

**APPENDIX -12**

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR, TEZPUR Present: <b>Smt. Priyanka Saikia, JMFC</b> (Date of the Judgment) <b>21-09-2022</b> <b>(CASE NO- G.R. 1722/2016)</b> (Details of FIR/Crime and Police Station)	
Complainant	State of Assam or Smti Papee Das
Represented By	Smti. Bandhana Boro, Learned APP
Accused persons	1. Sri Purnima Kalita W/o- Dharmeswar Kalita 2. Sri Kabita Baishya W/o- Sri Bhabani Baishya 3. Sri Jonti Devi W/o- Hem Nath 4. Pinki Kalita W/o- Ranjit Kalita 5. Rumi Das W/o- Biren Das All are of Village- Parua, Harigaon P.S.- Tezpur, District- Sonitpur
Represented by	Sri N.M. Goswami

**APPENDIX -13**

Date of offence	Not mentioned
Date of FIR	03-06-2016
Date of charge sheet	30-06-2016
Date of offence explanation	07-03-2018
Date of commencement of evidence	02-05-2018
Date on which judgment is reserved	22-08-2022
Date of judgment	21-09-2022
Date of the sentencing order, if any	NIL

**Accused Details**

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A-1	Purnima Kalita	NIL	28-04-17	Sections 143, 447, 294, 506, 34 of IPC	Acquitted	NIL	NIL
A-2	Kabita Baishya	NIL	28-04-17	Sections 143, 447, 294, 506, 34 of IPC	Acquitted	NIL	NIL
A-3	Jonti Devi	NIL	28-04-17	Sections 143, 447, 294, 506, 34 of IPC	Acquitted	NIL	NIL
A-4	Pinki Kalita	NIL	28-04-17	Sections 143, 447, 294, 506, 34 of IPC	Acquitted	NIL	NIL

A-5	Rumi Das	NIL	28-04-17	Sections 143, 447, 294, 506, 34 of IPC	Acquitted	NIL	NIL
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**APPENDIX -14****LIST OF PROSECUTION / DEFENSE / 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)
PW1	Lily Das	Other witness
PW2	Papee Das	Complainant
PW3	Shyamanta Das	Other witness
PW4	Amar Jyoti Baruah	Other witness
PW5	Nitul Koch	Other witness
PW6	Paresh Bhuyan	Other witness
PW7	Dipankar Borah	Other witness
PW8	Babita Koch	Other witness
PW9	Tarun Saikia	Other witness

**B. Defense 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/ DEFENSE/ COURT EXHIBITS****A. Prosecution:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext. 1	FIR
2	Ext. 1(1)	Signature

**B. Defense:**

<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

## **JUDGMENT**

**1.** Brief fact of case as put forward by the prosecution:-  
The case of the prosecution story in brief is that on 28.04.2016, the accused persons together and with criminal conspiracy abused the mother of the complainant and tried to outrage her modesty in the road. At that time, complainant's brother went there and tried to resist them, but the above accused persons abused him and started assaulting him with sharp weapons. The accused persons also torn the cloths of complainant's mother and they dragged the complainant by holding her hair and tried to touch her private parts. The accused persons also throw lime powder liquid on the eyes of the complainant's brother and therefore, he sustained injuries on his body. Hence, this case.

**2.** The complainant filed a complainant case before the learned CJM, Sonitpur and thereafter exercising power under section 156(3) Cr.P.C, the case was forwarded to Tezpur PS for investigation. On receipt of the complaint petition, Tezpur P.S. Case No 931/16 under Sections 324, 448, 326, 354, 298, 469, 350, 506 I.P.C. was registered and investigated into. On completion of the investigation, the Investigating Officer has submitted charge sheet under Sections 143, 447, 294, 506 read with Section 149 of I.P.C. against submitted charge-sheet against the accused persons, Smti Purnima Kalita, Smti Kabita Baishya, Jonti

Devi, Pinki Kalita and Rumi Das under Sections 143, 447, 294, 506, 34 of IPC.

**3.** In pursuance to summons issued the accused persons appeared before this court and were allowed to go on bail.

**4.** The accused persons entered trial and after furnishing the accused persons with the copies of the relevant documents in compliance with Section 207 of Cr.P.C and upon finding sufficient materials against the accused persons, offence under Sections 143, 447, 294, 506, 34 of IPC was explained to the accused persons to which they pleaded not guilty and claimed to be tried.

**5.** The prosecution examined the victim, Smti Lily Das as PW-1 and complainant Smti Popee Das as PW-2, Shyamanta Das as PW-3, Amarjyoti Baruah as PW-4, Nitul Koch as PW-5, Paresh Bhuyan as PW-6, Dipankar Bora as PW-7, Babita Koch as PW-8 and Tarun Saikia as PW-9 and also exhibited the ejahar. The statement of the accused persons under Section 313 of Cr.P.C was recorded and the defence is total denial. Defence declined to adduce evidence. I have heard the arguments for both sides.

**6.** Upon hearing and on perusal of the case record I have framed the following points for determination-

**(I)** Whether, 28.02.2016 the accused persons in furtherance of their common intention, formed unlawful

assembly with intend to commit rioting with the complainant and her family members and thereby committed an offence punishable under Sec. 143, 34 IPC?

**(II)** Whether, 28.02.2016 the accused persons in furtherance of their common intention, have committed criminal trespass into the house of the complainant and thereby committed the offence punishable under Sec. 447, 34 IPC?

**(III)** Whether, 28.02.2016 the accused persons in furtherance of their common intention, uttered filthy languages upon the complainant and her family members in a public place which caused annoyance to others and thereby committed the offence punishable under Sec. 294, 34 IPC?

**(IV)** Whether, 28.02.2016 the accused persons in furtherance of their common intention, threatened the complainant and her family members with dire consequences and thereby committed an offence punishable under Sec. 506, 34 of IPC?

**DISCUSSION, REASONS AND DECISION THEREOF:**

**7.** PW-1 Smti Lily Das has stated in her evidence that accused persons pulled her daughter from her house and also pour limestone powder liquid to her son's eye by tiding him in front of the pillar of Namghar. Accused persons also beat her son and pelted stone upon PW-1's house. One

Ramani Kalita tried to burn her house. The accused persons also snatched away her golden chain, ring and a cash amount of Rs. 28,000/-.

In her cross examination she stated that for the same incident she and her daughter filed two different cases. Accused persons abandoned them from the society. On the incident day accused persons also lodged a case against her, her son and daughter. Accused persons also lodged another case against her son for theft of hand pump. There are no medical documents of her son regarding the incident.

**8.** PW-2 Smti Papee Das has categorically deposed that on the day of incident there was a village meeting in Namghar and village people were talking about her mother. When her mother asked them, then one village man Hema Nath uttered obscene language to her mother. When her mother went to the road, Dharmeswar Kalita, Ramani Kalita and other ladies at Namghar chased her mother. The village people also tried to assault her but she somehow managed to run from that place. The accused persons pulled her brother from his shop and took him to Namghar and tied him with a gamosha on a pillar of Namghar. Then accused persons beat her brother with a wooden post of a Namghar. Dharmeswar Kalita, Ramani Kalita, Hema Nath and Prasanta Das had poured limestone powder to her brother's eye. At that time, Mahabhairab Police came and taken her brother for medical

examination. On the same day, when she and her father were at home, the accused persons pelting stone over their house. Dharmeswar Kalita, Ramani Kalita, Hema Nath and Prasanta Das came to their house and taken Rs.21,000/- and one golden chain and ring and pulled her out of their house by grabbing her hair. The ladies brought her to the police station. Ext 1 is the FIR and FIR(1) is her signature.

In her cross examination PW-2 deposed that her mother has lodged a case about the same incident and she has also filed this case after 13 days gap of the incident. It was not mentioned in the FIR. Police took her brother along with gamosha. She has not seen who has taken the cash amount and golden chain and ring. Accused persons also lodged a case against them. The accused persons poured limestone powder liquid to her brother's eye. The incident was witnessed by 30-40 people.

**9.** PW-3 Shyamanta Das in his evidence stated that accused persons pulled and tied him and poured limestone powder liquid to his eyes. Police had taken him to the hospital. He was referred to GMCH and he stayed at there for 7 days. Thereafter he stayed at Tezpur Hospital for 3 months.

In his cross examination he stated that he was tied with a sador and police taken him to the hospital along with sador. The village people poured limestone powder liquid on his eyes. No medical documents were enclosed in this case.

**10.** PW-4 Amar Jyoti Baruah in his evidence stated that on the incident day PW-1 scolding the accused persons in front of the Namghar. Thereafter, she lodged this case.

In his cross examination PW-4 stated that accused persons neither scolded the complainant and her mother nor had torn clothes of complainant's mother. PW-1 torn her clothes by herself and went to police station. PW-1 always has filed cases for small reasons against the village people. The accused persons neither pulled out complainant from their house nor pour limestone powder liquid to complainant's brother's eye.

**11.** PW-5 Sri Nitul Koch in his evidence stated that complainant's mother run away from the Namghar.

In his cross examination he stated that PW-1 always fights with the village people and keeps on lodging case against them.

**12.** PW-6 Sri Paresh Bhuyan stated in his evidence stated that complainant had a fight with the village people in the meeting at meeting in Namghar. He was not present at the time of occurrence.

**13.** PW-7 Dipankar Borah, PW-8 Babita Koch and PW-9 Tarun Saikia stated in their evidence that they had no knowledge about the incident.

**APPRECIATION OF EVIDENCE**

**14.** In this case the accused persons are facing trial under Sections 143, 447, 294, 506, 34 of IPC.

**15.** The Section 143 IPC provide that whoever forced by any members of an unlawful assembly with intend to commit rioting in pursuance of common object of such assembly. From the bare provision, it appears that to be an offence of rioting there must be an unlawful assembly on the behest of the assembly. There is no allegation in the FIR regarding the fact that the accused persons have formed with an unlawful assembly and assaulted them.

**16.** However, on going through the deposition of the complainant, she did not say anything, regarding the formation of unlawful assembly from the accused side. From the evidence of PW-1, it is apparent that the accused persons had entered her house and dragged her daughter out of the house. PW-2 deposed that on the incident day there was a meeting in Namghar and her mother went there to ask why they talked about her. PW-3 himself stated in his evidence that he was tied with Sador instead of Gamosha and poured limestone powder liquid to his eyes. The male persons of the village poured limestone on his eyes. Police did not seize anything.

**17.** Hence, it appears to me that the prosecution could not bring sufficient evidence to show that the accused

persons had formed unlawful assembly. As such, they cannot be liable for the guilty of the rioting. The prosecution has also not able to prove the rioting of the accused persons being armed with deadly weapons and as such, the accused persons are not found guilty of rioting being armed with deadly weapons as well.

**18.** Now let me discuss, whether the prosecution has brought the sufficient evidence for the ingredient of Section 143 IPC.

**19.** From the FIR, it is revealed that accused persons dragged her from her house and tried to touch her private parts. But in the evidence the PW-2 has deposed that Dharmeswar Kalita, Ramani Kalita, Hema Nath and Prasanta Das came to their house and taken Rs.21,000/- and one golden chain and ring. Further neither the PW-2 nor the other independent witnesses has deposed that accused persons entered the PW-2 house. Considering the discussion, I opined that there are no sufficient materials to hold that the accused persons had trespassed into the premises of the PW-2 and hence, the prosecution could not establish the ingredients under Section 447 IPC.

**20.** Further to meet the ingredient of Section 294 IPC, the prosecution has to mention the word so obscene, which was used in a public place towards the victim. However, I have once again gone through the FIR and in the FIR, the complainant / PW-2 did not mention the word

which was to fall within the purview of section 294 IPC. The other prosecution witnesses also could not mention the word used by the accused persons as obscene. As such, the accused persons are not found guilty of Section 294 IPC as well.

**21.** What remained before this court is to decide, whether the act of the accused persons had fulfilled the ingredients of the offence under Section 506 IPC. In the FIR the complainant did mention that the accused persons had threatened with the fear of injury. That allegation of the complainant undoubtedly coming within the purview of Section 506 IPC. In my considered opinion, the prosecution could not establish the case of Section 506 IPC.

**22.** It is seen that the evidence of PW.1 and PW.2 are totally contradictory. PW.1 deposed that accused persons pulled her daughter from her house and whereas PW.2 deposed that the male persons of the village pulled her out. PW-1 deposed in her evidence that accused persons snatched away her gold chain and ring along with cash amount, whereas PW-2 has deposed that the male persons of the village taken away the said articles. Moreover, after going through the FIR, I find that many new facts were deposed by the complainant in her evidence which were not stated in the FIR. PW-3 categorically deposed that he was tied by a "sador" whereas the complainant/PW.2 deposed it as a "Gamosha". It is also strange that the sador or gamosha was not seized by police.

**23.** After going through the evidence of independent witnesses PW.4 to PW.9, I find that nothing material could be drawn out from their evidence. The said PWs stated nothing about the alleged incident. Considering the matter in entirety, I find that there exists contradiction in the evidence of witnesses and further that the evidence deposed by PW.2 who is the complainant of this case cannot be relied upon as because it is seen that there exists no parity in between the evidence deposed by PW.1 and PW-3 and the FIR lodged by her as regard the alleged incident. From the discussion made in above paragraph, it already appeared that the complainant could not prove that the accused persons are the aggressor of this case. As such, the prosecution could not prove that the accused were the aggressor of this case.

**24.** In the case of **V. D. Jhingan Vs. State of Uttar Pradesh reported in AIR 1966 SC 1762**, the Hon'ble Supreme Court has held that it is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lies upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.

**25.** A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.

Hence, the accused persons are acquitted on benefit of doubt and set at liberty forthwith.

**ORDER**

**26.** Situated thus, the accused persons namely Purnima Kalita, Kabita Baishya, Jonti Devi, Pinki Kalita and Rumi Das are acquitted of the offence under Sections 143, 447, 294, 506, 34 of IPC and set at liberty forthwith.

**27.** The bail bond of the accused persons will remain in force for 6 (six) months from today by virtue of Sec. 437A Cr.P.C.

Given under my hand and seal of this court on this 21<sup>st</sup> day of September, 2022 at Sonitpur, Assam.

(Priyanka Saikia, AJS)  
Judicial Magistrate 1<sup>st</sup> Class  
Sonitpur, Tezpur