

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

G.R Case No:1989/2017

U/S 447/506 of I.P.C

State

-Versus-

Rejak Ali.....Accused Person

PRESENT : Smti. Sorbani Bhattacharjee, A.J.S,
Additional Chief Judicial Magistrate,
Nalbari.

ADVOCATES APPEARED:

FOR THE PROSECUTION : Md. S. Ali. Ld. A.P.P,

FOR THE ACCUSED PERSON : Mr. Rashed Bhuyan, Ld.
Counsel.

EVIDENCE RECORDED ON : 17/08/19, 18/09/19 &
07/11/19.

ARGUMENT HEARD ON : 20/10/2020.

JUDGMENT DELIVERED ON : 22/10/2020.

JUDGMENT

- 1) The prosecution in this case was launched by the lodging of ejahar with the Officer in Charge of the Daulashal O.P on 29/11/17 by the

informant Miss Amela Begum against the accused person namely Rejak Ali to the effect that on 24/11/17 at about 10 pm, she and her daughter were sleeping in their house and on that day her husband was not present in home and the accused taking advantage of the same entered inside her room through the bedroom window of her house and then the accused forcibly tried to rape her on the bed and thereafter, she restrained the accused and raised hue and cry after which the accused fled away. Hence the case.

- 2) The Officer-in-charge, Daulashal O.P received the ejahar vide Daulashal O.P G.D.E no. 241 dated 16/12/17 and forwarded the same to O/C Mukalmua P.S which was then received and registered as Mukalmua P.S Case No. 443/17 u/s 457/376/511 of I.P.C and started investigation. After completion of the investigation the concerned I.O submitted charge sheet against the accused person namely Rejak Ali u/s 447/506 of IPC.
- 3) In due course the accused person appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of CrPC. Having found a prima facie case against the accused, particulars of offence u/s 447/506 of IPC were read over and explained to him to which he pleaded not guilty and claimed to be tried.
- 4) The prosecution in support of its case examined six (6) witnesses. As per the submission of Ld. Assistant Public Prosecutor, further evidence of prosecution side was closed. The statement in defence of the accused person u/s 313 of the Code of Criminal Procedure was recorded. Defence side examined no witnesses. I have heard the arguments advanced by the Ld. counsels for both sides.

5) POINTS FOR DETERMINATION:-

- i. Whether the accused on or about 24/11/17 at about 10 pm, at Paschim peradhara under Mukalmua P.S. entered into the house of the informant Amela Begum with intent to commit offence or to intimidate, insult or annoy any person in possession of such property and thereby committed an offence punishable u/s 447 I.P.C?
- ii. Whether on the same day, time and place, the accused threatened the informant Amela Begum with injury to her person with intent to cause alarm and thereby committed an offence u/s 506 I.P.C?

DISCUSSION, DECISION AND REASONS THERE OF:

- 6) PW-1 Amela Begum who is the informant of this case deposed that she filed this case against Abdul Rejek. The incident took place 1 ½ years ago at about 10 pm. She was sleeping inside her house. Rejek Ali entered her room through the window and tried to rape her. He tore her clothes. She raised 'hulla' and the accused fled away. Later nearby people came. She filed the ejahar. Ext 1 is the ejahar. Police recorded her statement.
- 7) PW 1 during cross-examination deposed that she does not remember the date of the incident. She filed the ejahar after 3 – 4 days of the incident. She wrote the ejahar. The window of her room was closed on the date of incident. Khalil and Afaz came to her house. She does not remember the name of other persons who came to her house. Police saw her torn clothes but did not seized them. Accused Abdul Rejek has a shop selling stationery and grocery items. On the date of incident her 'bhagin' Tomiz Ali was in her house. She denied the suggestions put forward by Ld. Defence counsel.
- 8) PW-2 Md. Afazuddin deposed that he knows the informant and accused person. The incident took place 1½ years ago at about 10 pm. At that time he was sleeping in his house. Hearing 'hulla' in the house of Amela

Begum, he came to the house of Amela Begum and found her crying. She told him that accused Rejek came to her house. He returned back to his house. Police came to the P.O on the next day at about 7 am. Police recorded his statement.

- 9) PW 2 during cross-examination deposed that there are four houses in between the house of the informant and Rejek. The house of Rejek is on the eastern side of his house. He met some women when he reached P.O. Amela Begum is not his own 'bhai bowari'. She denied the suggestions put forward by Ld. Defence Counsel.
- 10) PW 3 Khalilur Rahman deposed that he know the informant and accused person. The incident took place 1 ½ years ago at about 10 pm. At that time he was sleeping in his house. Hearing 'hulla' in the house of Amela Begum, he came to the house of Amela Begum and found her crying. She told him that accused Rejek came to her house. He returned back to his house. Police came to the P.O on the next day during morning time and only recorded his name.
- 11) PW-3 during cross-examination deposed that he does not remember the date of incident. When he reached P.O there were about 8/10 persons, but he does not know their names. Amela Begum and her husband are not related to him. He does not know whether Tomiz Ali 'bhagin' of Hasen Ali resided in the house of Amela Begum. He denied the suggestions put forward by Id. Defence counsel.
- 12) PW-4 Musstt. Sabiya Khatun deposed that she knows the informant and the accused person. The incident took place about 2 years back at about 10.00 pm while she was sleeping. She heard hulla in the house of Amela. She came to to the house of Amela. She saw Rejek in the house of Amela. Thereafter Rejek left the house. Sarbat, Khalil and another person came to the house of Amela. Police recorded her statement.
- 13) PW 4 during cross-examination deposed that she was asleep at the time of incident. The house of Amela is adjacent to her house. She

woke up hearing hulla of Amela. She did not find any other persons except Amela and Rejek. Amela was raising hue and cry at that time. The childrens of Amela who are aged about 8 and 7 years were sleeping. She found Rejek coming out from the house of Amela through the door. It was a dark night. There was no light in the courtyard of the house of Amela. The wife of Abulchan came to the house of Amela but she does not know her name. About 20-30 persons came to the house of Amela. The husband of Amela is her relative. She does not know whether Tomij purchased grocery items from the shop of Rejek on credit. She has not heard whether any bichar was held as Tomij did not paid the credit amount to Rejek for purchasing grocery items. She denied the suggestions put forward by Ld. Defence counsel.

- 14) PW-5 Md. Sarbat Ali deposed that he know the informant and the accused persons. The incident took place about 2 years back at about 9.00-9.30 pm. He was in his house. Hearing hulla he went to the house of Amela. He did not find Rejek Ali in the house of Amela. He saw Amela was crying. He asked Amela and she told him that Rejek came to her house to assault her. Police recorded his statement.
- 15) PW-5 during cross-examination deposed that his house is on the southern side after two houses of the house of Amela. He was sleeping at that time. He found Amela, her mother-in-law in the courtyard and her two childrens were sleeping inside the house. Many peoples came to the house of Amela. About 10-12 persons came to the P.O. when they were about to return back. There was no electricity and it was dark. Hasen Ali is the son of his 'Pehi'. He denied all the suggestions put forward to him by Ld. Defence counsel.
- 16) PW-6 Jayanta Goswami (I.O) deposed that on 29-11-2017, he was working at Doulashal O.P as Attached Officer. On that day one written ejahar was filed at Doulashal O.P. by Amela Begum which was forwarded to Mukalmua P.S. vide GD entry number 241/2017 dated 16-12-2017 which was registered as Mukalmua P.S. case no 443/2017 u/s-457/376/511 IPC. He was endorsed to investigate the case. He visited

the P.O and drew sketch map. He recorded the statement of witnesses. After completion of investigation he submitted charge-sheet against Rejek Ali u/s- 447/506 IPC. Exhibit 2 is the sketch map and exhibit 2(1) is his signature. Exhibit 3 is the charge-sheet.

- 17) PW 6 during cross-examination deposed that the Ejahar was filed after 20 days of the incident. On 18-12-2017, he visited the P.O. He did not seized any articles from the P.O. PW 1 Amela Begum did not stated before him that the accused Rejek Ali entered her room through the window and tried to rape her and tore her clothes and Khalil and Afaz came to her house. He confirmed that PW-2 Afazuddin did not state before him that when he went to the house of Amela Begum, he found her crying and she told him that accused Rejek came to her house. PW-3 Khalilur Rahman did not stated before him that when he went to the house of Amela Begum, he found her crying and she told him that accused Rejek came to her house. PW 4 Sabia Khatun did not stated before him that he came to the house of Amela and saw Rejek in the house of Amela and thereafter Rejek left the house and Sarbat, Khalil and another person came to the house of Amela. PW 5 Sarbat Ali did not stated before him that he saw Amela was crying and he asked Amela and she told him that Rejek came to her house to assault her. It is not a fact that he filed charge-sheet against the accused person without proper investigation.
- 18) In this case prosecution examined altogether six witnesses including the informant. The accused is alleged to have committed offence u/s 447/506 of IPC. Let us now first see whether the prosecution has been able to prove the offence u/s 447 of IPC or not. In this case except the victim-cum-informant (PW1) there is no other eye witness. In the ejahar the informant has alleged the accused of entering her house through the window of her room. She also alleged that while she was sleeping in her room along with her minor daughter then the accused tried to rape her forcefully on her bed. She resisted and raised hue and cry and then the accused fled away from there. In her evidence also

she alleged that on the day of incident at about 10 p.m., while she was sleeping in her room accused entered her room through the window and tried to rape her. If we go through the evidence of other Pws then we find that the other Pws have not seen any incident. According to PW2 and PW3 who are the neighbours of the informant on the day of incident at about 10 p.m., they heard 'halla' in the house of the informant and when they reached the place of occurrence then they found the informant crying. Informant told them that accused came to her house. In their evidence PW2 and PW3 have nowhere stated why informant was crying and what accused did. They have not alleged the accused of entering the house of informant or tearing her cloths or any attempted on the part of the accused to rape of the informant. The evidence of PW4 reveals that when she came to the house of the informant hearing 'halla' then she saw accused in the house of informant. The evidence of PW5 reveals that when she came to the house of informant she saw informant crying. Informant told her that accused came to her house to assault her. There is no consistency in the evidence of PW's. The allegation of informant that accused entered her house through the door and his attempted to rape her is not supported by the other Pw's. Sarbot Ali has only stated that he was reported by the informant that accused came to her house to assault her which is totally different from the version of the informant. In his evidence PW6 (I.O.) confirmed that informant did not state before him that the accused Rejek Ali entered her room through the window and tried to rape her. Although in her evidence PW1 stated that her clothes were torn by the accused but the other Pw's are silent about it particularly PW2, PW3, PW4 and PW5 who saw her after the incident. The I.O., also did not seize the torn clothes in this case. On perusal of the ejahar filed by the informant it is seen that the alleged incident took place on 24.11.2017 but she lodged the ejahar on 29.11.2017. The informant neither in her ejahar nor in her evidence had explained the reason of inordinate delay of about five days in lodging the ejahar

which is fatal to the prosecution case and creates doubt over the truthfulness of the prosecution story.

- 19) Further as per the evidence of PW4 she came to the place of occurrence hearing hue and cry of the informant and her house is adjacent to the house of the informant. She also stated that the children of Amela (informant) who were aged about seven and eight years were sleeping at that time. It is quite impossible that if a person raises halla which is heard by neighbours but not by the children who are with the person making halla and they will keep on sleeping even when people gathers in their house. As per the evidence of PW5 also when he went to the house of the informant the two children were sleeping inside the house and at that time there were ten to twelve people present at the place of occurrence. The version of the informant and other Pws are not convincing enough to hold the accused guilty in this case. Prosecution failed to prove that the accused entered in the house or courtyard of the informant to commit any offence or to annoy, insult or intimidate her.
- 20) Let us now see what are the ingredients of section 506 of IPC and whether prosecution could prove the offence u/s 506 of IPC or not. The essential ingredients of the offence under section 506 are as follows:-
1. The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested.
 2. The accused did so with intent to cause alarm to the victim of offence;
 3. The accused did so to cause the victim to perform any act which he was not legally bound to do.

In this case neither the informant nor any other Pw's have incriminated the accused of threatening the informant or anyway

criminally intimidating her. There is no evidence on record to hold the accused guilty for the offence u/s 506 of IPC.

- 21) Accordingly, the accused person namely Rejak Ali is acquitted of the offence u/s 447/506 of I.P.C and he is set at liberty forthwith. The bail bond of the accused person and his surety shall remain in force for a period of 6 (six) months from today as per amended CrPC.

Given under my hand and seal of this court on this 22nd day of October, 2020.

Smti. Sorbani Bhattacharjee, A.J.S,
(Addl. Chief Judicial Magistrate),
Nalbari.

APPENDIX

PROSECUTION EXHIBITS:

- Ext.1 : Ejahar,
Ext.2 : Sketch map,
Ext.2(1) : Signature of I.O Jayanta Goswami,
Ext.3 : Charge-sheet,

DEFENCE EXHIBITS

NIL

PROSECUTION WITNESSES :

- PW-1 : Miss Amela Begum (Informant),
PW-2 : Afazuddin,
PW-3 : Khalilur Rahman,
PW-4 : Sabiya Khatun,
PW-5 : Sarbat Ali,
PW-6 : Jayanta Goswami (I.O),

COURT WITNESSES :

NIL

DEFENCE WITNESSES

NONE

MATERIAL EXHIBITS

NIL

Smti. Sorbani Bhattacharjee, A.J.S,
(Addl. Chief Judicial Magistrate),
Nalbari.