

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE:: KOKRAJHAR

G.R CASE NO.1071/08

U/S 448/427/353 of IPC

State

-Vs-

Sri Dharmeswar Basumatary

Accused person.

PRESENT:- SRI R. KR.TODI, A.J.S

Mr. K.Ch.Saha, Ld. A.P.P for the State.

Mr. A.R.Mandal, Learned Advocate for the accused person.

Date of recording Evidence: -15.03.14,

Date of hearing Argument:- 20.10.14

Date of delivery of Judgment:- 20.10.14

**JUDGMENT.**

1 Prosecution case in brief is that, an ejahar was lodged on 11.10.08 by one Bijoy Sarkar, Station Superintendent, Gossaigaon Railway Station, N.F.Railway alleging that on 8.10.08 at night an unknown person entered the Railway Engine without his knowledge. It is alleged further that the unknown person broke the glass of the door of the engine and assaulted the driver.

2 Accordingly, Bongaigaon GRPS Case No.19/08 was registered and on completion of investigation charge- sheet was submitted under sections 448/427/353 of IPC against the accused person.

3 On appearance, the accused person Dharmeswar Basumatary was enlarged on bail. Copy was furnished. Particulars of offences under sections 448/427/353 of IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.

4 **POINTS FOR DETERMINATION:**

- i) Whether, on 08.10.08, at Gossaigaon Railway Station yard at night the accused committed house trespass by entering into the Engine of the Train of N.F.Railway with intent to assault the driver of the Train and also to commit mischief by damaging the Railway property; committed mischief by damaging Railway property (namely the glass of the door of the engine) causing loss of more than Rs.50/- and also assaulted or used criminal force to the driver of said train (public servant) who was in execution of his duty as such public servant with intent to prevent or deter the said Railway driver from discharging his duty as such public servant and thereby committed offences punishable under sections 448/427/353 of IPC?

5 It appears from the record that prosecution could examine only the informant Bijoy Sarkar and inspite of efforts made by prosecution it could not secure attendance of other P.Ws and

ultimately finding the case an old pending one prosecution evidence had to be closed. Examination of accused person under section 313 of Cr.P.C also had to be dispensed with. Heard arguments.

6. **DISCUSSION DECISION AND REASONS THEREOF:**

The only P.W1 informant namely Bijoy Sarkar deposed that he did not know the accused. The incident took place on 8.10.08 at Gossaigaon while he was working as Railway Station Master at Gossaigaon. He deposed that on the day of occurrence driver of a Goods train reported him that an unknown person entered the train engine from Basugaon and broke away looking glass of the door of the engine and accordingly the informant lodged the ejahar. Ext.1 wherein Ext.1(1) was his signature.

In his cross-examination he admitted categorically that he did not see any incident and that he also did not know the accused.

7. From the evidence as above it is clear that identity of the accused to be the culprit could not be established at all and there is complete lack of evidence to show that it was the accused who committed house trespass by entering into the Railway engine and also that the accused committed mischief or prevented the driver of the train from discharging his duty as public servant. Accordingly, it is held that prosecution could not establish charges under sections 448/427/353 of IPC against the accused person at all and as such he is acquitted from the charges thereof and set at his liberty forthwith.

8. Judgment is pronounced.

The case is disposed of.

Given under my hand and seal of this court, this 20<sup>th</sup> Day of Sept'2014 at Kokrajhar.

**Dictated and corrected  
By me**

**R. Kr. Todi  
Addl. Chief Judicial Magistrate,  
Kokrajhar**

**Addl.C.J.M, Kokrajhar**

