

C.R.CASE NO. 140^c/2014

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

Present:- **Smti. Sanskrita Khanikar, A.J.S.**

Judicial Magistrate First Class, Dibrugarh

Date of Judgment:-22-02-2022

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(under sections 500/501 of the IPC)

Complainant:	Smti. Annapurna Nath W/O - Sri Naren Nath R/O - Lahoal Dibrual Gaon P.O. & P.S. - Lahoal Dist - Dibrugarh, Assam
Represented By	Learned Sri Jogen Bordoloi
Accused	1.Sri Utpal Boruah Editor, Dainik Janambhumi 2.Sri Ujjal Kumar Saikia Publisher, Dainik Janambhumi 3.Sri Jadav Gogoi Staff Reporter, Dainik Janambhumi
Represented By	Learned Sri Vijay Pandey

Date of Offence	28-09-2014
Date of Offence Report	18-11-2014
Date of Particulars of the Offence Explanation	28-12-2015
Date of Commencement of	30-08-2017 & 06-09-2018

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evidence	
Date of recording Statement Defence	25-07-2019
Date of Argument	21-12-2021 & 17-01-2021
Date on which Judgment is reserved	22-02-2022
Date of Judgment	22-02-2022
Date of Sentencing Order,if any	Nil

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Explained with sections	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.
Accused No.1	Sri Utpal Boruah	Nil	21-07-2017	500/501 of the IPC	Acquitted	Nil	Nil
Accused No.2	Sri Ujjal Kumar Saikia	Nil	28-12-2015	500/501 of the IPC	Acquitted	Nil	Nil
Accused No.3	Sri Jadav Gogoi	Nil	02-11-2015	500/501 of the IPC	Acquitted	Nil	Nil

J U D G M E N T

1. The accused persons, namely, Sri Utpal Boruah, Sri Ujjal Kumar Saikia and Sri Jadav Gogoi being the editor, publisher and staff reporter respectively of

the Assamese daily newspaper “Dainik Janambhumi” stood trial for offences punishable u/sec 500/501 of the Indian Penal Code.

2. The allegation of the complainant, namely, Smti. Annapurna Nath is that the accused persons published a defamatory news item against the complainant in an Assamese daily newspaper named “Dainik Janambhumi” on 28-09-2014.
3. The allegation brought in by the complainant is summarised as follows:

On 28-09-2014, she came to know that a defamatory statement about her has been published as news in the Assamese daily newspaper “Dainik Janambhumi”. The said defamatory statement was published under the heading of “Path nirmanok Kendra kori Lahoalot uttejana Congress netrik biruddhe khyubh” in column no. 1 and 2 of page no. 13 of said daily newspaper dated 28-09-2014 accompanied with other baseless and fabricated stories about the complainant due to which the complainant felt defamed. The accused persons are the editor, publisher and staff reporter of the said daily newspaper. The complaint alleges that the accused persons mentioned in the said news that a dispute arose between the complainant and the local public following constructions of a road in

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Dibruwal Village under Bakul Gaon Panchayat of Lahoal Assembly constituency. It was also mentioned therein that the complainant is a senior leader with portfolio of Congress party and that she is also a close associate of a senior minister of Assam, namely, Mr. Prithibi Majhi. According to the said news, the local public lodged a written complaint against the complainant at Lahoal P.S. and caused 'dharna' agitation in front of the complainant's residence. The complainant was cited as the sole reason for the workers not getting their wages before Durga Puja and only when the complainant promised not to obstruct the said construction and to complete the construction work of the culvert at her own initiative did the local public calm down. It was also published that on the previous year, the Oil India Ltd., Duliajan had allotted Rs. 3,60,000/- (Rupees Three Lakhs Sixty Thousand) for construction of 800 metres of the road but that only 200 metres of the road construction had been completed. The complainant had been stated to create an obstruction in the on-going drain construction work before the Project Officer, DRDA, Dibrugarh and the Block Development Officer, Lahoal Block, Dibrugarh.

The complainant also submits that there are other various false and defamatory statements in the said

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newspaper dated 28-09-2014 which may be looked into by the Court. According to the complainant, the said news item was baseless, false and defamatory. She contends that she is a noted social worker but after publication of the said news item in the Dainik Janambhumi newspaper, her moral and intellectual character was lowered in the eyes of general public. The complainant even issued a legal notice through her learned counsel to the accused no. 3 to clarify and substantiate the contents of the said news item to which the accused sent a reply through his learned counsel which was not as per order. As such, the complainant was compelled to file the instant complaint against the accused no. 1, 2 and 3 u/sec 500/501 r/w sec 34 IPC in the Court.

4. Upon receipt of the complaint petition, the complainant and two of her witnesses were examined under section 200 of the Code of Criminal Procedure. Thereafter, three more witnesses of the complainant were examined under section 202 of the Code of Criminal Procedure. Then, a police report was called for under sec 202 of the Code of Criminal Procedure in order to identify the names and addresses of the accused persons as the same was mentioned in the complaint. Upon consideration of the statements of the complainant, her witnesses recorded under section 200 and 202 Cr.P.C. and the

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report u/sec 202 Cr.P.C. sufficient grounds were found to proceed against the accused persons for offences punishable under section 500/501 of the Indian Penal Code and accordingly, processes were issued for causing the appearance of the three accused persons.

5. In response to the process issued against them, the three accused persons appeared before the court and were allowed to go on bail. Thereafter, the particulars of offences punishable under section 500/501 of the Indian Penal Code were explained to the accused persons to which they pleaded not guilty and claimed to be tried.
6. The complainant examined herself as P.W.1 in the instant case and was duly cross examined by the learned defence counsel representing the accused persons. After closing of the evidence for the complainant the accused persons were examined under section 313 Cr.P.C. The defence plea was of complete denial. The defence adduced no evidence.
7. I have heard the arguments of the learned counsel for the complainant as well as the learned counsel for the accused persons. I have also carefully gone through all the evidence adduced on record.
8. POINTS FOR DETERMINATION:-

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- i) Whether the accused persons on 28-09-2014 defamed the complainant by publishing defamatory news items in an Assamese daily named "Dainik Janambhumi" imputing the complainant with the intention of harming or with knowledge that it will harm the reputation of the complainant and thereby committed an offence punishable under section 500 IPC?
- ii) Whether the accused persons on 28-09-2014 printed a news item in an Assamese Daily named "Dainik Janambhumi" knowing or having good reason to believe that such matter was defamatory to the complainant and thereby committed an offence punishable under section 501 IPC?

DISCUSSION, DECISION AND REASONS THEREOF:-

9. The PW-1, being the complainant Smti. Annapurna Nath deposed in her evidence that she has instituted the instant complaint against the editor, publisher and staff reporter of the Assamese daily newspaper "Dainik Janambhumi". She reiterated the contents of the complaint and denied that she is a Congress party member. According to her, Oil India Ltd. had sanctioned payment of Rs. 3,00,000/- (Rupees Three Lakhs) in two instalments and not Rs. 3,60,000/- as published in the said news item. The payment was

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sanctioned in the name of Bokul Gonoswartha Unnayan Samity and that the same was deposited by OIL in a joint account. The joint account was maintained in the name of the complainant and in the name of the Circle Officer, West Revenue Circle, Dibrugarh at Allahabad Bank, Lahoal Branch, Dibrugarh. The work order for the road construction was issued by the Addl. Deputy Commissioner, Dibrugarh in the complainant's name. She stated that the construction of the 800 metres road was completed but due to rainfall, some gravel could not be used in the said construction. After receiving the first instalment of Rs. 1,50,000/- from OIL, she used the same in the said road construction and submitted a utilisation certificate to OIL for the same. Then she received the second instalment of Rs. 1,50,000/- from OIL and after utilising the same for the said road construction, she submitted the utilisation certificate to OIL. As published in the said news item she did not misappropriate the said money and there was no agitation by the local public in front of her residence. She also denied obstructing the said construction work along with the Project Director and the Block Development Officer. She stated that she was never a Congress party member but was an AGP member. She also stated that Mr. Prithivi Majhi is known to her but that she has never

taken advantage of her acquaintance with him for her own gain as published in the said news item. She claimed to be a person involved in community and public work but due to the publication of the said defamatory news item, the public has lost trust in her and her reputation has suffered. She proved Exhibit 1 as the copy of the news item published in the Assamese daily newspaper "Dainik Janambhumi". She proved Exhibit 2 as the copy of the legal notice to the accused and Exhibit 3 as the postal receipt of the same.

During her cross-examination, she stated that she works as a community resource person under the panchayat and she was given this designation by Gram Sevak. She denied the defence suggestion that appointment/selection in such posts are politically influenced. She stated that in her name was not mentioned in the contents of the said news item dated 28-09-2014. The documents of sanctioned money amount from OIL and the work completion certificates have not been exhibited in evidence by the complainant. OIL had allotted the responsibility of the said road construction to Bokul Gonoswartha Unnayan Samity and she in turn was allotted the responsibility of the road construction from the Bokul Gonoswartha Unnayan Samity. She did not exhibit any document of resolution of the

said Bokul Gonoswartha Unnayan Samity. She did not exhibit any authorisation letter or work completion certificate issued by the Addl. Deputy Commissioner, Dibrugarh. She could not remember the joint account no. in Allahabad Bank, Lahoal Branch, Dibrugarh. She did not exhibit any documents as proof of withdrawal of money from the said joint account. She stated that gravels were used for the purpose of road construction but she did not exhibit any receipts as proof of purchase of gravels used for the said construction. An engineer from the Irrigation Dept. had also checked on the construction work but she does not remember his name. She could not state the quantity of gravel used for the said construction work. She denied the defence suggestion that due to non-completion of the said construction work, the local public agitated in front of her residence. She denied the defence suggestion that being a Congress party member, she works under their influence. She denied the defence suggestion that she was not a member of AGP. She stated that she did not receive any reply to the legal notice issued to the accused. She denied the defence suggestion that the staff reporter i.e. the accused no. 3 replied to the said legal notice. She denied the defence suggestion that she instituted a false complaint against the accused persons in order

to harass them. She denied the defence suggestion that despite receiving the money from OIL, she did not complete the said road construction and that the Addl. Deputy Commissioner, the Circle Officer etc. are also involved in the said act.

10. The following are the essential ingredients of the offence u/sec 500 IPC:-
 - (i) The making or publishing of an imputation concerning the complainant
 - (ii) The means of such imputation are words, writing, signs or visible representations
 - (iii) Such imputation must have been made with the intention of harming or with knowledge that it will harm the reputation of the complainant

The following are the essential ingredients of the offence u/sec 501 IPC:-

- i) Printing or engraving
- ii) Of any defamatory matter
- iii) By a person knowing that it contains such matter

Intention to cause harm the reputation of a person is *sine qua non* of the offence of defamation. In the present case, it is also to be determined whether the

said news item was actually defamatory in substance.

11. The complainant is the sole witness in the instant case. During the trial, there were no independent witnesses in support of her contentions. It is true that the section 134 of the Indian Evidence Act, 1872 does not make it obligatory to examine as many witnesses as the parties can. But the nature of the instant case requires evidence of some other witnesses also from which the Court would have come to a definite conclusion regarding the averments made in the complaint. The complainant did not deny that she was infact given the responsibility of the said road construction. However, she did not produce any documentary or oral evidence during the trial to support her claim of having actually completed the road construction by making proper use of the money deposited in the said joint account by Oil India Ltd. The complainant could not even state the quantity of gravel used for the said construction work. She did not remember the joint account no. in which the money to be used in the said construction work was deposited by Oil India Ltd. She has not exhibited the documents of sanctioned money amount from OIL, the work completion certificates, document of resolution of the said Bokul Gonoswartha Unnayan Samity,

authorisation letter or work completion certificate issued by the Addl. Deputy Commissioner, Dibrugarh. She has also not exhibited any documents as proof of withdrawal of money from the said joint account at Allahabad Bank, Lahoal Branch, Dibrugarh or any receipts as proof of purchase of gravels used for the said construction.

12. The complainant contends that the allegation published in the newspaper is false. It is to be noted here that the accused persons did not bring the allegation. They only published the allegation made by some other people being the local public but the local public who allegedly condemned the complainant and agitated before her residence for non-completion of the said construction work were not made accused or witness in the case. In view of this, I fail to consider how the news items are defamatory in substance. Besides, the press enjoys freedom of speech and expression as conferred by the Constitution of India in Article 19(1)(a). In **Printers (Mysore) Ltd. Vs. Assistant Commercial Tax Officer (1994) 2 SCC 434**, the Hon'ble Supreme Court of India reiterated that *though freedom of press is not expressly granted as fundamental right it is implicit in the freedom of speech and expression. Freedom of press has always been a cherished right in all democratic countries*

and press has rightly been described as the fourth estate. The democratic credentials of a state are judged by the extent of the freedom the press enjoys in the state.

13. No one was examined from the institution of Dainik Janambhumi to substantiate that the said news was sent for publication by the accused no. 3. There is no evidence on record to substantiate the allegation that the news was communicated to any member of Dainik Janambhumi by the accused no. 3. There is also no evidence on record to establish that the accused nos. 1, 2 and 3 were in fact working in Dainik Janambhumi on the date of the communication or publication. For commission of offence u/sec 501 IPC, it has to be established that the communication to the public at large is made by the person charged with the intention to bring down the reputation of the person who is alleged to have committed such breach of trust, but in the instant case, the same is not established by any evidence. That apart, to decide the fact of the status and the reputation of the complainant in the society, the evidence of some other witnesses is essential in the instant case. In absence of the same, I am constrained to hold that the complainant has advanced a vague claim that her reputation has been harmed by the acts of the accused persons.

14. One cannot be defamed in one's own estimation. But after meticulous scrutiny of the materials on record, I am of the considered opinion that the complainant has failed to prove the 'intention' of the accused persons to defame her. As is clear from the above discussion, the evidence on record is quite inadequate to establish the complainant's 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 nos. 1, 2 and 3 guilty of the offences u/sec 500/501 IPC. As such, the points of determination are answered in the negative in favour of the accused persons.

ORDER

15. In view of the decision made above, the accused nos. 1, 2 and 3 are acquitted of the offences under section 500/501 IPC and set at liberty forthwith.
16. Their bail bonds shall remain in force for six months from today in compliance with section 437-A, Cr.P.C.
The case is disposed of on contest.
17. Given under my hand and the seal of this Court on this 22nd day of February, 2022 at Dibrugarh.

Typed by: Self

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh

APPENDIX

**LIST OF PROSECUTION /DEFENCE /COURT
WITNESSES**

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smti. Annapurna Nath	Informant/Complainant

B. Defence Witnesses,if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Nil	Nil
DW2	Nil	Nil

C. Court Witnesses,if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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CW1	Nil	Nil
CW2	Nil	Nil

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit-1	The Certified Copy of the Sale Deed
2	Exhibit-2	The copy of the legal notice to the accused
3	Exhibit-3	The postal receipt

B. Defence:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW1	Nil
2	Exhibit D-2/DW2	Nil

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	Nil
2	Exhibit C-2/CW2	Nil

D. Material Objects:

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Sr. No.	Exhibit Number	Description
1	MO1	Nil
2	MO2	Nil

Sanskrita Khanikar
Judicial Magistrate First Class
Dibrugarh