

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
UDALGURI : : ASSAM.**

**G.R. CASE NO. 678 of 2020
(PRC NO. 334/21)**

U/S- 447/294/323/427/34 I.P.C.

**Present: Smti. Ranjita Agarwalla,
Chief Judicial Magistrate,
Udalguri, Assam.**

STATE

-VS-

- 1. SRI SUNU NATH**
- 2. SRI RABINDRA @ LABANYA NATH**
- 3. DAYAMOI**

----- Accused persons.

For the Prosecution : Mr. M. Khakhlari, learned APP
For the Defence : Mr. Dwijen Kumar Boro, learned Advocate.

Date of Prosecution Evidence : 07-12-2021 & 15-12-2021.
Argument heard on : 15-12-2021.
Judgment delivered on : 15-12-2021.

J U D G M E N T

- 1.** The brief facts of the prosecution story are that on 02-07-2020 one Smti. Anjana Kalita of Dharamjuli Jungle village under Dimakuchi police station lodged a written ejahar before the In-Charge, Khagrabari police Outpost under Dimakuchi Police Station stating inter-alia that on 30-05-2020 at about 6:30 P.M. in absence of any male person in her house, without any rhyme or reason accused Sri Sunu Nath trespassed inside her house and attacked her at first for which her sister Smti Marami Das and aunt Smti. Binju Das obstructed him. They were also assaulted

- by the said accused. After a while, co-accused namely Sri Dayamoi Das and Sri Labanya Das came to the spot and scolded them with slang language, threatened to set ablaze their house, caused damage to the walls of her house by hitting. Hence, she lodged this case praying for taking necessary action against the accused persons.
- 2.** After receiving the ejahar to the effect aforesaid, the I/C, Khagrabari Outpost made a GF Entry vide Khagrabari OP GD Entry no. 24 dated 02-07-2020 and forwarded the same to the Officer-in-Charge, Dimakuchi Police Station for registering a case under proper section of law. Accordingly, after receiving the ejahar, the Officer-in-Charge, Dimakuchi Police Station registered a police case vide Dimakuchi PS case no. 53/20 U/S 447/323/294/427/34 I.P.C. and on completion of the investigation, the Investigating Officer submitted the charge sheet against the accused persons alleging commission of offences U/S 447/294/323/427/34 of I.P.C.
 - 3.** On the basis of the charge sheet, cognizance of offences was taken under Section **190 (1)(b)** of the Cr. PC. The processes were issued for causing appearance of the accused persons before the Court. Accordingly, all the accused persons appeared and on their appearance, necessary copies of all relevant papers and documents were furnished to them. Finding a prima-facie case for commission of offences, the particulars offences U/S 447/294/323/427/34 I.P.C. were stated and explained to the accused persons to which they pleaded not guilty and claimed to stand trial.
 - 4.** In order to bring home the case, the prosecution examined as many as three(3) PWs in the form of:

PW 1 Smti. Anjana Kalita (informant)

PW 2 Smti. Marami Das

PW 3 Smti. Binju Das.

The prosecution has also exhibited the following document in the form of:

Ext. 1 Ejahar.

5. After recording the prosecution witness the accused persons are exempted from recording their statements U/S 313 Cr.P.C. as not implicated. Further the accused persons declined to adduce any evidence in defence.

6. I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused persons. I have also carefully gone through the entire evidence available with the case record.

7. POINTS FOR DETERMINATION:

(I) Whether on 30-05-2020 at about 6:30 P.M. at village Dharamjuli Jungle under Dimakuchi Police Station the accused persons in furtherance of their common intention committed criminal trespass by entering into the compound of the informant Smti. Anjana Kalita with intent to commit an offence and thereby committed an offence punishable U/S 447/34 of I.P.C.?

(II) Whether on the same day at the same time and same place, the accused persons in furtherance of their common intention, uttered obscene words to the said informant, her sister Smti. Marami Das and aunt Smti. Binju Das which caused annoyance to others and thereby committed an offence punishable U/S 294/34 of I.P.C.?

(III) Whether on the same day at the same time and place the accused persons in furtherance of their common intention voluntarily caused hurt to the said informant, her sister Smti. Marami Das and aunt Smti. Binju Das respectively and thereby committed an offence punishable U/S 323/34 I.P.C.?

(IV) Whether on the same day at the same time and same place, the accused persons in furtherance of their common intention, committed mischief to the walls of the house of the said informant which caused loss or damage to the informant to the amount of fifty rupees or upwards and thereby committed an offence punishable U/S 427/34 of I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** Now, let us scrutinize the evidence on record. The star witness **PW1 Smti. Anjana Kalita**, who is the informant of this case, stated in her evidence that the accused persons are known to her as close neighbors. On 30-05-2020 the accused and her sister namely Sri Marami Das had an altercation relating to some boundary dispute. In that process they had a slight jostling and they sustained injuries by way of falling down. Subsequently, she lodged the ejahar in anger against the accused persons. **Ext. 1** is the ejahar and **Ext. 1(1)** is her signature.
- 9.** **PW 2 Smti. Marami Das** deposed that the informant is her sister and the accused persons are known to her. One and half years back one day she had an altercation with the accused persons relating to boundary dispute wherein slight jostling also took place with the accused persons and in that jostling she sustained injuries by way of falling. Therefore, she apprised the matter to her sister and her sister lodged this case against the accused person out of anger.
- 10.** **PW 3 Smti. Binju Das** stated that she knows both the accused and the informant as her close relatives. One and half years back as the informant and her sister were engaged in boundary dispute with the accused persons, thereby she opposed the matter and an altercation and slight jostling took place between the parties and in that process she sustained minor injuries by way of falling. Due to misunderstanding this case was lodged and subsequently they had negotiated the matter. As such, she has no objection to the acquittal of the accused persons from the case.
- 11.** Now, from the material available in the case record it reveals that although in this case the particulars of offences **U/S 447/294/323/427/34 of I.P.C.** were stated and explained to the accused persons, but the informant (**PW1**) Smti. Anjana Kalita who is the star witness of the case, has disclosed in her examination-in-chief regarding the offence **U/S 447 I.P.C.** that the accused persons are her close neighbors and on the day of occurrence they and altercation and jostle with the accused persons, but not mentioned particularly the place where it took place. Moreover, she averred that the altercation and slight jostle took place between them regarding the some boundary dispute. In her cross examination, **PW 1** stated that the case was lodged due to misunderstanding only and the same has been sorted out. **PW 1** expressed her

unwillingness to proceed further with the case. She has no grievances against the accused persons if they get acquittal from the case as they are her close neighbors. She averred that the accused persons neither assaulted them nor destroyed any boundary fence. Moreover, **PW 2** Smti. Marami Das the another alleged victim of the case also stated in her deposition that she sustained injuries by way of falling as slight jostle took place between them which is not debarred by the prosecution. But she expressed her no objection to the acquittal of the accused persons from the case as they have already settled the matter amicably between them. Moreover, she averred that she sustained injuries by way of falling only. As such, the accused persons unlawfully entering into the compound of the informant does not arise here.

- 12.** Pertaining to the offence **U/S 294 IPC** i.e., uttering obscene words, none of the PWs have whispered anything about utterance of any such obscene words by the accused persons. Although, **PW1** in the FIR stated that the accused persons scolded them with filthy language but she has not mentioned about the said scolding of the accused persons.
- 13.** Likewise, regarding offence under Section **323 I.P.C.** i.e. causing hurt, all the PWs are silent in this context. To attract the offence **U/S 323** the definition of hurt is defined in **Section 319** of Indian Penal Code wherein pain is one of the ingredients of such hurt. **PW 1, PW 2** and **PW 3** have stated in their examination in chief that there was slight jostling took place between them and in that process, they sustained injury by way of falling only. None of the PWs have stated anything about the assault or attack made by the accused persons on them.
- 14.** Moving to the offence **U/S 427 I.P.C.** the informant as well as **PW 2 & PW 3** are silent in their examination-in-chief and negate as same as in cross-examination also. Although PW 1 mentioned in the **Ext. 1 FIR** that the accused persons caused mischief to the walls of her house by hitting, PW1 has not disclosed the same in her evidence. Rather, **PW 1** in cross examination clearly stated that the accused persons neither assaulted her nor destroyed her boundary fence. None of the prosecution witnesses have stated anything against the accused persons as alleged in the ejahar. They all stated that out of misunderstanding only, this instant case was lodged against the accused persons. Considering the above aspects, I come to the conclusion that the prosecution has failed to prove the case against the accused persons.

- 15.** Thus, from the above discussion, I find that the prosecution has miserably failed to establish the offences U/S 447/294/323/427/34 of I.P.C. against the accused persons. In the result, the accused persons are not found guilty U/S 447/294/323/427/34 of I.P.C.

ORDER

- 16.** The accused persons namely (1) Sri Sunu Nath (2) Sri Dayamoi and (3) Rabindra @ Labanya Nath are acquitted from the offences U/S 447/294/323/427/34 I.P.C. and they are set at liberty forthwith.

Bail bonds shall remain in force for next 6 months as per provisions of Section 437(A) Cr.P.C.

Given under the hand and seal of this Court on this 15th day of December, 2021 at Udalguri, Assam.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

Dictated and corrected by me:

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

APPENDIX

A. Prosecution witnesses : **PW1 Sri Anjana Kalita (informant)**
PW 2 Smti. Marami Das
PW 3 Smti. Binju Das.

B. Defence witness : Nil.

C. Documents exhibited : **Ext. 1 FIR**

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.