

							purpose of section 428 of IPC
A-1	Sri Kanak Barman	24/02/2018	05/03/2018	U/S 448/353/294/34 of IPC	Convicted	The convicted persons	24/02/2018 to 05/03/2018
A-2	Md. Bubul Hussain					,	
A-3	Sri Ganesh Das					namely, Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das are given rigorous imprisonment for 2 years for commis	

						<p>sion of an offence u/s 353/34 of IPC. Also, the convict ed accused persons namely, Sri Kanak Barman , Md. Bubul Hussain and Sri Ganesh Das are liable to pay fine of Rs. 1000/-</p>	
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						(One Thousa nd) only each u/ s 448/34 of IPC and in case of default, in paymen t of fine, they will underg o simple impriso nment for 15 days.	
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APPENDIX-13

Date of offence	02/02/2018
Date of FIR	05/02/2018
Date of charge-sheet	28/02/2018
Date of framing of charges	06/04/2018
Date of commencement of evidence	21/07/2018
Date on which judgment is reserved	N/A
Date of judgment	26/09/2022
Date of the Sentencing Order, if any	26/09/2022

(J U D G M E N T)

1. The prosecution case sets into motion by filing a FIR by the informant, Musstt. Monowara Begum stating that on 02.02.2018 at about 12:30 P.M., the accused persons namely Lt. Biren Das, Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das committed house trespass by entering into the office of Home guard Commandant at Sariohtoli along with reporters of News live and accused Late Biren Das intended to outrage the modesty of the informant by putting hand in her chest and other accused persons stopped her from discharging her duty. Hence, she has lodged this case.
2. The Officer-in-charge, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 68/18, under section 447/448/353/354/34 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused

person namely Lt. Biren Das under section 447/448/353/354/294 of IPC and section 447/448/353/294/34 of IPC against accused persons namely Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das.

- 3.** In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to them as per section 207 of Cr.P.C. Formal charges U/S 448/353/294/34 of IPC are framed against the aforesaid accused persons and u/s 354 of IPC against accused Lt. Biren Das and the same are read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 4.** On perusal of the case record it is seen that vide order dated 27-06-2022 the case is abated against accused Biren Das as death certificate of the accused is received from O/C, Nalbari P.S.
- 5.** The prosecution, in support of its case, examined seven (07) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.
- 6.** The statement of the accused persons namely Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das under section 313 of Cr.P.C. are recorded wherein they took the plea of innocence and false implication. Defence side examined no witnesses.

7. I have heard the arguments advanced by the Learned Counsels for both sides.

8. POINTS FOR DETERMINATION:

- (i) *Whether on 02/02/2018 at about 12:30 P.M., at the office of the Commandant Home Guard at Sariahtoli, under the jurisdiction of Nalbari P.S., the accused persons, in furtherance of common intention committed house trespass by entering into the office of Home-guard Commandant and thereby committed an offence punishable u/s 448/34 of IPC?*
- (ii) *Whether on the same day, time and place the accused persons in furtherance of common intention, assaulted Musstt. Monowara Begum a public servant in discharge of her duty as a public servant and thereby committed an offence punishable u/s 353/34 of IPC?*
- (iii) *Whether on the same day, time and place the accused persons in furtherance of common intention, uttered obscene word in or near public place and thereby committed an offence punishable u/s 294/34 of IPC?*

EVIDENCES OF PWs:

9. PW-1, Musstt. Monowara Begum deposed that she is the informant of the case. She knows the accused persons. She is

working as peon in the office of Homeguard at Sarihatoli. The incident took place at about 12 noon about four months back from the day of her deposition. The accused Ganesh Das, Rubul Hussain and the other two accused persons brought media persons from "News live" to their office alleging that their Platoon Commandant Rupjyoti Talukdar demanded Rs.15,000/- from them. Biren Das caught hold her chest and pushed her outside the office. Many persons verbally abused her with obscene word. After two days of the incident Biren Das restrained her while she was going to treasury and verbally abused her. She filed the ejahar as advised by the D.G. Ext.1 is the ejahar and Ext 1(1) is her signature. Police recorded her statement.

- 10.** During cross-examination PW-1 says that the office of the homeguard can be reached after crossing the office of the S.P., Office. She is not engaged in any sitting work at the office. The servic of homeguard are re-newed after six months as per order of the platoon commandant. The homeguard maintain co-ordination with the office of homeguard. She has no role in appointment of homeguard. The journalist of 'News live" brought camera on the day of occurrence and as she restrained them they took her picture and highlighted her alleging that she demanded bribe for renewing the term of service of homeguard. About six other employees were present in the office at the time of the incident. Poinur Ali, Nitul Barman, Amit Boro, Hemanta Boro,

Sunder Basumatary and Rupjyoti Talukdar were present. The media persons entered the rest house in the office of the homeguard. The media persons put questions to the platoon commandant and she restrained them from putting questions. She does not know whether the platoon commandant informed his superior officers about the incident. The platoon commandant had not filed any case. She had not filed any ejahar till two days of the incident. She would not have filed the ejahar if not instructed by the D.G. Painur Ali wrote the ejahar and took her signature. She does not know the contents of the ejahar. The whole incident was captured in the camera by the media person of 'News Live'. After the incident she was called in the office of the D.G., for three days and for two days in the office of S.P., and she was mentally harassed to file ejahar. She does not know whether the platoon commandant used to demand bribe from the homeguard. The platoon commandant might have harassed the homeguard demanding bribe. She denied defence suggestion that the accused persons are not involved with the incident. She denied defence suggestion that she filed a false case.

- 11.** PW-2, Sri Sundar Kumar Basumatary deposed that he knows the informant. Except accused Biren Das he does not know the other accused persons. The incident took place on 02-02-2018 at about 11:30 am at his office of Home-guard, Soriohtoli, Laudal. On that day at about 11:30 am the

accused persons came to his office and asked for their appointment as Home-guard. He told that no other post were vacant except one post at BSNL office, Nalbari. The accused persons refused to work at BSNL office and left his office. Thereafter, he came to Nalbari for field visit. At about 12:30 pm the accused persons along with television media persons entered his office and insulted, verbally abused Asstt. Commandant Rupjyoti Talukdar and office peon Monowara Begum with allegations of taking bribe. The accused persons pushed Monowara Begum and also misbehaved with her by putting their hands in her chest. He was informed over telephone. The accused persons were on duty as Home-guard at that time. Police recorded his statement.

- 12.** During cross-examination PW-2 deposed that he was the Commandant, Home-guard at Sariahtoli. He was to look over the duties allotted to the home-guard. The accused persons came to his office in connection with inquiry regarding their duties. After conversation with the accused he came out of his office and went for field visit. He returned back to his office at about 12:45 pm. The Asstt. Commandant Rupjyoti Talukdar and Grade IV employee Monowara Begum informed him about the incident. He had not find the media persons at 12:45 pm in his office. No formal notice was issued to the accused persons but they were intimated over phone to come to his office, but they did not come to his office. He reported the incident to the S.P concerned. No departmental

inquiry was held with regard to the incident. The accused persons alleged that they have to pay money for allotment of their duties for home guard, but the allegations are false. He had not called the media persons to see the footage of the incident. He denied defence suggestion that a false case was filed against the accused persons. He denied defence suggestion that no incident took place as alleged in the ejahar.

- 13.** PW-3, Md. Poinur Ali deposed that he knows the informant who is the employee of the office of District Home-guard commandant, Nalbari. He knows the accused persons. The incident took place on 02-02-2018 at about 11.20 am. He was in the office. Sundar Kumar Basumotary who was the commandant was about to go out of the office to visit site at that time four persons came and talk with the commandant. Thereafter the commandant went out and the persons also went out of the office. At about 12-12.30 PM the four persons again came to office with media persons and entered the room of Rupjyoti Talukdar, Platoon commander and quarrel took place with the Rupjyoti Talukdar. He came to the room of Rupjyoti Talukdar thereafter Monowara Begum also came to the room of Rupjyoti Talukdar. He came out of the room. He heard that Biren Das pushed Monowara Begum by her chest. Thereafter the persons fled away. The persons standing in the dock came to their office on the day of the incident. Police recorded his statement.

14. During cross-examination PW-3 deposed that he was standing in the veranda at about 11.20 am on the date of incident in the office of District Home-guard commandant, Nalbari. Monowara is his colleague. He does not know the other persons standing in the veranda at that time. The other employees were not in the veranda. He does not know whether the other employees were busy in their official works. He does not know the names of the home-guard who were present on duty at the time of the incident. Except him and Monowara Begum no other persons came to restrain the accused persons. The term of home-guard is for six months. He has not seen the accused persons pushing Monowara Begum by her chest. He has not seen the accused persons assaulting Monowara Begum or any other persons. The accused persons alleged that the Platoon commander used to take bribe. No quarrel took place with Monowara Begum. He does not know whether the platoon commander demanded money from the accused persons for extending the term of home-guard. He denied defence suggestion that Platoon Commander filed a false case through Monowara Begum. He does not know whether the higher official authorities were informed about the incident. He denied defence suggestion that he had not stated before police that he heard that Biren Das pushed Monowara Begum by her chest. He denied defence suggestion that Biren Das did not pushed Monowara

by her chest. He denied defence suggestion that he deposed falsely in the favour of the office staff.

15. PW-4, Sri Nipul Haloi deposed that he knows the informant Manowara Begum. She works as a peon in home guard office. He knows all the four accused persons. Except Biren Das three accused are present in the dock. All the accused persons also worked as Home guard. The incident occurred in the year 2018 at Sariahtali Home Guard Office. The incident occurred at around 9 to 11 AM. He was present at the place of occurrence. The accused persons visited the office and they had a talk with PC Sir inside his office room. They came out after a while. Thereafter the news reporter of electronic media came and media persons took some photographs. Thereafter media left the place. The police never recorded his statement. He does not know anything about the incident. **The LD APP prayed to declare the witness as hostile witness and prayed to allow him to cross examine him. During cross-examination by Ld. APP, PW-4 deposed that** on the day of the incident, he was on duty at the baranda of office of PC Sir. The name of PC Sir is Sri Rupjyoti Talukdar. The IO inquired him about the incident and recorded his statement. He denied defence suggestion that he stated to IO in his statement recorded u/s 161 CrPC that the accused persons along with media persons criminally trespassed into the office of the PC Rupjyoti Talukdar and misbehaved him using filthy language. He

denied defence suggestion that he stated to IO in his statement recorded u/s 161 CrPC that he heard that the accused persons touched the breast of Manowara Begum. He admitted that he stated to IO in his statement recorded u/s 161 CrPC that the accused persons discussed some matters in the office. He denied defence suggestion that as the accused persons are also homeguard, so he is deposing falsely before the court on the day of his deposition to save them.

16. During cross-examination by Ld. Defence Counsel he deposed that he never stated anything to police on the day of alleged occurrence. He does not know what was discussed between the accused persons and the officer.

17. PW-5, Sri Pratap Basumatary deposed that he knows the informant Mrs. Manowara Begum. She works as office peon at District Home Guard Office. He knows the accused persons namely Kanak Barman, Bubul Hussain, Biren Das and Ganesh Das. They also work as Home Guard. The incident occurred in the year 2018 at about 11.30 PM at District Home Guard office. He was on duty at District Home Guard office. He was with District Commandant sir. The accused persons came to the office room of District Commandant sir and discussed about their duty. They came out of the room. He was inside the room with the District Commandant sir. When District Commandant sir came out, he remained in the room. After hearing hue and cry, he came out. From the room of Rupjyoti Talukdar, their PC sir sounds

of hue and cry was coming. He saw media persons there. The accused persons came out from the room of PC sir. He knows that much of the incident.

18. During cross-examination PW-5 deposed that he could not say what the matter between PC sir and the accused persons was discussed on that day. He was inside the room of DC sir when the incident occurred in the room of PC sir. He came out hearing hue and cry. He could not say regarding what matter the accused persons visited the place of occurrence. He denied defence suggestion that senior officer demanded bribe from the accused persons due to which hue and cry took place. He denied defence suggestion that he deposed falsely on the day of his deposition.

19. PW-6(IO), Sri Dipankar Saikia deposed that on 05-02-2018, he was on duty as SI at Nalbari Police Station. On that day informant Miss Manowara Begum, a grade IV employee DC court, who was on duty at Commandant Office, Home Guard, Sariatali lodged one FIR against the accused Sri Biren Das, Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das alleging that on 02-02-2018 at 12.30 PM the accused persons along with reporter of News Live entered into her office and Sri Biren Das used criminal force upon her with intention to outrage her modesty. The other co-accused also caused obstacle in her performing duty. On receipt of the FIR, the then OC Badrul Islam of Nalbari Police Station registered Nalbari PS case No. 68/2018 u/s

447/448/353/354/34 of IPC and endorsed him for investigation of the case. He met the complainant at Nalbari PS and recorded her statement u/s 161 CrPC. He visited the place of occurrence i.e. the office of the Commanding Officer, Home Guard at Sariahtali and prepared the sketch map. **Exhibit P-2/PW-6** is the sketch map and **Exhibit P-2(1)** is his signature. He also recorded the statements of witnesses namely Sri Sundar Kumar Basumatary, Sri Rupjyoti Talukdar, Md. Poinur Ali, Sri Nipul Haloi, Sri Pratap Basumatary u/s 161 CrPC. He visited the houses of the accused persons and found them absent. The accused persons namely Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das appeared at the police station on 24-02-2018. He recorded their statements and forwarded them to the Ld. CJM with a prayer for judicial custody. Later on, he also arrested the accused Biren Das and forwarded him to the Magistrate with a prayer for judicial custody. After completion of the investigation, he found prima-facie material against the accused persons. Hence, he submitted charge sheet no. 62/2018 dated 28-02-2018 u/s 447/448/353/354/294 of IPC against accused Sri Biren Das and u/s 447/448/353/294/34 of IPC against accused Sri Kanak Barman, Md Bubul Hussain and Sri Ganesh Das. **Exhibit P-3/PW-6** is the charge sheet and **Exhibit P-3(1)** is his signature.

- 20.** During cross-examination PW-6 (IO) denied defence suggestion that the place of occurrence is SP office. The place

of occurrence is Office of the Assistant Commandant of Home Guard at Sariahtali, Nalbari. He visited the place of occurrence on 07-02-2018. According to the FIR i.e. Exhibit 1, the date of occurrence is 02-02-2018. No explanation is found in the FIR i.e. Exhibit 1 nor in the statement recorded u/s 161 CrPC of the informant regarding the delay in lodging the FIR. The alleged place of occurrence is inside the office of the Assistant Commandant Office of Home Guard of Sariahtali. He does not know how many people were employed in the office of the Assistant Commandant Office of Home Guard of Sariahtali. He recorded the statement of Assistant Commandant of Home Guard Sri Sundar Kumar Basumatary (PW-2). He was absent at the time of the alleged incident as per the statement recorded u/s 161 CrPC. All the Pws say that the accused persons entered into the aforesaid office along with the media persons. He had not recorded statement of any media person in connection with this case. He had not collected nor examined any video footage, if available, with the media persons regarding the alleged incident. He had not seized any wearing appareles of the victims in connection with this case. The accused persons were also Home Guard, under the Assistant Commandant of Home Guard, Nalbari but were posted at other place outside the office. As per protocol, Assistant Commandant of Home Guard is holding the equivalent post of a Deputy Superintendent of Police. He has not investigated this case from the angle that why the

accused persons entered into the office along with media persons. He recorded the statements of the accused persons in connection with this case. The statement of the accused person Sri Ganesh Das recorded say that Platoon Commander Rupjyoti Talukdar asked them Rs. 15,000/- per person for posting him at Nalbari Post Office. He denied defence suggestion that he investigated the case under the pressure of the superior officer and in their influence he submitted charge sheet against the accused persons who are innocent. PW-6 further stated that Rupjyoti Talukdar is platoon commandant at Sarihatali Home Guard office. Informant Manowara Begum works as peon at the same office. He recorded the statement of Rupjyoti Talukdar at Sarihatali Home Guard Office. In his statement, Rupjyoti Talukdar said that the accused persons alleged that he demanded bribe for posting from the accused. He denied defence suggestion that he has not investigated the case properly.

- 21.** PW-7, Sri Rupjyoti Talukdar deposed that he knows the informant Mrs. Manowara Begum of this case. He was working as Platoon Commander at the office of the Home Guard, Sariahtali, Nalbari. The informant was also in that office as a peon. He knows the accused persons present in the dock. They were also Home Guard (volunteer) under that office at that time. The incident occurred on 01-02-2018. At about 10.30 AM, the accused persons along with Late Biren Das came to their office. He was sitting in the office of the

Commandant Sundar Kumar Basumatary. They requested Sundar Kumar Basumatary to get them engaged with private agency. As per their record, Biren Das was working in Manash National Park and another three who are present on the day of his deposition are engaged under police reserve, Nalbari. So, Sundar Kumar Basumatary refused to entertain their request. Sri Kanak Barman introduced himself as President of Home Guard Union and Bulbul Hussain introduced himself as Secretary of Home Guard Union. The accused persons left the office thereafter. They entered into his chamber and said the same thing to him. When he told them, whatever Commandant Sir said, the accused left the place, threatening him that they will see him. At about 12.30 PM, on that day, the accused persons came along with media persons. They made a news saying that they took bribe in discharging their duties and defamed them. At that time, informant Manowara Begum entered into his office. The accused persons made nuisance and pushed Manowara Begum. Late Biren Das touched the chest of Manowara Begum. After creating such a scene, the accused persons left along with media persons. Thereafter, the informant lodged the FIR and police recorded his statement.

- 22.** During cross examination PW-7 deposed that as a Platoon Commandant, his duty was to maintain office record, maintain the store items and monitoring the field duty of the Home Guard. On the relevant day, at first, the accused

persons had verbal altercation with the District Commandant. After the verbal altercation in office of the District Commandant, in the morning, he came to his chamber and the accused also came to his chamber. As there was no officer there, the accused came to his chamber to request him to request District Commandant to entertain their request. At 12.30 PM, when the accused person came along with three media persons along with camera man he was at his chamber. They came to his chamber as the office of the District Commandant was closed. The media was recording video of his. The accused persons were giving bite against him before the media at that time. Informant is only peon of their office. He has not made any written complaint against the accused persons to the Senior Officer nor lodged any police complaint in regard to the incident. At the time of alleged incident took place with Manowara Begum, the media persons were present. He denied defence suggestion that they demanded a huge bribe to the Home Guard to get them engaged and when they fail to meet their demand, they had not allotted them duties. He denied defence suggestion that they were running a scandal of extorting money from the home guards in the name of duty allotment and that day the accused persons came with media persons to expose them, due to which, in conspiracy with the informant, this false case is filed against the accused persons in revenge. He denied defence suggestion that he deposed falsely that the accused

persons made nuisance and pushed Manowara Begum and late Biren Das touched the chest of Manowara Begum and after creating such a scene, the accused persons left along with media persons.

DISCUSSION, DECISION AND REASONS

THEREOF:

23. The case is abated against the accused Biren Das due to his death against whom charge is framed u/s 354 of IPC. The other three accused persons are facing trial u/s 448/353/294/34 of IPC.

24. The essential ingredients of section 353 IPC are:

- (1) Accused made a gesture or preparation to use criminal force;
- (2) He knew that it was likely that such gesture or preparation to use criminal force would cause apprehension that criminal force would be used by him against the victim.
- (3) There was no grave or sudden provocation from the side of the victim.

25. The essential ingredients of section 448 IPC are:

- (1) The complainant was in possession of the property;
- (2) Property consisted of a building, tent or vessel used as a human dwelling or a building used as a place of worship or for custody of property;
- (3) The accused entered into or upon such building, tent or vessel;

(4) Having entered lawfully into such building, tent or vessel the accused remains there unlawfully;

(5) His intention was to commit an offence, or intimidate, insult or annoy the person in possession.

26. The essential ingredients of section 294 IPC are:

(1) The offender has done any obscene act in any public place or has sung or recited or uttered any obscene songs or words in or near any public place and has so caused annoyance to others.

27. Coming back to the evidences at hand, in the present case it is found that PW-1, Musstt. Monowara Begum, the informant of this case says that she knows the accused persons. She is working as peon in the office of Homeguard at Sarihatoli. The incident took place at about 12 noon about four months back. The accused Ganesh Das, Rubul Hussain and the other two accused persons brought media persons from "News live" to their office alleging that their Platoon Commandant Rupjyoti Talukdar demanded Rs.15,000/- from them. Biren Das caught hold her chest and pushed her outside the office. Many persons verbally abused her with obscene word. After two days of the incident Biren Das restrained her while she was going to treasury and verbally abused her. She filed the ejahar as advised by the D.G. Ext.1 is the ejahar and Ext 1(1) is her signature. Police recorded her statement. During her cross-examination she says that She has no role in appointment of homeguard and the

journalist of 'News live" brought camera on the day of occurrence and as she restrained them they took her picture and highlighted her alleging that she demanded bribe for renewing the term of service of homeguard. About six other employees were present in the office at the time of the incident. Poinur Ali, Nitul Barman, Amit Boro, Hemanta Boro, Sunder Basumatary and Rupjyoti Talukdar were present. The media persons entered the rest house in the office of the homeguard. The media persons put questions to the platoon commandant and she restrained them from putting questions.

28. From the cross-examination of the informant/victim (PW-1) it is seen that some unwanted situation took place inside the office of Commandant Home Guard in presence of some staffs of her office and media person. The reason behind the unruly situation took place was the fact that the accused persons alleged that someone i.e., Platoon Commandant demanded bribe and the informant has no role in it. She does not know whether the platoon commandant used to demand bribe from the homeguard and the platoon commandant might have harassed the homeguard demanding bribe. She was discharging the duty as a peon at that time in the office.

29. Her cross-examination also reveals that the platoon commandant had not filed any case. PW-1 had not filed any ejahar till two days of the incident. She would not have filed the ejahar if not instructed by the D.G. Painur Ali wrote the

ejahar and took her signature. She does not know the contents of the ejahar. The whole incident was captured in the camera by the media person of 'News Live'. After the incident she was called in the office of the D.G., for three days and for two days in the office of S.P., and she was mentally harassed to file ejahar.

30. However, she denied defence suggestion that the accused persons are not involved with the incident. She denied defence suggestion that she filed a false case.

31. From her evidence on record, it is seen that at first she was not inclined to lodge the FIR regarding the incident in which according to her testimony Lt. Biren Das caught hold of her chest and pushed her outside the office. The other accused persons along with Lt. Biren Das and media persons entered into her office and committed the scene. According to her, Lt. Biren Das also restrained her while she was going to treasury and verbally abused her.

32. From the case record it is found that on 21-07-2018, when PW-1 was examined and cross-examined Lt. Biren Das was present along with his engaged Counsel. The case was abated against Lt. Biren Das only on 27-06-2022. No suggestion was given by the defence side regarding the testimony of PW-1 (informant) that Lt. Biren Das restrained her on the road after two days of the incident. Hence, the reason why she was inclined to lodge the FIR can be understood. Moreover, as she said that she was called to the

office of the DG and SP to lodge the FIR, also reflect the situation in which she was undergoing after the incident. No specific suggestion is given regarding the fact that the accused persons did not enter into the room and used criminal force. Resultantly, I found no reason to disbelieve her testimony.

33. PW-6 (IO), Inspector Dipankar Saikia during cross-examination denied the fact that the place of occurrence is SP office. The IO (PW-6) during cross-examination deposed that the place of occurrence is Office of the Assistant Commandant of Home Guard at Sariahtali, Nalbari. Musstt. Monowara Begum, PW-1 of this case also says she works as peon in the office of Homeguard at Sarihatoli. PW-2 also says that informant (PW-1) works in his office. PW-3, PW-4 and PW-5 also says that PW-1 is the employee of the office of District Home Guard Office, Nalbari. No denial on the part of the defence side that PW-1 (informant) was not a peon at that time in the Office of the Home Guard and she was not a Govt. servant.

34. Section 21 of IPC defines public servant. PW-1 in the service or pay of the Government in the Office of DC, Nalbari and she was on duty at the Office of the Home Guard, Sariahtoli. Hence, there is no doubt left that at the time of alleged occurrence the PW-1 (informant) was working as a Home Guard.

35. PW-7, Sri Rupjyoti Talukdar is the eye witness of this case. According to him the incident occurred on 01-02-2018. At about 10.30 AM, the accused persons along with Late Biren Das came to their office. He was sitting in the office of the Commandant Sundar Kumar Basumatary. They requested Sundar Kumar Basumatary to get them engaged with private agency. As per their record, Biren Das was working in Manash National Park and another three who are present on the day of his deposition are engaged under police reserve, Nalbari. So, Sundar Kumar Basumatary refused to entertain their request. Sri Kanak Barman introduced himself as President of Home Guard Union and Bulbul Hussain introduced himself as Secretary of Home Guard Union. The accused persons left the office thereafter. They entered into his chamber and said the same thing to him. When he told them, whatever Commandant Sir said, the accused left the place, threatening him that they will see him. At about 12.30 PM, on that day, the accused persons came along with media persons. They made a news saying that they took bribe in discharging their duties and defamed them. At that time, informant Manowara Begum entered into his office. The accused persons made nuisance and pushed Manowara Begum. Late Biren Das touched the chest of Manowara Begum. After creating such a scene, the accused persons left along with media persons. Thereafter, the informant lodged the FIR and police recorded his statement. During cross-

examination the defence side failed to shake the credibility of the said witness. The evidence of PW-7 corroborated the evidence of PW-1 that the accused persons entered into the office of the PW-1 with allegation of taking bribe by officer and Lt. Biren Das pulled and pushed the informant (PW-1).

36. PW-2, Sri Sundar Kumar Basumatary says that he has not seen the incident. But his evidence is corroborated with the evidence of PW-1 (informant) and PW-7 to the fact that the accused persons alleged that they have to pay money for allotment of their duties for home guard, but the allegations are false. PW-2 also says that on that day at 12:30 P.M., accused persons entered to his office along with the media persons and pulled and pushed the informant (PW-1) and he was informed over phone.

37. PW-3, Md. Poinur Ali deposed that the incident took place on 02-02-2018 at about 11.20 am. He was in the office. Sundar Kumar Basumotary who was the commandant was about to go out of the office to visit site at that time four persons came and talk with the commandant. Thereafter the commandant went out and the persons also went out of the office. At about 12-12.30 PM the four persons again came to office with media persons and entered the room of Rupjyoti Talukdar, Platoon commander and quarrel took place with the Rupjyoti Talukdar. He came to the room of Rupjyoti Talukdar thereafter Monowara Begum also came to the room of Rupjyoti Talukdar. He came out of the room. He heard that

Lt. Biren Das pushed Monowara Begum by her chest. Thereafter the persons fled away. During cross-examination PW-3 says that he has not seen the accused persons assaulting Monowara Begum or any other person. But he and Monowara Begum came to restrain the accused persons. Though he is in the office, but, he was not inside the room at the time of the incident. However, his evidence is clear that at the relevant time accused persons entered into their office and he heard the incident that accused persons pulled and pushed Monowara.

38. PW-4, Sri Nipul Haloi was declared as hostile witness and during cross-examination by Ld. APP PW-4 admitted that he stated to IO in his statement recorded u/s 161 Cr.P.C. that the accused persons discussed some matters in the office. PW-4, Sri Nipul Haloi also a home guard was present at the office at that time and he saw the accused persons visited the office and come out after a while. He was on duty at the verandah of the office of P.C. sir as he said in his cross-examination. He also said that he said the I/O that accused persons discussed some matters in the office. But he said that he does not know what was discussed between the accused and the officer. His evidence clearly confirms the fact that accused persons entered into the office at that time.

39. PW-5, Sri Pratap Basumatary deposed that the incident occurred in the year 2018 at about 11.30 PM at District Home Guard office. He was on duty at District Home

Guard office. He was with District Commandant sir. The accused persons came to the office room of District Commandant sir and discussed about their duty. They came out of the room. He was inside the room with the District Commandant sir. When District Commandant sir came out, he remained in the room. After hearing hue and cry, he came out. From the room of Rupjyoti Talukdar, their PC sir sounds of hue and cry were coming. He saw media persons there. The accused persons came out from the room of PC sir. During cross-examination he says that he could not say what the matter between PC sir and the accused persons was discussed on that day. He was inside the room of DC sir when the incident occurred in the room of PC sir. He came out hearing hue and cry. He could not say regarding what matter the accused persons visited the place of occurrence.

40. Hence, PW-5 also confirms that accused persons came to the office room of District Commandant and thereafter visited the room of P.C. sir in which hue and cry took place and hearing which he came out and saw the accused persons came out of the room of P.C. sir.

41. So, from the evidence of PW-5, PW-4, PW-3 it is found that all of them have seen the accused persons entering into the room of Sri Rupjyoti Talukdar and heard the hue and cry and the accused persons came out. According to PW-1, the accused persons Lt. Biren Das caught hold on her chest and pushed her outside and other accused persons

accompanied him. PW-7 also says that the incident took place in his office and he witnessed it with his own eyes.

42. If the evidences of PW-1 stitches together with the evidence of PW-7 (eye witness) and evidence of witness PW-3, PW-4 (hostile witness), PW-5 who were present at the time of incident and saw the accused persons coming inside the room of PW-7 and saw them coming out after hearing hue and cry and evidence of PW-2 who was Commandant Home Guard, Sariahtoli and received the telephonic communication on the same date, it is found that the prosecution side succeeded to adduce cogent, plausible and trustworthy evidence against the accused persons Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das who entered into the office room of Sri Rupjyoti Talukdar (PW-7) in the office of Commandant Home Guard along with Lt. Biren Das and media persons and used criminal force upon the PW-1 (informant) while she was discharging her duty as public servant.

43. The underlying principle of section 34 IPC is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in **Ashok Kumar v State of Punjab (1971)1 SCC 746** the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with

commission of an offence jointly must be the same or identical similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

44. Though in the present case Lt. Biren Das touched the chest of the victim and pushed her, but there is no evidence to show that common intention has been formed at the spot of occurrence to outrage the modesty of the victim. Inference can be drawn regarding actual role played by the accused persons Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das is that they went inside the office with media persons with allegation that the Platoon Commandant demanded the bribe. However, there is nothing on record that apart from the media drama orchestrated inside the office premise, the accused persons approached any concerned authority for redressal of their grievances nor filed any complaint. In my considered opinion that making allegation against the Platoon Commandant only cannot justify their acts took place on that day. Moreover, the accused persons Sri Kanak Barman, President Home Guard Union, Md. Bulbul Hussain, Secretary Home Guard Union (as per the testimony of PW-7) coming to the office along with the media persons and creating hue and cry and use of criminal force also gave clear picture of the unruly situation took place on that day inside the office premises.

45. As a result, I found the prosecution side able to bring home the guilt of the accused persons beyond reasonable doubt in this case.

CONCLUSION/DECISION

The accused persons namely Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das are found guilty of offence U/S 448/353/34 of IPC and they are convicted u/s 448/353/34 of IPC.

All the accused persons were working as home guard at that point of time and the victim was a peon working in the office of the Home Guard as a public servant.

Hence, the nature of the offence committed by the accused persons does not entitle them benefit of section 360 Cr.P.C and under the provision of Probation of Offender Act and accordingly they are not considered under the said provision of law. Accordingly, I have heard accused persons on the point of sentence.

HEARING OF THE ACCUSED ON THE POINT OF SENTENCE

1. Convicted accused persons namely Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das are heard on the point of sentence and their plea of sentences are reduced into writing in separate sheets and kept with case record.

2. I heard Ld. Defence Counsel as well Ld. A.P.P for the state on the point of sentence. Convicts pleaded mercy and pray for considering leniently.

3. Learned APP prays for sentencing the convicts as per the law and the plea taken by convicted accused persons being pity the same should not be consider by the court while sentencing the accused persons taking into consideration nature of the offence committed by the accused persons.

4. Learned Defence Counsel made submission that accused persons' financial condition are very weak so counsel prays for leniency in sentencing the accused persons.

5. While hearing the accused persons on point of sentencing, accused/convict Sri Kanak Barman stated that he is father of a minor baby who is 2 months and 6 days old. He also has old aged parents and wife at home. His family is totally dependent upon him. Accused/convict Md. Bubul Hussain stated that he is father of a minor baby who is 8 months old. He also has old aged parents and wife at home. His family is totally dependent upon him. Accused/convict Sri Ganesh Das live with his wife and old aged parents and he is the only bread earner of his family. So, all the convicted accused persons requested the court to consider their case leniently.

6. After hearing Ld. Counsel for both sides and accused on the point of sentence, going through the material on record and considering the nature of the offence which accused persons have committed, I am of the opinion that this is not a fit case

to consider accused persons leniently. Accordingly, taking into consideration all aspect, nature of the offence committed by the convicted accused persons and considering the overall facts and circumstances of the case, the convicted persons, namely, Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das are given rigorous imprisonment for 2 years for commission of an offence u/s 353/34 of IPC.

7. Convicted accused persons namely, Sri Kanak Barman, Md. Bubul Hussain and Sri Ganesh Das are liable to pay fine of Rs. 1000/- (One Thousand) only each u/s 448/34 of IPC and in case of default, in payment of fine, they will undergo simple imprisonment for 15 days.

8. The convicted accused persons are told that they have right to appeal against the judgment and order of this court before Hon'ble Appellate court through the jail authority or independently of their own.

9. It is also made clear that the sentence in this case shall run concurrently with previous sentence of the accused persons, if any by court, under section 427 Cr.P.C.

10. Benefit of section 428 Cr.P.C. be also given to the convict persons and period of undergone by them till date of this case shall be set off against the term of imprisonment imposed on them on conviction. The convicted accused persons are told that they have right to appeal against the judgment and order of this court before Hon'ble Appellate

court through the jail authority or independently of their own.

11. Convicted accused persons are further informed that he is entitled free legal aid to prefer appeal before the Hon'ble Session court.

12. Let furnish free copy of Judgment to convicted accused persons.

13. Send copy of judgment to Learned District Magistrate Nalbari u/s 365 Cr.P.C.

14. It is found that the accused persons namely Sri Kanak Barman and Md. Bubul Hussain are working as Home Guard. Hence, send a copy of this order to Commandant General Home Guards, Assam, Beltola, Guwahati, 781028 and to the SP, Nalbari immediately.

Given under my hand and seal of this court on this 26th day of September, 2022 at Nalbari.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Musstt. Monowara Begum	Informant
PW-2	Sri Sundar Kumar Basumatary	Other witness
PW-3	Md. Poinur Ali	Other witness
PW-4	Sri Nipul Haloi	Other witness
PW-5	Sri Pratap Basumatary	Other witness
PW-6	Sri Dipankar Saikia	Police witness
PW-7	Sri Rupjyoti Talukdar	Eye witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
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		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

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

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Ejahaar
2.	Exhibit 1(1)	Signature of PW-1 (informant), Musstt. Monowara Begum
3.	Exhibit P-2/PW-6	Sketch map
4.	Exhibit P-2(1)	Signature of PW-6 (IO), Sri Dipankar Saikia
5.	Exhibit P-3/PW-6	Charge sheet

6.	Exhibit P-3(1)	Signature of PW-6 (IO), Sri Dipankar Saikia
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B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari