

APPENDIX-12

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

TIHU, NALBARI

Present : **Siddhartha Bora** , AJS

Date: 16-09-2022

PRC Case No. - 41/2022
U/S 341/354B/294 of I.P.C

(FIR No. 41/2022, Police Station: Tihu, Nalbari)

COMPLAINANT:	State of Assam
REPRESENTED BY	PULEN BARMAN, LD. APP
ACCUSED	1. Hemen Talukdar (A1) S/o Jogesh Ch. Talukdar Vill- Niz-Namati P.S. – Tihu, District – Nalbari (Assam)
REPRESENTED BY	Sri Nirmal Bharali, Ld. Advocate

APPENDIX-13

Date of Offence	28-04-2022
Date of FIR	28-04-2022
Date of Charge sheet	30-04-2022(10.05.22)
Date of Framing of charges	13-06-2022
Date of commencement of evidence	30-06-22, 15-07-22 & 28-07-22
Date on which judgment is reserved	05-09-2022
Date of Judgment	16-09-2022
Date of the Sentencing Order, if any	-

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 S. 428 Cr.P.C.
1.	Hemen Talukdar	29-04-22	11-05-22	U/S 341/354-B/294 IPC	U/S 341/354 of IPC	Two years with Fine of Rs.5000/-	

JUDGMENT

Prosecution Story :

1. The brief case of the prosecution leading to the filing of ejahar filed by Mrs. Latika Deka wife of Lachit Deka resident of Niz-Namati under Tihu P.S. against the aforementioned accused person, in brief, is that on 28.04.22 around 03.00 pm in the afternoon the informant and her husband Lachit Deka went to the house of the father of the accused to complain against the accused who used to rebuke her with obscene words, the accused called them to the house of Dhiraj Talukdar. At that moment there was lock at the house of Dhiraj Talukdar. Seeing a dao in the hand of the accused, while the informant was about to return to her house, it is then the accused wrongfully restrained her by twisting her blouse from the back side as a result of which the blouse was torn. When she raised hue and cry, the accused tried to attack her with a dao but get saved when neighbours people arrived there. The accused was also even involved in tug of war with her husband. The accused also misbehaved her earlier by showing lewd gestures.

Investigation :

2. On receipt of FIR, the police registered a case being Tihu P.S. Case No.- 41/2021 under section U/S 341/354B/294 of I.P.C. The Investigating Officer SI(P) Satyabrata Pegu of Tihu P.S. carried out the investigation in the matter. During the course

of investigation, the I.O. examined the witnesses u/s 161 Cr.P.C, prepared one sketch map of the place, where the offence was allegedly committed and then after completion of the investigation finally submitted the charge sheet finding sufficient materials against the accused person **Hemen Talukdar** for the offence **u/s. 341/354B/294 of I.P.C.**

Appearance of the accused person :

3. On receipt of summons, the accused person is called upon to enter trial and upon appearance of the accused, copies of relevant documents U/S 173 were furnished to the accused person in compliance with Section 207 of Cr.P.C.

Charge Explanantion against the accused person :

4. Considering the relevant documents attached with the case records and hearing both the parties, this Court framed charge against the accused person under section **U/S 341/354B/294 of I.P.C** which is then read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

Witness examined and Documents Exhibited :

5. In order to bring home the offence, the prosecution side examined six witness including the informant victim and the investigation officer. The Prosecution side exhibited four documents including the ejahar and chargesheet.

Examination of accused u/s 313 Cr.P.C.

6. The accused is examined under section 313 of Cr.P.C. and his statements are recorded in a separate sheet. The accused denied all the allegations levelled against him in the ejahar. But the accused made a plea that he was physically assaulted by the informant side at the time of occurrence.
7. The defence side did not adduce any evidence in support of his plea.
8. After hearing arguments put forwarded by both the learned counsels appearing on behalf of their respective parties, and after going through all the evidence on records and documents attached with the case records, I have framed the following points for determination.

Points for determination :

- 1. Whether the accused person on or about 28.04.22 around 03.00 pm in the afternoon while Smti Latika Deka was returning from your house, wrongfully restrained her and that you thereby committed the offence punishable u/s 341 of IPC?***
- 2. Whether the accused person on or about 28.04.22 around 03.00 pm in the afternoon at your house, Niz Namati, assaulted or used criminal force to Smti Latika Deka with the intention to disrobing or compelling her***

to be naked and that you thereby committed an offence punishable u/s 354B of IPC ?

3. Whether the accused person on or about 28.04.22 around 03.00 pm in the afternoon at your house, Niz Namati, rebuked Smti Latika Deka with obscene words in a public place and you thereby committed an offence punishable u/s. U/S 294 of I.P.C of IPC ?

Discussions, Decisions and Reasons thereof :

9. I have gone through the evidence adduced by the prosecution side.
10. **PW-1- Latika Deka has adduced in her evidence that** the ejahar was lodged against Hemen Talukdar. The occurrence took place on 28-04-2022 accused 03:00 PM in the afternoon. The accused used to rebuke her with obscene words, wherever he saw her. On the day of occurrence, she went to the house of the accused to complain his father about the accused. But, the accused restrained her in front of the house of Dhiraj Talukdar, the younger brother of the accused, to proceed towards his father. She saw a dao in his hand. When she came back he then twisted her from the back side. He torn her clothes which she was putting on. When she raised alarm, neighbouring people arrived there. Her husband who was with her at that time tried to snatch away the dao from the accused. When neighbouring people arrived there, it is then the dao could be snatched away from the hands of the

accused by her husband Lachit Deka. He rebuked them with obscene words. He used such obscene words that no one in a position could hear that. The quarrel took place due to misbehaviour of the accused. He used to eve-teasing her daughter and also talked them dirty about her and her daughter when he met them. Police seized her torn cloths and the dao used by the accused when she reached police station. Ext-P1/PW1- her ejahar and Ext.P1(1) is her signature. Ext-P2/PW1 is Seizure list of Dao and Blouse and Ext.P2(1) is her signature.

11. During the time of cross-examination, she testified that the ejahar was written by the in-charge of Nathkuchi P.P. and then it was printed out- it's a fact. On the day of occurrence, the accused rebuked her without any cause- it's a fact. The accused is a villager to her. The accused is not an insane people. It's a fact that the blouse was torn when the accused twisted her. At the time of occurrence, there was no any person other than she, her husband and the accused- it's a fact. Almost 6/7 people arrived at the place of occurrence. There gathered more than 10/15 people on the road near the PO. Within half an hour of the occurrence they reached the police station. It's a fact that she does not see the seized articles in the court complex today. Police took her to the Tihu medical but they did not send her to the court for 164 Cr.P.C. statement. *That the accused restrained her in front of the house of Dhiraj Talukdar when she went to complain about the accused to his father- it's not a fact that she did not state to*

police. It's not a fact that she did not see dao in the hand of the accused. That the dao of the accused was tried to snatch away by her husband, when she came back the accused twisted her by holding on her blouse; that the accused rebuked her with obscene words, that the accused used to rebuke her daughter with obscene and eve-teased her by using obscene words; that when people arrived at the P.O. it is then the dao could be taken away from the accused by her husband - all are not stated to police-it's not a fact. It's not a fact that she deposed falsely today and the accused was being rebuked by them.

12. Now, from the rebuttal evidence of PW1, it is obvious that the defence side tried their best to impeach the evidence adduced by PW1 in her examination-in-chief. But the defence side failed to impeach the credit of her evidence. The defence side also tried to bring contradiction of her evidence. From the evidence of PW6, the I/O of this case, the defence side confirmed contradiction of her evidence adduced at the time of examination-in-chief. PW6 confirmed that PW1 did not state to him that her husband tried to snatch away the dao from the hand of the accused. Perusal of statements made under section 161 of CrPC, it is evident that PW1 did not state to the I/O this statement at the time of interrogation. Now, it is to be seen whether this contradiction affects the core of the prosecution story. The main allegation against the accused herein is whether the accused used dao in his hand at the time of occurrence. From the evidence of PW1, it is clear that

the accused used the Dao at the time of occurrence. As such this contradiction does not cause fatal to the prosecution story.

13. Further the defence side also confirmed that the accused told obscene words about the daughter of Latika Devi and also used to eve-teasing by using obscene words is not stated to him by PW1. Now, let us see whether these contradictions causes fatal to the prosecution side. As the allegation levelled against the accused person is that the accused used to rebuke the victim with obscene words, as such the contradictions brought by the prosecution side and confirmed with the evidence of PW6 causes fatal to the prosecution side and so it not admissible in evidence.

14. Thus, from the evidence of PW1, it becomes crystal clear that the defence side could not rebut the evidence of PW1 as regards to restraining the informant/victim and then torn her blouse by twisting from the back side while she was about to return from the house of Dhiraj Talukdar.

15. PW-2- Dhaneswar Deka has adduced in his evidence that he knows both the parties. The occurrence took place on 28th Day in the year 2022. He forget the month of occurrence. At the time of occurrence he was returning from school. Hearing a quarrel in between Lalita Deka and Hemen Talukdar he went to the P.O. but the quarrel was already competed. Both the parties were involved in exchanging words. He saw a torn blouse and a dao. He could recognize

the dao today. The top front- edge of the dao is broken. He took the informant and victim to the police station. Ext.P2/PW2 is seizure list and Ext.P2(1) is her signature. M.O. 1 is the dao and M.O. 2 is the torn blouse.

16. **During the time of cross-examination he testified that** around 3:00PM he heard about the quarrel. He used to drive school vehicle. He met Latika Deka on the spot of occurrence on the very day of occurrence. He does not know what was taken place in the P.O. before his arrival at the P.O. The occurrence was seen by him at the village road. He does not know the seized Dao belongs to whom- it's a fact.

17. ***Now, PW2 is a seizure witness. From his evidence it is evident that he saw a dao and torn blouse at the place of occurrence and the same could be recognized by him at the time of his deposition in the Court.***

18. **PW-3- Tulika Talukdar has adduced in her evidence that she knows** both the parties. The occurrence took place on 28-04-2022 around 3:00 PM in day time. Hearing hue and cry of Latika Deka, they rushed to the house of Dhiraj Talukdar. They then saw on the courtyard of Dhiraj Talukda a dao on the hand of the accused. They then snatched away the dao from the hand of the accused. Hementa Talukdar, Upen Talukdar, Arpana Talukdar and Jatin Deka were also present in the P.O. They, after taking the Dao, came out from the courtyard of the Dhiraj House. The informant then lodged ejahar.

19. **During the time of cross-examination she testified that** Latika is the younger sister of her husband-it's a fact. His house and Dhiraj Talukdar is located adjacent to each other. There are almost 50/60 persons near the P.O. watching the occurrence. The dao was snatched away from the hand of accused by Arpana Talukdar. That hearing hue and cry they came out and rushed to the place of occurrence and then saw dao in the hand of the accused. There were many people watching the occurrence - is not stated to police - It's not a fact. It's not a fact that she deposed falsely today in favour of the informant.

20. From the evidence of PW3, it is seen that the defence side fails to impeach her evidence adduced at the time of examination –in-chief as regards to seeing the dao in the hand of the accused, which was snatched away from the accused by Arpana Talukdar. As to the watching of the occurrence by 50/60 persons I find it contradictory as she did not state it to the police at the time of her interrogation. PW3 is an eye witness and her material evidence adduced in examination-in-chief is found hardly rebut by the defence side. So, I find her evidence trustworthy .

21. **PW4-PunaKan Deka has adduced in his evidence that he** knows both the parties. The occurrence took place on 28-04-22 around 03.00 PM in day time. Hearing hue and cry he reached the P.O. and saw a high quarrel in between Latika Deka and Lachit Deka with the accused. He saw a dao

in the hand of the accused. He saw physical assault in the quarrel.

22. **During the time of occurrence that** the distance in b/w the P.O. and his house is just three houses. That hearing hue and cry he reached the P.O. and saw dao in the hand of accused and there took place high quarrel in between the informant and accused- is not stated to police- it's not a fact. It's not a fact that he deposed falsely today.

23. ***The defence side tried to impeach the evidence of PW4 by bringing contradiction of her evidence. PW4 did not admit in his rebuttal evidence that he did not state to police that hearing hue and cry he arrived at the place of occurrence and saw dao in the hand of the accused and there took place a high quarrel in between the informant and the accused. But in the rebuttal evidence of PW6, the defence side established that PW4 did not state to PW4 the above statement. I have gone through the statements of PW4 under 161 of Cr.P.C. From a meticulous perusal it clears out that PW4 stated more distinctly and in detail before the I.O. that the accused was involved with tug of war with the informant/victim and then torn her blouse. As such I find the evidence of PW4 as an eye witness is more reliable and trustworthy.***

24. **PW-5-Premalta Das has adduced in her evidence that she knows** both the parties. The occurrence took place on 28-04-22 in the day time around 03.00PM. There took place a

quarrel in between both the parties. Latika Deka and Lachit Deka went to the house of Hemen Talukdar in search of the accused. Hearing hue and cry along with four five persons she rushed there and saw a dao in the hand of the accused at the place of occurrence. The blouse of the informant/victim was torn. They saw tug of war in between both the parties. Hemanta Talukdar, Upen Talukdar, Kalpana Talukdar reached the P.O. and they took the dao from the hand of the accused. Ext.P2/PW5 is his Signature in seizure list. She could recognize the dao shown him today in the Court. It was used by the accused at the time of occurrence. M.O. Ext-1 is the Dao and M.O. Ext-2 is the torn Blouse.

25. At the time of cross-examination she testified that Lalita Deka is the daughter of her uncle. There is a house between her house and Dhiraj Talukdar. That hearing hue and cry they reached the P.O. and saw a dao in the hand of accused, that there were people such as Hemanta Talukdar Kalpana Talukdar and Upen Taludkar and they snatched away the dao from the accused -is not stated to police- it's not a fact. ***In Ext-P2(3) she put signature on there at Tihu chowk.*** On the day of seizure of the dao it was not covered by paper-it's a fact. Whether there is other dao as seized by police in their village she does not know. That Hemen and Upen Talukdar recovered the dao from the hand of the accused and then handed over the same to Latika Deka. It's not a fact that she deposed falsely today.

26. ***Now, from the rebuttal evidence of PW5, it appears that the defence side brought some contradictions at the time of rebuttal evidence. From a meticulous perusal of the evidence of PW5 and PW6, it becomes crystal clear that - "hearing hue and cry they reached the P.O. and saw a dao in the hand of accused, that there were people such as Hemanta Talukdar Kalpana Talukdar and Upen Taludkar and they snatched away the dao from the accused - are not stated to the I.O.- it's not a fact" – is not confirmed by the defence side at the time of rebuttal evidence of PW6. As such the defence side fails to establish the contradiction of the evidence of PW5 by the rebuttal evidence if PW6. Hence, the above evidence is found admissible in evidence.***

27. **PW-6- Satyabrata Pegu has adduced in his evidence that on 02-04-22 he was on duty as i/c at Tihu P.P.. On 28-04-2022 one Latika Deka, the informant, lodged ejhar which was made entry as MCD no 385 dtd. 28-04-2022. He then proceeded to inquire about the occurrence. He went to the P.O.. Reaching there, he drew sketch map of the P.O. , interrogated the witness present, and then seized a yellow and grey colour blouse and one dao. On 29-04-22 at 12:25 PM the ejahar was registered after receiving as Tihu PS case no 41/22 u/s 341/354(B)/294 IPC. He interrogated the informant. On the very day the accused appeared at the P.S. and after interrogation he was arrested and sent to the court for judicial custody. He then collected medical report. After completion of**

investigation, he chargesheeted against Hemen Talukdar u/s 341/354(B)/294 IPC.

Ext.PW3/PW6 Sketch Map **and** Ext.P3(1)- his signature.

Ext.P4/PW6 is the Chargesheet and Ext.P4(1) is his signature.

Ext.P2(4) is his signature on seizure list.

M.O. Ext-1- Seizued Dao and M.O. Ext-2 is the Seized blouse.

28. During the time of cross-examination, he testified that the extract copy of GD entry is not submitted with chargesheet - it's a fact. The point 2,3,4,5,6 which are marked as Dhiraj Talukdar Upen Talukdar Jagat Talukdar and Sourav Das respectively in the Ext-P2, are not interrogated- it's a fact. *In Ext.P2, the date is 28-04-22 and time is 4:30 PM at Tihu Nathkuchi P.P. are written - it's a fact. But, in the chief it is deposed that these seized articles were seized in the place of occurrence - it's a fact.* The items no. 2 of Seizure list (Ext.P2) the measurement of dao is written as 19 inches(approx) but not ascertained the measurement- it's a fact. *It's a fact that the seizure items were seized from the hand of Lalika deka who brought it to the Tihu P.P.* That when the ejahar was sent to Tihu PS there is no any note in his CD in this regard- it's a fact. It's a fact that there is a note written on the back of ejahar that the ejahar was forwarded to Tihu PS on 28-04-22. FIR was filled up by Tihu P.S. on the basis of GD entry. The ejahar was forwarded to Tihu PS. There is no any 164 Cr.P.C. statements recorded for the offence alleged to be committed

u/s 354B IPC. *That the husband of Latika Devi tried to snatch away the dao from the hand of the accused - is not stated to him by PW1. That the accused told obscene words about the daughter of Latika Devi and also used to eve-teasing by using obscene words is not stated to him by PW1 Latika Devi.* That Arpana Talukdar snatched away the dao from the hand of accused, that hearing hue and cry they came out and saw at the P.O. that there was a dao in the hand of accused and many people were watching the occurrence is not stated to him by PW3. That hearing hue and cry he arrived at the P.O. saw a dao in the hand of accused and also saw the informant and accused were involved in tug of war – it's not stated to him by PW4, Punakan Deka. The ejahar was typed by him - it's fact. That he did not properly investigate this case – it's not a fact.

Appreciation of Evidence

29. Having gone through the entire prosecution evidence, let us see whether the allegations as mentioned in the Ext.P1/PW1 attract the offences under section 341/354B/294 of IPC. For better understanding I would like to state the ingredients of the above offences as provided in the Indian Penal Code.

30. To convict a person for the offence alleged to be committed under section 341 of IPC, the following ingredients shall be proved -

- (i) First, the accused voluntarily obstructed a person.
- (ii) Second, due to such obstruction, the person could not proceed in certain direction in which he had the right to proceed.

31. The offence alleged to be committed under section 354B IPC are reproduced verbatim for better understanding -

"Section 354 Assault or criminal force to woman with intent to outrage her modesty.

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

'354B. Assault or use of criminal force to woman with intent to disrobe.--Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may

extend to seven years, and shall also be liable to fine.”

Now, to bring home an accused under the purview of the provision laid down under section 354B of IPC, the following ingredients must be proved by the prosecution side -

- (i) that the assaulted or used criminal force to a woman.
- (ii) that the accused did it intentionally for disrobing or compelling that woman to be naked.

32. The offence alleged to be committed under section 294 of IPC is reproduced verbatim as incorporated in I.P.C. -

294. Obscene acts and songs.—Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

Thus to bring home under this section, the prosecution must prove that –

- (i) the accused did any obscene act in any public place,*
- (ii) the accused sang, recited or uttered any obscene songs, ballad or words in or near public place; and*

(iii) the act of the accused causes annoyance to others.

33. Now, I proceed to appreciate the evidence on record on the backdrop of the above ingredients of the offences alleged to be committed by the accused person at the time of occurrence as mentioned in Ext.P1. For the check of convenience, the points for determination are discussed disorderly.

34. The allegation leveled against the accused person as per the Ext.P1/PW1, the informant/victim Smti Latika Deka is that the accused restrained her by twisting on her clothes as a result of which her blouse was torn, when she was about to return from the place of occurrence after seeing a dao in the hand of the accused. The occurrence took place when the informant and her husband were proceeding to complain the father of accused about the obscene rebuking by the accused to them. Now, from the evidence adduced by PWs, it transpires that the PW2, PW3, PW4 and PW5 have appeared at the place of occurrence hearing hue and cry and when they had appeared at the place of occurrence they did not see the accused twisted the victim, holding on her clothes from the back side but saw the torn clothes and a dao in the hand of the accused. PW2 and PW5, as seizure witnesses, even recognized the seized dao in the Court, that is alleged to be used by the accused at the time of occurrence at the time of deposition. The evidence of torn blouse seen at the place of occurrence as adduced by PW2 and PW5, also remains un-

rebutted at time of rebuttal evidence of PW2 and PW5. This establishes that the torn blouse and the seized dao are the same seized articles seized by the I.O.. That the seized dao belongs to the accused is established by the evidence of PW3, PW4 and PW5 who saw the seized dao in the hand of the accused at the time of occurrence. Now, from the rebuttal evidence of PW1 to PW5, it is evident that the defence side does not raise a plea in the rebuttal evidence of PW1 to PW5 that the dao was in fact brought by the husband of the victim. The accused under section 313 of CrPC raised a plea that the informant/victim side, in fact, took dao in their hand at the time of occurrence. But, to establish their defence, the accused side does not adduce any evidence.

35. Further from the evidence of PWs, it becomes crystal clear that the defence side also does not raise a plea at the time of rebuttal evidence of PWs as regards to torn of the blouse by the husband of the victim but not by the accused at the time of occurrence. Failing to raise such plea also indicates that none other than the accused torn the blouse of the accused .

36. Now, I proceed to discuss a contention forwarded by the accused side at the time of argument. The Ld. counsel appearing for the accused side has made a contention that there is discrepancy as regards to place of seizure of the seized articles. The I.O. in his examination-in-chief deposed that the seized articles were seized at the place of occurrence whereas in the evidence of PW1, it is deposed that Police seized her torn clothes and the dao used by the accused

when she reached police station. Therefore, the Ld. counsel appearing for the accused has contended that there is discrepancies as regards to the place of seizure of torn clothes and the dao used by the accused persons at the time of occurrence. Therefore, there is suspicion as regards to the seizure of torn clothes and dao. They may not be the same articles as the PWs adduced in their evidence.

37. As regards to minor discrepancies, in **State of Himachal Pradesh vs Lekh Raj (2003) 1 SCC 247**, the Hon'ble Supreme Court decided -

".....minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness making the statement.."

38. Similarly, the Hon'ble Supreme Court in **State of Uttar Pradesh vs. Naresh & Others (2011) 4 SCC 324** held -

"30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of

time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witnesses and other witnesses also make material improvement while deposing in the Court, such evidence can not be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not make a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.”

39. Now, herein this case, from the evidence of PWs other than the PW1 who is the victim of this case, all adduced in their evidence that they saw the dao and torn clothes at the place of occurrence. PW2 and PW5 even recognized the dao used by the accused at the time of occurrence in the time of deposition before this Court. The defence side totally fails to rebut the credit of the evidence of PWs who are eye witnesses as to the seized articles. As such, the allegation in the Ext.P1/PW1 is supported by PW1 and her evidence is corroborated by all the other PWs, who are eye witnesses. Thus, it is found that the eye witnesses accounts are corroborated by material particulars and so, they are reliable, it cannot discard their evidence only on the ground that there are some discrepancies in the evidence of witnesses. Therefore, the discrepancies in

testimony of witness pointed out by the Ld. defence counsel in the instant case, is found not material and so, cannot be discarded as this discrepancies does not go to the root of the matter in allegation and so, create any doubt about credibility of the PWs' evidence as to the seized articles. Hence, the contention of the defence counsel in this regard is found not plausible in the eye of law.

40. I would like to discuss another contention of the Ld. defence counsel forwarded at the time of argument. He contended that as per the ejahar and evidence adduced by PW1, there is also present at the time of occurrence the husband of PW1, whose name of Lachit Deka. As such Lachit Deka is a vital witness in the present case. But, the prosecution side did not summon him to examine. As such there is doubt as regards to the allegation in the Ext.P1/PW1 against the accused person. The accused is falsely implicated in the case. The story in the ejahar is concocted. I have gone through the ejahar, the Ext.P1/PW1. From a meticulous perusal of the Ext.P1/PW1, it becomes evident that informant also mentioned her husband being present at the time of occurrence in the place of occurrence along with her. From the evidence of PW1, PW4 and PW5, it also clear that Lachit Deka was present along with PW1 in the place of occurrence. Being present in the place of occurrence along with the PW1 at the time of occurrence, Lachit Deka is to be summoned for examination because he is the eye witness of the occurrence mentioned in the Ext.P1/PW1. But, let us see whether failure

to summon and examine Lachit Deka would render this case improbable to believe the evidence of other PWs untrustworthy.

41. From the entire evidence of PWs, it appears that PW4 and PW5 are eye witnesses of the quarrel in between the accused and the informant/victim. The evidence adduced by PW4 could not be rebut by the defence side at the time of rebuttal evidence as discussed above. Further, as to the evidence of PW5, no any contradictions could be confirmed by the defence side at the time of rebuttal evidence of PW6, the I.O. of this case. As such, I find the evidence of PW1 is fully corroborated to the evidence of PW4 and PW5. PW4 and PW5 are the eye witnesses who saw quarrel and tug of war in between the accused and the informant/victim and also the dao in the hand of the accused. These evidence of eye witnesses are found cogent, consistent and reliable and hence sufficient to establish the burden of proof by the prosecution side. Their evidences establishes the allegation that the accused restrained the informant/victim to proceed towards certain direction from the back side by twisting the victim by holding on the blouse of the victim i.e. PW1. As such the examination of Lachit Deka, the husband of the victim PW1 by summoning him is not required. Therefore, the contention of the defence counsel in this regards is found not plausible in the eye of law.
42. The Ld. counsel N. Bharali appearing for the accused person has further contended that the FIR was filled up by

Tihu P.S. on the basis of GD entry. But there is no any extract copy of GD entry in the case record. Hence, there is possibility of false implication of the accused in this case. I have carefully perused the rebuttal evidence of PW6. The PW6 has testified in his rebuttal evidence that there is a note written on the back of ejahar that the ejahar was forwarded to Tihu PS on 28-04-22. I have scrutinized the Ext.P1/PW1. On scrutiny of the ejahar, it clears out that the ejahar was lodged on 28.04.22 around 03.00 pm and after receiving it by the the in-charge of Tihu Nathkuchi P.P. and then making entry in the G.D., the same was forwarded to the Tihu P.S. after 03.30 pm. After receiving the ejahar, the Tihu O/C registered it on 29.04.22. As such, I do not find any procedural lapse in this regard. As such there is no requirement of producing the extract copy of G.D. entry along with chargesheet. Non producing the G.D. entry does not make the instant case fatal to the prosecution case. Therefore, the contention of the Ld. counsel for the accused person is not tenable.

43. Lastly, the Ld. counsel appearing for the accused has further contended that the PWs are related witnesses and so their evidence is not believable being interested witness. In a catena of Hon'ble Apex Court decision, it was decided that evidence of a related witness can also be relied on. In **Sahubuddin V. State of Assam, 2012 (12) SCALE 241**, it was held that

"The statement of a related witness can safely be relied upon by the court, as long as it is trustworthy, truthful and duly corroborated by other prosecution evidence."

In **Mookkiah V. State, (2013) 2 SCC 89** it was held that merely because a witness has related his evidence cannot be eschewed. It is the duty of court to analyze the evidence of such witness cautiously and scrutinize the same with other corroborative evidence.

In **2011(4) RCR (Cri) 355**, it is further held that -

"Evidence of related witness can be relied upon provided it is trustworthy. Mere relationship does not disqualify a witness. Witnesses who are related to the victim are as competent to depose the facts as any other witness. Such evidence is required to be carefully scrutinized and appreciated before reaching to a conclusion on the conviction of the accused."

44. Similarly, the Hon'ble Supreme Court in **Yakub Razak Memon V. State of Maharashtra, (2013) 13 SCC 1** held that *the testimony of such a witness should not be rejected when the same is convincing and also corroborated by testimony by another eyewitness.* In **Harijana Narayana V. State of Andhra Pradesh, AIR 2003 SC 2851**, the Hon'ble Court held that –

"The evidence in each case has to be considered from the point of trustworthiness and from the angle

as to whether it inspires confidence in the mind of the court, to accept and the question of credibility and reliability of a witness is to be decided with reference to the way he fared in cross examination and the nature of impression created in the mind of the court. There is no universal rule as to warrant rejection of the evidence of a witness, merely because the witnesses was related to or interested in the parties of either side. In such case if the presence of such witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances of the case to be true, it can provide a good, sound basis for conviction. But where it is shown that there is enmity and the witnesses are near relatives too, the court has a duty to scrutinize their evidence with great care, caution and circumspection and should careful by weigh such evidence.”

45. Here in this case also, the evidence of all the PWs is found cogent consistent and so trustworthy and reliable. Their evidences are adequately corroborated with the evidence adduced by PW1, the victim and informant of this case after finding no any material contradiction and discrepancy in between and amongst the evidence adduced by them. Therefore, the contention

forwarded by the defence side as to related witness and so interested witnesses cannot be considered in the eye of law.

46. Now, from the appraisal of the evidence of PWs and discussion made in the above, let us see whether the allegation levelled against the accused person attracts alleged the offence under section 341/354B/294 IPC in Ext.P1.

47. As mentioned above, to bring home a person under section 341 of IPC, the accused first voluntarily obstructed the victim/informant i.e. Latika Deka and then secondly, due to such obstruction, Latika Deka could not proceed in a certain direction in which she had the right to proceed i.e. She could return from the place of occurrence towards her destination. Now, from the appraisal of the entire evidence of PWs as discussed above, this Court finds that the prosecution side has succeeded to establish burden of proof as to wrongfully restraining Latika Deka by the accused at the time of occurrence by twisting her from the back side holding on her blouse as a result of which her blouse was torn apart. As such the ingredients of the offence under section 341 of IPC is established. Hence, the first point for determination is decided positively against the accused person.

Decision : The first point for determination is decided positively against the accused person.

48. To convict the accused under section 354B of IPC, the prosecution shall prove that the accused assaulted or used criminal force to Latika Deka and secondly, the accused did it

intentionally for disrobing or compelling that woman to be naked. Now, from the appraisal of entire evidence of PWs including documentary evidence, this Court finds as discussed above, that the accused used criminal force to Latika Deka by twisting her holding on her blouse from the back side as a result of which her blouse was torn apart. None of the PWs adduced in their evidence that the accused twisted Latika Deka from the back side holding her blouse with an intention to disrobing or compelling Latika Deka to be naked. The Ld. counsel for the accused has contended at the time of argument that the allegation levelled in Ext.P1/PW1 and the evidence adduced by all the PWs do not attract the offence under section 354B of IPC. As, not a single PWs adduced in his or her evidence that the accused twisted Latika Deka from the back side holding her blouse with an intention to disrobing or compelling her to be naked, as such the contention of the Ld. counsel in this regards seems to be plausible in the eye of law.

49. But. from the evidence adduced by all the PWs including the victim herself, as well as the allegation of the informant that she and her husband were going to the father of the accused to complain about the conduct of the accused of rebuking the informant with obscene languages on the day of occurrence as adduced by PW1 in her evidence and which remains unrebutted and also supports the allegation in Ext.P1/PW1, it is crystal clear that the accused used criminal force upon Latika Deka intending to outrage or knowing it to be likely that he would thereby outrage her modesty in an open area like the place of occurrence. By the act of twisting the blouse of Latika from the back side and thereby

made it torn apart, the accused very well had the knowledge that his such act would outrage the modesty of Latika Deka. As such I find the ingredients of the offence under section 354 of IPC but not the ingredients of 354B of IPC.

50. Now, the question here comes, whether the accused can be convicted for the offence under section 354 of IPC in the absence of charge thereunder, the charge having being framed under Section 354B of IPC. Here comes the provision laid down under section 222 of Cr.P.C. . The section 222 of Cr.P.C. is reproduced verbatim for better understanding -

“Section 222 Cr.P.C. : When offence proved included in offence charged: When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

3) XXXX

4) XXXX ”

51. In **Dalbir Singh Vs. State of U.P.** [MANU/SC/0320/2004], the Hon'ble Supreme Court held as follows:

".....Sub-section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear....."

52. Thus, the section 222 of Cr.P.C. provides us to convict a person in an minor offence although he is not charged with it. In the case in hand, the evidence adduced by all the PWs including the victim herself, satisfies the ingredients of offence under section 354 of IPC but not under section 354B of IPC. For better understanding the section 354 of IPC is also reproduced herein below -

"Section 354 Assault or criminal force to woman with intent to outrage her modesty :

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

53. Therefore, by taking recourse to the provision laid down under section 222 of CrPC, it is established that all the ingredients of the offence under section 354 of IPC are fulfilled and accordingly the accused is found committed the offence under section 354 of IPC even though there is no charge framed against the accused under section 354 of IPC. Hence, the point for determination no.2 is decided positively and against the accused person.

Decision: The point for determination no.2 is decided positively and against the accused person.

54. In the last point for determination, it is proved by the prosecution side whether the accused rebuked Latika Deka with obscene words at the time of occurrence . From the Ext.P3/PW6, it is clear that the place of occurrence is located near a public place i.e. near the PWD road running from Bhella to Bamunbari. From

the entire evidence adduced by all the PWs, it is evident that none of the PWs mentioned in their evidence that the accused used obscene words at the time of rebuking Latika Deka. It is a settled position of law that mere mentioning of rebuking the victim with obscene words does not satisfy the ingredients of the offence under section 294 of IPC, the obscene words must be mentioned in evidence as well. Here in this case, from a meticulous perusal of the Ext.P1/PW1, it is seen that not a single obscene word is mentioned in there. Similarly not a single obscene word is mentioned by any of the PWs at the time of their evidence. Hence, the point for determination no.3 is decided negatively and against the accused person.

Decision : The point for determination no.3 is decided negatively and against the accused person.

55. Thus, after due appreciation of the entire evidence on record and the decisions made in the above points for determination, this court finds that prosecution has failed to prove the commission of the offences under section 294 of IPC against the accused person beyond all reasonable doubts. But, the prosecution side has succeeded in proving the case against the accused person **Hemen Talukdar** beyond all reasonable doubts under section 341/354 of IPC. Hence, the accused person **Hemen Talukdar** is convicted for the offence committed under section 341/354 of IPC.

56. *Accordingly, the accused person Hemen Talukdar is acquitted from the charge u/s 294 of IPC leveled against him and set at liberty forthwith. But, the accused is held guilty for the offence under section 341/354 of IPC and accordingly he is convicted for the same offence.*
57. Heard the convict on the point of sentence. The convict sought leniency of the Court as it is submitted by the Ld. counsel for the convict that the convict belongs to poor family and if he be sent to jail, his parents will suffer as there is no one other than him to help her parents in his home. Heard also the convict in this regard. The convict submits that if he will be sent to the Jail, his family has to face great hardship. Heard also the Ld. APP for the State who opposed the prayer for releasing the convict on probation stating that convict be punished with maximum punishment and he does not deserve any leniency.
58. Considering the gravity and the nature of the offence committed and the age, maturity etc. of the accused person, I am not inclined to extend the benefits of the benevolent provisions of the Probation of Offender's Act as the crime committed by the accused person is a crime against society, and releasing the accused person under the Probation of Offender's Act will result in lessening the gravity of the offence committed by the accused person.

ORDER

59. Therefore, considering all aspects, I sentence the convict **Hemen Taslukdar** to undergo simple imprisonment for a period of two years along with a payment of fine of Rs.5000/- (Five Thousand Only) and in default of payment of fine the convict shall undergo simple imprisonment for a period of three months. The period of detention already undergone by the convict shall be set off. The amount of fine if realised will go to the State Exchequer.
60. Bail bond remain extended for another 6 (six) months as per section 437(A) of the Cr.P.C.
61. Furnish a free copy of judgment to the convict.
62. Accordingly, the case is disposed of on contest.

Judgment is pronounced and delivered in open court under seal of this Court with my signature on this 16th September, 2022.

(Siddhartha Bora)

Signature

Judicial Magistrate First Class

APPENDIX-14

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	Latika Deka	Victim/informant
PW2	Dhaneswar Deka	Eye Witness
PW3	Tulika Talukdar	Eye Witness
PW4	Punakan Deka	Eye Witness
PW5	Premlata Das	Eye Witness
PW6	SI, Satyabrata Pegu	Police 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

C. Court Witnesses, if any:

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

CW1		Nil
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LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sl. No.	Exhibit Number	Description
1.	Exhibit- P1/PW1	FIR
2.	Exhibit- P2/PW6	Seizure List
3.	Exhibit-P3/PW6	Sketch Map
4.	Exhibit-P4/PW6	Chargesheet

B. Defence:

Sl. No.	Exhibit Number	Description
1.	Exhibit D-1/DW1	Nil
2.	Exhibit D-2/DW2	Nil

C. Court Exhibits:

Sl. No.	Exhibit Number	Description
1.	Exhibit C-1/CW1	Nil
2.	Exhibit C-2/CW2	Nil

D. Material Objects:

Sl. No.	Exhibit Number	Description
1.	MO1	Nil
2.	MO2	Nil

(Siddhartha Bora)

Signature

Judicial Magistrate First Class, Tihu