

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

G.R CASE NO: 2835 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI TULAN SAIKIA

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

GR CASE NO: 2835 / 2017

U/S 447/298/506 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI TULAN SAIKIA

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MR. BIPUL BORA

OFFENCE EXPLAINED ON : 25/10/2018
EVIDENCE RECORDED ON : 01/06/19, 23/10/19, 30/01/20
19/03/21
ARGUMENT HEARD ON : 23/03/2021
JUDGMENT DELIVERED ON : 23/03/2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 23.09.2017 at about 4.00 PM, while informant Smt. Rekha Saikia was standing in the courtyard of her house at that time the accused came there and entered inside the courtyard without any permission and thereafter rebuked the informant verbally by using obscene words and also threatened

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to kill her. The informant thereafter lodged an FIR about the occurrence before the In-charge of Nowboicha police out-post.

2. On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 1211/2017. After investigation, I.O of the case submitted charge sheet against accused Sri Tulan Saikia for the offences punishable u/s 447/298/506 of IPC. Copies of relevant documents were furnished to the accused u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 447/298/506 of IPC are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined six witnesses, whereas the defence did not examined any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused and 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 on 23.09.2017 at about 4.00 PM, entered inside the courtyard of the house of informant with the intention to rebuke and threaten the informant, and thereby committed an offence punishable u/s 447 of IPC?

(ii) Whether the accused on 23.09.2017 at about 4.00 PM, with the deliberate intention of wounding the religious feelings of any person, uttered any word or made any sign in the hearing of informant, and thereby committed an offence punishable u/s 298 of IPC?

(iii) Whether the accused on 23.09.2017 at about 4.00 PM, 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 of IPC?

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DISCUSSION, DECISION AND REASONS THEREOF:**POINT NO. 1, 2 AND 3:**

6. For the sake of convenience and as because point no. 1, 2 and 3 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, informant Smt. Rekha Saikia as PW-1 in her evidence-in-chief has stated that on 26.09.2017 in the evening hours, while she was coming to her house and reached Balijan area, at that time, the accused misbehaved with her by saying that he will drag her and marry her. The accused also said that he will beat her son whenever he finds him (informant's son) in the road.

8. During her cross-examination, PW-1 has denied the suggestions of defence that she did not mentioned the aforesaid allegations in her statement before I/O. However, the I.O/PW-6 ASI Tarun Chetry in his cross-examination has confirmed that PW-1/informant did not mention the aforesaid allegations in her statement before him. In my opinion, the aforesaid allegations made by PW-1 are the crux of the alleged occurrence, and hence, the same should have been mentioned by her in her very initial statement before I/O. Therefore, the failure of PW-1 to mention those allegations in her statement before I/O is a material contradiction as per section 162 of CrPC which creates serious doubts regarding the credibility of her aforesaid allegations.

9. In the above context, PW-2 Sri Jitu Borah in his evidence has stated that on the day of occurrence he saw many people gathering on the main road and thereafter he came to know from others that the accused rebuked informant's son. The foregoing evidence deposed by PW-1 clearly shows that he has actually not seen the accused rebuking informant's son. Hence, the aforesaid allegation made by PW-2 is clearly hearsay and cannot be relied upon unless corroborated by some other reliable evidence.

10. Moreover, during his cross-examination, PW-2 has specifically denied the suggestion of defence that he did not mentioned the aforesaid
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allegations in his statement before I/O. In this respect, the I.O/PW-6 ASI Tarun Chetry in his cross-examination has confirmed that PW-2 did not mention the aforesaid allegations in his statement before him. In my opinion, the aforesaid allegations made by PW-2 are the crux of the alleged occurrence, and hence, the same should have been mentioned by him in his very initial statement before I/O. Therefore, the failure of PW-2 to mention those allegations in his statement before I/O is a material contradiction as per section 162 of CrPC which creates serious doubts regarding the credibility of his aforesaid allegation.

11. In the above context, PW-3 Smt. Krishna Saikia, PW-4 Sri Dharmendra Borah and PW-5 Sri Dipak Saikia in their respective evidence-in-chief have not stated anything which can support the allegations made in the FIR.

12. Needless to mention to here that none of the witnesses examined by prosecution have stated anything which can go to prove that the accused unlawfully entered inside any premises in possession of the informant. Also, the prosecution witnesses have not stated anything about use of any obscene word by the accused, or any other word which can hurt the religious feeling of any person.

13. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused has committed the offences as alleged in the FIR.

DECISION: The point no.1, 2 & 3 are therefore decided in the negative and goes against the prosecution.

ORDER

14. 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 Sri Tulan Saikia has committed the offences punishable under section 447/298/506 of IPC as alleged, and as such, the said accused is acquitted of the charges

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under section 447/298/506 of IPC on benefit of doubt and he be set at liberty forthwith.

The bail bond of the accused 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 23rd day of March, 2021.

The case is disposed of on contest.

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

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APPENDIX**PROSECUTION EXHIBITS:**

Exhibit.1 – FIR

PROSECUTION WITNESSES:

1. PW-1 – Smt. Rekha Saikia
2. PW-2 – Sri Jitu Borah
3. PW-3 – Smt. Krishna Saikia
4. PW-4 – Sri Dharmendra Borah
5. PW-5 – Sri Dipak Saikia
6. PW-6 – Sri Tarun Chetry

DEFENCE EXHIBITS:

NIL

DEFENCE WITNESSES:

NIL

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

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