

**IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE (S),
SONITPUR, TEZPUR**

G.R. CASE No. 3317 of 2015

u/s 506/34 IPC

State

Vs

1. Bishu Modak
2. Abhijit Ghosh
3. Manoj Kumar GopeAccused persons

PRESENT: Sri B. Acharyya. LL.M., A.J.S.

Sub-Divisional Judicial Magistrate(S), Sonitpur, Tezpur

Appearances:

For the Prosecution: Sri R. Goswami, Ld. APP.

For the Defence: Sri Sudesh Singh, Ld. Adv.

Charge Framed on: 19.01.2017

Date of Evidences: 14.01.2018, 27.03.2018 & 07.07.2018

Date of Argument: 18.04.2019

Date of Judgment: 02.05.2019

J U D G M E N T

1. The Prosecution case in brief is that one Swapna Biswas has filed an FIR on 07.12.2015 stating that on 05.12.2015 at about 11:30 AM some NADA (North Assam Distribution Association) members came to her office for discussion regarding some company issues. They were about 7-10 persons and she was along with only one staff in her office. Thereafter Bishu Modak threatened her and harassed her. Hence, she filed this case.

2. The O/C Tezpur P.S on receiving the FIR registered a case vide Tezpur P.S Case No. 1659/18 u/s 506/34 of the Indian Penal Code. After investigation, the I.O laid down the Charge sheet under Sections 506/34 of the Indian Penal Code against accused persons Bishu Modak, Abhijit Ghosh and Manoj Kumar Gope for trial.
3. On appearance before the court, accused persons were furnished with copies of relevant documents u/s 207 of the Cr.P.C. Upon perusal of the case record and on hearing the Learned Counsels for both sides, offences u/s 506/34 of Indian Penal Code was framed, which was then read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. The Prosecution examined 3 (three) witnesses. Thereafter, Ld. APP has prayed to close the evidence of the prosecution and accordingly, prayer was allowed.
5. The examination of the accused persons' u/s 313 of the Cr.P.C was dispensed with as there are no incriminating materials against them. Defence denied adducing evidence.
6. Heard the arguments put forward by the learned counsel for the accused persons and the learned APP for the State and also perused the evidences and materials on record.

POINT FOR DETERMINATION:

7. The following point has been taken up for determination and discussion in the case:

Whether the accused persons on 05.12.2015 at about 11:30 AM at Maa Laxmi Agency under Tezpur P.S., in furtherance of their common intention, had threatened the informant with injury to her person, and thereby committed offence punishable u/s 506/34 of the Indian Penal Code?

DISCUSSION, DECISION & REASONS THEREOF:

8. **Jitu Mech as PW 1** had deposed that he do not know the informant as well as the accused persons. Incident took place in the year 2016. One of his co-villagers called him and reported that his cycle was stolen by somebody. On the next that he took the cycle in zimma from police station.

His cross-examination was declined by defense.

9. **Palash Paran Das as PW 2** had deposed that he knows the informant and out of 3 (three) accused persons he knows only 2 (two) of them. The incident took place in the year 2015. At the time of incident, he was in his own house at Tezpur. After the incident, informant informed him that the accused persons had not followed the rules and regulations of Saj Food Products Company Pvt. Ltd. When the accused persons threatened the informant, she lodged this case against them.

In his cross-examination, PW 2 has stated that Saj Food Products Pvt. Ltd manufactures biscuits and a popular brand name is BISKFARM. They as a company approached NADA to settle the dispute between company and Jai Kali Agency. As per the notice of NADA, the members restrained themselves from selling BISKFARM biscuits. The farm in which the informant was member is not a part of NADA. PW 2 was not at the place when the incident took place between informant and the accused persons. At the time of the incident informant was alone. He did not try to personally enquire which members of NADA went to meet the informant. He has no knowledge how many persons went there and for what reasons they went to meet the informant. He heard that ezahar was lodged after a few days from the date of incident. The altercation with Jai Kali started from his conversation. He informed the police that he was not present at the time and place of occurrence.

10. **Informant Swapna Biswas as PW 3** had deposed that she knows the accused persons as they are related to her business. The incident took place on 15.12.2015. She is the distributor of BISKFARM biscuits. In 2015, Manoj Gope also had the distributorship of BISKFARM and due to some internal problem, billing of the accused Manoj Gope was closed and the accused persons also pressurized her to close the business. Accused Bishu Modak threatened her to be careful from him, both in personal as well as in business life. She had lodged the ezahar on 17.12.2015. Ext. 1 is ezahar wherein Ext. 1(1) is her signature.

In her cross-examination, PW 3 has stated she remember the contents of the ezahar. She did not receive police protection any day. No incident took place after the said incident. She have retained a photocopy of the FIR. She did not state that Abhijit Ghosh and Manoj Gope were related to the business of BISKFARM in the ezahar, like there was non billing of BISKFARM several members of NADA organisation came to her shop along

with President and Secretary and she was member of NADA for about 1 (one) month. She resigned from its membership during the alleged incident. The day she had resigned from the membership, members had come to her shop. NADA members requested her not to leave the membership. She did not want to continue as a member since she wanted to do business with BISKFARM. She admitted that due to call given by NADA, BISKFARM products were not sold in the entire North-Eastern states. She did not want to co-operate in the protest raised by NADA. She did not state in her ezahar that her staff Lohit Gayan was present at the time of incident. Later on, she deposed that she was in a separate room and as he was in a separate room she did not know whether Lohit Gayan heard the conversation. Other employees serving in her shop went to the market. She did not have CCTV camera installed in her shop. Sri Gobinda Biswas is her husband. Her husband was serving in United Bank of India, Jakhlabanda Branch and he was suspended on corruption charges. Later on terminated from service. She was a partner in the firm of Abhijit Ghosh known as "A.G Enterprise" and because of some differences the partnership firm was dissolved and she came out but Abhijit Ghosh continued as the proprietor. She does not know whether Bishu Modak is a member of NADA. There was a meeting at Hotel Centre Point of NADA just before the incident and she had attended the meeting and she had protested the sale of BISKFARM products. There were several members of NADA present in the meeting which took place in the last part of November or first part of December 2015. The office bearers including president of NADA were well known businessmen of Tezpur. She had not explained the reason for her resignation and she came back to her shop. She denied the fact that Abhijit Ghosh, Manoj Gope was not present in the meeting and also that Bishu Modak had not threatened her that she has to be careful from them. She did not state the reasons for delay in lodging the ezahar. Ext. 1 is in her writing. She admitted the fact that in the FIR she had named one accused and at the end she added two other names. PW 2 was serving as a Sales Officer of BISKFARM and there was some dispute between BISKFARM and NADA as regards percentage of discount. She admitted that NADA has given a call so that BISKFARM products sale could stop. She admitted that NADA gives protection to all its members. She denied the fact that she is trying to settle her personal grudge against the accused persons and accused persons had not committed any offence. Accused Bishu Modak reside nearby her house.

11. Upon going through the aforesaid evidences and materials on record and upon appreciation of the same, it appears that none of the independent PWs have implicated the accused persons with the alleged offences directly. Moreover there was a dispute between NADA and the informant regarding selling of BISKFARM biscuits. Moreover none of the independent witnesses have seen the accused persons threatening the informant. Hence it can be said that prosecution has failed to prove the allegation against the accused persons beyond reasonable doubt. In view of above discussion and considerations, it can be said that the alleged offences has not been established against the accused persons by the prosecution and hence they are entitled to be acquitted of the offence under Section 506/34 of the Indian Penal Code.

ORDER

Hence I hold that accused persons Bishu Modak, Abhijit Ghosh and Manoj Kumar Gope are not guilty of committing offence punishable under Section 506/34 of the Indian Penal Code. Accordingly the accused persons are acquitted from the offence punishable under Section 506/34 of the Indian Penal Code and they are set at liberty forthwith.

The bail bond of the accused persons shall stand cancelled and surety shall be discharged after the expiry of 6 (six) months period from today.

The case stands disposed of on contest.

The Judgment is delivered in the open Court in presence of the accused persons and their Advocate. The Judgment is given under my hand and seal of this Court on this the 02nd day of May, 2019.

(B. Acharyya)
SDJM(S), Sonitpur, Tezpur

Appendix:

Prosecution Witness:

PW 1: Jitu Mech
PW 2: Palash Paran Das
PW 3: Swapna Biswas

Documents Exhibited by Prosecution:

Ext. 1: F.I.R
Ext. 1(1): Signature of the informant.

Defence Witness: Nil

Documents Exhibited by the defence: Nil

(B. Acharyya)
SDJM(S), Sonitpur, Tezpur