

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,  
UDALGURI : : ASSAM.**

**G.R. CASE NO. 492 of 2020  
(PRC NO. 735/20)**

**U/S- 448/354(B)/506 I.P.C.**

**Present: Smti. Ranjita Agarwalla,  
Chief Judicial Magistrate,  
Udalguri, Assam.**

**STATE**

**-VS-**

**MD. KALIMUDDIN**

**----- Accused person.**

**For the Prosecution : Mr. M. Khakhlari, learned Additional P.P.**

**For the Defence : Mr. J. Islam, learned Advocate.**

**Evidence recorded on : 22-02-21, 15-03-21, 19-04-21 and  
03-08-2021,**

**Argument heard on : 15-12-2021.**

**Judgment delivered on : 21-12-2021.**

**J U D G M E N T**

- 1.** The laconic facts of the prosecution case are that on 12-05-2020 a written ejahar was lodged by one Smti. Taslima Begum before the Officer-in-Charge, Kalaigaon Police Station stating inter-alia that on 06-04-2020 at about 12 P.M. while she was working at her kitchen, the accused person taking a 'dao' in his hand entered into the said kitchen and grabbed her from back, rolled her down on the ground and tried to remove her wearing cloths. As she raised hue and cry he threatened to kill her with the dao and just at that time her husband came and the accused fled away.

- 2.** After receiving the ejahar to the effect aforesaid, the Officer-in-Charge, Kalaigaon PS registered a case vide Kalaigaon PS case no. 44/20 U/S 448/354(B)/506 I.P.C. and on completion of the investigation, the Investigating Officer submitted charge sheet against the accused person alleging commission of offences U/S 448/354(B)/506 I.P.C.
- 3.** On the basis of the charge sheet, cognizance was taken under Section **190 (1)(b)** of the Cr.PC. The processes were issued for causing appearance of the accused person before the Court. Accordingly, the accused appeared before the Court and on his appearance, necessary copies of all relevant papers and documents were furnished to him. Finding a prima-facie case for commission of offences, the charge U/S 448/354(B)/506 I.P.C. were framed, read over and explained to the accused to which the accused person pleaded not guilty and claimed to stand trial.
- 4.** In order to bring home the case, the prosecution examined as many as six(6) PWs and one(1) CW in the form of:

**PW 1 Musst. Taslima Begum (informant)**

**PW 2 Md. Mukul Ali**

**PW 3 Md. Nazir Ali**

**PW 4 Md. Putul Ali**

**PW 5 Dr. Naren Baruah**

**PW 6 ASI Surendra Nath.**

The prosecution has also examined one witness in the form of:

**CW 1 Md. Karim Ali.**

The prosecution has also exhibited the following documents in the form of:

**Ext. 1 Ejahar.**

**Ext. 2 Medical report**

**Ext. 3 Sketch map**

**Ext. 4 Charge-sheet.**

- 5.** After recording the evidence of prosecution witnesses the accused person is examined U/S 313 Cr.P.C.. All the incriminating circumstances which appeared in evidence against the accused were put to him for his explanation. The accused

denied all the circumstances and pleaded his innocence. Further the accused person declined to adduce any evidence in defence.

**6.** I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused person. I have also carefully gone through the entire evidence available with the case record.

**7. POINTS FOR DETERMINATION:**

**(I)** Whether on 06-04-2020 at about 12 P.M. at village Naptipara under Kalaigaon Police Station the accused Kalimuddin entered into the house of the informant Musst. Taslima Begum with intent to commit an offence of criminal trespass and house trespass and thereby committed an offence punishable U/S 448 I.P.C.?

**(II)** Whether on the same day at the same time and same place, the accused person used criminal force upon the informant with the intention of disrobing her and thereby committed an offence punishable U/S 354(B) I.P.C.?

**(III)** Whether on the same day at the same time and place the accused person committed criminal intimidation by threatening the informant with her life with the intent to cause alarm and thereby committed an offence punishable U/S 506 I.P.C.?

**DISCUSSION, DECISION AND REASONS THEREOF:**

Now, for sake of convenience of discussion I would like to reproduce the evidences of prosecution witnesses.

**8.** The star witness **PW1 Musst. Taslima Begum**, who is the informant of this case, stated in her deposition that she knows the accused. During lockdown period one day while she was cooking food at her kitchen, the accused entered into the kitchen and caught hold her from backside and tried to outrage her modesty. The accused came armed with a dao in his hand. Then she raised hue and cry to which her husband rushed to the kitchen and then the accused fled away.

- When court enquired, **PW 1** i.e. the informant stated that the accused tried to disrobe her. The accused also threatened her not to make any hue and cry by pointing his dao to her.
- 9. PW 2 Md. Mukul Ali** deposed that the informant as well as the accused is known to him. Around three months back one day at about 2:30 P.M. he heard the hue and cry from the husband of the informant who came towards them and apprised that the accused was seen in compromising situation with his wife i.e. the informant and he had caught him and wanted the villagers to give justice. Then they came to the house of the informant but did not see the accused there.
- 10. PW 3 Md. Nazir Ali** stated in his deposition that on the day of occurrence at about 2 P.M. they were playing cricket and then they heard hue and cry from the house of the informant and they went there following the noise. He saw that the husband of the informant was taking the dao of the accused. He heard that while the informant was cooking food at her house, the accused caught hold of her from backside and tried to outrage her modesty.
- 11. PW 4 Md. Putul Ali** stated in his deposition that during lockdown in the year, 2020 at about 2 P.M. while he was watching cricket match, he saw the husband of the informant came out making a hue and cry and stated before them that the accused tried to outrage the modesty of his wife and also threatened his wife. i.e. the informant. Though they went to their house, but did not find the accused there.
- 12. PW 5 Dr. Naren Baruah, the Medical Officer** has deposed that on 12-05-2020 at about 5-7 P.M. he examined one Taslima Begum aged about 26 years and found no external injury. **Ext. 2** is the medical report and **Ext. 2(1)** is his signature.
- 13. PW 6 ASI Surendra Nath** stated that on 12-05-2020 he was entrusted with the case as Investigating Officer. The incident occurred on 06-04-2020 and the information was received by the Officer-in-Charge of Kalaigaon Police Station that one Kalimuddin molested the informant. Accordingly, he investigated the case and on completion of investigation he submitted charge-sheet U/S 448/354-B I.P.C. against the accused. **Ext. 3** is the sketch map, **Ext. 4** is the charge-sheet and **Ext. 3(1)** and **4(1)** are his signatures.

- 14.** **CW 1 Md. Karim Ali** who is the husband of the informant stated in his deposition that on the day of occurrence he was at home and the accused came to his house. The informant was in the kitchen. When he went towards the kitchen, he found the door was locked and when he pushed the door and opened it, he found both the accused and informant were pushing and pulling each other. Thereafter, he called the neighbouring people to solve the matter. The accused went to their house with a dao.
- 15.** Now, from the material available in the case record it appears the **PW 1** and the **CW 1** are the ocular witnesses of the case. PW 1 the alleged victim of the case claimed that one day during the period of lockdown, 2020 while she was cooking in her kitchen the accused came and caught hold of her from backside and tried to outrage her modesty and then she raised hue and cry whereby her husband came and thereby the accused fled away. Thus, according to PW 1 on hearing her hue and cry her husband came to the spot. But CW 1 stated that on the day of incident when he went to kitchen, he found the door was locked from inside and he forcibly pushed the door and when opened, found both the informant and accused pushing and pulling each other. But the PW 1 has not stated in her evidence that the accused locked the door and her husband by pushing the door opened up the same.
- 16.** It is noted that PW 1 in her cross examination stated that ***"she had not seen the accused at any time prior to the incident."*** However, contrary to this, PW 2 in his cross-examination stated that PW 1 i.e. the informant Taslima Begum knows the accused. Moreover, PW 1 in her cross examination candidly affirmed that prior to the commission of the incident, the accused was talking with her husband. In my considered view, if the accused was talking with the husband of the victim/informant, then how he came to the kitchen to outrage the modesty of the informant in presence of her husband?
- 17.** Moreover, it is noted that PW 3 Nazir Ali stated that on the day of incident during lockdown at about 2 P.M. while they were playing cricket they heard hue and cry in the house of the informant and saw the husband of the informant was taking a dao of the accused which was in the hand of the accused. Interestingly, the said husband of the informant who was examined as CW 1 has not stated that he took the dao of the accused and the informant is silent regarding holding of the said dao of the accused by the CW 1. In my opinion, if the husband of the informant took the dao of the accused person then he may produce the same before the

Investigating Officer and the Investigating Officer may seize the same. But there is nothing like this.

- 18.** **PW 3** in his cross-examination admitted that the accused lodged a case against him alleging stealing of jewellery from his wife and in that case he was in jail hajot. PW 1 & PW 2 also affirmed the said fact in their cross examinations. Therefore, enmity between the accused and Nazir Ali is apparently clear and for which he exaggeratedly stated that he saw one dao in the hand of the accused. Moreover, PW 2 and PW 4 who also claimed that they were watching cricket match at the time of alleged incident from a distance of 100 meter from the house of the informant. But PW 3 & PW 4 are total silent about the presence of the accused or holding any dao of the accused by the husband of the informant.
- 19.** Moreover, PW 1 in her cross-examination stated that there are residences of Sakim Ali, Babar Ali and Muktar in the northern side of her house, on south Billal Ali and Mannas Ali and Babu Ali and on east Rasid Ali and Khancha were located. CW 1 also fortify the said fact in his cross-examination. But the prosecution side has not examined those persons as prosecution witnesses to fortify their case. Besides, the Investigating Officer of this case **PW 6 ASI Surendra Nath** stated that he did not examine those persons whose residences were located at the place of occurrence as shown in the sketch map prepared by him. In my considered view, non-examination of the neighboring witnesses also creates smacks of doubt designed by the prosecution.
- 20.** The **Investigating Officer** of this case in his cross examination admitted that he did not seize any cloth from the informant. Prosecution might have seized the cloth of the victim or the dao which was in the hands of the informant's husband which was brought by the accused as alleged.
- 21.** Moreover, in the medical report **Ext. 2** also negated the prosecution case wherein the concerned Medical Officer who examined the victim Taslima Begum did not find any injury mark in the body of the victim. Thus, from the aforesaid discussion, the evidence of PW 1 is found not trustworthy and also not corroborated with the evidence of her husband i.e. CW 1 and the witnesses did not find the accused at the spot and in absence of supporting any documentary evidence i.e. medical evidence I find that the prosecution has failed to establish the case against the accused beyond all reasonable doubt.

- 22.** More so, it is a settled position of law that generally, in sexual offence except the victim no eye witnesses are present unlike in the case of physical assault or marpit case. But the testimony of the victim must inspire confidence of the court, but as discussed above, the testimony of PW 1 doesnot inspire the confidence of the court since PW 1 herself stated that she did not know the accused prior to the incident. But PW 1 herself negated the same and she herself claimed that prior to the incident the accused was talking with her husband. Generally it is not seen that the accused would not outrage the modesty of PW 1 without knowing her.
- 23.** This apart, if we minutely peruse the evidences of PW 1 and her husband i.e. CW 1 are not corroborating each other as discussed earlier. According to PW 1 when she raised hue and cry her husband arrived, but CW 1 stated that when he causally went to the kitchen he saw the incident. PW 2 stated that CW 1 stated before him that the accused was seen in compromising state with his wife. But CW 1 himself stated that he only saw pushing and pulling but in both the situations there is huge difference. Moreover, PW 3 stated that the informant's husband caught hold the dao from the hand of the accused, but PW 2 and PW 4 have not uttered anything that the CW 1 i.e. informant's husband nabbed the accused. Therefore, it appears the prosecution has failed to prove the offence **U/S 354(B) I.P.C.** against the accused.
- 24.** Regarding the **offence U/S 448 I.P.C.** none of the prosecution witness claimed that they saw the accused person went to the house of the informant or came out there from. Here, PW 2 & PW 4 the independent witnesses have not seen the accused person at the place of occurrence, i.e. in the residence of the informant. Herein, PW 3 stated that he came to the house of the informant on hearing hue and cry and saw that the husband of the informant was taking the dao of the accused which was initially at the hand of the accused. As PW 2 & PW 4 who accompanied PW 3 at the relevant time of occurrence to the house of the informant but due to his enmity he exaggerated and claimed to be an eye witness. Although both the PW 1 and CW 1 claimed that the accused person entered into their kitchen but since I have already discussed that the evidence of PW 1 & CW 1 doesnot inspire the confidence of the court, therefore, in absence of any independent witness to support the versions of PW 1 & CW 1 it is difficult to hold that the accused person committed house trespass at the residence of the

- informant. Therefore, it appears that the prosecution has failed to prove the offence **U/S 448 I.P.C.** against the accused person.
- 25.** Likewise, regarding offence under **U/S 506 I.P.C.** both the ocular witnesses i.e. the informant and her husband are silent in their evidences. Although the **PW 1** mentioned in the **Ext. 1 FIR** that the accused person threatened her to cut with a dao, but she did not disclose the same in her evidence. She stated that when she made hue and cry, her husband reached the spot and the accused fled away from the scene. Though the **PW1** stated that the accused came with a dao, but in her cross examination she clearly stated that prior to the commission of the incident, the accused was talking with her husband. Nowhere in her evidence **PW1** whispered that the accused threatened to kill her with the dao or for the act of the accused criminally intimidated her or by threatening her life which caused her alarm. As such, it appears that the prosecution has failed to prove the offence **U/S 506 I.P.C.** against the accused person.
- 26.** Last but not the least it is admitted fact that the incident occurred on 06-04-2020 for which the ejahar was lodged on 12-05-2020; but the informant in her testimony silent about such delay in lodging the ejahar. The Investigating Officer **PW 6 ASI Surendra Nath** in his cross examination admitted that prior to lodging the ejahar no GD Entry was made by him. In the ejahar PW 1 stated that as the villagers told her that they would provide her "Bichar" as such, there was delay in lodging the ejahar. It is noted that during trial none of the prosecution witnesses had whispered anything about calling of or holding of such "Bichar".
- 27.** In **Bishnu Deo Vs. State of Orissa (1982) 493** wherein the Hon'ble Supreme Court observed that "**Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought and on account of delay, the report not only gets bereft of the advantage of spontaneity, but danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and for these reasons, it is essential that delay in the lodging the first information report should satisfactorily be explained.**"
- Further, in the case of **Dilwar Singh Vs. State of Delhi (2008) 3 SCC (Cri) 330 (Div. Bench)** the Hon'ble Apex Court held that : incident



**occurred on 8.8.1984, whole complaint was made on 31.8.1984. Except a bare statement to the effect that representations were made to various persons, no material in that regard was adduced. Complainant seeking to explain the delay by stating that the matter was reported to the police, but the police did not take any action, but the modalities envisaged under Section 154 (3) not adopted. Held such allegations have to be established by calling for the necessary records from the police. Absence of such satisfactory proof was fatal to prosecution case.”**

- 28.** Thus, from the above discussion, I come to the conclusion that the prosecution has miserably failed to establish the case U/S 448/354(B)/506 I.P.C. against the accused person. In the result, the accused person not held guilty U/S 448/354(B)/506 I.P.C.

**ORDER**

- 29.** The accused person namely Md. Kalimuddin is acquitted from the charges U/S 448/354(B)/506 I.P.C. and he is set at liberty forthwith.

Bail bond shall remain in force for next 6 months as per provisions of Section 437(A) Cr.P.C.

Send a copy of this judgment to the District Magistrate, Udalguri for kind information as per provisions of Section 365 Cr.P.C.

Given under the hand and seal of this Court on this 21<sup>st</sup> day of December, 2021 at Udalguri, Assam.

**(Ranjita Agarwalla)**  
Chief Judicial Magistrate  
Udalguri, Assam.

**Dictated and corrected by me:**

**(Ranjita Agarwalla)**  
Chief Judicial Magistrate  
Udalguri, Assam.

**APPENDIX**

A. Prosecution witnesses : **PW 1 Musst. Taslima Begum (informant)**  
**PW 2 Md. Mukul Ali**  
**PW 3 Md. Nazir Ali**  
**PW 4 Md. Putul Ali**  
**PW 5 Dr. Naren Baruah**  
**PW 6 ASI Surendra Nath.**

The prosecution has also examined one court witness in the form of:

**CW 1 Md. Karim Ali.**

B. Defence witness : Nil.

C. Documents exhibited : **Ext. 1 Ejahar.**  
**Ext. 2 Medical report**  
**Ext. 3 Sketch map**  
**Ext. 4 Charge-sheet.**

**(Ranjita Agarwalla)**  
Chief Judicial Magistrate  
Udalguri, Assam.