joint, (2) a haematoma seen at left posterior part of head measuring 2 x 2 cm, (3) tenderness and swelling seen on lower part of left scapular region, (4) tenderness and mild swelling positive on left clavicular region,

(5) Tenderness and swelling positive at left part of chin. The injuries are simple in nature caused by blunt object. Ext.3 is the Injury Report.

18. In cross-examination, PW5 said that he has not mentioned in his report the age of injuries. As the injuries of the victims were on both sides of their bodies; as such those cannot be caused by falling on any hard substance.

19. PW1 and 2 are husband and wife and are alleged victims also. It is written in the FIR about affixing of election poster at the trees of the informant for which the incident occurred. The PW1 informant has said so in his evidence. PW2 who is the wife of the informant is silent about any affixing of election poster in their trees. No election poster has been seized by the IO. Hence, whether any election poster was affixed on the trees of the informant by nailing or whatever, there is lack of supporting evidence on this point.

20. S. 171(F) IPC provides for punishment for undue influence or personation at an election. It reads as — "*Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both*". In our present case, the evidence shows that the incident took place due to affixing of election poster. There is no evidence of any undue influence in election or personation at any election. As such, S. 171(F) IPC is not proved here

21. S. 143 IPC says "*whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both*". To punish the accused persons u/s 143 IPC, the prosecution has to prove first of all that there was an 'unlawful assembly'. S.141 IPC defines an 'unlawful assembly'.

22. To constitute an 'unlawful assembly' the following 3 conditions must co-exist:-

- (a) There must be an assembly of five persons.
- (b) The assembly must have a common object and
- (c) The common object must be to commit one of the five illegal objects specified in section 141 IPC.

23. From the evidence of informant we can see that the accused persons affixed election poster of a certain candidate on trees within his campus with the help of nail. There were 40/50 persons. The informant protested. On this, the rest incident followed. So, we can see that the object of the assembly of 40/50 persons was to affix election poster and not to physically assault the informant or his wife.

24. But to support the evidence of the informant that the accused persons had affixed election poster on his wall and valuable trees, the IO has not seized any election poster or nail. Hence, though the informant and other PWs have said about affixing of election poster by the accused persons on trees of the informant, I find that there is no seized article

(election poster, nail) to substantiate the allegation of the informant that the accused persons had affixed election poster on his boundary wall and tree. As such, I find that the common object as mentioned in S. 141 Cr.P.C. is not proved in our case. Hence, there is no evidence that the accused persons had formed an unlawful assembly. So, S 143 IPC is not proved here.

25. S. 319 IPC defines 'hurt'. It says "*whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.*"

26. The evidence of the informant/PW1 and his wife/PW2 regarding physical assault is cogent and trustworthy. The medical evidence also shows that the PW1 & 2 had sustained simple injury by blunt object. PW5 Dr. Syed Ariful Islam has made it clear in his cross-examination that as the injuries of the victims were on both sides of their bodies; as such those cannot be caused by falling on any hard substance. It means that the injuries must have been inflicted by some other person to the victims. The injuries show that they had caused uncomfoting to the victims. Hence, I find that the informant/PW1 and his wife/PW2 had sustained hurt.

27. The informant has said that accused Kapil Das, Nandeswar Das, Bhagaban Das, Manmahon Das, Dulu Kalita etc. had affixed election posters of Oboro Suraksha Samittee on some of his valuable trees within his campus using nail. As he resisted them, they had beaten him. When his wife Nilima Das restrained the accused persons, they had beaten his wife. The defence could not bring any contradiction in the evidence of

the PWs. As such, I find that the accused persons had beaten the informant Jiten Das and his wife Nilima Das.

- 28.** The informant and his wife are completely silent about any kind of threatening given by the accused persons to them. As such, I find that S. 506 IPC is not proved.
- 29.** Ld. defence Counsel has argued that the informant and the accused persons are of different political parties. Even PW1 has said in his cross-examination that he is a supporter of BPF Party. Ld. defence Counsel has argued that as such the informant has filed this false case against the accused persons.
- 30.** Affiliation to a particular party does not mean that a person would file false case against somebody. The defence has no other plea to negate the prosecution story except political rivalry. I find that this point has no stand.
- 31.** From the above discussions, I find that it is not proved that the accused persons had committed the offence of undue influence or personation at an election **AND** the accused persons were member of an unlawful assembly **AND** the accused persons had criminally intimidated the informant Jiten Das. So, the accused persons cannot be held guilty u/s 171(F)/143/506 IPC.
- 32.** But I find that it is proved that the informant Jiten Das and his wife Nilima Das had sustained hurt **AND** the accused persons had voluntarily caused hurt to the informant Jiten Das and his wife Nilima Das.

- 33.** I find that the prosecution has successfully proved the guilt of the accused persons beyond reasonable doubt u/s.323 IPC. But the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt u/s 171(F)/143/506 IPC. So, I acquit the accused persons viz. Manmahon Kalita, Hemanta Kalita, Kapil Das, Nandeswar Das and Bhagaban Das of the charges u/s 171(F)/143/506 IPC.
- 34.** Any kind of law breaking is never acceptable and the law breaker should not return unpunished from the Court as same may send a wrong message to the society. As such, I consider that the accused persons are not entitled to get benefit of the provisions of the Probation of the Offender's Act.
- 35.** The accused persons are heard on the question of sentence.
- 36.** I convict the accused persons viz. **Manmahon Kalita, Hemanta Kalita, Kapil Das, Nandeswar Das and Bhagaban Das** u/s **323 IPC** and sentence each of them to pay fine of Rs.1000/- (Rupees one thousand) only each u/s 323 IPC i/d SI for 30 (thirty) days.
- 37.** The bail-bonds furnished u/s 437(A) Cr.P.C. shall remain in force up to six months from today.
- 38.** Given under my hand and seal of this Court this 25th day of March, 2022.

Typed by me—

D. Boro
CJM, Baksa

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