

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,**

**DIBRUGARH**

**Case No. 70C/ 14**

**U/S 294/506/34 IPC**

**COMPLAINANT:**

**SRI. RATNESWAR KONWAR**

**S/O LATE JATIN KONWAR**

**R/O GOGOI NAGAR, DHEKERI GAON**

**BOKPARA, GHARBANDI CHUK**

**P/S DIBRUGARH**

**Vs**

**ACCUSED:**

**1. SRI. ASHUTOSH BISWAS**

**S/O. LATE NIRANJAN BISWAS**

**2. SMTI. SIMA BISWAS**

**W/O. SRI. ASHUTOSH BISWAS**

**BOTH ARE R/O KODOMONI**

**NEAR SAMPURNA KEDNRIYA VIDYALAYA**

**DIBRUGARH**

Present : Smti. Talat Nasrat Jabin, AJS

Ld. Advocate present :

For the complainant : Sri. Gokul Pareek

For the accused : Sri. Manoj Kumar Sahu

Evidence recorded on : 18/11/16, 06/02/18, 20/06/118  
03/08/18, 21/12/18.

Final argument heard on : 26/04/19.

Date of judgement : 06/05/19.

## **JUDGEMENT**

- 1.** The instant case was set at motion by the complaint petition filed by the complainant Sri. Rotneswar Konwar stating that in the year 2012, August the complainant purchased a plot of land from the accused person measuring 1 Kotha 5 Locha under the dag number 133 situated at Bokapara, Gharbandi Chuk, Dhekeri Gaon, Gogoi Nagar under Mancotta Khanikar Mouja and paid total consideration of amount 6 lacs 80 thousand in several instalments. The complainant made the last payment on 20/06/2014, and in this transaction the accused person visited the house of the complainant and took the full and final amount of rupees 3 lacs 40 thousand and said to the complainant that he would give the clearance certificate and money receipt on the next day. However on the next day, on 21/06/2014 the complainant and his son, his daughter and his son in law and others went to the shop of the accused person to ask for the money receipt as well as the clearance certificate, but in that event the accused person instead demanded another amount of rupees 50,000 or else refuse to give the clearance certificate. The accused person abused the complainant and his family members with filthy language and threatened him with dire consequence by stating that he would filed false complainant against the complainant. The complainant had filed several complainants before the police but the police neglected to take any action against the accused person and finding no other alternative the complainant has moved to the court with the instant complainant petition.
- 2.** On receipt of the complaint petition the statement of the complainant and other witnesses under section 200 CrPC was recorded and upon finding prima facie material against the accused persons, summons under section 204 CrPC was issued against the accused persons.
- 3.** On appearance of the accused persons the particulars of offence under section 294/506/34 IPC was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4. Points of determination:**

  - i. Whether the accused persons in furtherance of common intention abused the complainant and his family members with filthy language and thereby committed offence punishable U/S 294 read with 34 IPC?

- ii. Whether the accused persons in furtherance of common intention threatened the complainant and his family members with dire consequences and thereby committed offence punishable U/S 506 read with 34 IPC?

#### **5. THE TRAIL:**

The complainant in the course of trial examined 5(five) witnesses and exhibited 3(three) documents. Considering the testimony of the witness the statement of the accused person U/S 313 CrPC is was recorded and tagged with the record.

The defence side had examined himself and did not exhibited any document.

#### **6. DISCUSSION, DECISION AND REASONS THEREOF:**

Let me first consider the evidence of the several witnesses adduced by the complainant side.

PW1, Sri. Ratneswar Konwar in his evidence stated that he is the complainant and he has filed this case against Sri. Ashutosh Biswas and Smti. Sima Biswas. He further stated that on 24/08/2012 he purchased a plot of land measuring 1 kotha 5 locha which was in possession of Ashutosh Biswas along with a thatch house for a consideration of 6 lacs 80 thousands agreed upon by both the parties. he paid rupees 2 lacs in cash on the day of the agreement and on 18/10/2012 he paid an amount of rupees 30 thousand, on 01/02/2013 he paid another amount of rupees 40 thousand and on 02/02/2013 he paid rupees 10 thousand, on 02/08/2013 he paid an amount of rupees 40 thousand, on 27/07/2013 he paid Another amount of rupees 10 thousand and after that on 01/12/2013 he paid an amount of rupees 20 thousand and the remaining amount of rupees 3 lacs 40 thousand was paid on 20/06/2014 which was the last payment. This payment was made to the accused person in the house of the complainant in presence of the accused person and one of his companion, and family members of the complainant. The accused person told the complainant that he would give the money receipt of the last payment on the next day. On the next day the complainant waited up to 5 PM but the accused person did not turn up. On the next day the complainant went to the shop of the accused person. The accused person asked for another amount of rupees 50 thousand from the complainant or else he refused to give the money receipt. The accused person and his wife abused the complainant with filthy language and chased him

out of the shop. The accused person did not give the money receipt till date however the complainant took the possession of the land and had constructed his house. The complainant side has adduced the following exhibits:

- Ex. 1 : Agreement cum sale deed.
- Ex. 2 : Revenue payment receipt of 2012 to 2014.
- Ex. 3 : Revenue payment receipt of 2014 to 2015.
- Ex. 4 : Revenue payment receipt of 2015 to 2016.
- Ex. 5 : Money receipt of 10/10/12.
- Ex. 6 : Money receipt of 01/02/13.
- Ex. 7 : Money receipt of 02/02/13.
- Ex. 8 : Money receipt of 12/04/13.
- Ex. 9 : Money receipt of 27/06/13.
- Ex. 10 : Money receipt of 07/12/13.
- Ex. 11(1) to 11(13) : APDCL receipt.
- Ex. 12(1) to 12(20) : APDCL Bill.
- Ex. 13 : APDCL Test Certificate.
- Ex. 14 : Complaint dated 03/04/2013.
- Ex. 15 : Complaint dated 10/09/2013.

He further stated that in connection with the alleged matter he had filed a complaint before the SP and DC of Dibrugarh and due to which the complainant had taken bail from Sessions court Dibrugarh.

PW1 in the cross examination stated that on 24/04/2012 he had purchased a plot of land measuring 1 kotha 5 locha from the accused person along with a thatch house. He stated that he has taken the receipt of every instalments paid by him. The electric city bills submitted by him are not in his name. Those bills are in the name of his wife. The agreement for purchased of land was in his name. He has not furnish the receipt of amount of rupees 3 lacs 40 thousand in the court because the same was not given by the accused person. He further stated that the accused person had filed a civil case against him for default of payment. He further stated that exhibit 5 to exhibit 10 is typed by him and the accused person had afterwards sign the same. The accused person has send the legal notice to him. He further stated that the accused person has filed a case against him by GR number 1992/14 in which he has taken bail.

PW2, Sri. Bikramjit Konwar in his evidence stated that on 24/08/12 his father purchased a plot of land measuring one Kotha 5 Locha under the Dag No. 133 from the accused person under a consideration of Rs. 6,80,000. On that day

and advance amount of rupees 2 lacs was paid by him to the accused person and an agreement was signed. As part of the agreement the possession of the land along with a half constructed house on the land was given to his father. And it was agreed that the remaining amount of rupees 4,80,000 will be paid to the accused person on the basis of the capacity of his father. Exhibit 1 is the agreement and sale deed signed between his father and the accused person. Exhibit 2 to exhibit 15 are the money receipts and other documents. As per the exhibited money receipts his father had pay the remaining amount from time to time to his father. His father paid amount of rupees 3,40,000 in this way and the remaining 3,40,000 was paid to the accused person on 20/06/2014. The said amount was taken by the accused person at their house. The accused person stated that he left the money receipt book at his house and therefore stated that he would give the clearance certificate on the next day. Believing the accused person they paid the amount accordingly. But the accused person refused to give the money receipt and the clearance certificate. Therefore on 21/06/2014 they went to the shop of the accused person at Naliapool. PW2 was accompanied by his sister, his brother in law, his father and another person name Saukat Ali. They asked for the money receipt and the clearance certificate. At that time both the accused person were present in the shop. When PW2 and other people asked for the clearance certificate, the accused person asked for another amount of rupees 50,000 and said that he would give the money receipt and the clearance certificate only after payment of rupees 50,000. It was refused by PW2 and his family members. The accused person abused them with filthy language and threatened them that he would file a false case against them. He further stated that the accused person has good relation with the police and it is for that reason they did not went to the police.

PW2 in the cross examination stated that he is a businessman. He stated that the papers relating to the land is prepared by him and he has also prepared the money receipt as well as the stamp paper which has been signed by notary officer. He stated that the money value of the land is 6 lacs 80 thousand and they have submitted the money receipt of amount of rupees 3 lacs 40 thousand. They have not submitted any other money receipt. He stated that the accused person owns his shop at Naliapool Market and on the day of the incident there was no customer at the shop of the accused person. There are other shop near the shop of the accused person. He further stated that they were 5 people who

went to the shop of the accused person and both the accused persons and his wife were present at the shop.

PW3, Sri. Saukat Ali in his evidence stated that on 20/06/2014 he was present in the house of Ratneswar Konwar. On that day both the accused person came to the house of Ratneswar Konwar. Ratneswar Konwar informed PW3 that he was about to make his final payment. On that day Ratneswar Konwar paid an amount of rupees 3 lacs 40 thousand to the accused person on cash. He was present at that time. The accused person told Ratneswar that he would give the money receipt on the next date and on the next day Ratneswar took PW3 along with him to bring the money receipt. When they went to asked for the money receipt the accused person and his wife asked for another amount of rupees 50 thousand. When they refused the accused person and his wife shouted and abused them with filthy language. At that time Ratneswar was along with his son, daughter and son in law. The accused person refused to give the money receipt.

PW3 in the cross examination stated that they were 5 people who went to the shop of the accused person. PW3 remained in the shop of the accused person for 15 to 20 minutes and when the quarrel started he left the place. He further stated that though there was a quarrel but the nearby people did not gather at the place of occurrence. He further stated that he did not know the name of the shop of the accused person. He stated that he did not know what happened between the complainant and the accused person and he was present at the time of payment of rupees 3 lacs 40 thousand. The amount congested of 3 bundles containing 1 thousand rupees and the amount of rupees 40 thousand included notes of rupees 5 hundred.

PW4, Smti. Purbali Konwar in her evidence stated that the complainant is her father. On 24/08/2012 her father Sri. Ratneswar Konwar entered into a written agreement with the accused person Sri. Ashutosh Biswas to purchase his plot of land measuring 1 kotha 5 locha for a consideration and price of rupees 6 lacs 80 thousand and of which he paid an advanced amount of rupees 2 lacs. Accordingly her father constructed a house on the land the place were plot of land is situated is Ghorbandi Chuk, Dhekeri Gaon. It was agreed that the remaining amount will be paid by her father according to his convenience. Her father paid an amount of rupees 3 lacs 40 thousand from time to time and paid the remaining amount of 6 lacs 80 thousand on 20/06/2014. The amount was paid at their house and the accused person came to their house to take the

amount. The amount was paid on cash. She was present at the time when the cash amount was paid. Her father asked for the money receipt but he said that he would give the money receipt on the next day. But he did not come till the evening of the next day therefore PW4 and her family member went to his house. She was accompanied by her husband, her father and one friend of her father. They went to the shop of the accused person at Naliapool. They were also accompanied by her brother. Her father asked for the money receipt but the accused person demanded another amount of rupees 50 thousand. Her father refused but the accused person misbehaved with him. He abused her father with filthy language. They have not received the money receipt yet.

PW4 in the cross examination stated that she did not know about the content of the complaint petition. The final amount of rupees 3 lacs 40 thousand was paid in the evening in the presence of herself, her mother, her husband, her brother and a friend of her father. She further stated that the shop of the accused person is at Naliapool. There are several other shops in that place. She does not know the name of the shop of the accused person. She was present for 15 to 20 minutes outside the shop of the accused person. The people of the locality did not gather at the time of the incident. She stated that she did not know who had prepared the papers of land. She further stated that the shop of the accused person is located on a road leading to AMCH on left side of Naliapool.

PW5, Sri. Tultul Baruah in his evidence stated the complainant is his father in law. The complainant purchased a plot of land for an amount of rupees 6 lacs 80 thousand and paid an advance amount of rupees 2 lacs to the accused person. The plot of land measured 1 kotha 5 locha. The plot of land is situated at Gogoi Nagar. He further stated that he was present at the time when the money was paid and it was agreed upon that the complainant would pay the remaining amount as per his convenience. The complainant paid the amount of rupees 3 lacs 40 thousand as per his convenience and the plot of land was handed over to the complainant by the accused person. And on 20/06/2014 the complainant paid the remaining amount of rupees 3 lacs 40 thousand to the accused person. PW5 was present at the time of payment of the amount. They asked for the money receipt from the accused person. The accused person said that he would hand over the clearance certificate on the next date but he did not give the same and because of this he, his wife, his brother in law, his father in law and one friend of his father in law went to the shop of the accused person. The shop of the accused person is at Naliapool. The accused person was present

at the shop. When the complainant asked for the receipt the wife of the accused person demanded another amount of rupees 50 thousand. The complainant refused the same. At this the wife of the accused person push his father in law. And the accused person abused his father in law by saying "get out" and pushed him outside the shop.

PW5 in the cross examination stated that the complainant works in the electrical department of railway. He further stated that there is the money receipt for an amount of rupees 3 lacs 40 thousand. He further stated that the accused person owns an electrical shop but he did not know whether the shop was Assam type or RCC. There are several other shop near the shop of the accused person. On the day of the incident there was no customer in the shop of the accused person. He further stated that many people gather at the shop of the accused person on the day of the incident.

DW1, Sri. Ashutosh Biswas in his evidence stated he owns a plot of land with half constructed house at Pub Banipur measuring 1 Kotha 5 lusha. He was in need of money and therefor asked Sri. Ratneswar Konwar to sell his plot of land. Ratneswar Konwar agreed to buy the plot of land measuring 1 kotha 5 lusa for a consideration of rupees 6 lacs 80 thousand. They also prepared an agreement between them. The complainant paid an amount of rupees 2 lacs as advanced amount on the day of the agreement. After that he paid an amount of rupees 3 lacs 40 thousand in different part. Sometime he paid 20 thousand, 50 thousand and likewise. The complainant did not pay the remaining amount. And when DW1 asked the complainant for the same he refused to give the amount but instead abused him with filthy language and threatened him with dire consequences (Muk Marim Pitim Buli Koi). DW1 had filed a civil case against the complainant and he has stated that the fact alleged by the complainant that he had asked for another amount of rupees 50 thousand is completely false. He further stated that neither the complainant ever visited his shop nor did he go to the house of the complainant. He stated that the complainant used to bring money receipt of whenever he paid any amount to the accused person and the accused person signed the money receipts. He stated that the complainant with his son in law threatened him with dire consequence.

DW1 in the cross examination stated that he gave the possession of his land to the complainant on 24/08/2012. The sale deed was prepared by the complainant. He stated that he has not given the register deed. He further stated



that the receipts which are furnish in this case for payment of money at several occasion is genuine. He stated that on 20/06/2014 he received a total amount of rupees 3 lacs 40 thousand but he did not give the clearance certificate because the consideration of the plot of land was agreed as 6 lacs 80 thousand. He did not received the remaining amount.

#### **7. APPRECIATION OF EVIDENCE:**

In the instant case the accused persons are booked under section 294/506/34 IPC. On perusal of the evidence on record it is reflected that the entire incident centres round buying and selling of a plot of land by the complainant from the accused person. As per the allegation from the complainant side he paid the total amount of consideration which was agreed upon by them amounting to rupees 6 lacs 80 thousand. But as per agreement the accused person did not hand over the clearance certificate to him. However it is admitted that the accused person gave the possession of the land to the complainant. The complainant in order to take the clearance certificate went to the shop of the accused person but the accused person asked for another amount of rupees 50 thousand and refused to give the clearance certificate. The accused person also abused him and threatened him. The above stated fact is reinstated by all the prosecution witnesses. The evidence from the prosecution side is denied by the accused person in his defence by stating that from the amount of rupees 6 lacs 80 thousand he had received only rupees 3 lacs 40 thousand. A therefore he has not given the clearance certificate. He also denied the fact that the complainant and his family members came to his shop. Now as per the charges under which the accused person is booked the cause of action arose at the shop of the accused person. Section 294 IPC clearly provides that a person shall be guilty under this penal provision if he ever use any obscene words or does any obscene act in any public place. Here the evidence of prosecution witnesses does not reflect the use of any obscene words or any other obscene act by the accused person which would annoy the complainant. PW5 in his evidence stated that the accused person used the word "get out" against the complainant. The word get out is not obscene as per dictionary meaning. Thus there is no material under section 294 IPC against the accused person.

Secondly, the accused person is alleged to have threatened the complainant with dire consequence. One of the essential requirement of section 506 IPC is that the criminal intimidation or the threatening must create alarm on the person against whom such threatening is made. In the instant case the

evidence from the prosecution side reflects that no such alarm was caused to the complainant. There is no evidence from the prosecution side that the accused person had threatened the complainant to cause injury to his person or his reputation or property which would create alarm to him. Thus the case under section 506 IPC has not been established against the accused persons.

Thus the complainant had miserably failed to prove the case against the accused persons Sri. Ashutosh Biswas and Smti. Sima Biswas under section 294/506/34 IPC.

**ORDER**

The accused persons Sri. Ashutosh Biswas and Smti. Sima Biswas are acquitted under section 294/506/34 IPC and set at liberty henceforth.

The bail bond of the accused persons shall extend to another six months as per section 437 A Crpc.

Given under my hand & seal of this court and delivered in the open Court on this 6<sup>th</sup> of May, 2019.

Talat Nasrat Jabin, AJS

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Judicial Magistrate First Class, Dibrugarh

**Appendix:**

List of prosecution witnesses

PW1: SRI. RATNESWAR KONWAR

PW2: SRI. BIKRAMJIT KONWAR

PW3: SRI. SAUKAT ALI.

PW4: SMTI. PURBALI KOWNAR.

PW5: SRI. TULTUL BARUAH.

List of defence witnesses:

DW1: SRI. ASHUTOSH BISWAS

Exhibits of prosecution side

Ex. 1 : Agreement cum sale deed.

Ex. 2 : Revenue payment receipt of 2012 to 2014.

Ex. 3 : Revenue payment receipt of 2014 to 2015.

Ex. 4 : Revenue payment receipt of 2015 to 2016.

Ex. 5 : Money receipt of 10/10/12.

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Ex. 11(1) to 11(13) : APDCL receipt.

Ex. 12(1) to 12(20) : APDCL Bill.

Ex. 13 : APDCL Test Certificate.

Ex. 14 : Complaint dated 03/04/2013.

Ex. 15 : Complaint dated 10/09/2013.

Exhibits of defence side

NIL

Signature

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