

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S), GOLAGHAT

C.R CASE 215 of 2017

U/S 294/506 (I) IPC

PABITRA HAZARIKA [COMPLAINANT]

v.

LABONYA BORA @ BHONTI [ACCUSED]

PRESENT: - SUNDEEP KASHYAP DAS, LL.M, A.J.S

SUB-DIVISIONAL JUDICIAL MAGISTRATE (S), GOLAGHAT

FOR THE COMPLAINANT:

D.P JAISWAL, J. GOGOI

.....ADVOCATE FOR THE COMPLAINANT

FOR THE ACCUSED

U. BORA

..... ADVOCATE FOR THE ACCUSED

**EVIDENCE RECORDED ON: -11.07.2018, 31.07.2018, 04.10.2018,
18.12.2018, 27.05.2019, 04.02.2020**

ARGUMENTS HEARD ON: -20.03.2021, 07.05.2021

JUDGMENT DELIVERED ON: -15.05.2021

JUDGMENT

BRIEF FACTS OF PROSECUTIONS' CASE

1. The brief facts' of prosecutions' case is that the accused person had abused the mother of the informant and his son with filthy language and threatened them with dire consequences and also committed criminal trespass. Hence, the complainant filed this case.

COGNIZANCE, INITIAL DEPOSITION, STATEMENT OF WITNESSES u/s 202 AND ISSUANCE OF PROCESS

2. The complainant and its witnesses were examined u/s 200 and u/s 202 of Code of Criminal Procedure (hereinafter referred to as Cr.P.C) and then having found prima facie materials against the accused person u/s 294/506 of IPC, cognizance was accordingly taken under the said section of law against the accused person namely Sri *LABONYA BORA @ BHONTI*.

APPEARANCE OF THE ACCUSED PERSON

3. On receipt of summons, the accused person entered her appearance.

EXPLANATION OF OFFENCE

4. Substance of accusation was stated to the accused person u/s 294/506 (I) of IPC by my learned predecessor and the same were read over and explained to him to which he pleaded not guilty and claimed to be tried.

EXAMINATION OF WITNESSES and DOCUMENTS EXHIBITED

5. During the course of trial, the complainant examined 4 (four) witnesses and exhibited no documents. Defence examined no witnesses.

EXAMINATION OF ACCUSED PERSON

6. The accused person has been examined u/s 313 of Cr.P.C. All the incriminating materials found are put to her. Her plea is of total denial. Defence adduced evidence.

ARGUMENT

7. I have heard the arguments for both the Learned Counsel for the complainant as well as the Learned Counsel for the accused.

POINTS FOR DETERMINATION

a. *Whether, on 05th day of November, 2017 at about 04:00 p.m., the accused person, used words which were obscene and that it cause annoyance to mother of the informant namely Smti Premoda Hazarika and his son namely Sri Ritusmin Hazarika and thereby committed an offence punishable under Section 294 of IPC?*

b. *Whether, on said date and time, the accused had threatened the mother of the informant and his son with intent to cause alarm to their person and thereby committed an offence punishable under Section 506 (I) of IPC?*

DISCUSSION, DECISIONS AND REASONS THEREOF

EVIDENCE FOR PROSECUTION

DATE OF INCIDENT

8. P.W.1, Sri **PABITRA HAZARIKA** has deposed that the incident took place on November 5, 2017. P.W.2, Smti **PREMODA HAZARIKA**, P.W.3, Smti **RANJUMONI BARUAH** and P.W.4, Smti **GITUMONI BARUAH** have corroborated the same.

THE INCIDENT

9. P.W.1 has deposed that on the said date, he went to *Dergaon* for training. Smti *Premoda Hazarika* and his child, *Ritusmin Hazarika* were at his house. His mother went to his neighbour's house namely *Sri Ananda Baruah*. At that time, the accused entered his house without any permission and when she found no one at his house, she had abused with filthy language. Subsequently, she chased his son who was playing on the floor of his neighbour and then his son went to his mother (P.W.2). His mother and child went to the house of *Umakanta Baruah* from the backyard of the house of *Ananda Baruah* and closed the door. The accused had abused with filthy language at the premise of *Umakanta Baruah*. As the accused chased them, they had sustained injuries. Subsequently, she left the place.
10. P.W.2 has deposed that on the said date at about 04:00 p.m., she went to the house of *Ananda Baruah*. At that time, the accused entered her house and then she chased her child who was playing at the premise of the house of *Ananda Baruah*. Her grandchild got scared and came to her. The accused had chased them and as such, they went to the house of *Umakanta Baruah* from the backyard of the house of *Ananta Baruah*. As they ran out of fear, they had sustained injuries on their legs. They went inside the house of *Umakanta Baruah* as stated earlier and closed the door. The accused kept shouting outside

his house and abused them with slang language. They returned to their house once complainant came back to their house.

11. P.W.3 has deposed that on the date of incident at about 04:00 p.m., the mother of the complainant came to her house along with her grandson. The complainant's son was playing at her premise and she was talking with his grandmother at *verandah*. The accused came to her house via the house of the complainant. As such, the son of the complainant went inside her house and his grandmother also went inside after seeing the accused. The accused had chased them and then the grandchild and grandmother went to the house of *Umakanta Baruah* from their backyard. She added that the accused had abused them with filthy language.

12. P.W.4 has deposed that on 05.11.2017, the mother of the complainant came to her house along with her grandson. The son of the complainant was playing at the premise of the house of *Ananda Baruah*. The accused came without any permission and chased her son. Subsequently, the son of the complainant took his grandmother inside their house. As they went back inside the house, they had sustained injuries on their legs. The accused had chased them and then the son and mother of the complainant went to their house from the backyard of the house of *Ananda Baruah* and closed the door. When the accused had

left the place of occurrence, the son and mother of the complainant went back to their house.

13. On perusal of materials on record, it appears that informant is not an eye witness to the incident as he went for training during the happening of alleged incident. During cross-examination, he has admitted the same. However, it is not necessary that informant requires to be an eye-witness to the incident. His duty was to set the law in motion and he did it accordingly.

14. The two star witnesses in this case are the mother and son of the informant. Prosecution has examined his mother as P.W.2 but it failed to examine his son. He could have been the best possible evidence on record.

USE OF OBSCENE WORDS

15. An offence under Section 294 of IPC has following ingredients:-

- A. An obscene must have been done in public place; or
- B. The act or song or balled or words were obscene; and
- C. There acts were done by the accused causing annoyance to others

16. The test of 'obscenity' is the substantial tendency to deprave and corrupt by arousing lustful desires. Mere platitudinous utterances signifying the enraged state of person's mind would not be sufficient to attract Section 294 of IPC.

17. During evidence, the prosecution witnesses have stated that the accused had abused with filthy language. However, they have not specified the words which the accused used in order to ascertain if it comes within the ambit of term 'obscene'. Moreover, from the evidence, it appears that the incident took place at the premise of *Ananda Baruah* and *Umakanta Baruah* which is private property and does not come within the ambit of the term 'public place'. As such, one of the essential ingredients to attract Section 294 is not fulfilled. Merely stating that the accused used filthy language is not enough. At least, they should have referred to those words which the accused alleged to have used on the date of incident. But, none stated the same. As such, prosecution has failed to prove that accused has committed an offence u/s 294 of IPC.

CRIMINAL INTIMIDATION

18. To bring home an offence u/s 506 of IPC, the prosecution is to prove that-

A. The accused threatened the victim,

B. This threatening was with injury to his person, reputation or property; or to the person, reputation or property of another in whom the victim is interested;

C. This threatening was intended to cause alarm to the victim or to cause the victim 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 execution of such threat;

D. The victim has in fact been alarmed by such threat.

19. All the witnesses have stated that the accused had stated that '*mas nepaleu bill ghula koriye eribo*' (Assamese). Except this, none of the witnesses have stated in what manner the accused had threatened the victims with dire consequences and caused alarm to their persons.

20. Situated thus from the overall analysis of evidence, I am of the opinion that prosecution has miserably failed to prove the guilt of the accused persons beyond reasonable doubt to warrant conviction against them.

DECISION:- The above points are decided in negative and goes in favour of the accused person

ORDER

In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused Smti **LABONYA BORA @ BHONTI** has committed the offence under section 294/506 (I) of Indian Penal Code as alleged and as such she is acquitted of the charge under section 294/506 (I) of IPC and she be set at liberty forthwith.

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

This judgment is given under my hand and seal of this court on this 15th day of May, 2021

The case is disposed of on contest.

SUNDEEP KASHYAP DAS

SUB-DIVISIONAL JUDICIAL MAGISTRATE (S)

GOLAGHAT

APPENDIX

LIST OF PROSECUTION WITNESS

P.W.1-Smti *PABITRA HAZARIKA*

P.W.2-Smti *PREMODA HAZARIKA*

P.W.3-Smti *RANJUMONI BARUAH*

P.W.4-Smti *GITUMONI BARUAH*

LIST OF DEFENCE WITNESS

NONE

LIST OF PROSECUTION EXHIBITS/DOCUMENTS

NONE

LIST OF DEFENCE EXHIBITS/DOCUMENTS

NONE

SUNDEEP KASHYAP DAS

SUB-DIVISIONAL JUDICIAL MAGISTRATE (S)

GOLAGHAT