

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

G.R CASE NO: 172 OF 2017  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI RAJU BORAH

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

GR CASE NO: 172 OF 2017

U/S 294/427/352 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI RAJU BORAH.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P  
ADVOCATE FOR THE ACCUSED: SRI J. KAKOTI

OFFENCE EXPLAINED ON : 21/02/2019  
EVIDENCE RECORDED ON : 08/05/2019

ARGUMENT HEARD ON : 08/05/2019  
JUDGMENT DELIVERED ON : 08/05/2019

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the F.I.R is that on 13/01/2017, while informant Sri Hiranya Hatiboruah was celebrating "Bihu" feast in front of P.H.E office at No.1 Nimuri area, at that time accused Sri Raju Bora came there and assaulted the informant physically and also caused destruction of

utensils and musical instruments. The informant then lodged an F.I.R about the occurrence before the In-charge of Simulguri Police out post.

2. On receipt of the F.I.R, In-charge of Simulguri out-post forwarded the same to O/C Bihpuria P.S who then registered the same as Bihpuria P.S Case No. 49/2017. After investigation, I/O of the case submitted charge sheet against accused Sri Raju Borah for the offences punishable under section 294/427/352 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 under section 294/427/352 of I.P.C are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined one witness whereas the accused person did not examine any witness in support of his defence. The examination of accused person u/s 313 CrPC is dispensed with finding no incriminating materials against him. I have heard the arguments of 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 on 13/01/2017, the accused person uttered any obscene word in or near any public place at Simulguri to the annoyance of the informant and thereby committed an offence punishable under section 294 of I.P.C?

(ii) Whether on 13/01/2017, the accused person, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the informant, caused destruction of utensils and musical instrument of the amount of Rupees 50/- or upwards belonging to the informant, and thereby committed an offence punishable under section 427 of I.P.C?

(iii) Whether on 13/01/2017, the accused person, assaulted or used criminal force to the informant, otherwise than on grave and sudden provocation, and thereby committed an offence punishable under section 352 of I.P.C?

**DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:**

5. For the sake of convenience, and as because point no.1, 2 & 3 are interconnected, hence they are taken up herein together for discussion and decision as follows:

6. As regards the aforesaid points for determination, PW1 Sri Hiranya Hatibaruah in his evidence in chief has stated that he is the informant and he knows the accused who is his co-villager. In the year 2017 on the day of "Magh Bihu" some at about 10:00 P.M, he had some altercation with the accused person with respect to burning of firewood for which he ultimately lodged an F.I.R against the accused persons. Exhibit – 1 is that F.I.R in which exhibit -1 (1) is his signature. After lodging of the said F.I.R, the aforesaid dispute between both the parties got settled amicably due to which he is not willing to proceed with this case. During his cross-examination, PW1 has stated that he has no objection if the accused is acquitted.

7. At the time of argument, learned counsel for defence submitted that the prosecution has failed to adduce any incriminating material against the accused person, and hence, the accused person is liable to be acquitted.

8. On going through the evidence deposited by PW-1, it is found that at the time of alleged occurrence, there took place only altercation between the informant and accused with respect to burning of some firewood. There is nothing in the evidence of PW1 to show that the accused uttered any obscene words, or caused destruction of any article belonging to informant, or physically assaulted the informant as alleged in the F.I.R. A simple altercation between both the parties can by no stretch of imagination be interpreted to mean that the accused person used obscene words against the informant. Therefore, from the foregoing discussion, it is evident that the witness examined by prosecution has not deposited any incriminating material against the accused and has failed to prove the case of prosecution as alleged in the F.I.R.

*DECISION: Point no.1, 2 & 3 are therefore decided in the negative and goes against the prosecution.*

### **ORDER**

9. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witness examined by prosecution has failed to prove that accused Sri Raju Borah has committed the

offences punishable under section 294/427/352 of I.P.C as alleged, and as such, both the above named accused is acquitted from the charges under section 294/427/352 of I.P.C and he be set at liberty forthwith.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 08<sup>th</sup> day of May, 2019.

The case is disposed of on contest.

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur

**APPENDIX****(A) PROSECUTION EXHIBITS**

Exhibit.1 – F.I.R

**(B) DEFENCE EXHIBITS**

Nil

**(C) PROSECUTION WITNESSES**

P.W. 1 – Sri Hiranya Hatibaruah

**(D) DEFENCE WITNESSES**

Nil

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur