

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS AT
SONITPUR, TEZPUR**

PRESENT: DARSHANA NATH, AJS

JMFC,

Sonitpur, Tezpur

GR CASE NO: 1150/14

U/S 341/506/34 IPC

STATE

VS.

Md. Risad Ali and others

Evidence recorded on : 30/10/2019

Arguments heard on : 27/01/2021

Judgement delivered on : 09/02/2021

Appearing for Prosecution : Smti. Karabi Das

Appearing for Defence : Shri Pawan Sharma

JUDGMENT

- 1.** The ejahar was lodged by the informant Md. Hassain Ali on 22/05/2014 alleging *inter alia* that the sister of the informant named Rehana Begum was raped by Afjal Khan who is the son of the accused person Adlot Khan along with his three companions on 06/05/2014 because of which Rehana Begum filed a case as case no.55/14 at Rangapara P.S. As a result, the police arrested Afjal Khan and was sent to jail Hazot. On being instigated, the accused persons Md Risad Ali, Md. Adlot Khan and Aisa Begum at 4 p.m. on 21/05/2014 threatened to kill the informant by bringing rented dacoits from the place of Adlot Khan's father-in-law, i.e. Kolakuchi. On receiving threatening, the informant was unable to move out of the house. Hence, this case.
- 2.** Police on receiving the ejahar registered the same as Rangapara P.S. Case No 61/2014 U/S 341/506/34 IPC and started investigation of the same. On completion of investigation, police submitted the chargesheet against the accused persons namely Md Risad Ali, Md. Adlot Khan and Aisa Begum U/S 341/506/34 IPC.
- 3.** Cognizance of the offence was taken and accordingly summons were issued to the accused persons. On appearance, the copies were furnished to the accused persons.

4. Considering the nature of the offences, the same were explained to the accused persons, to which they pleaded not guilty and claimed to be tried.
5. During the trial, prosecution has examined four witnesses. Statements of the accused persons are recorded under Section 313 CrPC, but the accused persons have failed to adduce evidence in their support.

I have heard the arguments advanced by the learned Counsel of both sides and carefully perused the evidence on record.

POINTS FOR DETERMINATION:

6. Whether the accused persons, in furtherance of their common intention wrongfully restrained the informant and thereby committed an offence punishable under sections 341/34 IPC?
7. Whether the accused persons, in furtherance of their common intention threatens the informant to kill him and thereby committed an offence punishable under sections 506/34 IPC.

DISCUSSIONS, DECISIONS AND REASONS THEREOF

8. PW1 Md. Hassain Ali has deposed that he is the informant of this case and he knew the accused persons. He stated that his sister Rehena Begum was raped by Muktar Ali and Astar Ali and regarding this case he lodged a case. After that the accused Rishad Ali came to his house and threatened him to withdraw the rape case which he refused. He stated that after refusing to withdraw the case accused Rishad Ali told him that he would kill the informant. Finding no way out, the informant had to lodge this case.
9. PW-1 did not mention the name of Afjal Khan who is son of the accused Adlot Khan. It is quite impossible for a rational person whose sister was raped can so easily forget the name of the rape accused in the court.
10. In cross-examination, PW-2 stated that she only heard from her husband, i.e. PW-1 that Rishad Ali threatened him to withdraw the case or he would kill PW-1. She did not see the incident by her own.
11. PW-3 stated in her examination-in-chief that she knew the accused persons and that the accused persons surrounded her father i.e. PW-1 and threatened to kill him if he would not withdraw the case which was filed by the sister of PW-1 for raping her. But in cross-examination that PW-3 stated that she only heard that the accused persons threatened her father i.e. PW-1 to withdraw the case otherwise he would kill PW-1. She stated that she did not see the incident by her own.
12. Section 60 of the Indian Evidence Act says that, oral evidence to be admissible, it must be direct. In other words, hearsay evidence is no evidence.

- 13.** PW-4 in cross-examination also stated that he is not sure that where the incident was taken place. Moreover, he stated that PW-1 has not stated before PW-4 that Muktar Ali and Astar Ali took away his sister when she came out of the bathroom to Borjuli Tea State and raped her as PW-1 stated in his examination-in-chief.
- 14.** Moreover, PW-1 stated in the Exhibit 1 that he was threatened by the accused persons at the road of Kamarpalli. But in examination-in-chief he stated that the accused persons threatened him at his house. Hence, the credibility of PW-1 is not beyond doubt.
- 15.** Thus, it is seen that there is no evidence on record to suggest that the accused persons wrongfully restrained and threatened the informant to kill him in furtherance of their common intention. Had the prosecution able to establish that the accused persons wrongfully restrained and threatened the informant to kill him beyond reasonable doubts, then it could be said that it was wrongful restrain and criminal intimidation on the part of the accused persons. Hence, it is considered that the prosecution has failed to prove the allegations against the accused persons beyond reasonable doubt.
- 16.** In the absence of proof of wrongful restrain and criminal intimidation in furtherance of common intention on the part of the accused persons, the offences u/s 341/506/34 stand disproved.
- 17.** Thus, all the points for determination are decided in the negative.

ORDER

- 18.** Accordingly, the accused persons, Md. Rishad Ali, Md. Adlot Khan and Aisa Begum are acquitted of the offence under section 341/506/34 IPC and set at liberty forthwith. Their bail bonds are extended for a period of 6 months.
- 19.** The custody of the seized articles is made absolute in favour of the registered owner thereof, if any.

Given in my hand and under the seal of this court on this 9th day of February. 2021.

Darshana Nath
JMFC, Sonitpur, Tezpur

Typed by me:

APPENDIX

Prosecution witness: PW1 Md Hassain Ali
PW2 Must. Masiram Begum
PW3 Hasina Khatoon
PW4: ASI Kudrat Ali

Defence witness: none

Prosecution exhibits: Ext. 1: Ejahar
Ext. 1(1): Signature of PW1
Ext. 2: Chargesheet

Defence exhibits: none