

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 2179 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD ABDUL KADIR AND
MD ABDUL KARIM

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 2179 / 2017

U/S 294/506/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. ABDUL KADIR AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MD. G.M. SADIQUE AHMED

OFFENCE EXAPLAINED ON : 17.04.2018
EVIDENCE RECORDED ON : 30.08.2018, 05.09.2019 & 28.02.2020

ARGUMENT HEARD ON : 16.03.2020
JUDGMENT DELIVERED ON : 16.03.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 24.07.2017 at about 12.00 PM, accused Md. Abdul Kadir and Md. Abdul Karim started an altercation with informant's husband. Thereafter, the accused persons came to the house of informant Musstt. Taslima Begum and rebuked her by using obscene language. The accused persons tried to commit rape on the informant but could not do so as the informant raised hue and cry. The accused persons

then threatened to kill the informant and thereafter fled away from the place of occurrence. The informant subsequently lodged an FIR before the O/C of Laluk police station.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 232/17 and after investigation I.O of the case submitted charge sheet against accused persons Md. Abdul Kadir and Md. Abdul Karim for the offences punishable u/s 294/506/34 of IPC. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 294/506/34 of IPC are read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined five witnesses, whereas the defence did not examine any witness. The accused persons were examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by the accused and also the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons on 24.07.2017 at about 12.00 PM at No.-2 Islampur under Laluk police station, in furtherance of their common intention, rebuked informant Mustt. Taslima Begum by using obscene words in or near any public place to the annoyance of informant and others, and thereby committed an offence punishable u/s 294/34 of IPC?

(ii) Whether the accused persons on 24.07.2017 at about 12.00 PM at No.-2 Islampur under Laluk police station, in furtherance of their common intention, threatened the informant with injury to her person or reputation, with the intent to cause alarm, and thereby committed an offence punishable u/s 506/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO. 1 AND 2:

6. For the sake of convenience and as because point no. 1 and 2 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, informant Mustt. Taslima Khatoon in her evidence-in-chief as PW-1 has stated that at the time of occurrence she was cleaning/brooming the road in front of her house. The accused person then came there and caught hold of her hands from both sides and tried to take her away by dragging. The accused persons also rebuked her by using obscene language and said that they shall marry her. Thereafter, she informed the matter to her husband when he came back to house. Subsequently, she went to the P.S and lodged an FIR about the occurrence.

8. PW-2 Ashimuddin in his evidence in chief has stated that at the time of occurrence, the informant was cleaning/brooming the front of her house. At that time, the accused persons pulled the informant by catching hold of her hand and cloth and rebuked her in a bad manner and tried to drag her under the bamboo tree. Thereafter, many people assembled there and the accused persons fled away.

9. PW- 3 Mamtaj Begum in her evidence in chief has stated that at the time of occurrence the accused persons went to the house of informant and tried to drag her away from the road in front of her house and also said that they shall marry her. At that time informant's husband was not at home. After hearing hue and cry, she/PW-3 and Ashimuddin came there and the accused persons fled away after seeing them.

10. On perusal of the aforesaid evidence deposited by PW-1, PW-2 and PW-3, it is seen that they have deposited incriminating materials against the accused persons and the same attracts the offences punishable u/s 294/506/34 of IPC. Therefore, it is necessary to find out that whether the aforesaid versions stated by PW-1, PW-2 and PW-3 can be relied upon to form a conclusive opinion against the accused persons.

11. In order to find out the credibility of the aforesaid versions deposited by PW-1, PW-2 and PW-3, upon perusal of their respective cross-examinations,

it is seen that they have specifically denied the suggestion of defence that they did not mentioned the aforesaid allegations in their respective statements recorded by police. However, in this respect, PW-5 Sri Dipankarjyoti Borah, who investigated this case being the attached officer at Laluk police station at that time, in his cross-examination has clearly confirmed that the PW-1, PW-2 and PW-3 have not mentioned the aforesaid allegations in their respective statements recorded u/s 161 of CrPC. In my opinion, the aforesaid allegations made by PW-1, PW-2 and PW-3 are the crux of the alleged occurrence, and hence, the said three witnesses would have definitely mentioned those allegations in their very initial statements before I.O/PW5 if the occurrence had taken place as alleged. Under such circumstances, it is clear that the omission of PW-1, PW-2 and PW-3 to mention the aforesaid allegations in their statements u/s 161 of CrPC is clearly a material contradiction in view of section 162 of CrPC and the same creates serious doubt as regards the credibility of their aforesaid versions.

12. In the above context, PW-4 Musstt. Selima Khatoon in her evidence in chief has not deposed anything in support of prosecution. However, in her cross-examination, PW-4 has specifically stated that prior to filing of this case, informant's brother-in-law Asimuddin had proposed the name of his brother Hazrat Ali for the post of President of the school managing committee of No.2 Islampur L.P. School. At that time the villagers and other members of that committee opposed the said proposal and instead they wanted accused Abdul Karim to be the President of that committee. For that reason, a hue and cry took place in that school and thereafter police was called and accordingly police suspended the meeting for ten days. Thereafter, on expiry of 09 days i.e., one day prior to the completion of said ten days, said Asimuddin filed a case through a female against the accused persons so that the accused persons could be put inside jail.

13. The foregoing version deposed by PW-4 shows that this case was allegedly lodged by informant at the instigation of her brother-in-law Md. Asimuddin so as to stop the accused persons from becoming the President of the aforesaid school managing committee. As such, it is seen that the version

deposed by PW4 suggests that this case was lodged falsely by the informant at the instigation of her brother in law.

14. Besides that, on comparison of the evidence deposed by PW4 with that of the evidence deposed by PW1, PW2 & PW3, it is clear that the witnesses examined by prosecution have deposed two different versions about the facts leading to the lodging of this case. It is a well-established principle of law that when two views are possible on the basis of evidence deposed by prosecution witnesses then the view which favours the accused shall be taken into consideration. Therefore, it is clear that in the case in hand, the version deposed by PW-4 which favours the defence, is to be taken into consideration. Needless to reiterate that there is no incriminating material against the accused in the version deposed by PW4.

15. In addition to the above, it is specifically stated by PW-5/I.O that the FIR was lodged on 25.07.2017 at 9.00 PM. Be it noted here that as per F.I.R, the occurrence took place on 24.07.2017 at about 12:00 P.M. As such, it is evident that there is a delay of about 32 hours in lodging the FIR. In this respect, there is nothing in the evidence on record which can justify that the delay in lodging the FIR was caused by some genuine and justifiable cause. Under such circumstances, and having regard to the version deposed by PW-4 as narrated above, I find that the unexplained delay in lodging the FIR causes serious doubt as regards the credibility of the entire case of prosecution.

16. Considering the entire discussion made above, it is clear that the witnesses examined by prosecution have failed to prove the case against accused persons as alleged in the FIR.

DECISION: Point no.1 & 2 are therefore decided in the negative and goes against the prosecution.

ORDER

17. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused persons Md. Abdul Kadir and Md. Abdul Karim have committed the offences punishable under section 294/506/34 of IPC as alleged, and as such, the

accused persons are acquitted of the charges under section 294/506/34 of IPC on benefit of doubt and they be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 16th day of March, 2020.

The case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**(A) PROSECUTION EXHIBITS**

Exhibit.1 – F.I.R

Exhibit.2 – Sketch map

Exhibit.3 – Charge-sheet

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

P.W. 1 – Mustt. Taslima Khatoon

P.W. 2 – Md. Asimuddin

P.W. 3 – Mustt. Montaz Begum

P.W. 4 – Mustt. Selima Khatoon

P.W. 5 – Sri Dipankarjyoti Borah

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur