

G.R No-1780 of 2017
(State of Assam Vs Must. Rahima Begum & Ors)

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

G. R. Case No. 1780 of 2017

Under section-294/448/506/34 of I.P.C

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

State of Assam

-Vs-

1. Must. Rahima Begum
2. Md. Mainul Haque
3. Md. Ainul Haque

All are R/O:- Gutlong

P/S:- Tezpur

Dist:-Sonitpur, Assam

.....Accused Persons

Advocate appeared:

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

Mr. Babul Borthakur, Ld. Advocate.....For the accused persons

Evidence recorded on	:- 03.01.2020 & 28.01.2021
Date of Offence Explanation	:- 04.07.2019
Argument heard on	:- 15.02.2021
Judgment delivered on	:- 15.02.2021

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that Must. Hafiza Khatoon lodged an ejarah before the O/C, of Tezpur PS through I/C of Mahabhoirab Police Outpost on 15.05.2017 alleging inter alia that she got married with one Md. Safiqul Haque around ten years back and thereafter, they started their conjugal life peacefully. It is also stated that the FIR named accused persons called her over phone stating that accused Rahima Begum, who is already a

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married woman used to love her husband and demanded that her husband should accept accused Rahima as his wife and if her husband did not accept her as his wife then she would kidnap her husband and creates family problems for which her husband facing financial problem in his business. It is further stated that the accused persons also abused her by using filthy languages over phone and threatened her to kill. It is further stated that on 14.05.2017 at about 12 Noon, all the accused persons physically assaulted her sister-in-law and her mother-in-law.

“INVESTIGATION”

2. On receipt of the ejahar, Tezpur P.S Case No. 934 of 2017 under sections-507/341/323 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-294/448/506/34 of I.P.C against the accused persons.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s-207 of CrPC was furnished to the accused persons. After hearing both side, particulars of offences u/s-294/448/506/34 of I.P.C was read over and explained to the accused person by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

STATEMENT OF DEFENCE

4. The prosecution side to prove the guilty of the accused persons examined only 03 (Three) numbers of witnesses including the informant of this case. Considering the testimonies of witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Accused persons are examined u/s-313 Cr.P.C and their pleas of denial are recorded in separate sheet and the same kept with the case record. Accused declined to adduce evidence on his defence.

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ARGUMENT

5. I have heard arguments of both sides, 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 or before 14.05.2017 at a place called Gutlong under Tezpur PS, the FIR named accused persons in furtherance of their common intention entered into the house of informant with intent to commit an offence and thereby committed an offence punishable under section-448/34 of IPC?
 - (ii.) Whether on the same date, time and place, the accused in furtherance of their common intention scolded the informant by using filthy languages and thereby committed an offence punishable u/s-294/34 of IPC?
 - (iii.) Whether on the same date and place, the accused persons in furtherance of their common intention threatened the informant with dear consequences of her life and thereby committed an offence punishable u/s 506/34 of IPC?

EVIDENCE OF PROSECUTION SIDE

7. In this case prosecution side to prove the contentions of the ejahar examined as many as three numbers of witnesses including the informant of this case. Let us reproduce the relevant part of the evidences adduced by the prosecution witnesses for the sake of proper appreciation.
8. PW-1, Must. Hafiza Khatoon, being the informant of this case deposed that she knows the accused persons of this case. She also deposed that the incident took place on 15.05.2017 at about 12 Noon and on the date of alleged incident, the accused persons went to their house and started quarrelling with her. She further deposed that prior to the incident accused Rahima called her over phone and threatened her that if her husband did not marry her, she broke

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their conjugal life. She also deposed that accused persons, namely, Ainul and Mainul physically assaulted her sister-in-law and her mother-in-law.

9. PW-1 in her cross-examination testified that accused Rahima also filed a case against her husband by alleging that her husband uploaded a joint photo with accused Rahima. She deposed that the ejahar was written by one mohori. She deposed that she had not stated before the police that accused persons on the date of alleged incident at about 12 Noon went to their house and physically assaulted her sister-in-law and her mother-in-law.
10. PW-2, Must. Nirala Khatoon deposed that she knows the informant and the accused persons of this case. She also deposed that on the date of alleged incident at about 10 AM, informant called her and told her that accused persons had a quarrelled with her. She further deposed that she went there and saw a verbal altercation took place between them. PW-2 in her cross-examination denied that she never went to the house of informant and had not seen the altercation which took place between the parties.
11. PW-3, Md. Rajibul Islam deposed that the incident took place in the month of May, 2017 and on the date of occurrence he heard a quarrel took place between the informant and accused side.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

12. In the foregoing discussions, it already disclosed that the Criminal law sets in motion against the accused person on the basis of ejahar lodged by the informant Must. Hafiza Khatoon. In the light of accusations levelled against the accused person in this case the prosecution side has got the burden of prove that she got married with one Md. Safiqul Haque around ten years back and thereafter, they started their conjugal life peacefully. It is also stated that the FIR named accused persons called her over phone stating that accused Rahima Begum, who is already a married woman used to love her husband and demanded that her husband should accept accused Rahima as his wife and if her husband did not accept her as his wife then she would kidnap her husband

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and creates family problems for which her husband facing financial problem in his business. It is also stated that the accused persons abused her using filthy languages over phone and threatened her to kill and further on 14.05.2017 at about 12 Noon, all the accused persons physically assaulted her sister-in-law and her mother-in-law. Accordingly, particulars of offences punishable under section-448/294/506/34 of IPC were explained to the accused persons to which they pleaded not guilty and claimed to be tried. The condemnations upon which the criminal law sets in motion against the four accused persons of this case needs to be demonstrate by the prosecution beyond any reasonable doubt to prove the guilty of the accused persons.

13. For the sake of proper appreciation of indications accessible before this court, let us deliberate all the facts for fortitude composed in the background of the evidences on record. On cautious and scrupulous scrutiny of the evidence on record, it disclosed before this court that PW-1 is the informant of this case and she appears to be inconsistent with her version as she contended in her ejahar vide Ext-1. PW-1 in her ejahar empathically pleaded that the accused persons called her over phone stating that accused Rahima Begum, who is already a married woman used to love her husband and demanded that her husband should accept accused Rahima as his wife and if her husband did not accept her as his wife then she would kidnap her husband and creates family problems for which her husband facing financial problem in his business. Further, the accused abused her by using filthy languages over phone and threatened her to kill and on 14.05.2017 at about 12 Noon, all the accused persons physically assaulted her sister-in-law and her mother-in-law.
14. The evidence presented by PW-1 makes it categorical that she had failed to utter any single word to support the prime accusations of scolding her using filthy languages and in the same time she had not uttered any single words as to what filthy languages used against her by the accused persons. She simply stated that the accused persons went to her house and started quarrelling with

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her and also tried to physically assault her. She had not pleaded or supported anything regarding the fact as she pleaded in her ejahar. She had pleaded in her ejahar claiming that accused Rahima called her over phone and claimed that she wanted to marry her husband and if her husband did not accept accused Rahima as his wife then she would kidnap her husband and created problems in their conjugal life for which her husband facing business problems that causes mental torture but surprisingly, she had not utter any single word to support such fact in her evidence-in-chief. She in her evidence also deposed that accused Ainul and Mainul tried to assault her but they failed to assault her. The PW-1, in her examination-in-chief did not utter any single words to support the incident dated-14.05.2017. She has also not supported and corroborated the fact of threatening her to kill by the accused persons in her evidence-in-chief as she claimed in her ejahar.

15. Now, coming to the evidence of PW-2, it is seen that as per PW-2 on the date of alleged incident, she went to the house of informant and saw an altercation took place between the accused and the informant. Later, the accused persons went from the place of occurrence. The evidence presented by PW-2 appears to be more categorical and she being the eye witness testified that there was only an altercation took place between the informant and the accused persons when she went to the house of the informant. The testimony of PW-2 appears to be a direct in nature and relates to the material fact of this case and her statement being relevant in nature cannot be thrown out rather her evidence makes the entire version of informant contradictory. Hence, it is seen that PW-1's version regarding the physical assault of her sister-in-law and her mother-in-law by the accused persons on the date of alleged incident appears to be not supportive from the version of PW-2, who witnessed the alleged incident. That being so, the version of PW-1 appears to be not supportive, corroborative and coherent with the version of other eye witness of the alleged incident and in presence of such contradiction, the entire prosecution story appears to be doubtful in

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nature. PW-2, being the eye witness in her examination-in-chief did not utter any single words to support the version of PW-1 regarding the date and time of alleged incident. She has also not supported and corroborated the fact of threatening the informant in her evidence-in-chief as the informant claimed in her ejahar. Moreover, from the evidence of PW-2, it is also seen that she had witnessed the altercation between the parties but she failed to utter any single word to support the actual place of occurrence as pleaded by the informant. PW-3, who only heard about the incident which took place between the informant and accused side and his evidence appears to be hearsay in nature.

16. The evidences presented by other independent witnesses i.e. PW-2 and PW-3, it indicates that there was only an altercation which took place between the informant and the accused persons of this case. The PW-3 clearly testified that he only heard about the incident. PW-2 & PW-3 are not clear about the involvement of accused persons with the alleged incident as disclosed from their own testimonies. Hence, in absence of any direct evidence it is very difficult to determine that the accused persons actually were involved with the alleged incident. The evidences presented by PW-2 & PW-3 not only makes the version of the informant (PW-1) doubtful but also creates a reasonable contradiction which cannot be thrown away. More also the evidences offered by the prosecution side appears to be full with lots of shortcomings and those being contradictory in nature cannot be relied upon.
17. To sum up the evidences on record, it disclosed that the testimonies of all three 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 shortcoming. Hence, this court is unable to put its reliance upon the testimonies of all three witnesses.
18. Therefore, in the light of aforesaid discussion this court is constrained to opine that the prosecution side failed to prove the guilty of the accused persons

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beyond any shadow of doubt. Hence, the accused persons are acquitted from the charge's u/s-448/294/506/34 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.

19. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 15th day of February, 2021. Accordingly, the case is disposed of.

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

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ANNEXURE

1. Witnesses for Prosecution:-

PW-1:- Must. Hafiza Khatoon, Informant

PW-2:- Must. Nirala Khatoon

PW-3:- Md. Rajibul Islam

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**