

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, UDALGURI, ASSAM

P. R. Case No. 269 of 2020 U/s 506 Part-II/507 of the I.P.C.

State of Assam

-Vs-

Sri Nirmal Basumatary

S/o- Sri Lesen Basumatary

Permanent resident of Vill.-Goroimari

P.S.- Dokmoka

Dist.- Karbi Anglong, Assam

Present resident of Vill.- Puroini Goroibari

P.S.- Udalguri

Dist.- Udalguri, Assam **..... Accused.**

Present:- *Sri D. K. Kalita, A. J. S.*

Addl. Chief Judicial Magistrate,

Udalguri, Assam

Appearance:

For the State : Mr. J. Daimari, Asst. P.P.

For the Defence : Mr. R. Khakhlari, Adv.

Date of Evidence : 30.11.21

Date of Argument : 30.11.21

Date of Judgment : 08.12.21

J U D G M E N T

1. Prosecution case, in brief, is that on 07.10.2019, one Sri Fresh Muchahari @ M. Fwilao lodged an ejahar with the Officer-in-Charge, Udalguri P.S. alleging inter-alia that some armed cadres of the N.D.F.B (P) of Gobinda Basumatary @ B. Swmkhwr and Sanjoy Swargiary (S. Sanjarang) threatened and planned secretly to shoot and kill them. That threat was evidently on him and confirmed from the recent voice record or clip from the mobile No. 8011196794. He identified voice of some cadres which is authentic. One is Nirmal Basumatary @ B. Nanggra (Gobinda group) and Burkhang Basumatary @ B. Bwthwr (surrender N.D.F.B.) and many others.

2. On receipt the said ejahar, Udalguri P.S. Case No. 193/2019 under Sections 120-B/506/507 I.P.C. was registered and investigated into. On completion of the investigation, the Investigating Officer submitted charge-sheet under Sections 506/507 I.P.C. against the accused Nirmal Basumatary.

3. On appearance before the Court, necessary copies were furnished to the accused and on hearing both the sides, charges under Sections 506 Part-II/507 I.P.C. were framed and on being read over and explained the said charges, the accused pleaded not guilty and claimed to stand trial.

4. In support of its case, prosecution side examined only three (3) witnesses. Thereafter, prosecution evidence was closed on prayer of the prosecution. Accused has been dispensed with the examination under Section 313 Cr.P.C. since the same is found not necessary.

5. I have heard arguments of the learned counsels for both the sides at length, gone through the case record and perused the evidence carefully.

POINTS FOR DETERMINATION ARE:

6. (i) *Whether the accused, on or before 07.10.2019 at Udalguri under Udalguri P.S., threatened the informant Fresh Muchahari @ M. Fwilao to secretly shoot or kill him and thereby committed an offence punishable under Section **506 Part-II** I.P.C.?*

(ii) *Whether the accused, on the same day and place above, committed the offence of criminal intimidation by an anonymous communication or having taken precaution to conceal his name and abode and thereby committed an offence punishable under Section **507** I.P.C.?*

DISCUSSION, DECISION AND REASONS THEREON:

7. For the convenience of discussion, I have taken both the points for determination together to decide. Before going to decide the points for determination, let me briefly describe the evidence of the

prosecution witnesses. *P.W.-1 Sri Fresh Muchahari @ M. Fwilao*, is the informant who has stated in his evidence that he knows the accused. The incident took place on 06.10.2019. On the day of occurrence, someone taking the name of N.D.F.B. (P) threatened him over phone of his friend Musuka Basumatary with dire consequences. Then, he filed case against the accused thinking that he might threaten him. Ejahar has been exhibited as Ext.1 and his signature thereon as Ext.1(1). *In his cross-examination*, he has stated that he does not know the number of the mobile over which he was threatened. He has not mentioned the name of Musuka Basumatary in the ejahar. He filed the case on suspicion and due to misunderstanding. He has no grievance against the accused. *P.W.-2, Sri Musuka Basumatary*, has stated in his evidence that he knows the informant and the accused. The incident took place in the month of September, 2019. On the day of occurrence, one Bwthwr called him over phone that someone would kill the informant Fresh Muchahari. Then, he informed the informant about the threatening. *In his cross-examination*, he has stated that informant filed the case on suspicion and due to misunderstanding. He has no grievance against the accused. *P.W.-3, Sri Mihiram Boro*, has stated in his evidence that he knows the informant and the accused. The incident took place in the month of

September, 2019. He came to know that someone threatened Fresh Muchahari over phone of Musuka Basumatary. Defence has declined to cross-examine this witness.

8. It is revealed from the evidence of the PW-2 that one Bwthwr called him over phone that someone would kill the informant. But, the informant has not stated in his evidence who called PW-2 and threatened him. None of the prosecution witnesses has stated that the accused threatened the informant. Moreover, the informant (PW-1) and PW-2 has clearly stated in their cross-examination that the informant (PW-1) filed the case on suspicion and due to misunderstanding. Thus, no evidence comes out against the accused as regards threatening the informant (PW-1). Having regard to lack of evidence, I am of the considered opinion that the prosecution has failed to bring home the charges against the accused and as such, accused deserves acquittal.

ORDER

9. In view of the conclusion made above, I hold the accused not guilty of the offences under Section 506 Part-II/507 I.P.C. and hence, he is acquitted of the said offences. Accused is set at liberty forthwith.

10. The bail-bond of the accused shall remain in force for a period of six months from the date of this order.

11. The judgment is delivered in the open Court in presence of the accused and his learned Counsel.

Given under my hand and the seal of this court on this 8th day of December, 2021.

(D. K. Kalita)

Addl. C.J.M., Udalguri

Dictated and corrected by me,

(D. K. Kalita)

Addl. C.J.M., Udalguri

APPENDIX

1. Prosecution Witnesses:

P.W.1- Sri Fresh Muchahari @ M. Fwilao

P.W.2- Sri Musuka Basumatary

P.W.3- Sri Mihiram Boro

2. Prosecution Exhibit:

Ext.1- Ejahar

3. Court Witness: Nil

4. Defence Witness: Nil

5. Defence Exhibit: Nil

(D. K. Kalita)

Addl. C.J.M., Udalguri