

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE,**  
**MORIGAON**

**G. R. Case No: 2913/15**

**Under section 447/352/506 INDIAN PENAL CODE**

**State**

**Vs**

**1. Md. Jahan Uddin**

S/o Md. Faizul Rahman, R/o BortholKachari, P.S. Moirabari, Morigaon, Assam.

.....Accused person

**Present: Lohit Kumar Sarmah, SDJM(S), Morigaon**

**Advocates appeared**

For the State: Smti. B. Devi, APP

For the accused person: Mr. A. B. Siddique

Evidence recorded on: 27.9.2018, 2.2.2019 and 5.9.2019

Argument heard on: 7.11.2019

Judgment delivered on: 21.11.2019

**JUDGMENT**

1. The informant Musstt. RejiaKhatunlodged an ejahar before the Moirabari Police Station on 22.12.2015 against the accused Jahanuddin stating inter alia that on 20.12.2015 at around 6 am the nearby sugarcane crops of the accused was eaten and ruined by some goats of other people and the accused blamed the informant as if she had not taken care of the sugarcanes and entered into the courtyard of informant, abused her with filthy language and outraged her modesty by physically assaulting her. The accused also threatened the informant with dire consequences stating that she must vacate her place by collapsing her house within 8 days. As the informant was waiting for amicable settlement and due to her medical check-up got delayed in filing the ejahar.

2. The ejahar was received and registered as Moirabari Police Station case No. 307/15 under section 447/294/323/354/506 of Indian Penal Code.
3. Police started investigation to trace the root of the case. The Investigating Officer after due investigation of the case submitted charge sheet under section 447/294/352/506 of Indian Penal Code against the accused Jahanuddin.
4. On receiving summonses the accused appeared and entered trial. Copies of the relevant documents were furnished to the accused person as per section 207 of CRPC.
5. On perusal of the case record sufficient grounds under section 447/352/506 of Indian Penal Code were found against the accused person and formal charge under the said sections was framed against the accused person and accordingly the particulars of offences under the above sections were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. The prosecution has examined five witnesses including the informant-cum-victim. The statement of the accused person under section 313 Criminal Procedure Code was recorded. The defence side adduced no evidence and pleaded for total denial.

**POINTS FOR DETERMINATION:**

- i) Whether the accused person on 20.12.2015 at around 6 am, committed criminal trespass by entering into or upon property of the informant with intent to commit an offence and thereby committed an offence punishable under Sec. 447 Indian Penal Code?
  - ii) Whether the accused on 20.12.2015 at around 6 am, assaulted or used criminal force to Musst. Rejia Khatun otherwise than on grave and sudden provocation and thereby committed an offence punishable under section 352 of Indian Penal Code?
  - iii) Whether the accused person on 20.12.2015 at around 6 am, threatened Musst. Rejia Khatun with dire consequences and thereby committed an offence punishable under Sec. 506 Indian Penal Code?
7. I have heard the oral arguments put forward by both the Counsels. I have also gone through the entire evidence available on record. My discussion and reasons for the decision is discussed below.

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. PW1, Rejia Khatun who is the informant-cum-victim deposed that the accused person was known to her and the incident took place around 3 years prior to her deposition at around 6/8 am. Some cattle had eaten up the sugarcane crop of the accused then the accused abused the informant for that. Whereas, PW1 has no cattle. The accused came and collided with her. The accused held the hands of PW1 and pulled her. She had filed this case as because the accused pushed backs the informant in spite of her being a woman. Ext-1 is the ejahar and Ext-1(1) is her signature.
9. During cross-examination PW1 stated that the family members of the accused do not come to PW1's house. The police did not take PW1's statement. She denied to the fact that she did not state before police about the incident as stated here in chief. It was not a fact that she deposed falsely that some cattle had eaten up the sugarcane crop of the accused then the accused abused the informant for that.
10. PW2, Musst. Nurnahar Khatun deposed that the informant was her mother-in-law and the accused person was known to her and the incident took place around 3 years prior to her deposition during day time. Upon eating the sugarcane crops by cattle the incident took place. The accused interrogated PW1 and told her that she must know about his crops being a nearby resident and then he beat her. On hearing hue and cry PW2 went to the place of occurrence and tried to obstruct the accused but he ordered PW2 to leave from there and then she left. The accused was colliding with PW1.
11. During cross-examination PW2 stated that she does not remember the date of occurrence. The sugarcane crops are around 1 km away from the house of accused and there are no nearby houses there. At the time of conflicts PW2 was at her house. She heard about the conflicts. She denied to the fact that PW2 did not state before police that "the accused interrogated PW1 and told her that she must know about his crops being a nearby resident and then he beat her. On hearing hue and cry PW2 went to the place of occurrence and tried to obstruct

the accused but he ordered PW2 to leave from there and then she left. The accused was colliding with PW1”.

12. PW3 Md. AbulKasem deposed that both the parties are known to him. The incident took place around 2/3 years prior to his deposition at around 8/9 am. The father of the accused went to the house of PW3 and told him that their 5/7 numbers of sugarcane were destroyed and asked PW3 to accompany him to the PW1's house for inquiring her. On being inquired PW1 told that she does not know anything. Then the accused too arrived there and then there was verbal altercation between PW1 and accused.
13. During cross-examination PW3 stated that there was only verbal altercation between the parties and no fight took place. PW3 resides nearby the place of occurrence.
14. PW4 Md. AbdusSattar who deposed that both the parties are known to him. The incident took place around 3/4 years prior to his deposition. PW4 was not present at the time of incident. Later he heard that there was verbal altercation between the parties and he had not seen any incident. The learned defence counsel declined to cross-examine PW4.
15. PW5 Sri Jatin Chandra Bora who is the investigating officer deposed that on 20.12.2015 he was working as O/C at Moirabari PS. On that day Rejia Khatun filed an e-jahar which was received and registered by the then Officer-in-Charge under Moirabari PS Case No.307/15 u/s 447/294/323/354/506 of Indian Penal Code and he was entrusted with the investigation of the case. He visited the place of occurrence on the same day, prepared the sketch map and recorded the statements of witnesses. He also collected the medical report of the victim. As the offence established were of bailable nature hence the accused was arrested and given on bail. He has submitted charge sheet against the accused Jahanuddin u/s 447/294/352/506 IPC. Ext-2 is the sketch map and Ext-2(1) is his signature. Ext-3 is the charge sheet and Ext-3(1) is his signature.
16. During cross-examination PW5 stated that he visited the place of occurrence once on the same day. He collected medical report on 27.12.2015. GDE copy was submitted along with the FIR. It is not a fact that his investigation was perfunctory and not proper.

17. Regarding the offence under section 447 of the Indian Penal Code, the informant alleged in the ejahar that the accused blamed the informant as if she had not taken care of the sugarcanes and entered into the courtyard of informant, abused her with filthy language and outraged her modesty by physically assaulting her. However during deposition as PW1, the informant did not state that the accused entered into the courtyard of her house. PW2, PW3 and PW4 are also silent as to whether the accused had entered into the property of the informant or not. Hence there is no iota of evidence to show that the accused entered into the courtyard of the house of the informant with criminal intention. Hence prosecution is failed to prove the ingredients of the offence under section 447 of the Indian Penal Code beyond reasonable doubt against the accused.
18. Therefore the point for determination No. 1 is decided in negative and in favour of the accused.
19. Regarding the offence under section 506 of the Indian Penal Code, the informant alleged in the ejahar that the accused also threatened the informant with dire consequences stating that she must vacate her place by collapsing her house within 8 days. However during deposition as PW1, the informant did not state anything regarding any act of the accused with criminal intention which intimidated her. PW2, PW3 and PW4 also did not depose anything to implicate the accused under the said provision of law. Thus prosecution could not adduce any evidence to prove that the accused had threatened the informant. Hence prosecution is failed to prove the ingredients of the offence under section 506 of the Indian Penal Code beyond reasonable doubt against the accused.
20. Therefore the point for determination No. 3 is decided in negative and in favour of the accused.
21. Regarding the offence under section 352 of the Indian Penal Code, the informant alleged in the ejahar that on 20.12.2015 at around 6 am the nearby sugarcane crops of the accused was eaten and ruined by some goats of other people and the accused blamed the informant as if she had not taken care of the sugarcanes and entered into the courtyard of informant, abused her with filthy language and outraged her modesty by physically assaulting her. During deposition as PW1, the informant stated that some cattle had eaten up the sugarcane crop of the accused then the accused abused the informant for that. The accused came and collided with her. The accused held the hands of PW1 and pulled her. PW2 also during her deposition stated that the accused had beaten the informant.

However the injury report suggests that the informant did not sustain any injury. Further, PW3 and PW4 also consistently deposed that there was only some verbal altercations between the accused and the informant. Hence, in absence of any other evidence in this reference the allegation of the informant alone cannot be believed with a degree certainty of beyond reasonable doubt. PW3 was an eyewitness who without any ambiguity stated that there was only some verbal altercations between the parties. Hence there arises a doubt regarding the authenticity of the prosecution story. The principle of the criminal justice system is that the benefit of doubt must go in favour of the accused. Hence the prosecution is failed to prove the ingredients of the offence under section 352 of the Indian Penal Code.

22. Therefore the point for determination No. 2 is decided in negative and in favour of the accused.

23. In view of the above, it is held that the prosecution has failed to establish the charges under section 447/352/506 of the Indian Penal Code against the accused person Jahan Uddin beyond reasonable doubt. Accordingly, the accused person is found not guilty and is acquitted of the alleged offences levelled against him and he is set at liberty.

24. Bail bond and affidavits furnished by the bailor is extended for a period of six months from today.

Given under my hand and seal of this Court on the 21<sup>st</sup> day of November, 2019 at Morigaon.

Lohit Kumar Sarmah  
SDJM(S), Morigaon

**APPENDIX**

**Prosecution witnesses:**

PW1- Musstt. RejiaKhatun(Informant-cum-victim)

PW2- Musstt. NurnaharKhatun

PW3- Md. AbulKasem

PW4- Md. AbdusSattar

PW5- Sri Jatin Ch. Bora (I.O.)

**Exhibits for the prosecution:**

Ext-1 : Ejahar

**Defence witness :**

Nil

**Exhibits for defence:**

Nil

Lohit Kumar Sarmah  
SDJM(S), Morigaon