

**In The Court Of Judicial Magistrate 1<sup>st</sup> Class, Goalpara**

[G.R. Case no. 1835/2014]

u/S 447, 294 and 506 of the Indian Penal Code

**Present : Dimpee Talukdar, AJS**

State

-vs-

**1. Rasul Sheikh**

S/o. Bokter Ali

Resident of village Barbalupara

P.S. Matia, Dist. Goalpara

.....Accused person

Evidence recorded on : 29.11.2019

Argument heard on : 31.05.2021

Judgment delivered on : 31.05.2021

Appearing for the Prosecution : Smti. Hemantika Das, learned APP

Appearing for the defence : Mr. Hafizur Rahman, learned defence counsel

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

1. The accused person namely **Rasul Sheikh** has stood Trial for an offence punishable *u/S 447, 294 and 506 of the IPC* .

**Allegation, information and investigation:**

2. The informant namely Rousanara Khatun had initiated the instant proceeding by lodging an FIR before Matia P.S. stating inter alia that on 18.08.2014 while she was sleeping at her house at around 1.30 a.m. the

accused person had trespassed her house and tried to molest her. Hence, this case.

3. On the strength of the FIR, Matia P.S. Case no. 129/2014 was registered. The I/O after duly completing the investigation, had submitted the charge-sheet against the FIR Named accused person namely Rosul Sheikh u/S 447, 294 and 506 of the IPC.

**Trial :**

4. Accordingly cognizance of the charge-sheeted offence was taken as per Section 190(1)(b) of the Criminal Procedure Code and summons was issued to the accused person to appear before this Court. On appearance, copies of relevant documents was furnished to him in compliance with the provision of Section 207 Cr.P.C. and ingredients of offence u/S 447, 294 and 506 of the IPC were read over and explained to him to which he pleaded not guilty and claimed to be tried.
5. During trial the prosecution examined only 1 (one) witness namely Sakina Khatun as PW-1. After closing of prosecution evidence the statement of the accused person u/S 313 Cr.P.C. was recorded whereby he denied all the allegations put to him. However the defence denied adducing any evidence.
6. I have heard both the counsels for the prosecution and defence on the merit of the case and have thoroughly gone through the evidence on record.

**Points for determination :**

7. Basing on the materials on record and in order to find out whether the prosecution has been able to establish the guilt of the accused beyond reasonable doubt in the case in hand, the following points have been taken up for determination :
  - (i) *Whether the accused persons on 18/08/2014 at about 1.30 am in the night had entered into the property in possession of the informant with intent to commit an offence thereby committing an offence u/S 447 IPC?*

(ii) *Whether the accused person to the annoyance of the informant uttered any obscene words in or near any public place thereby committing an offence punishable u/S 294 IPC?*

(iii) *Whether the accused person had threatened the informant with dire consequences thereby committing an offence punishable u/S 506 IPC?*

## **DISCUSSION, DECISION AND REASONS THEREOF**

### **PROSECUTION EVIDENCE:**

8. **PW-1** namely Sakina Khatun had stated in her evidence that she knew both the informant and the accused person. She deposed that on the time of the incident the informant had called her name and told her that the accused person had asked her to open the door for which he would give her Rs. 500/- (Rupees Five Hundred) only and hearing her name the PW-1 had gone to the informant's house where she had seen the accused person standing in front of the door of the informant and trying to give her Rs. 500/- (Rupees Five Hundred) only. The PW-1 further stated that she had seen the informant crying at the time of the incident and that the police had interrogated the PW-1.

In her cross-examination she stated that she had not seen the incident and had only heard about the same from the mouth of the informant. She further revealed that there was certain earlier altercation between the accused and the informant. She again stated that she had not seen the accused person at the time of the incident.

### **JUDICIAL DETERMINATION:**

9. I have meticulously considered the evidence on record in its entirety. This is a case u/S 447, 294 & 506 of the IPC. Now let me first point out the essential ingredients of these offences which need to be proved beyond reasonable doubt in order to ensure a conviction for the accused person.

**10.** In order to bring home the charge **u/S 447** of the IPC the prosecution must prove:

- The accused entered into or upon the property in the possession of another
- If such entry is lawful at the inception but then the accused later unlawfully remained upon such property to commit an offence or to intimidate, insult or annoy any persons in possession of such property.
- Such entry or unlawfully staying upon the property must be with intent to commit an offence or to intimidate or annoy any persons in possession of the property.

In order to bring home the charge u/S 294 IPC the prosecution must prove :

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

In order to bring home charge u/S 506 IPC the prosecution must prove:

- The accused threatened the victim
- That this threatening was with any injury to his person, reputation or property
- That this threatening was intended to cause alarm to the victim or 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 such threat
- the victim has in fact been alarmed by the threat; that threat to injury may be in relation to reputation of a deceased person.

11. From a careful perusal of the evidence on record it can be said that the entire prosecution case is based upon the evidence of the PW-1 who in her deposition had plainly stated that she had not seen any incident as alleged but she had only heard about the same.
12. Interestingly, the informant who was the victim of this instant case has not appeared before this Court to depose in spite of several attempts by the prosecution.
13. During the course of argument the learned counsel for the defence had stated that the prosecution witness did not support the case of the prosecution. He also argued that this case was filed just to harass the accused person due to certain personal enmity between the accused and informant. The learned APP did not object to the contention of the defence counsel.
14. It is hence apparent that no prosecution witness has been able to back up the case of the prosecution; rather the evidence does not at all corroborate to the averments made in the FIR which has made the credibility of the prosecution case remarkably doubtful.

**Decision:**

15. It is the cardinal principle of criminal jurisprudence that a person is innocent until proven guilty and this principle cannot be ignored at any cost. It is the burden of the prosecution to establish through cogent and unimpeachable evidence that the accused persons committed the alleged offence, failing which the accused person shall be proved innocent. Thus from the discussion made in the preceding paragraphs it has become evident that there is no cogent and credible evidence to prove the prosecution case beyond reasonable doubt and that the accused person had trespassed the property in possession of the informant and that he had threatened and uttered abusive words towards her. That being said, the points for determination as averred in paragraph no.7 are decided in negative as the prosecution failed to bring home the charges u/S 447, 294 & 506 of the IPC as mentioned in the paragraph no.10.

**ORDER**

- 16.** On the strength of the deliberate discussion made above, I am of the considered opinion that in the facts and circumstances of the instant case, the evidence on record is not sufficient to prove the guilt of the accused person beyond reasonable doubt as such the accused person namely **Rashul Sheikh** is acquitted of the charge u/S 447, 294 & 506 of the IPC and set at liberty forthwith.
- 17.** His bail-bonds are extended for a period of 6 (six) months as per the provision u/S 437 A of the Cr.P.C.

Given under my hand and seal of this Court on this 31<sup>st</sup> day of May, 2021.

**Dimpee Talukdar**

**Judicial Magistrate 1<sup>st</sup> Class, Goalpara**

## **APPENDIX**

- Prosecution witnesses : PW-1 : Sakina Khatun
- Defence witnesses : Nil
- Prosecution exhibits : Nil
- Defence exhibits : Nil

**Dimpee Talukdar**  
**Judicial Magistrate 1<sup>st</sup> Class, Goalpara**