

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
GOALPARA**

GR CASE NO 570/2017

U/S 448/354/506 IPC

STATE OF ASSAM

VS

Majom AliAccused

PRESENT: **Jyoti Rupa Haloi**, AJS

Judicial Magistrate First Class.

Advocate for the Prosecution: Dipu Kalita, Learned APP.

Advocate for the Accused: Shahjahan Ali, Learned Advocate.

Evidence recorded on: 02.04.2018, 28.05.2018, 04.07.2018,

09.10.2018

Argument heard on: 13.05.2019, 24.05.2019

Judgment delivered on: 07.06.2019

JUDGEMENT

- 1.** The prosecution story in brief as revealed from the Ejahar is that the husband of the informant sold a plot of land to the accused person and the accused gave a cheque of Rs. 10,00,000/- to the husband of the informant. When her husband went to bank with that cheque then, he came to know that there is only Rs. 7,00,000/- at the account of the accused. The accused person does not want to pay the sale price of the land. Therefore, the accused person hired some dacoits to abduct the informant. On the day of occurrence the accused person went to the house of the informant and called her husband. When the informant said that her husband was not at home then the accused illegally entered the house and disrobed her modesty by pulling her clothes. When the informant raised hue and cry then the accused left the place of occurrence and threatened the informant.
- 2.** The police at Lakhipur P.S. received and registered the Ejahar as Lakhipur P.S. Case No. 103/2017, conducted its investigation and on completion of the same, laid down the charge-sheet u/s 448/354/506 IPC.
- 3.** The accused entered appearance and was enlarged on bail. After hearing both the sides a formal charge was framed u/s 448/354/506 IPC and the contents of the charge are then read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Hence, this trial.
- 4.** Prosecution has examined seven witnesses in support of its case. The statement of the accused person is recorded u/s 313 Cr.P.C. However, he denied all the allegations levied upon him. The defence, however, did not adduce any evidence.
- 5.** I have heard the arguments advanced by the learned counsels of both sides. I have meticulously perused the case record.

6. POINT FOR DETERMINATION:

- (a) Whether the accused person on 12.07.2015 at about 9.00 p.m. illegally entered into the house of the informant with intent to commit offence and thereby committed offence u/s 448 IPC?
- (b) Whether the accused on the same day, time and place used criminal force to the informant with intent to outrage her modesty and thereby committed offence u/s 354 IPC?
- (c) Whether the accused on the same day, time and place criminally intimidated the informant with dire consequences and thereby committed offence u/s 506 IPC?

1. DISCUSSION, DECISION AND REASON THEREOF:

I have gone carefully through the entire evidence and materials on record.

PW1 Rahul Hoque Khandakar deposed that he knows the informant and the accused person. The incident took place in the year of 2016. He has a plot of land near the house of the accused. His father opened a market in that land. The accused person gave two nos. of cheque of Rs. 10,00,000/-. When he went to bank and verified he saw that there is not as much amount of money as in the cheque. He did not find the whole amount from the bank. As the accused bought land from his father, therefore, he gave two nos. of cheque. But, at his account there was not sufficient amount of money. When he asked for the money from the accused, then the accused person told that he will give the money afterwards. But, the accused person did not give the money. He has not receive the remaining amount of money from the accused. One night at about 9.00 p.m, when he came to his house from market, he came to know that the accused person came with few persons and threatened his wife. The accused person abused his wife in filthy language.

In cross-examination he has deposed that at the time of transaction relating to the land his father was alive. The price of land was fixed at Rs. 52,00,000/-. He has admitted that his father has given one plot of land at the name of Mazam Ali through Sub-registry. He cannot say whether that land was one bigha or two bigha. He has not given the bounced cheque to the police. He has not given any notice though the cheque was bounced, because the accused told that he will return the money. He denied the suggestion that the cheque given by the accused was not bounced. He does not remember the number of the cheque. He denied the suggestion that one civil case is pending against him. He denied the suggestion that as Jahangir Hussain is running a school in the one bigha of land, therefore, that land is not given to the accused. He cannot say on which date the accused person came to their house with other people. He was not present at home at that time. There are houses of Sahjahan, Sattar and Bakkar near the place of occurrence. He denied the suggestion that he has not given the land to the accused after receiving the payment. He denied the suggestion that this case is filed falsely.

PW2 Anisa Begum deposed that she is the informant. She knows the accused person. The incident took place on 12.07.2015. Her husband sold a plot of land to the accused. That land was sold at Rs. 28,00,000/-. Firstly, the accused person gave a cheque of Rs. 10,00,000/-. After that though he promised to give a cheque of Rs 10 lac but he gave a cheque of Rs. 7,00,000/-. However, the deal for money was fixed at Rs. 28,00,000/-. When they went to bank they came to know that there is only Rs.3,000 at the bank account of the accused. One day on 12.07.2015 the accused person went to her house. He called her husband. When she told that her husband is not at home, then the accused person forcefully entered her house and threatened her. At that time Bodiur, Altaf and other few persons were with the accused. After lodging of the case the accused person tried to took away her daughter. The accused person threatened that if he does not

receive the land, then he will kill everyone in their family. Exhibit 1 is the ejahar. Exhibit 1(1) is her signature.

In cross-examination PW2 deposed that she lodged the ejahar after one day of the occurrence at the police station. The Lakhipur P.S. is at a distance of one km from her house. It is at a distance of 70 km from Goalpara. She denied the suggestion that she filed the case at the court. Harul Hoque Khandakar is her father-in-law. She denied the suggestion that the land is registered in the name of accused. She does not know the number of the cheques given by the accused. The accused person gave two nos. of cheque. She does not know the account number. She does not remember on what date money was deposited at bank. She does not have number of the bounced cheque. She has not filed any other case for cheque bouncing. She does not remember on which date the accused wanted to return the money. There are houses of Sorbat Ali, Shahjahan Ali, Abu Master and Bakkar Master near her house. At the time of occurrence Sorbat Ali, Shahjahan Ali, Abu Master and Bakkar Master came to their house. At the time when the accused entered their house those persons came and saw the accused. She does not remember on which date the accused wanted to take away her daughter. Her house is at a distance of one km from the school of her daughter. At that time she was at home. Her daughter studies at Class-I and she was coming alone. Her daughter informed her that the accused tried to kidnap her. Her father-in-law did not sell any land to the accused and did not register any land in the name of the accused. She denied the suggestion that she is not entitled for the land of her father-in-law. The accused person has taken the land in his name through registered deed from her husband. They have copy of that registered deed. Police interrogated her. She denied the suggestion that she has not deposed before police that the accused person has given only a cheque of Rs. 10,00,000/-. She denied the suggestion that she did not depose before police that the cheques were bounced. She denied the suggestion that she

has not deposed before police that the accused wanted to take away her daughter. She denied the suggestion that she has deposed falsely. She denied the suggestion that the accused did not come to her house and did not threaten her. Many people gathered at that time. She denied the suggestion that she has deposed falsely.

PW3 Sarkat Ali deposed that he knows the informant and the accused person. The incident took place on 12.07.2015. After having his meal he came outside of the road at about 9.00 pm. He saw three nos. of motor-cycle in front of house of the informant. After that he went to his home. After hearing the noise he came out and went to the house of the informant. He saw that the informant was crying and her clothes were torn. When he asked her she told that the accused person searched for her husband. When she told that her husband is not at home, then the accused entered to her house. She thought that the accused has come for the matter of land. After opening the door the accused told her that he needs the land and it should be given to him. Then the informant told that the land will be given to him if he pays the amount. The informant told that she is disrobed by the accused person.

In cross-examination he has deposed that he cannot say the number of bike of the accused. There are houses of Hussain, Banat Ali, Atowar Rahman. They did not come out with him. The informant was wearing Salwar. He does not remember the colour. Police did not seize the torn clothes. When he went to the house of the informant her husband was not present. He denied the suggestion that he has deposed falsely.

PW4 Atowar Rahman deposed that he knows the informant and the accused person. The incident took place about four years ago. He heard hue and cry at the house of Anisa. It was about 9pm at that time. He went to his house and came after changing his dress. Anisa told him that the accused came to her house to

ask for money. There was some dealing for sell of land. But, the accused person has given blank cheque of Rs. 10,00,000/-.

In cross-examination he has deposed that he does not remember the date of occurrence. No one went with him to the house of Anisa. He cannot say who went with the accused to the house of Anisa. He has no personal knowledge about the dealing of land and money. He denied the suggestion that he did not state before police that some persons went with the accused to the house of Anisa. He denied the suggestion that he did not depose before police that Anisa did not receive any money from the Cheque. Later on, he deposed that he has not stated anything before police. He denied the suggestion that he has deposed falsely.

PW5 Sohikul Islam deposed that he knows the informant. He does not know the accused person. He does not know anything about the occurrence.

PW6 Kusha Sheikh deposed that he knows the informant. He does not know the accuse person. He does not know anything about the occurrence.

PW7 S.I. Santosh Kumar Barman deposed that on 01.04.2017 when he was posted as Attached Officer at Lakhipur P.S. then O.C. Achit Talukdar received an ejahar and after registering it as Lakhipur P.S. Case No. 103/2017 u/s 447/448/376/511 IPC gave him the responsibility of investigation. He interrogated the informant at police station. After that he went to the place of occurrence on next day i.e. on 02.04.2017. After reaching the place of occurrence he recorded the statement of the witnesses and drew the sketch map. He brought the informant Anisa Begum to the court for recording her statement u/s 164 Cr.P.C. After completion of investigation he filed the charge-sheet against the accused Majom Ali u/s 448/354/506 IPC. Exhibit 2 is the Sketch Map. Exhibit 2(1) is his signature. Exhibit 3 is the Charge-Sheet. Exhibit 3(1) is his signature.

In cross-examination he has deposed that the ejahar was forwarded from the court as Complaint petition. The date of occurrence is 12.07.2015 at about 9.00 p.m. The case was investigated after registering it two years later. There were houses of people near the place of occurrence. The statement of Shahjahan who was marked as "C" in the sketch map was not taken. He did not write in the Sketch Map whether Rahul Haque Khandakar lives at his house or not. The houses of Rahul Khandakar and Anisa Begum are separate as per the Sketch Map. He did not seize any document or cheque regarding the case as no information was given. He did not make Bakkar Master a witness who lives near the place of occurrence. He did not interrogate the minor child of Anisa. PW2/Anisa Begum did not state before him that she has received a cheque of Rs.20, 00, 000/- from the accused. She stated that she has got a cheque of Rs. 10,00,000/- which was bounced. PW2/Anisa Begum stated before him that the accused person had threatened her that he will kidnap her minor child. PW2 did not state before him that Majom had told that he will kidnap her minor child. PW2/Anisa Begum did not state before him that Majom came with Bodiur and Altaf to her house and told that they will finish her. PW2/Anisa Begum did not state before him that the plot of land was sold at Rs. 20,00,000/-. PW3/Sharkat Ali did not state before him that he saw a bike in front of the house of Anisa. PW3/Sharkat Ali did not state before him that Anisa had opened the door as she thought that Majom Ali had come to pay the remaining amount of money. PW3/Sharkat Ali did not state before him that the informant had told him that the accused person has torn her wearing clothes. PW4/Atowar Rahman did not state before him that the accused person went to the house of the informant and that she was to get money from the accused

I have heard the Learned APP and Learned Counsel for defence. Perused the entire case record and meticulously gone through the evidence on record.

After perusal of the testimonies it has been perceived that though the PW1 and PW2 have deposed that the accused person gave the informant's husband a bounced cheque for the sale price of their land and there was no sufficient fund in the bank account of the accused, but, they have not filed any case regarding the cheque bouncing under Negotiable Instrument Act.

Further, the prosecution side has not exhibited any document of bank relating to the bouncing of cheque and no such document is submitted by the informant to the police.

As such, there is no substantive evidence pertaining to the allegation made by the informant.

In the present case, the charge has been framed against the accused u/s 448/354/506 IPC.

PW2/the informant deposed that the accused person came and threatened her for the issue of land. However, she has not deposed anything in her testimony with regard to disrobing her modesty. Thus, the testimony of the informant herself does not support the story as narrated in the ejahar.

Moreover, PW1,the husband of the informant has also not deposed anything about the outraging of modesty of his wife.

Therefore, though the PW3 deposed about disrobing the modesty of the informant but it has no relevance as the informant herself has abstained from deposing in that context.

Further, PW2/the informant deposed that the accused threatened her over the issue of land. But, from her testimony is cannot be known whether she was alarmed or frightened by his threatening.

So, the testimony of the informant herself is not supportive to the version stated in the ejahar. Therefore, the evidence on record do not inspire confidence to rely on the version of the prosecution.

Hence, it is seen that the evidence on record are not sufficient enough to hold up the accusation brought against the accused.

2. Thus, in view of the above discussions it is seen that the prosecution has failed to prove the charges against the accused person u/s 448/354/506 IPC beyond reasonable doubt.

ORDER

3. Hence, considering the above discussion, the accused Majom Ali is not found guilty of the charges under Section 448/354/506 IPC.
4. Hence, the accused person is acquitted of the charges under Section 448/354/506 IPC and set at liberty forthwith.
5. The Bail bonds of Majom Ali are extended for a period of 6 (six) months from today as per Section 437A, Criminal Procedure Code.
6. Given in my hand and under the seal of this court on this the 07th day of June, 2019.

Smti Jyoti Rupa Haloi.
Judicial Magistrate First Class, Goalpara.

APPENDIX

A. Prosecution Witnesses: PW1 Rahul Hoque Khandakar
PW2 Anisa Begum
PW3 Sharkat Ali
PW4 Atowar Rahman
PW5 Sohikul Islam
PW6 Kusha Sheikh
PW7 S.I. Santosh Kumar Barman

B. Defence Witnesses: None

C. Prosecution Exhibits: Exhibit 1 : Ejahar
Exhibit 2 : Sketch Map
Exhibit-3 : Charge-Sheet

D. Defence Exhibits: None

Smti Jyoti Rupa Haloi.
Judicial Magistrate First Class, Goalpara.

