

**G.R No-3262 of 2016**  
**(State of Assam Vs Sri Manoj Saikia)**

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR**

**G. R. Case No. 3262 of 2016**

Under section-447/294/506of I.P.C

Present:- **Sri N. J. Hoque, AJS,**  
**Chief Judicial Magistrate,**  
**Sonitpur, Tezpur**

State of Assam

-Vs-

Sri Manoj Saikia

S/O:- Sri Jogeswar Saikia

R/O:- Solal Gaon

P/S:- Sootea

Dist:-Sonitpur, Assam

.....Accused Person

**Advocate appeared:**

Mr. N. K. Mishra, Addl. P.P..... For the State

Mr. A. K. Paul & B. Mazumdar, Ld. Advocates..... For the accused person

Evidence recorded on	: - 14.02.2019, 03.08.2019, 11.02.2020 & 11.01.2021
Date of Offence Explanation	: - 27.02.2018
Argument heard on	: - 17.08.2021
Judgment delivered on	: - 23.08.2021

**J U D G M E N T**

**History of Prosecution's Case**

1. Prosecution case appears to be in a nutshell is that one Smt. Anamika Gogoi lodged an ejahar before the O/C of Tezpur P.S on 27.09.2016 alleging inter alia that her husband physically tortured her so that on 16.03.2016 she lodged a case against her husband named Manoj Saikia registered under section-498(A). It is also alleged that since then her husband threatened her to kill by pouring acid upon her body. It is further alleged by the informant that after one week back, the accused tried to harm her reputation on the middle of the road whenever he found her. It is alleged

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by the informant that the accused went to her rented house and started abusing her with filthy languages and also thrown away the household articles of her house. It is also alleged that one day the accused illegally entered into her rented house and tried to commit misdeed with her and also tried to bring her minor daughter.

**"INVESTIGATION"**

2. On receipt of the ejahar, Tezpur P.S Case No-1754 of 2016 under sections-448/294/506/336/427 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-447/294/506 of I.P.C against the accused person.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused person appeared before the court and he was allowed to go on bail. Copies u/s-207 of Cr.P.C was furnished to the accused person named Sri Manoj Saikia. After hearing both side, particulars of offences u/s-447/294/506 of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which he pleaded not guilty and claimed to be tried.

**STATEMENT OF DEFENCE**

4. The prosecution side to prove the guilty of the accused persons examined as many as 04 (Four) numbers of witnesses including the informant in support of this case. Accused person was examined u/s-313 Cr.P.C and his pleas of denial were recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

**ARGUMENT**

5. I have heard arguments of both sides and gone through the case record in the backdrop of evidences offered before this court by prosecution side.
6. **The points for determination in this case are:-**
  - (i.) Whether on 29.09.2016 at about 2 PM to 2:30 PM at a place called Baraholia under Tezpur PS, the accused person entered into the rented house of informant named Smt. Anamika Gogoi

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with intend to commit an offence and thereby committed an offence punishable under section-447 of I.P.C?

- (ii.) Whether the accused person on the same date, time and place scolded the informant named Smt. Anamika Gogoi using filthy languages and thereby committed an offence punishable u/s-294 of IPC?
- (iii.) Whether on the same date, time and place, the accused person threatened the informant-cum-victim with dear consequences of her life and thereby committed an offence punishable u/s-506 of IPC?

**EVIDENCES OF PROSECUTION SIDE**

7. In this case prosecution side to prove the contentions of the ejahar examined as many as four numbers of witnesses including the informant in support of this case. Let us reproduce the relevant part of the evidences adduced by each witness for the sake of proper appreciation.
8. PW-1, Smt. Anamika Gogoi deposed before this court that she filed this case against accused. She also deposed that on 29.09.2016 in between 2 PM to 2 ½ PM and on the date of alleged incident, the accused person came to her rented house and started using slang languages towards her. She deposed that at that time she was not at her house but her sister along with her daughter was present at her house. After getting information from her sister she came to her house. She also deposed that the accused broke her household articles and forcefully took her daughter along with him. She deposed that she immediately informed the matter to police and thereafter, police came and took the accused along with them. She lodged the ejahar on the date of alleged incident. She identified her ejahar as Ext-1 wherein she put her signature as Ext-1(1). She also deposed that the accused threatened her by throwing acid.
9. PW-1 during her cross-examination testified that she has mentioned in her ejahar about the safety of her life and the safety of her minor daughter. She deposed that

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she also mentioned in her ejahar about the peaceful life of her daughter, she further deposed that she has also prayed in her ejahar that the accused will not forcefully take her daughter with him. She further deposed that she has not specifically mentioned in her ejahar that on 29.09.2016 the accused went to her house in her absence and started using obscene words towards her and on being informed by her sister she went to her house and found that the accused had broken the household articles. She admitted that she has not stated before the police in her statement that "on 29.09.2016 in her absence the accused went to her house and started using filthy languages by taking her name and on being informed by her sister she went to her house and found that the accused had broken the household articles and also has not stated before the police that the accused forcefully tried to take her daughter along with him". She resided at the rented house of one named Depam Saikia and they shared in the same campus. She also deposed that she did not mention in her ejahar that on the very day of the occurrence police came to the place of occurrence and took the accused along with them. She denied the fact that on 29.09.2016 police did not apprehend the accused from her house. She deposed that prior filing the instant ejahar she has already filed one another case against her husband under section-498(A) of IPC. She further deposed that she has also filed a divorce case against the accused.

10. PW-2, Sangeeta Baruah deposed before the court that he knows the informant and the accused person of this case. She also deposed that the incident took place on 29.09.2016 during day time and on the date of alleged incident informant resided at a rented house situated at Baraholia. She further deposed that informant was present at her place at the first level of the incident and thereafter the accused went to the infomrant's house and started using obscene words towards the informant. She also deposed that when she informed the matter to the informant over phone, the accused went away from the place of occurrence. After an hour the informant reached at her house and after sometime accused again came to the

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place of occurrence and abused her with filthy languages and also thrown the kitchen utensil of informant. Thereafter, the informant lodged the ejarah.

11. PW-2 in her cross-examination testified that she permanently resided at Bedeti Jamoni. She also deposed that on the date of alleged incident she was continuing her study at Tezpur and resided at a place called Kolibari, Tezpur. She further deposed that on the date of alleged incident she was at the house of the informant along with the informant's daughter. She admitted the fact that she has not specifically stated before the police that "on 29.09.2016 during day time the accused went to the informant's house and started using obscene words towards her and when she informed the matter to the informant over phone, the accused went away and after an hour the informant reached at her house and after sometime accused again came to the place of occurrence and abused her with filthy languages and also thrown the kitchen utensil of informant." She also deposed that she knows that the informant lodged one divorce case against the accused. She denied the suggestion that no such incident took place on 29.09.2016 as stated by her before the court.
12. PW-3, Sri Depam Saikia deposed before the court that he knows the informant as well as the accused person of this case. He also deposed that the incident took place in the year 2016 and at the relevant time he was at college. He deposed that after completion of his duty when he returned to his house, his daughter informed him that an altercation took place between the informant and the accused person. Except this he knows nothing.
13. PW-3 in his cross-examination testified that he has not heard any altercation which took place between the accused and the informant. He deposed that he does not know how many cases were lodged by the informant against the accused person. He also deposed that the informant the informant was staying at his father's rented house.
14. PW-4, Sri Rinku Saikia @ Pinku Saikia deposed before the court that he knows the informant and the accused of this case. Both the accused and informant are

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husband and wife. He also deposed that he does not know anything about the incident. He only knows that one day accused arrested and brought to Tezpur PS. The cross-examination of PW-4 was declined by the defence.

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

15. In this case as per the particulars of offences read over and explained to the accused person, the prosecution side has got the burden of prove to establish that after lodging a case registered under section-498(A) of IPC against the accused, the accused threatened her to kill by pouring acid upon her body. It is also alleged that the accused person illegally entered into her rented house and started using filthy languages towards her and also tried to bring her minor daughter
16. Hence, the prosecution side has got the burden of prove that on the date of alleged incident the accused person entered into the rented house of the informant and scolded the informant using filthy languages and further threatened her of dire consequences of her life. The prosecution side examined as many as four numbers of witnesses out of which PW-1 is the informant, PW-2 is her nephew and PW-3 and PW-4 are the independent witnesses. Now, for the sake of proper appreciation of the evidences on record, let us discuss all the four points for determination together in the backdrop of evidences on record.
17. I have carefully travelled through the evidences on record and it finds that the informant as PW-1 in her evidence claimed that on the date of alleged incident, the accused went to her rented house and abused her using filthy languages. After getting information from her sister, she immediately went to her house and found that the accused broke her household articles and forcefully took her daughter along with him.
18. PW-1 being the informant-cum-victim of this case contradicted her own contention as she pleaded in her ejahar and in her evidence-in-chief. PW-1 in her ejahar as well as in her evidence-in-chief deposed that her husband went to her rented house and started using filthy language towards her and also broke her household articles. But her cross-examination part categorically deposed that her sister (PW-2)

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informed her over telephone that her husband on 29.09.2016 went to her house and abused her with filthy languages and also broke her household articles. Hence, it is seen that the evidence presented by PW-1 not appears to be coherent and her evidence creates the entire prosecution story to be contradictory and untrustworthy in nature. The evidence of victim PW-1 appears to be hearsay in nature.

19. PW-1 in her ejahar claimed that she was scolded by the accused but in her evidence she had admitted that at the time of incident she was not present at her house. It further disclosed that she herself contradicted the contentions of the ejahar by way of testifying in her cross-examination that she heard from her sister who was present at her house as per her version that accused used filthy languages towards her and also broke her household articles, whereas, she claimed in her ejahar that her husband threatened her of dire consequences of her life by showing acid and also scolded her on the middle of the road whenever she met the accused. Admittedly, the informant in her ejahar did not plead the fact that at the relevant point of time her sister was present at her home and on being informed by her sister, the informant immediately went to her house and found the broken household articles. As such it is seen that the informant-cum-victim omitted to plead some relevant facts in her ejahar vide Ext-1 as she deposed before this court. The omissions reveal from the evidence-in-chief of PW-1 makes her evidence contradictory in nature.
20. Now, coming to the other evidences on record, this court finds that the sister of the informant was examined as PW-2 who informed her about the incident. On careful perusal of the evidence PW-2, it disclosed that on 29.09.2016 during day time the accused went to the informant's house and started using obscene words towards her and when she informed the matter to the informant over phone, the accused went away and after an hour the informant reached at her house and after sometime accused again came to the place of occurrence and abused her with filthy languages and also thrown the kitchen utensil of informant. The cross-examination part of PW-2 makes it crystal clear that the evidence as deposed by PW-2 did not

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stated by herself before the police. If so, then her version regarding the fact of using filthy languages towards the informant not appears to be trustworthy in nature. Hence, on scrupulous appreciation of evidence offered by the PW-2 and in the light of evidence presented by PW-1, this court finds that the testimonies of PW-1 and PW-2 not appears to be the supportive, corroborative, coherent with the version of entire prosecution.

21. PW-3 appears to be an independent witness to the alleged incident and as per his evidence on the date of alleged incident after completion of his college duty when he returned to his house, his daughter informed him that an altercation took place between the informant and the accused person. He in his cross-examination clearly testified that he has not heard any altercation which took place between the informant and the accused. He also deposed that the informant the informant was staying at his father's rented house. It is quite undesirable that PW-3 being the neighbour of informant don't know anything about the incident. If, there any offence took place as alleged by the informant, the PW-3 being a neighbour must have knowledge about the incident. Hence, it seen that evidence of independent witness not appears to be corroborative with the version of PW-1 and PW-2. Therefore, the evidence of PW-3 cannot be overlooked of this case and his evidence makes the testimony of the informant contradictory in nature. PW-4 does not know anything about the incident.
22. To sum up the evidences on record, it disclosed that the testimonies of prosecution witnesses are appears to be contradictory with each other and that makes their evidences doubtful and untrustworthy in nature. This court not finds any single witness to be truthful rather their testimonies found to be full with lot of shortcomings. The evidence offered by the prosecution side specifically failed to implicate the accused person with the alleged incident. Hence, this court is unable to put its reliance upon the testimonies of all three witnesses.
23. Now coming to the sole testamentary value of the evidence presented by PW-1 and PW-2, this court finds that their testimonies not appears to be supportive with any



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other forms of evidence before this court. The prosecution side failed to examine the Investigating Officer.

24. Therefore, in the light of the aforesaid discussion this court is of considered opinion that the prosecution has failed to adduce any truthful evidence before this court upon which an inference may be drawn up regarding guilty of the accused. More also, the sole testimony of PW-1 not appears to be supportive and failed to get any independent source of corroboration and accordingly, her sole evidence cannot be relied upon. Furthermore, all witnesses deposed that the alleged occurrence took place at the rented house of informant and accused being the husband of the victim has an easy access to her house. What filthy languages have been used that was not clarified.
25. The incident allegedly occurred at the house of victim and that is not a public place and in an offence punishable under section-294 of IPC there must be language of filthy nature used against a person which disgraced the honour and dignity of that person before the society. In this case the nature of languages used by the accused has not been clarified by the victim in her evidence. If that is the position then question of committing illegal trespass by the accused person in the house of the informant with intend to commission of offence does not arise. Now, coming to the aspect of section-506 of IPC, this court not finds anything from the evidence of the witnesses upon which the accused may held the guilty of offence punishable under section-506 of IPC.
26. Therefore, in the light of above said evidence offered by the prosecution side is not appears to be implicating against the accused person and trustworthy in nature under which accused person may held guilty for commission of the alleged offence u/s-447/294/506 of IPC.
27. In view of the above, evidence on record, I am of the opinion that prosecution has failed to prove the charge against the accused person beyond reasonable doubt and as such the accused person is acquitted from the charge u/s-447/294/506 of IPC

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and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

28. Accordingly the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand and seal of this court on this 23<sup>rd</sup> day of August, 2021 at Sonitpur, Tezpur.

**(Sri N. J. Hoque)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

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**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1:- Smt. Anamika Gogoi, the informant

PW-2:- Smt. Sangeeta Baruah,

PW-3:- Sri Dipam Saikia,

PW-4:- Sri Rinku @ Pinku Saikia

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits:**

Ext-1                    :- FIR

Ext-1(1)                :- Signature of PW-1

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

**Chief Judicial Magistrate**  
**Sonitpur, Tezpur**