

Both accused persons had verbally abused her using indecent language and threatened to cut her into pieces.

2. The informant has further mentioned in the FIR that accused Arun Kalita has been trying to rape her with ill eyes since earlier. When she goes to the field to see the cows, he called her by waving his hand. When her daughter and she go for bathe, he peeps through the slit of the wall. The accused persons had given tin fencing covering two foot land of the informant on the northern side and often make quarrel with her.
3. Anandabazar GD Entry No. 367 dated 27-04-2015 was made in respect of the FIR. Salbari PS Case No. 43/15, u/s 294/506/354(A)/34 IPC was registered and investigated into. After completion of investigation, charge-sheet was submitted against both accused persons u/s 294/506/34 IPC.
4. Particulars of offence u/s 294/506/34 IPC are read over and explained to the accused persons to which the accused persons pleaded not guilty and claimed to be tried.
5. The prosecution examined 5 (five) Nos. of witnesses. The defence has examined none.
6. The accused persons are examined u/s 313 Cr.P.C. The accused persons have declined to adduce evidence.
7. I have heard argument of the learned A.P.P. as well as the learned defence counsel and perused all the relevant documents available on record.

8. POINTS FOR DETERMINATION:-

1. Whether the accused persons had in furtherance of common intention uttered obscene words in the public to the annoyance of the informant?
2. Whether the accused persons had in furtherance of common intention criminally intimidated the informant?

9. DISCUSSION, REASONS AND DECISION:

10. POINT NO. 1 & 2:

11. PW1 is the informant Lalita Talukdar. PW2 Utpal Talukdar is the husband's brother of the informant. The informant is sister-in-law of PW3 Prabhat Talukdar and PW4 Anjana Talukdar. PW5 is the IO.

12. The IO/PW5 has said that the accused persons had also filed a cross-case in respect of the same occurrence against the victim. He had investigated the cross-case also.

13. PW3 has said that on 26-04-2015 at about 6/6.30 AM the incident took place; prior to the incident, some of his chickens damaged some cow dung of informant Lalita Talukdar and on that issue the accused persons started to abuse the informant with filthy language; he also heard the verbal abuse on Lalita Talukdar. PW3 has admitted in his cross-examination that he has not stated the above facts before the IO.

14. PW3 Prabhat Talukdar has further stated in his cross-examination that accused Arun Kalita is about 85 years old. There is boundary dispute between the informant and accused Arun Kalita. They used to fight frequently for their boundary. Accused Arun Kalita had filed a criminal case against Utpal Talukdar (PW2), Aswini Talukdar, Lakhyajit Talukdar and Lalita Talukdar (informant) prior to this incident.
15. We can see that PW3 Prabhat Talukdar has stated some facts for the first time before the Court which he has admitted in his cross-examination. As such, his evidence that he has heard verbal abuse on Lalita Talukdar and the accused persons had abused the informant with filthy language cannot be accepted straightly as true account.
16. PW4 Anjana Talukdar is the wife of PW3 Prabhat Talukdar and has stated the same thing as PW3. PW4 has said that on 26-04-2015 at about 6:00/6:30 AM, the incident took place. Prior to the incident some of her chicken damaged some cow dung of the informant Lalita Talukdar which is in the boundary between informant Lalita and accused persons. As some of the cow dung fell within the compound of the accused persons, they started to abuse Lalita with filthy language. She also heard the verbal assault on Lalita Talukdar. PW4 has also admitted in her cross-examination that she has not stated the above facts before the IO.

17. PW4 has further stated in her cross-examination that there is boundary dispute between the informant and accused Arun Kalita. They used to fight frequently for their boundary. Accused Arun Kalita had filed a criminal case against Utpal Talukdar (PW2), Aswini Talukdar, Lakhyajit Talukdar and Lalita Talukdar (informant) prior to this incident.
18. As PW4 has admitted that she has said the facts for the first time before the Court, as such, her evidence cannot be accepted as true account of the incident.
19. PW2 Utpal Talukdar has stated that on 26-04-2015 at about 7 AM the informant was giving cow dung to the betel nut trees. Then the accused persons came chasing to assault her. The accused persons had verbally abused the informant the whole day. He saw that the cow dung fell beyond her land.
20. PW2 has stated in his cross-examination that he knows about civil case regarding boundary dispute pending between both parties. Accused Arun Kalita is about 70 years old. He is accused No.1 in the cross-case filed by accused Arun Kalita.
21. PW1 has said that on the relevant day she was giving cow dung to the trees. Then the accused persons had verbally abused her saying that the cow dung fell to their side. Then she said that the cow dung pieces may fall on their side. Then the accused persons came to assault her by breaking the fencing of tin. At that time she was alone at home and there was one 10

years old boy in her house. She asked that boy to call her nephews and the boy called them. The accused persons came chasing. Ext.1 is FIR.

22. PW1 Lalita Talukdar/informant said in cross-examination that the accused persons are her adjacent neighbor. A boundary dispute is pending with the accused persons. She has filed the case as the accused persons have filed case.

23. The informant/PW1 is the alleged victim of this case. She has not said what indecent language or words were used by the accused persons while they verbally abused her. Under such circumstance, the Court cannot hold that the accused persons had uttered any obscene words.

24. The informant/PW1 has not stated before the Court about the threatening given by the accused persons to her. We can see that the prosecution has failed to prove the ingredients of section 294 and 506 IPC.

25. Evidence shows that accused Arun Kalita is an old man above 70 years. The informant and the accused persons are adjacent neighbours. There is civil case pending between both parties in respect of boundary dispute. The FIR shows that the relation between the informant and accused persons is not good at all. The mention of certain conduct of accused Arun Kalita in the FIR shows that the informant has bitter feelings towards accused Arun Kalita. All the PWs are close relative of the

informant. The informant has admitted that as the accused persons had filed a case, she has also filed the case. Apart from the fact of the failure of prosecution to prove the ingredients of section 294/506 IPC, all the above factors make the prosecution allegation doubtful.

26. In view of the discussions, I find that it is not proved that the accused persons had in furtherance of common intention uttered obscene words in the public to the annoyance of the informant **AND** the accused persons had in furtherance of common intention criminally intimidated the informant. So, the accused persons cannot be held guilty u/s. 294/506/34 IPC.

27. From the above discussions, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt u/s 294/506/34IPC. So, I acquit the accused persons namely Arun Kalita and Sukhada Kalita of the charges u/s 294/506/34IPC and are set at liberty.

28. Given under my hand and seal of this Court this 4th day of July, 2022.

Typed by me—

D. Boro
CJM, Baksa

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APENDIX

PROSECUTION EXHIBITS:

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

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

- PW1- Lalita Talukdar.
PW2- Utpal Talukdar.
PW3- Prabhat Talukdar
PW4- Anjana Talukdar
PW5- SI Pranjali Prakash Chakrabarty

DEFENCE WITNESSES :

COURT WITNESSES: NIL.