

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIOGAON, ASSAM.

G.R. Case No. 1821/16
U/S 448/294/506(II)/34 IPC

STATE OF ASSAM

-VS-

1. MD. ABDUL KADIR, S/O MS. ABDUL MANNAS.

2. MD. ABDUL MALEQUE, S/O LT. BONDE ALI.

3. MD. ABDIDAR HUSSAIN @ DILU, S/O MD. ABDUL MALEQUE.

ALL R/O DATIALBORI, WARD NO.6, P/S BHELOGURI.

DIST. MORIOGAON, ASSAM

.....ACCUSED PERSONS.

PRESENT: - SMTI. ANAMIKA BARMAN, LL.M., A.J.S.
JUDICIAL MAGISTRATE FIRST CLASS
MORIOGAON, ASSAM.

FOR THE STATE: - MR. M. ISLAM, LEARNED A.P.P.

FOR THE ACCUSED: - MR. A. ZAMAN, LEARNED ADVOCATE.

EVIDENCE RECORDED ON: - 25.06.2019 and 10.01.2020.

ARGUMENT HEARD ON: - 10.01.2020.

JUDGMENT DELIVERED ON: - 10.01.2020.

JUDGMENT

1. The brief of the prosecution story is that one Md. Sharafat Ali filed an FIR before the Officer-in-Charge, Bhelowguri P.S. on 25.07.16, alleging inter alia that on

23.07.16, at about 10:00 am, the School Managing Committee of Datialbori M.E. School had organized a meeting in the school and while the informant along with the Head Master of the school were waiting for the other members of the SMC, the accused Md. Abdul Kadir, Md. Diluwar Hussain and Md. Abdul Maleque wrongfully entered the meeting room and rebuked the informant with obscene words. The accused Md. Abdul Kadir also tried to assault the informant with a slipper. The accused persons even threatened to kill the informant. Hence, the case.

2. On receipt of the ejahar, Bhelowguri P.S. Case No. 57/16 u/s 448/294/506/34 IPC was registered and investigated into. On completion of the investigation, I/O filed charge-sheet against the accused persons Md. Abdul Kadir, Md. Abdul Maleque and Md. Abdidar Hussain u/s 448/294/506(II)/34 of IPC.

3. On receipt of summons the accused persons appeared before the court and copies of relevant documents were furnished to the accused persons under section 207 of Cr. P.C. On finding sufficient prima facie materials to presume that the accused persons had committed offences u/s 448/294/506(II)/34 of IPC, charge under the said sections was framed and the same was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined only 3 (three) witnesses. In view of the evidence recorded the Ld. APP verbally prayed to close PWs as the prosecution declined to adduce further evidence. After closure of prosecution evidence, statement under section 313 of Cr.P.C. was dispensed with as found not necessary. Defence declined to adduce evidence. Heard the arguments put forward by the learned Counsels for both the sides as well as gone through the evidences available on record.

5. **Points for determination.**

I. Whether on 23.07.16, at about 10:00 am, at Datialbori M.E. School under Bhelowguri PS, the accused persons, in furtherance of their common intention, committed house-trespass by entering into Datialbori M.E. School with intent to commit an offence of criminal trespass and house-trespass, and hence committed an offence u/s 448/34 IPC?

II. Whether on the same date, time and place, the accused persons, in furtherance of their common intention, uttered obscene words at or near a public place, and hence committed an offence u/s 294/34, IPC?

III. Whether on the same date, time and place, the accused persons, in furtherance of their common intention, committed criminal intimidation by threatening to kill the informant Md. Sharafat Ali, and hence committed an offence u/s 506(II)/34, IPC?

Discussion, Decision and Reasons thereof:-

6. In this case prosecution examined only 3 (three) witnesses. One Md. Nasiruddin was examined as PW-1, one Musstt. Roushanara Begum was examined as PW-2 and the informant/victim Md. Sharafat Ali was examined as PW-3 to prove the charges against the accused persons.

7. Before going to decide the points for determination, let me describe the evidence in brief. *In his examination-in-chief PW-1*, Md. Nasiruddin, deposed that he knows the informant as the informant was the President of Datialbori M.E. School which is located near PW-1's house. He further deposed that he knows the accused persons standing on the dock as they are his neighbours. However, PW-1 stated that he does not know anything about the incident. Defence declined to cross-examine this witness on his deposition.

8. *In her examination-in-chief PW-2*, Musstt. Roushanara Begum, deposed that she knows the informant and the accused persons as the informant and the accused persons are her neighbours. However, she further deposed that she does not know anything about the incident. Defence declined to cross-examine this witness on her deposition.

9. *In his examination-in-chief PW-3/informant/victim*, Md. Sharafat Ali, deposed that he is the informant and he knows the accused persons standing on the dock. The accused Md. Abdul Kadir was the Asstt. Teacher at Datialbori M.E. School and PW-3 was the President of the SMC of that school. The house of the other 2 (two) accused persons are near the said school. He further deposed that the incident had taken place about 2-3 (two to three) years prior to the date of his deposition at the said school. On the date of the incident, he had a verbal altercation with the accused persons over

a matter discussed in the SMC meeting of the said school and PW-3 filed the instant case in that misunderstanding.

10. *During his cross-examination*, PW-3 stated that he does not have any objection if the accused persons are acquitted.

11. The accused Md. Hasen Ali is her brother-in-law and the other accused Md. Arif Hussain is the son of the accused Md. Hasen Ali. She further deposed that the incident had taken place about 2 (two) years prior to the date of her deposition at about 05:00 pm at Dalbari near the parental house of PW-2. On the date of the incident they had a verbal altercation with the accused persons over some family matters and PW-1 filed the instant case in that misunderstanding.

12. *During her cross-examination*, PW-2 stated that she does not have any objection if the accused persons are acquitted.

13. On perusal of evidence recorded by the prosecution side, it appears that the PW-3/informant/victim is not willing to proceed with the case further and he stated that the case was filed out of some misunderstandings. Now he does not have any objection if the accused persons are acquitted. The other 2 (two) PWs have stated that they do not anything about the incident.

14. In view of the evidence recorded the prosecution declined to adduce further evidence. This being so there is nothing in the evidence of the prosecution warranting conviction of the accused persons u/s 448/294/506(II)/34 IPC as the evidence of the prosecution witnesses is found to be not acceptable and reliable.

15. Considering the above, I came to the safe conclusion that the prosecution has failed to prove the charge u/s 448/294/506(II)/34 IPC against the accused persons beyond reasonable doubt. Accordingly, the accused persons are found not guilty of the offences charged against them and are acquitted.

ORDER

16. In the light of the above decision, the accused persons are acquitted of the charge under section 448/294/506(II)/34 IPC and set at liberty forthwith.

17. The bail bonds of the accused persons are extended for a period of 6 (six) months as per section 437-A, CrPC.

18. Given under my hand & seal of this Court and delivered in the open Court on this 10th day of January, 2020.

Dictated and corrected by me

(ANAMIKA BARMAN)

(Miss. Anamika Barman)

Judicial Magistrate First Class, Morigaon

Judicial Magistrate First Class

Morigaon, Assam

APPENDIX

PROSECUTION WITNESSES:

1. P.W.-1, MD. NASIRUDDIN.
2. P.W.-2, MUSST. ROUSHANARA BEGUM.
3. P.W.-3, MD. SHARAFAT ALI.

DEFENCE WITNESSES:

NIL

EXHIBITED DOCUMENTS:

NIL

**(ANAMIKA BARMAN)
JMFC, Morigaon
Assam**