

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

PRESENT : SMTI DEEPSIKHA DAS, AJS

(Date of Judgment: 24/02/2022)

G.R. Case No : 2187/2016

(Under section 294, 352 and 506 of Indian Penal Code.
FIR No. 630/16 Dated 07/08/2016. P.S- Dibrugarh)

COMPLAINANT/INFORMANT	Sri Tapan Nath
REPRESENTED BY	LEARNED A.P.P SMTI GOPA CHAKRABORTY.
ACCUSED	Uttam Dey S/O Late Robindralal Dey Naliapool, P.S- Dibrugarh, District- Dibrugarh
REPRESENTED BY	LEARNED ADVOCATE Biswajit Singha

Date of Offence	07/08/2016.
Date of FIR	07/08/2016.
Date of Charge sheet	29/08/2016.
Date of Framing of Charges	04/09/2017.
Date of commencement of evidence	08/01/2018.
Date on which judgment is reserved	N/A.
Date of Judgment	24/02/2022.
Date of the Sentencing Order, if any	N/A.

Accused Details:

Rank of the accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Sec.428 Cr.P.C.
1.	Uttam Dey	Not arrested	21/8/17	294, 352 and 506 IPC	Acquitted	N/A	N/A

JUDGMENT

1. The genesis of this case had its roots with the lodging of the ejarah, wherein the informant, **Sri Tapan Nath**, has alleged inter alia that on 7/8/2016 around 10.30 a.m., while he was at Naliapool Bazar (Zone-B) for marketing, all of a sudden he got hurt from the cycle of Mr Uttam Dey and on his (informant's) vehement protest of bringing cycle at such rush place, Mr Uttam Dey along with his associates started using filthy languages against him and beaten him and injured his left eye and his head. He stated that the accused also snatched away his silver chain from his neck and threatened him with dire consequences and said powerful officials are in their pockets. One Hemanta Gogoi came to save him. He named two other persons namely Sapon Dey and Milan Dey being involved in the incident. He further alleged that they have also beaten one Sri Tarun Ukil, Secretary of Naliapool Bazar

Unnayan Samity because Mr Tapan Nath called him to consult and solve the matter. Hence the case.

2. The ejahar was registered as Dibrugarh P.S. Case No. 630/2016 under sections 294, 352 and 506 IPC. The police after investigation submitted charge sheet against the accused person Uttam Dey under sections 294, 352 and 506 IPC.
3. Cognizance was accordingly taken. On appearance of the accused, copies of relevant documents were furnished to him in compliance with section 207 CrPC. The particulars of offences under sections 294, 352 and 506 IPC were explained to him, to which he pleaded not guilty and claimed to be tried (**trial commenced**).
4. During the trial, the prosecution examined 6(Six) witnesses including the investigating officer as well as the informant. The statement of the accused person was recorded u/s 313 CrPC. The defence adduced 1(one) evidence.
5. I have heard both sides and perused the evidence on record.

Points for Determination

i) Whether the accused person Uttam Dey had, uttered obscene words against the informant, in or near any public place to the annoyance of other

persons, and thereby committed an offence under section 294 IPC?

ii) Whether the accused person had, assaulted or used criminal force to the informant and thereby committed an offence under section 352 of IPC?

iii) Whether the accused person, had on various occasions criminally intimidated the informant and thereby committed offence punishable under section 506 of IPC?

Decisions and Reasons Thereof

6. To arrive at a judicious decision, I have gone through the materials on record, including evidence recorded and in the light of arguments heard, appreciated evidence as follows:

7. PW1, Tapan Nath, stated in his evidence on oath that he is the informant and the accused person is known to him. He stated that in the year 2016, one morning at about 8.30/9 am, he was going to his shop by his bicycle. He stated that he was not riding but was pushing the cycle by hand while walking, as the market was crowded. The paddle of his cycle touched the leg of the accused. The accused asked him. He (pw1) apologised and said that it happened due to the rush. Then the accused person started scolding in the name of mother. Accused slapped on his face and also

punched. Pw1 stated that he went to his shop. While he was in the shop, accused person brought his brothers and started assaulting him. Then pw1 informed in the police station. He was medically examined. He sustained injury on his eyes and head. He identified exhibit 1 as the ejahar and exhibit 1(1) as his signature on it. He also stated that he lost his gold chain while the accused assaulted him.

In his cross examination, PW1 stated that the exhibit1 was written by Tarun Ukil, who was the secretary of the Naliapool Market. He stated that he did not know where the ejahar was typed. He again stated he(Tarun Ukil) typed it in his computer. He stated that the house of Tarun Ukil was 5minutes away from the market. He also stated that he never visited Tarun Ukil's house. Pw1 stated that he put his signature on the ejahar after reading it. He further stated that he went to the police station on the very day of the occurrence.

He stated that at the place where the accused got hurt, there were almost 40 shops. He stated that he could not tell the names of the shops. He further stated that there are almost 8/10 permanent shops there.

He denied the suggestion that he also hit the accused. He denied the suggestion that he hit the

accused and for saving himself he filed this case. He denied the suggestion that the accused did not hit him and he did not get injury. He denied the suggestion that no incident was happened as he told. He denied the suggestion that he and Tarun Ukil assaulted the accused.

8. Pw2, Tarun Ukil, stated that he knew both the informant as well as the accused person. He stated that the incident occurred in the year 2016. One morning he was in his shop situated at Gabhorupothar market. He stated that there was a vegetable market behind his shop. He stated that suddenly he heard some noise and being the secretary of the bazar samiti, he rushed to the place of occurrence to know what was happening. Pw2 stated that he saw that there a scuffle was going on between the informant and the accused. On being asked he was informed that the cycle of Tapan Nath hit the leg of Uttam Dey and as a result the scuffle took place. Pw2 stated that he broke the quarrel. Then Uttam Dey said that Tapan Nath had to apologise. Tapan Nath apologised accordingly. After that Uttam Dey punched on the face of Tapan Nath. Blood oozed out from the nose of Tapan. Then the accused went away from the place of occurrence. Tapan Nath was brought to Gabhorupothar Police station. He stated that police interrogated him.

In his cross examination, he stated that he did not know whether Tapan Nath sells Doubleguti in Naliapool market or not. He denied the suggestion that he did not state before the police that Tapan Nath called him over phone at 9.30 am and he rushed to the market.

He stated that he did not remember whether he told the police about being in the shop and after hearing noise he rushed to the place of occurrence. He denied the suggestion that he did not told police that “a scuffle was going on between the informant and the accused. On being asked he was informed that the cycle of Tapan Nath hit the leg of Uttam Dey and as a result the scuffle took place. Then Uttam Dey said that Tapan Nath had to apologise. Tapan Nath apologised accordingly. After that Uttam Dey punched on the face of Tapan Nath. Blood oozed out from the nose of Tapan. Then the accused went away from the place of occurrence.”

He stated that he did not know if Tapan Nath has taken bail in any case. He denied the suggestion that he requested the accused for withdrawing the case filed by him. He denied the suggestion that he is giving false on behalf of the informant. He denied the suggestion that accused assaulted the informant. He admitted the fact that

the cycle of Tapan hit Uttam and as a result the scuffle took place.

9. Pw3, Ajay Bishwas, in his evidence on oath stated that he knew both the informant as well as the accused person. He stated that the accident occurred in 2016. One morning at about 10 a.m, he was at Naliapool market for shopping vegetable. He stated that the cycle of informant touched the body of the accused. After that a scuffle took place. After that pw3 went away and did not know further.

In his cross examination, Pw3 stated that it is true that he did not tell to the police that a scuffle took place between the accused and the informant. He further stated that he did not know for whose fault the incident took place.

10. Pw4 Robi Dhar, in his evidence on oath stated that knew both the accused as well as the informant. he stated that before two years from the date of recording his deposition, one morning at about 10 a.m, the Naliapool market was very rush. Therefore the cycle of the informant hit the accused when the accused was buying vegetables.

In his cross examination, pw4 stated that the accused was not guilty.

11. PW5 Hemanta Gogoi, in his evidence on oath stated that he knew the informant and that

he had seen the accused person in the market. He stated that about three year before recording his deposition, one morning he visited the cycle stand to stand his cycle. He saw that an altercation was going on between the informant Tapan Nath and the accused. He stated that he tried to break the altercation. He also stated that he did not know the reason for the altercation.he stated that police did not interrogate him.

In his cross examination, Pw5 stated that he did not see any fight between the two parties and he did not know about it. He stated that he did not know if the informant sells liquour. He stated that there were almost 100 shops near the shop of informant. he also stated that the place remains crowded altime.

12. PW6 Loknath Nagaria, in his evidence on oath stated that on 7//8/2016 he was posted as attached officer in Gabhorupothar outpost. He stated that at about 11.30 a.m., one Tapan Nath of Borbari Railway Colony lodged an FIR alleging that one Uttam Dey had assaulted him in the Naliapool market. One GD entry no.188 dated 7/8/2016 was made and the case was transferred to the Dibrugarh PS for registering a case. Pw6 sent the informant to the police hospital for treatment. He interrogated Tarun Ukil who had accompanied the informant to the ps. He

examined the informant. At 12.40pm, he visited the place of occurrence and interrogated the witnesses there. He prepared the sketch map. He proved exhibit 3 as the sketch map and exhibit 3(1) as his signature on it. Meanwhile the case was registered as Dibrugarh PS case no 630/2016 u/s 294, 323, 379 and 506 r/w sec 34 IPC.

The accused came to the Thana for lodging a cross case against the informant. Accused was examined. The accused was then interrogated, arrested and was let him go on bail.

He collected the medical report on 29/8/2016. He proved exhibit 4 as the medical report. He stated that he did not find materials against Milan Dey and Swapan Dey and therefore he made prayer for not implicating them. After getting medical report sec 323 IPC was removed and sec 352 was inserted. He then submitted the Charge-sheet u/s 294, 352, 506 IPC against the accused. He identified exhibit 5 as the Charge-sheet and exhibit 5(1) as his signature.

In his cross examination, Pw6 stated at about 11.30 am, he was entrusted with the responsibility of investigation after registration of the case. At 7.25 am, on that day the cross case lodged by the accused against the informant was received in the P.S. After receiving the FIR of the

accused he made G.D. Entry No. 189 dated 07.08.2016 and entrusted Bijoy Pradhan with the responsibility of the investigation. That case was charge-sheeted against the informant of this case Tapan Nath, under sections 294/352 IPC. He identified Exhibit A as the certified copy of G.R. Case No. 2188/2016 which is running in the court of Ld. JMFC K. K. Baruah. He identified Exhibit A(1) as the FIR. He also identified Exhibit A(2) as the G.D. Entry. He identified Exhibit A(3) as the charge-sheet. Pw6 then examined all the P.Ws on 07.08.2016. He denied the suggestion that as no injury was found in the Medical Report, he inserted section 352 IPC in place of section 323 IPC. He denied the suggestion that P.W.2 Tarun Ukil has stated before him that the informant Tapan Nath called him at the place of occurrence. P.W.2 Tarun Ukil did not state anything before him that he had seen any such incident. P.W2 Tarun Ukil also did not state before him that the accused had demanded an apology from the informant; and thereafter the accused assaulted him and as a result of which there was bleeding from the nose of the informant. He denied the suggestion that he had perfunctorily performed the investigation and erroneously submitted the charge-sheet against the accused person.

13. DW1, Uttam Dey, in his evidence on oath stated that on 7/8/2016 at about 9.30 am, he was shopping in the Naliapool market. Suddenly one person hit his cycle on his leg from behind. He stated that he was hurt. The person suddenly touched his neck and slapped him and threw stones. He got astonished. He stated that the person used very filthy language, which he cannot even tell in the court. He stated that two more persons were there with the man. They have wine shop. He stated that he went to his house after the incident and lodged the ejahar on that very day which was registered as GR 2188. He also stated that he was brought for medical test from the police station. He identified exhibit 1 as the ejahar and exhibit 1(1) as his signature.

In his cross examination, he denied the suggestion that when the padel of the cycle of pw1 Tapan Nath hit his leg, he (pw1) apologised him. He denied the suggestion that he scolded pw1 by the name of his mother and slapped him and gave him blow. He denied the suggestion that he brought his brothers and assaulted Tapan Das. He denied the suggestion that he is giving false evidence.

Appreciation of evidence

14. I have perused the evidence of PW'S and on perusal of the evidence of PW'S it appears that

there was an accident which took place and this cannot be denied at all.

Point for determination no. 1

15. Before I proceed, In respect of point of determination no (i), before proceeding further, I deem it fit to go through the ingredients of the offence u/s 294 of IPC.

In order to secure a conviction the provision under section 294 of IPC requires two particulars to be proved by the prosecution. Firstly, the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place, and secondly has so caused annoyance to others.

In order to satisfy the test of obscenity, the words uttered must be capable of arousing sexually impure thoughts in the minds of its hearers.

In the instant case, no witness has stated anything about any abusive or filthy language used by the accused person. Thus in the absence of any cogent evidence, I deem it fit not to convict the accused u/s 294 IPC.

Point for determination no. 2 and 3

16. Coming to the second point for determination, that is **sec 352**, pw1 stated that

the accused has assaulted him. The accused had slapped and gave him blow. Pw2 also stated that the accused gave pw1 blow on his face as a result of which blood oozed out from the nose of the accused. pw3 stated about a scuffle between the accused and the informant. pw5 stated that there was an altercation. In the medical report (exhibit 4) also no external injury of the informant was seen. Thus there is no eye witness and no evidence of the incident which can prove that the accused has used criminal force upon the informant.

- 17.** Regarding **sec 506**, no witness stated about any kind of threatening, intimidation or insult caused by the accused to the informant.

Thus without any cogent evidence the accused cannot be convicted under the above sections. Accordingly point of determination no 2 and 3 are decided in negative.

- 18.** During the evidence of these PW'S none of the ingredients of section 294, 352 and 506 of IPC could be brought forwarded by the prosecution during the course of evidence. Hence, this court finds itself difficult that no such essential elements of the above mentioned sections could be proved by the prosecution beyond reasonable doubt.

- 19.** The golden rule of criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence.
- 20.** In the case of **V. D. Jhingan V. State of Uttar Pradesh the hon'ble Supreme Court** has held that it is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lie upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.
- 21.** A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.
- 22.** In the light of the above discussion & reasons, I am of the opinion that the prosecution has failed to prove the case against the accused person beyond reasonable doubt. Hence, the accused person deserves to be acquitted of the offences levelled against him.
- 23.** So, I am of the conclusive opinion that the prosecution has failed to bring home the accusation under section 294, 352 and 506 of the Indian Penal Code.

ORDER

- 24.** In view of the foregoing discussion, I am of the considered opinion that accused Sri Uttam Dey is acquitted of the charges under section 294, 352 and 506 of the Indian Penal Code and as such he is set at liberty forthwith.
- 25.** Consequently, the bail bond of the accused shall remain in force for a further period of six months from today.
- 26.** The custody of the seized vehicle and its documents is made absolute in favour of the registered owner thereof.
- 27.** Given under my hand and the seal of this Court on this the 24th February, 2022.

Deepsikha Das
Judicial Magistrate First Class,
Dibrugarh

APPENDIX

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

A. PROSECUTION:

RANK	NAME	NATURE OF EVIDENCE
PW1	Tapan Nath	Informant/Complainant
PW2	Tarun Ukil	Other
PW3	Ajoy Biswas	Other
PW4	Robi Dhar	Other
PW5	Hemanta Gogoi	Other
PW6	Loknath Nagaria	Investigating officer

B. DEFENCE WITNESSES, IF ANY: Uttam Dey

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:

A. PROSECUTION:

Sr. No.	Exhibit Number	Description
1	Exhibit P-1/PW1	Ejhar
2	Exhibit P-2/PW6	GD entry
3	Exhibit P-3/PW6	Sketch Map
4	Exhibit P-4/PW6	Medical Report
5	Exhibit P-5/PW6	Charge-sheet

B. DEFENCE EXHIBITS: None.

Deepsikha Das
Judicial Magistrate First Class,
Dibrugarh