

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ; JORHAT.

PRESENT ; Md.Manwar Ali, M.A, LL.B.,A.J.S.,

Chief Judicial Magistrate,

Jorhat.

Ref. : G.R.Case No.598 of 2009.

State -vs-

Smti. Gayatri Roy Gogoi ..... Accused.

U/s 448/427/506 of I.P.C.

Offences explained on	.....	09.09.2010.
Evidence recorded on	.....	19.11.2010; 25.01.2011; 18.04.2011; 18.06.2011.
Statement recorded on	.....	21.07.2011.
Arguments heard on	.....	17.11.2011.
Judgment delivered on	.....	21.11.2011.

**JUDGMENT.**

1. The prosecution initiated this case on receipt of an ejahar at Jorhat police station filed by one Smti. Ratna Sarma, wife of Sri Tarun Sarma of Jyotinagar, Tarajan, District Jorhat, alleging that on 28.06.09, at about 10-00 a.m. one of her neighbour Smti. Gayatri Roy Gogoi entered into her house in absence of the husband of the informant and damaged the household articles and also threatened her with dire consequences.
2. The officer-in-charge of Jorhat police station, on receipt of the said ejahar, registered a case as Jorhat P.S. Case No. 290/09, u/s 448/427/506 of I.P.C. and endorsed Taibur Rahman, S.I.of police, to take up the investigation of the instant case. After completion of the investigation the investigating officer submitted charge sheet against

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Accused Smti Gayatri Roy Gogoi u/s 448/427/506 of I.P.C.

3. On appearance of the accused before the Court, the necessary copies were furnished to her u/s 207 Cr.P.C. After hearing the learned counsel of both sides and perusal of the records, my learned predecessor found prima facie case u/s 448/427/506 of I.P.C. and the particulars of offences u/s 448/427/506 of I.P.C. were read over and explained to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution, in support of its case, examined as many as five witnesses who were cross-examined by the defence in extenso. The defence did not adduce any evidence. The statement of the accused was recorded u/s 313 Cr.P.C. The plea of the defence was nothing but an utter denial. I have also heard the arguments of both sides.

**POINTS FOR DETERMINATION :**

5. (I) Whether the accused person committed house trespass as alleged on the relevant date and time and thereby committed offence u/s 448 of I.P.C. ?

(II) Whether the accused person damaged the household articles of the complainant as alleged on the relevant date and time and thereby committed offence u/s 427 of I.P.C. ?

(III) Whether the accused person threatened the complainant, namely Smti. Ratna Sarma with dire consequences as alleged on the relevant date and time and thereby committed offence u/s 506 of I.P.C. ?

**DISCUSSIONS, DECISIONS AND REASONS THEREOF :**

6. P.W.1 Smti. Ratna Sarma is the informant as well as the victim. She has deposed in her evidence that on 10.06.09 , at about 10-00 a.m.

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at morning time, while her husband was absent, the accused entered into her house and threw a lathi on her person. The accused also threw one plastic chair on her body and the said chair got broken. Then P.W.1 wanted to talk with her husband over telephone which was snatched by the accused and in the process it got broken and the accused also abused the husband of P.W.1 over telephone. The accused also threatened P.W.1 to set fire by pouring kerosene oil on her. Thereafter, the ejahar was lodged. P.W.1 has further confirmed the ejahar marked as Ext.1 with her signature marked as Ext.1(1). In her cross-examination P.W.1 has further stated that one Chikan Hazarika and others saw the incident. Many suggestions were put by the defence during cross-examination of P.W.1 which were denied by her. But the defence could not disprove the fact that the accused entering into the house of P.W.1, damaged the household articles and also threatened her with dire consequences. I also do not find any reason to discard the evidence of P.W.1. So, I hold that P.W.1, being the eye-witness and victim, has stated truthfully.

7. P.W.2 Smti. Sneha Sarma has stated that she knows the accused person. The informant is her mother. At the time of the incident she was studying at her home. Then the accused came to her house and threw one lathi on her mother. The accused also entered into the drawing room and abused P.W.2. The accused also threw one plastic chair on P.W.1 which got broken. Thereafter, the accused abused the mother of P.W.2 with filthy language. The accused also threatened to set fire on her mother. P.W.2 has further stated in her cross-examination that the accused could

not cause any injury to her mother. Many suggestions were put by the defence during cross-examination of P.W.2 which were denied by her. It appears from the evidence of P.W. 2 that the evidence of P.W.1 is corroborated by the evidence of P.W.2.

8. P.W.3 Tarun Chandra Sarma has stated that he knows the accused person and the informant is his wife. On 28.06.09 the incident took place and at that time P.W.3 was at his place of posting at Digboi. On that day, at about 10-00 a.m. at morning time, the wife of P.W.3 informed him over telephone that the accused person entered into the house and abused his wife in filthy languages. The accused also threw a lathi on her person and also attempted to assault his wife with a chair. His wife was also threatened by the accused to set on fire. The accused also threatened the wife of P.W.3 with dire consequences. Thereafter, P.W.3 visited his house. The police also recorded his statement and during investigation the police seized his plastic chair. P.W.3 has further confirmed the seizure list marked as Ext.2 with his signature marked as Ext.2(1). In his cross- examination P.W.3 has further stated that he did not ask the neighbours about the incident. Many suggestions were put by the defence during cross-examination of P.W.3 which were denied by him.

9. P.W.4 Smti Sangeeta Kalwar has stated that she knows the informant Ratna Sarma. She is her neighbour. P.W.4 also knows the accused. On 24.06.09 she saw the police visiting the house of the informant. Next day she came to know about the incident from the informant. The defence has declined to cross-examine P.W.4.

10. P.W.5 Syed Taibur aRahman, S.I. of police, has stated that on 28.06.08 he was working at Jorhat police station as S.I. of police. On that day,

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one Smti. Ratna Sarma filed an ejahar and on receipt of the same the In-charge registered a case and endorsed P.W.5 to investigate the case. Thereafter, P.W.5 visited the place of occurrence and recorded the statements of the informant and other witnesses at the place of occurrence. P.W.5 also confirmed the seizure list marked as Ext.2 with his signature marked as Ext.2(2). After completion of the investigation P.W.5 submitted charge sheet against accused Smti. Gayatri Roy Gogoi u/s 448/427/506 of I.P.C. P.W.5 has further confirmed the charge sheet marked as Ext.3 with his signature marked as Ext.3(1).

11. Smti. D.Hazarika, learned Addl.P.P., while arguing for and on behalf of the State, has submitted that the prosecution has proved its case against the accused person beyond doubt and, therefore, Smti. D.Hazarika contended to accept the prosecution case and to convict the accused person.

12. Per contra, Mr. Uttam Kumar Bora, the learned defence counsel raised the following points before me :-

- (i) There is contradiction in the versions of the witnesses ;
- (ii) The prosecution witnesses are interested witnesses .

13. “Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through some human process.” (1978) 4-SCC-161.

14. There are some discrepancies, exaggerations in the statements of the P.Ws. for that reason, the evidence cannot be discarded. Much importance should not be given to minor discrepancies, they can be overlooked unless, discrepancies go to the root of the matter to impeach the basic version of the case. Further version here is supported by probabilities.

15. In the case of State of Himachal Pradesh -vs- Lakhraj (2000) 1 SCC-247, the Hon'ble Apex Court has distinguished minor discrepancies from

contradiction and held that minor discrepancies or variation in evidence does not make the case doubtful.

16. It is well settled law that the interestedness of witnesses is not fatal, if believed. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for proof or disproof of any fact.

17. I have carefully sifted the evidence on record. After careful appreciation of the materials in evidence on record, and keeping in view the position of law and in view of the foregoing discussions in the instant case, it is found that all the prosecution witnesses have implicated accused Smti Gayatri Roy Gogoi with the offence and I hold that the prosecution has come out with flying colours in bringing home the guilt of accused Smti. Gayatri Roy Gogoi u/s 448/427/506 of the I.P.C. beyond reasonable doubt. Accused Smti. Gayatri Roy Gogoi is, therefore, convicted u/s 448/427/506 of the I.P.C.

18. Therefore, taking into consideration of above observations and the gravity and the nature of the offence, I am reluctant to release the convicted accused person on Probation of good conduct or due admonition as per provisions of sections 3 or 4 of the Probation of Offenders Act or as per provisions of section 360 Cr.P.C.

19. Heard the accused Smti. Gayatri Roy Gogoi on the point of sentence u/s 248(2) of Cr.P.C. The accused has fervently prayed for leniency.

20. Considering the facts and circumstances of the case and nature of the offence and also considering the age of the accused person, instead of sentencing her to imprisonment I sentence accused Smti. Gayatri Roy Gogoi u/s 448 of the I.P.C. to pay fine of Rs. 1,000/- (Rupees one thousand) and in default of payment of fine the accused shall undergo simple imprisonment for one month, u/s 427 of thd I.P.C. to pay fine of Rs. 1,000/- (Rupees one thousand) and in default of payment of fine the accused shall undergo simple imprisonment for

one month and u/s 506 of the I.P.C. to pay a fine of Rs. 1,000/- (Rupees one thousand) and in default of payment of fine, the accused shall further undergo simple imprisonment for one month.

21. The fine amount, if realised, shall be paid to victim Smti. Ratna Sarma das compensation.

22. Let a free copy of the judgment be furnished to accused Gayatri Roy Gogoi forthwith.

23. Judgment is pronounced in the open Court under my hand and seal of this Court on this 22<sup>nd</sup> day of November, 2011, at Jorhat.

Chief Judicial Magistrate,

Jorhat.

Dictated & corrected by me :-

Chief Judicial Magistrate,

Jorhat.

Transcribed & typed by :-

P.K.Bora,

Stenographer.