

DISTRICT : KOKRAJHAR**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,
KOKRAJHAR****GR Case No. 893/2016**

Under Section 354(D)/506 of I.P.C

State of Assam

..... Complainant

-Vs-

Sri Supwen Murmu

..... AccusedPRESENT : **Achyutananda Saikia, AJS**

APPEARANCE:

For the State: Sri Lakshman Barman, Ld. APP

For the Accused: Md. Abdur Rashid Mondal, Ld. Advocate

Date of Charge: 21.11.16

Date of Evidence: 15.12.16 and 12.01.17

Date of Argument: 20.01.18

Date of Judgment: 30.01.18

JUDGMENT

1. The prosecution case is initiated with the lodging of an FIR by one Sri Rabin Hasda before the In-Charge of Salakati Out Post under Kokrajhar P.S. to the effect that on 23.08.16 at about 9:00 AM when his daughter/victim (name withheld) was going to Jaregaon High School the accused followed her in a motor cycle and at Simlaguri village he intercepted her and threatened her to kill if she refused to get married

with him and he also threatened her to kill her husband or any member of her family if she married other man. Hence the case.

2. Accordingly, Kokrajhar Police Station Case No. 491/16 was registered under Section 354(D)/506 of IPC and after completion of investigation police submitted Charge Sheet under Section 354(D)/506 of IPC against the accused.
3. The accused appeared before court on issue of process and copies of relevant documents submitted by the Investigating Officer under Section 173 of Cr.P.C. were furnished to him under Section 207 of Cr.P.C. Formal charges under Section 354(D)/506 of IPC were framed against the accused and contents of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.
4. During trial prosecution examined as many as four prosecution witnesses. The accused was examined under Section 313 of Cr.P.C. and defence case is of total denial. Defence did not adduce evidence.

POINTS FOR DETERMINATION

5. Whether the accused Sri Supwen Murmu on 23.08.16 at about 9:00 AM was following and contacting the victim when she was going to her school to foster personal interaction with her repeatedly inspite of clear indication of disinterest from her and threatened her to kill her or any member of her family with intent to cause alarm to her to get married with him which she was not legally bound to do, and thereby committed offence punishable under Section 354(D)/506 of IPC.
6. I have heard arguments of both sides and carefully examined the evidence on record.

DISCUSSION on EVIDENCE , DECISION and REASON THEREOF

7. PW 1, informant Sri Rabin Hasda has stated in his evidence that on 23.08.16 at about 9:00 AM when his daughter/victim was going to Jaregaon High School by riding her bicycle the accused followed her by a

motor cycle and he intercepted her at Simlaguri village on the road and asked her as to whether she would get married with him. He has also stated that the accused was following her constantly and told her that if she refused he would kill her or if she was given in marriage to someone else he would kill her or her husband or would kill someone else of her family. PW 1 has further stated that his daughter requested the accused not to interfere into her life, but the accused followed her even to her school. PW 1 has further stated that on being informed about the same by his daughter he approached the Gaonbura who asked him to approach police as he already convened 'bichar' regarding previous attempt of the accused to contact and make relation with his daughter. PW 1 has also stated that the accused liked his daughter and wanted to marry her and it was made clear in the previous 'bichar' that she would not be given in marriage to the accused. PW 1 waited for a 'bichar' till 25.08.16 and since the accused did not come forward for the 'bichar' he finally lodged the FIR on 26.08.18. Prosecution marked the FIR as Ext. 1.

There is nothing material in cross examination of PW 1 except certain suggestions which PW 1 denied.

8. PW 2/victim has stated in her evidence that on 13.08.16 at about 9:00 AM when she was going to her school at Jaregaon by riding her bicycle the accused followed her in a motor cycle and he intercepted her at Simlaguri village on the road and asked her as to whether she would get married with him and that he followed her constantly and told her that if she refused he would kill her, or if she was given in marriage to someone else he would kill her or her husband or someone else of her family. She has also stated that she requested the accused not to interfere into her personal life but he did not hear and even followed her till she reached her school.

In cross examination PW 2 stated that there were other passerby people on the road when the accused followed her. She denied the suggestion that she had love affair with the accused and as her parents would oppose she had falsely told her parents that the accused followed her and

put pressure on her to get married with him and that she made the false allegation to save herself from anger of her parents.

9. PW 3 Smti. Pranati Murmu, mother of the victim, has also stated in her evidence that on 23.08.16 at about 9:00 AM when the victim was going to her school at Jaregaon by her bicycle the accused followed her in a motor cycle and he intercepted her at Simlaguri village on the road and asked her as to whether she would get married with him and that the accused followed her constantly and told her that if she refused he would kill her, or if she was given in marriage to someone else he would kill her or her husband or someone else of her family. She has also stated that her daughter requested him not to interfere into her personal life but he did not hear and even followed her till she reached her school.

In cross examination PW 3 also denied the suggestion that her daughter had love affair with the accused and that as its revelation would make her family ashamed in society they have falsely implicated the accused.

10. PW 4 Sri Mohan Hasda has also stated in his evidence that on 23.08.16 the accused followed his niece/victim when she was going to her school by a bicycle and the accused restrained her on the road and threatened her to kill if she refused to get married with him. He has also stated that the accused also threatened her by saying that if she marries another he would kill that man or you would kill her family members. There is nothing material in his cross examination.
11. It is seen from the evidence on record that the witnesses have corroborated that on 23.08.16 at about 9:00 AM when the victim was going to her school the accused followed her, intercepted her on the road and criminally intimidated her to get married with him and also threatened her to kill herself or any member of her family if she was given in marriage to some other person. Thus the witnesses have corroborated to the prosecution case. Now the question is as to how far the allegation of the victim is believable, as it is the victim only whose evidence is direct, and the evidence of others are hearsay. Victim in her cross examination mentioned that there were other passerby people on

the road and the accused was following her by motorcycle. However, prosecution has failed to bring evidence of any such independent and eye witness to substantiate the version of the victim that the accused was following her inspite of her clear indication of disinterest.

12. There is no heard and fast rule that the Court will always look for corroboration of independent witnesses, if the prosecution otherwise establishes the case. Even if we brush aside the evidence of PW 2, 3 & 4 who are only reported witnesses, evidence of the victim may be sufficient in establishing the prosecution case without corroboration, provided the victim's evidence stands to the test of credibility and trustworthiness. Now if we make an experiment to test the credibility and trustworthiness of the version of the victim, we find miss-composition in the prosecution case as the informant/PW 1 has clearly stated in his evidence that the accused liked his daughter and he wanted to marry her. So it can be assumed that there was some kind of affair between the victim and the accused which instigated the accused to develop love towards the victim for which he even wanted to marry her. PW 1 mentioned in his evidence that there was a previous 'bichar' in their village regarding the matter and it was made clear to the accused that the victim would not be given in marriage to the accused and he was asked to refrain from contacting the victim. Now if we assume that the accused was in fact asked to refrain from contacting the victim, his subsequent conduct of stalking giving rise to the present case is tending to attract penal-liability as charged.
13. The accused in his examination under 313 of Cr.P.C. has stated that he met the victim on the road at Kalipukhuri, but it was the victim who asked him where he was going and that he told her that he would go to market and he left the place. He has also stated that the victim wanted to get married with him but he refused and that there was a village 'bichar' also regarding this and he refused to marry the victim and so victim's father has lodged this case falsely on him and the witnesses have deposed falsely to implicate him into this false case. Now, if the statement of the accused is to be considered, the same adds to the assumption that there was love affair between the accused and the victim which is also indirectly

admitted by PW 1, father of the victim when he mentioned in his evidence that the accused liked his daughter and wanted to marry her. Furthermore, regarding the evidence of PW 1 that there was a previous 'bichar' where it was decided that the victim would not be given in marriage to the accused and that the accused was asked to refrain from contacting the victim, the evidence of the Gaonbura who held the 'bichar' named by PW 1 as Bhundaram Murmu is also not brought on record by prosecution to substantiate that there was in fact a 'bichar' and that the accused was in fact asked to refrain from contacting the victim, to satisfy the element of 'disinterest' of the victim in further attempt to establish contact with her by the accused.

14. Thus, from observing the above I am of the opinion that prosecution has failed to establish that the accused was stalking the victim inspite of clear indication of disinterest on her part and observing thus the element of criminal intimidation on the part of the accused has also gone to oblivion.

ORDER

15. The prosecution has failed to establish the guilt of the accused Sri Supwen Murmu beyond reasonable doubt by adducing sufficient evidence.
16. The accused is thus acquitted from the charges punishable under Section 354(D)/506 of IPC and set at liberty forthwith.
17. The bail bond shall remain in force for next six months from today.

Given under my hand and seal of this Court on this the 30th day of January, 2018.

(Typed by me)

ACHYUTANANDA SAIKIA

Judicial Magistrate 1st Class, Kokrajhar

ACHYUTANANDA SAIKIA

Judicial Magistrate 1st Class, Kokrajhar

APPENDIX**1. Witnesses for Prosecution**

P.W. 1: Sri Rabin Hasda
P.W. 2: Victim
P.W. 3: Smti. Pranati Murmu
P.W. 4: Sri Mohan Hasda

2. Witnesses for Defence

NIL

3. Court Witnesses

NIL

4. Prosecution Exhibits

Ext. 1: FIR

5. Defence Exhibits

NIL

ACHYUTANANDA SAIKIA

Judicial Magistrate 1st Class, Kokrajhar