

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

10.10.2022

[GR Case No.2998 of 2014]

(Details of FIR/ Crime and Police Station)

COMPLAINANT :	State of Assam Or Md. Mofizuddin S/o Md. Nobil Hussain R/o- Gerujuli, P.S.- Dhekiajuli, Dist.- Sonitpur (Assam)
REPRESENTED BY	Smti Niva Devi, Ld. A.P.P.
ACCUSED	Sahjahan Ali S/o- Samsul Huda R/o- Gerujuli, P.S.- Dhekiajuli, Dist.- Sonitpur (Assam)
REPRESENTED BY	Babul Barthakur, Ld. Counsel.

APPENDIX -13

Date of Offence	15-12-2014
Date of FIR.	17-12-2014
Date of Charge-sheet	28-02-2015
Date of Offence Explained	08-02-2016
Date of commencement of evidence	28-10-2016
Date on which judgment is reserved	26-09-2022
Date of the Judgment	10-10-2022
Date of the Sentencing Order, if any	-

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	Sahjahan Ali	Nil	Nil	U/S 447/354 /427/50 6 IPC	Acquitted	Nil	Nil

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

**PRESENT: DARSHANA NATH, MA, LLM
JMFC, Tezpur, Sonitpur**

GR CASE NO: 2998/14

U/S 447/354/427/506 IPC

STATE

VS.

Md. Sahjahan Ali

Evidence recorded on :28/10/16,19/03/18,09/07/18,
18/11/21, 11/08/22.

Arguments heard on : 13/09/2022

Judgement delivered on : 10/10/2022

Appearing for Prosecution :Smti. Niva Devi, Ld.A.P.P.

Appearing for Defence : Babul Barthakur, Ld. Counsel.

JUDGMENT

1. The ejahar was lodged by the informant Md. Mafizuddin on 17/12/2014 alleging *inter alia* that the accused person A1 on 15/12/2014 at around 10 pm forcefully tried to enter his house by calling his wife as "bhabi" and made a hole on the wall of his house. When his wife asked the accused why he has come, he asked her to remain silent or else he would kill her. When she tried to shout, the accused person escaped.

2. Police on receiving the ejahar registered the same as Dhekiajuli P.S. Case No 730/14 u/s 447/354/427/506 IPC and started investigation of the same. On completion of investigation, police submitted the charge sheet against the accused person A1 u/s 447/354/427/506 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 particulars of offence u/s 447/354/427/506 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 eight witnesses. Statement of the accused person is recorded under Section 313 CrPC, but the accused person has failed to adduce evidence in his support.

I have heard the arguments advanced by the learned Counsel of both sides and carefully perused the evidence on record.

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 caused mischief and thereby committed an offence punishable under section 427 IPC?***

c. Whether the accused person used criminal force to the PW2 with intend to outrage her modesty and thereby committed an offence punishable under section 354 IPC?

d. Whether the accused person threatened to kill PW2 and thereby committed an offence punishable under section 506 IPC?

DISCUSSIONS, DECISIONS AND REASONS THEREOF

- 6.** PW1 as the informant in his evidence stated that on 15/12/14 at around 10 pm, the accused A1 entered his house and called his wife, i.e. PW2 as "bhabi". When PW2 asked him why he has come, accused told her that he has come for her good. PW2 told the accused A1 that her husband, i.e. PW1 was not at home at that time and she refused to open the door. The accused then hit the door with dagger out of rage and asked PW2 to remain silent and if she shouted he would kill her. When the parents of PW1 came, the accused escaped from the place of occurrence. On that very day, PW1 was not at home. In the FIR, he made same allegations against the accused person.
- 7.** In cross examination, he stated that he filed the FIR after two days of the incident. He was not at home at the time of incident and after coming home, he informed the villagers about the incident. Since the villagers did not take any step, he filed the FIR against the accused person. He stated that he has no previous fight with the accused person. He stated that he showed the holes of the wall to the police. Hence, the evidence given by PW1 can be corroborated with the contents of the FIR.

- 8.** PW2 as the victim stated that she knew both the accused person and the informant. Informant is her husband. She stated that on that very day at around 10 pm, the accused came to their house and called her as "bhabi". She informed the accused that her husband, i.e. PW1 was not at home and she refused to open the door. He told her that he came to her house to do bad work with her. As she did not open the door, the accused broke the wall and peed at her bed. The accused warned her to remain silent or else he would kill her. The accused removed a bulb from the house of the PW1 and PW2.
- 9.** In cross examination, she stated that her parents-in-law's house was at the back side of her house and after hearing her hue and cry, her parents-in-law came within 2/3 minutes.
- 10.** PW3 and PW4 stated that they knew the informant and accused person. They stated that they only heard about the incident.
- 11.** PW5 stated that he knew both informant and accused. He stated that on that very day at around 10-11 PM, he went to the house of PW1 after hearing some hue and cry of PW2. On being asked, she informed PW5 that accused came to her house and told her to open the door. In cross-examination, he stated that he did not see anyone at the place of occurrence.
- 12.** PW6 stated that the informant is his son and he knew the accused. On that very day, at around 10 pm, after hearing noises from PW2, he came to the place of occurrence. He saw that the accused was eloping towards his house from the house of PW2. He then called one Hasen and another person and told about the story.

13. In cross-examination, he stated that there were no fencing in between the houses of PW1 and the accused and there was electricity provision in their houses. He stated that generally people in that area went to sleep at around 11/12 PM.
14. PW7 stated that she came to the place of occurrence after hearing noises from PW2 and stated that PW2 is her daughter-in-law. She saw that the accused was eloping towards his house. in cross examination, she stated that she went to sleep on that day, but after hearing hue and cry of PW2, they came to the place.
15. PW8 is the investigating officer in the instant case. He stated that he found the informant at the police station and recorded his statement. He went to the place occurrence and prepared a sketch map. He stated that he did not seize any bulb from the place of occurrence.
16. In statement recorded under section 313 CrPC, the accused person denied all allegations made against him.
17. Now let me discuss the evidence. 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.***
18. To constitute offence u/s 354 IPC, there must be some assault or criminal force with intention to outrage a woman's modesty. As per the statement and evidence given by the victim, i.e., PW2, it is

nowhere transpires that the accused used any criminal force on the victim. She stated in her evidence that the accused told her to open the door and that he has come to do bad work with her. When she refused to open the door, the accused broke the wall and peed on the bed. In statement recorded u/s 164 CrPC, she stated that the accused came to bad work with her and told her his name. The accused then entered her house by breaking the wall and by pressing her mouth, he tried to open the door. When she refused, the accused threatened her to kill with a dao and her parents-in-law came after hearing hue and cry of the victim. She stated that he pulled off the bulb of her house.

19. In her evidence, the victim failed to mention that the accused pressed her mouth and tried to kill her with a dao which she mentioned in her statement recorded u/s 164 CrPC. It is quite impossible to believe that a victim who is physically abused can so easily forget to mention those acts which outraged her modesty. Hence, the statement of the victim cannot be regarded as trustworthy.

20. It is quite probable that the whole incident might take minimum 10 minutes and the victim did not shout during whole 10 minutes. The accused came, requested to open the door, she replied, then he broke the wall and peed in the bed. Generally when a person gets shocked, he or she shouts at first instance. He or she won't wait till the culprits break wall and enter house and pee on the bed. In this case, as per statement of the victim, if the accused did all those things and she did not shout during that time, the court finds reasons to disbelieve the victim's evidence.

21. A victim whose modesty is outraged is the prime witness. Culprits generally commit such crimes in private place where people rarely roam. A

culprit can be convicted solely on the statement of the victim. Here, the victim herself has given two different statements regarding pressing her mouth, threatening her with a dao and peeing on bed and hence the court cannot consider her as trustworthy and satisfactory witness. Prosecution failed to prove any assault or criminal force on the part of the accused person.

22. 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.***

23. To constitute offence under section 447 IPC, one must enter 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.

24. PW2, i.e., the victim stated in her evidence that the accused told her to open the door and that he has come to do bad work with her. When she refused to open the door, the accused broke the wall and peed on the bed. The accused warned her to remain silent or else he would kill her. When she shouted, her parents-in-law came and the accused pulled off the bulb of their house. PW1 stated that the accused broke the wall with a dagger, which PW2 did not mention anywhere in her evidence. The investigating officer neither seized any dagger nor took any photograph of the broken wall. Neither the police seized any bulb which PW2 mentioned in her evidence. In the case record, I have not found any evidence which could prove that the accused broke the wall of the house of PW1 on that very day.

25. The main ingredients of mischief u/s 427 IPC are -intention to cause wrongful loss or damage to public or to any person and to cause the destruction of any property. Neither the investigating officer seized any dao or dagger, nor any evidence could prove the commission of offence u/s 427 IPC on the part of the accused person. As the prosecution failed to prove allegations of offence u/s 448 IPC, it is obvious that the accused did not commit mischief in the house of PW1. As the accused did not break the wall nor entered into the house of PW1, it is impossible to commit mischief by the accused.

26. Now come to section 506 IPC. To constitute offence, there must be some criminal intimidation on the part of the accused person. Here, PW2 stated that the accused called her outside the door and he told that he had come to do bad work. To be a crime, there must be ill intention and some motive on the part of the accused person, i.e. *mens rea*. Without *mens rea*, there is no crime. If there is any bad intention on the part of the accused, he would not tell her his name and about his intentions. A criminal minded person never reveals his name and intention before committing the offence, as he would presume that the victim will definitely shout or do something out of shock for which he might be caught.

27. A criminal must have motive to commit a crime. PW1 stated that there was no previous fight between him and the accused person. PW2 also stated that there was no previous hatred between her and accused. Here, prosecution failed to prove the motive of the accused person.

28. In view of above, I am of the considered opinion that prosecution has miserably failed to

prove the allegations against the accused person. I do not find any ground to believe the evidences of the aforesaid witnesses to the effect that on the date of occurrence, at about 10 pm, the accused did not commit criminal trespass, neither committed mischief nor outraged modesty of PW2. Hence, the ingredients of offence u/s 447/427/354/506 is found to be disproved against the accused person, and as such, it is held that prosecution has failed to prove the guilt of the accused person for commission of offence u/s 447/427/354/506 IPC beyond all reasonable doubts.

29. From the evidence given by the all the PWs, it could not be proved that the accused person had committed house trespass, mischief in the house of PW1 and outraged modesty of PW2 and threatened her to kill.

30. Hence, it is considered that the prosecution has failed to prove the allegations against the accused person beyond reasonable doubt.

31. In the absence of proof of house trespass, mischief, outraged modesty and criminal intimidation on the part of the accused person the offence u/s 447/427/354/506 stands disproved.

32. Thus, all the points for determination are decided in the negative.

ORDER

33. Accordingly, the accused person A1 is acquitted of the offence under section 447/427/354/506 IPC

and set at liberty forthwith. His bail bond is extended for a period of 6 months.

Given in my hand and under the seal of this court on this 10th day October, 2022.

Typed by me:

Darshana Nath
JMFC, Sonitpur, Tezpur

APPENDIX -14**LIST OF PROSECUTION / DEFENCE / COURT****WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Mofizuddin	Informant
PW2	Musstt. Rahima Khatoon	Other witness(Victim)
PW3	Md. Nur Jaman	Other witness
PW4	Md. Saiful Islam	Other witness
PW5	Habibur Rahman	Other witness
PW6	Nabi Hussain	Other witness
PW7	Jerina Khatoon	Other witness
PW8	Dandadhar Kumar	Other witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

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

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Exhibit 1	FIR
2	Exhibit 1(1)	Signature of PW1
3	Exhibit 2	Statement of PW2(Victim) u/s 164 of CrPC.
4	Exhibit 2(1)	Signature of PW2(Victim) on u/s 164 of CrPC statement.
5	Exhibit 2(2)	Signature of PW2(Victim) on u/s 164 of CrPC statement.
6	Exhibit P2/PW8	Trace map
7	Exhibit P2(1)/PW8	Signature of PW8
8	Exhibit P3/PW8	Charge Sheet
9	Exhibit P3(1)/PW8	Signature of PW8

B. Defence:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

Smti. Darshana Nath
Judicial Magistrate First Class, Tezpur