

IN THE COURT OF JMFC-20, SONITPUR,
TEZPUR

Present: **Smt. Triza P Mazinder Baruah, AJS**

[Date of the Judgment]
24-06-2022

[PR Case no: 32 of 2018]
[GR Case no: 4579 of 2017]

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM OR Md. Ajijul Haque
REPRESENTED BY	Learned A.P.P Sri Niranjan Saikia.
ACCUSED PERSONS	1. Md. Fazar Ali S/o- Lt. Abdul Karim 2. Musstt. Hazera Khatoon W/o- Md. Fazar Ali Both are resident of Vill: Gorgarh P.S: Tezpur Dist: Sonitpur (Assam)
REPRESENTED BY	Ajay Kr. Paul

FORM B

Date of Offence	09-11-2017
Date of FIR.	10-11-2017
Date of Charge-sheet	30-11-2017
Date of offence explained	05-11-2019
Date of commencement of evidence	17.01.2022
Date on which judgment is reserved	NIL
Date of the Judgment	24.06.2022
Date of the Sentencing Order, if any	NIL

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period
	Md. Fazar Ali	NA	10.07.2019	447/294/352/34	Acquitted	NIL	
	Musstt. Hazera Khatoon	NA	10.07.2019	447/294/352/34	Acquitted	NIL	

Form C

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Ajjjul Haque	Other witness (Complainant)
PW2	Anjuma Begum	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	PW/Ext -1	FIR
2	PW/Ext- 1(1)	Signature of informant

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	Material Object Number	Description
NIL	NIL	NIL

BEFORE THE COURT OF JUDICIAL MAGISTRATE 1ST

CLASS

TEZPUR, SONITPUR

**Present :- Smti Triza P M Baruah , AJS
Judicial Magistrate 1st Class Sonitpur, at Tezpur**

**P.R CASE NO. : 32 of 2018
G.R CASE NO. :4579 of 2017**

Under Sections 447/294/352/34 of IPC

State of Assam

- *VERSUS* -

Md. Fazar Ali

Musstt. Hazera Khatoon

Both are resident of

Vill: Gorgarh

Police Station- Tezpur

District- Sonitpur (Assam)

-Accused persons.

Appeared

Learned APP for State : Sri Niranjan Saikia.
Learned Counsel for Defence: Ajay Kr. Paul
Date of Evidence : 17.01.2022, 22.06.2022
Date of Argument : 22.06.2022
Date of Judgment : 24.06.2022

P.R.CASE NO: 32 OF 2018

J U D G M E N T

1. The present case arose out of an FIR lodged by informant Ajijul Haque against the accused persons namely Md. Fazar Ali and Musstt. Hazera Khatun alleging that on 8:30 AM the accused persons illegally entered the premise of the informant and assaulted the informant and his family members. Consequently informant had filed an FIR. Hence, this case.

2. On receipt of the FIR, officer in charge of Tezpur police station registered a case vide Tezpur P.S. case no. 2307/2017 under sections 447/323/427/34 of the Indian Penal Code (IPC) and endorsed the case for investigation. Accordingly Investigating Officer (I/O) initiated investigation of this case and on completion of investigation, I/O submitted charge sheet against the accused persons under sections 447/294/352/34 of the IPC.

3. Thereafter, on basis of the contents of the case diary, FIR, charge sheet and other relevant documents, cognizance was taken of the offence prima facie appeared to have been committed by the accused persons and summons was issued against them.

4. On appearance, accused persons was furnished with copy of relevant documents under Section 207 of the Criminal Procedure Code (Cr.P.C.).

5. On perusal and consideration of the material on record and upon hearing the learned Assistant Public Prosecutor (APP) and the learned counsel appearing on behalf of the accused persons, prima-facie material of offence under sections 447/294/352/34 of the Indian Penal Code (IPC) were found against the accused persons and accordingly particulars of said offence under the aforesaid sections were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. In support of its case, prosecution examined 2 (Two) numbers of witness and exhibited 1 (One) number of document. The witnesses were cross-examined by the defence and thereafter the witnesses were discharged.

7. Statement of defence of the accused persons under section 313 Cr.P.C. has been dispensed with due to lack of any incriminating evidence against them. The defence declined to adduce any evidence.

8. I have perused the material on record and heard the arguments advanced by the learned A.P.P. and the learned counsel appearing for the accused persons.

9. Upon hearing and after perusal of the record, following points are formulated for proper adjudication of this case:

POINT FOR DETERMINATION : Whether the accused persons in furtherance of common intention under section 34 IPC.

(A) Point No. 1: Whether the accused persons committed the offence of criminal trespass by entering into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any persons and thereby committed an offence punishable under section 447 of IPC ?

(B) Point No. 2 : Whether the accused persons uttered obscene words or did an obscene act in a public place to the annoyance of others and thereby committed an offence punishable under section 294 of IPC ?

(C) Point No. 3 : Whether the accused persons assaulted or use criminal force to the family members of the informant otherwise than on grave and sudden provocation and thereby committed an offence punishable under section 352 of IPC?

DISCUSSION , DECISION & REASONS THEREOF:-

10. P.W-1 Ajijul Haque who is the informant in this case deposed that the incident happened around 4 years ago in the year 2017 at his house at 8:00 a.m. He further deposed that the accused persons entered in his house and assaulted his family members. Consequently, he filed an FIR on the day of the incident. PW/Exhibit 1 is the FIR and PW/Exhibit 1(1) is his signature therein. In the cross examination in chief he stated that during the incident there was an ongoing property dispute between the accused persons and the informant.

Moving ahead with the deposition of PW 2 Anjuma Begum who is the wife of the informant; she stated that accused persons are their relatives and due to misunderstanding her husband filed this instant case against the accused persons. She further stated that she does not hold any grievance against the accused persons and has no issue if the accused persons are acquitted in the instant case.

11. Burden of proof to establish the guilt of the accused persons is on the prosecution. Here, prosecution has failed to establish the guilt of the accused persons. From the evidence of the prosecution witness who has appeared, it can be seen that the FIR was lodged due to a misunderstanding and there is no incriminating material to

suggest that the accused persons have committed offence punishable under sections 447/294/352/34 of the Indian Penal Code (IPC).

12. Considering all, it is found that the prosecution has failed to establish the guilt of the accused persons and implicate them of any offence under the above stated sections of IPC. The point for determination as stated above are hence, decided in negative.

ORDER

13. In light of the above discussion, the accused persons Md. Fazar Ali and Musstt. Hazera Khatoon are acquitted of the charges of offence alleged to have been committed by him.

14. Set the accused persons at liberty forthwith.

15. Bail bond for the accused persons are extended for a further period of six months in view of section 437(A) of the Cr.P.C.

16. Given under the hand and seal of this court on this **24th day of June, 2022** at Tezpur, Sonitpur.

(Smt. Triza P Mazinder Baruah)
Judicial Magistrate First Class
Tezpur, Sonitpur.

Appendix

Name of the witness of Prosecution:-

P.W-1 : Md. Ajijul Haque

P.W-2 : Anjuma Begum

Documents exhibited by Prosecution :- Nil.

Name of the witness of Defence:- Nil.

Documents exhibited by Defence :- Nil.

**(Smt. Triza P Mazinder Baruah)
Judicial Magistrate First Class
Tezpur, Sonitpur.**