

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS
SONITPUR: TEZPUR

G. R. Case No. 1755 of 2015

Under section 294/448/506/34 of I.P.C
(Arising out of Tezpur PS Case No. 863 of 2015)

State of Assam

–Vs–

1) Dr Manoj Mirdha
S/O: Late EanushMirdha

2) Sri Mirza Farid Raja @ Piklu

3) S/O: Dr Manoj Mirdha

All are R/O: Ranu Singh Road

P/S: Tezpur

Dist: Sonitpur, Assam

...Accused Persons

Present:

Smt. Neha Saikia,

Judicial Magistrate First Class, Sonitpur, Tezpur

Evidence recorded on: 02.08.2016, 27.02.2017 & 28.04.2017

Argument heard on: 15.11.2017 & 28.11.2017

Judgment delivered on: 26.12.2017

For the State: Sri N. K. Mishra, Addl. Public Prosecutor

For the accused: Sri P. C. Sarmah, Ld. Advocate

J U D G M E N T

1. **BRIEF FACTS OF THE CASE:** The case of the prosecution in brief is that the informant Smt. Usha Devi, resident of C. K. Das Road under Tezpur PS lodged a written complaint before the Deputy Inspector General of Police, North

Range, Sonitpur on 03.07.2015 stating inter-alia that, the son of Dr. Manoj Mirdha namely, Piklu along with few other boys wrongfully entered into her house in search of her son Sri Bonti Agarwala to get back the loan amount which according to them had been taken by her son and which is yet to be returned. It was further stated that they also asked them to be present before his father Dr. Manoj Mirdha and asked her husband to meet him at Mirdha Nursing Home. When they reached the said Nursing Home, Dr Manoj Mirdha abused them with bad and obscene language and also threatened them to return the loan amount as soon as possible otherwise they are to face dire consequences. She further stated that as per the direction of Dr Manoj Mirdha, a boy strangled her husband's neck to sign in a blank sheet of paper and his son also strangled her husband's neck and threw them out of the said Nursing Home. Hence, she lodged this case.

2. On receiving the ejahar, Deputy Inspector General of Police, North Range, Sonitpur forwarded the same to the O/C, Tezpur PS for registering a case. On receiving the FIR, O/C Tezpur PS registered the same as Tezpur PS Case No. 863/15 under section 448/294/506/34 of IPC vide GDE No. 422 dated 10.07.2015 and endorsed SI Biplab Sarkar to complete the investigation.

3. Police after completion of investigation, submitted charge sheet against the accused persons, namely, Dr Manoj Mirdha and Sri Mirza Farid Raja @ Piklu u/s 448/294/506/34 of IPC. When the case came for trial cognizance of the offences under section 448/294/506/34 of IPC was taken and summons was issued to the accused persons and on appearance of the accused persons, copy of the relevant documents was furnished to them and particulars of the offences under section 448/294/506/34 of IPC was explained to the accused persons to which they pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION

- (i.) Whether the accused persons Dr. Manoj Mirdha and Sri Mirza Farid Raja @ Piklu in furtherance of their

common intention had committed house trespass by entering into the house of the informant Smt. Usha Devi Agarwala and thereby committed an offence under section 448/34 of IPC, as alleged?

(ii.) Whether the accused persons, Dr. Manoj Mirdha and Sri Mirza Farid Raja @ Pikluin furtherance of their common intention had uttered obscene words to the informant Smt. Usha Devi Agarwala and her family members in public thereby creating annoyance and thereby committed offence under section 294/34 of IPC, as alleged?

(iii.) Whether the accused persons Dr. Manoj Mirdha and Sri Mirza Farid Raja @ Pikluin furtherance of their common intention threatened to cause injury to the informant Smt. Usha Devi Agarwala as well as her family member and thereby committed offence under section 506/34 of IPC, as alleged?

4. Thereafter, summons was issued to the witnesses. The prosecution side in order to prove its case against the accused persons adduced evidence of as many as six witnesses including the informant Smt. Smt. Usha Devi Agarwala and also examined the Investigating Officer in support of the prosecution case and after hearing both the parties, the prosecution evidence was closed and further proceeding was also closed. On closer of PWS' evidence statement of the accused persons were recorded u/s 313 CrPC. The plea of defence is of total denial. The defence chose not to adduce any evidence in support of their case.

ARGUMENTS

5. I have heard both the parties. I have heard the learned counsel for the accused persons who submitted that there is no material against the accused

persons; as such the accused persons needs to be acquitted. On the other hand Ld. Asst. Public Prosecution submitted that there is sufficient materials found against the accused persons as such, accused persons are required to be convicted.

APPRECIATION OF THE EVIDENCE

6. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination. For the sake of convenience the points for determination are discussed separately:

Discussion on Point No. (i)

Whether the accused persons Dr. Manoj Mirdha and Sri Mirza Farid Raja @ Piklu in furtherance of their common intention had committed house trespass by entering into the house of the informant Smt. Usha Devi Agarwala and thereby committed an offence under section 448/34 of IPC, as alleged?

7. From the evidence on record as stated in the ejahar, PW 1 Smt. Usha Devi Agarwala who is also the Informant of this case deposed in her examination-in-chief that on the alleged date of occurrence the son of Dr. Manoj Mirdha namely, Piklu along with few other boys wrongfully entered into her house in search of her son Sri Bonti Agarwala to get back the loan amount which according to him had been taken by her son and which is yet to be returned. PW 2 and PW 3 also corroborated to the same fact that the accused Piklu entered into the house of the Informant though all of them could not remember the exact date of his trespass into the house. **In her cross examination**, she stated that she did not know the good named of the son of the accused Dr. Manoj. She admitted that she does not know if her son Banti Agarwala had taken money from many people. She stated that she does not know what business her son used to do.

8. **PW 2, Sri JankiLal Agarwal**, who is the husband of the informant had stated that the accused person, namely, Iklu Mirdha @ Mirza Farid Raja

came to his house along 4-5 persons around one year back during the Ramzan Month and asked him and his wife to return the money which their son Sri Banti Agarwala had taken from him. He further stated that then he asked them to meet his father the other accused Dr. Manoj Mirdha. **In his cross-examination**, he admitted that he has no knowledge if his son had taken money from the accused persons or other people. He further stated that he has no knowledge if his son had taken money for the accused person for cement business and in order to save his son he had lodged this case.

9. **PW 3, Geeta Agarwala** also narrated the same that on the alleged date while she was in the house of the Informant, 4-5 people entered into the house of the Informant and asked them to meet his father at Mirdha Nursing Home. **In her cross-examination**, she admitted that she has no knowledge of the son of the informant had taken money from the accused persons.

10. Before coming into a decision regarding the commission of the alleged offence u/s 448 IPC, it is to be determined first whether the accused Sri Mirza Farid Raja @ Piklu had actually constituted the offence of Sec 448 IPC and that can be assured only if the following ingredients are fulfilled:

- The complainant was in possession of the property;
- Property consisted of a building, tent or vessel used as human dwelling or a building used as place of worship or custody of property;
- Accused entered into or upon such building, tent or vessel;
- Having entered lawfully into such building, tent or vessel accused remains there unlawfully;
- His intention was to commit an offence, or intimidate, insult or annoy the person in possession.

11. By analyzing the evidence of all the three PWs, it came to my notice that that though the accused person Mirza Farid Raja @ Piklu might have entered into the house of the Informant along with 4-5 persons, he went and asked the informant about her son who had taken money from them and asked them to meet his father at his chamber at Mirdha Nursing Home. None of the PWs stated about commission of any sort of offence as alleged by the said accused person on that day. Moreover, PW 1 and PW 2 were unaware about the fact that whether their son had taken money from the accused or not. Hence mere entering into someone's house without committing any offence does not amount to commission of offence u/s 448 IPC. The informant moreover could not remember the exact date when the said accused person came into their house neither she mentioned about forceful or unlawful entry of the accused into their house. She along with other two PWS just stated that the said accused came into their house and asked for the money taken by their son Banti Agarwala and asked them to meet his father, accused Dr. Manoj Mirdha next day at his chamber at Mirdha Nursing Home. Moreover, accused Dr. Manoj Mirdha did not accompanied his son and hence automatically he is discharged from this section of law.

12. **DECISION:** Hence, from that evidence available on record, it is found that the prosecution has failed to prove the guilt of the accused person, Mirza Farid Raja @ Piklu and Dr. Manoj Mirdha beyond reasonable doubt in respect of the alleged offence u/s 448 IPC and this point stands **NEGATIVE**.

Discussion on Point No. (ii)

Whether the accused persons, Dr. Manoj Mirdha and Sri Mirza Farid Raja @ Piklu in furtherance of their common intention had uttered obscene words to the informant Smt. Usha Devi Agarwala and her family members in public thereby creating annoyance and thereby committed offence under section 294/34 of IPC, as alleged?

13. So Far as point no. (ii) is concerned, when PW 1, PW 2 and PW 3 had gone to meet accused Dr. Manoj Mirdha at his official Chamber at Mirdha

Nursing Home, Tezpur, it was stated in the *Ejahaar* that Dr Mirdha abused them with bad and obscene language but none of them mentioned about any form of obscene words or bad sentence uttered by the accused persons. Moreover, the incident that they have been alleged to have committed in the official chamber of the accused Dr. Manoj Mirdha cannot be regarded as public place. Neither the informant nor the other two witnesses mentioned any obscene words used by the accused persons so as to attract the ingredients of Section 294 for IPC. Although PW 1 have stated that the accused rebuked her and her husband in the *Ejahaar* as mentioned but that in itself is not enough to attract the ingredients of Section 294 of IPC. No such words are described/stated by any one of them which were used by the accused against the informant and hence the court cannot determine whether the words said were obscene or not. It is the accepted principle of criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubt and in case of any doubt, the benefit of doubt has to be given to the accused.

14. Hon'ble Supreme Court of India in ***Pawan Kumar vs. State of Haryana and another, (1996) 4 SCC 17*** has observed that —

"In order to secure a conviction the provision (Section 294 IPC) requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed."

15. **DECISION**: Hence, from that evidence available on record, it is found that the prosecution has failed to prove the guilt of the accused person, Mirza Farid Raja @ Piklu and Dr. Manoj Mirdha beyond reasonable doubt in respect of the alleged offence u/s 294 IPC and this point also stands **NEGATIVE**.

Discussion on Point No. (ii)

Whether the accused persons Dr. Manoj Mirdha and Sri Mirza Farid Raja @ Piklu in furtherance of their common intention threatened to cause injury to the informant Smt. Usha Devi Agarwala as well as her family member and thereby committed offence under section 506/34 of IPC, as alleged?

16. After careful examination of the evidence on record deposed by the three prime witnesses in this case, PW 1, PW 2 and PW 3, it is seen that when they reached the chamber of the accused Dr. Manoj Mirdha he asked the Informant's husband JankiLal Agarwal to give the money taken by their son Banti Agarwala to them and asked her husband to sign a paper. When her husband denied, accused Dr. Manoj Mirdha held her husband by his neck and pushed him outside his chamber. Thereafter, the accused told them that since he is a big leader of Congress and all police are under him and therefore he will bind them to give the money. However, in the *ejahar*, Informant Smt. Usha Devi Agarwala stated that as per the direction of Dr Mirdha, a boy strangled her husband's neck to sign in a blank sheet of paper and his son also strangled her husband's neck and threw them out of the said Nursing Home when they were in the official chamber of the accused Dr. Manoj Mirdha. She did not mention about Dr. Manoj Mirdha to have strangled her husband's neck in his chamber in her evidence in chief. In such case, a doubt has arisen upon the veracity of the information given by the informant in her deposition and what has been mentioned in the *ejahar*.

17. **Section 506 Indian Penal Code** prescribes punishment for the offence of criminal intimidation. "**Criminal intimidation**" as defined in **Section 503 Indian Penal Code** is as under:

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is

not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

18. Hon'ble Supreme Court of India in ***Manik Taneja vs. State of Karnataka, (2015) 7 SCC 423***, it is observed that:

A reading of the definition of Criminal intimidation would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

19. Hon'ble Supreme Court further observed that: -

It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of Criminal intimidation. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant.

20. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the perusal of the evidence on record, the PWs only stated that the accused threatened them but

did not mention as to how and by what specific threatening they made against the informant. The PWs did not stated whether the threatening was to harm the life or property. However, apart from the utterance, there is nothing on record to show how the accused threatened. Mere saying that he has contact with politicians and police does not amount to cause threatening as per sec 506 IPC. Mere utterance does not constitute offence u/s 506 of the Indian Penal Code.

21. The evidence of PW 4 and PW 5 are not relevant in this case since both of them denied of having any knowledge about the alleged incident. However, the I/O as PW 6 stated that the FIR does not contain the signature of the informant. In the sketch map the letter "B" which is indicating the house of Hari Prajapati is the adjacent house of the informant but his statement was not recorded and his name is also not there is the list of witnesses. Other than the family members of the informant who are the interested witness, the other two independent witness did not mention anything in regard to the occurrence of the alleged offence by the said accused persons.

22. **DECISION:** For these reasons, the accused persons could not be convicted under section 506 IPC. Moreover, from the evidence available on record, it is found that the prosecution has failed to prove the guilt of the accused person, Mirza Farid Raja @ Piklu and Dr. Manoj Mirdha beyond reasonable doubt in respect of the alleged offence u/s 506 IPC and this point also stands **NEGATIVE**.

ORDER

23. Considering the discussions made above, it can be safely presumed that the prosecution has failed to bring home the guilt of the accused persons, namely, **Dr Manoj Mirdha** and **Sri Mirza Farid Raja @ Piklu** under section 448/294/506/34 of IPC beyond all reasonable doubt. Hence, benefit of doubt goes to the accused person and he is **ACQUITTED** of the said offences and set at liberty forthwith.

24. The bail bond shall remain in force for the next six months as per provision of sec-437-A Cr.P.C.

25. Judgment is prepared in separate sheets, delivered in open court in presence of both the parties.

Given under my Hand and Seal of this Court on this the 26th day of December, 2017

(Smt. Neha Saikia)

**Judicial Magistrate First Class,
Sonitpur: Tezpur**

Dictated and corrected by me:-

**(Smt. Neha Saikia)
Judicial Magistrate First Class,
Sonitpur: Tezpur**

Dictation taken and transcribed by me:

(Janmoni Deka) -Steno-

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

1. Witnesses for Prosecution

PW 1: Smt. Usha Devi Agarwala

PW 2: Sri JankiLal Agarwal

PW 3: Smt Geeta Agarwal

PW 4: Miss Ila Das

PW 5: Miss Chumki Das

PW 6: S.I. Biplob Sarkar, I/O

2. Witnesses for Defence: NIL

3. Court Witnesses: NIL

4. Prosecution Exhibits:

Ext 1 : FIR

Ext 1(1) :Signature of the informant.

Ext 2 : Entrustment Note

Ext 3 : Sketch Map

Ext 4 : Charge Sheet

5. Defence Exhibits : NIL

6. Material Exhibits: NIL

Judicial Magistrate First Class
Sonitpur, Tezpur