

**APPENDIX -12****IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS****Present:** Smt. Darshana Nath, JMFC, SONITPUR, TEZPUR**[Date of the Judgment]**

27.12.2022

[ GR Case No.2735 of 2012]

(Details of FIR/ Crime and Police Station)

<b>COMPLAINANT :</b>	State of Assam
<b>REPRESENTED BY</b>	Smti Niva Devi, Ld. A.P.P.
<b>ACCUSED</b>	Md. Giasuddin S/o- Lt. Baharuddin R/o-Nurpurjut, P.S.- Dhekiajuli , Dist.- Sonitpur (Assam)
<b>REPRESENTED BY</b>	Debashish Borah, Ld. Counsel.

**APPENDIX -13**

Date of Offence	10-11-2012
Date of FIR.	11-11-2012
Date of Charge-sheet	30-11-2012
Date of Offence Explained	04-03-2015
Date of commencement of evidence	20-07-2015
Date on which judgment is reserved	-
Date of the Judgment	27-12-2022
Date of the Sentencing Order, if any	<b>Two (2) years</b> rigorous imprisonment with a fine of Rs. 10,000/- (Ten thousand rupees only) in default to undergo simple imprisonment (S.I) for another 2 (two) months for the offence under section 354, IPC and, <b>One</b>

	<p><b>month</b> rigorous imprisonment with a fine of Rs. 500/- (Five Hundred Rupees only) in default to undergo simple imprisonment for another 7 (seven) days for the offence under section 447, IPC and <b>One (1) year</b> rigorous imprisonment with a fine of Rs. 5,000/- (Five Thousand Rupees only) in default to undergo simple imprisonment for another 15 (fifteen) days for the offence under section 509 IPC.</p>
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**ACCUSED DETAILS:**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A1	Md. Giyasuddin	Nil	Nil	U/S 447/354/509 of IPC	Convicted	Nil	Nil

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS AT SONITPUR, TEZPUR**

**PRESENT: DARSHANA NATH, MA, LL.M., AJS**

**GR CASE NO: 2735/2012**

U/S 447/354/509 IPC

**STATE**

**VS.**

**Md. Giasuddin**

Evidence recorded on : 16/12/2022  
Arguments heard on : 19/12/2022  
Judgement delivered on : 27/12/2022  
Appearing for Prosecution : Smti. Niva Devi  
Appearing for Defence : Mr. Debasish Borah

**JUDGMENT**

- 1.** The ejahar was lodged by the informant/PW1 on 11/11/2012 alleging *inter alia* that the accused person A1 on 10/11/2012 at morning 5 am stalked her near 'domkol' and when she came to wash her mouth, he pulled her hand without her permission and tried to

outrage her modesty by giving some vulgar indication to her. When she shouted, her grandmother ran to the place of occurrence and the accused person escaped.

- 2.** Police on receiving the ejahar registered the same as Dhekiajuli P.S. Case No 441/12 u/s 447/354/509 IPC and started investigation of the same. On completion of investigation, police submitted the charge sheet against the accused person A1 u/s 447/354/509 IPC.
- 3.** Cognizance of the offence was taken and accordingly summons was issued to the accused person. On appearance, the copies were furnished to the accused persons.
- 4.** Considering the nature of the offence, formal charges are framed and substance of offence u/s 447/354/509 IPC are explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 5.** During the trial, prosecution has examined four witnesses. Statement of the accused person is recorded under Section 313 CrPC, but the accused person has failed to adduce evidence in his support.
- 6.** I have heard the arguments advanced by the learned Counsel of both sides and carefully perused the

evidence on record. Then I framed the following points for determination:

**POINTS FOR DETERMINATION:**

***a) Whether the accused person committed criminal trespass and thereby committed an offence punishable under section 447 IPC?***

***b) Whether the accused person used criminal force to the informant with intend to outrage her modesty and thereby committed an offence punishable under section 354 IPC?***

***c) Whether the accused person made gesture intending to insult the modesty of the informant and thereby committed an offence punishable under section 509 IPC?***

**DISCUSSIONS, DECISIONS AND REASONS THEREOF**

7. PW1 as the informant in her evidence stated that before 3 years ago at 5 am, when she went to 'domkol' to wash her face, the accused person was stalking her. He then suddenly touched her chest and mouth without her permission and showed her some vulgar gestures. When she shouted, her grandmother

came to the place of occurrence and the accused person escaped. Then she filed an FIR in the police station. In the FIR, she stated that on 10/11/2012 at around 5 AM when she came near "domkol", the accused by pulling her hand and pressing mouth showed her some vulgar postures. When she shouted, her grandmother came to the place of occurrence and the accused managed to escape. In cross-examination, PW1 stated that her parents and brother knew the accused person since very long. Hence, the evidence given by PW1 can be corroborated with the contents of the FIR.

- 8.** PW2 stated that he knew both the accused person and the informant. He stated that on that very day at around 5 am when he was brushing, he heard some hue and cry from the house of PW1. When he went to her house, he came to know that the accused person hid himself near 'domkol' in the house of PW1 and when PW1 went to wash her mouth, the accused person pressed her mouth and indicated her some vulgar gesture. At the meeting of villagers, the accused person accepted his mistake. He stated that the grandmother of PW1 died.
- 9.** In cross-examination also he stated that he went to the police station with PW1 to file the FIR and he had



cordial relation with both the informant as well as the accused person.

**10.** PW2 is an independent witness and in cross-examination, he stated that he has cordial relation with both the informant and accused. Hence, I consider PW2 as vital witness as he has no interest either in victim or in the accused.

**11.** PW3 stated that she knew both the accused person and the informant/PW1. She stated that about 6 years ago at around 5 am when PW1 went to wash her mouth, the accused person pulled her neck inappropriately and indicated some vulgar signs. When PW1 shouted, PW3 went to the place of occurrence and came to know about the incident. PW3 saw that the accused person was running away towards his house. After the incident, the father of PW1 brought the accused person from his home and asked about the incident before the villagers. Then the accused accepted that he has done mistake.

**12.** In cross-examination she stated that she did not witness the incident and she knew about it from PW1. She is the mother of PW1. She stated that she also went to the house of the accused to bring him on that very day along with the father of PW1. She stated that the accused's house is 50 meter far away from

her home. After hearing the screaming of the victim/PW1, the grandfather of PW1- Abdul Jolil and the father of PW1 rushed to the place of occurrence. She denied the suggestion that she forced the accused person to marry PW1 as she was not beautiful and as he refused to marry her, PW1 filed this false case against the accused person.

**13.** In statement recorded under section 313 CrPC, the accused person denied all allegations made by the PWs.

**14.** On the day when the case was fixed for judgment, learned APP prayed to call the IO to examine as prosecution witness because prosecution evidence was closed without taking his evidence. Prayer was allowed for the end of justice and the court issued summons to the IO. The IO appeared before the court and deposed his evidence as PW4.

**15.** PW4 stated that he was entrusted to investigate the case by then OC, Dhekiajuli PS on receiving FIR having GDE no. 202 dated 11/11/2012 filed by PW1. He went to the place of occurrence and prepared sketch map. In cross-examination, he stated that he got the FIR on 13/11/2012, but he started the investigation as per GDE no. from 12/11/2012. He stated that PW1 deposed him that the accused

pressed her and when she shouted, her grandmother came out of the house.

- 16.** After careful perusal of the case record, I have seen that the concerned IO/PW4 neither conducted any medical examination of the victim nor prayed to record her statement u/s 164 CrPC in the court which can be regarded as gross negligence on the part of the police.
- 17.** After recording the evidence of the IO/PW4, the court recorded additional statement of the accused u/s 313 CrPC for the end of justice.
- 18.** In first statement recorded u/s 313 CrPC, the accused took the plea of alibi by stating that he was not at home on the day of incident, but was at Arunachal Pradesh. But the accused stated that he was sleeping at the time of incident at his own home in his additional statement recorded u/s 313 CrPC. Hence, there is contradiction in own statements of the accused and the accused failed to prove his plea.
- 19.** Now let me discuss the evidence. Evidence given by the PWs did not contradict one another. Section 354 of IPC says that: ***whoever assaults or criminal force to any woman, intending to outrage or knowing it to be likely that he will***

***thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.***

**20.** Modesty means sexual dignity of a woman which is acquired by her since the time of her birth. The concept of modesty is subjective to every woman i.e. the sexual limits are personal to every woman; there cannot be a set formula to judge the boundaries of the sexual honour of a woman. It is a virtue attached to a woman owing to her sex. A simple touch on the shoulder might be unacceptable to a woman whereas it could be a casual gesture to greet people for some other women.

**21.** The word 'outrage' implies physical act. Herein, the modesty of a woman is violated by touching her without her consent at such parts of her body which are unacceptable to her. It is necessary that the accused should have used criminal force or made such gestures to outrage the modesty or knowledge that it would outrage her modesty. The reaction of the woman is very relevant in judging as to whether an assault to her amount to outraging her modesty as this offence differs from woman to woman but there are certain acts which are bound to be outrageous to

the modesty of every woman such as touching on her posterior sexual organs etc.

**22.** The ultimate test for ascertaining whether modesty has been outraged is whether the act by the accused is capable of shocking the sense of decency of the woman. The modesty of a woman is outraged without even touching her but by uttering any word, making any sound or gesture or exhibiting any object which has a sexual connotation with intention.

**23.** In this case, PW1 was shocked when the accused person touched her neck and chest inappropriately and she shouted. She stated that when she shouted, her grandmother Jubeda Khatoon came to the place of occurrence and the accused managed to escape. Though the evidence of material witness Jubeda Khatoon could not be taken as she died, yet the contents of FIR can be corroborated with the evidence of PW1.

**24.** The IO/PW4 in his evidence deposed that the victim/PW1 stated before him that when the accused touched and pressed her inappropriately, she shouted and her grandmother came to the place of occurrence which can be corroborated with the contents of FIR and the evidence given by PW1. PW4 is an official witness and has no interest either in the informant

and the accused. Hence, I find no reason to disbelieve the testimony of PW4 in this regard.

**25.** Learned counsel of the accused pleaded that the parents of PW1 wanted that accused would marry their daughter, i.e., PW1 and when he refused, PW1 filed this case falsely against the accused person only to harass him. But in his statement recorded u/s 313 CrPC, the accused stated that he has no previous enmity with PW1 and her family members.

**26.** Learned counsel of the accused also pleaded that there was no any eye witness of the alleged offence on that very day and hence, the accused did not commit any offence. But crimes like sexual offences, outrage modesty of a woman etc. shall not require eye witness to prove the case because offenders never commit such crimes in public place.

**27.** In **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, the Hon'ble Supreme Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions in statement of prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there

are compelling reasons for seeking corroboration. The Court observed as under: (SCC pp. 403, para 21)

***"21..... The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."***

**28.** It is true that, except PW1/victim there is no any eye witness of the offence alleged against the accused. But we cannot discard circumstantial evidence as provided by the prosecution witnesses.

**29.** In **Madhu vs State Of Kerala** [(2012) 2 SCC 399], Hon'ble Apex Court held that –

***"5.....The care and caution with which circumstantial evidence has to be evaluated stands recognized by judicial precedent. Only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. In a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion. In the absence of convincing circumstantial evidence, an accused would be entitled to the benefit of doubt....."***

**30.** The first and foremost requirement in circumstantial evidence is the identification of the accused person. In the instant case, PW1/victim



clearly identifies the accused A1 first in the FIR, then in her evidence.

- 31.** Secondly, PW1 stated in her evidence that when the accused pressed her mouth by indicating her some vulgar postures on 10/11/2012 at around 5 am, she shouted which is corroborated by PW2, an independent witness who stated that he heard some hue and cry from the house of PW1 at around 5 am on that very day.
- 32.** In third place, PW1 stated in her evidence that when she shouted, her grandmother ran to the place of occurrence, which is admitted by the IO/PW4 stating that PW1 deposed before him that her grandmother came to the place of occurrence after hearing her screaming.
- 33.** Fourthly, PW1 stated that when she shouted, her grandmother came and the accused eloped from the place of occurrence which can be corroborated with evidence given by PW3 who saw the accused running towards his house.
- 34.** In fifth place, PW3 stated that the father of PW1/victim after the incident went to the house of the accused and brought him in front of the villagers which can be corroborated with statement made by

the accused u/s 313 CrPC that the father of PW1 went to his house at around 6 am on that day and dragged him in front of the villagers.

**35.** In sixth place, PW2 stated that the accused was brought in front of the villagers where he accepted his alleged offence which can be corroborated with evidence given by PW3 that the accused accepted his offence in front of the villagers and with the statement made by accused u/s 313 CrPC that he was brought in front of the villagers. Though he denied that he accepted his offence in front of the villagers, he could not prove it beyond reasonable doubt.

**36.** After careful perusal of evidence on record, prosecution has established a complete unbroken chain of events from which it is inferred that the accused has committed the offences as alleged by PW1. It is crystal clear that prosecution has proved commission of offences on the part of the accused as alleged by PW1 beyond reasonable doubt and the defence has miserably failed to rebut the incriminating part of the evidence laid by the prosecution witnesses PW1, PW2 and PW3. I do not find any ground to disbelieve the evidences of the aforesaid witnesses to the effect that on the date of occurrence, at about 5 am, the informant was pulled by the accused forcefully and was used criminal force

which outraged her modesty. Hence, the ingredients of offence u/s 354 is found to be proved against the accused person, because of the fact that assaulting a woman by pulling her hand and touching her chest without the consent of a woman are sufficient to come to a conclusion that it constitute outrage of modesty of a woman. It is also sufficient to conclude that there is reasonable ground to believe that by such action, accused knew it will thereby, outrage the modesty of the victim and as such, it is held that prosecution has been able to prove the guilt of the accused person for commission of offence u/s 354 IPC beyond all reasonable doubts.

**37.** Now to constitute offence under section 509 of IPC, the accused person must have to utter any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman. Here, the accused person showed gesture to the victim/PW1 by pressing her mouth, pulling her neck and touching her chest which outraged her modesty. As the prosecution proved that the accused committed offence u/s 354 IPC, the accused must have committed offence u/s 509 IPC.

**38.** Now come to section 447 IPC. Section 447 of IPC reads as: ***whoever commits criminal trespass***

***shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.***

**39.** 'Criminal trespass' means an offence when a person enters into property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property as per section 441 IPC. In this case, as the offence under section 354 IPC has been proved, it is obvious that the accused person entered into the premises of PW1 intending to abuse her. The evidence given by PW1, PW2 and PW3 has proved the fact that the accused entered into the premises of PW1 with an intention to outrage modesty of PW1. Hence, the accused person is found guilty of offence under section 447 IPC.

**40.** Situated thus, it is my considered opinion that that the prosecution has successfully established beyond all reasonable doubt that the accused person A1 on 10/11/2012, entered into the premises of PW1 with the intention to abuse her and used criminal force to outrage her modesty thereby committed offence punishable under section 354/447/509 of The Indian Penal Code.

### **ORDER**

- 41.** Considering all facts, I am of the view that the accused person A1 is found guilty for offence u/s 354/447/509 IPC and convicted accordingly.

### **PROBATION**

- 42.** It is true that each and every offence is serious and deterrent action is very essential to the maintenance of law and order in a society. Here I have considered the applicability of Sections 3 and 4 of the Probation of Offenders Act to the convict. At present situation, crimes against women are increasing day by day in the form of rape, domestic violence, molestation, torture, sexual harassment etc. Such crimes have physical and psychological impact on women which preventing them from leading a standard life. It is a right of every woman to live a dignified and respectable life. Women contribute to the health and productivity of whole family. It is the responsibility of every citizen to make the women feel safe in our society.

- 43.** To curb crimes against women, strict punishment is necessary against the offenders. Fear of punishment prevents the law breakers from violating the law. Woman safety is the need of an hour. Therefore, condoning such offences will only lead to

repetition of the same. Hence, I am disinclined to extend the benefits of Sections 3 and 4 of the Probation of Offenders Act to the convict.

### **SENTENCE HEARING**

- 44.** I have also considered the quantum of sentence to be imposed upon him. Section 354, Indian Penal Code carries punishment of imprisonment of either description for a term which shall not less than 1 year but which may extend to five years, and shall also be liable to fine.
- 45.** Section 447, Indian Penal Code carries punishment of imprisonment of either description for a term which may extend to three months, with fine or which may extend to Five Hundred Rupees, or with both.
- 46.** Section 509, Indian Penal Code determines punishment of imprisonment of either description for a term which may extend to three years and also with fine.
- 47.** I have heard the convict on the point of sentence and recorded his statement in separate sheet u/s 248 CrPC. He requested the court to reduce the punishment.

**48.** Herein, the convict A1, has been under trial for almost ten (10) years. He must have already suffered much.

**49.** After considering all, I am of the considered opinion that a sentence of two (2) years rigorous imprisonment with fine under section 354 IPC, one month rigorous imprisonment with fine under section 447 IPC and one (1) year rigorous imprisonment with fine under section 509 IPC will suffice the ends of justice. Accordingly, I sentence the convict A1 to undergo-

**Two (2) years** rigorous imprisonment with a fine of Rs. 10,000/- (Ten thousand rupees only) in default to undergo simple imprisonment (S.I) for another 2 (two) months for the offence under section 354, Indian Penal Code and,

**One month** rigorous imprisonment with a fine of Rs. 500/- (Five Hundred Rupees only) in default to undergo simple imprisonment for another 7 (seven) days for the offence under section 447, IPC.

**One (1) year** rigorous imprisonment with a fine of Rs. 5,000/- (Five Thousand Rupees only) in default to undergo simple imprisonment for another 15 (fifteen) days for the offence under section 509 IPC.

**50. All sentences will run concurrently.**

**51.** Any period of jail custody of the convict already undergone shall be set off against the sentence of imprisonment as per Section 428, Criminal Procedure Code.

**52.** His bail bonds are extended for a further period of 6 (six) months as per the provisions of Section 437-A, Criminal Procedure Code.

**53.** Let the items, which were seized in connection with this case, be returned to the rightful owners in due course, if any.

**54.** Let the fine, if paid, be given to the victim i.e., PW1 as per section 357 CrPC.

**55.** Let a copy of the judgment be given to the convict immediately free of cost as per the provisions



of Section 363(1), Criminal Procedure Code. The convict is also informed of his right of appeal against the judgment and order of conviction and sentence.

Given in my hand and under the seal of this court on this 27<sup>th</sup> day December, 2022.

Typed by me:

Darshana Nath  
JMFC, 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)
PW1	Victim(named as XYZ)	Informant
PW2	Md. Baharul Islam	Other witness
PW3	Sufia Khatoon	Other witness
PW4	Mahendra Sarma	Other witness (I.O.)

**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	Exhibit P1/PW1	FIR
2	Exhibit P1(1)/PW1	Signature of PW1
3	Exhibit P2/PW4	Sketch Map
4	Exhibit P2(1)/PW4	Signature of PW4
5	Exhibit P3/PW4	Charge Sheet
6	Exhibit P3(1)/PW4	Signature of PW4

**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

Smti. Darshana Nath  
Judicial Magistrate First Class, Tezpur