

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

AT GOHPUR, SONITPUR

G.R.No. – 248/2016

U/S: 143/352/294 of I.P.C.

S T A T E

-Versus-

- 1. Sri Nandeswar Saikia**
- 2. Sri Nitu Sarmah**
- 3. Sri Manik Sarmah**
- 4. Sri Bhaskar Baruah**
- 5. Sri Bikash Borthakur**
- 6. Sri Ganesh Bharali**
- 7. Sri Binoy Bharali**
- 8. Sri Tikaram Nirala**
- 9. Smt. Durga Devi**
- 10. Smt. Nita Adhikari**
- 11. Smt. Dipali Devi**
- 12. Smt. Runu Das**
- 13. Smt. Bobi Das.....accused persons**

**Present: Smt. Pooja Sinha, AJS,
Sub-Divisional Judicial Magistrate (M)
Gohpur**

Advocate appearing for the State : Smt. Barnali Chetia
Advocate appearing for the Accused : Sri Dipak Sarmah
**Dates of recording evidence : 18.11.2017, 16.02.2018,
12.03.2018, 04.05.2018
& 28.05.2018**
Date of hearing argument : 04.06.2018
Date of delivering Judgment : 05.06.2018

JUDGMENT

- 1. The case of the prosecution in brief is that**, on 17.09.2016 Smt. Aruna Das along with few others went to Kalyani mandir to perform puja during day hours, when suddenly Sri Nandeswar Saikia, Sri Nitu Sarmah, Sri Manik Sarmah, Sri Bhaskar Baruah, Sri Bikash Borthakur, Sri Ganesh Bharali, Sri Binoy Bharali, Sri Tikaram Nirala, Smt. Durga Devi, Smt. Nita Adhikari, Smt. Dipali Devi, Smt. Runu Das and Smt. Bobi Das came and beat her up and her clothes were torn by them. One Sri Danda Borah intervened when the accused persons gave him fist blows. Hence, the case.
- 2.** In this regard, Smt. Aruna Das filed an ejahar on 17.09.2016, the Officer-in-Charge, Gohpur Police Station registered a case as Gohpur P.S. Case No. 220/16 under sections 354/294/143 of I.P.C. The police conducted investigation and thereafter, submitted charge-sheet against the accused persons Sri Nandeswar Saikia, Sri Nitu Sarmah, Sri Manik Sarmah, Sri Bhaskar Baruah, Sri Bikash Borthakur, Sri Ganesh Bharali, Sri Binoy Bharali, Sri Tikaram Nirala, Smt. Durga Devi, Smt. Nita Adhikari, Smt. Dipali Devi, Smt. Runu Das and Smt. Bobi Das for trial under sections 354/143 of I.P.C.
- 3.** In due course, the accused persons entered appearance. They were furnished with the copies as required under section 207 Cr.P.C. My Learned Predecessor-in-Office read over charge U/S 352/294/143 of I.P.C. to the accused persons and the particulars of the offences was explained to them, to which they pleaded not guilty and claimed to be tried.
- 4.** In support of the case, the prosecution examined five (5) witnesses. Statement U/S. 313 of Cr.P.C. of the accused persons is recorded. Defence plea was of total denial. Defence opted not to adduce evidence.
- 5. Point for determination :**
 - I. Whether the accused persons on 17.09.2016 at day hours at Maa Kalyani Devalaya premises were members of an unlawful assembly in prosecution of a common object and thereby committed an offence punishable U/S 143 of I.P.C.?and subsequently,**
 - II. Whether the accused persons on same date, time and place being members of unlawful assembly in prosecution**

of the common object used criminal force upon Smt. Aruna Das and thereby committed an offence punishable U/S 352/143 of I.P.C.? and subsequently,

III. Whether the accused persons on same date, time and place being members of unlawful assembly in prosecution of the common object used obscene language and cause annoyance to Smt. Aruna Das and thereby committed an offence punishable U/S 294/143 of I.P.C.?

6. Discussion, Decision and Reasons thereof: - I have heard the learned Counsel appearing for the State. Also heard the learned Counsel appearing for the accused persons. Upon hearing the learned Counsel for the parties and on perusal of the records, I am of the considered opinion to hold the following :-

7. Point of Determination No. I, II & III: All the points are taken up together for discussion in order to maintain the flow and appreciation of evidence.

8. P.W.1 Smt. Aruna Das, she is the informant of the instant case. She in her examination-in-chief deposed that she is acquainted with the accused persons. That, on 17.09.2016 they went to Maa Kalyani Devalaya to make Lakhimi Brdoloit sit in the chair of President, when supporters of Nandeswar Saikia opposed the move and physically assaulted them and specifically Depali Baruah gave her fist blows. That the accused persons were the supporters of Nandeswar Saikia. That she filed the ejahar which she exhibited as Ext.1 and identified her signature thereon.

9. During her cross-examination stated that she did not take any medical treatment after the alleged assault. Denied that she deposed falsely.

10.P.W.2- Sri Dipak Bora, he in his examination-in-chief deposed that he is acquainted with both the sides. That, about 1 ½ years back in the year 2016 on the day of Biswakarma puja in between 11 a.m. - 12 a.m. at Maa Kalyani mandir premises. That, the incident occurred in between supporters of Nandeswar Saikia and Lakhimi Bordoloi with

respect to formation of new Mandir committee. That, he has no knowledge as to why Aruna Das has filed the case.

11. During his cross-examination he deposed that the accused present in the dock did not raise hue and cry but was raised by the shopkeepers.

12.P.W.3- Sri Jayanta Saikia, he in his examination-in-chief deposed that he is acquainted with both the complainant and the accused persons. That, about a year back he went to Maa Kalyani mandir at about 2 p.m., where he heard a commotion. That, he has no knowledge about the incident and why Aruna Das has filed the case. That, he has not seen the accused persons in the place of occurrence.

His cross-examination was declined by the defense side.

13.P.W.4- Sri Ghanashyam Borah, he in his examination-in-chief deposed that he is acquainted with both sides. That, the incident took place about 2 years back at about 11 a.m. at Maa Kalyani mandir premises. That, the supporters of Lakhimi Bordoloi went with intention to establish a new Mandir Committee. That, they broke the lock of the mandir committee office room. That, they raised hue and cry. That, the accused persons were not responsible for the incident. That, he was the president of the Mandir puja committee.

His cross-examination was declined by the defense side.

14.P.W.5- Sri Dharma Bhuyan, he in his examination-in-chief deposed that he is acquainted with both the sides. That, 6 months ago at about 11 a.m. he went to Maa Kalyani mandir to perform puja and at that time he heard a commotion at the Maa Kalyani mandir premises. That, he did not notice the accused persons at the place of occurrence on the day of incident. That, the accused persons are inhabitants of nearby village.

His cross-examination was declined by the defense side.

15. In the light of the above testimonies and on perusal of the materials on record, the following facts are observed:

I. Although victim cum informant stated that accused persons beat her up along with Danda Baruah in the

ejahar. However, she did not state anything about Danda Baruah when she deposed as P.W.1. Further, she did not state that the accused persons torn off her clothes.

- II. That, Danda Baruah who is slated to be another victim by P.W.1 is not brought forward as a witness in the instant case.
- III. Rest of the P.Ws from 2 to 5 has not stated anything incriminatory as alleged by the prosecution against the accused persons.
- IV. Therefore, considering the place of occurrence , which is a busy public place, where there is a gathering of large group, the testimony of victim cannot be held credible and cogent in itself to held the accused persons guilty of the offence U/S 352/143 of I.P.C.
- V. Further, the victim has not stated anything incriminatory which could prove the points consisting offence U/S 294 of I.P.C.
- VI. Hence, all the above points leads me to forward benefit of doubt to the accused persons.

16. Considering the above, I hold that prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubt that **on 17.09.2016 at day hours at Maa Kalyani Devalaya premises were members of an unlawful assembly in prosecution of a common object used criminal force upon Smt. Aruna Das and used obscene language which caused annoyance to them and thereby committed the offence punishable U/S 143/352/294 of I.P.C.**

17. In the result, the accused persons Sri Nandeswar Saikia, Sri Nitu Sarmah, Sri Manik Sarmah, Sri Bhaskar Baruah, Sri Bikash Borthakur, Sri Ganesh Bharali, Sri Binoy Bharali, Sri Tikaram Nirala, Smt. Durga Devi, Smt. Nita Adhikari, Smt. Dipali Devi, Smt. Runu Das and Smt. Bobi Das are hereby acquitted on benefit of doubt U/S 143/352/143 of I.P.C. and set at liberty forthwith.

18. Bail bonds furnished are hereby extended for a period of 6 (six) months.

19. The case is disposed of on contest.

Given under my hand and seal of this court on this the 5th day of June, 2018 at Gohpur.

**(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur**

Dictated and corrected by me

**(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur**

APPENDIX

Prosecution Witness-

P.W.1- Smt. Aruna Das

P.W.2- Sri Dipak Bora

P.W.3- Sri Jayanta Saikia

P.W.4- Sri Ghanashyam Borah

P.W.5- Sri Dharma Bhuyan

Defence Witness-

Nil

Prosecution Side Exhibits-

Ext.1- Ejahar

Defence Side Exhibits-

Nil

(Pooja Sinha)
Sub-Divisional Judicial Magistrate (M)
Gohpur