

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

G.R CASE NO: 2682 OF 2018
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI DIPAK HANDIQUE
SMTI MAMONI HANDIQUE

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

GR CASE NO: 2682 / 2018

U/S 294/323/352/506/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI DIPAK HANDIQUE AND ANR.

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI J. BORAH

OFFENCE EXAPLAINED ON : 14.06.2019
EVIDENCE RECORDED ON : 17.02.2020

ARGUMENT HEARD ON : 17.02.2020
JUDGMENT DELIVERED ON : 17.02.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 24.10.2018 accused Sri Dipak Handique started to rebuke informant's uncle Sri Jagat Handique by using obscene words. At that time, informant's father Sri Moina Handique tried to convince the said accused and his mother Smt. Bhan Handique to stop such activities. However, the accused persons

without any reason misbehaved with informant's father and assaulted him by hitting blows and thereby caused injury. In the meantime, informant's mother Smt. Niharika Handique came forward to save informant's father, but the accused persons assaulted informant's mother too. Thereafter, informant's aunt Smt. Phuleswari Handique along with informant Sri Chitranjan Handique came there to save informant's father and mother but the accused persons assaulted them and caused injury. The informant then lodged an F.I.R about the occurrence before the In-charge of Dhalpur police out-post.

2. On receipt of the F.I.R, the in-charge of Dhalpur police out-post forwarded the same to the O/C of Bihpuria police station. Accordingly, a case was registered being numbered as Bihpuria P.S Case No. 673/18 and after investigation I.O of the case submitted charge sheet against accused persons Sri Dipak Handique @ Bagai Handique and Smt. Mamoni Handique @ Bhan Handique for the offences punishable u/s 294/323/352/506/34 of IPC. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of offences punishable u/s 294/323/352/506/34 of IPC are read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined three witnesses, whereas the defence did not examined any witness. Finding no incriminating materials against the accused persons their cross-examination u/s 313 of CrPC was dispensed with. 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-

5. POINTS FOR DETERMINATION:

(i) Whether the accused persons on 24.10.2018 at about 1.00 P.M at no.1 Arapathar village under Bihpuria police station, in furtherance of their common intention, rebuked the informant and his family members by using

obscene language in or near any public place to the annoyance of informant or others, and thereby committed an offence punishable u/s 294 of IPC?

(ii) Whether the accused persons on 24.10.2018 at about 1.00 P.M at no.1 Arapathar village under Bihpuria police station, in furtherance of their common intention, voluntarily assaulted informant, and informant's father & mother, and informant's aunt Smt. Phuleswari Handique by hitting blows and stabbing with stick with the intention to cause hurt, and thereby caused hurt to them, and thereby committed an offence punishable u/s 323/34 of IPC?

(iii) Whether the accused persons on 24.10.2018 at about 1.00 P.M at no.1 Arapathar village under Bihpuria police station, in furtherance of their common intention, assaulted or used criminal force upon the informant, and informant's father & mother, and informant's aunt Smt. Phuleswari Handique, otherwise than on grave and sudden provocation, and thereby committed an offence punishable u/s 352/34 of IPC?

(iv) Whether the accused persons on 24.10.2018 at about 1.00 P.M at no.1 Arapathar village under Bihpuria police station, in furtherance of their common intention, threatened the informant, and informant's father & mother, and informant's aunt Smt. Phuleswari Handique, with injury to their person, with the intent to cause alarm, and thereby committed an offence punishable u/s 506/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO. 1, 2, 3 & 4:

6. For the sake of convenience and as because point no. 1, 2, 3 and 4 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, the gist of evidence deposed by informant Sri Chitraranjan Handique/PW1, informant's father Sri Moina Handique/PW2 and informant's mother Smt. Niharika Handique/PW3 in their respective evidence-in-chief is that, about one year back on a day at about 7.3-8.00 PM, they along with informant's aunt Phuleswari Handique

had an altercation with the accused persons. The altercation took place in front of the gates of both the parties. Thereafter, the informant lodged an FIR about the occurrence in police station. Exhibit-1 is that FIR in which Exhibit-1(1) is the signature of informant. Said Phuleswari Handique expired about 6 months back. After lodging of that FIR, the aforesaid dispute between both the parties got settled amicably for which they are not willing to proceed with this case any further. During their cross-examination, the PW-1, PW-2 and PW-3 have stated that they do not have any objection if the accused persons are acquitted from this case.

8. At the time of argument, learned counsel for the defence submitted that the prosecution has failed to prove its case as alleged and hence the accused is liable to be acquitted from this case.

9. On perusal of the evidence deposed by PW-1, PW-2 and PW-3 as narrated above, it is seen that at the time of occurrence, the informant along with his father, mother and aunt Phuleswari Handique had allegedly an altercation with the accused persons in front of the gates of the houses of both the parties. There is nothing in the evidence of prosecution witnesses which can show that the accused persons rebuked anybody by using obscene words, or caused hurt or threatened or used criminal force to the informant and his family members as alleged. The prosecution witnesses have not stated anything about use of any obscene words by the accused persons, or causing of hurt by the accused persons, or threat by the accused persons as alleged in the FIR. Hence, it is evident that the witnesses examined by prosecution have not deposed any incriminating materials against the accused persons and have failed to prove the case of prosecution as alleged in the FIR.

DECISION: Point no.1, 2, 3 & 4 are therefore decided in the negative and goes against the prosecution.

ORDER

10. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove that accused Sri Dipak Handique @ Bagai

Handique and Smt. Mamoni Handique @ Bhan Handique have committed the offences punishable under section 294/323/352/506/34 of I.P.C as alleged, and as such, the above named accused persons are acquitted of the charges under section 294/323/352/506/34 of I.P.C and they 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 17th day of February, 2020.

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 Chitraranjan Handique
P.W. 2 – Sri Moina Handique
P.W. 3 – Smt. Niharika Handique
- (D) DEFENCE WITNESSES
Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur