

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.2570/2015

State

Vs.

**Md. Farid Ali
Son of Md. Azahar Ali
Resident of village: Telahi Janpar,
Ward No.9, P.S.- Dharamtul,
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.
For the defense: Md. A. Salam, Advocate

Offences explained: u/s 294/506 (I) of IPC

Evidence recorded on: 7-9-2017, 4-12-2017, 14-3-2018, 25-6-2018,
26-6-2019 & 18-9-2019

Statement of defense recorded on: 30-10-2019

Argument heard on: 14-11-2019

Judgment delivered on: 29-11-2019

JUDGMENT

1. The prosecution case in brief is that one Musstt. Rufia Khatun lodged an ejahar in the Dharamtul police station against the accused Md. Farid Ali alleging therein that on 17-11-2015, at about 10.00 p.m. one Musstt. Arifa Khatun called the informant over phone calling by phone No.8486852698 and requested her to come over. Accordingly, the informant came to the Dharamtul police station and the Officer-in-Charge of the said police station also brought the accused person. However, the accused Md. Farid Ali, in presence of his parents, wife Rufia (sic)

and several other police personnel hurled obscene abuses at his mother-in-law inside the police station.

2. The ejahar was received in the Dharamtul police station on 18.11.2015 and a Dharamtul police station case no.115/2015 under sections 294/506 of IPC was registered vide GD Entry No.412 dated 18-11-2015 at 9.00 p.m. and the sub inspector of police Sri Manindra Kr. Das, who was the Officer-in-charge of the said police station, decided to complete the investigation himself. On completion of investigation, police submitted charge sheet against the accused person namely Md. Farid Ali under sections 294/506 IPC.

3. On appearance before court copies of all relevant documents were furnished to the accused person under section 207 CrPC. Particulars of offences under sections 294/506(I) of IPC were explained to the accused Md. Farid Ali to which he pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 5 (five) witnesses namely Musstt. Rufia Khatun, Md. Abu Shahid, Smti Papumoni Deka, Sri Srestha Bordoloi and SI Sri Munindra Kr. Das, as PW-1, PW-2, PW-3, PW-4 and PW-5, respectively. Another witness namely Musstt. Arifa Khatun, who is the daughter of the informant and wife of the accused, was examined as a court witness (CW-1) as her evidence was deemed necessary for a just decision of the case. The prosecution side also exhibited 3 (three) documents including the ejahar and the charge sheet. While under examination under section 313 CrPC the accused person completely denied the allegations leveled against him. Defense side refused to adduce any evidence.

5. I have heard the argument of Mrs. Alakananda Kakati, learned APP and the argument of Md. Abdus Salam (Jr.), learned defence counsel, perused the case record and considered the same. The following points for determination are formulated:

- i. Whether the accused person, on or about 17-11-2015, at about 10.00 p.m. at Dharamtul police station, in the district of Morigaon, uttered obscene words in a public place to the annoyance of Musstt. Rufia

Khatun and thereby committed an offence punishable under section 294 IPC?

- ii. Whether the accused person, on or about the same date, time and place, threatened Musstt. Rufia Khatun to cause alarm to her and thereby committed an offence punishable under section 506(I) of IPC?

Discussion of evidence, decision and reasons therefor:

6. For convenience, both the points for determination are taken up together for discussion. The informant Musstt. Rufia Khatun deposed before the court as PW-1 and her ejahar is proved as exhibit-1 wherein she admitted her signature as exhibit-1(1). So far as the allegation in the ejahar that it was Musstt. Arifa Khatun, who is the daughter of the informant, brought the informant by calling her over phone and that the informant arrived at the Dharamtul police station and the Officer-in-charge of the said police station also brought the accused person are concerned, they are found to be true from the evidence of the PWs as well as the accused himself.

7. In her deposition, PW-1 Musstt. Rufia Khatun stated that on the night of 17-11-2015, her daughter Musstt. Arifa Khatun told her over phone that she was harassed and she should be brought back or she would consume poison or commit suicide by jumping in front of train. Therefore, the informant and her son- in-law Md. Abu Sahid, who deposed as PW-2, came to the Dharamtul police station. Police asked them to wait at the police station and told them that the accused would be called in the morning. At about 8.00 a.m., on the next day i.e. on 18-11-2018 at 8.00 a.m. the accused Md. Farid Ali, Musstt Arifa Khatun, who is the daughter of the informant, and parents of the accused arrived at the police station. These facts are corroborated by PW-2 Md. Abu Shahid, PW-3 Smti Papumoni Deka, PW-4 Sri Srestha Bordoloi and the CW-1 Musstt. Arifa Khatun.

8. PW-5 SI Sri Munindra Kumar Das, who was the investigating officer, prepared the sketch map of the place of occurrence, which is exhibited as exhibit-2 wherein he confirmed his own signature as exhibit-2(1), and also submitted the charge sheet against the accused which is exhibited as exhibit-3 wherein he admitted his signature as exhibit-3(1). PW-5, while under cross

examination, also confirmed arrival of both the parties at the Dharamtul police station on the day of the occurrence.

9. While under examination under section 313 CrPC, the aforesaid facts were put to the accused person and he also admitted the said facts in his answers to the questions put to him by the court. Therefore, regarding the presence of the informant and the accused person, Musstt. Arifa Khatun and presence of Md. Abu Sahid as well as presence of parents of the accused at about 8.00 a.m. on 18-11-2015 is beyond doubt.

10. Now the only question is whether the allegation that the accused Md. Farid Ali abused Musstt. Rufia Khatun with obscene language is true or not. According to PW-1, the said accused Md. Farid Ali told her by shouting that he would insert his hand into her private part and would break one of her leg by tearing away the other leg. At that time there were policemen and other persons at the police station. When she started crying, police arrested the accused and asked her to lodge an ejahar. Exhibit-1 is the said ejahar. This accusation by PW-1 is also reiterated in her cross-examination also. When it was suggested to her during cross examination that she did not make the said statement before police, she answered that she did not make the said statement before the investigating officer as the accused uttered those words in front of police. This revelation, that to in her cross-examination, further reinforces her statement made in her examination-in-chief. The said accusation is also supported and corroborated by PW-2 Md. Abu Sahed also. According him also, immediately when the accused shouted using those words, his mother-in-law informed the officer-in-charge of the same and the accused was arrested and police told them to lodge an ejahar. Accordingly his mother-in-law lodged the ejahar.

11. PW-3 Smti Papumani Deka is a constable of police and was working at Dharamtul police station at the time of the occurrence. Her deposition also reveals that the accused shouted in loud voice telling something which she could not understand as the accused used his own language. Likewise also PW-4 Sri Srestha Bordoloi, who was also working in the aforesaid police station at that

time saw the accused quarreling with the informant. These two witnesses are independent witnesses and have no axe to grind against the accused.

12. The cross-examination of PW-1 and PW-2 could not reveal anything to show that the said accusations as revealed by PW-1 and PW-2 is false. Though CW-1 Musstt. Arifa Khatun, who is the wife of the accused Md. Farid Ali and daughter of the informant, stated in her cross-examination that her husband i.e. the present accused did not verbally abused her mother or did not use any obscene words. However, her deposition appears to be only partially true as she did not reveal the said accusations for obvious reasons as the accused is her husband and she deposed in order to save him. The deposition of PW-1 that she was contacted over phone by her daughter i.e. CW-1 is admitted by her in her deposition also. This in turn shows that the deposition of PW-1 and PW-2 is true regarding the same. Though there is a difference between the versions of PW-1 and CW-1 as to what transpired between them in their telephonic conversation same is not required to go into in detail as the point for determination have no direct connection with it. She also stated that when she arrived at the police station along with her husband and mother-in-law Musstt. Majida Begum and found that her mother did not brought NRC documents, therefore, she engaged in a verbal quarrel with her mother. This quarrel was witnessed by PW-3 Smti Papumoni Deka and PW-4 Sri Srestha Bordoloi.

13. PW-4 revealed that the accused started quarrel with the informant i.e. PW-1, therefore negates the deposition of CW-1 Musstt. Arifa Khatun that while she was engaged in a verbal quarrel with her mother, it was her husband i.e. the present accused who told her not to engage in verbal quarrel and asked her to keep silence. Therefore, the statement of CW-1 is clearly in order to save her husband as she is an interested witness. However, PW-4 is entirely an independent witness who is not related to any of the parties and who was working at the aforesaid police station. According to him also, he could not entirely understand the language used by the quarreling parties. In the cross-examination of the PW-4 also it has been revealed that the mother daughter duo quarreled for ten minutes. He denied the suggestion that the accused tried to stop the quarrel between them. Therefore, so far as the accusation leveled

against the accused is concerned, the CW-1 Musstt. Arifa Khatun is found to be an interested witness who did not reveal the entire facts to the court and suppressed the material evidence which naturally would have implicated her husband had she revealed it to the court. Therefore, her evidence, so far as the same relates to the exoneration of her husband is concerned is found to be false and same is rejected.

14. The learned defense counsel submitted that as PW-1 and PW-2 did not stated before the investigating officer the statements which they made before the court, therefore, they are unreliable witnesses. It is true that the investigating officer (PW-5) also admitted that the said two PWs did not stated before him that the accused shouted and told the informant that he would insert his hand into her private part and break one of her leg by tearing the other. However, in order to elicit those answers, the investigating officer must ask the questions. But there is nothing to show that the investigating officer asked specific questions to the said two witnesses to elicit those answers. Hence, with all due respect, the submission so made by the learned defense counsel cannot be accepted. Further, the delay of almost twelve hours in lodging the ejahar, though not explained anywhere, or agitated by the learned defense counsel, is attributable to the officer in charge of the police station as the ejahar was registered lately not that the ejahar was lodged after deliberation and delay. It is so in view of the fact that both PW-1 and PW-2 stated that when the accused threatened the informant it was the police personnel who advised the informant to lodge a case and accordingly PW-1 lodged the case as the occurrence took place in the police station itself.

15. Now the question is whether the utterance by the accused as revealed by PW-1 and PW-2 would be covered by sections 294 and 506 (I) IPC, particulars of which were explained to the accused person. We have seen in their evidence they have not clearly indicated the exact obscene words used by the accused person. However, the utterance of said words by the accused that he would insert his hand into the private part of the informant and break her one leg by tearing away the other is found to be in instance of criminal intimidation sufficient enough to cause alarm to the informant. Therefore, though no material is found

under section 294 IPC, however, the aforementioned threat by the accused is clearly covered by section 506(I) of IPC.

16. For the aforementioned reasons and discussion the points for determinations are answer as follows:

- i. Prosecution failed to prove the case against the accused so far as the offence under section 294 IPC is concerned. As such, he is found not guilty and acquitted of the said offence.
- i. Prosecution has proved beyond reasonable doubt that the accused committed the offence punishable under section 506(I) IPC and accordingly he is found guilty and convicted of the said offence.

17. Having regard to the circumstances of the case, the manner in which the convict Md. Farid Ali committed the offence to his own mother in law, punishment need to be imposed to deter him from committing similar offence in future and deter others from committing such kind of offence and therefore the benefits of the provisions of the Probation of Offenders Act, 1958 cannot be extended to the convict.

18. The aggravating circumstances of the case are that the accused caused alarm to the informant, who is his own mother in law, by threatening her in full public view by shouting and uttering words which is indicative of his depraved mind. The continued denial by the convict of the offence while the court examined him under section 313 CrPC speaks volume of the fact that he has no repentance of the crime committed by him. I have given my due regard to the same.

19. The mitigating circumstances of the case are that the convict is young man of aged about 34 years at present, faced trial for the last four years and there is no record of any previous conviction against him. He is also the husband of the daughter of the informant.

20. I have considered the personal circumstances of the convict, the need to punish the convicted person, a punishment which must be just in all the circumstances, the need for a very strong denunciation of the conduct of the convicted person, having regard to the fact that he must be sentenced according

to law and the need to generally deter others who might be like minded from committing similar offence. The primary sentencing consideration here is punishment, deterrence, both personal and general, denunciation of the conduct and promotion of respect for the rule of law. In sentencing, I take account of all the matters I have referred to including the statutory maximum penalty for the offence.

21. In view of the above and after hearing the convict in person and his learned defense counsel on the question of sentence, the convict is sentenced to rigorous imprisonment of 6 (six) months with a fine of Rs. 5000/- (Rupees five thousand) only for the offence punishable under section 506(I) of IPC. In default to pay the fine, the convict shall undergo simple imprisonment of 1 (one) month.

22. The fine, if recovered, shall be given to Musstt. Rufia Khatun as compensation, under section 357 CrPC, for the injury caused by the offence, as, in view of this court, compensation is recoverable by her in a civil court. However, such fine, if recovered, shall not be paid before the period allowed for presenting the appeal has elapsed, or if an appeal is presented, before the decision of the appeal.

23. The bail bond of the convict is extended for a period of six months in view of section 437A of CrPC.

24. Furnish a free copy of the judgment to the convict.

25. The judgment is pronounced in open court and given under my hand and seal on this 29th day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
Ext.-1(1): Signature Musstt. Rufia Khatun
Ext.-2: Sketch map
Ext.-2(1): Signature of S.I. Sri Munindra Kr. Das
Ext.-3: Charge sheet
Ext.-3(1): Signature of S.I. Sri Munindra Kr. Das
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Musstt. Rufia Khatun
P.W.-2: Md. Abu Shahid
P.W.-3: Smti Papumoni Deka
P.W.-4: Sri Srestha Bordoloi
P.W.-5: S.I. Sri Munindra Kr. Das
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
C.W.-1: Musstt. Arifa Khatun

Chief Judicial Magistrate, Morigaon