

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS ::::::::::: BAKSA,  
MUSHALPUR**

Present: *Sri Binod Prasad A.J.S.*  
*J.M.F.C., Baksa Mushalpur*

**GR CASE NO- 988/2018**  
**Old GR Case No-1140/2015**

**Salbari P.S. Case No -146/2015**  
**U/S-294/506 IPC**

***State***

***-Vs.-***

***Krishna Barman ..... Accused  
Person***

For the Prosecution : Richa Swargiary, Asst. Public Prosecutor  
For the Accused : Partha Pratim Talukdar, Learned Advocate  
Date of Evidence : 26-07-2017, 07-09-2017, 09-11-2017, 18-05-2018  
Date of Argument : 01-08-2018  
Date of Judgment : 23-08-2018

**J U D G M E N T**

1. Prosecution's case, in brief, is that, informant Dhanesh Barman lodged an Ejahar on 08-11-2015 with the I/C of Ananda Bazar Out Post to the effect that on 06-11-2015 at about 3-00 P.M. at the shop of the informant the accused person namely Krishna Barman rebuked the informant using filthy language and also threatened the informant to kill him. Hence this case is for taking necessary action.
2. The said Ejahar was forwarded to the O/C of Salbari P.S. for Registration. Upon receipt of the Ejahar/F.I.R the Officer-in-Charge of Salbari Police

Station registered the case vide. it's P.S. Case no. 146/2015 u/s-448/294/506 I.P.C.

3. Upon completion of investigation, the I.O. submitted the charge sheet under section 294/506 I.P.C. against the accused person namely Krishna Barman. Hence, the cognizance of the said sections of law is taken against the said accused person.
4. The necessary copies u/s 207 of Cr.P.C. were furnished to the accused person on his appearance. Particulars of offence u/s 294/506 I.P.C. were explained to the accused person to which he pleaded not guilty and claimed to be tried.
5. During evidence, prosecution examined 5(five) witnesses including the informant. The statement of the accused person u/s 313 of Cr.P.C. has been recorded in which he denied the allegations and refused to adduce evidence.
6. I have heard the argument of the learned defence counsel and the learned Asst. P.P. I perused the case record and scrutinized the evidence on record.

### **POINTS FOR DETERMINATION**

7. After considering the relevant documents and after hearing the defence and the prosecution I find that the following points are to be determined in this case:
  1. Whether on 06-11-2015 at about 03-00 p.m. the accused person abused the informant at his shop with obscene language to the annoyance of others and thereby committed an offence punishable u/s 294 I.P.C.?
  2. Whether on same date and time the accused threatened the informant with dire consequences and thereby committed an offence punishable u/s 506 I.P.C.?

### **DISCUSSION DECISION AND REASON THEREOF**

8. PW-1 Dhanesh Barman who is the informant, deposed in his evidence that he has lodged this case against Krishna Barman. PW-1 deposed that often quarrel takes place between him and the accused. PW-1 deposed that he has a shop beside the road of his village. PW-1 deposed that on the day of occurrence the accused threatened the informant to kill him and kidnap him within 24 hours. PW-1 also deposed that two days before the incident the accused asked for Rs.20,000/- from the informant. Ext-1 is the Ejahar and Ext-1(1) is the signature of the informant i.e. PW-1.
9. In his cross examination PW-1 stated that he has not mentioned in his Ejahar that the accused threatened the informant to kill him and kidnap him within 24 hours. PW-1 also stated that he has not mentioned in his Ejahar that the accused asked for Rs.20,000/- from the informant two days before the occurrence. PW-1 further stated in his cross examination that he has enmity with the accused for last 2/3 years. PW-1 denied the suggestion put by the defence that he has not stated before the police that the accused threatened him to kill and kidnap within 24 hours and also asked for Rs.20,000/- just two days before the occurrence.
10. PW-2 identified the accused and the informant and deposed in his evidence that the informant has a shop beside the house of the informant. PW-2 deposed that on the day of occurrence Police enquired the public gathered at the shop of the informant. The PW-2 got to know that an altercation took place between the informant and the accused. In his cross examination PW-2 stated that he does not know anything about the occurrence.
11. PW-3 deposed in his evidence that when police came to the house of the informant, PW-2 also went to the house of the informant and got to know that accused Krishna Barman threatened to kidnap the family of the informant within 24 hours.
12. In his cross examination PW-3 stated that he did not witness the occurrence. PW-3 stated that he does not know anything about the

occurrence. PW-3 also stated in his cross examination that he could not say who threatened to kidnap the family of the informant.

13. PW-4 deposed in her evidence that at the time of occurrence she was at the shop which is situated in front of her house and at that time a quarrel broke out between the informant and the accused. PW-4 deposed that the accused asked for Rs.20,000/- from the informant and told the informant that if the informant would fail to pay the money then he would kill the informant. The accused also told the informant that he would take away PW-4 who is the aunt of the informant.
14. In her cross examination PW-4 stated that informant is the nephew of PW-4. PW-4 also stated in her cross examination that on 06-11-2015 he was at her father's house since morning on the occasion of "Manasha Puja" and she also stayed at night there.
15. PW-5, who is the Investigating Officer (I/O), deposed in his evidence that on 08-11-2015 he was posted at Ananda Bazar Out Post as I/C and on that day one Dhanesh Barman lodged an Ejarah alleging that accused Krishna Barman abused him using filthy language and also threatened him to kill. After registering a case vide Salbari P.S. Case No-146/15, PW-5 visited the place of occurrence, drew sketch map and recorded the statements of the witnesses. Later, after investigation PW-5 submitted the Charge-sheet against the accused person. Ext-2 is the Charge-sheet and Ext-2(1) is the signature of PW-5 and Ext-3 is the seizure-list and Ext-3(1) is the signature of PW-5.
16. In his cross examination PW-5 stated that the informant in his statement u/s 161 Cr.P.C. did not state that the accused told the informant to kidnap him and to kill him within 24 hours. The informant in his statement u/s 161 Cr.P.C. did not state before PW-5 that the accused asked for money Rs.20,000/- from the informant two days before the occurrence. In his cross examination PW-5 stated that PW-4 in her statement u/s 161 Cr.P.C. did not state that if the informant would fail to pay Rs.20,000/- to the accused then the accused would kill the informant.

## **APPRECIATION**

17. It's pertinent to mention that in order to constitute the offence under Section 294 IPC, the following ingredients are required to be proved by the prosecution :

- a. The accused did any obscene act in any public place, or
- b. Sang, recited or uttered any obscene songs, ballad or words in or near any public place and
- c. That the aforesaid act or acts caused annoyance of others.

18. Similarly, to bring home the offence under Section 506 IPC, the prosecution shall have to prove the following:

- a. The accused threatened some person with some injury to the person, reputation or property or the person, reputation or property of another in whom the person is interested.
- b. He did so with intent to cause alarm to that person, or to cause that person to do any act which he was not legally bound to do or omit to an act he was bound to as a means of avoiding execution of the threat.

19. The pre-requisite of Section 294 of IPC speaks that the utterance of obscene words must have been done in public place and such occurrence must have caused annoyance to others. A vague or general statement in the FIR or in evidence that the accused showered obscene words is not enough to constitute an offence under Section 294. It is necessary to state the words uttered by the accused. The complaint or the FIR, as the case may be, shall contain the words spoken to by the accused, which, according to the prosecution, would attract the offence under Section 294 of the Indian Penal Code.

20. In this case none of the witnesses have stated in their evidence that the accused abused the informant using any filthy language. The allegation of abusing informant with filthy languages is mentioned in the Ejahar only but the PWs including the informant have not stated in their evidence that the accused person used filthy language or obscene words uttered by the accused. Here in this instant case the exact obscene words have not been proved as per the discussion made above. Thus, the ingredients of section 294 of the I.P.C. remained far from proof.
21. In this case PW-1 i.e. informant and PW-4 are interested witnesses as they are relatives. PW-1 has stated that the accused Krishna Barman threatened him to kill and kidnap. He has also stated in his evidence that the accused asked for Rs.20,000/- from the him two days before the occurrence. On the other hand, PW-4 claimed that she was present at the place of occurrence and has stated in her evidence that the accused asked for Rs.20,000/- from the informant and told the informant that if the informant would fail to pay the money then he would kill the informant. PW-1 inter alia denied the suggestion that in his statement u/s 161 Cr.P.C. he did not state before the police that the accused threatened him to kill and kidnap within 24 hours and also asked for Rs.20,000/- just two days before the occurrence.
22. The Hon'ble Gauhati High Court in **Bimal Ch. Sarkar v. State of Tripura reported in (2010) 4 GLR 567** it has been held that "when a material fact is withheld by particular witness from the Investigating Officer, whose statement was reduced into writing under section 161 Cr.P.C., if such statement finds place in his or her evidence, the natural presumption would be that either the witness deposed falsely of this fact or omitted to state the fact to the I.O. If in a particular criminal case such situation prevails almost in respect of every witness, the court would refuse to act on such evidence adduced by the witness."
23. I have gone through the statement of the PW-1 and PW-4 recorded u/s 161 Cr. P.C. and after perusal of their statement it appears that in their statement recorded u/s 161 Cr.P.C. none of them stated anything about

demanding Rs.20,000/- by threatening to kidnap the informant. But in their evidence before the court both PW-1 and 4 stated that the accused persons demanded Rs.20,000/- from the informant 2 days before the occurrence. PW-1 also stated in his evidence before the court that the accused threatened him to kidnap. Here it is seen that the PW-1 and PW-4 were confronted with their previous statement. PW-5 who was I.O. in his cross examination also confirmed that none of witnesses stated that the accused persons demanded Rs.20,000/- from the informant 2 days before the occurrence. The I/O also confirmed in his cross examination that PW-4 in her statement u/s 161 Cr.P.C. did not state that if the informant would fail to pay Rs.20,000/- to the accused then the accused would kill the informant. These are major contradiction which throws doubt over the prosecution case.

24. On the other hand, from the perusal of the evidence of PW-2 and PW-3 it clearly appears that they were not present at the place of occurrence and they also expressed their ignorance about the occurrence.

25. Again as per the version of PW-1 (informant) it has become clear that the informant and the accused have not been in good terms and often quarrel occurs between them. PW-1 himself stated in his cross examination that he has enmity with the accused for last 2/3 years. Here it clearly appears that the accused person has a long standing dispute with the PW-1. Learned defence lawyer also argued in this context that the accused person has been falsely implicated in this case out of that enmity. So this fact also caste shadow upon the prosecution's case.

26. So far the question of giving threat to the informant is concerned, the threat must be real in the sense that the offender is capable of doing what he says and that the person threatened must feel actually threatened. In ***Amulya Kumar Behera v. Nabaghana Behera 1995 Cri.L.J. 3559*** it was held that in section 503 the intention of the accused must be to cause alarm to the victim, and whether the victim is alarmed or not is of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person. Mere expression of words without any intention to cause alarm would not be sufficient for section 506 of the Code to apply.

27. Thus where the accused only gives threat to cause death or grievous hurt but do not act in pursuance thereof the offence of criminal intimidation cannot be made out. The Supreme Court had ruled that to attract Section 506 of IPC, the threat must be with intention to cause alarm to the complainant to make that person to do or omit to do any work and mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this Section.
28. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:- "503. Criminal Intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one 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. Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."
29. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant.
30. Whether threat was given with intention to cause alarm to the person threatened has to be established by evidence to be brought on record. In the instant case the material in that regard is totally lacking. Thus it can be held that no evidence was there to show that the accused person intended to cause alarm to the complainant.
31. From the totality of the facts I hold that there is no cogent evidence to show the involvement of the accused person in committing the offence. So,



I am of the opinion that it is a fit case where the accused person is entitled for benefit of doubt. There is no just and cogent evidence against the accused person to hold him liable under the section he is charged with. Therefore in the absence of any evidence on record I am of the considered opinion that the Prosecution failed to establish the guilt of the accused person beyond all reasonable doubt and therefore the accused person should be acquitted of the offences charged with.

### **ORDER**

32. In view of the discussions made above and the decisions reached, it is held that the prosecution has failed to prove the charges against the accused person beyond all reasonable doubt and as such the accused person Krishna Barman is acquitted from the charges under section 294/506 IPC and he is set at liberty. The bail bond of the accused person and his surety shall remain in force for six months from today in view of Sec. 437-A Cr.P.C.

The case stands disposed of on contest.

Given under my hand and the seal of this Court on this 23<sup>rd</sup> day of August, 2018.

Typed by me:

(BINOD PRASAD)  
Judicial Magistrate 1<sup>st</sup>

Class

Baksa, Mushalpur

### **A P P E N D I X**

#### **Prosecution witness :**

P.W.1 ..... Dhanesh Barman

P.W.2 ..... Dipen Barman

P.W.3 ..... Pradip Barman

P.W.4 ..... Bisakha Barman

**Defence witness :** \_\_\_\_\_ ..... Nil.

**Prosecution document :**

Exhibit 1: Ejahar

Exhibit 1(1): signature of PW-1

**Defence document :** ..... Nil.

**Court witness :** \_\_\_\_\_ ..... Nil.

(BINOD PRASAD)  
Judicial Magistrate 1<sup>st</sup>  
Class  
Baksa, Mushalpur