

IN THE COURT OF JUDICIAL MAGISTRATE

FIRST CLASS,

GOHPUR, SONITPUR

PRC Case No. 71/21

**Under Sections 448, 354, 509 read with Section 34,
Indian Penal Code**

STATE OF ASSAM

.....**PROSECUTION**

-VERSUS-

1. Ms. MAMONI SAIKIA

W/O Mr. UPEN SAIKIA

2. Mr. AKASH SAIKIA

S/O Mr. UPEN SAIKIA

BOTH ARE RESIDENTS OF:

VILL- DHENUDHARA,

P.S- GOHPUR

DIST.- BISWANATH

.....**ACCUSED PERSON**

PRESENT: Mr. RAJ SEKHAR DUARA, JUDICIAL MAGISTRATE
FIRST CLASS, GOHPUR

ADVOCATE FOR THE PROSECUTION: Ms. SANTANA
BHUYAN, A.P.P
ADVOCATE FOR THE ACCUSED : Ms. RULI
BARUAH

CHARGE FRAMED ON: 15.12.21
EVIDENCE RECORDED ON: 22.12.21
ARGUMENTS HEARD ON: 22.12.21
JUDGMENT DELIVERED ON: 05.01.22

JUDGMENT

FACTUAL SCENARIO

1. The Prosecution's case can be surmised as: one Ms. Kalpana Gowala had lodged an F.I.R. dated 23.04.2020 before the officer-in-charge of the Gohpur Police station alleging inter alia that on 23.04.2020 at around 12 p.m. in the afternoon, the accused persons brandishing sticks in their hands unlawfully barged into her house and made obscene gestures at her daughter, Ms. Pallabi Gowala and tried to assault her and ended up tearing her clothes. Hence, this case.

INVESTIGATION BY POLICE AND CHARGESHEET

2. On receipt of the F.I.R., Officer- in- charge of Gohpur P.S registered it on 23.04.2020 as Gohpur P.S. No. 148/20 under Sections 448, 354 A, 354 B read with Section 34, I.P.C. and initiated investigation into the matter. On completion of such investigation, the police submitted charge-sheet against the accused persons, Ms. Mamoni Saikia and Mr. Akash Saikia under Sections 448, 354, 294 read with Section 34 of the Indian Penal Code.

APPEARANCE OF THE ACCUSED AND TRIAL

3. In due course, the accused persons entered their appearance in response to the process issued. Copies of the relevant documents stipulated under section 207, Cr.PC were furnished to them. Subsequently, formal charge under Sections 448, 354, 509 read with Section 34 of the Indian Penal Code was framed and its particulars were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. During trial, in support of their case, the prosecution examined 1 (one) witness and exhibited 1 (one) document after which prosecution submitted for closure of its evidence and accordingly, evidence for prosecution was closed. Since the aforementioned witness did not bring forth any incriminating materials against the accused persons in her

deposition, the statements of the accused persons as mandated by Section 313, Criminal Procedure Code were dispensed with due to lack of sufficient materials. Defense did not adduce any evidence.

POINTS FOR DETERMINATION

5. Upon hearing both the parties and on perusal of the case record, the following points for determination have been formulated by this court to arrive at a definite finding.

- i. Whether the accused persons, on or about the 23rd day of April, 2020 at 12 p.m. at Dhenudhara, in furtherance of common intention, committed house trespass by unlawfully entering into the house in possession of the informant and thereby committed an offence punishable under Section 448 read with Section 34, I.P.C.?**
- ii. Whether the accused persons on or about the same, date and place, in furtherance of common intention, used criminal force against the daughter of the informant with the intention to outrage her modesty and thereby committed an offence punishable under Section 354 read with Section 34, I.P.C.?**

iii. Whether the accused persons on or about the same, date and place, in furtherance of common intention, intending to insult the modesty of the daughter of the informant made obscene gestures at her and thereby committed an offence punishable under Section 509 read with Section 34, I.P.C.?

6. I have heard the learned counsels for both sides and have gone through the evidence on record which has been outlined below.

EVIDENCE

7. P.W.1, Ms. Kalpana Gowala, the informant, has deposed in her examination-in-chief that she had lodged the F.I.R. which is Exhibit-1 and her signature over the same is Exhibit 1(1). She deposed in her testimony that the incident had happened on 23.04.2020 at around 11:30 a.m. in front of her house. She states that the accused persons had come to distribute ration during the time of the lockdown. During this process, she had developed differences with the accused persons and a misunderstanding arose between them. She states that the instant F.I.R. was filed out of anger caused by such misunderstanding with the two accused persons. She

adds that they have amicably resolved their differences at present and that no such incident as was originally alleged, had happened. She lastly expressed her desire that she wants to put an end to the proceedings of this case and that she has no objection if the accused persons are acquitted from this case.

DISCUSSION, DECISION AND REASONS THEREOF

8. After a thorough deliberation upon the evidence of the witness and all other materials available on record, it transpires that there are no incriminating materials to constitute an offence which is punishable under Sections 448, 354, 509 read with Section 34 of the Indian Penal Code. It is also imperative to acknowledge that the prime witness, who is the informant himself, stated nothing incriminatory against the accused person. Furthermore, it is pertinent to assert that the prosecution has failed in establishing the guilt of the accused persons beyond reasonable doubt which is the standard of proof in every criminal proceeding. In light of the same and after careful consideration of all the materials on record, the accused persons are found not guilty for the aforesaid offences. Situated thus, the accused persons, Ms. Mamoni Saikia and Mr. Akash Saikia are hereby **acquitted** from this case and set at liberty forthwith.

9. The bail bonds of the accused persons and their sureties shall remain in force for a period of 6 months from today in compliance with Section 437 (A), Criminal Procedure Code.

10. The Case accordingly stands disposed of.

11. The judgment is pronounced in open court in presence of the counsel for the accused persons and given under my hand and seal of this court on this 5th day of January, 2022 at Gohpur.

Typed by me

(Raj Sekhar Duara)
Judicial Magistrate First Class,
Gohpur, Sonitpur

APPENDIX

PROSECUTION EXHIBIT:

Exhibit 1: FIR dated 23.04.2020

DEFENCE EXHIBIT: NONE

PROSECUTION WITNESS:

P.W.1- Ms. Kalpana Gowala

DEFENCE WITNESS: NONE

(Raj Sekhar Duara)
Judicial Magistrate First Class,
Gohpur, Sonitpur