

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 458 OF 2015
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MUSSTT. JUBUN NEHAR

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 458 / 2015

U/S 447/294/500 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MUSSTT. JUBUN NEHAR

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SRI SANJIB GOGOI

OFFENCE EXPLAINED ON : 29/04/2017
EVIDENCE RECORDED ON : 01/12/2017, 29/03/2018, 06/06/2018, 29/08/2018

ARGUMENT HEARD ON : 07/03/2019
JUDGMENT DELIVERED ON : 11/03/2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R. is that, about one year prior to the lodging of F.I.R, the managing committee of DaulatpurPaschimpara Primary School removed accused Musstt. JiabunNehar from the post of cook of that school after following the Departmental rules. Thereafter, on repeated request of the accused for re-consideration of the aforesaid decision of removal, the school managing committee and the guardians of students held a meeting for that purpose,

but the public present in that meeting expressed their unwillingness for appointment of accused in the post of cook. For that reason, since last 18.02.2015, the accused on various occasions entered into the premises of aforesaid school and rebuked the teachers and other cooks of that school and thereby disturbed the environment of the school. The informant thereafter communicated the matter to B.E.E.O. and subsequently lodged an F.I.R. before the O.C. of Bihpuria P.S.

2. On receipt of the F.I.R. by O/C of Bihpuria P.S a case was registered being numbered as Bihpuria P.S Case No. 84/2015 and after investigation I.O of the case submitted charge sheet against accused Musstt. JubunNehar for the offence punishable under section 447/294/500 of I.P.C. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of the offences punishable u/s 447/294/500 of IPC are read over and explained to the accused person to which she pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined six witnesses whereas the accused did not examine any witness in support of his defence. The accused was examined u/s 313 CrPC. Her statements are recorded in separate sheets and kept with the case record. Defence case is of total denial as it reveals from the statement of accused and also the tenor of cross – examination of prosecution witnesses by defence. Defence declined to adduce evidence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

POINTS FOR DETERMINATION:

- (i) Whether the accused person on various dates after 18.02.2015, more particularly on 04.03.2015, entered into the school premises of Daulatpur Paschimpara Primary School with the intent to commit an offence, or to intimidate insult, or annoy the informant or the school teachers or school authority, who were in possession of that school?
- (ii) Whether the accused person on various dates after 18.02.2015, more particularly on 04.03.2015, entered into the school premises of Daulatpur Paschimpara Primary School, which is a public place and is also situated near to other public places, and thereafter uttered any obscene words to the annoyance of the informant or others?

- (iii) Whether the accused person on various dates after 18.02.2015, more particularly on 04.03.2015, inside the school premises of Daulatpur Paschimpara Primary School, by her words spoken made any imputations concerning the informant or the school authority of aforesaid school intending to harm, or knowing or having reason to believe that such imputations will harm the reputation of informant or other persons of the school authority?

DISCUSSION OF EVIDENCE, REASONS AND DECISION THEREOF:-

5. For the sake of convenience, and as the point for determination no.1,2 and 3 are interconnected, hence they are taken up herein together for discussion and decision.
6. As regards the aforesaid points for determination, PW1 Md. Jubed Ali in his evidence in chief has stated that he is the informant. At the time of occurrence he was the President of school managing committee of Daulatpur Paschimpara Primary School. The accused was employed as a cook in that school. Subsequently due to negligence of the accused in performing her duty the school managing committee removed her from service. However, the accused came to said school alongwith other females and rebuked the school authority by using obscene language. He then informed the matter to block primary education officer (B.E.E.O) and subsequently lodged F.I.R at the instruction of B.E.E.O. Exhibit -1 is that F.I.R in which exhibit – 1(1) is his signature.
7. During his cross-examination, PW1 has stated that the occurrence took place on or about 04/03/2015. He do not know if he has mentioned that date in F.I.R. The F.I.R was written by a clerk and not by him.
8. PW2 Md. Hedaitul Islam in his evidence in chief has stated that in the year 2015, he was the member of school managing committee of Daulatpur Paschimpara Primary School. Accused was a cook in that school at that time. Accused committed negligence in performing her duty. Thereafter the school managing committee suspended the accused for some days from her duty. However, the accused brought other females to the school and engaged in altercation with the teachers and students of that school. The matter was then informed to B.E.E.O. During his cross-examination PW2 has stated that at the time of occurrence there were three cooks in that school.

9. PW3 Musstt. Mallika Begum in her evidence in chief has stated that she knows the accused and informant. About three years back the occurrence took place on a day in between 07:00 to 12:00 P.M. The informant and accused often used to involve in altercations. She heard the altercation between informant and accused. The altercation took place as the accused was denied to work as cook in the school. During her cross-examination, PW3 has stated that the informant is the president of that school. She/PW3 earlier used to work as cook in that school. She/PW3 and the accused did not get the job in that school but her colleagues got the job. She/PW3 was not present on the day of occurrence.

10. PW4 Musstt. Rahima Khatun in her evidence in chief has stated that about three years back on a day the occurrence took place in Daulatpur Paschimpara Primary School. The accused used to work as a cook in that school. Subsequently the accused was removed from the post of cook. However, even after removal from job the accused regularly used to come to that school and engage in altercation with the teachers and also the informant during school hours. The accused rebuked them by using bad language.

11. PW4 in her cross-examination has stated that he do not know that for how many days the accused worked as cook. At present somebody else is working as cook in that school. The cook was appointed by informant. The accused was removed from service by informant, and the altercation took place in that respect. She/PW4 saw the occurrence from a distance while standing in the school.

12. PW5 Sri Munindra Hazarika in his evidence in chief has stated that the occurrence took place about 3 -4 years back on a day in Daulatpur Paschim Primary School. Prior to the occurrence the accused used to work in that school as a cook, but the managing committee removed the accused from the post of cook. However, even after removal from job the accused frequently came to that school and used to disturb the school environment by creating hue & cry. The accused rebuked the informant and newly appointed cook by using obscene language. At that time the school authority tried to oust the accused from school campus but the accused refused to go out and wanted to work as cook in that school and also started an altercation with the newly appointed cook.

13. PW5 in his cross-examination has stated that the informant is the president of School Managing Committee of that school. The appointment and removal of cook from service in that school is done by the president of that committee. The accused

worked in that school for about 2 years as cook. The accused basically started an altercation with the president of that committee and the newly appointed cook in connection with her removal from the post of cook. The house of informant is near to the school. The land of that school is gifted by the informant. The informant takes care of all the work of that school. The road to that school is through the homestead of informant.

14. PW6 Sri Gokul Chutia, who investigated this case, in his evidence in chief has narrated the details of investigation done by him. PW6 has stated that during investigation he visited the place of occurrence, drew up a sketch map, recorded the statement of available witnesses, and arrested the accused. PW6 has marked the sketch map as exhibit – 2 and charge sheet as exhibit – 3.

15. Upon perusal of the evidence deposed by prosecution witnesses as narrated above, it is seen that the crux of allegation made by the prosecution witnesses is that the accused on the day of occurrence entered inside the premises of DaulatpurPaschimpara Primary School and thereafter rebuked the informant and school teachers also school staffs and thereby caused disturbance to them.

16. Before going to form any conclusive opinion on the basis of aforesaid evidence, let me find out as to whether the versions stated by the prosecution witnesses as narrated above are believable or not. In this respect, on perusal of the evidence deposed by PW3, it is seen that PW3 in her cross-examination has specifically stated that she was not present in the school on the day of occurrence. Hence, it is clear that the version stated by PW3 as regards the altercation which allegedly took place on the day of occurrence, is a piece of hearsay evidence which cannot be believed unless corroborated by some other reliable evidence.

17. As regards the version stated by PW1, perusal of his cross-examination shows that the F.I.R was written by a clerk and not by him. The foregoing fact, in my opinion, is not sufficient to create any doubt regarding his trustworthiness, as because, there is nothing in the evidence on record which can show that the contents of F.I.R regarding the alleged occurrence were not written as per his dictation. In fact, PW1 in his evidence in chief has corroborated the contents of exhibit – 1 /F.I.R, and this suggests that, PW1 has got proper knowledge about the contents of exhibit - 1 / F.I.R.

18. As regards the version stated by PW2, PW4 & PW5, upon perusal of their respective cross-examinations, I do not find any statement which can be taken as

adverse to the case of prosecution. There is practically nothing substantial in their cross-examination which can create any reasonable doubt as regards the truthfulness of the statements made by them in their evidence in chief. In fact, PW4 in her cross-examination has specifically mentioned that she saw the altercation. This further strengthens the version stated by her in her evidence in chief.

19. It may be mentioned here that admittedly none of the witnesses, except PW1, in their evidence have mentioned the exact date of occurrence. However, in my opinion, as the alleged occurrence is of the year 2015, and the recording of evidence started from 01/12/2017 as per case record, hence in the usual course of the things a witness may forget the date of occurrence due to normal loss of memory upon lapse of time. As such, inability of the witnesses to mention the specific date of occurrence is, in my opinion, not fatal to the case of prosecution.

20. Therefore, considering the above discussion, it is evident that there is nothing substantial in the case record which can create any reasonable doubt regarding the truthfulness of the versions made by PW1, PW2, PW4 & PW5 in their respective evidence in chief. As such, the statements made by PW1, PW2, PW4, & PW5 in their evidence in chief can be believed and acted upon. Therefore, on the basis of evidence deposed by PW1, PW2, PW4 & PW5, it is proved beyond reasonable doubt that on the day of occurrence the accused, who was earlier removed from the post of cook of Daulatpur Paschimpara Primary School, entered inside the campus of said school and then rebuked the informant and school teachers and also school staffs in connection with her removal from the post of cook and thereby caused disturbance to the teaching environment of the school.

21. Now, let me find out as to whether the aforesaid acts committed by the accused attract the offences charged against the accused person. In this respect, perusal of case record shows that this case is proceeding against the accused for the offences punishable under sections 447/294/500 of I.P.C.

22. As regards the offences punishable under section 294 of I.P.C, upon perusal of the evidence available in case record, it is clear that the witnesses examined by prosecution have nowhere mentioned the specific obscene words allegedly used by the accused. Though PW1 has simply mentioned that the accused rebuked them by using obscene words, but, in the absence of specific mention of such alleged obscene words, it cannot be ascertained as to whether the words allegedly used by the accused were actually obscene or not. It is not for the witness,

but for the court to determine, as to whether the words allegedly used by accused can be considered as obscene. For that purpose, it is very much essential that the alleged obscene words uttered by the accused must be specifically reflected in the evidence on record. Hence, the evidence available in the case record is not sufficient to prove beyond reasonable doubt that the accused had any uttered obscene words at the time of alleged occurrence.

23. Similarly, as regards the alleged offence punishable u/s 500 of I.P.C, it is seen that none of the witnesses examined by prosecution have specifically stated that the accused made any imputation concerning the informant or the school teachers or school staffs which has harmed their reputation. In this respect, though it is evident from the above discussion that the accused rebuked the informant and school teacher and also school staffs, but the witnesses examined by prosecution have not mentioned the specific words used by accused while rebuking informant and school teachers. Therefore, in the absence of specific mention of such words or sentences, it is not possible for this court to determine as to whether the meaning of words used by the accused can actually harm the reputation of informant or school teachers or staffs. Hence, from the above discussion, it is clear that the evidence on record is not satisfactory to prove beyond reasonable doubt that the accused had made any imputation concerning the informant or the school authority which can harm their reputation.

24. Now, as regards the alleged offence punishable under section 447 of I.P.C i.e., criminal trespass, it is seen that the ingredients required to complete the said offence as defined in Section 441 of I.P.C are as follows :-

- (1) Entry of accused into or upon the property of another;
- (2) If such entry is lawful, then unlawfully remaining upon such property;
- (3) Such entry or unlawful remaining must be with intent to;-
 - (i) Commit an offence, or
 - (ii) To intimidate, insult or annoy the person in possession of that property.

25. Now, having understood the requirements of Section 441 of I.P.C, coming back to the case in hand, from the discussion of evidence made above it is already evident that the accused on the day of occurrence entered inside the premises of Daulatpur Paschimpara Primary School. Therefore, let me now examine the evidence

and find out as to whether the accused had the intention to commit an offence, or to intimidate, insult, or annoy the person in possession of that school.

26. In this respect, on the basis of discussion made above, it is evident that the accused rebuked the informant and school teachers in connection with her removal from the post of cook of that school and thereby created disturbance. In my opinion, if the accused had any grievance with respect to her removal from service then she should have approached the higher authorities of that school, or should have formally and peacefully discussed the matter with school authorities. The accused, being a major and already worked as a school staff (cook), in my opinion, has got sufficient maturity of understanding and knowledge that she cannot get herself reinstated in the post of cook by rebuking the informant and school teachers. Under such circumstances, the only inference which can be gathered from the aforesaid conduct of accused is that she (accused) came to school at the time of occurrence with the intention to disturb the informant and school teachers by rebuking them.

27. The next element required to be proved to bring home the offence defined in Section 441 of I.P.C is that the property in question was in possession of the person annoyed. In the case in hand, the evidence on record shows that the place of occurrence is inside the school campus of Daulatpur Paschimpara Primary School. The school campus of a government school is undisputedly a property in possession of the concerned department of the government. However, the government cannot be personified, and hence, it is obvious that the persons who work in that school and run the administration thereof on behalf of the government, can be said to be in possession of the school campus.

28. In the case in hand, from the evidence, deposited by prosecution witnesses as narrated above, it is clear that the informant was president of the School Managing Committee of that school at the time of occurrence. As a matter of fact, the school managing committee of a school is responsible for some of the administrative works of that particular school. Also, as discussed above, the annoyance was caused to the informant and teachers of that school. Hence, it is evident that the annoyance was caused to the persons in possession of that school.

29. In addition to the above, to establish the charge of offence punishable u/s 447 of I.P.C, it is also required to be proved that the entry of accused into or upon that property was unlawful, or that the accused after lawfully entering into that property remained there unlawfully. In the case in hand, there is nothing in the

evidence on record which can show that the accused entered into the school premises for some lawful purpose. Also, as discussed above, the accused came to the school with the intention to annoy the informant and school teachers. The foregoing factors, in my opinion, makes it evident that the entry of the accused in the school at the time of occurrence was unlawful since she had no lawful purpose for her arrival and she had the intention to disturb the informant and school teachers.

30. For the sake of arguments, if it is presumed that the initial entry of accused inside the school campus was lawful, even then, in my opinion, the moment the accused started to rebuke the informant and school teachers, her stay inside the school premises became unlawful for the obvious reason that she has no right to rebuke others and create annoyance to them.

31. Before parting with the discussion, I deem it fit to mention here that learned counsel for defence at the time of argument submitted that the informant in his F.I.R has not mentioned the exact date of occurrence; and has rather stated that the accused came to school and rebuked the informant since 18/02/2015. Also, the informant in his evidence has not mentioned about all the specific dates in which the occurrence took place. This, as per learned counsel, shows that the informant himself is not certain about the date of occurrence which ultimately creates doubt about the truthfulness of entire case of the prosecution.

32. As regards the aforesaid submission made by learned counsel for the defence, perusal of the evidence on record shows that PW1/informant in his cross-examination has mentioned that the occurrence took place on or about 04/03/2015 i.e., on the day of lodging of F.I.R. As stated above, informant in his F.I.R has mentioned that the occurrence took place since 18/02/2015. The word "**since**" used by the informant makes it clear that the date of lodging of F.I.R is also included as a date of occurrence.

33. Therefore, it is clear that, though the informant in his F.I.R. has mentioned that the same kind of occurrence took place on more than one date, but in his evidence has proved the occurrence of only one date. In this connection, I do not find any mandatory rule which requires that the informant in his evidence must depose separately about the alleged occurrences of all the dates. If the occurrence of such one day which is proved by informant in his evidence is sufficient to establish the charge against the accused, then, in my opinion, there is no irregularity in holding the accused guilty on that basis. Moreover, it is true that PW2, PW4, & PW5 have not

stated the specific date of occurrence; but it is equally true that there is nothing in their evidence which can specifically show that they have not deposed about the occurrence of 04.03.2015.

34. Therefore, considering the above discussion, I do not find anything which can show that the version of informant and other prosecution witnesses is doubtful on the ground that they have not referred to specific date of occurrence, or that they have not stated about the occurrence of all the dates as mentioned in the F.I.R. As such, I do not find any force in the aforesaid argument of learned counsel for defence and the same cannot be sustained.

35. Considering the entire discussion made above, it is held that the witnesses examined by prosecution have proved beyond reasonable doubt that the accused on the day of occurrence unlawfully entered into the school campus of Daulatpur Paschimpara Primary School, which was in possession of the informant and school teacher and staff, with the intention to annoy the informant and school teachers, and thereby caused annoyance to said informant and school teachers who were in possession of that school. As such, it is held that the witnesses examined by prosecution have proved beyond reasonable doubt that the accused has committed an offence punishable under section 447 of I.P.C.

DECISION: Point no.1 is decided in the affirmative and goes in favour of the prosecution. Point no.2& 3 are decided in the negative and goes against the prosecution.

ORDER

36. In view of the discussion made and decision reached in the points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that accused Musstt. Jubun Nehar has committed the offences punishable under section 294/500 of I.P.C. Hence, the accused is acquitted from the charges under section 294/500 of I.P.C on benefit of doubt. However, it is held that the prosecution has proved beyond reasonable doubt that accused Musstt. Jubun Nehar has committed an offence punishable under section 447 of I.P.C. As such, I find the said accused guilty for commission of offence u/s 447 of I.P.C. Accordingly, the accused is convicted for the commission of offence punishable under section 447 of I.P.C. The offence being committed inside an educational institution must have had disturbing impact in the mind of the students. Under such circumstances, releasing

the accused under the provisions of Probation of Offenders Act, in my opinion, will portray a very lenient impression of law before the students who are the future citizens of country. Such an approach may even encourage other potential offenders to commit similar minor offences in future with a belief to get the benefits of said Act. Hence, I am not inclined to extend the benefits of Probation of Offenders Act to the accused. I have heard the accused on the point of sentence. Considering all aspects, more particularly the fact that the accused is a female having five children and the youngest one being six months old, I am of the opinion that it will not be proper in the facts & circumstances of this case to sentence the accused to suffer imprisonment. Hence, the accused is sentenced to pay a fine of Rupees 500/- (Five hundred) for the commission of offence punishable u/s 447 of I.P.C. In default of payment of fine the accused shall suffer simple imprisonment for one month.

This judgment is given under my hand and the seal of this court on this the 11th day of March, 2019.

This case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX

(A) **PROSECUTION EXHIBITS**

- Exhibit.1 – F.I.R
- Exhibit.2 – Sketch Map
- Exhibit.3 – Charge Sheet.

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

- P.W. 1 – Md. Jubed Ali
- P.W. 2 – Md. Hedaitul Islam
- P.W. 3 – Musstt. Mallika Begum
- P.W. 4 – Musstt Rahima Begum.
- P.W. 5 – Sri Munindra Hazarika
- P.W. 6 – Sri Gokul Chutia

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur