

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
UDALGURI :: BTAD :: ASSAM.**

**G.R. CASE NO. 999 of 2019
(PRC NO. 1080/19)**

**Present: Sri Mridul Kumar Saikia.
Chief Judicial Magistrate
Udalguri, BTAD, Assam.**

**STATE
-VS-
SRI ARJUN CHETRY
.....Accused.**

For the Prosecution : Mr. M. Khaklary, Learned Addl. PP.

**For the Defence : Mr. Samarjit Sharma & Miss N.
Daimary, Advocates.**

Date of prosecution evidence : 05-03-2020.

Date of argument & Judgment: 05-03-2020.

U/S- 448/323 I.P.C.

J U D G M E N T

1. The prosecution case arose out of an ejahar lodged by the complainant Sri Bikash Singha of Horpur village, before the Officer-in-Charge, Udalguri Police Station on 27-09-2019 inter-alia stating that on 26-09-2019 at about 8.30 PM, when Sri Sadhan Singha, the father of the complainant was alone at his home, accused Arjun Chetry of the same village came to their house and without any rhyme or reason assaulted him with a "bamboo stick" on his head and caused him injured. With the help of his family members and some other people from their village, his father was taken to Udalguri Civil Hospital for treatment.
2. On receipt of the ejahar to the effect aforesaid, Udalguri PS case no. 190 of 2019 U/S 448/325 I.P.C. was registered and investigation was taken up. After completion of investigation, the I/O submitted the charge sheet against the accused Sri Arjun Chetry alleging commission of the offences U/S 448/323 I.P.C.

3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused before the court. Accordingly, the accused appeared before the Court to answer the charges and the necessary copies of all relevant papers and documents were furnished to the accused in compliance with the provisions of Section 207 CrPC. Finding a prima-facie case for commission of offences U/S 448/323 I.P.C., the particulars of offences were read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.
4. In order to bring home the charge, the prosecution examined as many as four(4) Pws including the complainant in the form of:

PW 1 Sri Bikash Singha (complainant)
PW 2 Sri Ranjan Singha
PW 3 Sri Sukanta Singha &
PW 4 Sadhan Singha.

The prosecution exhibited the following document in the form of:

Ext. 1 – Ejahar.

5. After recording the prosecution witnesses the accused was examined U/S 313 Cr.P.C. All the incriminating circumstances which appeared in evidence against the accused were put to him for his explanation. The accused denied all the circumstances and pleaded his innocence. Further the accused declined to adduce evidence in defence.
6. I have heard the argument put forward by the learned Additional P.P. and the learned advocates appearing for the accused. I have also carefully gone through the entire evidence available with the case record.
7. **POINTS FOR DETERMINATION OF THE CASE :** To ascertain the guilt of the accused person on the charges levelled against him, the following points is sorted out for decision in the present case:

(1) Whether on 26th September, 2019 at about 8.30 PM at Village-Horpur, under Udalguri P.S., the accused trespassed inside the house of the complainant by entering into or remains there with intent to commit offence?

- (2) Whether on the same day, time and place the accused abused Sri Sadhan Singha, the father of the complainant using indecent words?

DISCUSSION, DECISION AND REASONS THEREOF:

9. To decide the above points, let us make a scrutiny of the evidence led by the prosecution in support of its case. PW-1 Sri Bikash Singha is the complainant of this case. He has stated that six months ago, one night at about 9 PM, when he came to his home, he came to know that at about 8 PM, due to some misunderstanding, there was an altercation with pushing and shoving between the father of the complainant and the accused for which his father got minor injury by falling down for which, on being emotional, he lodged the ejahar against the accused. Presently they have resolved their differences and are living peacefully. He expressed his unwillingness to proceed with the case further against the accused. He has proved the ejahar Ext. 1 by identifying his signature Ext. 1(1) thereon.
10. During cross-examination, PW 1 stated that he has no objection if the accused gets acquitted in this case.
11. PW 2 Ranjan Singha has deposed that six months ago, one day at about 8 PM, he heard that due to misunderstanding between the father of the complainant and the accused they had some altercation with pushing and shoving. He did not see any occurrence.
12. PW 3 Sukanta Singha has stated that complainant is his nephew and six months ago, one day at about 8 PM, he came to know from the "naam kirtan" that due to misunderstanding, there was an altercation with pushing and shoving between the father of the complainant and the accused. He did not see any occurrence.
13. PW 4 Sadhan Singha has stated that complainant is his son and six months ago, one night at about 8 PM, due to misunderstanding, he had an altercation with pushing and shoving with the accused for which he got some minor injuries by falling down and thus, being emotional, his son lodged the ejahar against the accused. Presently, they resolved their differences and are living peacefully.
14. During cross-examination, PW 4 stated that he has no objection if the accused gets acquitted in this case and accused did not commit any harm to him.
15. After perusing the evidence on record, it is clear that there was no such occurrence as alleged in the ejahar. Further, the complainant himself does not

want to proceed with the case further against the accused and clearly stated that he has no objection, if the accused gets acquitted from the charges. The most vital witness PW 4 Sri Sadhan Singha who is the victim of the case has also stated in his deposition that the altercation and scuffle took place with the accused due to misunderstanding only and in that process, he somehow fell down and sustained minor injury. He too in his cross stated clearly about the fact that he has no objection, if the accused is acquitted from the case. Altogether, it gives the impression that the complainant and the victim noway incriminated the accused with the alleged offences. As the PW 1 the complainant and his father i.e. the victim (PW 4) have deposed before the court voluntarily, the evidences of PW 1 & PW 4 are accepted. The remaining witnesses too have not incriminated the accused with the alleged occurrences. The independent witnesses clearly stated in their evidences that there was no such occurrence as alleged in the ejahar between the accused and the father of the complainant. Moreover, the most vital witnesses i.e. PW 1 & PW 4 have expressed their unwillingness to proceed with the case further. It appears that the instant case arose out of misunderstanding only as admitted by the complainant and the victim.

16. Thus, from the above appraisal, appreciation of evidence on record, and the application of law, I find that the prosecution has failed to establish the offences U/S 448/323 I.P.C. against the accused person beyond all reasonable doubt. In the result, the accused is not found guilty U/S 448/323 I.P.C. Hence, the accused Sri Arjun Chetry is acquitted from the charges U/S 448/323 I.P.C. on benefit of doubt and set him at liberty forthwith.
17. Bail bond shall remain in force for next 6 months as per provisions of Section 437 A CrPC.

Given under the hand and seal of this Court on this 5th day of March, 2020 at Udalguri, BTAD, Assam.

Dictated and corrected by me:

(Mridul Kumar Saikia)
Chief Judicial Magistrate
Udalguri, BTAD, Assam.

(Mridul Kumar Saikia)
Chief Judicial Magistrate
Udalguri, BTAD, Assam.

APPENDIX

- A. Prosecution witnesses : PW 1 Sri Bikash Singha(complainant).
PW 2 Sri Ranjan Singha
PW 3 Sri Sukanta Singha &
PW 4 Sri Sadhan Singha
- B. Defence witness : Nil.
- C. Documents exhibited : Ext. 1 – Ejahar

(Mridul Kumar Saikia)
Chief Judicial Magistrate
Udalguri, BTAD, Assam.

Typed and transcribed by me:

(Poonam Rajbongshi /Stenographer)