

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, LAKHIMPUR,
NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur, Assam

G.R. 802/2016

U/s 447/294/323/34, IPC

State of Assam

-Vs-

1. Sri Pradip Gogoi

S/O: Late Lalit Gogoi

R/O: Hessamora

P.S: Boginadi

District: Lakhimpur, Assam

2. Smti. Anjana Borah

W/O: Sri Puaaram Borah

R/O: Hessamora

P.S: Boginadi

District: Lakhimpur, Assam

3. Smti. Priyanka Borah

D/O: Sri Puaaram Borah

R/O: Hessamora

P.S: Boginadi

District: Lakhimpur, Assam

.....Accused persons

Date of offence explanation : 20.01.2018
Dates of recording evidence : 30.03.2019, 20.04.2019
Date of argument : 20.04.2019
Date of judgment : **20.04.2019**

Advocates appeared in the case:-

Smti. Ajanta Sharma, Addl. P.P., for the State

Sri Deepak Chutia, Advocate, for the accused persons

J U D G M E N T

1. The prosecution case, in brief, is that on 08.04.2016 informant Smti. Hemlata Chutia lodged an FIR with the In-charge of Chauldhowa Police Outpost under Boginadi Police Station alleging that at about 2:00 PM on

08.04.2016 some guests visited her house and when she was offering tea and betel-nut to them, at that time, accused persons Sri Pradip Gogoi, Smti. Anjana Borah and Smti. Priyanka Borah suddenly entered into her house and hurled obscene words to her and also assaulted her with bamboo stick causing grievous injuries on her body and also criminally intimidated her threatening to kill her in future. Hence, the case.

2. After receiving the ejahar, the In-charge of the Chauldhowa Police Outpost effected a G.D. Entry vide Chauldhowa O.P. G.D. Entry No. 166 dated 09.04.2016 and forwarded the ejahar to the Officer-in-charge of Boginadi Police Station to register a case. On receipt of the ejahar, the Officer-in-charge, Boginadi Police Station, registered a case vide Boginadi P.S. Case No. 55/2016 under section 447/294/325/506/34 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 447/294/323/34 of the Indian Penal Code against the accused persons Sri Pradip Gogoi, Smti. Anjana Borah and Smti. Priyanka Borah to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 447/294/323/34 of the Indian Penal Code was taken as per section 190(1)(b), Cr.P.C. The accused persons entered their appearance before this Court after receiving the summons. Copies were furnished to the accused persons as per provision contained in section 207, Cr.P.C. The particulars of the offence under section 447/294/323/34 of the Indian Penal Code were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

Points for determination

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused persons, at about 2:00 PM on 08.04.2016, at village Hessamora under Boginadi Police Station, in furtherance of their common intention, committed criminal trespass by entering into the house

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compound of informant Smti. Hemlata Chutia with intent to commit an offence, and thereby committed an offence punishable u/s 447/34 IPC ?

(b) Whether the accused persons, at about 2:00 PM on 08.04.2016, at village Hessamora under Boginadi Police Station, in furtherance of their common intention, hurled obscene words to informant Hemlata Chutia at and around the public place, and thereby committed an offence punishable u/s 294/34 IPC ?

(c) Whether the accused persons, at about 2:00 PM on 08.04.2016, at village Hessamora under Boginadi Police Station, in furtherance of their common intention, voluntarily caused hurt to informant Smti. Hemlata Chutia, and thereby committed an offence punishable u/s 323/34 IPC ?

5. During the trial the Prosecution side examined altogether 5 (five) witnesses, namely, Smti. Hemlata Chutia (PW-1), Smti. Durgeswari Chutia (PW-2), Sri Babakon Chutia (PW-3), Sri Jayanta Borgohain (PW-4) and Md. Monser Ali (PW-5). The PWs i.e. the informant-cum-victim and her witnesses have not supported the prosecution case and as such learned Addl. P.P. submitted that calling of further evidence will not improve the prosecution case. Considering the evidence, the prosecution evidence was closed. Since no incriminating material surfaced against the accused persons as such recording of statement of the accused persons u/s 313, Cr.P.C was dispensed with. I have heard the Argument of both sides and thereupon come to the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

6. At the very outset it is essential to have a brief resume of the versions of the witnesses in order to marshal the evidence in right perspective in tandem with the points for discussion.

7. PW-1 Smti. Hemlata Chutia, informant-cum-victim, has deposed that at the time of the occurrence some guests had come to the house of accused persons and on their return to Dhemaji they entered her house to have a glass of water and while she was having conversation with her

guests, at that time, the accused persons came to her house and over the matter of her offering water to their guests the accused persons had altercation with her and her guests and in the process there was a rough and tumbling between both the sides in which she fell down and sustained injury. Thereafter, out of anger she went to the police station and lodged an ejarah. The accused persons also lodged a case against her.

8. In her cross-examination, PW-1 has stated that out of misunderstanding this case was lodged. The accused persons did not intend to hurt her but it was because of pushing and tumbling that she fell down and sustained the injury. The accused persons did not utter any obscene words to her. The accused persons are her acquaintance and as such they used to visit her house of and on. She does not have any objection if the accused persons are acquitted from this case.

9. PW-2 Smti. Durgeswari Chutia has deposed that informant Smti. Hemlata Chutia is her mother. The occurrence took place in the year 2016 at about 2:00 PM in her mother's house. After the death of her husband, she used to stay with her mother. On the day of occurrence, she was present in the house and at that time seven numbers of guests came to their house from Dhemaji to have water. In the meantime, the accused persons also came to their house and had altercation with her mother who was also present in the house. In the process of altercation a rough and tumble took place between them and as such her mother fell down and sustained simple injury. Thereafter, her mother went to the police station and lodged an ejarah. The accused persons also lodged a case against them.

10. In her cross-examination, PW-2 has stated that they have amicably settled their disputes with the accused persons and as such they have good relation with them. She does not have any objection if the accused persons are acquitted from this case.

11. PW-3 Sri Babakon Chutia deposed that informant Hemlata Chutia is his mother. The occurrence took place in the year 2016 at about 2:00 PM in their house. On the day of occurrence, he was present in their house and at that time seven numbers of guests came to their house from Dhemaji to

have water. In the mean time, the accused persons also came to their house and had altercation with his mother who was also present in their house. In the process of altercation a rough and tumble took place between them and as such his mother fell down and sustained simple injury. Thereafter, his mother went to the police station and lodged an ejahar. The accused persons also lodged a case against them.

12. In his cross-examination, PW-3 has stated that they have amicably settled their differences with the accused persons and as such they have good relation with them. She does not have any objection if the accused persons are acquitted from this case.

13. PW-4 Sri Jayanta Borgohain has stated that on the day of occurrence an altercation took place between the informant and the accused persons in the house of the informant. Only an altercation had taken place.

14. In his cross-examination, PW-4 has stated that he had not seen any occurrence of assault. The accused persons did not utter any slang words. Both the parties used to visit the house of one another.

15. PW-5 Md. Monsur Ali has stated that on the day of occurrence the family members of the husband of accused Priyanka had come to take her and entered into the house of Hemlata to have a glass of water for which an altercation took place between the accused persons and the informant and thereafter both the sides went to their respective houses.

16. In his cross-examination, PW-5 has stated that he had not seen any occurrence of assault. He had also not seen the accused persons uttering slang words.

17. What emerges from the evidence adduced on record is that the informant-cum-victim and her witnesses have not at all supported the case of the prosecution. It appears from the evidence of the PWs that on the day of the occurrence an altercation took place between the informant and the accused persons for the reason that the guests of the accused persons had visited the house of the informant for having a glass of water and in the process of altercation there was a little bit of rough and tumble in which the

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informant fell down and sustained simple injury. So, it is evidently clear from the evidence of the PWs that apart from altercation between the accused persons and the informant nothing else had happened. In their cross-examination, PWs have categorically stated that the accused persons did not assault PW-1 and the case was lodged out of misunderstanding and as such they do not have any objection if the accused persons are released from this case. Hence, it is apparent that there is not an iota of evidence in this case to the effect that the accused persons, in furtherance of their common intention, committed criminal trespass by entering into the house compound of PW-1 or uttered obscene wores to her or voluntarily caused hurt to her as alleged.

18. In the result, I am convinced that the prosecution has miserably failed to bring home the accusations under section 447/294/323/34 of the Indian Penal Code against the accused persons.

ORDER

19. In view of the discussion made above, the points for determination are decided against the prosecution and accused persons Sri Pradip Gogoi, Smti. Anjana Borah and Smti. Priyanka Borah are acquitted of the accusations under section 447/294/323/34 of the Indian Penal Code. Consequently, the accused persons are set at liberty forthwith. The bail-bond of the accused persons stands cancelled and surety stands discharged.

20. Given under my hand and the seal of this Court on this the 20th day of April, 2019.

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

A P P E N D I X

WITNESSES FROM THE PROSECUTION SIDE

Smti. Hemlata Chutia (PW-1)

Smti. Durgeswari Chutia (PW-2)

Sri Babakon Chutia (PW-3)

Sri Jayanta Borgohain (PW-4)

Md. Monser Ali (PW-5)

PROSECUTION EXHIBITS

Nil

WITNESSES FROM THE DEFENCE SIDE

Nil

DEFENCE EXHIBITS

Nil

(Shri Narayan Kuri)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed & types by-
Sri Narayan Chetri, Stenographer