

**APPENDIX-12**

<u>IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR</u> <u>TEZPUR</u>	
Present:- Sri Nabajit Bhatta. AJS. MA, LL.B. Chief Judicial Magistrate, Sonitpur, Tezpur	
[Date of the Judgment] <b>14.10.2022</b>	
<b>[PR Case No-755 of 2020]</b>	
(FIR NO-1523/2019 DATED-15.08.2019/CRIMINAL TRESPASS/VOLUNTARILY CAUSING HURT CASE AND TEZPUR POLICE STATION)	
COMPLAINANT :	STATE OF ASSAM OR Smt. Tutumoni Borah Kahar, W/O:- Sri Lakhi Kahar, R/O:- Pakhijar Milanpur Digingia, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSONS	1. Sri Ranjit Kalita, S/O:- Late Dulal Kalita, R/O:- Pakhijar Milanpur Digingia, P/S:- Tezpur, Dist:- Sonitpur, Assam  2. Sri Dhunu Kalita S/O:- Late Dulal Kalita, R/O:- Pakhijar Milanpur Digingia, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mrs. Upasana Mahanta, Ld. Counsel

**APPENDIX-13**

Date of Offence	14.08.2019
Date of FIR	15.08.2019
Date of Charge Sheet	31.12.2019
Date of Offence Explanation	07.04.2021
Date of commencement of evidence	28.10.2021
Date on which judgment is reserved	29.09.2022
Date of Judgment	14.10.2022
Date of the Sentencing Order, if any	NIL

**ACCUSED DETAILS :**

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Sri Ranjit Kalita	NIL	NIL	Section-448/323/34 of IPC	Acquitted	NIL	NIL
A-2	Sri Dhunu Kalita	NIL	NIL	Section-448/323/34 of IPC	Acquitted	NIL	NIL

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR**

**P R. Case No-755 of 2020**

State of Assam

–Vs–

1. Sri Ranjit Kalita
2. Sri Dhunu Kalita

.....Accused Persons

Under section-448/323/34 of I.P.C

*Present:*

*Sri Nabajit Bhatta AJS. MA, LL.B.  
Chief Judicial Magistrate, Sonitpur at Tezpur*

14<sup>th</sup> day of October, 2022

Mr. N. K. Mishra, Addl. P.P

..... Advocate for the State

Mrs. U. Mahanta, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 28.10.2021, 21.12.2021, 11.03.2022  
& 22.07.2022

Date of Argument : 29.09.2022

Date of Judgment : 14.10.2022

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

1. Prosecution story in brief is as follows that on 15.08.2019 informant, namely, Smt. Tutumoni Borah Kahar lodged an FIR before the O/C of Tezpur Police Station through In-charge of Bebejia Police Outpost to the effect that on 14.08.2019 at about 10 PM, accused persons, namely, Sri Ranjit Kalita and Sri Dhunu Kalita closed the road situated just backside of her house and when she raised objection about the act of accused persons, then both the accused persons had chased her for assault and accordingly, both the accused persons assaulted her by way of giving her fist blows and also torn her clothes. Thereafter, her husband went to the place of occurrence and chased them from there. It is also stated that after sometimes, the accused persons again went to her house along with Ajit Saikia and Jaan Saikia had entered into her house by breaking

the door of her house and physically assaulted her and her husband and due to that both of them sustained injuries on their face and head. Further, both the accused persons also caused cut injury on the leg of her husband with a dao and also threatened them of dire consequences. Hence, the prosecution case.

2. The instant case was registered under section-325/427/448/326/506/34 of Indian Penal Code and police investigated the same. After completion of investigation police submitted the charge-sheet against the accused persons, namely, Sri Ranjit Kalita and Sri Dhunu Kalita under section-448/294/323/34 of I.P.C.
3. That my Ld. Predecessor in Office took cognizance of offence against the accused persons. On appearance of accused persons, copies of relevant documents were furnished to the accused persons and particulars of offences under section-448/323/34 of Indian Penal Code were read over and explained to the accused persons by my Ld. Predecessor in office to which they pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as five (05) numbers of witnesses including the informant, medical officer and investigating officer in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of accused persons have been recorded U/S-313 of Cr. P.C.
5. **POINTS FOR DETERMINATION:-**
  - (i.) Whether the accused persons on 14.08.2019 at about 10 PM at Milanpur Pokhijajan under Tezpur PS in furtherance of their common intention committed criminal trespass by entering into the house of the informant, Smt. Tutumoni Borah Kahar with intent to commit an offence of assault and thereby committed an offence punishable u/s-448/34 of Indian Penal Code?

- (i.) Whether the accused persons on the same day, time and place voluntarily in furtherance of their common intention caused hurt to the informant and her husband by way of giving them fist blows on their face and head and thereby committed an offence punishable under section-323/34 of Indian Penal Code?
6. Heard argument from both sides. On perusal of the evidences on record and case diary the very findings are as follows.

**DISCUSSION, DECISION AND REASONS THEREOF**

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Smt. Tutumoni Borah as PW-1. The PW-1 in her evidence-in-chief has stated that she knows the accused persons of this case. She further stated that on 14.08.2019 at about 10:00 PM, accused persons went to her boundary of house and physically assaulted her over a land dispute and due to that she sustained injury on her hand. She also stated that at the time of incident, her husband was not present at her house. She further stated that during the time of incident her husband came to house and intervene the accused persons. She also stated that accused persons assaulted her husband and her husband also assaulted the accused persons. Thereafter, she lodged the ejahar on next day of incident. She stated that she took treatment from hospital. She identified the FIR as Ext-1 wherein she put her signature as Ext-1(1).
8. PW-1 in her cross-examination has stated that in respect of the same occurrence, accused persons also lodged ejahar against them and said case is now pending before this court. She further stated that there was a boundary dispute between them. She also stated that police has not seized anything.

9. PW-2, Sri Lakhiram Kahar in his evidence-in-chief has stated that the informant is his wife and he knows both the accused persons of this case. He further stated that on 14.08.2019 at about 8:30 PM, incident took place at the boundary of her house and he was not present when the incident occurred. He also stated that he came to his house at around 8:30 PM and found his wife in an injured condition and she was crying. He stated that his wife told him that accused persons physically assaulted her over a boundary dispute and then he along with his wife went to Bebejia Police outpost and lodged ejahar. He further stated that police took his wife to civil hospital for her treatment. He also stated that when he returned to his house, the accused persons entered his house by breaking open the door and accused namely, Ajit Saikia and Jaan Saikia assaulted him with a dao. He further stated that accused persons further shown fear of dire consequences of life.
10. PW-2 in his cross-examination stated that he was not present during the day time of the incident. He further stated that they have filed two ejahar in respect of the incident. He also stated that he could not say in respect of which incident he came to depose before this court today. He admitted the fact that the accused persons of this case not physically assaulted him. He further stated that he could not say whether accused persons filed any other case against them.
11. PW-3, Smt. Pinki Tanti in her evidence-in-chief has stated that she knows the informant and the accused persons of this case. She also stated that in the year 2019 one day at night between the informant and accused marpit took place. She further stated that incident took place at the courtyard of accused.
12. In cross-examination, PW-3 has stated that on the date of incident she was at Nagaon. She also stated that she has not seen the incident.

13. PW-4, Dr. Tilak Bhattacharjya being the Medical Officer of this case has stated in his evidence-in-chief that on 14.08.2019, he was posted as Senior Medical and Health Officer at KCH, Tezpur and on that day in reference to Bebejia OP GDE No-234, dated-14.08.2019, he examined one Mrs. Tutumoni Borah at emergency OPD of KCH, Tezpur vide registration no. 17/185 and on examination, he found the following injuries:-

1. Lacerated injury on lower lip near left corner of 1 cm X  $\frac{1}{4}$  cm X  $\frac{1}{4}$  cm.
2. Abrasion on right side of face of 3 cm X  $\frac{1}{4}$  cm.
3. Abrasion on right arm of 2 cm X  $\frac{1}{4}$  cm.
4. Tenderness over lower back.

The nature of injury is simple, fresh and caused by blunt object. He identified the medical examination report of victim a P.Ext-2 wherein he put his signature as P.Ext-2(1).

14. In cross-examination, PW-4 has stated that those injuries sustained by the victim by falling on the hard substance.

15. PW-5, ASI Sarat Ch. Das being the Investigating Officer of this case has stated that on 15.08.2019, he was posted at Tezpur Bebejia Out Post as ASI and on that day as a I/C of Bebejia OP received an ejarah lodged by one Tutumoni Borah Kahar and thereafter made an GDE vide No-246 dated-15.08.2019 and forwarded the same before Tezpur P.S. Accordingly, on received of the same, the O/C of Tezpur PS registered as Tezpur PS Case No-1523/19, u/s-325/427/448/326/506/34 of IPC. He also stated that thereafter, the O/C of Tezpur P.S. endorsed him to investigate the case and accordingly, he started his investigation by visiting the place of occurrence and prepared sketch map. He identified the sketch map as P. Ext-3 wherein he put his signature as P. Ext-3(1). He further stated that he recorded the statement of the informant and

other witnesses. He also stated that on the date of incident, he send the victim for medical examination and collected the medical report. Thereafter, he called the accused persons to appear before the police station and accordingly, the accused persons appeared before the PS and allowed them to go on bail. He also stated that after completion of the investigation, he has submitted charge-sheet against the accused persons u/s-448/294/323/34 of IPC. He identified the charge sheet submitted by him as P. Ext-4 wherein he put his signature as P. Ext-4(1).

16. PW-5 in his cross-examination has stated that incident took place on 14.08.2019 and the ejahar was lodged on 15.08.2019. He further stated that after getting the ejahar, he started the investigation vide GDE No-246 dated-15.08.2019. He also stated that he also received information on 14.08.2019 and he made a GD entry vide number-234 dated-14.08.2019 at about 10:20 PM but he did not submit the extract copy of the GD entry with the case record. However, he submitted extract copy of the GD entry-234 dated-14.08.2019 with the case diary. He stated that he prepared the sketch map on 15.08.2019. He further stated that he mentioned Duleswari and Kera Tanti at his sketch map as the neighbours of place of occurrence but he did not record their statements. He also stated that he recorded statement of Tutumoni Borah Kahar, Lakhimoni Kahar, Pinki Tanti and Lakhi Kahar. He stated that Tutumoni Borah Kahar, Lakhimoni Kahar and Lakhi Kahar are belongs to same family. He further stated that accused side also lodged a case against the informant side on the same incident. He also stated that the I.O of that case was different one. He further stated that both FIRs were registered by him. He further stated that he did not seize any articles in connection with this case. He also stated that he did not seize any torn cloths of the victim as he did not receive from the victim. He stated that the writer of the ejahar was not mentioned in the ejahar. He also stated that he



recorded the statements of all witnesses. He further stated that he has no personal knowledge whether there was any land dispute between the parties.

17. I have minutely perused the evidences on record including the cross examination of the witnesses. In this case prosecution side has examined five numbers of witnesses including the informant-cum-victim, medical officer and investigating officer in support of this case. In this case, PW-1 is the informant-cum-victim of this case. PW-2 is the husband of informant, PW-3 is the independent witness. PW-4 and PW-5 are the official witnesses i.e. Medical Officer and Investigating Officer. In this case the PW-1 has deposed that on 14.08.2019 at about 10:00 PM, accused persons went to her boundary of house and physically assaulted her over a land dispute and due to that she sustained injury on her hand. She further deposed that at that time her husband was not present. The PW-1 has not clearly stated that how the accused persons assaulted her. That there was no eye witnesses of this case. From the Medical Report it appears that the PW-1 sustained some injury on her lips, face, arm and back but it was not clear whether she sustained injury from the physical assault of the accused persons.

18. Again the PW-2 has deposed that on 14-08-2019 when he was not present at his house that he came to his house at around 8:30 PM and found his wife in an injured condition and she was crying. His wife told him that accused persons physically assaulted her over a boundary dispute. He also stated that when he returned to his house, the accused persons entered his house by breaking open the door and accused namely, Ajit Saikia and Jaan Saikia assaulted him with a dao. On other hand the PW-1 has deposed that when her husband came to house the accused persons assaulted her husband and her husband also assaulted the accused persons. That the both statement of the PW-1 & PW-2 are

contradicted each other. Further the PW-2 was not medically examined by the Doctor. His injury was not proved by Medical Report. Further in cross-examination the PW-2 also admitted that the accused persons did not physically assault him. From, the evidence of PW-2 nothing implicating found against the accused persons regarding the involvement of the accused persons in the incident of assault. PW-3 who was the hearsay witness has deposed that in the year 2019 one day at night between the informant and accused marpit took place at the courtyard of accused. In cross-examination, PW-3 has stated that on the date of incident she was at Nagaon and she has not seen the incident. PW-3 also not implicated the accused persons in this case as PW-3 only heard about the incident. Thus it is not proved that the injuries sustained by the informant (PW-1) cum-victim is caused by the accused.

19. On perusal of the case record and after going through the evidences adduced by the prosecution side, it is seen that only the evidence of PW-1 and PW-2 support the prosecution side. But other than them none other witness of the prosecution side affirmatively supports the prosecution case. PW3 is only hearsay evidence and she had not seen the incident. PW-1 and PW-2 being the related witness, one being the informant of this case and the other being the husband of the PW-1 both are interested witness. Moreover, both of the PW-1 in her cross examination stated that there was a dispute between them and there was a cross case pending against them. Further in cross-examination the PW-2 also admitted that the accused persons did not physically assault him. Apart from it is also seen that there are so many contradictions in the F.I.R. lodged by the complainant and the statement given the PW-1 & PW-2. Hence, the testimonies of PW-1 and PW-2, devoid of any corroboration from any corner, lacks credibility in this aspect and hence does not support the prosecution case.

20. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused persons beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused persons U/S: 448/323/34 of Indian Penal Code. Hence, the accused persons, namely, Sri Ranjit Kalita and Sri Dhunu Kalita are not found guilty.

**ORDER**

Accused persons, namely, Sri Ranjit Kalita and Sri Dhunu Kalita are acquitted from the Charges under section-448/323/34 of Indian Penal Code and set at liberty forthwith.

Bail-bonds of the accused persons are extended for six months in view of section-437A of Cr.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 14<sup>th</sup> day of October, 2022 at Tezpur.

**(Sri Nabajit Bhatta)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

Dictated and Corrected by me

Chief Judicial Magistrate,  
Sonitpur: Tezpur

**APPENDIX -14**  
**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Smt. Tutumoni Borah Kahar	INFORMANT
PW-2	Sri Lakhiram Kahar	OTHER WITNESS
PW-3	Smt. Pinki Tanti	OTHER WITNESS
PW-4	Dr. Tilak Bhattacharjya	MEDICAL WITNESS
PW-5	ASI Sarat Ch. Das	POLICE WITNESS

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**

**A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext-1/PW-1	Ejhar
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-4	Medical Report of Victim
4	Ext-2(1)	Signature of PW-4
5	Ext-3/PW-5	Sketch Map
6	Ext-3(1)	Signature of PW-5
7	Ext-4/PW-5	Charge Sheet
8	Ext-4(1)	Signature of PW-5

**B. Defence:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**C. Court Exhibits:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**D. Material Objects:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

Chief Judicial Magistrate,  
Sonitpur: Tezpur