

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

**Present: Dr. Nabanita Kalita**

(Date of Judgment)  
23.09.2022

**PRC Case No. 832/2019**

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP.
ACCUSED	1) KARUNA DEKA
REPRESENTED BY	HITESWAR LAHKAR, ADVOCATE

Date of Offence	18.08.2018
Date of FIR	18.08.2018
Date of Charge sheet	30.08.2018
Date of offence explanation	03.06.2022
Date of commencement of evidence	11.08.2022
Date on which judgment is reserved	NIL
Date of Judgment	23.09.2022
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	Karuna Dekka			323/294 IPC	Acquitted	N/A	N/A

**JUDGMENT**

1. The case of the prosecution in a nutshell is that on 18.08.2018 in the evening while informant's nephew Syed Toufikul Islam was coming from his own garage to his own house at Borjabarihati, at Kundargoan Jaborihati, the drunker then under the custody of police, flashed a torce of five batteries in his eye. It is stated that somehow informant's nephew saved from accident and when he asked why the accused has flashed of the torce in the eye, Toufikul Islam was injured severely from backside and he fell down instantly. It is stated that immediately local people caught the drunker and handed over to the police and informant's nephew Toufikul Islam was admitted at Ghograpar hospital.

2. On receipt of the FIR, police of Ghograpar PS registered the same Ghograpar PS Case no. 225/18

under Section 325 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 person namely Karuna Deka u/s 323/294 of 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 323/294 of IPC were read over and explained to the accused person to which he 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 person has been dispensed with due to lack of incriminating materials against him. Defence declined to adduce DW evidence.

### **POINTS FOR DETERMINATION**

i) Whether the accused person on 18.08.2018 in the evening voluntarily caused hurt to the informant's nephew Toufiqul Islam and thereby

committed an offence punishable under section 323 IPC?

ii) Whether the accused person on same date and time did obscene act to the informant's nephew Toufiqul Islam and thereby committed an offence punishable under section 294 IPC?

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

### **EVIDENCE ON RECORD**

9. PW 1 Toyeb Ali is the informant of this case. He deposed in his evidence-in-chief that he lodged this case. He knows the accused person. The occurrence took place on 18.8.2018. PW 1 stated that in the evening, his nephew Tafiqul Islam was coming from garage situated at Ghograpar towards house. Then accused was also coming flashing torce in a place named Latima. Verbal altercation took place between them due to falling of light of torce upon his nephew. PW 1 stated that at the time of occurrence, accused was in drunken stage and because of he could not know anything, he could not know flashing of torce. PW 1 stated that on being informed by his nephew about the matter, he lodged the case due to misunderstanding. Thereafter, on being regained his sense, accused admitted his guilt himself. Then the misunderstanding has been resolved between them. PW 1 also stated that they have no allegation

against the accused person. He does not want to proceed with the case. Ext. P1/PW1 is ejahar. Ext. P1(1)/PW1 is his signature.

10. During cross examination, PW 1 stated that he has no objection if accused is acquitted.

11. PW 2 Tafiqul Islam deposed in his evidence-in-chief that informant is his uncle. He knows the accused person. The occurrence took place about 2/3 years ago at about 8 pm. PW 2 stated that he was coming from Garage at Ghograpar towards house. While he was coming, at Latima village, accused was coming from Barjuburi. Light of torce which was in the hand of accused, fell in his eye. At that time accused was in drunken state. PW 2 stated that verbal altercation took place regarding flashing of torce light. On being informed by him, his uncle lodged the case due to misunderstanding. Thereafter, the accused person apolized and admitted his guilt. Now, he has no allegation against the accused person. Therefore, he does not want to proceed with the case.

12. During cross examination, PW 2 stated that he has no objection, if accused person is acquitted.

### **DISCUSSION, DECISION AND REASONS THEREOF**

13. 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 there was a verbal altercation with the accused person when the light of the torch flashed on nephew of the informant. At the time of incident, the accused person was intoxicated for which he could not know about that. PW 1 stated that the FIR was lodged due to misunderstanding when the his nephew informed him the matter. It is further stated that later on, accused apologized his guilt and prayed to excuse him. Now PW 1 and PW 2 have no grievance against the accused person. Hence, they are not willing to proceed with the instant case. The PW 1 and 2 who are the victim and informant, being the most vital witnesses did not implicate the accused person to the alleged crime, I do not find any force in the prosecution case to hold the accused person guilty of the alleged crime.

14. Now it is the burden of the prosecution to establish the guilt of the accused person. From the evidence of the prosecution witnesses, it appears that the witnesses have not adduced any evidence to hold the accused person 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 person deserves acquittal.

15. Situated thus, it is found that the prosecution has failed to implicate the accused person Karuna Deka of any offence u/s 323/294 of IPC. As such, the points for determination are answered in negative and in favour of the accused person.

### **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 person had committed the offence under Section 323/294 IPC. As such, the accused person namely Karuna Deka is acquitted of the charge under Section 323/294 IPC and set at liberty forthwith.

The bail bond of the accused person and his surety 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 23<sup>rd</sup> 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	Toyeb Ali	Informant
PW2	Tafikul Islam	Eye witness

**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:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	P.Ext-1/PW2	FIR
2	P.Ext-1 <sub>1</sub> /PW1	Signature of PW1

**B. Defence:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit D1/ DW1	NIL

**C. Court Exhibits:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit C1/ CW1	NIL

**D. Material Objects:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	MO1	NIL

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