

**IN THE COURT OF Munsiff No. 1 cum JMFC,
Nalbari**

Present: Dr. Nabanita Kalita

(Date of Judgment)
02.09.2022

PRC Case No. 335/2021

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP.
ACCUSED	1) SAFAR ALI (2) HAZARAT ALI (3) AMSER ALI
REPRESENTED BY	GITIMA BEZBARUA, ADVOCATE

Date of Offence	02.12.2020
Date of FIR	03.12.2020
Date of Charge sheet	31.12.2020
Date of offence explanation	19.07.2022
Date of commencement of evidence	25.08.2022
Date on which judgment is reserved	NIL
Date of Judgment	02.09.2022
Date of the Sentencing Order, if any	NIL

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
A-1	Safar Ali	08.12.2020	08.12.2020	294/352/34 IPC	Acquitted	N/A	N/A
A-2	Hazarat Ali	08.12.2020	08.12.2020	294/352/34 IPC	Acquitted	N/A	N/A
A-3	Amser Ali	08.12.2020	08.12.2020	294/352/34 IPC	Acquitted	N/A	N/A

JUDGMENT

1. The case of the prosecution in a nutshell is that on 02.12.2020, at about 8.20 am, accused persons, on the instigation of Mannaf Ali taking the chance of absence of the informant in his house, chased the wife of informant Miss Gulesa Bibi to the courtyard of the informant carrying lathi, jung in their hands and physically assaulted her and caused grievous injury to her. It is also alleged that thereafter, accused persons abused them with obscene languages and threatened them.

2. On receipt of the FIR, police of Ghograpar PS registered the same Ghograpar PS Case no. 556/20

under Section 120(B)/325/506 IPC against the accused persons and conducted investigation into the matter.

3. On completion of the investigation, the police submitted Charge sheet against the accused persons namely Safar Ali, Hazarat Ali and Amser Ali under Section 294/352/34 IPC

4. The accused person entered their appearance in response to the process issued. Copies of relevant documents were furnished to the accused person in accordance with section 207 Criminal Procedure Code.

5. Particulars of offence under section 294/352/34 of IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. During trial, the prosecution examined 2(two) witnesses. Thereafter, on prayer of the Id. APP, prosecution evidence has been closed as according to the opinion of the Id. APP calling other witnesses will not improve the case.

7. The statement of defence of the accused persons have been dispensed with due to lack of incriminating materials against them. Defence declined to adduce DW evidence.

POINTS FOR DETERMINATION

i) Whether the accused persons on 02.12.2020 at about 8.30 a.m. in furtherance of their common

intention used obscene language to the annoyance of the informant's wife and thereby committed an offence punishable under section 294/34 IPC?

ii) Whether the accused persons on same date and time in furtherance of their common intention assaulted the informant's wife Gulesa Bibi and thereby committed an offence punishable under section 352/34 IPC?

8. I have heard the learned counsel for both sides and have gone through the case record.

EVIDENCE ON RECORD

9. PW 1 Gulesa Bibi deposed in her examination-in-chief that informant is her husband. Accused is her niece. Her house and the houses of the accused persons are in same boundary. PW 1 stated that occurrence took place two years ago. PW 1 deposed that a verbal altercation took place with the accused persons in connection with going to cut bamboo standing in the boundary. Having heard the matter, her husband lodged the case due to misunderstanding. Later on, the misunderstanding has been resolved. PW 1 also stated that since accused persons are from same family, they have cordial relationship with the accused persons. PW 1 further stated that there is no allegation against the accused persons. She does not want to proceed with the case.

10. PW 2 Qushan Ali is the informant of this case. He deposed in his examination-in-chief that he lodged this case. Accused persons are his niece. The occurrence took place about two years ago. PW 2 stated that because of the family dispute due to misunderstanding, he lodged the case against the accused persons. Now the misunderstanding has been resolved. PW 1 stated that they have no allegation. They are staying affectionately. He does not want to proceed with the case. Ext. P1/PW2 is ejahar. Ext. P1(1)/PW 2 is his signature.

DISCUSSION, DECISION AND REASONS THEREOF

11 After going through the evidence of PW 1 and 2, it transpires that PW 1 and 2 have derailed from the allegations set forth in the FIR. From the deposition of the PW 1 and PW 2 it is seen that they have stated nothing incriminating against the accused persons in their evidence, rather PW 1 and PW 2 deposed that the FIR was lodged due to misunderstanding relating to some family matter. Both PW 1 and PW 2 have stated that now misunderstanding is resolved and they have cordial relationship with the accused persons, as they are from same family. Both PW 1 and PW 2 expressed their unwillingness to proceed with the case. Moreover, PW 1 and PW 2 stated that there is no allegation against the accused persons. The PW 1

and 2 who are the victim and informant, being the most vital witnesses did not implicate the accused persons to the alleged crime, I do not find any force in the prosecution case to hold the accused persons guilty of the alleged crime.

12. Now it is the burden of the prosecution to establish the guilt of the accused persons. From the evidence of the prosecution witnesses, it appears that the witnesses have not adduced any evidence to hold the accused persons guilty under the alleged sections of IPC. Due to insufficient evidence on the part of the prosecution side, it is a fit case in my view to acquit the accused from the charges levelled against them. Hence, the accused persons deserves acquittal.

13. Situated thus, it is found that the prosecution has failed to implicate the accused persons Safar Ali, Hazarat Ali and Amser Ali of any offence u/s 294/352/34 of IPC. As such, the points for determination are answered in negative and in favour of the accused persons.

ORDER

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution failed to prove beyond reasonable doubt that the accused

persons had committed the offence under Section 294/352/34 IPC. As such, the accused persons namely Safar Ali, Hazarat Ali and Amser Ali are acquitted of the charge under Section 294/352/34 IPC and set at liberty forthwith.

The bail bond of the accused persons and their sureties shall remain in force for a period of six months from today in compliance with section 437(A) Criminal Procedure Code.

Case is disposed of on contest.

Given under my hand and seal of this court on this 2nd day of September, 2022 at Nalbari, Assam.

(DR. NABANITA KALITA)
Judicial Magistrate, 1st Class,
Nalbari.

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	Gulesa Bibi	Eye witness (victim)
PW2	Qushan Ali	Informant

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	NIL	N/A

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	NIL	N/A

**LIST OF PROSECUTION/ DEFENCE /
COURT EXIBITS**

A. Prosecution:

Sr. No	Exhibit Number	Description
1	P.Ext-1/PW2	FIR
2	P.Ext-1 ₁ /PW2	Signature of PW2

B. Defence:

Sr. No	Exhibit Number	Description
1	Exhibit D1/ DW1	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Exhibit C1/ CW1	NIL

D. Material Objects:

Sr. No	Exhibit Number	Description
1	MO1	NIL

DR. NABANITA KALITA)
Judicial Magistrate 1st Class,
Nalbari.