

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA:

TINSUKIA

G.R. CASE NO: 358 OF 2016

U/Sec 294/506 OF IPC

STATE OF ASSAM

..... PROSECUTOR

-Vs.-

1) SRI BABA SAIKIA

S/O: MONI RAM SAIKIA

ADDRESS: NO. 1 ASAMIYA GAON, TINGRAI

P.S.: DIGBOI, DIST: TINSUKIA, ASSAM

2) SMTI. POLI SAIKIA

W/O: BABA SAIKIA

ADDRESS: NO. 1 ASAMIYA GAON, TINGRAI

P.S.: DIGBOI, DIST: TINSUKIA, ASSAM

.....ACCUSED

PRESENT: SALEH AHAMMAD, LL.M. AJS

**SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA,
TINSUKIA**

FOR THE STATE: Mr. BAPA PURU KASHYTA, LEARNED ASST.PP

FOR THE ACCUSED: Mr. BIDYUT DUARAH, LEARNED ADVOCATE

OFFENCE EXPLAINED ON: 19/12/17

EVIDENCE RECORDED ON: 15/12/18, 01/09/18, 12/03/19 & 01/06/19

ARGUMENT HEARD ON: 15/07/19

JUDGMENT DELIVERED ON: 31/08/19 (Judgment couldn't be delivered on time as the accused were absent)

JUDGMENT:

1. The genesis of this case had its roots with the lodging of the First Information Report (in short as FIR) wherein the informant has alleged that since the morning the

accused person along with his family had used slang words against the informant and her family. The accused persons also threatened her family. The accused persons came with dao& bricks and thereby trespassed into the house of the informant and chased them. The accused persons also used slang words against her elder sister RINA KAKOTY at 8:00 A.M. Thereby she lodged the FIR. The criminal law was set in motion with the lodging of the FIR.

2. In this case the O/C of DIGBOI PS registered as DIGBOI PS case No. 91/2016 U/sec 294/506/34 of IPC and the case was entrusted to S.I. TIRTHA DIHINGIA for investigation and finally after completion of investigation the charge sheet was submitted by him against the accused persons U/sec 294/506/34 of IPC.
3. In this case the accused persons appeared before the court and they were allowed to go on bail and as per section 207 of CrPC& the offences U/sec 294/506 of IPC was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. In this case the prosecution has adduced as many as eight PW'S to prove the case. In this case the statements of the accused persons are hereby recorded and their pleas are of total denial. The defence does not want to adduce any DW's from their side.
4. I have heard arguments of the learned defence counsel and the learned Asst. P.P. I have perused the evidence on record and scrutinized the evidence on record.
5. After hearing both sides the following are determined point of determination.

POINT OF DETERMINATION

POINT FOR DETERMINATION NO.1:

Whether the accused person on 01/06/16 at 8:00 A.M. had used slang or abusive words in a public place or near a public place to the informant and her family and thereby committed an offence punishable u/sec 294 of IPC?

POINT FOR DETERMINATION NO.2:

Whether the accused persons at the same time and place had committed criminal intimidation by threatening the complainant and her family which had caused alarm to their minds& thereby committed an offence punishable u/s 506 of IPC?

Discussion, Decision and Reasons there on:

For the sake of convenience both the points are clubbed together:

6. PW1 in her evidence has deposed that she is the informant of this case. She has filed

this case against Baba Saikia, his wife PoliSaikia and mother. They are her neighbors. The incident took place in the month of June, 2016. In the morning on the date of occurrence the accused persons abused them using filthy language taking their name and the names of her brother in law RinkuKakoti @ Jintu and his wife BulBuliKakoti. They also took the name of his sister RinaKakoti, who is a reporter by profession. Hearing that when she and her husband went out to see then accused Baba Saikia came chasing them holding a lathi and a piece of brick. Expecting the danger they entered into the house through the back door. While rebuking them the accused persons shouted that their family did not have any income source and so the lady members of the family did illegal business by selling their body. After the said incident they went to the PS and lodged an ejahar. After lodging the ejahar police came to the place of occurrence and took the accused persons to the PS. At that time they were at the PS. Police recorded their statement in connection with this case. EXT 1 IS THE FIR, EXT 1(1) IS HER SIGNATURE.

7. During cross examination she has stated that she is not a member of any MahilaSamity, adjacent to their house is the house of Late Akon Sonowal and little distance away is the house of Lalit Koch. Baba Saikia and PoliSaikia sold the house and property in the name of the local MohilaSamity. Baba Saikia's family has gone from the place of occurrence after selling his property. The nearby people also heard the accused persons abusing them. The suggestions put forward are of total denial.
8. PW2 in his evidence has deposed that the informant is his wife. He has filed this case against Baba Saikia and his wife PoliSaikia. They are his neighbors. He has no personal enmity with the accused persons. The incident took place on 01-06-2016. In the morning on the date of occurrence the accused persons abused him and his family members using filthy language. They took his wife's name and shouted that she did illegal business of her body and run their family. Hearing that when he and his wife went out to see then accused Baba Saikia came chasing them holding a lathi in order to assault. Seeing the danger they entered into the house. After the said incident they went to the PS and lodged an ejahar. After lodging the ejahar police came to the place of occurrence and took the accused persons to the PS. Police recorded their statement in connection with this case.
9. During cross examination he has stated that his name was not taken by the accused persons. His brother RinkuKaloti and his wife also reside with them in the same mess. At the time of occurrence the neighbours saw and heard the incident. They did not come forward to their house. Amongst them were ThaneswarKonwar,

TanujaSonowal, Pushpa Moran and the family members of Koch. Accused Baba and Poli had personal problem with the MahilaSamity of locality. They sold their lander property to the MahilaSamity and left the place of occurrence. The suggestion put forward is of total denial.

10. PW3 in his evidence has deposed that the informant is his sister-in-law. On 01-06-16 at about 4:00 A.M when he was on his bed he heard that the accused persons was screaming outside. He went outside the house. One Koch title man rang him. He saw that accused Baba Saikia and PoliSaikia along with dao, brick, and lathi in their hands told his brother to come outside the house. The accused persons came to his house chasing to assault his brother. At that time they closed their door. Later on, he along with his elder brother, sister in law, his wife went to Digboi PS by vehicle and lodged an ejarah at Digboi P.S. Police came to his house along with his brother.
11. During cross examination he has stated that he has no quarrel with the accused persons. The houses of LALIT KOCH, AKON SONOWAL & THANESHWAR KONWAR etc. are near to his house. He woke up after getting the information from his elder brother. The suggestion put forward is of total denial.
12. PW4 in her evidence has deposed that the complainant is her sister in law. On 01-06-16 the incident took place. On the day of occurrence at about 4/4-30 A.M when he was sleeping, one lady Borah title informed her sister in law Songrami Sharma Kakoty over phone that the accused persons used abused filthy language. Thereafter, he got up from the bed and opened the back door and saw that the accused persons abused filthy language by calling their names. The accused persons came with lathi in their hand to assault them. The accused stated that her husband used to carry business of her character. They closed the door and entered inside. After sometime they went to the Digboi P.S.
13. During her cross examination she stated that there are houses of LALIT KOCH, LATE AKON SONOWAL & BHASKAR MORAN. They saw the occurrence. The police recorded her statement. The suggestions put forward are of total denial.
14. PW5 in her evidence has deposed that the informant is her daughter-in-law. He know the accused persons as they their neighbours. It was Baba Saikia had used slang words against them when he came out from the boundary. He came out and used filthy words. It was about 4:30 A.M/5:00 A.M they were sleeping and they used "KAKOTY-KAKOTY" words and KHEDA MARI AHISE." She came out and saw it. The door was closed and she was inside the house along with her grandchildren. Her son Pankaj & SangramiKakoty informed the matter to the police at the police station. The

- police came and asked them about it.
15. During cross examination she has stated that Baba Saikia did not use anyone's name. He used the name Jintu. There are houses of Akon Sonowal, ThaneshwarKonwar, Lalit Koch, BhaskarNeog near their house. She do not know any problem between Baba Saikia&MahilaSamity and on that day he did not take her name.
 16. PW6 in her evidence has deposed that she know the informant and know the accused persons by name. She do not know anything about this case.
 17. Her cross examination has been declined by defence side.
 18. PW7 in her evidence has deposed that she know the informant of this case. She do not know the accused persons. She did not know anything about this case.
 19. Her cross examination has been declined by defence side.
 20. PW8 in his evidence has deposed that on 01-06-16 he was working as SI at the Digboi P.S. On that one SmtiSangramiSarmahKakoty had lodged the FIR and thereafter the O/C of Digboi PS registered the case and he was entrusted for investigation. He recorded the statements of the witnesses at the police station who were present there. On the same day he went to the place of occurrence, prepared the sketch map, recorded the statements of other witnesses at the place of occurrence. He searched the accused persons and thereafter they were arrested and brought to the police station. He recorded their statements and the offences being bailable in nature he allowed the accused persons to go on bail after finding sufficient bailor. He filed charge sheet in this case u/s 294/506/34 of IPC. Ext.2 is the sketch map, Ext.2(1) is his signature. Ext.3 is the charge sheet, Ext.3(1) is his signature.
 21. During cross examination he has stated that he recorded the statements of the witnesses at the police station who came with the informant. They are the relatives of the informant. He did not recorded the statements of ThaneshwarKonwar, Lalit Koch & Akon Sonowal. The suggestions put forward are of total denial.
 22. ***I have heard the arguments of the learned Asst.PP & the learned defence counsel.***
 23. In this case one of the issues which has been brought to light is u/sec 294 of IPC. On close scrutiny of the evidence of PW'S it appears that the PW'S had stated that the accused had used abusive words against the informant and it were up to the extent by taking their names as well as that the body of the informant's lady members was used to earning. This itself appears to be words which cannot be accepted in a

modern society. The law prohibits it and doesn't support such kind of activities. But on perusal of the evidence of PW1, PW2 & PW4 it appears that the said words were stated by the accused persons. The cross examination of PW'S has been in the form of suggestions. Suggestions during cross examination cannot be accepted as part of evidence unless brought to light and proved it. On close scrutiny of the EXT 1 it appears that the informant had stated that the accused had used abusive and slang words. There is no reference made in connection with the exact words. However, the prosecution side has brought to light a few of them at the time of evidence. It itself has been contradictory to EXT 1. It appears that the accused persons had rebuked and used the abusive words outside the campus of the informant's family. The prosecution has failed to bring to light whether it was a public place or near a public place. None of the PW'S had stated about it.

24. Mere use of words is not sufficient to attract the provision of section 294 of IPC. In order to attract the provision of section 294 of IPC the exact words used by the accused persons should come to light and the PW'S must use the exact words which were stated by the accused persons along with the fact that the incident took place in a public place or near a public place.
25. In the case of ***PREETHIMON Vs. STATE OF KERALA***,¹ **2008 CrLJ 1233 (Ker)** the *hon'ble KERALA HIGH COURT* has held that in order to constitute an offence under this section the words should be the exact words used by the accused person. In reference to this case it means that the words i.e. slang words used by the accused person and none of the PW'S have mentioned about the slang words or which were the slang words spoken by the accused person.
26. The prosecution side has failed to bring out the ingredients u/sec 294 of IPC.
27. One of the important issues which has been involved in this case is u/sec 506 of IPC. Criminal intimidation has been defined in Section 503 I.P.C. which is reproduced below for convenience: "**503. Criminal intimidation.**- *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone 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.*
28. *Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section".*

¹2008 CrLJ 1233 (Ker)

29. *In order to bring home charge U/S 506 I.P.C. for committing criminal intimidation the prosecution has to prove the following:(i) Threatening a person with any injury; (ii) to his person, reputation or property;(iii) to the person or reputation of any one in whom that person is interested;(2) Threatening a person with injury; (a) to cause alarm to that person, or(b) to cause the person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat, (c) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.*

30. A careful perusal of above definition and ingredient shows that in order to bring home the charge for committing criminal intimidation prosecution has to show that the threat must be with intent to cause alarm to that person or to cause that person to do or omit to do any act as a means of avoiding the execution of such threat.

31. Now, in this case it is apparent on the face of the record that on the day of occurrence the accused persons who came chasing PW1 & PW2 with a lathi & bricks which was with an intent to assault them. It was PW1 & PW2 who expected danger they entered into their house through the back door. The evidence of PW1, PW2 finds its corroboration with the evidence of other PW'S i.e. PW3 & PW4 who had also supported the version of PW1 & PW2. Similarly, PW5 had stated that the accused had chased PW1 & PW2 and thereafter the door was closed and her son & daughter in law informed the matter to the police. Now, in this case, during the cross examination of PW'S there is no such suggestion brought to light on the aspect that the accused persons didn't threaten the informant and her husband i.e. PW1 & PW2. The evidence of PW1, PW2, PW3 & PW4 had remained static during the cross examination and despite tough cross examination the learned defence side has failed to bring to light this aspect. During the course of evidence of PW1, PW2, PW3 & PW4 they have stated that the accused persons had chased the informant and her husband with lathi & bricks. It has been specifically mentioned by PW'S that they were expecting a danger and because of it they entered inside the house. The evidence of PW1 & PW2 are having corroboration with the evidence of other PW'S. The incident took place in the morning and because of the said incident there were words which were used by the accused persons and thereafter it was PW1 & PW2. The incident is expected to take place at around 4:30/5:00 A.M. In the said moment of time if the accused persons had chased them with bricks and lathi there will be a threat which comes in common parlance to everyone that there is a threat to assault

and because of it they entered inside the house. There is no doubt when PW1 & PW2 were chased with bricks and lathi there will be danger to their lives and this itself causes alarm to the mind of a person and in this case it was PW1 & PW2 who had expected and presumed that there is danger to their life and because of it they entered into their house to save their lives. The intention of the accused persons can be presumed in this case when they chased with bricks and lathi. Even if during the cross examination of PW'S it has been brought to light that there is a problem which took place between BABA SAIKIA & MAHILA SAMITY but the said couldn't be proved in this case. It has been brought to light during the cross examination of PW'S that the neighbours saw the occurrence and they were AKON SONOWAL, THANESHWAR SONOWAL, LALIT KOCH & BHASKAR NEOG. The statements of the said witnesses were not recorded by the I/O and it is the discretion of the investigating agency but it would have been better if the I/O i.e. PW8 would have recorded their statements. Nevertheless, even if the I/O has failed to record the statements of AKON SONOWAL, THANESHWAR SONOWAL, LALIT KOCH & BHASKAR NEOG who are the neighbours of the PW'S but the said doesn't affect the story of the prosecution. The prosecution has been brought to light the ingredients of section 506 of IPC.

32. In this case, PW6 & PW7 were independent witnesses and they have stated that they didn't know about the occurrence. The learned defence side has brought to light that the witnesses who had appeared from the side of the prosecution side are interested witnesses and they couldn't be relied upon.
33. This court is of the view that it cannot be laid down as an invariable rule that the evidence of interested witnesses can never form the basis of conviction unless corroborated in material particular by independent witness. Relationship is not the factor which affects credibility, the only thing is that evidence of interested witness is to be scrutinized with care and weighed in golden scale before being relied upon. More often than not a relative would not conceal the actual culprit and inculcate an innocent person. Each case must be judged on its own facts. A close relative who is a natural witness cannot be regarded as an interested witness having a direct interest in having the accused somehow or the other convicted. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. The interest of a witness has to be considered and not just that he is interested. In this case, the incident took place at 4:30/5:00 A.M. and even if the neighbours saw the occurrence and the I/O has failed to record their statements. But it doesn't mean the evidence of other PW'S cannot be

relied upon. The mere fact that PW6 & PW7 didn't know about the occurrence doesn't discredit the evidence of other PW'S who happens to interested witness.

34. In the matter of **Dalip Singh Vs. State of Punjab², AIR 1953 SC 364**, the Hon'ble Supreme Court laid down the law relating to the evidentiary value of a related witness by observing thus: "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

35. The hon'ble supreme court in **Bolinedi Venkataramaiah Vs State Of Andhra Pradesh³ AIR 1994 SC 76** wherein the hon'ble supreme court has held, "...However, since they are interested witnesses, their evidence was subjected to greater scrutiny and one of the tests applied is whether the specific overt acts are attributed to them so that the omnibus allegations may not be accepted so as to rule out the possibility of implicating some innocent persons. In appreciating evidence of this kind of witnesses, the courts have always considered that such of those accused to whom specific overt acts have been attributed consistently and the same is corroborated by the medical evidence and the circumstances of the case, can safely be convicted..."

36. Hence, I am of the opinion that the evidence of PW1, PW2, PW3, PW4 & PW5 don't suffer from any infirmity and in such a case the evidence of PW1, PW2, PW3, PW4 & PW5 cannot be rejected only on the ground that they are interested witness.

37. The I/O couldn't seize the weapon of offence during the investigation. In this regard, I am of the opinion that there is a duty cast upon the investigating agency to recover and seize the weapon of offence. At this juncture, this court is of the opinion that

²AIR 1953 SC 364

³AIR 1994 SC 76

mere no seizure of the weapon of offence from the place of occurrence cannot be a ground to acquit the accused persons when there are sufficient evidence to prove the facts that the accused persons was involved in such activities.

38. In the case of **STATE OF KARNATAKA Vs. V.K.YARAPPA REDDY⁴ 1999 (4) (CRIME) 171, AIR2000SC185** whereby hon'ble Supreme Courthas held that defect and irregularities in the investigation cannot be granted for acquittal. A similar identical view has also be taken in the case of **DHANAJ SINGH Vs. STATE OF PUNJAB⁵, MANU/SC/0203/2004** hence in the light of above judgment and judicial pronouncement I am of the opinion that mere omission to investigation cannot have any reflection in the otherwise proved prosecution story.
39. This court had taken into consideration the statements of the accused person's u/sec 313 of CrPC and his plea is of total denial. The major plea which was a new entry from the side of defence that there was a monetary issue wherein the co accused had given the money to JINTU KAKOKTY & BUL BULI KAKOTY. But they didn't get it. But there is nothing in the evidence on record as well as by way of suggestion that there was a monetary transaction between them. This court finds it difficult to accept it. The accused persons were given the opportunity to adduce defence evidence but they have failed to adduce it. The plea that the accused persons didn't went to the place of occurrence doesn't hold good as there are ample evidence that the accused persons had chased the informant and her husband.
40. The accused persons are also the neighbours of the informant and in such a case when the investigating agency has failed to record the statements of AKON SONOWAL, THANESHWAR SONOWAL, LALIT KOCH & BHASKAR NEOG there was no bar upon the accused persons to adduce evidence from their side of their neighbours wherein their defence could have come to light but they have failed to do so.
41. This is quite evident and crystal clear that the accused persons were involved in the commission of the offence i.e. in the act of threatening the informant and her family.
42. Finally I am of the opinion that the accused persons are involved in the said crime and all the ingredients U/sec 506 of IPC has been proved by the prosecution by relying upon 8 PW's and hence the accused persons are held guilty for an offence U/sec 506 of IPC. However, the prosecution side has failed to prove the offence u/sec 294 of IPC.

⁴ 1999 (4) (CRIME) 171, AIR2000SC185

⁵ MANU/SC/0203/2004

Now let me considered whether the accused persons are entitled to get benefit of probation in this case.

43. From the perusal of the evidence on record it seems clearly that the accused persons had the intention to commit the said offence. In the light of growing crime rate in society and social environment of villages/towns/cities such crime should not go unpunished & the accused are not entitled to get any benefit.
44. Considering all aspects I decide that the accused will not be released on probation as per sec 3 and sec 4 of the Probation of Offenders Act 1960.

HEARING OF POINT OF SENTENCE

45. Now I proposed to pass appropriate sentence after hearing the convicts. Heard the convicts on the point of sentence. They have prayed mercy of the court considering their family and future life as well as being the bread earner of their family. With regard to the point of sentence there is a duty cast upon the court to keep the following objectives in mind while sentencing accused persons the social interest and consciousness of the society, seriousness of the crime and the criminal history of the accused, the undue sympathy to impose inadequate sentence would do more harm to the public at large, the imposition of inadequate sentence would undermine the public confidence in the efficacy of law and society cannot endure such threats.
46. I have heard the learned defence counsel and the learned Asst. P.P. on the point of sentence. The learned Asst.P.P has submitted that the accused persons should get adequate amount of punishment and the learned defence counsel had submitted that the court may be lenient on the accused persons on the point of sentence as the accused persons are having their family and future life.
47. I have considered few factors mitigating connected to the case of the prosecution, while coming to the decision about what punishment would serve justice in this case. I found that the accused are aged 38 & 30 years of age and they have prayed for some relief.

ORDER

As a result the accused persons are hereby convicted of the offence leveled against them U/sec 506 of IPC. Having regard to the nature of offence submission of the convict as well as after hearing the learned defence counsel and the learned Asst. P.P and circumstances of the present case I hereby sentence the accused persons namely BABA SAIKIA & POLI SAIKIA U/sec 506 of IPC to pay a fine of Rs. 2000/- (Rupees two thousand) each I/d undergo

simple imprisonment of three (3) months. However, the prosecution side has failed to prove the offence u/sec 294 of IPC against the accused persons.

The fine amount if realized be deposited in the Treasury, Margherita.

The period of detention already undergone by the accused persons (if any) in judicial custody during the investigation, the enquiry or trial of the instant case shall be "set off" as per provisions of sec 428 of CrPC.

Let a copy of the judgment be given to the convicts free of cost under Sec 363 of CrPC immediately.

Make necessary entry in the judgment register

Given under my hand and seal of this court on this the 31st day of AUGUST, 2019 at MARGHERITA COURT

**SALEH AHAMMAD
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA**

APPENDIX:

WITNESSES FROM THE PROSECUTION SIDE:

PW1: SANGRAMI SHARMA KAKOTI

PW2: PANKAJ KAKOTI

PW3: RINKU KAKOTI

PW4: BULBULI KAKOTI

PW5: NILIMA KAKOTI

PW6: TANUJA SONOWAL

PW7: JULI SONOWAL KOCH

PW8: TIRTHA DIHINGIA, I/O

WITNESSES FROM THE DEFENCE SIDE: NIL

PROSECUTION EXHIBITS:

EXT 1 IS THE FIR

EXT 1(1) IS THE SIGNATURE OF PW1

EXT 2 IS THE SKETCH MAP

EXT 2(1) IS THE SIGNATURE OF PW8

EXT 3 IS THE CHARGE SHEET

EXT 3(1) IS THE SIGNATURE OF PW8

DEFENCE EXHIBITS: NIL

SALEH AHAMMAD
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA