

Gr 1840/16  
State  
Vs  
Nitul Pathak & Others

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS, NALBARI**

**Case No. GR 1840/2016 u/s 447/323/34 IPC**

**STATE**

**-Vs-**

**NITUL PATHAK & OTHERS..... Accused**

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mrs Manika Chakraborty.....for the State.

Mr. Kamalendra Talukdar.....for the accused.

Date of prosecution evidence – 06.09.18

Date of argument – 06.09.18

Date of judgment – 06.09.18

**Judgment**

1. Sri Taru Deka initiated the instant case by filing written 'ejahar' before the O/C, Belsore P.S. on 27.11.16. The prosecution case in brief is that, on 27.11.16, at about 1 p.m. the informant was plowing his tractor in their premise the accused persons came with lathis in their hand an started beating the informant and his family.
2. On receipt of the 'ejahar', police has registered the case as Belsore P.S. case No. 246/16 u/s 325/34 IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused person Nitul Pathak, Dambarudhar Pathak and Ratul Pathak u/s 447/323/34 IPC.
3. During trial, accused person entered his appearance on receipt of summons from the court and were allowed to go on bail. Relevant copies of the case were furnished to

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them u/s 207 Cr.P.C. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused persons u/s 447/323/34 IPC. The particulars of the offence were explained to the accused to which they pleaded not guilty and claimed to be tried.

4. Prosecution in support of the case examined five witnesses. Defence side declined to adduce any witness in support of their claim. The examination of the accused person u/s 313 of Cr.P.C. was dispensed with as no incriminating materials were found against them.
5. I have heard argument of both sides.

#### **Points for Determination**

6. Upon hearing and perusal of the record, I have framed the following points for determination:
  - a. Whether the accused person on 27.11.16 at about 1 p.m. in furtherance of common intention criminally trespassed into the house of the informant and thereby committed an offence punishable u/s 447 IPC?
  - b. Whether the accused person on same date, time and place in furtherance of common intention have voluntarily caused hurt to the informant and his family and thereby committed an offence punishable u/s 323 IPC?

#### **Evidence on Record**

7. I have carefully gone through the entire evidence on record and materials placed before me.
8. PW 1 Taru Deka deposed in his evidence that he filed the case due to some misunderstanding and that they have now settled the matter.
9. Pw 2, Pw 3, Pw 4 and Pw 5 have deposed to the tune of Pw 1.
10. Now on going through the entire evidence on record it appears that vital witnesses examined by prosecution side, the informant as well as the alleged victim and other Pw have not supported the prosecution case. In result, there is no incriminating materials found against the accused person.
11. I, therefore, find that the prosecution has failed to establish the guilt of the accused person. Accordingly, accused persons Nitul Pathak, Dambarudhar Pathak and Ratul

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Pathak are held not guilty of the offence punishable u/s 447/323/34 IPC and accordingly, they are acquitted and set at liberty forthwith.

12. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

13. The seized article if any be disposed in accordance with law.

Given under my hand and seal of this court on this 6<sup>th</sup> day of September, 2018.

Rubina Yasmin

J.M.F.C. Nalbari

**APPENDIX**

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**Prosecution witness:**

*PW 1 – Taru Deka*

*PW 2 – Biraj Deka*

*PW 3 – Mukul Deka*

*PW 4 – Bhabadev Deka*

*PW 5 – Hiramoni Deka*

**Defence witness:**

*Nil*

**Exhibits:**

*Ext. 1- ejahar*

*Ext. 1(1) - Signature of the informant*

Rubina Yasmin  
J.M.F.C. Nalbari