

**P.R Case No-348 of 2019**  
**(State of Assam Vs Smt. Sabitri Saha & Anr)**

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR**

**P. R. Case No-348 of 2019**

Under section-294/323/34 of I.P.C

Present:- **Sri N. J. Haque, AJS,**  
**Chief Judicial Magistrate,**  
**Sonitpur, Tezpur**

State of Assam

-Vs-

1. Smt. Sabitri Saha  
W/O:- Sri Prafulla Saha

2. Smt. Shankari Ghosh @ Sangita  
W/O:- Sri Sanjay Ghosh

Both are R/O:- Bhairab Nagar Tilla  
P/S:- Tezpur  
Dist:-Sonitpur, Assam

.....Accused Persons

**Advocate appeared:**

Mrs. Karabi Das, Asst. P.P..... For the State

Mr. Rose Bharali, Ld. Advocate..... For the accused persons

Evidence recorded on	:- 02.03.2021 & 04.01.2022
Date of Statement of defence	:- 04.01.2022
Argument heard on	:- 04.01.2022
Judgment delivered on	:- 04.01.2022

**J U D G M E N T**

**History of Prosecution's Case**

1. Prosecution's case appears to be in a narrow campus is that one Smt. Swapna Roy lodged an ejahar before the O/C of Tezpur P.S through I/C of Mahabhoirab Police Outpost alleging inter alia that on 14.05.2018 at about 12:30 PM, while she was returning from the house of one Smt. Jharna Biswas after taking water, the accused persons without any reason started scolding her using filthy languages. It is also stated that when she asked the accused about the same, both the accused

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persons physically assaulted her. It is further stated that on the same day at about 10 PM, while her husband named Sri Kalipad Ray went to the house of accused to ask about the matter, both the accused persons started scolding her husband using filthy languages.

**"INVESTIGATION"**

2. On receipt of the ejahar, Tezpur P.S Case No-793 of 2018 under section-294/352/323/506/34 of I.P.C was registered and investigation into. On completion of the investigation, the I.O. of this case submitted charge sheet u/s-294/323/34 of I.P.C against the accused person.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s-207 of CrPC was furnished to the above named accused persons. After hearing both side, particulars of offences u/s-294/323/34 of I.P.C. was read over and explained to the accused persons by my Ld. Predecessor in office, on which they pleaded not guilty and claimed to be tried.

**STATEMENT OF DEFENCE**

4. The prosecution side to prove the guilty of the accused persons examined as many as three numbers of witnesses i.e. the informant and the victim of this case. Considering the testimonies of the witnesses, prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Examination of accused under section-313 of Cr.P.C is dispensed with as from the testimonies of the prosecution witnesses, nothing implicating disclosed against the accused.

**ARGUMENT**

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.

6. **The points for determination in this case are:**

- (i) Whether the accused persons on 14.05.2018 at about 12:30 PM at a place called Garwanpatty under Tezpur PS

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in furtherance of their common intention scolded the informant and her husband named Sri Kalipad Ray using filthy languages and thereby committed an offence punishable u/s-294/34 of IPC?

- (ii) Whether on the same date, time and place, both the accused persons in furtherance of their common intention voluntarily caused simple hurt upon the body of the informant and thereby committed an offence punishable u/s-323/34 of IPC?

**DECISION, DECISION AND THE REASON THEREOF:**

7. In this case, prosecution side has got the burden of prove that on 14.05.2018 at about 12:30 PM, while she was returning from the house of one Smt. Jharna Biswas after taking water, the accused persons without any reason started scolding her using filthy languages and when she asked the accused about the same, both the accused persons physically assaulted her. It is also stated that on the same day at about 10 PM, while her husband Sri Kalipad Ray went to the house of the accused to ask about the matter, both the accused persons started scolding her husband using filthy languages. In this case prosecution side to prove the case examined three numbers of witnesses in support of this case. I have carefully travelled through the testimonies of the prosecution witnesses in the backdrop of entire prosecution case and it finds:-
8. PW-1, Smt. Swapna Rai being the informant of this case deposed before this court that she knows the accused persons of this case. She also deposed that the incident took place in the year 2018 and on the date of the alleged incident, she had a domestic quarrel with the accused and due to misunderstanding she lodged the instant case. She further deposed that now she does not want to proceed further with the instant case and therefore, she has no objection if the accused persons are acquitted from this case. She identified her ejahar as Ext-1 wherein she put her signature as Ext-1 (1). The cross-examination of PW-1 was declined by the defence side.

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9. PW-2, Sri Kalipad Roy deposed before the court that the informant is his wife and the accused persons are known to him. He also deposed that the incident took place in the year 2018 and on the date of alleged incident, his wife had a domestic quarrel with the accused persons and due to misunderstanding she lodged the instant case. He further deposed that now he does not want to proceed further with the instant case and therefore, he has no objection if the accused persons are acquitted from this case. The cross-examination of PW-2 was declined by the defence side.
10. PW-3, Smt. Satibala Rai deposed before the court that she knows the informant and the accused persons of this case. She also deposed that the incident took place around 3 years back at about 10:00 PM and on the date of alleged incident, the informant had a quarrel with the accused persons and out of misunderstanding, informant lodged the ejarah against the accused persons. She further deposed that the informant has settled the matter with the accused persons outside the court. The cross-examination of PW-3 was declined by the defence side.
11. I have carefully travelled through the testimonies of PW-1 and PW-2 in the backdrop of the entire prosecution case and it finds that both the PW-1 and PW-2 in their evidences contradicted the entire contention of the prosecution story by way of not implicating the accused persons with the alleged incident. PW-1 in her evidence categorically deposed that she lodged the ejarah against the accused due to misunderstanding and now she does not want to proceed further with this case against both the accused. Both PW-1 and PW-2 in their evidences admitted that they do not have any objection if the accused persons are acquitted from this case.
12. To sum up the testimonies of the prosecution witnesses, it reveals before this court that the prosecution witnesses appears to be contradictory with the entire contention of the ejarah and their testimonies cannot be relied upon.
13. In view of the above evidence on record, I am of the opinion that prosecution side has failed to prove the charges against both the accused persons beyond reasonable doubt and as such the accused persons are acquitted from the

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charges u/s-294/323/34 of IPC and sets at liberty. Surety is extended for six months in view of section-437A of Cr PC.

14. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 04<sup>th</sup> day of January, 2022.

**(Sri N. J. Haque)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

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**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1:- Smt. Swapna Rai, Informant

PW-2:- Sri Kalipad Roy,

PW-3:- Smt. Satibala Rai

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits:**

Ext-1 :- FIR

Ext-1(1):- Signature of PW-1

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

Chief Judicial Magistrate  
Sonitpur, Tezpur