

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

**G.R. CASE NO. 924 of 2020
(PRC NO. 305/21)**

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

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

STATE

-VS-

MD. ANOWAR HUSSAIN

----- Accused.

For the Prosecution : Mr. M. Khakhlari, learned Additional PP
For the Defence : Mr. Nikumoni Baglari, learned Advocate.

Date of Prosecution Evidence : 23-12-2021.
Argument heard on : 23-12-2021.
Judgment delivered on : 23-12-2021.

J U D G M E N T

- 1.** The brief facts of the prosecution story are that on 19-08-2020 one Md. Toib Ali of Panikhaity village under Rowta police station lodged a written ejahar before the In-Charge, Lalpool police outpost stating inter-alia that on 28-07-2020 at about 3 P.M. the accused person unlawfully entered inside his house and without any rhyme or reason scolded with filthy language and assaulted him on his head and hand with a piece of batam and caused injury. When his wife namely Musst. Obiron Nessa came forward to save him, she was also assaulted on her right hand by the accused. Presuming that the accused may again cause atrocities on him, he apprised the matter to the villagers and though the villagers tried to settle the

- matter, he was not satisfied with the sorting made by the villagers and hence, lodged this case praying for taking necessary action against the accused person.
- 2.** After receiving the ejahar to the effect aforesaid, the In-Charge, Lalpool police outpost made a GD Entry bearing Lalpool OP GD Entry No. 285 dated 19-08-2020 and forwarded the same to the Officer-in-Charge, Rowta Police Station for registering a case under proper section of law. Accordingly, after receiving the aforesaid ejahar, the Officer-in-Charge, Rowta Police Station registered Rowta PS case no. 127/20 U/S 448/323/294 I.P.C. and on completion of the investigation, the Investigating Officer submitted the charge sheet against the accused person namely Md. Anowar Hussain alleging commission of offences U/S 447/294/323 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 person before the Court. Accordingly, the accused appeared before the Court and on his appearance, necessary copies of all relevant papers and documents were furnished to him. Finding a prima-facie case for commission of offences, the particulars offences U/S 447/323/294 I.P.C. were stated and explained to the accused person to which he pleaded not guilty and claimed to stand trial.
 - 4.** In order to bring home the case, the prosecution examined as many as two(2) PWs in the form of:

PW 1 Md. Toib Ali (informant)
PW 2 Musst. Obiran Nessa.
 - 5.** After recording the prosecution witnesses the accused is exempted from recording their statements U/S 313 Cr.P.C. as not implicated. Further the accused person 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 person. I have also carefully gone through the entire evidence available with the case record.

7. POINTS FOR DETERMINATION OF THE CASE:

- (I)** Whether on 28-07-2020 at village Panikhaity under Rowta Police Station the accused committed criminal trespass by entering into the compound of the informant Md. Toib Ali with intent to commit an offence and thereby committed an offence punishable U/S 447 of I.P.C.?
- (II)** Whether on the same day at same place, the accused person uttered obscene words to the informant which caused annoyance to others and thereby committed an offence punishable U/S 294 of I.P.C.?
- (III)** Whether on the same day at the same time and place the accused person voluntarily caused hurt to the said informant, his wife Musst. Obiran Nessa and thereby committed an offence punishable U/S 323 I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** Now, let us have a glimpse on the evidence on record. The star witness **PW1 Md. Toib Ali**, who is the informant of this case, stated in his deposition that the accused person is his son. On 28-07-2020 he had an altercation with his father regarding some domestic affairs as well as ancestral property and in that process they had slight jostling too and in that jostling he and his wife sustained minor injuries by way of falling. As such, due to misunderstanding he lodged this instant against his son as his son also lodged a case against him.
- 9.** **PW 2 Musst. Obiran Nessa**, one of the alleged victim of the case, deposed that the informant is her husband and the accused is her son. On 28-07-2020 her husband and she had an altercation with her said son regarding some domestic affairs as well as ancestral property and they had slight jostling too and in that process she and her husband both sustained minor injuries by way of falling.
- 10.** 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 of I.P.C.** were stated and

explained to the accused persons, but the informant (**PW1**) who is the star witness of the case, has disclosed in his examination-in-chief regarding the offence **U/S 447 I.P.C.** that the accused person is his son. Moreover, he averred that on 28-07-2020 he had an altercation with his father regarding some domestic affairs as well as ancestral property and slight jostling too took place among them and in that jostling he and his wife both sustained minor injuries by way of falling. In his cross examination, PW 1 stated that the case was lodged due to misunderstanding only and at present the same has been sorted out. **PW 1** clearly stated that he does not want to proceed further with the case. He has no grievances against the accused person if he gets acquittal from the case as the accused is his son and living with him in the same compound. Moreover, **PW 2 Musst. Obirann Nessa** the mother of the accused as well as alleged victim of the case also stated in her evidence that on 28-07-2020 she along with her husband had an altercation with her son (accused) regarding some domestic affairs and ancestral property of them and there was slight jostling too where she and her husband both sustained minor injuries by way of falling down which is not debarred by the prosecution. But she expressed that the accused is their son and due to some mistake, this instant case was lodged against the accused and the same has been amicably sorted out. Moreover, as per cross version of **PW 1, i.e. the informant**, they are living with the accused under the same compound being he (accused) their son. As such, the accused person unlawfully entering into the compound of the informant does not arise here.

- 11.** Pertaining to the offence **U/S 294 IPC** i.e., uttering obscene words, both the vital witnesses i.e. **PW1 & PW 2** in their evidences are mum about the same. Although, **PW1** in the FIR stated that the accused person scolded him using filthy languages, but he has not mentioned about the said scolding by the accused person in his evidence.
- 12.** Likewise, regarding offence under Section **323 I.P.C.** i.e. causing hurt, both the PWs are silent. 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. Both **PW 1 & PW 2** have stated in their examination in chief that there was slight jostling took place amongst them and in that process both of them i.e. **PW 1 & PW 2** sustained minor injuries by way of falling. None of the PWs have stated anything about the assault or attack made by the accused person on them.

Rather, they stated that the accused is their son and the informant admitted that in the process he and his wife sustained minor injuries by way of falling only. Nowhere the informant i.e. PW 1 or the PW 2 stated about any assault caused by the accused to them. Both the PWs in their respective testimonies stated that the matter had already sorted out and the accused is their son and they have no grievances against the accused if he gets acquittal from the case. Considering the above aspects, I come to the conclusion that the prosecution has failed to prove the case against the accused person.

- 13.** Thus, from the above discussion, I find that the prosecution has miserably failed to establish the offences U/S 447/294/323 I.P.C. against the accused person. In the result, the accused person is not found guilty U/S 447/294/323 I.P.C.

ORDER

- 14.** The accused person namely Md. Anowar Hussain is acquitted from the offences U/S 447/294/323 I.P.C. and he is set at liberty forthwith.

Bail bond 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 23rd 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 : **PW 1 Md. Toib Ali**
PW 2 Musst. Obiran Nessa.

B. Defence witness : Nil.

C. Documents exhibited : Nil.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.