

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
TINSUKIA**

G. R. Case No. 3285 of 2014
U/S 341/294/506 of IPC

State of Assam

.....Prosecutor

- *Versus* -

Sri Sudarshan Prasad

.....Accused

Present: Dr. Chetana Khanikar
Additional Chief Judicial Magistrate, Tinsukia

For the prosecution: Smti. J. Phukan, Addl. P.P.

For the defence: Sri R. Borthakur, Advocate

Evidence recorded on: 19.01.2016, 03.02.2017,
31.05.2017, 24.10.2017,
08.08.2018, 19.03.2019,
20.05.2019, 27.06.2019

Argument heard on: 15.07.2019

Judgment delivered on: 17.07.2019

JUDGMENT

1. The prosecution case in brief as stated in the FIR is that the informant and other 5 family members are residing in Ambagan house since 50-55 years. The common room of that house was put under lock and key by the accused forcefully. On 14.12.2014 the accused Sudarshan Prasad had abused the informant and his family with obscene words and restrained the informant by showing a dao. The accused had also threatened the informant and his family members with dire consequences. The accused threatened to vacate the house within 24 hours.

2. On the basis of aforesaid FIR, police registered a case against the accused as Tinsukia PS Case No.1215/2014 U/S 341/294/506 of IPC.

Police investigated the case and on completion of investigation submitted charge-sheet against the accused Sri Sudarshan Prasad U/S 341/294/506 of IPC.

3. On appearance of the accused Sri Sudarshan Prasad in Court, copies of relevant documents were furnished to him as required U/S 207 of CrPC. Considering the relevant documents and hearing both the parties and having found a prima facie case against the accused U/S 341/294/506 of IPC. Accordingly particulars of offences under those sections are explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial the prosecution has examined eight witnesses and adduced three documentary evidences.

5. At the close of the prosecution evidence, statement of the accused U/S 313 of the Cr.P.C. has been recorded with reference to the incriminating circumstances appearing against him in the prosecution evidences. Defence side has adduced no evidence and plea of the accused is of total denial.

6. After perusing the records, considering the materials produced, hearing the arguments of the learned counsels for both the sides and the accused the following points are taken as POINTS FOR DETERMINATION:

- i. Whether on 14.12.2014 the accused had wrongfully restrained the informant with intent to commit an offence thereon?
- ii. Whether the accused had abused the informant and his family members with obscene words in public place, on that day?
- lii. Whether the accused had threatened the informant and his family members with dire consequences, on that day?

DISCUSSION, DECISION AND REASONS THEREOF:

Point (i), (ii) & (iii):

7. For convenience of discussion and to avoid unnecessary repetition these three points are taken together for discussion.

8. In this case, P.W. 1 is the informant. He deposed that the incident is regarding the closing of the common door. The accused had closed the door through which the informant and his family members used to ingress and egress as the married daughter of the accused came in those days. The accused told the informant that he will close the door permanently. When on 14.12.2014 the informant went to tell the accused to open the door, then the accused showed him a dao and threatened to vacate the house within 24 hours. During cross examination he stated that he did not state in his FIR or before police that the accused had closed the door permanently. The informant had bad relation with the accused. When the daughter of the accused came for one month, then the informant and his family used to ingress and egress from backside. There is a cross case pending against the informant.

9. PW 2 and PW 3 have stated that the accused had locked the house of the verandah which was used by the informant and his family members and did not open inspite their request. When the informant tried to open the lock of the door a quarrel took place. They stated that the accused took out a dao and was abusing the informant by showing the dao. During cross-examination they stated that they have another way on the back side of their house through which they can come out and go into their houses.

10. PW 4 stated that the accused had closed the common door of the drawing room and when he was asked to open it by Ritesh and his mother he denied to open the same. He stated that the accused had abused the informant and other by using slang language and stated that they can do anything and he also threatened them with injuries in future. During cross examination he stated that the drawing room is

common to all of them. The house containing the drawing room belongs to Rahul, Ritesh, Manjit and the accused. There are 4 doors in the drawing room and one of those doors were closed. They can go to the rooms of all the families by the door which was closed. He stated that often quarrel took place between their families regarding partition of their ancestral property. There is a temple in their house which is looked after by the accused and they are not allowed to enter that temple.

11. PW 5 stated that he saw that the accused was asking Rahul and other members of his family to go out of his house by taking a dao in his hand, he was abusing the informant and other members of his family. During cross examination he stated that about 10/15 people were gathered at the PO.

12. PW 6 stated that the daughter of the accused came from Bihar after marriage, the accused said that he will keep the door closed. On that matter an altercation took place. During cross-examination he stated that the informant has been keeping in and out to his houses. There are 4 ways to go to the informant's house. There is mandir in joint family which was constructed by the accused. She stated that all the latrine, bathroom of joint family was constructed by the accused. There has been a quarrel among the informant, accused and other families of joint family regarding the respective shares of the joint family property. This case was filed for property dispute.

13. PW 7 stated that an altercation took place between the informant and the accused.

14. PW 8 is the I/O. During his examination in-chief he stated that he had visited the place of occurrence, drew the sketch map, recorded the statements of witnesses and filed the charge-sheet. During cross-examination he stated that he only filed the charge sheet in this case. He did not examine any witness. As such he does not have personal knowledge as to what was stated by the witnesses. He stated that Sahitya Sabha Bhawan is situated by the side of Rangarah road which

is shown in the sketch map as RG road/thana road. As per sketch map Dr. Sama Prasad's house and the PO are situated along the side of Sahitya Sabha Bhawan. As per sketch map the PO is also situated by the side of Rangarah road. In the sketch map shankar medical is shown as situated by the side of rangarah road. In the sketch map Ext-2(a) is marked by two lines but I cannot say what does Ext-2(a) mean. In the sketch map it is not shown if any way leading to informant's house exists through the house of the accused. It cannot be ascertained from the sketch map whether the PO is the house of the informant or the accused. The house of the informant and the accused are not shown in the sketch map. He stated that he submitted the charge-sheet without comparing the statement of the witnesses with the sketch map.

15. These are the evidences adduced by the prosecution sides. From these evidences it is seen that all the witnesses have stated that the entire incident arose due to property dispute. PW 1, 2, 3, 4 and 5 stated that the accused abused the informant with obscene words. But none of the witnesses has mentioned any obscene word which was uttered by the accused. To attract S. 294 the specific word should be mentioned. No other person also stated anything regarding that to show the annoyance to the public. From the sketch map it can not be ascertained, which door or way of the informant was closed. Statement of the informant in the court and before the IO are also not corroborative.

16. Above all, it is admitted by the prosecution side that there is a property dispute between the parties. Here PW 1 is the informant and PW 2, 3, 4 and 5 are the family members of the informant. PW 6 and 7 who are independent witnesses have stated that there is only a quarrel between the informant and the accused. They have not stated about any restraint or abuse or threatening by the accused. Thus, only the interested witnesses who have property dispute with the accused, have stated against the accused. But their statements are also contradictory and they are not sure as to what was actually happened, who actually went to the PO and when the incident actually had happened. In view of the aforesaid contradictory circumstance I am of the opinion that some

more corroborative independent evidence is required to hold the accused guilty. Hence, I hold that the prosecution side failed to prove beyond reasonable doubt that on 14.12.2014 the accused had wrongfully restrained the informant with intent to commit an offence thereon or abused the informant and his family members with obscene words in public place or threatened the informant and his family members with dire consequences.

Hence Point No. (i), (ii) & (iii) are decided negative.

17. From the above discussions I come to the conclusion that prosecution has failed to establish the allegations against the accused. Hence the accused Sri Sudarshan Prasad is acquitted from the case. Bail bond is extended for next six months. I set the accused in liberty forthwith.

Given under my hand and the seal of this Court on this 17th day of July, 2019.

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia

APPENDIX

Witnesses for the prosecution:

- P.W. 1: Sri Rahul Prasad Rajak, informant
- P.W.2: Smti. Munmi Devi
- P.W.3: Smti. Anita Das Prasad
- P.W.4: Sri Rajesh Prasad
- P.W.5: Md. Noor Islam Ahmed
- P.W.6: Smti. Bhagbani Devi
- P.W.7: Sri Hridayananda Prasad
- P.W.8: Sri Pradip Kumar Bonik, the IO

Witness for the defence:

Nil

Exhibits:

- 1. FIR..... Ext. 1
- 2. Sketch Map.....Ext. 2
- 3. Charge sheet.....Ext. 3

(C. Khanikar)
Additional Chief Judicial Magistrate,
Tinsukia