

C.R.CASE NO: 434 of 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI SAHABUL ALI & ORS

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DISTRICT: NALBARI
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL MAGISTRATE:::::NALBARI

C.R.CASE NO:434/17
U/S 323 IPC

COMPLAINANT: MD MAINU ALI @ MOINUDDIN

VERSUS

ACCUSED: (1) SARUHANU ALI
(2) HAKIM ALI
(3) SAHABUL ALI
(4) MOJIBOR ALI

**PRESENT : SHALMA AZAZ,
S.D.J.M., (S) NALBARI.**

ADVOCATE FOR THE PROSECUTION: SMTI M.CHAKROVERTY.

ADVOCATE FOR THE ACCUSED: SRI J.ISLAM

OFFENCE EXPLINED ON: 4.12.17

EVIDENCE RECORDED ON: 20.02.19

ARGUMENT HEARD ON: 20.02.19

JUDGMENT DELIVERED ON: 20.02.19

JUDGMENT

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of the Mukalmua Police station, by the informant/victim, Md. Mainu Ali on 03.02.13, against the accused persons, Saruhanu Ali, Hakim Ali, Sahabul Ali and Mojibor Ali to the effect that, on 03.02.13 at 3 p.m, while the informant was going to the house of one Dhiru Ali to give him Rs.12,000/- and when he reached at the middle of a field, at that moment, the accused persons give fist blow to him, as a result of which he sustained injuries. The accused persons also snatched away the money from him. While the informant/ victim raised hue and cry the neighbour people came to the spot and brought him to Mukalmua P.H.C., for treatment. The accused persons also give fist and blow to one Islam Ali who went to the spot to save the informant and snatched away one mobile phone and Rs.8000/- from him.
2. The police upon receipt of the ejahar registered it as Mukalmua Police Station case No.28/13 under sections 394/34 IPC and started investigation in the case. After completion of the investigation the police submitted final report against the accused person.
3. The Honorable Chief Judicial Magistrate, took cognizance of the case and registered it as State CR, and the same was transferred for disposal, and my learned predecessor called the accused persons to enter trial and after causing their appearance the copies of the relevant documents were furnished to the accused. My learned predecessor , on perusal of record, read over and explained the particulars of offence under section 323 IPC, to the accused persons to which they pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined two witnesses, the informant and victim of the case . The prosecution prayed to close the evidence of prosecution side, as the principal witnesses, i.e the informant and the victim did not support the case of the prosecution and the examination of the other witnesses is not required. I have perused the record and it appears that the informant and the victim were the principal witnesses for the prosecution; hence when they have not supported the case of the prosecution then further examination of other witnesses would

merely be a futile exercise as it will not change the merit of the case; as such the evidence of the prosecution side is closed.

5. As there is no incriminating material against the accused persons, the statement of the accused persons under section 313 of CrPC, is dispensed with.
6. I have heard both the parties. I have heard the learned counsel for the accused who submitted that there is no material against the accused persons; as such the accused persons need to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following points for determination-

(1) Whether the accused persons, on 03.02.13 at about 3 pm, in the evening, at village Dirua under Mukalmua P.S., voluntarily caused hurt to informant Md. Mainu Ali @ Moinuddin and Islam Ali, and thereby committed the offence under section 323 of IPC?

8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

DISCUSSION, DECISION AND REASONS FOR THE DECISION:

POINT FOR DETERMINATION NO.1

9. The prosecution has examined only two witnesses in support of its case, i.e the alleged informant and victim of this case.
10. The PW1, Md. Mainu Ali @ Moinuddin, who is the informant/victim of this case, has stated that he know the accused persons, they live near his house, and the incident occurred in the year 2013, at around 3 p.m., and at that time he was going to the house of Islam Ali and on the way, he saw that the accused persons are having an altercation with Islam Ali and he tried to stop the altercation and the parties shoved each other and he got hurt and so he out of anger and misunderstanding lodged the ejahar against the accused person. Later on, after talking with each other their

misunderstanding was resolved. Exhibit.1 is the ejahar and Exhibit.1(1) is his signature.

In cross examination, the PW1 admitted that he does not know what is written in the ejahar, he did not read it. The PW1 also admitted that the accused persons intentionally did not assault him.

11. The PW2 Md. Islam Ali is stated that ,he is well acquainted with the accused persons, and at the time of incident, behind his house, he was talking with the accused persons and while kidding with them, regarding a silly matter, they had an altercation and at that time the informant came, tried to stop the altercation and they shoved each other and informant got hurt. Later on, out of anger and misunderstanding the informant lodged the ejahar against the accused persons, but, after talking with each other their misunderstanding was resolved.

In cross-examined PW2 admitted that the accused persons intentionally did not assault him.

12. On perusal of the case record, it is seen that the accused persons and the victim, are friends and they had an altercation regarding a silly matter. The perusal of the evidence of the PW1 and PW2 reveals that they had not at all supported the prosecution version and according to them, PW1 had lodged the ejahar out of apprehension and in misunderstanding. The PW1 and PW2 has specifically admitted that the accused persons did not commit the alleged offences, rather they only had an altercation; hence it is held that the prosecution has failed to establish the charges against the accused persons.
13. In view of the above discussion it is held that the prosecution has failed to prove the points for determination.
14. DECISION: The prosecution has failed to prove the charges against the accused persons under section 323 of IPC, and therefore, the point for determinations are answered in negative, in favour of the accused persons.

ORDER

15. In view of the discussions made above and the decision reached therein it is held that the prosecution has failed to prove the charges against the accused persons, namely Saruhanu Ali, Hakim Ali, Sahabul Ali and Mojibor Ali; as such the accused persons are acquitted of the charges under section 323 IPC and they are set at liberty.

17. The bail bond of the accused persons and their surety shall remain in force for six months from today.

18. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 20th day of February, 2019 at Nalbari.

Shalma Azaz,

S.D.J.M., (S),

Nalbari.

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APPENDIX

PROSECUTION EXHIBITS:

EXHIBIT 1 : EJA HAR

DEFENCE EXHIBITS

NONE

PROSECUTION WITNESSES

1) MD MAINU ALI @ MOINUDDIN.

2) MD ISLAM ALI.

DEFENCE WITNESSES

NONE

Shalma Azaz,
S.D.J.M., (S),
Nalbari.

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