



IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE

BAKSA: MUSHALPUR

PRESENT: *A.M.Md. Mahiuddin. M.Sc.;LL.B.*
Chief Judicial Magistrate,
Baksa, Mushalpur.

G.R. case no. 453/2018

u/s. 341/294/506 I.P.C.

State

Vs

Maniram Ramchiary

... Accused person.

Date of offence explanation : 29-03-2017
Date of recording evidence : 02-08-2018, 05-10-2018, 16-03-
2019, 20-05-2019 & 05-09-2019
Date of hearing argument : 10-07-2020 and 06-01-2021
Date of delivery of the judgment : 06-01-2021

APPEARANCE :

Sri. Kishore Basnet. (Assistant P.P.-For the State).

Sri. Tridib Sarma. (Advocate - For the Accused person).

J U D G M E N T

1. The prosecution case in brief is that informant Aghoni Swargiary on 25-08-2018 lodged a written FIR against accused Maniram Ramchiary before the officer-in-charge Salbari police station alleging that on 20-08-2016 around 5.00 pm, while the informant was on her way to her uncle's house to bring

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her daughter Banti Ramchiary, the accused restrained her on road and abused her verbally with filthy words and also criminally intimidated her. As she raised alarm, the accused fled away. As she reached her home along with her daughter, in the meantime, the accused went to the house of her father and also abused him verbally as well as criminally intimidated him. The informant in her ejahar further alleged that prior to this incident, the accused on the pretext of marrying her established physical relations with her and as a result she got pregnant and gave birth to her daughter. In the year 2008 and 2009 there was a village level bichar held at Chaitanguri village regarding said issue. However, the accused never attended those meetings. Later on she filed a case against the accused before Salbari Police and a case was registered against the accused being number Sessions Case No 192/14 u/s 420/376, IPC which was under trial. She also filed a case seeking maintenance for her daughter against the accused.

2. The FIR was registered as Salbari PS case No-81/16, u/s-341/294/506, IPC and police started to investigate the case. After completion of investigation, the Police submitted charge sheet No. 48/16 dated 31-08-2016 against accused **Maniram Ramchiary, u/s 341/294/506, IPC.**
3. After receiving the case for disposal, learned predecessor in chair took cognizance against the accused, issued summons to him and after his appearance and being released on bail, he was supplied with the copies of the relevant documents u/s 207, Cr.P.C. As prima-facie material u/s 341/294/506, I.P.C. was found against the accused; the particulars of the offences were explained to him and asked his plea. On being asked, the accused pleaded not guilty and claimed to stand trial. The plea of the accused was total denial.

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4. During the trial, the prosecution has examined the informant and four other witnesses including the investigating officer here in this Court and on the basis of the evidence on record; the prosecution closed its further evidence. Thereafter the accused was examined u/s 313, Cr.P.C. and his statements were recorded. The accused declined to adduce evidence. Accordingly, arguments from both sides through video conference in virtual court are heard.

POINTS FOR DETERMINATION

1. *Whether the accused, wrongfully restrained the informant i.e. Aghoni Swargiary, as alleged in the FIR?*
2. *Whether the accused, verbally abused the informant with obscene words to the hearing of the public, as alleged in the FIR?*
3. *Whether the accused criminally intimidated the informant and her father, as alleged in the FIR?*

DISCUSSION, DECISION AND THE REASONS THERE OF

5. *It may be mentioned here that, for the convenience of decision, both the points are taken together for discussion. At the time of argument the learned Assistant Public Prosecutor for the State submitted that the prosecution witnesses have proved the allegations against the accused beyond all reasonable doubt and as such prayed for holding the accused guilty and convict him.*
6. *On the other hand, the learned counsel for the accused submitted that the prosecution has failed to prove its case beyond all reasonable doubt as there are lots of material discrepancies in their case. The plea of the defense is that, as prior to the alleged incident, the informant and the accused was involved in a series of fights and court cases and as such had a sour relationship. The*

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informant falsely implicated the accused in a case where she alleged that he had physical relation with her on pretext of marriage. But in the said case the accused was acquitted by court. On that grudge, the informant lodged this false and concocted case against the accused. It is further submitted that, the concoction of the story is evident from the fact that apart from the informant/victim the prosecution could not produce any other eye witness to the alleged incident despite of the fact that it was allegedly took place in broad day light in a public place. Further it is submitted that the informant/victim cannot be relied wholly as she is found to have contradicted her earlier statement made in the FIR to her evidence before this Court. The inconsistencies shown by the informant and vital prosecution witness make them untrustworthy and least credible so as to believe them and base conviction solely on their testimony. Since prosecution has failed to discharge its bounded duty, the accused is entitled to be held not guilty and acquit accordingly.

7. Now having considered the arguments led by the prosecution and the defense we must first decide whether the prosecution witnesses in this case can be believed and if so then to what extent. For this we must go through their depositions. Let us first see the evidence of informant/victim **Aghoni Swargiary** who was examined as PW-1 by prosecution in this case. PW-1 deposed that the accused co habited with her promising marriage and as a result in the year 2008, she became pregnant. However the accused started avoiding her and to resolve the issue she placed the matter before the village society and a meeting was called. However, the accused never appeared in the meeting and in the year 2009, she delivered a girl who is 10 years old. But as the accused never took interest on her and her daughter, she filed some cases in the Barpeta Court including a petition u/s 125 Cr.P.C seeking maintenance. The informant further deposed that after filing of the cases on 20-08-2016 around 5.00 pm, while she was returning home from her uncle's house, the

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accused wrongfully restrained her on road and started to hurl abuses at her for lodging cases against him. The accused also threatened her with dire consequences if she continues with the cases. The informant somehow returned to her old home. In the meantime, the accused went to her new house and started to abuse her father and threatened him. After about half an hour later when she came to her new house, she came to know from her father that the accused also went there and abused him. After couple of days she filed this case before Salbari Police. PW-1 proved her ejahar as Ex.-1.

8. During her cross examination, the informant admitted that the accused was acquitted in the case where she alleged that he entered into sexual relation with her on promise of marriage. That means we have enough scope to doubt on the averment made by informant that prior to the incident she had some sort of a relationship with the accused for which the instant alleged incident took place. Moreover though the informant alleged that she lodged complain before the village society to adjudicate her grievance against the accused for the alleged relationship, but the prosecution could not prove the same by producing independent witness from the village.
9. Prosecution examined the father of the informant **Koneswar Swargiary** as PW-2 and he deposed that the accused and the informant had relation and out of that they have a daughter named Banti Ramchiary. On 20-08-2016 around 5.00 pm, the incident took place. At that time, his daughter/informant went to his brother Saitendra Swargiary's house to bring back her daughter. While she was returning with her child, the accused restrained and abused them with filthy words and also threatened them. Then his daughter went back to his brother's house and after sometime the latter accompanied the former to his house. After sometime, the accused came in front of his house and started to abuse all of them from the road. After that incident, his daughter filed the case.

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10. Now let us see the evidence of **Saitendra Swargiary (PW-3)**, the uncle of the informant. It appears from his evidence that on 20-08-2016, around 5.00 pm, the informant's daughter was in his house and accordingly the informant went to his house to take her back. On the way, the accused met the informant and abused her verbally and intimidated. The informant after coming to his house informed the matter to him and requested him to accompany them to their house. Accordingly, he accompanied them and in the house of the informant, her father i.e. his elder brother Soneswar Swargiary apprised them that the accused also went there and criminally intimidated him.
11. Now analyzing the evidence of the informant and PW-3 from the point of view of PW-2's evidence, it is found that as per PW-1 and PW-3 the accused abused PW-2 in absence of them while the informant was in the house of PW-3. About half an hour later she returned to her house along with PW-3 and came to know from her father that the accused also went there and abused him verbally. But as per PW-2 the accused abused him from road after his daughter along with his granddaughter and brother Saitendra Swargiary returned to his house. Thus the material contradiction regarding presence of the informant and PW-3 gives enough scope to cast doubt on their truthfulness.
12. Prosecution examined the another daughter of informant i.e. **Bhanu Swargiary as PW-4** and she deposed that on 20-08-2016 around 5.00 pm, while her mother and sister were returning from her uncle Saitendra Swargiary's house, the accused restrained and abused them with obscene words. She was apprised by her mother/informant about the incident. Thereafter on the same day the accused went to the house of her grandfather Koneswar Swargiary and threatened him.
13. In her cross examination PW-4 admitted that she did not witness accused abusing or threatening her mother, her sister or even her grandfather as she was not present there.

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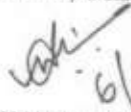
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14. Now from the evidence on record it is an admitted position that apart from the informant none of the other prosecution witnesses had witnessed the accused abusing and threatening the informant and her daughter on road. Likewise neither the informant nor PW-3 or PW-4 had witnessed the accused abusing PW-2. As such for the separate occurrences, PW-1 and PW-2 are the sole witnesses to the alleged incidents.
15. Now from the evidence on record and after going through the arguments of both the parties it is apparent that there has been a series of court cases between the parties and the defense pleaded for a standing enmity as the cause for lodging of the false case. It may be mentioned here that, the **Hon'ble Supreme Court of India** in the case of **Ramashis Ray Vs Jagadish Singh Reported in (2005) 10 SCC 498** that *"By now, it is well settled principle of law that enmity is a double edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence."*
16. Further regarding conviction of accused on the basis of the testimony of sole witness, I would like to mention a decision of the **Hon'ble Supreme Court of India** given in the case of **Chacko @ Aniyam Kunju and Ors. Vs. State of Kerala**, which was reported in **(2004) 12 SCC 269**, where it was held that- *"Conviction can be based on the testimony of single witness if he is wholly reliable. Corroboration may be necessary when he is only partially reliable. If the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then, on his evidence alone conviction can be maintained"*. That means, where there is only a single witness to the alleged crime, a slightest deviation and inconsistency in his stand can make the entire prosecution case liable for rejection. Since there has been an animosity between the parties, here in this

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case we must be extra cautious and diligent in appreciating the evidence of the informant. But here in this case from the discussions made above it is apparent that neither the evidence of informant nor the evidence of her father is free from reasonable doubt. Both have deposed self-contradictory statements which give scope to cast doubt on their credibility and truthfulness.

17. Moreover, it is found from the record that the alleged incident took place on 20-08-2016 and the FIR was lodged on 25-08-2016. As such there was admittedly a delay of five days on the part of the informant in lodging the first information regarding the alleged incident. It may be mentioned here that, in the case of **Thulia Kali V. the State of Tamil Nadu reported in AIR 1973 SC 501** the Hon'ble Supreme Court hold that the first information report in a criminal case is extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial (Advantage of Prompt FIR & Disadvantage of delay has also discussed in this case). The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation.

18. Furthermore here in this case it is found that the delay has neither been properly explained by the informant in her ejahar nor been tried by the prosecution to take from her during evidence. As such it gives the unexplained delay in lodging the first information coupled with other contradictions as

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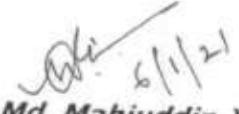
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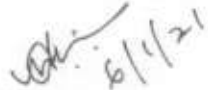
discussed above gives reasonable scope to presume that the allegations made in the FIR against the accused are false and concocted one.

19. At this juncture, it would be pertinent to mention that, the criminal jurisprudence of our country demands proof of the guilt of the accused beyond all reasonable doubt. There should not be any iota of doubt on the guilt of the accused. There should not be any other inference except the guilt of the accused, after considering the evidence on record. The prosecution is under statutory obligation to fulfill the above mentioned standard of proof.
20. Here in this case from the discussions made above it is clear that the prime and sole witness for the prosecution i.e. the victim/informant and her father are not a wholly reliable witness and no credence can be attributed to their testimony without reasonable doubt. So it is found that prosecution has failed to discharge its bounded duty to prove the guilt of the accused beyond reasonable doubt and as such the benefit should go to the accused. Accordingly extending the benefit of doubt the accused **Maniram Ramchiary** is found not guilty and hence acquitted of the offence u/s 341/294/506, IPC.
21. The accused is set at liberty forthwith. The bail bond will remain in force for next 6(six) months or till furnishing of fresh surety by the accused u/s 437(A), IPC, whichever is earlier.

This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this 6th Day of January, 2021.


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