

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

PRESENT: SRI KAUSHIK KUMAR SHARMA

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

GR: 750/13

U/S 294/323 of IPC

STATE OF ASSAM.....PROSECUTION

v.

Sri Sohen Basumatary.....ACCUSED

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

**For Defence.....Smti Mousumi Borthakur, Ld.
Advocate**

Evidence Recorded on : 15.12.14, 03.3.15, 23.3.15,18.5.15.

Argument heard on: 18.5.15

Judgment delivered on: 18.5.15

J U D G M E N T

1. The prosecution's case is that on 20.10.13, at about 6 PM, when the informant, Smti Arati Dip, was standing near of the shop of Smti Keteki Bania, the accused had hurled abuses at her using obscene words and had assaulted her with bamboo stick. Hence the case.

2. The informant, had lodged the FIR on 21.10.13, at Gohpur police station. The police had registered Gohpur P.S Case No. 224/13 u/s 294/325/506 of IPC. After investigation, the police had submitted charge sheet u/s 294/323 of IPC.
3. On appearance before Court, the particulars of offences u/s 294/323 of IPC were explained to the accused to which he pleaded not guilty and claimed to be tried.
4. The prosecution had examined 5 witnesses. Thereafter, prosecution has closed its evidence. The accused was examined u/s 313 CrPC. The defence side did not adduce any evidence. Heard arguments.

POINTS FOR DETREMINATION:

- a) Whether the accused had uttered obscene words to the informant to the annoyance of others at or near public place, on 20.10.13?
- b) Whether the accused had voluntarily caused hurt to the informant on 20.10.13?

DISCUSSION AND DECISION BASED ON REASON:

5. PW1, Smti Arati Dip, in his examination in chief has stated that she is the informant. She stated that on the day of occurrence, she and her brother in law, Sri Vishal Tati, had gone to Kheroni gate at about 6 PM. She had asked her brother in law to get change of a note of Rs.1000/-. Then, he had told her that if he did not get the change in the fish market, he would go the shop of Keteki Bania. When he did not return for about ½ hours, she went to the shop of Keteki Bania. When she was inquiring about her brother in law, the accused came running and had restrained her. Thereafter, the accused had assaulted her on her legs, backside and other places of her body with bamboo stick. He

, then, informed the matter to Dhanraj, but Dhanraj had refused to hold a public meeting as he was afraid of the accused. She then informed the matter to the Women organization and came to police station to lodge the case. She lodged the FIR at Gohpur P.S. and thereafter she was taken to the hospital. Ext 1 is the FIR, where she had put her signature.

6. In her cross examination, she has stated that the incident had occurred in the fish market at Kheronigate. She stated that there were people nearby, when she was being assaulted. But she does not remember the names of the people who were there near the place of occurrence. She stated that Keteki Bania had seen the occurrence. She has denied the suggestion that her assertion that the accused had beaten her with bamboo stick is false. She denied the suggestion that she was creating a scene in the fish market after getting drunk and when the public had complained, the accused had taken her away, and she had sustained injury due to fall on the ground. She denied that she did not state before the police that the accused had restrained her. She denied the suggestion that she had lodged a false case against the accused as the latter had drove her away from the market. She denied that she did not state before police that she had informed the matter to Dhanraj and to Women organization. She denied that she did not state before the police that she had sustained injury on her legs and on her backside.
7. PW2, Sri Prahlad Das, in his examination in chief has stated that on the day of occurrence, the informant was causing a noisy situation in the Khergate daily market after getting drunk. Thereafter, her husband, Sri Paltu @Ramesh Dip had tried to take her away, but she had ousted him down and

hurled abuses at him. He stated that he had gone to the Khergate market for shopping. He had seen the incident.

8. Thereafter, the witness was delared as hostile witness. In his cross examination, he had denied that he had stated before the I.O. that the accused had assaulted the informant with one bamboo stick. In his cross examination by the defence, he stated that he had stated what he had deposed today in the Court. He has not seen the accused assaulting the informant. He also stated that the informant had consumed liquor.
9. PW3, Smti Maina Basumatary, in her examination in chief has stated that the informant was loitering at the Khergate center after getting drunk. The accused had driven her away from the market. Thereafter, the husband of the accused came and took her away. That was the incident.
10. In her cross examination she has stated that the accused is the mahaldar of the fish market. When the informant was loitering in the market after getting drunk, people had complained it to the accused, who had taken her away.
11. PW4, Smti Dipa Basumatary has stated in her examination in chief that the informant was causing noise after getting drunk , in the fish market. When people had complained the matter to the accused, the accused had caused her to move away. Thereafter, the husband of the informant had taken her away. The accused is a *mahaldar* in the market.
12. In her cross examination, she has stated that she has a fish shop in the Khergate market.
13. PW5, Sri Biren Boro, in his examination in chief has stated that the informant was behaving badly after getting drunk in the Khergate market. Then the accused had told her to go away. The accused did not assault her.
14. In his cross examination, he has stated that the informant as creating a noise in the market after getting drunk. When the

public had lodged a complaint, the accused had asked her to go away from the market. He also stated that the informant had picked up quarrel with many people after getting drunk. He has also stated that she had lost her stability due to intoxication and had fallen down on the ground many a times.

Appreciation of evidence:

15. The evidence of the PW1, that she was being beaten by the accused in the market has not been supported by other PWs. Rather other PWs, have stated that the informant was drunk and causing noise in the market and was loitering there. When people had complained to the accused, who was a *mahaldar* in the fish market, he had told her to leave. None of the other PWs has stated that the accused had beaten her or had uttered obscene words to her.
16. Hence, in the absence of corroboration, and considering the testimonies of PW2, PW3, PW4 and PW5, about the behavior of the informant in the drunken state, I am of the view that it will be unsafe to rely on the sole testimony of PW1, to convict the accused. The alleged incident had taken place in a busy fish market, and had there been an incident of assault on the informant, then, naturally, there would be eye-witness to such an incident. But prosecution had failed to produce any such witness. On the other hand, the PWs, other than the informant herself, had raised accusation against the informant.
17. Thus, the offences u/s 294/323 of IPC are not proved, beyond reasonable doubt.
18. Hence, in the light of the above evidence, I am of the considered view that prosecution has failed to prove the guilt of the accused u/s 294/323 of IPC. Hence, the accused

is acquitted from all the charges of this case, and is set at liberty forthwith.

19. The judgment is pronounced in the open court on this 18th of May, 2015. The judgment is prepared under my hand and seal of this Court
20. 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.
21. The case is, accordingly, disposed of.

(K.K. Sharma)

S.D.J.M, Gohpur.

LIST OF DOCUMENTS EXHIBITED BY THE PROSECUTION:

EXT. 1: FIR

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