

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL  
MAGISTRATE(M), GOHPUR**

**PRESENT: SRI KAUSHIK KUMAR SHARMA**

**S.D.J.M(M), GOHPUR**

**GR: 578/12**

**U/S 341/294/323 of IPC**

**STATE OF ASSAM.....PROSECUTION**

**v.**

**SRI Dhruba Das .....ACCUSED**

**Ld. Advocates: For Prosecution.....Smti Bornali Chetia,  
Ld.APP**

**For Defence.....Sri Pranjal Baruah, Ld.  
Advocate**

**Evidence Recorded on : 23.12.14, 21.1.15, 9.3.15**

**Argument heard on: 14.5.15**

**Judgment delivered on: 14/5/15**

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

1. The prosecution's case is that on 2.8.12, the accused, Sri Dhruba Das had wrongfully restrained the informant, Sri Bap Gogoi, uttered obscene words at or near public place had assaulted him. Hence the case.
2. The informant, had lodged the FIR on 2.8.12, at Gohpur P.S, which had led to the registration of Gohpur P.S Case no. 183/12, u/s 341/294/323/506/34 of IPC. After investigation, charge sheet was filed against the accused, Sri Dhruba Das u/s 341/294/352 of IPC.
3. The prosecution had examined three witnesses and, thereafter, closed its evidence. The examination of the accused u/s 313 CrPC, was carried out. The accused has pleaded innocence. The defence side did not adduce any evidence. Heard arguments.

**4. POINTS FOR DETREMINATION:**

- 1) Whether the accused, on 02.08.12, at about 6 AM, had wrongfully restrained the informant, Sri Bap Gogoi, as alleged?
- 2) Whether the accused on 2.8.12 at about 6AM, had uttered obscene words to the annoyance of others, at or near public place, as alleged?
- 3) Whether the accused on 2.8.12, at about 6 AM, had caused hurt to the informant , as alleged?

**DISCUSION AND DECISION BASED ON REASON:**

4. PW1, Sri Bap Gogoi, the informant, in his examination in chief has stated that on the day of occurrence, when he was talking with his younger brother, the accused , Dhruba Das, came running and had assaulted him with his hands. The family members of the accused had separated them. Thereafter, he had left that place. He also stated that the accused had initially, lodged a case against him. Ext 1is the FIR, where he had put his thumb impression.
5. In his cross examination, he has stated that there is a long standing dispute over land, between them and the accused. He stated that if the accused withdraws the case lodged against him, he will also withdraw his case. The dispute between them has been amicably settled. He stated that he has no objection, if the accused is acquitted.
6. PW2, Smti Lokmai Das, has stated in her examination in chief that she had not seen the incident , as she was inside her house. She stated that she had heard from inside her house that there was an altercation between the accused and the informant. The said witness was declared as hostile witness.
7. PW3, Sri Rajib Das, in his examination in chief has stated that there is a filed in between the houses of the informant and the accused. There is a demarcation( aali) on the boundary between the lands of the accused and the informant. But when the said demarcation is closed during rainy season, the house of Bap Gogoi, gets flooded. About three years ago( i.e on the day of occurrence), the sons of Bap Gogoi had opened up that demarcation(aali). When the family members of Dhruba Das had obstructed the sons of Bap Gogoi, then, Bap Gogoi came and tried to assault

Dhruva Das and his family members. At that time, the accused had separated them. The accused was not involved in the quarrel. The quarrel was between Bap Gogoi and Dhruva Das.

8. In his cross examination, inter alia, he has stated that on the day of occurrence, he was in his house, and came out of the house, after hearing noise. He stated that he saw from his house that the informant and his sons had come to the house of the accused to assault the accused. At that time, the accused was not in his house. Later on, when the informant side was causing noise, the accused had arrived. He also stated that the accused was unaware of the incident of opening up of the demarcation . The informant had opened the *alli* in the absence of the accused.

**Appreciation of evidence:**

9. PW1, the informant has stated that the accused had come and assaulted him on the day of occurrence. But, his evidence was not supported by PW2 and PW3. PW2, had stated that there was an altercation between the accused and the informant, which she had heard from inside her house. PW3, rather, stated that it was the accused who had come to assault the informant. PW3, is an eye-witness to the incident. He categorically, stated that he had seen the accused and his sons coming to the house of the accused, to assault him.
10. Moreover, PW1 in his evidence has stated that there is a long standing dispute between him and the accused over land. Further, he stated that the accused had lodged one case ahead of him. Thus, the existence of the dispute, and his statement that if the accused withdraws his case he would also not proceed with his case, makes his testimony, not wholly reliable as well as not wholly unreliable. Therefore, for reliance on the testimony of PW1, corroboration of the testimony of PW1, from independent evidence is required. But, from the record, it reveals that there is no such corroboration. On the contrary, from the evidence of PW3, it appears that the accused did not take part in any quarrel.
11. Thus, from the evidence on record, the charge u/s 323 of IPC is not proved, beyond reasonable doubt. Moreover,

there is no assertion in the evidence of PW1, that the accused had wrongfully restrained him and that he had uttered obscene words. Thus, the charges u/s 341/294 IPC are also not proved.

12. In the light of the above, the prosecution could not prove the guilt of the accused person, u/s 341/294/323 of IPC. Hence, the accused is acquitted from the charge u/s 341/294/323 of IPC, and is set at liberty forthwith.
13. The judgment is pronounced in the open court on this 14<sup>th</sup> of May, 2015. The judgment is prepared under my hand and seal of this Court.
14. The bail bond shall remain operative till 6 months from the date of this order and shall stand cancelled after the expiry of 6 months.
15. The case is, accordingly, disposed of.

(K.K. Sharma)

S.D.J.M, Gohpur.

ANNEXURE

LIST OF DOCUMENTS EXHIBITED BY PROSECUTION

EXT.1: FIR

S.D.J.M, Gohpur