

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

Present: Dr. Nabanita Kalita

(Date of Judgment)
05.09.2022

PRC Case No. 975/2022

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP.
ACCUSED	1) HEMANTA DUTTA
REPRESENTED BY	KHITISH BARMAN, ADVOCATE

Date of Offence	19.06.2021
Date of FIR	24.06.2021
Date of Charge sheet	30.05.2022
Date of framing of charge	12.07.2022
Date of commencement of evidence	26.08.2022
Date on which judgment is reserved	NIL
Date of Judgment	05.09.2022
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	Hemanta Dutta	21.05.2022	21.05.2022	294/326 IPC	Acquitted	N/A	N/A

JUDGMENT

1. The case of the prosecution in a nutshell is that on 19.06.2021, at about 2.30 pm, accused person abused the informant's mother with obscene languages and when accused came to beat informant's mother, he asked why the accused has abused and when informant told the accused to go to home, accused chased the informant and stabbed in the right eye of the informant with an iron rod. It is stated that though the informant took treatment at SMKCH in injured condition, doctor referred him to GMCH. The reason for delay in lodging the ejehar is stated as he was busy with the treatment.

2. On receipt of the FIR, police of Belsor PS registered the same Belsor PS Case no. 232/2021

under Section 326/294 IPC against the accused person and conducted investigation into the matter.

3. On completion of the investigation, the police submitted Charge sheet against the accused person namely Hemanta Dutta under Section 294/352/34 IPC

4. Copies of relevant documents were furnished to the accused person in accordance with section 207 Criminal Procedure Code.

5. Charge under section 294/326 of IPC is framed and same is 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 19.06.2021 at about 2.30 p.m. used obscene languages to the mother of the informant and thereby committed an offence punishable under section 294 IPC?

ii) Whether the accused person on same date and time voluntarily caused hurt to the informant by means of an iron rod and thereby committed an offence punishable under section 326 IPC?

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

EVIDENCE ON RECORD

9. PW 1 Charubala Dutta deposed in her examination-in-chief that both accused and informant are her sons. The occurrence took place about one year ago in the evening. PW 1 stated that her elder son Hemanta Dutta was doing hue and cry consuming alcohol. When she resisted, he was telling something to her also. At that time, when her middle son Paresh Dutta prohibited him, verbal altercation occurred and out of anger, Paresh Dutta lodged the case. Thereafter, matter is amicably settled between both of them. PW 1 stated that since both are brothers, her son does not want to proceed with the case. She has no allegation against Hemanta Dutta.

10. PW 2 Paresh Dutta deposed in his examination-in-chief that he lodged this case. Accused is his elder brother. The occurrence took place one year ago in the evening at about 2.30 pm. PW 1 stated that accused his elder brother was doing 'hulla' consuming alcohol and told something to his mother. He came out and on being resisted

verbal altercation took place. He lodged the case out of anger. Thereafter, matter is resolved between them. PW 2 also stated that as the accused is elder brother, they are staying together affectionately. He has no allegation against his brother. He does not want to proceed with the case. Ext. P1/PW 2 is ejahar. Ext. P1(1)/PW 2 is his signature.

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

DISCUSSION, DECISION AND REASONS THEREOF

12. After going through the evidence of PWs, it transpires that PWs 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 in their evidence, rather PW 2 deposed that he lodged the FIR out of anger. Moreover, PW 1 stated that now informant has cordial relationship with the accused person as they are brothers. As such, both PW 1 and PW 2 expressed their unwillingness to proceed with the 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.

13. 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 him. Hence, the accused person deserves acquittal.

14. Situated thus, it is found that the prosecution has failed to implicate the accused person Hemanta Dutta of any offence u/s 294/326 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 294/326 IPC. As such, the accused person namely Hemanta Dutta is acquitted of the charge under Section 294/326 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 5th 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	Charubala Dutta	Eye witness
PW2	Paresh Dutta	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.