

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
DIBRUGARH
GR 981/12
U/S 341/448/294/354 IPC**

STATE

Vs

**SRI. ANANDA DAS
S/O SRI. MRIDUL DAS
R/O DHEKERI GAON,
NEAR MOINA PARIJAT HALL,
BANIPUR
P.S. & DIST - DIBRUGARH**

Present : Smti. Talat Nasrat Jabin, AJS
Ld. Advocate present
For the prosecution : Sri. Lakhyadhar Deori
For the defence : Sri. Tarik Ahmed
Evidence recorded on : 04/10/17, 09/02/18, 11/06/18
23/04/19.
Final argument heard on : 06/05/19.
Date of judgement : 08/05/19.

JUDGEMENT

1. The brief of the prosecution side is that on 27/04/2012 at about 12.30am when the informant and her friend Smti. Bornali Sarmah were returning home after witnessing a bihu Function, they were stopped and obstructed from moving forward by the accused person and he used obscene language against them and tried to outrage their modesty. Hence this case.

2. On receipt of the information, the OC of Dibrugarh Police Station received the FIR and registered it as Dibrugarh P.S case number 363/12, U/S 341/448/294/354 IPC and forwarded the FIR for investigation. The investigating officer in the course of investigation, visited the place of occurrence, examined the witnesses, prepared the sketch map and the accused person was arrested and allowed to go on police bail. On the conclusion of investigation, police filed charge-sheet U/S 341/448/294/354 IPC against the accused person Sri. Ananda Das.

3. On receiving the case for disposal, summons was issued to the accused persons. On appearance of the accused person, copies of the relevant document was furnished to the accused person in compliance with S.207 Crpc After the consideration of materials on record, the particulars of offence U/S 341/448/294/354 IPC was read over and explained to the accused person Sri. Anand Das to which he pleaded not guilty and claimed to be tried.

4. Points of determination:

- I. Whether the accused person obstructed the informant and restricted her from moving in the direction in which she was legally entitled to move and thereby committed offence punishable U/S 341 IPC?
- II. Whether the accused person to enter into the house of the informant and committed offence and thereby committed offence punishable U/S 448 IPC?
- III. Whether the accused person to abused the informant with filthy language and thereby committed offence U/S 294 IPC?
- IV. Whether the accused person with his conduct outraged the modesty of the informant and thereby committed offence U/S 354 IPC?

5. THE TRIAL

During the trial prosecution examined as many as 4 (four) witnesses and exhibited 3 (three) number of document (shown in the annexure appended below). The defence have fully utilised the opportunity to cross examine the prosecution witness. Considering the testimony of the prosecution witnesses the statement of the accused persons under section 313 CrPC is dispensed. The defence side have declined to adduce any evidence in defence. After closure of evidence, I have heard the final arguments of the learned advocates of both the sides and thereupon have reached the following decision.

6. DISCUSSION, DECISION AND REASONS THEREOF:

Let me first consider the evidence adduced by different witnesses produced from the prosecution side.

PW1. Smti. Bhabani Borah in her evidence stated that she is the informant to the case and the incident took place in the month of April 2012 at about 1am at Banipur Sasan field. On the said place in a bihu function the accused person after consuming alcohol used filthy language against a girl name Kakoli Gogoi. PW1 restricted the accused person from uttering obscene words and got ready to leave for her house. The accused person followed them after uttering obscene words. PW1 was accompanied by Smti. Bornali Sarmah whom the accused person came and hit PW1 with a blow on her face and chest. After this PW1 informed about the incident to the family members of the accused person and returned to their respective home. Later on at about 2 to 2.30am the accused person came to the house of the informant and Bornali Sarmah and shouted. PW1 waited for the accused person to apologise but when he did not do so she had filed the instant FIR being exhibit 1 and exhibit 1 (1) being her signature.

PW1 in the cross examination stated that she has written the FIR. She has not mentioned the cause delay in the FIR. She further stated that she did not tell the police that the accused person was drunk. She stated that the incident took place with her friend and she had filed the FIR.

PW2, Smti. Bornali Sarmah in her evidence stated that the incident took place in the year 2012 at about 11 to 11.30pm. On that day Smti. Kakoli Gogoi was singing in the bihu function and the accused person used obscene words against Kakoli Gogoi. The informant tried to stop the accused person and stated that Kakoli was like his sister and he should not use such word against her. At this the accused person fought with the informant. The informant and PW2 then returned to their home. On their way to home the accused person took the name of PW2 and used obscene words and hit her with a blow on her shoulder. She further stated that the case was filed after 2-3 days of the incident.

PW3, Sri. Anup Chetia in his evidence stated that the incident took place 5 years before adducing of his evidence and on the day of the incident when a girl was singing in the bihu function some boys asked her to sing another song and on this the informant had filed this case.

PW3 in the cross examination stated that he has no personal knowledge about the incident.

PW4, Sri. Gokul Chutia in his evidence stated that on 29/04/2012 he was working as ASI of Gabharupathar Outpost and on the same day the informant Smti. Bhabani Borah had filed the FIR which was entered in general diary as GDE number 651 dated 21/04/2012 and forwarded the case to PW4 for investigation. The FIR was sent to Dibrugarh PS for registration of the case.

PW4 investigated the case on the basis of GD entry. In the course of investigation he examined the informant, visited the place of occurrence, examined the witness and prepared the sketch map being exhibit 2 and exhibit 2(1) being his signature. On finding materials against the accused person he searched the residence of the accused person but the accused person was not found. In the meantime case was registered as Dibrugarh PS case number 363/12 under section 341/448/294/354 IPC and PW4 was again handed with the investigation of the case. On the next day the accused person appeared in the police station. PW4 interrogated the accused person, arrested him and since the offence was bailable in nature the accused person was allowed to go on bail. On completion of the investigation he handed over the CD to the I/C who had filed the charge sheet under section 341/448/294/354 IPC. Exhibit 3 is the charge sheet and exhibit 3(1) is the signature of I/C Deepjyoti Dadhara identified by PW4.

PW4 in the cross examination stated that the I/C has filed the charge sheet on the basis of the investigation conducted by him. He stated that on 27/04/12 there was a bihu function on the place of occurrence that included used gathering of people and shopkeepers. He further stated that he had examined all the witnesses on the same day at police station. He stated that the FIR was filed after 2 days and the cause of delay is not mentioned in the FIR. PW4 stated that PW1 in her statement under section 161 CrPC before the police that she informed about the incident at the house of the accused person. PW2 in her statement did not mention that the accused person used filthy words when Kakoli was singing neither she mentioned about the accused person hitting her on the right shoulder.

7. APPRECIATION OF EVIDENCE :

The prosecution side examined as many as four witnesses including the informant and the investigating officer in order to establish the case. In the first place the accused person is booked under section 341 IPC. Section 341 IPC provides punishment for wrongful restraint. In this case the evidence of pw1 and pw2 nowhere reflects that the accused person obstructed them or restraint them in moving in direction in which they were legally entitled to move. Thus the case under section 341 IPC is not made out.

Secondly, the accused person is booked under section 448 IPC which provides punishment for House Trespass. Pw1 in her evidence stated that pw1 came to her house and to the house of Bornali Sarma and shouted (SIYOR BAKHAR KORE) at about 2:30 am. Now the term House Trespass includes Criminal Trespass. Criminal trespass according to section 441 IPC means entering into the property in possession of other person with the intention to commit offence or to intimidate, insult, or annoy ant person in possession of such property. Here the accused person entered the house of pw1 and shouted at about 2:30 am. Any person who enters the house of other person at such

late hours of night and shouts there will definitely create intimidation and annoyance to the person who is in possession of the house. Thus the act of the accused person was sufficient to create annoyance to the informant.

Thus the prosecution has successfully proved the case under section 448 IPC.

Next the accused person is booked under section 294 IPC. Section 294 IPC penalises a person for use of obscene words in public.

In this case the prosecution side adduced evidence reflecting that the accused person used obscene (BEYA MAAT MATE) against Kakoli, pw1 and pw2. But the terms or words which were used by the accused person has not been specifically mentioned by the prosecution witnesses. In the absence of any evidence that obscene words or songs were uttered by the accused person in public, the case under section 294 IPC has not been established against him.

Lastly, the accused person is booked under section 354 IPC which provides punishment for use of criminal force to outrage the modesty of a women. Pw1 and Pw2 has specifically mentioned that the accused person hit Smti Bornali Sharma on her shoulder. However there is no evidence to prove that the modesty of the victim was destroyed or outraged by the accused person. But at the same time the use of criminal force by the accused person on the victim cannot be denied. Thus, though the materials under section 345 IP has not been established by the prosecution side yet sufficient materials under section 352 IPC is found against the accused person.

The prosecution failed to prove the case under section 341/294 IPC against the accused person.

The prosecution has successfully proved the case under section 448/352 IPC against the accused person.

ORDER

I thereby acquit the accused person Sri. Ananda Das is under section 341/294 IPC.

I convict the accused person Sri. Ananda Das is under section 448/352 IPC.

I have considered the application of Probation of Offender's Act upon the convicted person and considering the nature of the offence and the fact that the offence was committed against a women and any leniency in such matter will send a wrong message to the society. I am of the opinion that the convicted person should not be forwarded with the benefit of said provision.

I have heard the convicted person on the point of sentencing which is recoded on a separate sheet of paper and the same is tagged with the record. The accused persons stated that this is their first time offence and they have a family to look after and they would not repeat the offence again.

I convict the accused person Sri. Ananda Das under section 448 IPC with a fine of Rs. 300 (three hundred), in default to simple imprisonment for a term of 3 days.

I convict the accused person Sri. Ananda Das under section 352 IPC with a fine of Rs. 200 (two hundred), in default to simple imprisonment for a term of 3 days.

Material exhibits (if any) are to be disposed of in due course of time.

The copy of the judgement is to be supplied to the convicted person free of cost as per section 363(1), CrPC.

Given under my hand & seal of this court and delivered in the open Court on this 8th May, 2019.

Talat Nasrat Jabin, AJS

.....

Judicial magistrate first class, Dibrugarh

Appendix:

List of prosecution witnesses

PW1: SMTI. BHABANI BORAH.

PW2: SMTI. BORNALI SARMAH.

PW3 : SRI. ANUP CHETIA.

PW4 : ASI SRI. GOKUL CHUTIA.

List of defence witnesses:

NIL

Exhibits of prosecution side

Ext.1 : FIR

Ext.1(1) : SIGNATUR OF THE INFORMANT.

Ext.2 : SKECH MAP

Ext.2(1) : SIGNATUR OF THE INVESTIGATING OFFICER.

Ext.3 : CHARGE SHEET

Ext.3(1) : SIGNATUR OF THE INVESTIGATING OFFICER.

Exhibits of defence side

NIL

Signature

.....