

**P.R No-1054 of 2019
(State of Assam Vs Sri Rajen Horo)**

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR AT TEZPUR

P. R. Case No. 1054 of 2019

(Under section-506 of I.P.C)

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

State of Assam

-Vs-

Sri Rajen Horo

S/O:- Late Mangra Horo

R/O:- Rongajaan

P/S:- Chariduar

Dist:- Tezpur, AssamAccused Person

Advocate appeared:

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

Mr. I. Ansari, Ld. Advocate..... For the accused person

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|------------------------------|----------------------------|
| Evidence recorded on | :- 27.02.2020 & 12.02.2021 |
| Date of Statement of defence | :- 07.08.2021 |
| Argument heard on | :- 07.08.2021 |
| Judgment delivered on | :- 11.08.2021 |

J U D G M E N T

History of Prosecution's Case

1. Prosecution case appears to be in a nutshell is that on 01.02.2019, one Smt. Salmi Horo lodged an Ejahar before the O/C of Chariduar P.S alleging inter alia that around one year back (Since from the date of filing the Ejahar) the FIR named accused person had maintained extra marital relationship with the wife of her elder brother (Sister-in-law) and thereafter, since one year her husband did not talk to her. It is also stated that she along with her three daughters were staying at her parental house. She stated that she

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caught the accused when he was sleeping with her sister-in-law Smt. Purabi Topno and when the village people asked the accused about the matter, the accused person thereafter, chased her with dao to kill.

"INVESTIGATION"

2. On receipt of the ejahar, Chariduar P.S Case No-32 of 2019 under section-497/498(A)/506 of Indian Penal Code was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-497/498(A)/506 of I.P.C against the above-named accused person.

CHARGE & TRIAL

3. In pursuant to the court's process, the accused person appeared before the court and thereafter, he was allowed to go on bail. Copies u/s-207 of CrPC was furnished to him. After hearing both side, particulars of offence u/s-506 of I.P.C was read over and explained to the accused 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 person examined only 03 (Three) numbers of witnesses including the informant of this case. Considering the testimonies of the witnesses, prosecution side declined to adduce further evidence before this court. Hence, evidence of prosecution side is closed. Accused person was examined u/s-313 of 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, gone through the case record in the backdrop of evidences presented before this court by the prosecution side.
6. **The points for determination in this case are:-**

Whether the accused being the husband of the informant Smt. Salmi Horo since after marriage committed criminal intimidation

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by threatening her to cause physical injury by means of "dao"
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 three numbers of witnesses including the informant. For the sake of proper appreciation of evidences let us reproduce the evidences of witnesses. PW-1, Smt. Salmi Horo being the informant of this case deposed that she lodged the FIR on 01.02.2019 against her husband, who is the accused of this case. She further deposed that after the death of her elder brother Dan Topno her husband used to go and reside at the house of her brother. She also deposed that he has an extra marital relationship with her sister-in-law Purabi Topno. Accordingly, she called for a meeting to inform the villagers about the illicit relationship but the meeting did not take place. She also deposed that when she got to know from her elder sister-in-law Prafulla Topno that her husband was at the house of said Purabi Topno and thereafter, she went to her house and saw her husband was sleeping with Purabi Topno. She further deposed that on seeing her, her husband chased her with a dao and went looking for her and thereafter, she had hide herself for the entire day in the house of her parental aunt. She identified her Ejahar as Ext-1 wherein she put her signature as Ext-1(1).
8. PW-1 in her cross-examination testified that she got married to the accused in the year 2005 but she does not remember the date of her marriage. She deposed that at her parental home her mother, her two sisters and two brothers and one brother along with two sister-in-laws are residing in one campus but in different houses. She further deposed that her brother Dan Topno expired about four years ago and after the death of her brother, her sister-in-law stays in the compound of her parental house in separate room. She deposed that her matrimonial house is 01 KM away from her parental home. She also deposed that after the death of her brother, her husband

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used to go and stay at her parental home in the room where her sister-in-law Purabi Topno resides. Though, her brothers objected and a quarrel took place, still her husband did not listen. She deposed that he would sneak into the house of Purabi Topno during night hours. She also deposed that for the meeting, she had verbally called the VDP Secretary, Nanda Biswas and neighbours but she has not given a written proposal for the meeting. She denied the fact that she had not called for a meeting. She also denied the fact that she has not stated before the police that Prafulla Topno informed her that her husband was in the room/house of her sister-in-law Purabi Topno. She denied the fact that Prafulla Topno had not informed her about the presence of her husband in the house of Purabi Topno. She further denied the fact that she has not stated before the police or in her FIR that she had hide herself in her paternal aunty Priska Topno's house. She also denied that she has not seen her husband sleeping with Purabi Topno. She deposed that she was informed that her husband was looking for her with a dao by her sister-in-law Geeta Horo over telephone. Then he went out of his house with dao and thereafter, she hide herself, so she did not go where he went with the dao in hand. She denied the fact that her husband does not have an illicit relationship with her sister-in-law and that he was keeping her well, giving all the rights as a wife and that on account of suspicion she has instituted a false case against her husband.

9. PW-2, Smt. Purabi Topno deposed before the court that the informant is her sister-in-law and the accused is her brother-in-law i.e. the informant's husband. She deposed that the informant had lodged the case one year back. She also deposed that after the death of her husband, whenever the accused come to their house, the informant suspects that he has an extra marital relationship with her and she started quarrelling with her.
10. PW-2 in her cross-examination testified that her husband had expired on 04.02.2018 and after that the informant with an intention to chase her out

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of the matrimonial house has filed this false case. She also deposed that at present she is staying at her matrimonial house along with her two sons. She further deposed that at the compound of her matrimonial house, her three sister-in-laws and two brother-in-laws stayed in the same compound. She admitted that she has no extra marital relationship with the accused as alleged by the informant.

11. PW-3, Smt. Risa Tapno @ Prichka Tapno deposed before the court that she knows the informant and the accused person of this case, who are husband and wife. She deposed that on the day of occurrence, she was at home. She also deposed that after one year of marriage, their relationship deteriorated. Out of the wedlock a female child was born. She further deposed that the accused person did not take care of his wife and his daughter and also did not provide his wife necessary facilities and also did not her three course of meal. However, the informant beared with the treatment meted out to her and finally two years prior to this day, she has filed the FIR against the accused. She also deposed that at the time of filing the case, the informant was at her parental house but subsequently, she was shifted to her material house. She further deposed that she heard and witnessed that the accused person had illicit relationship with her sister-in-law named Purabi Topno. Even though the informant at present residing at her matrimonial house still the accused does not take care of her and even provide her with proper fooding.
12. PW-3 in her cross-examination testified that the informant has been married to the accused for the last 14 years and after one year of the marriage a female child was born to them and since then their relationship deteriorated. Thereafter, two female children were born to them. She also deposed that informant along with three children was residing at the house of accused. She deposed that she is the paternal aunt of the informant. She further deposed that the paternal house of the informant is about 1 KM away and

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the house of the accused is half kilometre away from her house. She also deposed that the house of Purabi Topno and the paternal house of the informant are situated in the same compound. She admitted that she has not seen the illicit relationship herself between the accused and Smt. Purabi Topno. She got to know about the illicit relationship between the accused and Purabi Topno from the informant Salmi Horo and one Profuli Topno, who is the elder sister of the accused.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

13. In this case particulars of offence punishable u/s-506 of IPC were explained to the accused person on the basis of the charge sheet submitted against the accused by the investigating officer. In the foregoing discussions, it already disclosed that the Criminal law sets in motion against the accused person on the basis of the ejahar lodged by the informant named Smt. Salmi Horo. In the light of accusations levelled against the accused person in this case the prosecution side has got the burden of prove that on the date of alleged incident, accused person had maintained extra marital relationship with sister-in-law of the informant and thereafter, she caught the accused while he was sleeping with her sister-in-law Smt. Purabi Topno. It is also pleaded that when the villagers asked him about the matter, the accused chased her with dao to kill the informant. To substantiate the accusation under section-506 of IPC, prosecution side needs to establish the following facts:-

- (i) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
- (ii) The accused did so with intent to cause alarm to the victim of offence;

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(iii) The accused did so to cause the victim to perform any act which he was not legally bound to do.

14. 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.
15. We have deliberated in the preceding conversation that the prosecution side examined as many as three numbers of witnesses including the informant. I have carefully travelled through the testimony of the informant (PW-1) in the backdrop of entire prosecution case and it finds that PW-1, Smt. Salmi Horo as per her evidence after death of her elder brother Dan Topno, her husband used to reside at the house of her elder brother and maintained extra marital relationship with her sister-in-law named Purabi Topno (PW-2). On being came to know from her elder sister-in-law named Prafulla Topno that her husband/accused was sleeping with Purabi Topno at the house of her deceased brother and when she went there she saw both of them were sleeping together. She also testified that on seeing her, the accused person chased her with dao and looking for her. She further testified that she called a village meeting in connection with the said incident but the same did not take place.
16. 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 chased her with dao over the matter of illicit relationship maintained by him with her sister-in-law (PW-2). But her cross-examination part categorically deposed that her sister-in-law Geeta Horo informed her over telephone that her husband was looking for her with a dao and thereafter, she hide herself, so she did not go where he went with the dao in hand. Hence, it is seen that the evidence presented by PW-1 not appears to be coherent and his

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evidence creates the entire prosecution story to be contradictory and untrustworthy in nature.

17. The settled propositions of law never claimed the ejahar to be a substantive piece of evidence. In "**Ram Kumar Pande vs The State Of Madhya Pradesh AIR 1975 SC 1206,**" the Hon'ble Supreme Court observed that an FIR is not a substantive piece of evidence and it can only be used to corroborate the statement of the maker u/s-157 of Indian Evidence Act or to contradict it u/s-145 of Indian Evidence Act. It can only be used for corroboration and contradiction purposes that to when FIR was lodged by a person having direct knowledge about the occurrence. In this case, informant herself admitted that she had lodged the ejahar. If so, then the contradictions disclosed from her evidence, makes her version to be contradictory.
18. Now, coming to the evidence of informant, it disclosed that she herself contradicted the contentions of the ejahar by way of testifying in her cross-examination that she heard from her sister-in-law that accused is looking for her with a dao whereas, she claimed in her ejahar that her husband chased her with dao. Accordingly, it is seen that the evidence of PW-1 appears to be contradictory in nature.
19. Now, coming to the other evidences on record, this court finds that the sister-in-law of the informant was examined as PW-2 and in an ordinary course she being the wife of deceased elder brother of informant with whom the accused had maintained some illicit relationship as per the version of informant perceptibly shall not deposed anything against the accused as she appears to be an interested witness. But her evidence cannot be straightway brushed aside as she also happens to be the sister-in-law of informant and the court may expect from the PW-2 that she would recite the truth before court. On careful perusal of the evidence of Smt. Purabi Topno (PW-2), it disclosed that after the death of her husband, whenever the accused came

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to their house, the informant suspects that the accused had maintained extra marital relationship with her and due to that the informant started quarrelling with her. The cross-examination part of PW-2 makes it crystal clear that after the death of her husband, the informant with an intention to chase her out of the matrimonial house and so that the informant has filed this false case. She admitted that she has no extra marital relationship with the accused as alleged by the informant. As such, it becomes crystal clear that the testimony of PW-2 contradicts the entire contentions of the ejahar as well as the version of the informant (PW-1). The evidence of PW-2 cannot be overlooked as she is the sister-in-law of the informant with whom the accused allegedly maintained illicit relationship as per the version of PW-1 and her evidence makes the testimony of the informant contradictory 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 supportive, corroborative, coherent with the version of entire prosecution.

20. The evidence presented by the PW-2 not only displayed goodbye to the entire prosecution case but also contradict the entire version of prosecution story and that being in nature of evidence presented before the court by the witnesses of the prosecution, this court finds that the testimonies of each witnesses to be contradictory in nature and which makes their evidences to be doubtful and untrustworthy in nature.
21. PW-3 appears to be an independent witness and as per her evidence after marriage of the accused and the informant a female child was born to them and since then their relationship deteriorated. She also deposed that the accused person did not take care of his wife and his daughter and also did not provide his wife necessary facilities and also did not her three course of meal. However, the informant beared with the treatment meted out to her. She deposed that she had heard and witnessed that the accused person had

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illicit relationship with her sister-in-law named Smt. Purabi Topno. Even though the informant at present residing at her matrimonial house still the accused does not take care of her and even provide her with proper fooding. PW-3 in her examination-in-chief affirmed that there was only matrimonial dispute between the informant and the accused.

22. The cross-examination part of PW-3 makes it crystal clear that she has not seen any illicit relationship herself between the accused and Purabi Topno. Hence, it is seen that PW-3 doesn't have any personal knowledge about the incident as she only heard about the same from others. Furthermore, PW-3 has not deposed anything that on the date of alleged incident, the informant was been threatened in any manner by the accused person with dao. There was no whisper from the evidence of PW-3 where it can be presumed that on the date of alleged incident PW-1 was threatened with dire consequences by the accused person. Further, the evidence as deposed by the informant-cum-victim (PW-1) did not stated by herself before the police. As such, it becomes crystal clear that the testimony of PW-3 contradicts the entire contentions of the ejahar as well as the version of the informant (PW-1). PW-3 not deposed anything against the accused person.
23. 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. 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.
24. Now coming to the sole testamentary value of the evidence presented by the victim, this court finds that her evidence not appears to be supportive with

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

25. 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.
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-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-506 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
28. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 11th day of August, 2021.

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

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A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

- PW-1 :- Smt. Salmi Horo, Informant
PW-2 :- Smt. Purabi Topno,
PW-3 :- Smt. Risa Tapno @ Prichka Tapno

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