

**G.R.CASE NO. 37/2012**

**(U/S- 448/352/427 r/w section 34 IPC)**

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS, DIBRUGARH, ASSAM**

**G.R.CASE NO. 37/2012**

**(U/S- 448/352/427 r/w section 34 IPC)**

**Present: Sanskrita Khanikar, A.J.S.  
Judicial Magistrate First Class,  
Dibrugarh**

**State**

**- VS -**

**1. Sri Dipak Bhagat**

S/O - Sri Narendra Kishor Bhagat

R/O - Geleki SDR

P.S. - Geleki SDR

Dist - Sivasagar, Assam

**2. Anita Gowala**

W/O - Sri Ram Chandra Gowala

R/O - Dihajan Guria Gaon

P.S. - Demow

Dist - Sivasagar, Assam

**.....Accused persons**

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Advocate for the Prosecution : Learned Smti. Lakshmi  
Mohan

Advocate for the Defence : Learned Sri Purnananda  
Hiloidhari

Evidence recorded on : 30-12-2017, 02-02-2018,  
21-05-2018, 16-11-2018,  
26-03-2019

Argument heard on : 26-04-2021

Judgment delivered on : 03-05-2021

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

1. The prosecution case as stated in the F.I.R. dated 04-01-2012 is that on 02-01-2012 at about 05:00 P.M. in the evening while the informant, namely, Sri Shiv Kumar Koiri was playing some music in the music player in his shop, the accused, namely, Smti. Anita Gowala, Sri Pranabjyoti Gowala and Sri Dipak Bhagat entered into his house and physically assaulted him. When the informant's wife tried to save him, the accused persons physically assaulted her as well. They also entered into his shop and destroyed and broke the glass windows, show case and music player.

2. A case was registered at Moran P.S. subsequent to the lodging of this F.I.R. Upon completion of investigation, the police submitted charge-sheet against the accused persons, namely, Smti. Anita Gowala, Sri Pranabjyoti Gowala and Sri Dipak Bhagat for the commission of offences under sections 448/352/427 R/w section 34 of the Indian Penal Code (hereinafter referred to as I.P.C.).

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3. It is pertinent to mention here that during the stage of appearance, the accused Sri Pranabjyoti Gowala expired and as such the case stood abated against him. The accused Smti. Anita Gowala and Sri Dipak Bhagat stood for trial. Copies of the relevant documents were furnished to the accused as required by Section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). The particulars of the offences under sections 448/352/427 R/w section 34 of the IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of the case, the prosecution side has examined as many as 6 (six) witnesses namely Sri Shiv Kumar Koiri, informant of the case as PW-1, Smti. Pinky Koiri as PW-2, Sri Anil Kurmi as PW-3, Dr. Karabi Challeng as PW-4, Sri Sanju Kheria as PW-5 and Sri Jogeswar Dihingia as PW-6.

The prosecution also took aid of 6 (six) documents which were exhibited as follows:

The ejahar was exhibited as Exhibit 1, the seizure list as Exhibit 2, the medical report of Smti. Pinky Koiri as Exhibit 3, the medical report of Sri Shiv Kumar Koiri as Exhibit 4, the rough sketch map of the place of occurrence as Exhibit 5 and the charge-sheet as Exhibit 6.

After recording the prosecution evidence, the statements of the accused persons were recorded u/sec 313 of Cr.P.C. The defence plea is that of total denial and the accused persons claimed innocence. The defence adduced no evidence.

5. I have heard the arguments from both sides and meticulously perused the entire evidence on record.

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**6. THE POINTS FOR DETERMINATION**

(i) Whether the accused persons on 02-01-2012 at about 05:00 P.M. at Kachamari Gaon, Moran, in furtherance of their common intention, committed house-trespass by entering into or unlawfully remaining in the shop of the informant, namely, Sri Shiv Kumar Koiri which was in his possession with intent to commit an offence and thereby committed an offence punishable u/sec 448 of the IPC?

(ii) Whether the accused persons on the same day, at the same time and place, in furtherance of their common intention, assaulted or used criminal force upon the informant without any grave and sudden provocation by him and thereby committed an offence punishable u/sec 352 of the IPC?

(iii) Whether the accused persons, on the same day, time and at the same place, in furtherance of their common intention, committed mischief by causing damage of the value of more than Rs. 50 in the informant's shop, and thereby committed an offence u/sec 427 of the IPC?

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. PW-1, the informant deposed in his evidence that he recognises the accused persons. The incident occurred on in the evening of 02-01-2012. He stated that he was playing some music in the shop attached to his house. In this context the accused persons started verbally abusing him in foul language. He then turned off the music but the accused persons entered into his shop with sticks and started to physically assault him and his wife i.e. PW-2. The accused persons also broke and destroyed the glass windows, show case and the music player of his shop. He also stated that his wife being PW-2 was pregnant at that time and the

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accused persons had even pelted stones at her as a result of which the stones hit her on the belly. Compelled by the circumstances as narrated by him, he called the police at Moran P.S. and was then rescued by the police. He further stated that initially he did not contemplate lodging the ejahar against the accused but then the accused did not agree to a settlement and lodged a case against him because of which he in turn lodged the ejahar against the accused at the Moran P.S. His statement was recorded by the police. He was also sent for medical examination and treatment by the police. He proved Exhibit 1 as the ejahar by identifying Exhibit 1(1) as his signature therein. He also proved Exhibit 2 as the seizure list by identifying Exhibit 2(1) as his signature thereon.

During his cross-examination, he stated that he did not mention the cause of delay in lodging the ejahar. He did not state before the police that the accused persons had pelted stones at his wife and that the stones had hit her on the belly. He stated that the accused had also filed a case against him and that he instituted the instant case against the accused after that. He denied the defence suggestion that he spoiled the environment of the place by playing the type of music he had played for which the accused tried to stop him and that for the same reason he instituted the instant case against her. He denied the defence suggestion that he did not state before the police that his wife was pregnant at that time. He also stated that he had not written the ejahar and that it was written by someone else. He stated that he does not remember the contents of the Exhibit 2 and that he signed upon the same as he was told to do so by the police. He denied the defence suggestion that he had instituted the instant case against the accused as they had also lodged a case against him. He denied the defence suggestion that he deposed falsely in the Court.

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8. PW-2 in her evidence deposed that the informant is her husband. The accused Smti Anita Gowala is known to her but that the co-accused Sri Dipak Bhagat is not known to her. She stated that a few years ago on the 2<sup>nd</sup> of January, her husband being the informant/PW-1 was playing music on the music player in his shop and that this was the reason for the fight between the PW-1 and the accused persons. According to her, the accused Smti. Anita Gowala physically assaulted the PW-1 and the deceased Sri Pranabjyoti Gowala pelted stones at the shop which in turn hit her on the belly. After the incident, the PW-1 lodged the F.I.R. The PWs 1 and 2 were medically examined by a doctor. Her statement was recorded by the police.

During her cross-examination, she stated that PW-1 did not state before the police that he was having a picnic in his shop. She could not say if the PW-1 was consuming liquor at his shop. She also could not tell if the PW-1 used to eve-tease the daughter(s) of the accused Smti. Anita Gowala. She stated that on the day after the incident she along with PW-1 went to the doctor on their own accord. She denied the defence suggestion that the PW-1 used to sell liquor at his shop. She, however, stated that PW-1 used to consume liquor outside. She also stated that the accused Smti. Anita Gowala had lodged a case against the PW-1 at the Sivasagar District Court. She denied the defence suggestion that PW-1 instituted the instant case just because the accused Smti. Anita Gowala had instituted a case against him. She also denied the defence suggestion that she deposed falsely in Court.

9. PW-3 deposed in his evidence that the informant and the accused persons are known to him. He stated that he knows nothing about the incident. His statement was not taken down by the police.

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His cross-examination has been declined by the defence.

10. PW-4 being the M.O. deposed in her evidence that on 05-01-2012, she was posted at Moran State Dispensary as Medical and Health Officer. On the same day, she examined PW-2 Smti. Pinky Koiri, 22 years, W/O Sri Shiv Kumar Koiri. She was escorted and identified by WHG Smti. Monju Changmai of Moran P.S. Upon systematic examination, she found that the patient's uterus was 28 weeks size foetal heart sound was present. On local examination, no external injury was seen and she was advised to undergo obstractical sonography. The patient examined was a primigravida at 28 weeks gestation with no sign of any external injury. On the same day and at about the same time, she also examined PW-1 Sri Shiv Kumar Koiri, 22 years. He was escorted and identified by WHG Smti. Monju Changmai of Moran P.S. Upon systematic examination, no abnormalities were detected and upon local examination, no external injury was seen on his body. The patient examined was healthy both physically and mentally with no external injury on his body. She proved Exhibits 3 and 4 as the injury reports of the PWs 1 and 2 by identifying Exhibits 3(1) and 4(1) respectively as her signatures thereon.

Her cross-examination has been declined by the defence.

11. PW-5 deposed in his evidence that the informant is known to him. The accused Smti. Anita Gowala and deceased Sri Pranabjyoti Gowala are known to him but the accused Sri Dipak Bhagat is not known to him. The incident occurred a few years ago. He heard from others that there was a scuffle between the informant and the accused regarding playing of music on a music player.

His cross-examination has been declined by the defence.

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12. PW-6 being the I.O. deposed in his evidence that on 04-01-2012, he was posted at Moran P.S. as A.S.I. On that day, the informant/PW-1 Sri Shiv Kumar Koiri lodged an ejahar at Moran P.S. and the O/C, Moran P.S. entrusted him with the investigation of the instant case. He at first visited the place of occurrence and prepared a rough sketch map of the place of occurrence. He then recorded the statements of the witnesses and seized the damaged articles from the place of occurrence. Then the statements of the accused persons were recorded and they were arrested. The offences being bailable in nature, they were released on police bail. On 20-01-2012, he collected the medical reports of the informant/PW-1 and PW-2. After completion of the pre-steps he submitted his report to the O/C, Moran P.S. Subsequently, on the basis of the report of his investigation, S.I. Sri Utpal Borah submitted charge-sheet against the accused Smti. Anita Gowala, Sri Pranabjyoti Gowala and Sri Dipak Bhagat u/sec 448/352/427 r/w section 34 of the IPC. He proved Exhibit 2 as the seizure list by identifying Exhibit 2(2) as his signature thereon. He proved Exhibits 3 and 4 as the medical reports of the victims collected by him. He proved Exhibit 5 as the rough sketch map of the place of occurrence by identifying Exhibit 5(1) as his signature thereon. He proved Exhibit 6 as the charge-sheet by identifying the signature of S.I. Sri Utpal Borah with which he is acquainted.

During his cross-examination, he stated that the ejahar was lodged on 04-01-2012 at about 5 P.M. in the evening. He went to the place of occurrence after about half an hour from the time when the ejahar was lodged. During the investigation, he did not send the informant/PW-1 and the PW-2 for medical examination. The informant/PW-1 and the PW-2 availed medical treatment on their own. According to him, the informant/PW-1 did not state to him that he had to

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turn off the music when the accused started making comments. The informant/PW-1 also did not state to him that the accused were carrying sticks when they entered into his shop and that they broke his music player by thrashing it with sticks. The informant/PW-1 did not state to him that at the time of the occurrence, his wife was pregnant and that the stones pelted by the accused had hit her on the belly. The informant/PW-1 did not call the police of Moran P.S. to inform them of the occurrence. The PW-2 did not state to him that her husband i.e. PW-1 was playing music in his shop as a picnic was going on there and that for the same reason there was a fight between her husband and the accused. She also did not state before him that the accused Sri Pranabjyoti Gowala had thrown stones at her belly. He denied the defence suggestion that he had not visited the place of occurrence and that he did not conduct the investigation properly.

13. A careful study of the testimonies of the prosecution witnesses reveals that the entire edifice of the prosecution case depends on the testimony of the informant i.e. PW-1 and PW-2. PW-3 has categorically deposed in his evidence that he knows nothing about the incident, PW-4 is the M.O., PW-5 is a hearsay witness and PW-6 is the I.O. The Indian Evidence Act, 1872 does not mandate the requirement of a large or long list of witnesses to prove a fact. What matters is the quality of the evidence tendered and not the quantity. The evidence of a single eye witness can be relied upon if his evidence is trustworthy. In the instant case, PW-1/informant has testified that initially he did not contemplate lodging the ejarah against the accused but then the accused did not agree to a settlement and lodged a case against him because of which he in turn lodged the ejarah against the accused at the Moran P.S. He also admitted in his cross-examination that the accused had also

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filed a case against him and that he instituted the instant case against the accused after that. This clearly implies that he had simply lodged the ejahar with a revenge motive against the accused persons.

Perusal of the Exhibit 1 reveals that the incident occurred on 02-01-2012 but the ejahar was lodged on 04-01-2012. In his cross-examination, the informant/PW-1 stated that he did not mention the cause of delay in lodging the ejahar.

He also admitted that he did not state before the police that the accused persons had pelted stones at his wife and that the stones had hit her on the belly. The I.O./PW-6 in his cross-examination has stated that the informant/PW-1 did not state before him that the accused persons had pelted stones at his wife and that the stones had hit her on the belly. This creates a doubt in the mind of the Court as to why the informant/PW-1 failed to disclose such a vital fact to the I.O.

The informant/PW-1 has further stated in his cross-examination that he did not write the ejahar and that it was actually written by someone else. But he could not disclose the name of the writer of ejahar and in such circumstances it is very doubtful whether the contents of the ejahar is the version of the informant/PW-1 as taken down in writing by the writer.

Coming to the medical evidence at hand, from the testimony of the M.O./PW-4, it appears that upon examination of the informant/PW-1 and his wife being the PW-2, she did not find any external injury on their persons.

The prosecution failed to examine the writer of the ejahar and also failed to produce the seized articles in Court for reasons best known to it. Moreover, the person who assessed the quantum of damage is also not mentioned by

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the I.O./PW-6. Infact, it does not appear from the evidence of the I.O./PW-6 that he got the damaged music system examined by a technical expert in order to assess the quantum of damage. These findings, thus, cast reflection on the truthfulness of the prosecution case.

It is one of the cardinal principles of criminal jurisprudence that the prosecution must prove the guilt of the accused beyond all reasonable doubt. As is clear from the above discussion, the evidence on record is quite inadequate to establish the prosecution case and there is ample scope of reasonable doubt as to the factum of the occurrence alleged. Situated thus, I am not inclined to hold the accused persons namely, Sri Dipak Bhagat and Smti. Anita Gowala guilty of the offences u/sec 448/352/427 r/w Section 34, IPC. As such, the points of determination are answered in the negative in favour of the accused persons.

**ORDER**

14. In view of the decision made above, the accused persons, namely, Sri Dipak Bhagat and Smti. Anita Gowala are acquitted of the offences under section 448/352/427 r/w Section 34 IPC and set at liberty forthwith.

Their bail bonds shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.

Let the seized items, be returned to the rightful owner(s) after proper verification and if that is not possible, let the same be sold off in auction.

The case is disposed of on contest.

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Given under my hand and the seal of this Court on this 3<sup>rd</sup>  
day of May, 2021 at Dibrugarh.

Smti. Sanskrita Khanikar  
Judicial Magistrate First Class  
Dibrugarh

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**APPENDIX**

**A. Prosecution witnesses:-**

- i) Sri Shiv Kumar Koiri, informant of the case as PW-1
- ii) Smti. Pinky Koiri as PW-2
- iii) Sri Anil Kurmi as PW-3
- iv) Dr. Karabi Challeng as PW-4
- v) Sri Sanju Kheria as PW-5
- vi) Sri Jogeswar Dihingia as PW-6

**B. Defence witnesses:- Nil**

**C. Prosecution exhibits:-**

- i) The Ejahar as Exhibit 1
- ii) The seizure list as Exhibit 2
- iii) The medical report of Smti. Pinky Koiri as Exhibit 3
- iv) The medical report of Sri Shiv Kumar Koiri as Exhibit 4
- v) The rough sketch map of the place of occurrence as Exhibit 5
- vi) The charge-sheet as Exhibit 6

**D. Defence exhibits: Nil**

Smti. Sanskrita Khanikar  
Judicial Magistrate First Class  
Dibrugarh