

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

**G.R. CASE NO.- 2955/2012**

**U/S 294/323 OF THE IPC**

STATE

VS.

SRI LAL BABU YADAV  
S/O LATE DEO NATH YADAV  
R/O DIBRUGARH RAIL LINE  
P.S. DIBRUGARH  
DISTT. DIBRUGARH

PRESENT:- KAUSHIK KAMAL BARUAH  
JUDICIAL MAGISTRATE FIRST CLASS  
AT DIBRUGARH

APPEARANCES:- SMT. LAKHIMI MOHAN.....FOR STATE  
SRI ASHIM KUMAR DUTTA.....FOR ACCUSED

DATE OF EVIDENCE:- 17/12/14, 17/03/15, 24/05/16, 12/07/16,  
06/09/16, 02/06/18, 09/11/18.

EXAMINATION OF ACCUSED:- 04/12/18.

DATE OF ARGUMENT:- 03/05/19.

DATE OF JUDGMENT:- 15/05/19.

**JUDGMENT**

1. Accused Lal Babu Yadav stood trial for offences punishable under sections 294/323 of the Indian Penal Code, 1860 (the IPC for short).
2. Criminal law was set into motion against the accused named above on the strength of a First Information Report (FIR for short) filed by Bhagirath Choudhry, wherein the informant alleged that on 07/12/12 at about 07:30 AM, when he was working near Maijan Road in front of his house, above named accused approached him and hurled verbal abuses at him for no apparent reason. After hurling uncouth words at him the accused manhandled him by means of a bamboo stick and shoved him to the nearby fence, thereby, inflicting injuries on his face and backside.

**GR CASE NO- 2955/12**  
**U/s 294/323 of the IPC**

3. On the same day, informant, Bhagirath Choudhry, lodged a written FIR before the In-Charge of Borbari Outpost which was forwarded to the Officer-in-Charge of Dibrugarh Police Station for taking necessary action. On receipt thereof the same was registered and numbered as Dibrugarh P.S. Case No.1146/2012 under sections 294/325 of the IPC. During the course of investigation, the investigating officer visited the place of occurrence, recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for short), made a rough sketch map of the place of occurrence, collected injury report of the victim, arrested the accused person and released him on bail.
4. After completing the investigation, the Investigating Officer submitted charge-sheet to prosecute the accused person for offences under sections 294/323 of the IPC.
5. Court processes were issued and on his appearance the accused was allowed to go on bail. Copy of relevant documents was furnished to the accused person. Particulars of the offences under sections 294/323 of the IPC were explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. Prosecution examined eleven witnesses and evidence stood closed vide order dated- 09/11/18. Thereafter, accused was examined under section 313 of the Cr.P.C. by putting questions to him from all incriminating evidence appearing against him on record, thereby, giving him an opportunity to explain the same. In response, he denied the allegations levelled against him *in-toto* and also declined to adduce evidence in his support. Heard arguments advanced by learned Assistant Public Prosecutor and learned defence counsel.

#### **POINTS FOR DETERMINATION**

- a) Whether the accused, on 07/12/12 at about 07:30 AM at Maijan Road within Dibrugarh PS, uttered obscene words to the annoyance of others?

- b) Whether the accused on the same day, time and place voluntarily caused hurt to Bhagirath Choudhry?

**DISCUSSION, DECISION AND REASONS THEREON**

7. In order to establish the allegations against the accused person, prosecution examined Bhagirath Choudhry, Mahtab Khan, Maya Das, Sohan Raut, Rimi Das, Istiak Khan, Noor Hussein, Razvi Das, Mina Jha, Fakaruddin Khan and Wazidur Rahman as PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 respectively and closed evidence.
8. In the case at hand, PW1, Bhagirath Choudhry, was the informant. He was examined on 17/12/14 and in his examination-in-chief, he deposed that the occurrence took place on 07/12/12 at about 07:30 AM. On that day, the road adjoining his house and that of the accused was under construction as per order of the Chairman of their Municipality. He, therefore, went out to check the construction work that was being executed. As he approached the accused person's house, the latter came out and complained as to why the drain contiguous to his house was dug deep. A heated argument ensued between them and the accused shoved him aside. Consequently, both fell in the drain. Nearby people came and brought them out of it. Immediately, the accused took a bamboo stick and tried to manhandle him but was rescued by Mahtab Khan and others who got hold of the accused. His nose bled profusely and he sustained injuries on his face and head. In addition to being assaulted, accused also uttered obscene and filthy words at him. Thereafter, without any loss of time he went to the PS and filed FIR against the accused complaining about the occurrence. Ext.1 is the FIR and Ext.1(1) is his signature thereon.
9. In his cross-examination, he testified that the occurrence took place in front of the house of the accused which is about eight house-holds away from his residence. He admitted that in respect of the same occurrence the accused had also filed an FIR against him, including his mother Nichuki Choudhry, father Pashupati Choudhry, brother Ratan Choudhry, wife Panna Choudhry, sister Mira Prasad and brother-in-law Binod Prasad. Said case is

pending trial vide GR Case No- 2956/12. Thereafter, defence led a few suggestions which he flatly denied. He, thus, denied the suggestion that he and his family members manhandled the accused inflicting injuries on the middle finger of his right hand and left leg. He also denied the suggestion of falsely implicating the accused.

10. Mahtab Khan was examined on 17/03/15 as PW2. In his examination-in-chief, he deposed that on 07/12/17 between 07:30 AM to 08:00 AM he was working in his garden adjoining the road. From there he could see the informant and the accused arguing with each other on the road. On that day road construction work was going on and some canes were strewn on the road. From among those, accused picked up a cane and struck the informant twice and in the scuffle that ensued the accused fell in the nearby drain. Thereafter, he and nearby people helped the accused out of the pit and broke-off the fight.
11. In his cross-examination, he expressed his ignorance about the cause of the occurrence and also if the accused suffered injuries on the middle finger of his right hand and left leg. He admitted that the occurrence took place in front of the accused person's residence and of stating to the investigating officer that he picked up the accused from a drain. However, he denied the suggestions that no occurrence had taken place as alleged and that the accused had not manhandled the informant. He also denied of falsely implicating the accused and of not witnessing the occurrence.
12. PW3, PW4, PW5 and PW6, namely, Maya Das, Sohan Raut, Rimi Das and Istiak Khan were examined on 24/05/16.
13. Maya Das and Sohan Raut, in their examination-in-chief, testified that the informant and the accused are their neighbors. Neither of them implicated the accused of any overt act rather deposed that they heard hue and cry emanating from the place of occurrence and after they reached there, they learnt from others that the informant and the accused had a fight over some matter. On the other hand, Rimi Das expressed her complete obliviousness about the occurrence despite being a neighbor of the

informant and the accused. The defence, on its part, declined to cross-examine them.

14. Istiak Khan, in his examination-in-chief, testified that on the date of the occurrence, between 07:00 AM and 07:30 AM, when he came out of his house he saw the informant manhandling the accused, both being his neighbors. Shortly thereafter, informant's brother Ratan Choudhry, sister and brother-in-law arrived at the scene and joined the informant in manhandling the accused person. As a result, the accused fell in the adjoining drain and sustained a cut injury on the middle finger of his right hand. He, however, expressed his ignorance about the cause of the occurrence. The defence declined to cross-examine him as well.
15. Examined on 12/07/16, PW7, Noor Hussein, also deposed that the warring sides are his neighbors. On the date of occurrence, between 07:00 AM to 07:30 AM, he was sitting in a shop near the accused person's house along with Mahtab Khan and Sohan Raut. At that time, the informant came to the shop, took a cigarette and approached the accused. Both had an exchange of words and thereafter he saw the accused falling down in the adjoining drain. Then, he saw the informant beating the accused with a cane. He tried to intervene but to no avail. Shortly, thereafter, the informant was joined by his brother, Ratan Choudhry, and his family members in manhandling the accused. Thereafter, he went back to his house and by the time he came to the spot, the occurrence had abated and police personnel also arrived to whom he recounted what had happened.
16. In his cross-examination, Noor Hussein testified that the occurrence took place in front of the house of the accused and as a result of the occurrence, accused suffered a cut injury on the middle finger of his right hand and on his leg.
17. PW9, Mina Jha, examined on 06/09/16, deposed that on 07/12/12, between 07:00 AM to 08:00 AM, she saw the informant and the accused talking. Abruptly both started to fight and the accused went tumbling down the adjoining drain. Soon thereafter, a large crowd collected at the place

of occurrence. She could also discern injuries on the person of the accused. In her cross-examination, she admitted that she could not identify the assailant before the investigating officer.

18. Fakaruddin Khan, examined on 02/06/18 as PW10, deposed that the occurrence took place on 07/12/12. He had not seen it taking place but heard from others that the informant and the accused were engaged in a brawl. The defence declined to cross-examine him.
19. PW8, Dr. Razvi Das, was the examining doctor. He testified that on 07/12/12 he was posted at the AMCH, Dibrugarh as Registrar of the Department of Surgery. On that day he examined Bhagirath Choudhry, S/O Pashupati Choudhry of Maijan Road, who was escorted by Home Guard Rupam Sonowal. On examination he found one lacerated wound measuring ½ cm X ½ cm X ½ cm over right side of the lower lip; multiple abrasion over the back; and an abrasion measuring 05 cm X 06 mm over the left side of the back of the chest. In his opinion, all the injuries were simple in nature. Ext.2 is the injury report and Ext.2(1) is his signature thereon. In his cross-examination he stated that the injuries might have also been caused by falling.
20. Lastly, PW11, Wazidur Rahman, was the investigating officer who was examined on 09/11/18. In his examination-in-chief, he deposed that on 07/12/12/ he was posted at Borbari Outpost as an Attached Officer. On that day, Bhagirath Choudhry filed a written FIR complaining about the occurrence. GD Entry No- 202 was made and the FIR was forwarded to Sadar PS for necessary action. Task of conducting preliminary investigation was invested on him. Accordingly, he recorded statements of the informant and the accused in the police station premises and forwarded them to the nearest hospital for examination. Thereafter, he proceeded to the place of occurrence, prepared a rough sketch map thereof and recorded statements of witnesses. In the meantime, the FIR was registered and numbered as Dibrugarh PS Case No- 1146/12 under sections 294/325 of the IPC and he was invested with the duties of investigating the occurrence. Accused Lal Babu Yadav surrendered in Court on 12/12/12. During the course of the

investigation he also collected injury report of the victim and after completing the investigation he submitted charge-sheet against the accused under sections 294/323 of the IPC. Ext.3 is the sketch map and Ext.4 is the charge-sheet whereon he had affixed his signatures vide Ext.3(1) and Ext.4(1) respectively.

21. In his cross-examination he testified that the place of occurrence is located near the accused person's house which is about eight households away from that of the informant's. He also testified that he investigated the case that was filed by the accused against the informant concerning the same occurrence.
22. Now, as unfolded by the prosecution, accused Lal Babu Yadav stood trial for uttering obscene and filthy words at the informant, Bhagirath Choudhry, in a public place and is, thus, liable to punishment as provided under section 294 of the IPC. Towards this end, prosecution examined as many as nine probable eye witnesses, including Bhagirath Choudhry. All of them unwaveringly testified that the entire occurrence happened on Maijan Road. Evidence tendered by the investigating officer, especially, the sketch map, vide Ext.3, shows that the occurrence took place on Maijan Road which is an 18 feet wide public road.
23. Thus, the fact that the occurrence took place in a public place was established by prosecution beyond doubt. But, whether the prosecution succeeded in bringing the accused within the net of section 294 of the IPC? In this respect, the prosecution, in addition to the above, must prove beyond doubt that the accused uttered obscene words and that the effect thereof caused annoyance to others.
24. But, as transpires from the ocular evidence available on record, neither the informant, Bhagirath Choudhry, nor, the remaining witnesses examined by the prosecution testified anything even to remotely suggest that the accused uttered any obscene, or, uncouth words. In Ext.1, Bhagirath Choudhry had, in very general terms, alleged that he was verbally abused by the accused. Even more generally he deposed that the accused person used filthy words on the day of the alleged occurrence. But, to constitute

an offence under section 294 of the I.P.C., it is absolutely necessary to mention the exact obscene words that were uttered in the FIR and also in the oral evidence. But neither in the Ext.1, nor, in his oral testimony had Bhagirath Choudhry mentioned the obscene words that were supposedly uttered by the accused person.

25. In my considered opinion, prosecution has no evidence worth the name against accused Lal Babu Yadav for the offence under section 294 of the IPC.

26. In addition to the above allegation, accused Lal Babu Yadav was also prosecuted for causing hurt to Bhagirath Choudhry. The injury report, that is, Ext.2, demonstrates three kinds of injuries suffered by Bhagirath Choudhry, namely:-

- a) one lacerated wound measuring  $\frac{1}{2}$  cm X  $\frac{1}{2}$  cm X  $\frac{1}{2}$  cm over right side of the lower lip;
- b) multiple abrasion over the back; and
- c) an abrasion measuring 05 cm X 06 mm over the left side of the back of the chest.

The defence version was that the above injuries could have been the consequence of a fall to which PW8, Dr. Razvi Das, acceded without question. On the other hand, the prosecution tried to drive home the message that the above injuries were inflicted on Bhagirath Choudhry by the accused.

27. In this respect, though prosecution examined nine probable eye witnesses, yet it could manage to procure only one who implicated the accused of manhandling the informant, that is, Mahtab Khan. Said Mahtab Khan, as prosecution tried to demonstrate, saw the occurrence taking place from the very beginning till its end. As such, said Mahtab Khan, the supposed savior of Bhagirath Choudhry from the menacing clutches of accused Lal Babu Yadav, ought to corroborate the prosecution version in all material particulars without any discrepancies or glitch. But, a meticulous perusal, or, comparison of the testimonies tendered by Bhagirath Choudhry and that of Mahtab Khan shows on its face that he had not witnessed the

occurrence taking place. Whereas, as per version of Bhagirath Choudhry, he was about to be manhandled by the accused but was saved by Mahtab Khan and others, said Mahtab Khan went a step further by implicating the accused of actually landing the blow on the informant and that too, twice. Said narration of facts by Mahtab Khan is clear exaggeration of facts which, in turn, throws doubt on the prosecution version, thereby, corroding its credibility, including the veracity of the testimony tendered by Mahtab Khan.

28. Furthermore, the injury report does not corroborate the testimony of Bhagirath Choudhry. His testimony that he sustained injuries on his face and head and that his nose bled profusely ought to have been reflected in the injury report. But, Ext.2 is totally silent about those injuries. Rather, the prosecution version is replete with evidence that both the informant and the accused went tumbling down the drain adjoining the road, which was being recently dug deep, immediately after a heated argument ensued between them. Thus, there is every likelihood that Bhagirath Choudhry suffered the injuries mentioned in Ext.2 as a result of the fall in the ditch and not because of any assault as alleged.
29. To cut a long story short, prosecution had failed to establish the allegation levelled against accused Lal Babu Yadav for offence under section 323 of the IPC beyond all reasonable doubt.
30. The points for determination are decided in the negative.

### **ORDER**

31. As such, from the observation and discussion done hereinbefore, I arrive at the conclusion that the prosecution had failed to establish the allegations against accused Lal Babu Yadav for the offences under sections 294/323 of the IPC beyond all reasonable doubt. As such, the accused is acquitted of the offences under the sections of law indicated above.
32. Accused person be set at liberty forthwith. Bail bonds of the accused person stands cancelled. The accused person may obtain copy of the judgment without payment.

33. Instant case is disposed of on contest.

Given under my hand and Seal of the Court this 15<sup>th</sup> day of May, 2019.

Typed and corrected by me and every page bears my signature.

Judicial Magistrate First Class,  
Dibrugarh.

**THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DIBRUGARH**  
**G.R. CASE NO.- 2955/12**  
**APPENDIX**

- 1) Prosecution exhibits:-
  - Ext.1:- FIR
  - Ext.1(1):- Signature of Bhagirath Choudhry
  - Ext.2:- Injury report
  - Ext.2(1):- Signature of Dr. Razvi Das
  - Ext.3:- Sketch map
  - Ext.3(1):- Signature of Wazidur Rahman
  - Ext.4:- Charge sheet
  - Ext.4(1):- Signature of Wazidur Rahman
- 2) Prosecution witnesses:-
  - PW1:- Bhagirath Choudhry
  - PW2:- Mahtab Khan
  - PW3:- Maya Das
  - PW4:- Sohan Raut
  - PW5:- Rimi Das
  - PW6:- Istiak Khan
  - PW7:- Noor Hussein
  - PW8:- Dr. Razvi Das
  - PW9:- Mina Jha
  - PW10:- Fakaruddin Khan
  - PW11:- Wazidur Rahman
- 3) Defence exhibits.- NIL
- 4) Defence witnesses.- NONE

Judicial Magistrate First Class,  
Dibrugarh.