

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. 91/2018

u/s. 294/506/34, I.P.C.

State

Vs

1. Dipen Kalita

2. Namal Kalita

3. Madan Talukdar

... Accused persons.

Date of offence explanation : 15-02-2016
Date of recording evidence : 29-07-2016, 08-09-2016, 01-11- 2016,
27-12-2016 & 04-08-2018
Date of hearing argument : 14-11-2018
Date of delivery of the judgment : 28-11-2018

APPEARANCE :

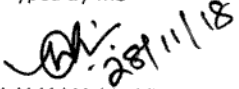
Sri. Dipmoni Boro. (Addl.P.P.-For the State).

Sri. Gobinda Nath. (Advocate - For the Accused).

J U D G M E N T

1. The prosecution of the accused Dipen Kalita, Namal Kalita and Madan Talukdar started on lodging of a written FIR, before the Officer-in-charge of Tamulpur police station on 13-10-20158, by Sri Srimanta Talukdar alleging

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 28/11/18

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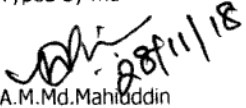
that, on 10-10-2015 under the leadership of accused Namal Kalita, the other accused persons called him to the house of Dhaneswar Rabha regarding misappropriation of houses under Indira Awas Yojana (IAY). The accused persons physically and verbally abused him and took him to the house of Madan Talukdar on account of discussing the same matter. At that time there were around 200-250 people present. Some beneficiaries also demanded him to return them their money. The accused persons also threatened him to quit KMSS and join BPF and took his signature on a blank page. The accused kept the informant with them from 2 pm in the noon to 8 pm in the evening and verbally abused him.

2. The ejahar was registered as Tamulpur PS case No-246/2015, u/s-294/384/506/34, IPC. Police started to investigate the case. After completion of investigation, the Police submitted charge sheet No. 123/2015 dated 28-10-2015 against accused **Dipen Kalita, Namal Kalita and Madan Talukdar, u/s 294/506/34, IPC.**
3. After receiving the case for disposal, learned predecessor in chair took cognizance against the accused, issued summons against them and after their appearance and releasing them on bail, they were supplied with the copies of the case u/s 207, Cr.P.C. As prima-facie materials u/s 294/506/34, I.P.C. was found against the accused persons; the particulars of the offence were explained. On being asked, the accused persons pleaded not guilty and claimed to stand trial. The plea of the accused was total denial.

POINTS FOR DETERMINATION

1. ***Whether the accused persons, in furtherance of their common intention abused the informant verbally with filthy words, as alleged in the FIR?***
2. ***Whether the accused persons, in furtherance of their common intention, criminally intimidated the***

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informant with dire consequences if he continues to work for KMSS, as alleged in the FIR?

4. During the trial, the prosecution has examined the informant/victim and six other witnesses including the investigation officer. After the evidence of prosecution was closed, the accused persons were examined u/s 313, Cr.P.C. and their statements were recorded. The accused declined to adduce evidence. Accordingly, arguments from both sides are heard.

DISCUSSION, DECISION AND THE REASONS THERE OF

5. Before going into the depth of this case, let us see what the prosecution witnesses deposed in this case. **PW1 Shrimanta Talukdar** deposed that, he is the informant of the case and knows the accused namely Numal Kalita, Dipen Kalita and Madan Kalita. The incident occurred on 10-10-2015 between 1:30 pm to 8:30-9:00 pm. On that day he was on his way to Tamulpur to refill the gas cylinder. In the morning at around 8 am, he was informed by co-villagers of Dipen Kalita about some hue and cry and he needs to reach their village. He reached the village at around 1 pm and asked what the matter was and came to know that nothing such has happened. On reaching his home, Dipen Kalita called him over telephone and asked him to come to the house of one Dhaneswar Rabha. When he reached the house of Dhaneswar Rabha, he could see some 30 persons belonging to BPF party. Amongst them were villagers from other villages and his native village as well. Upon arrival the informant was welcomed with verbal abuse. One Samar Basumatary even physically abused him. The informant tried to resist the action by holding the hand of the former and asked him what his fault was. There were many people in the house of Madan Talukdar. Numal Talukdar and Parameswar Rabha rushed near him to assault him physically. One Dipak Dauka accused the informant of collecting money from UCO Bank of 12 beneficiaries by fraud means. The informant

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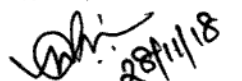
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replied them that he has no such money. After that they took his signature on a blank paper and threatened him of dire consequences. They forcefully scribbled on a blank paper that he would not work for Krishak Mukti and would work for BPF and took his signature. The informant out of fright signed the paper. The people present there shook hands with him. The informant later filed an FIR in the police station. Ex.-1 is the FIR and Ex.-1(1) is the signature. The police recorded his statements.

6. **PW 2 Dipak Dauka** deposed that, he knows the informant as well as the accused. The incident occurred on 10-10-2015 at around 12 am. The incident was regarding IAY house. The accused Madan Talukdar, Dipen Kalita, Numal Kalita met him regarding Indira Awas Yojana (AYI). However Dhaneswar Rabha was not present at his home at that time. He invited all of them in his house. When they were discussing about the houses allotted under Indira Awas Yojana, Srimanta Talukdar who is the informant arrived and accused them that instead of giving away the sum of money to the beneficiaries, they collected the sum by fraud. Thereafter they arrive at the house of Madan Kalita and discussed the matter there. The informant also took part in the discussion. After the discussion, he concluded that there was no misappropriation of money in any of the IAY scheme.
7. **PW 3 Babul Rajbangshi** deposed that, he know nothing about the alleged incident.
8. **PW 4 Narayan Rabha** deposed that, he knows both the informant and the accused persons. The incident occurred 1 year back at around 1 pm. At the time of the incident, he was present at the house of Dhaneswar Rabha. There was an argument between the informant Srimanta Talukdar and the accused Numal Kalita and Dipen Kalita. He came to know that the informant was taken to the house of Madan Talukdar from Dhaneswar Rabha's house but has no knowledge what happened thereafter.

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9. PW-5 Dhaneswar Rabha deposed that, he knows the informant as well as the accused persons. The incident occurred one year ago at around 11 am. At the time of the incident, he was present somewhere else. One Mangal Rabha told him to reach his house. However he did not reach his home. Numal Kalita, Dipen Kalita and Madan Talukdar called the informant Srimanta Talukdar over telephone to arrive at his home. At that time, he was present at his home. The accused persons threatened the informant regarding the allotment of houses under Indira Awas yojana. The informant was charged with collecting the money under AYI by fraud. The accused persons took the informant to the house of Madan Talukdar. He however did not go to the house of Madan Talukdar. The accused persons belong to the BPF party.

10. PW 6 Garpa Rabha deposed that, he knows the accused as well as the informant. The incident occurred last year at around 10 am. At that time, he was working at his home. A few people came and asked whereabouts of his son Dhaneswar to which he replied in negative. The accused persons called the informant and tried to bash him. He told them not to indulge in any such act at his home and if they want to, they can do it outside. Later his son Dhaneswar arrived and took the informant from his house.

11. *During argument, the learned counsel for the accused persons submitted that, neither the informant nor other star witnesses of the prosecution can be believed wholly. Rather, they have shown extraordinary exaggerations and deviations in the Court from their earlier stands. Explaining his argument, the learned defense counsel pointed out to the contradictions of the prosecution witnesses and also to the requisite proof through the investigation officer.*

12. It needs to be mentioned here that, prosecution examined Investigation Officer Khargeswar Swargiary as PW-7 who proved his investigation by exhibiting the charge sheet as Ex.-3 and his signature as Ex.-3(1). However, during his cross-examination PW-7 admitted that, **PW 1 Srimanta Talukdar**

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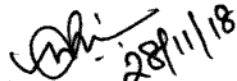
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did not state to him that in the morning he went to bring a gas cylinder, that he was called by Dipen and that he reached the house in the noon and after returning house he enquired about the matter from his wife and villagers. He further did not state that in the house of Dhaneswar Rabha there were 50 members of BPF belonging to other villages. He further did not state that he was assaulted by Laxman Basumatary and after 5 minutes he was taken to the house of Madan Talukdar where he saw gathering of people and accused Namal Kalita tried to hit him with a chair and that the accused persons obtained his signature on a declaration that he would never act for Krishak Mukti.

13. He further admitted that, PW 5 Dhaneswar Rabha did not state to him that the accused persons called the informant to his house over telephone, that the accused persons abused the informant regarding IAY house and accused him of misappropriating of those houses. He further did not state that the accused persons took the informant to the house of Madan Talukdar from his house and **PW 6 Gerpa Rabha** did not state to him that the accused persons tried to assault the informant.

14. From the above testimony of the investigation officer, it is clear that, the PW-1, PW-5 & PW-6 did not state before him while he examined them all the allegations they have made against the accused persons in the Court. They are seen to have developed their contentions in the Court and made some self contradictory statements. Thus, in view of the contradictions shown by the vital witnesses of the prosecution like the PW-1 the informant/victim and PW-5 & PW-6, it would not be justified to say that, the prosecution story is unblemished. There is every scope to doubt the credibility and truthfulness of these witnesses for the developments of their stands they have made in the Court. Since, the criminal jurisprudence of our Country warrants proving the case of the prosecution beyond all reasonable doubt, here in this case I have

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found the prosecution failing to fulfill the standard. It would not be safe and justified to hold the accused persons guilty on the basis of the testimony of tainted witnesses.

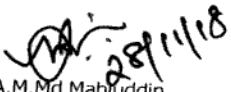
15.In the light of above discussions, observations and findings, I conclude that, the prosecution has failed to prove the points taken for decision beyond all reasonable doubt. Accordingly, giving the benefit of doubt, the accused persons namely **Dipen Kalita, Namal Kalita and Madan Talukdar** are **found not guilty and thus acquitted** from the charge of offence u/s-294/506/34, IPC labeled against them.

16.The accused are set at liberty forthwith. The bail bonds will remain in force for next 6(six) months or till furnishing of fresh sureties by the accused persons u/s 437(A), CrPC, whichever is earlier.

*This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this **28th day of November, 2018.***


(A.M.Md. Mahiuddin.)
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