

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, GOALPARA

GR-642/18

U/S : 353/34 IPC

State

-Vs-

- 1. Basudev Basumatary,**
- 2. Diganta Sutradhar.**

**PRESENT: RINI BHARALI,
CHIEF JUDICIAL MAGISTRATE,
GOALPARA.**

ADVOCATES APPEARED

For the State : Ld. Addl. P.P, Mr. Manaranjan Khaklary.

For the Accused : Ld. Advocate, Mr. Amzad Ali.

EVIDENCE RECORDED ON : 07.09.2018, 25.10.2018,
07.03.2019, 26.06.2019,
06.07.2019, 14.02.2020

ARGUMENT HEARD ON : 20.04.2021

JUDGMENT DELIVERED ON : 03.05.2021

JUDGMENT

The brief of the criminal case is that one Monmohan Nath, Forester has lodged an ejarah against Basudev Basumatary on 19.03.2018 before Dudhnoi P.S. alleging that on that day at about 12 o'clock at the noon they got information that one Basudev Basumatary of Dohela village was running a saw mill illegally. After getting information, he along with the staffs of Krishnai Forest Office with the assistance of Forest Guards proceeded to evict the saw mill and then the owner of that saw mill along with some other persons gathered there and forcefully snatched away the *gosa* from them. They were not able to resist those persons as there were only four forest personal with him. Accordingly, the informant is praying for taking necessary action against the owner of the saw mill Basudev Basumatary.

After receiving the information, police registered the case as Dudhnoi P.S. Case No. 37/2018 U/S 143/353 of IPC against the accused persons. After completion of investigation, police submitted the charge-sheet against the accused persons namely Basudev Basumatary and Diganta Sutradhar U/S 353/34 of IPC.

On being appearance, copy was furnished to the accused persons. Particulars of offence U/S 353/34 IPC was framed, read over and explained to the accused persons to which, they did not plead guilty and claimed to be tried.

In support of the case, prosecution has examined as many as seven PWs. Defence has adduced no evidence.

Accused persons were examined and their statements were recorded U/S 313 of Cr.PC and their plea is of total denial.

I have heard argument of Learned Advocates for both sides.

THE POINTS FOR DETERMINATION

- (I) Whether the accused persons in furtherance of their common intention, on the alleged day of occurrence assaulted or used criminal force against the informant Monmohan Nath and the staffs of Krishnai Forest Department who are public servants in execution of their duty with intent to prevent or deter such public servant from executing their duty and thereby committed an offence punishable U/S 353/34 IPC?

DISCUSSION, DECISION AND REASONS THEREBY

It has already been stated that prosecution has examined seven PWs.

PW1, Monmohan Nath is the informant of this case. He stated that he knows the accused persons. On 19.03.2018, he had been working as Forester 1 at Krishnai Range Office and on that day at about 11:30 am, he along with four Forest Guards proceeded to Dohela Forest Reserve as the DFO called him over telephone to Dohela centre. DFO took him to the saw mill of the accused Basudev Basumatary and directed him to open nut and bolt the saw mill. Accordingly, he with the assistance of Forest staffs open the same. After some time, the accused person forcefully taken away the *gosa* which was in the mill. They seized the sawing plate and machine of the mill and took it to Krishnai Range Office. As per the direction of the DFO, he has filed this case. Exhibit 1 is the Ejahar. Exhibit 1(1) is his signature. In his cross-examination, he has admitted that he never stated before the police and also in the ejahar that DFO asked him to go to the saw mill of Basudev Basumatary. He has also not stated in the ejahar that they have seized one sawing plate of the mill.

PW2, Bubul Nath deposed that he does not know the informant but he knows the accused persons. He stated that about three months ago, he saw one vehicle of Forest Department in the road in front of his house but he does not know what had happened.

PW3, Monin Ray stated that he knows both the accused persons but does not know the informant. He deposed that staffs of Forest Department came to the house of the accused, Basudev Basumatary and other people but he does not know the reason behind it.

PW4, Susil Kumar Das deposed that he knows both the parties. About one year ago, at about 11 am, he went to Bogulamari and saw that saw mill of the accused, Basudev Basumatary was running at that time and he went there. When, they tried to open the mill then Basudev Basumatary and his family members and 60 to 70 persons gathered there and snatched away the tools of the mill from them. Later on, the informant filed a case. In cross-examination, he has stated that at the time of incident, he was in duty in the Forest area near Krishnai. The distance between Krishnai and Bogulamari is

about 20 kms. About 70 to 80 villagers gave obstruction to them but he does not know their name. He has also stated that he does not know who was the owner of the machine and *gosa*.

PW5, Sofiqul Islam deposed that he knows both the parties and on 19.03.2018 at about 11 am, when he was at Dohela village, he got information that one saw mill was running and they proceeded there to evict the same. First time they tried to take away the *gosa* of the mill but accused, Basudev Basumatary and some other persons did not allow them to take the same. He further deposed that they were only four in numbers but in the opposite side there were about 40/50 persons. Hence they left the place. In cross-examination, he stated that the distance between Krishnai Range and the place of occurrence is 5 to 6 kms. He along with the informant Sushil Das and Jagadish Barman went to the place of occurrence in a vehicle of their department but he does not know the registration number of the vehicle and the name of the driver also. As per the information received from the DFO they went to the saw mill and the house of the accused is adjacent to that saw mill.

PW6, Jagadish Barman stated that he knows the informant and the accused Basudev Basumatary but another accused is not known to him. On 19.03.2018 at about 12 o'clock in the noon, while he was working as Forester 1 at Krishnai Range, he went to Dohela village and saw one saw mill there. Then he along with informant and other two Batallion party tried to take away the *gosa* of the mill but the accused, Basudev Basumatary along with some other people forcefully snatched away the same. In cross-examination, he stated that there were 20/22 numbers of villagers along with Basudev Basumatary and they had taken away the *gosa* of the mill. He has further stated that generally he used to put signature in duty register while going for duty and on that day also he did put his signature in duty register. He has also stated that he does not know who was the owner of the saw mill and in whose land it is situated.

PW7, Swapan Kr. Ray deposed that on 19.03.18, while he was posted as Second Officer at Dudhnoi P.S, one Monmohan Nath lodged an

ejahar at Dudhnoi P.S. and accordingly OC, of the said PS registered a case being Dudhnoi P.S Case no. 37/18 u/s 143/353 IPC and endorsed him with the duty of investigation of this case. Accordingly, he visited the place of occurrence, prepared Sketch Map and recorded statement of witnesses. He arrested the accused persons and upon completion of his investigation, he submitted chargesheet against the accused persons, Basudev Basumatary and Diganta Sutradhar U/S 353/34 IPC. Exhibit 2 is the Sketch Map. Exhibit 2(1) is his signature. Exhibit 3 is the Chargesheet. Exhibit 3(7)(8) are his signatures.

The evidence of all the PWs are available on the case record and I have gone through all the evidence on record. From the evidence of PW1 it appears that as per the direction of DFO when he tried to open the saw mill of the accused, Basudev Basumatary, then the accused person forcefully taken away the *gosa* which was in the mill. They seized the sawing plate of the machine of that mill and took it to Krishnai Range Office and as per the direction of DFO, he has filed this case.

So far as PW2 is concerned, although from the evidence it appears that he has not implicated the accused person but he supported the prosecution story to the extent that about three months ago, he had seen one vehicle of Forest Department in front of his house.

Again PW3 also not implicated the accused person but he has also supported the prosecution story and deposed that staff of Forest Department came to the house of the accused Basudev Basumatary.

PW4 also supported and corroborated the evidence of PW1 who deposed that on the day of occurrence, they had seen that saw mill of the accused, Basudev Basumatary was running and when they tried to open the mill, the accused Basudev Basumatary and his family members and some other persons gathered there and snatched away the tools of the mill from them.

So far PW5 is concerned, he also supported the prosecution story who deposed that after getting the information that one saw mill was running in Dohela village, they proceeded there to evict the same and tried to take away the *gosa* of the mill but accused, Basudev Basumatary and some other persons did not allow them to take the same. He has also stated that he went to the place of occurrence along with Susil Das (PW4) and Jagadish Barman (PW6).

Again, PW6 who deposed that on 19.03.2018, at about 12 o'clock, in the noon while he was working as Forester 1 at Krishnai Range, he went to Dohela village and had seen a saw mill there and tried to take away the *gosa* of the mill. But the accused, Basudev Basumatary along with some other people forcefully snatched away the same.

Section 353 IPC defined it as "Assault or criminal force to deter public servant from discharging of his duty" – Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or any consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A reading of aforesaid provision shows that main ingredient of the offence u/s 353 of IPC are that the accused persons of the said charge who have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty as such public servant. Therefore, the main ingredient of the offence is that the accused should be shown to have assaulted the public servant or used criminal force so it appears that u/s 353 IPC, the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary.

From the discussion of PWs in this instant case, it appears that although the defence has cross-examined the PWs at length but they are not

able to shake the credibility of the PWs. The evidence of PW1, PW4, PW5, PW6 remain static and intact despite of cross-examination and I have not found any ground to disbelieve their evidence. From the evidence of above PWs, it appears that the accused, Basudev Basumatary used criminal force to deter them from discharging their duty while they were executing their duty being public servant.

It is evident from the evidence of PW1, PW4, PW5 and PW6 that they were prevented from discharging their duty as public servant due to criminal force used by the accused Basudev Basumatary. Hence, it also appears that accused Basudev Basumatary had an intention of preventing or deterring them who are public servant from discharging their duty.

After going through the evidence on record, it appears that prosecution has been able to establish the case against the accused Basudev Basumatary u/s 353 of IPC and he is found guilty under above section and accordingly he is convicted under above section. But so far another accused namely Diganta Sutradhar is concerned, it appears that none of the prosecution witnesses have implicated him and I have not found him guilty u/s 353/34 of IPC. Therefore, in my opinion, prosecution has failed to establish the case against the accused Diganta Sutradhar u/s 353/34 of IPC and accordingly, he is acquitted from the purview of section 353/34 of IPC.

Provision of Probation Of Offenders Act in this case.

Now the question is whether the accused/convict Basudev Basumatary is entitled to get benefit of provision of probation of offenders act in this case?

It appears from the perusal of the evidence on record clearly that accused/convict Basudev Basumatary had an intention to commit the said offence. Considering all the aspects, I am of the opinion that accused/convict Basudev Basumatary should not be released as per provision of section 3/4 of Probation of Offenders Act.

Now I proposed to pass appropriate sentence after hearing the convict/accused Basudev Basumatary. Heard the convict on point of sentence. He pleads leniency considering his family and future life. I have heard learned Addl. Public Prosecution and learned Advocate for the defence. Ld. Defence counsel has also prayed for taking lenient view considering that the accused/convict has a family and this is his first offence.

Considering the nature of offence and submission of the convict as well as hearing Ld. Defence Counsel and Ld. Addl. P.P. and circumstances of the case I hereby sentence the accused/convict Basudev Basumatary to pay a fine of Rs. 2,500/- (Rs. Two Thousand and Five Hundred) u/s 353 of IPC in default to simple imprisonment for 3 (three) months.

Another accused person, Diganta Sutradhar who is acquitted in this case from the purview of section 353/34 of IPC is set at liberty forthwith. His bail bonds shall remain extended in force for a period of another six months

Furnish free copy of judgment to the accused/convict, Basudev Basumatary.

The fine amount if realized to be deposited in Treasury.

Case is disposed of accordingly.

Given under my hand and seal of this Court, this 03rd May, 2021.

(Rini Bharali, AJS)
Chief Judicial Magistrate,
Goalpara.

APPENDIX

PROSECUTION WITNESSES :

PW1, Monmohan Nath

PW2, Bubul Nath

PW3, Monin Ray

PW4, Susil Kumar Das

PW5, Sofiquil Islam

PW6, Jagadish Barman

PW7, Swapan Kr. Ray

DEFENCE WITNESS :

NONE

PROSECUTION EXHIBITS :

Exhibit 1 : Ejahar

Exhibit 2 : Sketch Map

Exhibit 3 : Chargesheet

DEFENCE EXHIBIT :

NONE

(Rini Bharali, AJS)
Chief Judicial Magistrate,
Goalpara.