

**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. 1375/2017**

U/s 427/294 of the Indian Penal Code

**State of Assam**

**-Vs-**

**Smti. Konmai Neog**

S/O: Late Tulan Chandra Neog

R/O: Sarukathani

P/S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused person

Date of offence explanation : 22.05.2019  
Date of recording evidence : 26.06.2019  
Date of argument : 26.06.2019  
Date of judgment : **26.06.2019**

**Advocates appeared in the case:-**

Sri Prasanta Dutta, Addl. P.P., for the State

Smti. Nirmali Konwar, Advocate, for the accused person

**J U D G M E N T**

1. This case has arisen from an ejahar lodged on 15.05.2017 by informant Sri Dhaneswar Saikia before the In-charge of Dhalpur Police Outpost under Bihpuria Police Station. It is alleged in the ejahar that at about 9:00 AM on 10.05.2017 while nobody was present in the house of informant Sri Dhaneswar Saikia, accused persons Smti. Konmai Neog and Sri Moina Neog cut some plantain plants standing on their land for which it fell on the post by which electric line was brought to his house and as such the said post got broken into three pieces. It is further alleged that when the informant came to know about the said fact he called the village Gaonburah and the villagers to discuss about the said matter but the above named

accused persons without paying any heed to him uttered slang words to him and denied to take any responsibility for breaking of the electric post. Hence, the case.

2. The In-charge of Dhalpur Police Outpost, on receipt of the ejahar, effected a G.D. Entry vide Dhalpur O.P. G.D. Entry No. 248 dated 15.05.2017 and forwarded the ejahar to the Officer-in-charge of Bihpuria Police Station to register a case. The Officer-in-charge, Bihpuria Police Station, after receiving the ejahar, registered a case vide Bihpuria P.S. Case No. 412/2017 under section 427/294/34 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 427/294 of the Indian Penal Code against accused person Smti. Konmai Neog to stand trial in the Court. The FIR-named accused Sri Moina Neog was not sent up for trial.

3. On receipt of the charge-sheet, cognizance of the offence under section 427/294 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. Necessary copies were furnished to the accused person as per section 207 of the Code of Criminal Procedure after his appearance before the Court. The particulars of the offence under section 427/294 of the Indian Penal Code were explained to the accused person to which he 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:

(i) Whether the accused person, at about 9:00 AM, on 10.05.2017, at village Sarukathani, Dhalpur, under Bihpuria Police Station, committed mischief by breaking the electric post of informant Sri Dhaneswar Saikia into three pieces, and thereby committed an offence punishable under section 427 of the Indian Penal Code ?

(ii) Whether the accused person, at about 9:00 AM, on 10.05.2017, at village Sarukathani, Dhalpur, under Bihpuria Police Station, uttered slang words to informant Sri Dhaneswar Saikia in or near any public place, thereby committed an offence punishable under section 294 of the Indian Penal Code ?

5. During the trial, the prosecution examined only three witnesses namely Sri Dhaneswar Saikia (PW-1) (informant-cum-victim), Smti. Renu Saikia (PW-2) and Sri Atul Saikia (PW-3). In the instant case the informant-cum-victim and other witnesses have been examined but they have not stated any incriminating materials against the accused person, as such, learned Addl. P.P. prayed for closure of the prosecution evidence. Considering the materials in evidence, the prayer of the prosecution was allowed and the prosecution evidence was closed. The examination under section 313 of the Code of Criminal Procedure of the accused person was dispensed with as no incriminating circumstance appeared against him in the evidence adduced in this case. Both the sides advanced their respective arguments in this case.

**DISCUSSION, DECISION AND REASON THEREFOR:**

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

7. PW-1 Sri Dhaneswar Saikia, informant-cum-victim, has stated that on the day of occurrence while accused Konmai Saikia cut her plantain plants, the same fall on his post by which electric line was supplied to his house and the said post was broken. He called the Gaonburah and showed the broken electric post to him and he advised him to lodged an ejahar (Ext-1) in the police station in that connection. In his cross-examination, he has stated that he lodged the case against the accused person as he refused to replace his broken electric post. He lodged the ejahar out of

misunderstanding and as such he does not have any objection if the accused person is acquitted from this case.

8. PW-2 Smti. Renu Saikia, wife of the informant, has stated that when the accused person cut the plantain plants the same fall on their electric post for which it got broken and when they asked him to replace the same he refused to do so and hence the case was lodged against him. In her cross-examination, she has stated that while cutting the banana plantain by the accused the same accidentally falls on their electric post and the same was broken. The case was lodged out of misunderstanding and as such she does not have any objection if the accused person is acquitted from this case.

9. PW-3 Sri Atul Saikia, an independent witness, has stated that on the day of occurrence the banana plantain of accused fell on the electric post of the informant causing damage of the same and as such there was village bichar (village sitting) but both the parties did not arrive to any conclusion and as such the informant lodged the ejahar. In his cross-examination, he has stated that the accused had not broken the electric post. The case was lodged out of misunderstanding between the parties.

10. Thus, it is quite apparent from the evidence on record that PW-1 (informant) and PW-2 (wife of the informant) and PW-3 (an independent witness) have not at all implicated the accused person to have been intentionally damaged their electric post. As per version of PW-1 and PW-2 as the accused person cut his banana plantain the same accidentally fell on the electric post of the informant causing damage of the same for which they called a village bichar (village sitting) but they could not arrive into any conclusion and hence they lodged this case. In her cross-examination, PW-2 has categorically stated that the plantain accidentally fall on their electric post breaking the same. Furthermore, in their cross-examination, PW-1 and PW-2 have clarified that the case was lodged due to misunderstanding and they do not have any objection if the accused person is released from this

case. Corroborating to the evidence of PW-1 and PW-2, PW-3 has also stated that the banana plantain of the accused broke the electric post of the informant and as no conclusion comes out in the village meeting the informant lodged the case against the accused. In his cross-examination, he has stated that the accused had not broken the electric post of the informant. Thus, there is not an iota of evidence available on the case record to suggest that the accused person committed the offence of mischief by causing wrongful loss by damaging the electric post of the informant or uttered slang words to him in or near any public place as alleged.

11. In view of the above discussion, I have no hesitation in holding that the prosecution has miserably failed to bring home the accusations u/s 427/294 of the Indian Penal Code against the accused person. As such, the points for determination are decided against the prosecution and the accused person Smti. Konmai Neog is acquitted of the said accusations. Consequently, the accused person is set at liberty forthwith. The bail-bond of the accused person stands cancelled and surety stands discharged.

12. Given under my hand and the seal of this Court on this the 26<sup>th</sup> day of June, 2019.

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

Dictated and Corrected by me:

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

Continued ..... (Appendix)

**A P P E N D I X**

**WITNESSES FROM THE PROSECUTION SIDE**

Sri Dhaneswar Saikia (PW-1)

Smti. Renu Saikia (PW-2)

Sri Atul Saikia (PW-3)

**PROSECUTION EXHIBIT**

Ejahaar (Ext-1)

**WITNESSES FROM THE DEFENCE SIDE**

Nil

**DEFENCE EXHIBIT**

Nil

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

Transcribed and typed by me:

Narayan Chetri, Stenographer