

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
GOALPARA**

G.R. 1325 of 2015

U/S 353/506/34 of I.P.C.

STATE

Vs

Lal Miyah and anr.accused

PRESENT-DRISTISIKHA BARUAH, AJS

ADVOCATES APPEARED

For state :- Ld. APP Gayetri Devi.

For Accused :- Zakir Hussain Khan, Ld. Advocate

Evidence recorded on :-17/11/2016, 24/05/2017, 09/11/2017.

Arguments heard on :- 13/08/2021.

Judgment delivered on:- 26/08/2021.

JUDGMENT

1. The gist of the prosecution case is that on 03/06/2015 a written F.I.R. was lodged by the informant Abdus Salam Talukdar, S.I. of Police, OC Baguan PS stating that on 03/06/2015 at 08:15 P.M. in the night at Baguan police station the accused persons of case no. 88/2015 after being served notice for interrogation in the instant case, they deterred the informant of this case to conduct investigation and also

threatened him. Hence, this instant case was lodged. Hence this instant FIR was lodged with Baguan P.S. Case No. 89/2015 u/s 353/506/34 of I.P.C. against accused persons Inamul Hoque and Lal Miyah.

2. Accordingly investigation was handed over to A.S.I. Bonomali Das who submits charge sheet against accused persons Inamul Hoque and Lal Miyah under section 353/506/34 of I.P.C.
3. On appearance, copy was furnished to the accused persons. After hearing both the sides and perusal of materials on record a prima facie case was found against the accused persons namely Inamul Hoque and Lal Miyah. Accordingly, particulars of offence u/s 352/506/34 of I.P.C. was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Point to be noted here is that after going through the material evidences on record I have found that the particulars of offence u/s 352 of I.P.C. was framed against the accused persons under a clerical error and that it should have been Section 353 of I.P.C. instead. Having said so and applying my judicial mind I shall decide the case as the offences being read over and explained to the accused persons u/s 353/506/34 of I.P.C.
4. Prosecution side has examined three witnesses who were duly examined, cross examined by the defence and discharged.
5. Statement of the accused persons is not recorded as was found not necessary. Arguments are heard on behalf of both sides.

POINTS FOR DETERMINATION

6. Whether the accused persons, namely; Inamul Hoque and Lal Miyah on 03/06/2015 at about 08:15 P.M. in Baguan PS campus used criminal force to the informant who being a public servant, in execution of his duty as a public servant, or with the intent to prevent or deter the public servant from discharging his duty committing offence punishable u/s 353/34 of I.P.C. in furtherance of common intention?
7. Whether the accused persons, namely; Inamul Hoque and Lal Miyah on 03/06/2015 at about 08:15 P.M. in Baguan PS campus have committed alleged acts of causing criminal intimidation to the informant and thereby committing the offence punishable u/s 506/34 of I.P.C. in furtherance of common intention?

EVIDENCE ON RECORD

8. Perused the material evidences put to record by both the sides.
9. **PW 1/ Abu Bakkar Mollah**, states in his evidence in chief that he knows the informant of this case and knows only the accused Lal Miyah among the others. That the incident had occurred in the year 2015 at about 7 P.M. and that his shop is near the police station. When he heard noises from inside the police station he immediately went inside. That he came to know that a person namely Lal Miyah had a fight with the O.C. of the police station and fled from the police station and after the incident he was interrogated by the police.

10. **PW-2/Abdus Salam Talukdar**, he is the informant of this case and knows the accused persons. That the incident had occurred on 03/06/2015 at about 08:15 P.M. at night. That on that day he was interrogating one accused person of Baguan PS case No. 88/2015 u/s 498(A)/34 of I.P.C. When the accused person entered the police station and questioned him that why he was been interrogated. That the accused persons also had a quarrel with him. That he was been deterred from conduct of government duty and also prevented him. That the accused also threatened him that he will be taken care of later. And thereafter he had lodged the instant F.I.R. with the police. Ext.1 is the F.I.R. wherein Ext.1(1) is his signature. That he was also interrogated by the I.O.
11. **PW-3/ Jahan Uddin**, states in his evidence in chief that he knows the informant and the accused persons. That about 2 years ago the incident had occurred at the evening time. That he was called by the O.C. to the police station for settling a case which was related to his cousin sister. He came back from the police station when he came to know that the accused persons have involved in a quarrel with the O.C. That he was interrogated by the police.

ARGUMENTS BY THE PROSECUTION

12. Learned APP has argued that the prosecution has successfully established its case, by bringing all the charge sheeted material witnesses on record. However non examination of some witnesses is not fatal to the prosecution

case. That no contradiction could have been proved by the defence. It is strongly argued that the evidence of P.Ws including victim has proved the case. Thus, the evidence on record inspire enough confidence to warrant the conviction of the accused persons.

REBUTTAL BY THE DEFENCE

13. The learned defence counsel has however denied all the allegations made against the accused persons and has also denied adducing evidence in their favour but, has relied upon the cross-examination of the PWs. The following can be ascertained.

Cross examination of PW 1

14. In his cross-examination he deposes that he does not know properly why the fight between Lal Miyah and O.C. of the police station had taken place. That there were about 10-15 people present inside the police station. That there was Lathi and arms present in the hands of the police. That he has a tea stall near the police station. That at the time of incident there were customers present in his shop. That the customers went to the police station. He admits that he had not seen any incident inside the police station. Remaining questions are suggestions which are denied by the witness.

Cross examination OF PW 2

15. In his cross-examination PW-2 deposes that the incident had occurred on 03/06/2015 at about 08:15 P.M. in the night time and that he had called the accused of Baguan PS Case

No. 88/2015 through notice. That the I.O. of that case was busy in investigation. He also admits that with the F.I.R. copy he had not attached the copy of notice. That there were eight constables, three A.S.I. and he himself S.I. were present. That there were about 12-13 ATPFQ jawan present near the police station. They had also questioned him as to why he was questioning the accused person. That the informant of Baguan PS Case No. 88/2015 is the sister of this case's accused Inamul Hoque. He also admits that he had only signed the F.I.R. and that the F.I.R. was written by FIR writer present in the police station. He further states that the case was registered u/s 353/506 of IPC. The I.O. had released the accused persons on police bail. That he is a public servant and that he may be discharged or suspended from his duty by S.P. He further states that he was the in-charge of Baguan police station.

Cross examination OF PW 3

16. In his cross-examination he admits that he had not seen any incident with his own eyes and that at the time when he was present in the police station there was no incident.

ARGUMENTS BY THE DEFENCE

17. The learned defence counsel submits that the informant had lodged this case against the accused persons falsely and that no such incident had occurred on the alleged day of incident. That there is no direct evidence or eye witness to the alleged incident caused. PW-1 and PW-3 are both independent witnesses who states that they have not seen any incident with

their own eyes and that they have only heard about the incident. PW-2 who is the informant of this case himself has admitted in his cross-examination that he had not attached copy of notice with the F.I.R. which he had served with the F.I.R. Further he has also stated that he had not written the F.I.R. in his own hand and that he has only signed it. Further, his statements are not corroborated by any other independent witnesses or any evidence on record. Therefore, having said all the prosecution has failed to bring home the charges against the accused persons and the accused persons are liable to be acquitted from the case.

JUDICIAL DETERMINATION

18. I have considered the evidences on record in the light of the arguments put forth by both sides.

19. Now, let us go to see the requirements of law.

Law:-

Section 353 of IPC

20. The essential ingredients of the offence u/s 353 of IPC are as follows:-

- (a) Whoever uses assault or criminal force to any public servant in execution of his duty as public servant; or
- (b) With the intent to prevent or deter that person from discharging such public servants duty; or
- (c) In consequence of such action in lawful discharge of his duty as public servant;

Shall be punish under this section.

Section 506 of IPC

21. The essential ingredients of the offence u/s 506 of IPC are as follows:-

(a) Whoever commits offence of criminal intimidation causing threat to another of injury to his person, reputation or property; or

(b) To anyone in whom that person is interested to the person or reputation; or

(c) To cause alarm to that person or cause to do any act or omit to do any act which he is not legally bound to do or legally entitled to do respectively

Shall be punished under this section.

22. **Section 21 of IPC** defines a "**Public Servant**" and also reading the Hon'ble Kerela High Court judgment *MJ George vs SO of Police on 8 March 1983 Equivalent citations 1984 CriLJ 717* whereby Hon'ble High Court had decided that "there can be no doubt that Sub-Inspector of Police is a public servant within the meaning of section 21 of IPC".

23. Now looking back at the evidence it is seen that the PW-1 Abu Bakkar Mollah and PW-3 Jahan Uddin are the only two independent witnesses. Of them both the witnesses have failed to corroborate the statement of the informant/PW-2 Abdus Salam Talukdar. Further point to be noted is that he admits of

not sending the notice copy along with the copy of F.I.R. to the accused persons in Baguan PS Case No. 88/2015 u/s 498(A)/34 of I.P.C. This is where the accused persons' reaction of asking as to why he was called to the police station for interrogation is justified to an extent. However, there is no evidence on record to substantiate the allegation that the SI or the informant was prevented or deterred from conduct of his official duty and if he was been criminally intimidated by the accused persons. There is lack of evidence. No eye witnesses or direct evidence on record.

DECISION

24. Considering the said, this Court is of the opinion that there is no strong and cogent evidences to prove the guilt of the accused persons beyond reasonable doubt under the following heads.

CHARGES U/S 353 OF IPC :-

25. Considering the definition of section 353 of IPC which defines that whoever uses assault or criminal force to any public servant in execution of his duty as public servant; or with the intent to prevent or deter that person from discharging such public servants duty; or in consequence of such action in lawful discharge of his duty as public servant shall be punish under this section. But Owing to the discussion held above, the guilt of the alleged offence has not been established successfully therefore no offence under section

353/34 IPC is committed. Whereby it is alleged that the accused persons have deterred the informant to conduct investigation on 03/06/2015 at 08:30 P.M. **Therefore offence u/s 353/34 of I.P.C. is not committed by the accused persons in furtherance of common intention.**

CHARGES U/S 506 of IPC :-

26. Considering the definition of section 506 of IPC which defines that whoever commits offence of criminal intimidation causing threat to another of injury to his person, reputation or property; or to anyone in whom that person is interested to the person or reputation; or to cause alarm to that person or cause to do any act or omit to do any act which he is not legally bound to do or legally entitled to do respectively shall be punish under this section. But Owing to the discussion held above, the guilt of the alleged offence has not been established successfully therefore no offence under section 506/34 IPC is committed. Whereby it is alleged that the accused persons have committed criminal intimidation on 03/06/2015 at 08:30 P.M. **Therefore offence u/s 506/34 of I.P.C. is not committed by the accused persons in furtherance of common intention.**

ORDER

27. In light of the aforesaid discussion, it is in my opinion that the prosecution has failed to prove beyond reasonable doubt that the accused persons, namely; Inamul Hoque and Lal Miyah on 03/06/2015 at 08:15 P.M. had committed any offence under section 353/506/34 of IPC.
28. Accordingly, accused persons, namely; Inamul Hoque and Lal Miyah are acquitted of the offence punishable under section 353/506/34 IPC and are set at liberty forthwith. Bail Bonds shall be extended up to 6 months from today.
29. The case stands disposed of on contest.
30. Given under my hand and the seal of this Court on this 26th day of August, 2021.

Typed and corrected by me:

DRISTISIKHA BARUAH, AJS
JUDICIAL MAGISTRATE FIRST CLASS
GOALPARA

APPENDIX

1. Prosecution witness:

PW 1 : Abu Bakkar Mollah.
PW 2 : Abdus Salam Talukdar.
PW-3 : Jahan Uddin.

2. Defence witness

None

3. Prosecution Exhibit.

Ext.1 : FIR
Ext.1(1) : Signature of PW-2 / Informant.

4. Defence Exhibit.

None.

RO&AC

**DRISTISIKHA BARUAH, AJS
JUDICIAL MAGISTRATE FIRST CLASS
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