

CAUSE TITLE**Criminal Appeal No.5(1)2019.**

Appellant : Sri Golen Gogoi.

Respondent : State of Assam.

ADVOCATES :

For the Appellant : Mr. Bhabani Phukan, learned
Advocate.

For the State : Mr J. Saikia, learned Public
Prosecutor.

**IN THE COURT OF THE SESSIONS JUDGE,
LAKHIMPUR, AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
Sessions Judge,
Lakhimpur, North Lakhimpur.

Criminal Appeal No.5(1)2019.

Appellant : Sri Golen Gogoi.

Respondent : State of Assam.

Date of Argument : 31.03.2021.

Date of Judgment : 30.04.2021.

J U D G M E N T

1. The subject matter of the impeachment is the Judgment and Order dated 04.01.2018 rendered by the Judicial Magistrate 1st Class, Dhakuakhana, in connection with C.R. Case No.21/2016, convicting the Appellant under Section 500 of the Indian Penal Code (IPC for short), to simple imprisonment for three months and a fine of Rs.5,000/- (Rupees Five Thousand), with default clause. The State of Assam and the informant Sri Jayanta Saikia are

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arrayed as Respondent No.1 and No.2, respectively. Sri Golen Gogoi will be hereinafter referred to as the Appellant.

Background Facts.

2) The genesis of the case is that Respondent No.2 is an Assistant Professor in the department of English in Harhi College at Govindapur under Dhakuakhana Police Station (P.S. in short). The Appellant is also a teacher by profession. On 28/12/2014, the Appellant lodged an F.I.R. with the police at Dhakuakhana P.S. alleging that on 26/12/2014, at about 6:30 PM, some unidentified miscreants handed over a letter dated 28/11/2013, under the guise of U.L.F.A. The miscreants had their faces covered with black cloth and they demanded a ransom on 28/12/2014, threatening to kill the Appellant in his failure to pay the ransom. The F.I.R. lodged by the Appellant was registered as Dhakuakhana P.S. Case No.116/2014 under Section 384 I.P.C. This case was subsequently registered as G.R. Case No.218/2014. On 01/01/2015, at about 6:30 PM, the police picked up the Respondent No.2 from his house and the Respondent was informed by the Investigating Officer (I.O. in short), Sri Ramcharan Rabha that the Appellant accused him as one of the miscreants who handed him the ransom note in the guise of U.L.F.A. On the same day, the Appellant again came to Dhakuakhana P.S. and stated before the I.O., in presence of Sri Arun

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Saikia and Smt Pranita Saikia and the Respondent No.2's younger sister and other relatives that the Respondent No.2 came to his house and demanded the ransom by handing over the ransom note. The Respondent however denied that he is a member of any banned outfit and that he placed the ransom note demanding the ransom, but his pleadings fell into deaf ears and he was forwarded to judicial custody. On 02/01/2015, the Respondent No.2 was forwarded to the Court of the S.D.J.M. (M), Dhakuakhana and thereafter, he was forwarded to judicial custody on rejection of his bail petition. On 02/02/2015, the Hon'ble High Court granted him bail. The I.O. submitted Final Report against the Respondent vide F.R. No.13/2015 dated 28/02/2015. Thereafter, on 18/12/2015, the Appellant filed a petition No.1816 dated 18/12/2015 before the S.D.J.M. (M), Dhakuakhana stating that he had no objection if the Final Report against the Respondent No.2 was accepted. He expressed his reluctance to pursue the case against the Respondent No.2 and prayed for disposal of the case. The Final Report was accepted and the G.R. Case No.218/2014 against the Respondent was finally disposed of.

3) The Respondent has averred that the Appellant had falsely and maliciously implicated him in a false case, pursuant to which he had to remain behind

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bars from 02.01.2015 up to 02.02.2015, which was a breach into his personal liberty for 32 days. The Respondent No.2's arrest was published in various newspapers including the widely circulated 'Asomiya Pratidin' which tarnished his image and marred his reputation. It is alleged that the Appellant spread rumours that the Respondent No.2 posed himself as a member of the U.L.F.A. organization and demanded a ransom. Consequentially, the Respondent No.2 had to suffer mental agony due to the false imputations by the Appellant. This impelled him to move the Court as the accused is liable under Section 500 I.P.C. On receipt of the complaint, the S.D.J.M. (M), Dhakuakhana examined the Respondent and two witnesses under Section 200 of the Code of Criminal Procedure (Cr.P.C. for short) and on finding prima facie materials, proceeded against the Appellant. The offence was explained to the Appellant and he pleaded not guilty and claimed to be tried.

4) To substantiate his stance, the Respondent examined 6 witnesses and the Appellant cross-examined the witnesses in extenso. To the incriminating circumstances arising against him, the accused took the plea of total denial in a blanket manner.

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Contentions Of The Parties.

5) I have heard Mr. Bhabani Phukan for the Appellant, who has empathetically submitted that the Trial Court over looked the fact that the Appellant did not pursue the case registered against the Respondent No.2 and so the question of defamation does not arise. The Appellant is not responsible for any publication against the Respondent in any widely circulated news daily. As an aggrieved, he lodged the ejahar with the police with the sole object of seeking relief. He had no malice against the Respondent. It is strenuously argued that the Trial Court decided this case against the Appellant with a preconceived notion that the C.R. Case No.21/2016 was false and so Final Report was submitted by the I.O., without assessing the role of the I.O. in relation to the previous case launched by the Appellant. It is submitted that the circumstances arising against the Appellant was not categorically explained and asked to the Appellant, not providing him a scope to explain the circumstances arising against him. The Appellant has been held guilty without *mens rea*. The sentence is too severe on the Appellant and he will have to pay with his employment as a teacher. The Appellant was not named in the F.I.R. It is also submitted that his statement to the police during

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investigation cannot be considered as defamation, and so on and so forth.

6) The Public Prosecutor for the State, Sri Jagneswar Saikia laid stress in his argument that the Judgment and Order of conviction was appropriate and interference of the Judgment and Order is not required.

7) The Trial Court decided the case on the following point:-

“i) Whether the accused Sri Golen Gogoi (Appellant), on 01/01/2015, had stated before the police and others in the Dhakuakhana P.S. defamatory statements against the Complainant Sri Jayanta Saikia intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of the Complainant and his family members and thereby committed an offence punishable under Section 500 I.P.C.?”

Section 500 I.P.C.

8) The criminal law on defamation has been codified and is contained in Section 499 to 502 I.P.C. For an offence of defamation as defined under Section 499 I.P.C., three essential ingredients are required to be fulfilled.

i) Making or publishing any imputation concerning any person.

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ii) Such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations.

lii) The said imputations must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned.

9) As this is a first appeal, it is the bounden duty of this Court to re-appraise the evidence. Much capital was made on the *mens rea* of the Appellant to tarnish the Respondent's image.

10) I would like to advert to the evidence. The Respondent No.2 Jayanta Saikia testified as P.W.-1 that on 01/01/2015, the police arrested him on the ground that an F.I.R. was lodged with allegations that a miscreant, posing as a member of an unlawful outfit, demanded a ransom in lieu of his life. His name was not mentioned in the F.I.R., but in his statement under Section 161 Cr.P.C., the Appellant stated that he suspected that the Respondent was complicit. The P.W.-1 further testified that the Appellant identified him as the miscreant in presence of police and his family members and assured that he is hundred percent certain that the Respondent No.2 was the miscreant who demanded the ransom from him. Pursuant to

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the allegations, the police arrested the Respondent and forwarded him to jail. P.W.-1 also testified that the Appellant published fake news against him in the highly circulated Assamese Daily 'Asomiya Pratidin' that he was the fake ULFA, who demanded ransom from him. As he (P.W.-1) was a teacher in the Jatia Vidyalay School at Dhakuakhana, the fake news tarnished his image as it was defamatory in nature. However, Final Report was submitted in this case and the Appellant did not pursue the case, but he (P.W.-1 - Respondent No.2) was confined in judicial custody from 01/01/2015 up to 02/02/2015. His co-villagers wrote a letter to the police to release him as he was innocent. As he was vilified by the imputations cast against him, his clean image was tarnished in the society and he had to resign from his post as English Teacher from the Jatia Vidyalay, Dhakuakhana. He was compelled to sell his house and mortgage his family property in order to obtain bail from the Hon'ble High Court. The Respondent as P.W.-1 marked several documents as exhibits. Ext.1 is the complaint and Ext.1(1) up to Ext.1(7) are his signatures on the complaint filed by him against the Appellant. Ext.2 is the certified copy of the G.R. Case No.218/2014, which was lodged against him by the Appellant. Ext.3 is the no objection certificate filed by the Appellant on 18/12/2015. Ext.4 is the application

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filed by the public of Amulaguri Borma Gaon on 02/01/2015. Ext.5 is the alleged news item published on 02/01/2015 with the 'Asomia Pratidin' newspaper.

11) Sri Arun Saikia is the Respondent's father and he testified as P.W.-2 that the Appellant filed a false case against his son and subsequent thereto, his son had to remain in the jail for one month. On 11/04/2016, his son (P.W.-1) filed this complaint against the Appellant. His son was not named in the F.I.R. lodged by the Appellant, but the Appellant identified his son (P.W.-1) as the miscreant and assured the I.O., S.I. Ramcharan Rabha that he was 100 percent certain that the Respondent No.2 was the miscreant who demanded money, posing himself as a member of the U.L.F.A. outfit and demanding money through a demand letter. His son (P.W.-1) had to suffer both mentally as well as financially as his image was tarnished. The evidence of P.W.-2 further proceeds that after 8 or 9 months, after the incident, the Respondent No.2 however joined as an Assistant Professor of Harhi College at Dhakuakhana. P.W.-2 insisted that the allegation brought against his son (P.W.-1) was false.

12) The evidence of PW.2 substantiates the evidence of PW.1 that the image of PW.1 was

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tarnished due to the criminal case against him. At the same time, PW.2 also testified that his son (Respondent No.2 - PW.1) is at present working as Asstt. Professor at Harhi College in Dhakuakhana. When the criminal case against the Respondent No.2 was not pursued, *mens rea* of the Appellant to tarnish the image of the Respondent No.2 is under cloud. The newspaper article alleged to have been published against the Respondent No.2 is indeed libelous, but the article was published by the 'Asomia Pratidin' on their own volition. There is no evidence that the Appellant was the author of the article. It has also to be borne in mind that the evidence of PW.1 and 2 depicts that Respondent No.2's name (PW.1's name) was not mentioned in the FIR. It was only in his statement u/s 161 CrPC that the Appellant identified the Respondent No.2 as the miscreant, who went with the demand note for the ransom. Even, if a person's face is covered with cloth, we can easily identify a familiar person and a rational and diligent person can easily identify a familiar person, who covers a part of his face with mask or cloth.

13) Now, the question is whether the statement u/s 161 CrPC is slanderous to the extent that the Appellant has to be brought to the book or incarcerated.

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14) At this juncture, I would like to advert to the evidence. Sri Nabin Dutta testified as PW.3 that on 11.03.2016, the Respondent No.2 (PW.1) filed a complaint against the Appellant. On 01.01.2015, Dhakuakhana police arrested the Respondent No.2. In the Police Station, the Appellant identified the Respondent No.2 as the miscreant, who demanded ransom from him in the guise of ULFA. Many people were present when the Appellant identified the Respondent No.2 (PW.1) As a result of this case initiated by the Appellant against the Respondent No.2, the image of Respondent No.2 was tarnished and his reputation was marred.

15) This witness, PW.3 also testified that the Appellant did not mention the Respondent No.2's name in the FIR, nor did he mention the Respondent No.2's name in the Final Report, but in his statement u/s 161 CrPC, he mentioned the Respondent No.2's name as the miscreant.

16) After scrutinising the evidence of PW.1, 2 and 3, it can be deciphered that during the stage of investigation, the Appellant identified the Respondent No.2 as the person, who demanded ransom in the guise of ULFA. If the Respondent No.2 was innocent, he ought to have lodged a case u/s 211 IPC, and then it would have been appropriate to proceed against the Appellant with the instant case

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of defamation. Without any case of false accusation against the Appellant, this case of defamation is baseless. Moreover, through the corresponding case of defamation, the Respondent No.2 did not affirm that he was innocent. It is amply clear that as the Appellant did not proceed against him and as the investigating Agency submitted Final Report, the Respondent No.2 was not found guilty of demanding a ransom and posing as an ULFA member. It has to be borne in mind that the Appellant did not pursue the criminal case against the Respondent No.2.

17) The evidence of the Respondent No.2's sister is a replication of the evidence of the Respondent No.2 as PW.1 and his father as PW.2. Respondent No.2's younger sister, Smt Nomita Saikia testified in her cross-examination that while her brother was languishing in jail, the school authorities allowed her to teach in the Jatia Vidyalaya at Dhakuakhana in lieu of her brother. Through this cross-examination the Appellant tried to project that the Respondent's claim of being ostracised by the society is false and frivolous. Moreover, the Respondent No.2's father has admitted in his cross-examination as PW.2 that the Respondent No.2 is at present working as a Professor, which position is a notch higher in the echelons of society. If the school

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authority and the college authority have not ostracised the Respondent No.2, the question of tarnished reputation does not arise.

18) In sync with the evidence of PW.1, 2, 3 and 4, the evidence of PW.5 also depicts about a criminal case launched against the Respondent No.2 by the Appellant. The disturbing feature of this case is that, not a single witness stressed through their testimony that the case launched against the Respondent No.2 was a false case. It was even not argued on behalf of the Respondent No.2 that a false case was initiated by the Appellant. The witnesses highlighted that the image of the Respondent No.2 was tarnished as a result of the case, and slanderous and libelous statements were made against the Respondent No.2 during the course of investigation. Another disturbing feature is that the witnesses in presence of whom, the Appellant made the imputations against the Respondent No.2 were not identified and examined by the prosecution. It has already been held in my foregoing discussions that the Appellant was not found to be responsible for the alleged libel published against the Respondent No.2.

19) An important witness in this case is the Investigating Officer of the criminal case against the Respondent No.2. SI Ram Charan Rabha is the

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Investigating Officer and he testified as PW.6 that on 20.12.2016, he was posted as ASI and he was entrusted to investigate the Dhakuakhana PS Case No.116/2018 u/s 384 IPC. He recorded the statement of the Appellant (Golen Gogoi) u/s 161 CrPC, and the Appellant stated that one unknown youth came to his house at about 6.30 pm, who in the guise of ULFA showed a demand note for a ransom and again on the next day i.e., on 27.12.2021, another unknown youth with his face covered with a piece of black cloth told him (Appellant) that they would return on 28.12.2014 for the money, which has to be arranged by the Appellant. The Appellant further stated that the miscreant threatened him not to divulge about the incident, lest he would face dire consequences. The demand note was seized in presence of Prahlad Chutia and Ratneswar Chutia vide Seizure List, Ext.7 and Ext.7(1) is his signature. He also recorded the statements of other witnesses, and went to the place of occurrence and prepared the sketch map, Ext.8, wherein Ext.8(1) is his signature.

20) The evidence of PW.6 further proceeds that on 30.12.2014 at about 9 am, the Appellant (complainant) came to the Police Station and stated before him that on 29.12.2014, some unknown miscreants came to his residence at about 8 Pm

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and demanded money and when he raised alarm, the villagers came and the unknown men fled from the scene. The Appellant (complainant, Golen Gogoi) further stated that the demand letter dtd.13th November was actually given by Jayanta Saikia (Respondent No.2). He stated that while Jayanta Saikia was talking to him, the black cloth slipped from his face revealing his identity and he could identify that the unknown youth was none other than Jayanta Saikia (Respondent No.2). PW.6 further testified that the Appellant (complainant) further stated that on 26.12.2014 at about 6.30 pm, some unknown men came to his residence and reminded him about the demand letter dtd. 13th November and demanded ransom and threatened him that in case of his failure to pay the ransom, he would be shot to death. PW.6 further testified that the Appellant, Golen Gogoi (complainant) further stated that as Jayanta Saikia (Respondent No.2) was from his village, he was terrified and was in fear of his life and as he was being ceaselessly pursued for the ransom, he had to seek help from the police. On 01.01.2015, he arrested Jayanta Saikia (Respondent No.2) and the Appellant identified him in the Police Station in presence of Arun Saikia, Pronita Saikia and some other villagers. PW.6 further testified that the witnesses stated before him that Jayanta Saikia (Respondent No.2) is not a person, who would commit such a crime and the

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witnesses further insisted that they heard from Golen Gogoi (Appellant) that an unknown person demanded money from him, and so he finally submitted final report against the accused (Respondent No.2, Jayanta Saikia) as there were no materials against the Respondent No.2. Ext.9 is the Final Report and Ext.9(1) is his signature. In his cross-examination, PW.6 testified that as the statements made by Golen Gogoi (Appellant) were contradictory and as the Appellant came to the Police Station again on 30.12.2014 stating that he had to give some information regarding this case, he recorded the Appellant's statement u/s 161 CrPC for the second time. His cross-examination is not noteworthy.

21) Recapitulating the entire evidence, it is held that when the miscreants persistently and ceaselessly demanded ransom from the Appellant, he apprehended danger to his life and he solicited help of police and lodged a criminal case against the miscreant. He was hesitant as he was terrified to divulge the name of the Respondent No.2. Being the resident of the same area, it was not difficult for him to identify the Respondent No.2 even if he had a black cloth covering his face. Finally, he made up his mind to reveal the identity of the miscreant and so he went for the second time to the I.O. i.e., PW.6 and divulged the name of the miscreant who

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demanded the ransom. Normally, a human being will be terrified of a banned outfit. The submission of the Final Report against the Respondent No.2 and the conduct and reluctance of the Appellant does not give clean chit to the Respondent No.2. When the Appellant filed a petition of 'no-objection' on the acceptance of the Final Report, the Respondent No.2 got a relief from the criminal case lodged against him. The imputation against the Respondent No.2 is without doubt injurious to his reputation. The statement u/s 161 CrPC cannot be considered slanderous. The Respondent No.2 had better measures of relief u/s 211 IPC and also he could have claimed for damages, but it is apparent that he did not want to rake up flak against him.

22) It has been held by Hon'ble the Supreme Court in *Rajendra Kumar Sitaram Pandey and others vs Uttam Kumar and another*, AIR 1999 SC 1028, that ***"Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the***

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complainant, a departmental inquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out."

23) Reverting back to this instant case, it is held that the evidence reveals that this case is based on the statement of the Appellant before the I.O. during the course of investigation of the criminal case against the Respondent No.2. This case, therefore, falls under the purview of Eight Exception to Section 499 IPC, which envisages **Accusation preferred in good faith to authorised person.** *" It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation "*.

24) In view of my foregoing discussions, it is thereby held that the Appellant had no *mens rea* to

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vilify the Respondent No.2. It was the precautionary measure taken by the Appellant when he lodged an FIR against the miscreant, who demanded ransom and threatened to do away the Appellant in the event of his failure to pay the ransom.

25) The Appellant was compelled to inform the police as he apprehended that his life was under threat. The criminal case was lodged against the Respondent No.2 and in his statement u/s 161 CrPC, the Appellant identified the Respondent No.2 as the person, who demanded the ransom and threatened him with dire consequences.

26) If the complaint to the police results in an unsuccessful prosecution then the person defamed can only claim damages for malicious prosecution and not for defamation. In case the complaint to the police does not result in a prosecution, then also the persons defamed have no remedy in respect of defamatory statements made in such a complaint to the police. But if a false complaint is made to the police, the person who makes such a false complaint would be punishable either under Section 182 or Section 211 of the Indian Penal Code. It is also held that the statements u/s 161 CrPC cannot be considered as defamatory statements.

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27) In view of my foregoing discussions, it is held that I do not agree with the decision of the Trial Court. The impugned Judgment and order passed by the Trial Court is, hereby, set aside.

28) Appeal is allowed.

29) Send back the L.C.R., with a copy of this Judgment and order.

Judgment & Order is signed, sealed and delivered in the open Court on the 30th day of April, 2021.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :
Sri Satyabrata Kshattri, Stenographer.