

**APPENDIX-12**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPURTEZPUR

Present:- Sri Nabajit Bhatta. AJS. MA, LL.B.  
Chief Judicial Magistrate,  
Sonitpur, Tezpur

[Date of the Judgment]

**29.11.2022****[PR Case No-1057 of 2020]**

(FIR NO-1236/2020 DATED-21.07.2020/HOUSE TRESPASS/MISCHIEF CAUSING  
DAMAGES TO THE AMOUNT OF FIFTY RUPEES CASE AND TEZPUR POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Smt. Lipika Mahanta, W/O:- Sri Hemendra Mahanta, R/O:- Usha Nagar By Lane No-14, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSON	Sri Rajib Mahanta, S/O:- Late Bhupen Mahanta, R/O:- Usha Nagar By Lane No-14, P/S:- Tezpur, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Babul Borthakur, Ld. Senior Counsel

**APPENDIX-13**

Date of Offence	20.07.2020
Date of FIR	21.07.2020
Date of Charge Sheet	31.07.2020
Date of Offence Explanation	02.02.2022
Date of commencement of evidence	29.03.2022
Date on which judgment is reserved	18.11.2022
Date of Judgment	29.11.2022
Date of the Sentencing Order, if any	NIL

**ACCUSED DETAILS :**

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Sri Rajib Mahanta	NIL	NIL	Section-448/427 of IPC	Acquitted	NIL	NIL

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

**P R. Case No-1057 of 2020**

State of Assam  
-Vs-  
Sri Rajib Mahanta

.....Accused Person

Under section-448/427 of I.P.C

*Present:*

*Sri Nabajit Bhatta AJS. MA, LL.B.  
Chief Judicial Magistrate, Sonitpur at Tezpur*

29<sup>th</sup> day of November, 2022

Mr. N. K. Mishra, Addl. P.P

..... Advocate for the State

Mr. B. Borthakur, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 29.03.2022, 24.06.2022, 04.08.2022  
& 15.10.2022

Date of Argument : 18.11.2022

Date of Judgment : 29.11.2022

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

1. Prosecution story in brief is as follows that on 21.07.2022 informant, namely, Smt. Lipika Mahanta lodged an FIR before the O/C of Tezpur Police Station through In-charge of Kacharigaon Police Outpost to the effect that on 20.07.2020 at about 10 PM when she was eating food, accused Sri Rajib Mahanta blow calling bell of her house, and thereafter, her daughter went there to open the door. Then, the accused being her brother-in-law came in an intoxicated state armed with iron rod and destroyed the household articles. It is also stated that the accused also used obscene words towards her in front of her children and also raised un-environmental situation at her house. It is further stated that she has been residing with her ill husband along with her children and the accused visited her house in an intoxicated state at night and tortured them both mentally and physically. Hence, the prosecution case.

2. The instant case was registered u/s-427/294/448 of Indian Penal Code and police investigated the same. After completion of investigation, police submitted the charge-sheet against the accused person, namely, Sri Rajib Mahanta under section-427/294/448 of I.P.C.
3. That my Ld. Predecessor in Office took cognizance of the offence against the accused person. On appearance of the accused person, copy of relevant document was furnished to the accused person and particulars of offences under section-448/427 of Indian Penal Code were read over and explained to the accused person by my Ld. Predecessor in office to which he pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined as many as five (05) numbers of witnesses including the informant and the investigating officer in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statement of accused person was recorded U/S-313 of Cr. P.C.

5. **POINTS FOR DETERMINATION:-**

- (i.) Whether the accused person on 20.07.2020 at about 10:00 PM at Usha Nagar By Lane No-14 under Tezpur PS in committed criminal trespass by entering into the house of the informant Smt. Lipika Mahanta with intent to commit an offence of physical assault and thereby committed an offence punishable u/s-448 of Indian Penal Code?
- (ii.) Whether the accused person on the same date, time and place by destroying the household articles of informant and caused damages to the household articles of the informant and thereby committed damage amounting to Rs. 50/- or more and thereby committed an offence punishable under section-427 of I.P.C.?

6. Heard argument from both sides. On perusal of the evidences on record and case diary the very findings are as follows.

**DISCUSSION, DECISION AND REASONS THEREOF**

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Smt. Lipika Mahanta as PW-1. The PW-1 in her evidence-in-chief has stated that she knows the accused person of this case and he is her brother-in-law. She further stated that in the year 2020, one day at about 10:00 PM, she was taking dinner at her home and then accused blow the calling bell of their house and her daughter opened the door. She also stated that the accused entered her house with an iron rod and caused mischief of their furniture and other materials of their house. She stated that the accused was in a drunken condition and used slang language against them. She also stated that the accused declined to go from their house even his wife and mother insisted him to leave their house. Thereafter, on being compelling circumstances she called police. She further stated that at that point of time her husband was ill and accused always attempted to throw her out of her matrimonial home. Thereafter, she lodged ejahar. She identified the FIR as P. Ext-1 wherein she put her signature as P. Ext-1(1).
8. PW-1 in her cross-examination stated that police went to their house at 11:30 PM. She stated that police did not seize any broken furniture from her house. She also stated that on the date of incident police recorded her statement. She further stated that her brother-in-law Bablu Mahanta, mother of accused and wife of accused came to the place of incident. She also stated that she did not mention the name of articles destroyed by the accused in her ejahar. She stated that they used to reside one part of 1<sup>st</sup> floor of the house and another part belongs to accused. Accused used to live in ground floor of the building. She stated that her husband and the accused are brothers. She further stated that the

accused filed one case against her alleging that she has maintained illicit relationship with a person.

9. PW-2, Smt. Anita Talukdar in her evidence-in-chief has stated that she knows the complainant of this case and she is daughter of her elder sister. She also knows the accused person and he is the brother-in-law of the informant. She stated that the incident took place on in the year 2020. Both of them resided at same house. She also stated that one day at night an altercation took place between informant and accused. After that the informant called her over telephone and informed the matter to her. She told her that the accused tried to assault her.
10. PW-2 in her cross-examination stated that informant stayed at 1<sup>st</sup> floor and the accused resided at ground floor at their house. She stated that police did not record her statement. Police only wrote her name and address.
11. PW-3, Sri Nitul Barman has stated in his evidence-in-chief that he knows the complainant of this case and she is his elder sister. He also knows the accused person and he is the brother-in-law of the informant. He stated that one day the accused had entered her house and used slang language to the informant and damaged the goods of her house by an iron rod. He also stated that at that time her husband was bed ridden. After that the informant called her over telephone and informed the matter. PW-3 in his cross-examination has stated that police did not meet him. He stated that he has stated his statement before this court for first time.
12. PW-4, Sri Bijit Mahanta has stated in his evidence-in-chief that he knows the complainant and the accused person of this case. He stated that the accused is the brother-in-law of the informant. He also stated that the incident took place one and half years ago on one day. He further stated that on the day of incident, a halla took place at their house. He further stated that at that time, he went to the house informant Lipika Mahanta

with her brother and he heard that accused used slang language to the informant. Again on one day, he heard that the accused used slang language to the informant when he was at the house of the brother of the informant.

13. PW-4 in his cross-examination has stated that he heard halla at the mobile of the brother of the informant Nitul Barman. He further stated that he doesn't remember whether he stated before the police that on that day he went to the house of informant with her brother. He stated that informant Lipika Mahanta is his relative elder sister.
14. PW-5, ASI Hemanta Kumar Nath being the Investigating Officer of this case has stated in his evidence-in-chief that on 20.07.2020, he was posted at Kacharigaon Out Post under Tezpur PS as ASI and on that day, I/C of Kacharigaon OP received an ejahar lodged by one Lipika Mahanta and thereafter made an GDE vide No-380, dated-20.07.2020 and forwarded the same before Tezpur P.S. Accordingly, on received of the same, the O/C of Tezpur PS registered a case vide Tezpur PS Case No-1235/2020, U/S-448/427/294 of IPC. Thereafter, O/C of Tezpur P.S. endorsed him to investigate the case and accordingly he started his investigation by visiting the place of occurrence and prepared sketch map. He identified the sketch map as P. Ext-2 wherein he put his signature as P. Ext-2(1). He also stated that he recorded the statement of the informant and other witnesses. Thereafter, he called the accused person to appear before the police station and accordingly, the accused person appeared before the PS and allowed him to go on bail. He further stated that after completion of the investigation, SI Tilak Ch. Teron has submitted charge sheet against the accused person, namely, Sri Rajib Mahanta u/s-448/427/294 of IPC. He also identified the charge sheet submitted by SI Tilak Ch. Teron as P.Ext-3 and P. Ext-3(1) is the signature of SI Tilok Teron which is known to him.

15. PW-5 in his cross-examination has stated that he was endorsed for investigation on 20.07.2020 at about 5:30 PM and he went the place of occurrence at 6:00 PM. He also stated that near the place of occurrence, Kamaleswari Saikia and Binita Patowary were resided. He further stated that he did not examine them as they did not wish to adduce statement before him. But he did not mention it in his case diary. He stated that PW-3 Nitul Barman and PW-4 Bijit Mahanta resided at Dhekiajuli and PW-2 Anita Talukdar resided at Rowta. He also stated that he did not examine the neighbor people of the place of occurrence. The witnesses namely Nitul Barman, Bijit Mahanta and Anita Talukdar are the relatives of the complainant. He also stated that no witnesses of this case gave statement regarding using slang language by the accused person. He stated that the accused and complainant resided at same campus. He further stated that he did not seize any articles in connection with this case. He also stated that he did not send the victim for medical examination.
16. I have minutely perused the evidences on record including the cross examination of the witnesses. In this case prosecution side has examined five numbers of the witnesses including the informant and investigating officer in support of this case. In this case, PW-1 is the informant of this case. PW-2, PW-3 and PW-4 are the relatives of informant and they are hearsay witnesses. PW-5 is the Investigating Officer.
17. In this case, PW-1 (Informant) in her evidence deposed that in the year 2020, one day at about 10:00 PM, while she was taking dinner, the accused came to her house with an iron rod and caused mischief of their furniture and other materials of their house. At that time the accused was in a drunken condition and used slang language against them. After that she lodged the case against the accused.
18. PW-2, PW-3 and PW-4 are the relatives of informant and also are the hearsay witnesses of this case. They have stated that they were



informed over phone about the incident by the complainant. All three witnesses were not present at the place of occurrence when the incident took place. They only heard about the incident from the informant. Hence, from the evidences of PW-2, PW-3 and PW-4 sufficient implicating materials had been not found against the accused person. So, the statement given by the PW-1 has been not proved by statement of other witnesses.

19. PW-5 being the investigating officer has exhibited the sketch map as Ext-2 and charge sheet as Ext-3. From the cross-examination of PW-5 (I.O) it appears that near the place of occurrence, Kamaleswari Saikia and Binita Patowary were resided but they are not examined by him. They were vital witnesses of this case but the I.O. did not record their statements. Further the I/O did not seize any articles in connection with this case. The I/O also failed to examine the neighbouring people of the place of occurrence. So, I have not found sufficient materials against the accused person for commission of offence of criminal trespass at the house of the complainant.

20. Section-427 of IPC relates to the facts of causing damage to the amount of Rs.50/- in this case, the prosecution side failed to adduce any evidence upon which that the Court may presumed any damages caused by the accused person which is Rs. 50/- or upwards. The prosecution side failed to adduce any evidence to substantiate the Section-427 of IPC. Although, PW-1 in her evidence stated that on the date of alleged incident the accused person caused mischief of furniture and other materials of her house but no eye witness has affirm her claim. Further the I.O. also did not seize any materials from the house of informant. Merely the evidence of PW-1 that the furniture and other materials of her house got damage does not appears to be the proof of mischief causing damage to the amount of Rs. 50/- or more. Hence, none of the prosecution witnesses have deposed exactly anything about the actual

damages of household articles which proves of the mischief causing damage to the amount of Rs. 50/- or more.

21. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused person beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused person U/S: 448/427 of Indian Penal Code. Hence, the accused namely, Sri Rajib Mahanta is not found guilty.

**ORDER**

Accused person, namely, Sri Rajib Mahanta is acquitted from the Charges under section-448/427 of Indian Penal Code and set at liberty forthwith.

Bail-bond of the accused person is extended for six months in view of section-437A of Cr.P.C.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 29<sup>th</sup> day of November, 2022 at Tezpur.

**(Sri Nabajit Bhatta)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

Dictated and Corrected by me

Chief Judicial Magistrate,  
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)
PW-1	Smt. Lipika Mahanta	INFORMANT
PW-2	Smt. Anita Talukdar	OTHER WITNESS
PW-3	Sri Nitul Barman	OTHER WITNESS
PW-4	Sri Bijit Mahanta	OTHER WITNESS
PW-5	ASI Hemanta Kumar Nath	POLICE WITNESS

**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	Ext-1/PW-1	Ejhar
2	Ext-1(1)	Signature of PW-1
3	Ext-2/PW-5	Sketch Map
4	Ext-2(1)	Signature of PW-3
5	Ext-3/PW-3	Charge Sheet
6	Ext-3(1)	Signature of SI Tilak Ch. Teron

**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

Chief Judicial Magistrate,  
Sonitpur: Tezpur