

APPENDIX-12

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

TIHU, NALBARI

Present : **Siddhartha Bora** , AJS

Date: 07-09-2022

PRC Case No. - 51/2021
U/S 341/354/294 of I.P.C

(FIR No. 89/2021, Police Station: Tihu, Nalbari)

COMPLAINANT:	State of Assam
REPRESENTED BY	PULEN BARMAN, LD. APP
ACCUSED	1. Gunajit Talukdar (A1) S/o Lt Guruprasad Talukdar Vill- Ward No.4, Tihu Town P.S. – Tihu, District – Nalbari (Assam)
REPRESENTED BY	Partha Pratim Talukdar, Ld. Advocate

APPENDIX-13

Date of Offence	01-09-2021
Date of FIR	01-09-2021
Date of Charge sheet	30-09-2021
Date of Framing of charges	07-06-2022
Date of commencement of evidence	14-7-22, 26-7-2022, 04-07-22
Date on which judgment is reserved	31-08-2022
Date of Judgment	07-09-2022
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.	Gunajit Talukdar		30-5-22	U/S 341/354/294 IPC	Acquitted		

JUDGMENT

Prosecution Story :

1. The brief case of the prosecution leading to the filing of ejahar filed by Mrs. Khiroda Talukdar wife of Tarun Ch. Talukdar resident of W/N-4 of Tihu Town against the aforementioned accused person, in brief, is that the accused is a nephew of the informant. In the afternoon on 01/09/21 around 04.00 pm the accused forcefully locked a room of a rented shop adjacent to her own house and which is located on the informant's own land. When she went there to open the lock of her room given on rent for shop, the accused then snatched away her by holding on her hand and body. He even tried to assault her. The accused used to rebuke them with obscene words for a couple of days and also threatened to kill.

Investigation :

2. On receipt of FIR, the police registered a case being Tihu P.S. Case No.- 89/2021 under section U/S 341/354/294/506 of I.P.C. The Investigating Officer SI(P) Narayan Haloi 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 **Gunajit Talukdar** for the offence **u/s. 341/354/294 of I.P.C.**

Appearance of the accused persons :

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 341/354/294 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 ejehar.
7. The defence side did not adduce any evidence.
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 01.09.21 around 04.00 pm in the after noon while SMti Khiruda Talukdar went to open the lock of her shop adjacent to her home in ward no.4 , Tihu Town, assaulted her intending to outrage her modesty and that thereby committed an offence punishable u/s 354 of IPC ?***
- 2. Whether the accused person on or about 01.09.21 around 04.00 pm in the after noon while SMti Khiruda Talukdar went to open the lock of her shop adjacent to her home in ward no.4 , Tihu Town, wrongfully restrained her and that you thereby committed the offence punishable u/s 341 of IPC?***
- 3. Whether the accused person on or about 01.09.21 around 04.00 pm in the after noon while SMti Khiruda Talukdar went to open the lock of her shop adjacent to***

her home in ward no.4 , Tihu Town, rebuked her 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- Gitanjali Talukdar has adduced in her evidence that** the informant is her mother-in-law. The accused is the son of her uncle. The occurrence took place 01-09-2021. There are four shops belonging to them. The informant has also a shop which was rented. There is a cycle shop in our rented us. On the day of occurrence the accused forcefully evicted the cycle shop owner from the rented shop when they including she, Ranta Talukdar and Khiroda Talukdar reached the lace of occurrence. The accused then did not allow them to open the lock of the shop and pushed hard her mother-in-law. The accused even did not allow them to open the shop till date. After that she lodged ejahar.
11. During the time of cross-examination, she testified that the P.O. is located on their land which is not yet partitioned- it's a fact. In connection with partition of their land, earlier a case was filed and till date the same is pending - it's a fact. That - "there are four shops belonging to them, that there is a cycle

shop in their rented house, on the day of occurrence, the accused forcefully evicted the cycle own from the rented shop” - is not told to police- it’s a fact. It’s a fact that the four rooms were constructed by Hitesh Talukdar and the accused. That the accused pushed back hard her mother in law - is not stated to police as police did not interrogate her. It’s not a fact that there did to take place any occurrence on the day of occurrence. It’s not a fact that the accused allowed them to open the cycle shop.

12. **PW-2- Samata Talukdar has adduced in her evidence that** the informant is her mother in law and the accused is the son of uncle of her in-laws family. The occurrence took place on 01-09-21. On that day the accused did not allow them to open the shop room given on rent for a business of cycle shop. On the day of occurrence, when she, Khanindra Talukdar and Gitanjali Talukdar reached the P.O. the accused was setting in front of the lock of their rented shop and did not allow them to open the shop. He also pushed back hard his mother in law. After that his mother in law lodged ejarah against the accused.
13. During the time of occurrence, she testified that the disputed land where rented shop is located, is not yet partitioned. It is *ejmali* land-it’s a fact. That the accused constructed the four shops at the P.O. - it’s not a fact. There gathered many people in the P.O. They were watching the occurrence. That there are cases pending for the partition of the land on the place of occurrence-it’s a fact. It’s a fact that the accused

was sitting in front of his shop and when they reached the P.O. he approached to them. It's a fact that police did not interrogate her. It's not a fact that the accused did not commit anything on the day of occurrence and what she stated in chief is false.

14. PW-3- Khiroda Talukdar has adduced in her evidence

that this case is lodged against the accused. The occurrence took place on 1st September' 2020. There are four shops near Dharmsala, belonging to them. They have also one shop and the shop was given on rent. On the day of occurrence, the accused locked the shop which was given on rent. The accused did not allow them to open the lock . When she went to open the lock the accused snatched her away as a result of which she received injury in her land. Police took her for medical examination. The accused now locked down the wall on the backside of the shop in P.O. whereas the lock in the shop is hanging till date. Ext.P1/PW3- her ejahar and Ext.P1(1)/PW3- her signature.

15. During the time of cross-examination, she testified that she does not know the name of the person who wrote the ejahar -it's a fact. It's a fact that at the time of writing ejahar she was not present. But, the ejahar was taken to her for signature after writing. After putting signature she lodged the ejahar in the police station. The ejahar was written by her son Rupesh Talukdar. She did not read the ejahar - it's a fact. It's a fact that she does not know what is written on ejahar and she do not have any knowledge about it. It's fact

that the place of occurrence belongs to ancestral property and the same is not yet partitioned legally. The shops on the place of occurrence were built by each of their siblings for their own shops. That whether any documents as to the ownership of the shop in the P.O. was submitted to police she does not know properly. It's not a fact that the shop in the place of occurrence is not belonging to them. It's a fact that the tenant to whom their shop was given on rent for shop business. That at the time of twisting by the accused, she received injury on her hand – is not stated to police – it's not a fact. It's not a fact that she did not receive injury on her hand as a result of twisting . It's not a fact that at the time of occurrence, the accused was assaulted physically by them.

16. PW-4-Binodh Mahato has adduced in his evidence

that he knows both the parties. The occurrence took place 9 month ago. He heard that at the of occurrence a quarrel took place in between both the parties for their shops rooms. Ext. P2/PW4 - Seizure list and Ext.P2(1) - his signature

17. At the time of cross-examination he testified that he did not see what was written on the paper which police gave him for signature. It's a fact that what contains inside the M.O. Ext 1. he does not know.

18. PW-5- Rupesh Talukdar has adduced in his evidence

that both sides are known to him. The occurrence took place on 1st September 2021 in the day time around 12 PM. He

was at his shop. His mother /informant informed him over phone that the accused did not allow to open her own shop which was given for rent . The accused then snatched away her when she tried to open the lock of shop as it was locked by the accused. He then reached the P.O., took his mother to P.S. and his mother then lodged ejahar against the accused. His mother was taken for medical examination as his mother received injury on hand at the time of snatching her away by the accused. Ext.P2(2) is her signature and M.O. Ext(1)/PW5 – One Pen Drive.

19. During the time of cross-examination he testified that after the occurrence he reached the P.O.- it's a fact. He was at his shop. That – " his mother /informant informed him over phone that the accused did not allow to open her own shop which was given for rent . The accused then snatched her away when she tried to open the lock of shop as it was locked by the accused. He then reached the P.O., took his mother to PS and his mother then lodged ejahar against the accused. His mother was taken for medical examination as his mother received injury on hand it the time of snatching away by the accused." - are not stated to police - its not a fact. What was written on Ext. P(2) - she does not know- it's a fact. It's not a fact that what contains the pen drive in M.O. Ext 1/PW5 she does not know . It's not a fact that the accused did not commit any offence at the time of occurrence.

20. PW-6- ASI Narayan Haloi has adduced in his evidence

that on 01-09-21 he was at Tihu P.S. and on that day Khiroda Talukdar lodged an ejahar which was registered as Tihu PS 89/21 U/S 341/354/294/506 of IPC. After registration the charge of investigation was entrusted to him. Taking the charge he reached the P.O., drew sketch map of the P.O., interrogated witness present there and then inspected the lock hanging on the shop of P.O. The accused arrived at the P.S. on phone call and after interrogation he was released on bail. After completion of investigation chargesheet was submitted against the accused u/s 341/354/294 of IPC. Ext.P3/PW6- Sketch map and Ext P3(1) – his signature. Ext. P4 - chargesheet and Ext.P4(1) - his signature.

21. During the time of cross-examination, he testified that the two witnesses which he interrogated are the daughters in law of the informant - it's a fact. That there are four shop in the P.O. of them, the informant has also a shop which was rented, there is cycle shop in one rented room, on the day of occurrence the accused evicted the cycle shop from own rented shop - are not stated to him by PW1 Gitanjali Talukdar - it's a fact. That the accused pushed back hard her mother in law - is not stated to him by PW1 - it's a fact. But it's true that the mother in law was taken aside by the accused. That on the day of occurrence she received injury on her hand is not stated to him by PW3, Khiroda talukdar. That he was at his shop, her mother informed him over phone that the accused did not allow to open her own room which is given

on rent, the accused then snatched her away while she tried to open the lock of shop as it was locked by the accused, he then reached the P.O., took his mother to police station and his mother then lodged ejarah against the accused, his mother was taken for medical examination as his mother received injuries on her hand at the time of snatching away by the accused - are not stated to him by PW3. That the date and time of seized articles in Ext P2/PW4 is overwritten and there is no initial for overwritten there - it's a fact. That there is no mention of any word of pen drive in Ext P2/PW4 - it's a fact. That in the Ext P3/PW6 there is no signature of the person who drew it – it's a fact. That the persons/shop owners near the place of occurrence i.e B & C marked shop-owners in Ext.P2 - are not interrogated-it's a fact. It's not a fact that he did not inspect the place of occurrence. It's not a fact that he did not investigation the case properly.

Appreciation of Evidence

22. Having gone through the entire prosecution evidence, let us see whether the allegations as mentioned in the Ext.P1 attract the offences under section 341/354/294 of IPC. For better understanding I would like to state the ingredients of the above offences as provided in the Indian Penal Code.
23. 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.

24. The offence alleged to be committed under section 354 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."

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

- (i) that the person assaulted must be a woman.
- (ii) that the accused must have used criminal force on her;
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her

modesty – **S.P.S. Rathore vs. CBI AIR 2016
SC 4486.**

25. 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.*

26. 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.

27. The allegation leveled against the accused person as per the Ext.P1/PW3, the informant/victim Khiroda Talukdar at the

time of occurrence was proceeding towards the lock room which was given on rent as it was locked by the accused as alleged. But, it was alleged that the accused did not allow her to do that and restrained her by sitting in front of the lock door as well as snatching her away aside. The accused also rebuked her with obscene words at the time of occurrence. That the accused did not allow PW3 while she went to open the disputed shop located at the place of occurrence and restrained her by sitting in front of the locked door as well as snatching her away aside is also adduced by PW3 in her evidence. But, her evidence adduced at the time of examination-in-chief was being tried to impeach by the defence side. PW3 admitted at the time of occurrence that she does not know what is written in the ejahar, she does not have any knowledge about it and the ejahar was written by her son Rupesh Talukdar who took signature of her in the ejahar. On the basis of her admission at the time of rebuttal evidence, the Ld. counsel appearing for the accused at the time of argument contended that her evidence is not to be considered as she does not know the content of the ejahar. It is a settled position of law that the ejahar is not an encyclopedia of everything about the occurrence. It sets the criminal law in motion. Here in this case she might not know the contents of the ejahar. Because her son Rupesh Talukdar wrote the ejahar and she only signs in it. Rupesh Talukdar as PW5 also adduced in his evidence that he took her mother to P.S. and her mother lodged ejahar there. Although PW3 could

not say what is written in the ejahar but she adduced almost everything that contains in ejahar. Had it been there any difference in between her ejahar and evidence, then there might be suspicion of lodging false ejahar. But herein this case, PW3 is not only the informant but also the victim of this case and her evidence as PW3 is corroborated by the evidence of PW5. Besides, I do not find any discrepancy in this regard. Hence, the contention of Ld. counsel appearing for the accused in this regard can not be considered.

28. Now, it is an admitted fact that the accused is also a legal heirs of the ancestral property. PW3 admitted in her evidence that the land where the place of occurrence is located belongs to their ancestral property and the same is not yet partitioned legally as adduced by PW1 and PW2, the shops on the place of occurrence were built by each of their siblings. PW1 admitted in her evidence that the shops were built by Hitesh Talukdar and the accused. Further civil case is pending against the disputed land for partition as admitted by PW1 and PW2 in their rebuttal evidence. The prosecution side did not any documentary evidence so as to establish that the shop, whereto the accused restrained PW3 along with PW1 and others, belonging exclusively to PW3 or PW5. As such, the accused has also a private right of defence as enshrined under section 96 IPC albeit within the purview of limitation provided under section 99 of IPC.

29. PW1 as adduced by PW3 also went along with PW3 to the place of occurrence and she was present at the time of

occurrence. That the accused did not allow PW3 to open the disputed shop and pushed PW3 hard aside could not be rebutted by the defence side at the time of occurrence. I find her evidence trustworthy as she is an eye witness of the occurrence.

30. PW2 is also an eye witness to the occurrence. She went along with PW3 and PW1. As adduced by PW1 and PW3, she also adduced that the accused did not allow to open the disputed shop by sitting in front of the locked shop and pushed PW3 hard aside while PW3 went to open the shop. The evidence adduced by PW2 could not be rebutted by the defence side by impeaching the evidence adduced by PW2 in her examination-in-chief.

31. The evidence adduced by PW5 is a hearsay evidence. What he adduced in his evidence all are contradicted by the defence side and the contradiction brought by the defence side is also confirmed by the rebuttal evidence of PW6 who is the I.O. of this case. But his evidence as to take the PW3 to the police station is found admissible in evidence as the same is also adduced by PW3 in her evidence.

32. The defence side at the time of occurrence has submitted a contention that the prosecution side failed to examine some eye witnesses as mentioned by PW2 in her evidence and the shop owners nearby the place of occurrence, marked in Ext.P3/PW6 as B & C. PW6 also admitted it in his rebuttal evidence. But, herein this case, most of the vital eye witnesses were examined by the prosecution side. As such I

am of the opinion that the contention of the defence side in this regard is not plausible in the eye of law.

33. Now, from the appraisal of the entire evidence on record, it appears that the prosecution side succeeds to establish the allegation as mentioned in the Ext.P1/PW3 that PW3 was restrained by the accused when she went to open the lock of the disputed shop at the place of occurrence as well as also snatched her way aside by holding on her hand. But, as to the alleged offence under section 294 of IPC, I find that the prosecution side fails to fulfill the ingredients of the alleged offence under section 294 of IPC. As none of the PWs adduced in their evidence either any obscene words used by the accused at the time of occurrence or that the accused rebuked PW3 with obscene words the ingredients. Similarly, I also do not find any material as to the commission of the offence under section 354 of IPC by the accused. Because to convict a person under this section, there must be intention to outrage the modesty of the woman victim. Herein this case, none of the prosecution witnesses, even the victim also, have not adduce in their evidence that the accused snatched the victim aside by holding on her hand or body with an intention or motive to outrage her modesty. The circumstantial evidence does not also speak of the same. Now, the question here comes whether this amounts to commission of the alleged offence as mentioned in Ext.P1/PW3. As discussed above, the place of occurrence is an ejmali land and the same is not yet partitioned. There is a civil case pending for partition. Further,

the disputed shop was built by Hitesh Talukdar and the accused. As such, the accused has a right of private defence as well. In the end, I find that the occurrence wholly sprung out of a civil dispute and there is a lack of ingredients of the offences as alleged in Ext.P1/PW3.

34. Upon consideration of the entire evidence adduced by PWs, it becomes crystal clear that the prosecution side fails to establish the commission of the offence under section 341/204/354 of IPC by the accused person. Therefore, all the points for determination are decided negatively and in favour of the accused person.

Decision : All the points for determination are decided negatively and in favour of the accused person.

FINDING

35. Thus, after due appreciation of the entire evidence on records including the oral and documentary and the decisions made in the above mentioned points for determination, it is established that the prosecution side has failed to succeed in proving the offence beyond all reasonable doubts under section 341/294/354 of IPC.

ORDER

36. Accordingly, it is held that accused person is not guilty of the offence punishable under section

341/294/354 of IPC and so he is acquitted from all the charges levelled against him on benefit of doubts.

37. The case stands disposed of on contest.

Judgment is pronounced and delivered in open court under seal of this Court with my signature on this 07th September, 2022.

(Siddhartha Bora)

Signature

Judicial Magistrate First Class, Tihu

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	Gitanjali Talukdar	Hearsay Witness
PW2	Santa Talukdar	Hearsay Witness
PW3	Khiroda Talukdar	victim/Informant
PW4	Binodh Mahato	Hearsay Witness
PW5	Rupesh Talukdar	Hearsay Witness
PW6	ASI Narayan Haloi	Hearsay 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
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		WITNESS, OTHER WITNESS)
CW1		Nil

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sl. No.	Exhibit Number	Description
1.	Exhibit- 1/PW3	FIR
2.	Exhibit- 2/PW4	Injury Report

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