

::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::

PRESENT : = Sri K.C. Boro, A.J.S.

Ref: GR Case No.1174/15

State

-vs-

i) Hasmat Ali

S/o- Lt. Bheda Ali.

ii) Nazum Ali

S/o- Lt. Bheda Ali.

iii) Jainal Ali

S/o- Lt. Gani Ali.

iv) Jiaur Ali

S/o- Lt. Ismail Ali.

v) Tamiz Ali

S/o- Lt. Nur Ali.

All are resident of

Village Larma Batakuchi

PS Ghograpar

Dist. Nalbari, Assam Accused persons.

u/s-147/341/352 IPC r/w Sec.149 IPC

EVIDENCE RECORDED ON : 07.09.16, 27.10.16, 26.12.16,
21.02.17, 10.04.17, 25.05.17, 19.08.17, 30.01.18, 01.03.19 & 11.04.19

ARGUMENTS HEARD ON : 26.06.19 & 09.07.16.

JUDGMENT DELIVERED ON : 11.07.19.

ADVOCATES APPEARED :

For the State : Mr. D. Talukdar, Ld. A.P.P.

For the Accused : Smti. A. Barman, Ld. Advocate.

J U D G M E N T

1. The case of the prosecution, in a brief, is that an FIR was filed on 01.08.15 with the O.C of Ghograpar PS by informant Manowar Hussain against the accused persons namely Hasmat Ali, Tamiz Ali, Nazum Ali, Joynal Ali and Jiaur Ali alleging inter-alia that on 30.07.15, at about 7.00 pm, one Imamul Ali s/o- Akram Ali was proceeding through the front of the residence of accused and then, there was an electric short circuit at a electric pole which is near the residence of accused Hasmat Ali, but the accused persons implicated Imamul falsely that he had set their hay stock on fire and assaulted Imamul. Accused Hasmat gave slaps to Imamul and the co-accused were instigating the accused Hasmat. Thereafter, the villagers came and found that there was no fire at the hay stock of Hasmat Ali. Later on, a village bichar was held, but the accused did not attend the village bichar. Hence, the case.

2. On receiving the case, the O.C of Ghograpar PS registered Ghograpar P.S. Case No.149/15 u/s-147/341/323 IPC and started investigation. On completion of investigation, the I.O laid charge-sheet against the accused persons namely Hasmat Ali, Tamiz Ali, Nazum Ali, Joynal Ali and Jiaur Ali u/s-147/341/352 IPC vide CS No.112/15 dated 31.08.15.

3. The CR was forwarded to the court of Ld. Addl. CJM, Nalbari for disposal. In pursuance of the process issued, the accused persons appeared before the Court and on their appearance the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused persons. Thereupon prima facie case was found against the accused persons u/s-147/341/352 IPC r/w Sec.149 IPC and the substances of accusation u/s-147/341/352 IPC r/w Sec.149 IPC were explained to the accused persons and they were asked whether they would plead guilty of the offences charged or claimed to be tried. They had pleaded not guilty and claimed to be tried. Later on, the CR was again transferred to this Court as the cross case is pending before this Court.

4. During the trial, the prosecution side examined eleven (11) witnesses including one (1) Court witness. 313 Cr.P.C statements

of accused persons were of total denial. The defence side also adduce one (1) DW.

5. I have heard the argument of both the sides.

POINTS FOR DETERMINATION

- Whether the accused persons namely Hasmat Ali, Tamiz Ali, Nazum Ali, Joynal Ali and Jiaur Ali on 31.07.15 at village No.1 Larma Batakuchi under Ghograpar PS were members of an unlawful assembly and in prosecution of common object of such assembly, committed the offence of rioting and thereby committed an offence punishable u/s-147 I.P.C. ?

- Whether the accused persons namely Hasmat Ali, Tamiz Ali, Nazum Ali, Joynal Ali and Jiaur Ali on 31.07.15 at village No.1 Larma Batakuchi under Ghograpar PS were members of an unlawful assembly and in prosecution of common object of such assembly, voluntarily obstructed injured Imamul Ali so as to prevent him from proceeding in the direction in which he had right to proceed and thereby committed an offence punishable u/s 341 I.P.C.?

- Whether the accused persons namely Hasmat Ali, Tamiz Ali, Nazum Ali, Joynal Ali and Jiaur Ali on 31.07.15 at village No.1 Larma Batakuchi under Ghograpar PS were members of an unlawful assembly and in prosecution of common object of such assembly, used criminal force upon the injured Imamul Ali and thereby committed an offence punishable u/s-352 I.P.C.?

DECISION AND REASONS THEREOF:

6. PW.1 is Md. Manowar Hussain, informant. He deposed that on 30.07.15, at around 7.00 pm, in the evening, his nephew Imamul was walking through the road. When he reached the residence of the accused, there was electric short circuit as a result of which there was fire on the banana leaves. Then, the accused assaulted his nephew alleging that he had set their hay stock on fire. The villagers on hearing hulla came to the place of occurrence and found that there was no fire on the hay stock of the accused. Thereafter, on the next day, he called for a village bichar, but the accused did not appear in the village bichar. Later on, he filed the FIR. Ext.1 is the FIR and ext.1(1) is his signature. Police recorded his statement.

7. During cross-examination, this witness deposed that the incident occurred on 30.07.15. Imamul has father. This witness deposed that he filed the FIR as Imamul's father does not know how to read and write. Imamul was assaulted in front of the residence of accused Hasmat. He has not seen the incident. At that time, he was at his residence. He denied that on 31.07.15, at night, he went to the residence of Rahila Begum and misbehaved with Sajida Begum by pulling her wearing apparel. He admitted that due to the incident of 31.07.15, Rahila also filed a case upon him. He denied that he filed this case in order to save him from the case filed by the accused. Accused Tamiz Ali works in Medical. Accused Hasmat works in ASEB. They used to intercourse from Guwahati. He denied that both of them were in Guwahati on the day of the incident in the evening hour.

8. PW.2 is Mustt. Elima Begum. She deposed in her evidence that she knew both the sides. The incident occurred about a year ago, at about 7.00 pm, in the evening. At that time, she was sitting at her courtyard along with her child. There was short circuit near her residence and therefore, the current disconnected. At that time, Imamul was proceeding from shop. Then, Hasmat Ali and Rahila Begum assaulted Imamul falsely alleging that he had set their hay stock on fire. Then, this witness proceeded and told Hasmat that there was short circuit, but the accused did not listen to her. The villagers came and

found that there was no fire on the hay stocks. The villagers called for village bichar on the next day, but the accused did not appear in the village bichar. Later on, informant filed the FIR. Police recorded her statement. Imamul was given slaps. He was medically examined at Ghograpar Medical.

9. During cross-examination, this witness deposed that informant is her uncle. Imamul is her brother. Police recorded her statement after two days of the incident. Hasmat works in ASEB and he used to intercourse from his house. She denied that Hasmat came to Guwahati on the day of the incident. The marpit took place in front of the residence of Hasmat. She has not seen the marpit being taken place. The accused were present at the marpit. The marpit was also seen by Muslim Ali, Afzar Ali and Jyotshna Bibi. She admitted that Rahila also filed a case upon Manowar, Kutub and Ima alleging that they had misbehaved with Rahila and Sajida. She denied that Manowar filed this case in order to save himself from that case. It is not a fact that Imamul did not state before police that at the time of the incident, she was returning from shop. She did not state before police that Hasmat Ali and Rahila Begum assaulted Imamul falsely alleging that he had set their hay stock on fire.

10. PW.3 is Jyotshna Begum. She deposed that she knew both the sides. The incident occurred about a year ago, at about 7.00 pm, in the evening. At that time, she along with Muslim Ali were sitting at the courtyard. Then, there was an electric short circuit and the current got disconnected. After a while, accused Hasmat raised hulla that Imamul had set their hay stock on fire. The villagers came and found that there was no fire on the hay stock. The accused chased Imamul. She has not seen who assaulted. She heard that Hasmat assaulted. Later on, informant filed the FIR. Police recorded her statements. The villagers called for a bichar, but the accused did not attend in the bichar.

11. During cross-examination, this witness deposed that she saw Imamul being chased away. She has not seen any marpit. She does not know whether Rahila filed any case upon Manowar. At that time, a large number of villagers were present, but she could not state

their names.

12. PW.4 is Miss Lily Bibi. She deposed that she knew both the sides. The incident occurred on 30.07.15, at about 7.00 pm, in the evening. On hearing hulla, this witness came out and saw that there was fire on the hay stock of Rahila. She hear hulla that Rahila had seen that Imamul had set their hay stock on fire. Thereafter, Imamul was chased away by the family members of Hasmat. Thereafter, village gaon burah was called for.

13. During cross-examination, this witness deposed that none has assaulted Imamul. Rahila also filed a case alleging that she was chased away.

14. PW.5 is Muslim Ali. He deposed that he knew both the parties. The incident occurred about a year ago, one evening. At that very moment, there was an electric short circuit and the current disappeared. Then, the wife of Hasmat stated that Imamul had set their hay stock on fire. The public gathered. The villagers came and found that there was no fire on the hay stock. Later on, informant filed the FIR. Police recorded his statement.

15. During cross-examination, this witness deposed that his residence is near the place of occurrence. He did not come out from his residence.

16. PW.6 is Mahrum Ali. He deposed that he knew both the sides. The incident occurred about one year ago, in the evening time, at about 9.00 pm. While he was proceeding towards the mosque, he found that there was fire on the leaves of trees when they came in touch with electric wire. On his returning from mosque, Imamul told him that he was assaulted by Hasmat. This witness has not seen any marpit. Imamul left the place by crying. He heard that the wife of Hasmat was scolding Imamul. He went to his residence. Later on, case was filed. Police recorded his statements.

17. During cross-examination, this witness deposed that he has not seen Imamul being assaulted. He did not see Hasmat. He heard that the wife of Hasmat has filed a case upon the village head man.

18. PW.7 is Afzan Bibi. She deposed that she knew both the sides. The incident occurred about 1 ½ years ago during the evening hour. She deposed that at the relevant time, she came out of the residence of Muslim and found that Imamul and one other were standing. Then, there was fire on the banana leaves due to electric short circuit. Then, Hasmat came and gave one or two blows to Imamul thinking that Imamul had set their hay stock on fire. This witness left the place. The villagers assembled. Police recorded her statement. The villagers sat in a bichar, but Hasmat did not obey the bichar.

19. During cross-examination, this witness deposed that Hasmat does service at City Board in Guwahati. The incident occurred at about 7.00-8.00 pm. She denied that accused Hasmat was not at his residence, rather he was in Guwahati. She further denied that she did not state before police that Hasmat gave slaps to Imamul. Hasmat is her nephew. This witness has no talking terms with Hasmat. She only saw that Hamat assaulted Imamul. Both the sides filed FIRs.

20. PW.8 is Jahanara Bibi. She deposed that she knew both the sides. The incident occurred about a year ago, at about 6.00 pm in the evening. At the relevant time of the incident, she came out to the road along with her younger child. She saw that there was fire on the electric wire near the residence of Kayem. The fire was on the trees. Imamul reached the place of occurrence after coming from shop. Then, Hasmat came out and stated that Imamul had set their hay stock on fire. Imamul did not set on fire on their hay stock. Hasmat gave two slaps to Imamul. Later on, public gathered. Police recorded her statements.

21. During cross-examination, this witness deposed that informant is her cousin. The residence of Hasmat and Manowar are in separate supas. Her house is situated about three houses away from the residence of Hasmat. Hasmat works in ASEB, in Guwahati and he used to intercourse from his house. She denied that Hasmat was not present at the place of occurrence at the relevant time as he did not reach his house from his office. Hasmat assaulted Imamul in her presence. She denied that this case was filed falsely in order to save

from the case filed by Rahila. Imamul used to address her as paternal aunt (pehi). She did not make any try to broke the quarrel.

22. PW.9 is Jiaur Ali. He deposed that he knew both the side. The incident occurred about two years ago, at about 8.30-9.00 pm. This witness went to Mosque. Then, he saw that there was fire on the banana leaves near the residence of Hasmal Ali. After coming from namaj, this witness heard that Imamul setting the hay stock of Hasmal on fire. He also heard that Hasmal gave slaps to Imamul, but he has not seen the same. Later on, Manowar filed FIR. Police came to the place of occurrence. Police recorded his statements.

23. Defence declined to cross-examine this witness.

24. PW.10 is I.O Baikuntha Baishya. He deposed that on 01.08.15, he was working as A.S.I., in Ghagrapar P.S. On that day, informant Manowar Hussain filed a written FIR in Ghograpar P.S. On receipt of the FIR, the O.C., gave him the task of inquiry. He visited the place of occurrence, drew the sketch map and recorded the statements of witnesses. He submitted a report of inquiry to the O.C., Ghograpar P.S., for registering a case. Ext.2 is his inquiry report and Ext.2(1) is his signature. On the basis of his inquiry, the O.C of Ghograpar P.S., registered Ghograpar P.S Case No.149/15 u/s-147/341/323 IPC. He was given the task of investigation. He recorded the statements of the other witnesses on 10.08.15 in the police station. The accused surrendered before the court of Hon'ble Chief Judicial Magistrate, Nalbari. He collected the medical report of the victim on 31.08.15. Ext.3 is the Medical report. On completion of investigation, he filed charge-sheet against the accused persons namely Hasmal Ali, Tamiz Ali Nazmul, Joynal Ali and Jiaur u/s-147/341/352 IPC. Exhibit-4 is the charge-sheet and Exhibit-4(1) is his signature.

25. During cross-examination, this witness deposed that he has not visited the place of occurrence after registration of the FIR. He also investigated the cross-case. Witness Elima Begum did not state before him that she was proceeding from shop. Witness Elima Begum also did not state before him that accused Hasmal and Rahila assaulted Imamul by falsely thinking that Imamul had set their hay

stock on fire. Witness Afzan Bibi did not state before him that accused Hasmat gave a slap to Imamul. He denied that he did not investigate the case properly.

26. PW.11 is Medical Officer Dr. Jayanta Talukdar. He stated that on 08.08.15, he examined one Imamul Haque at Ghograpar BPHC and found- complain of abdominal pain and generalized body pain due to the attack by some persons three or four days back. On clinical and physical examination, no significant injury noted anywhere and an USG was given for further evaluation which has not been performed. In his remark: the person concerned is stable both physically and mentally on clinical examination. Ext.5 is the medical report and Ext.5(1) is his signature.

27. During cross-examination, this witness deposed that he wrote in the Injury report as per the version of the patient. He found no injury in the body of the patient. He advised for ultrasound, but report not submitted. As per his report, the patient was stable at that time.

28. These are the evidence from the prosecution side.

29. DW.1 is Hasmat Ali. He deposed that on 31.07.15, while he was at his work place, he came to know from his wife over telephone that Manowar and some others had come to his residence and verbally abused by using filthy languages. Then, his wife Rahila Begum and daughter-in-law Bulu Begum came out and asked the village Headman Manowar not to use any slang languages. Then, the village headman and his companions fell his wife and daughter-in-law to the ground and misbehaved with them by disrobing them. When his family members raised hue and cry, public gathered and Manowar and his companions fled away from the place. Thereafter, his wife filed a case vide GR Case No.1173/15 which is pending before this Court. This witness further deposed that in order to save himself from the case filed by his wife, this case has been falsely filed. He also submitted his duty certificate vide Ext.kha and Ext.kha(1) is the signature of Sadananda Nath dated 06.08.15. He further deposed that now Sadananda Nath has got retirement.

30. During cross-examination by prosecution, this witness deposed that Manowar Hussain is his nephew in relation. He never intercourse from Guwahati to Ghograpar daily. He only came to his house on holidays. He denied that he always intercourse. He denied that his wife had set their hay stock on fire by herself. He further denied that he along with other accused set the hay stock on fire and thereafter they assaulted Imamul. He told the villagers that Manowar had come to their residence. He further denied that he did not appear in the bichar as he knew that they would be held guilty.

31. The victim of this case namely Md. Imamul Ali has been examined as Court Witness No.1. He deposed in his evidence that informant is his uncle. He knew the accused persons. The incident occurred about four years ago, one evening, at about 6.30 pm. He was proceeding towards a village shop. Then, there was electric short circuit near the residence of the accused. Then, the accused persons set their hay stock on fire themselves and assaulted him. Hasmat and Jiaur had assaulted him. The villagers found that there was no fire on the hay stock. Later on, they called for village bichar, but the accused did not come to the bichar. Thereafter, their society asked them to file this case and accordingly, his uncle filed this case.

32. During cross-examination, this witness deposed that he could not remember the date of the incident. His residence is about ½ km away from the place of occurrence. There are residences of Hajarat, Bana, Harmen, Muslim near the place of occurrence. They have witnessed the incident. Muslim, Hazarat and some other persons saw that he was being assaulted. He does not know where accused Hasmat works. The FIR was filed on the next day of the incident. From the police station, he was taken to medical. He denied that he set the hay stock of accused on fire.

33. These are the materials on record.

34. Ld. Defence counsel argued that the informant has lodged this case falsely in order to save himself from the case filed by Rahila Khatun. Ld. Defence counsel strenuously argued that accused Hasmat was not present at the time of the incident as he was in his duty place

and to that extent, accused exhibited his duty card as Ext.Kha. Hence, the accused persons should be acquitted. Per contra, Ld. APP submitted that the prosecution has been successful in proving this case beyond all reasonable doubt. Hence, this case is fit for conviction.

35. For the sake of convenience, points for determination Nos(ii) and (iii) are discussed together.

To constitute the offence of Wrongful Restraint u/s-339 which is punishable u/s 341 IPC, the following ingredients are to be fulfilled:

- a. Voluntary obstruction of a person;
- b. The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.

The offence of wrongful restraint is completed if one's freedom of movement is suspended by an act of another done voluntarily" that is to say, done with that intention or with the knowledge or belief in its likelihood.

36. In order to establish the case u/s 352 IPC, the following ingredients are to be proved:

- a. The accused made a gesture or preparation to use criminal force.
- b. The accused knew that it was likely that such gesture or preparation to use criminal force would cause by appreciation that such assault or use of force would be done.
- c. That no grave or sudden provocation was received from the complainant.

37. Now, let us see whether the prosecution has been able to bring home the guilt of the accused persons beyond all reasonable doubt. Let me scrutinize the evidence on record. First of all, let us come to the evidence of the victim namely Md. Imamul Ali who has been examined as CW.1. During his evidence, he stated that on the day of the incident, at the relevant time, he was proceeding towards a village

shop. Then, there was electric short circuit near the residence of the accused. Then, the accused persons set their hay stock on fire themselves and assaulted him. Hasmat and Jiaur had assaulted him. The villagers found that there was no fire on the hay stock. Later on, they called for village bichar, but the accused did not appear in the bichar as a result of which, this case has been filed by his uncle. The defence though cross-examined CW.1 Imamul Ali at length, but failed to dislodge his evidence. The defence also failed to put suggestion before the CW that accused Hasmat and Jiaur did not assault him. CW.1 stated in his evidence that Muslim Ali, Hazarat Ali and some other persons have witnessed the incident. The prosecution examined Muslim Ali as PW.5. During his evidence, Muslim Ali deposed that at the relevant time of the incident, there was an electric short circuit and the current disappeared. Then, the wife of accused Hasmat stated that Imamul had set their hay stock on fire. The public gathered and found that there was no fire on the hay stock. From the evidence of eye witness namely Muslim Ali, it appears that his evidence is absolutely silent regarding accused Hasmat and Jiaur assaulted Imamul.

38. Next we come to the evidence of informant PW.1 Manowar Hussain. He stated in his evidence that on 30.07.15, at around 7.00 pm, in the evening, his nephew Imamul was walking through the road. When he reached the residence of the accused, there was an electric short circuit as a result of which there was fire on the dried banana leaves. Then, the accused assaulted his nephew alleging that he had set their hay stock on fire. The villagers on hearing hulla came to the place of occurrence and found that there was no fire on the hay stock of the accused. Thereafter, on the next day, he called for a village bichar, but the accused did not appear in the village bichar.

39. Next, we come to the evidence of PW.2 Mustt. Elima Begum. She stated in her evidence that on the day of the incident, at the relevant time, she was sitting at her courtyard along with her child. At that moment, there was short circuit near her residence and therefore current disappeared. At that time, CW.1 was proceeding from shop and then, Hasmat Ali and his wife Rahila Begum assaulted

Imamul falsely alleging that he had set their hay stock on fire. Then, this witness proceeded and told Hasmat that there was an electric short circuit, but the accused did not listen to her. Thereafter, the villagers came and found no fire on the hay stock. But, when we move to the evidence of the Investigating Officer, it is found that this witness namely Elima Begum did not state before him in her 161 CrPC statement that accused Hasmat and Rahila assaulted Imamul by falsely thinking that Imamul had set their hay stock on fire. It appears that this is a vital contradiction. Furthermore, PW.2 Elima Begum also stated that the “marpit” was seen by Muslim Ali, Afzan and Jyotshna Bibi. The prosecution examined Jyotshna Bibi as PW.3. She deposed in her evidence that on the day of the incident, while she was sitting along with Muslim Ali, there was an electric short circuit and the current disappeared. Thereafter, accused Hasmat raised hulla that Imamul had set their hay stock on fire. The villagers gathered and found that there is no fire on the hay stock. During cross-examination, this witness categorically deposed that she only saw Imamul being chased away. She has not seen any “marpit”. Hence, the evidence of this witness namely Jyotshna Begum is not of any help to the prosecution story.

40. Another eye witness to the incident according to the evidence of PW.2 is PW.7 Afzan Bibi. She deposed that at the relevant time of the incident, she came out of the residence of Muslim and found that Imamul and another person were standing. Then, there was fire on the banana leaves due to Electric short circuit. Then, Hasmat came and gave one or two blows to Imamul thinking that Imamul had set their hay stock on fire. But, this witness has also failed to state before the I.O in her 161 CrPC statement that Hasmat gave blows to Imamul which leads to a vital contradiction. The I.O has confirmed about the same in his evidence as PW.10.

41. PW.9 Jiur Ali and PW.6 Mahrum Ali are found to be hearsay witnesses. They have not seen any incident. Furthermore, PW.4 Lily Begum stated in her evidence that on the day of the incident, Imamul was chased away by the family members of Hasmat. She has categorically deposed in her cross-examination that none has

assaulted Imamul. Hence, the evidence of these witnesses attributed nothing to the prosecution story.

42. Next, we move to the evidence of PW.8 Jahanara Bibi. She deposed in her evidence that at the relevant time of the incident, she came out to the road along with her younger child and she saw that there was fire in the electric wire near the residence of Kayem. In the mean time, Imamul CW.1 reached the said spot coming from shop. Then, Hasmat came out and stated that Imamul had set their hay stock on fire. Then, Hasmat gave two slaps to Imamul. Though defence cross-examined this witness at length, but failed to dislodge her evidence regarding the fact that accused Hasmat gave two slaps to Imamul. The evidence of this witness has fully corroborated the version of the victim CW.1 regarding that fact that accused Hasmat assaulted CW.1.

43. Medical Officer PW.11 is a formal witness who found no significant injury upon the person of CW.1 while he examined CW.1 on 08.08.15 at Ghograpar BPHC. From perusing the FIR, it is seen that the incident occurred on 30.07.15. As the victim was treated after 8 days of the incident, the Medical Officer definitely would not have found any bodily injury upon the person of CW.1.

44. DW.1 Hasmat Ali took plea in his evidence that he was not present at the relevant time of the incident. He further took plea that the informant has falsely implicated him because his wife Rahila also filed a case upon the informant and some others of this case. But, to that extent, he has failed to adduce evidence of any supporting witness that he was not present at the time of the incident. Per contra, the prosecution witnesses have remained consistent regarding the fact of presence of Hasmat Ali at the PO at the relevant time. Though Hasmat Ali exhibited his duty card vide Ext.kha, but he has failed to adduce evidence to support that at the time of incident, he was at his work place.

45. The victim CW.1 claimed in his evidence that accused Hasmat and Jiaur assaulted him. But, the eye witness PW.8 Jahanara

Bibi stated that accused Hasmat gave a slap to Imamul. The evidence of Jahanara Bibi is absolutely silent regarding accused Jiaur assaulting Imamul. Furthermore, there is nothing on record that the co-accused namely Nazum Ali, Jainal Ali and Tamiz Ali are involved in the said offence.

46. There are no infirmities and discrepancies in the evidence of PW.8 and CW.1 regarding the fact of accused Hasmat assaulting Imamul and their testimonies are found to be believable and trustworthy. It can be safely presumed that the accused Hasmat wrongfully restrained CW.1 Imamul Ali and thereafter assaulted him. Furthermore, Mere suggestions will not help the accused, if it is not supported by any cogent defense evidence. Though defence cross-examined the prosecution witnesses at length, but failed to dislodge their evidence regarding the fact of assault by accused Hasmat upon CW.1 Imamul Ali.

47. The Ld. Defence counsel argued that the accused also filed another case on the next day of the incident. Though both the cases at first were tried separately, later on, both the cases were tried simultaneously. The Hon'ble Supreme Court in [Nathi Lal v. State of U.P.](#), 1990 Supp SCC 145 : 1990 SCC (Cri) 638 has held that both the cases, which are counter cases relating to the same occurrence, should be tried by the same judge in the following manner:-

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be

decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

48. The evidence on record does not lucidly portray the necessary elements required to constitute offences u/s-147/341/352 IPC against accused persons namely Nazum Ali, Jainal Ali, Jiaur Ali and Tamiz Ali. The prosecution has failed to prove the guilt of the accused persons namely Nazum Ali, Jainal Ali, Jiaur Ali and Tamiz Ali u/s-147/341/352 IPC beyond all reasonable doubt. Accordingly, the accused persons namely Nazum Ali, Jainal Ali, Jiaur Ali and Tamiz Ali are acquitted of the offences u/s-147/341/352 IPC and set at liberty forthwith.

49. On the other hand, marshaling the available evidence on record, it is seen that the evidences of the victim CW.1 and eye witness PW.8 bear weightage. As the oral testimonies of PW.8 and CW.1 are in corroboration in respect of alleged assault upon CW.1 by accused Hasmat Ali, therefore, I have no hesitation to conclude that the prosecution has been able to bring home the accusation u/s 341/352 IPC against the accused person namely Hasmat Ali beyond reasonable doubt. Accordingly, accused person namely Hasmat Ali stands convicted u/s-341/352 IPC.

50. Be that as it may, the said accused person is heard on the point of sentence. The convict prayed for leniency repenting his conduct. Learned defense counsel for accused also submitted for taking lenient view against the accused person citing as a first-time offender.

51. Accused person, if handed out a sentence, would harbour a sense of vengeance. The mechanical chores and the soulless work performed in jail premises under the coercive presence of the prison warden and without reference to relaxation or relish may be counter-productive. Having considered the fact that no previous conviction has been proved against the accused person, therefore, the guilty accused

person is conferred with the beneficial provisions of Probation of Offenders Act considering the nature of offences. Additionally, if the accused person so convicted for the offence committed in such circumstances is released on probation of good conduct, I suppose, it will save the offenders from the evil effects of institutional incarceration and afford them an opportunity of reformation within the society.

52. **ORDER**

The prosecution has failed to prove the guilt of the accused persons namely Nazum Ali, Jainal Ali, Jiaur Ali and Tamiz Ali u/s-147/341/352 IPC beyond all reasonable doubt. Accordingly, the accused persons namely Nazum Ali, Jainal Ali, Jiaur Ali and Tamiz Ali are acquitted of the offences u/s-147/341/352 IPC and set at liberty forthwith. On the other hand, prosecution has been successful in proving a case u/s-341/352 IPC against accused Hasmat Ali beyond all reasonable doubt. Resultantly, accused person namely Hasmat Ali is hereby convicted u/s-341/352 IPC and released on probation after due admonition. The convict is further directed to keep the peace and be of good behaviour and not to commit such type of offence for a period of one year failing which, he shall be called upon to appear and receive sentence.

53. Bail bond of accused persons namely Nazum Ali, Jainal Ali, Jiaur Ali and Tamiz Ali shall remain in force till expiry of the appellate period.

54. Furnish a copy of judgment free of cost to the convict and also furnish a copy of judgment to the Ld. District Magistrate, Nalbari.

55. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 11th day of July, 2019.

(Sri K.C. Boro)
Chief Judicial Magistrate,
Nalbari

GR Case No.1174/15

Dictated and corrected by me

(Sri K.C. Boro)
Chief Judicial Magistrate,
Nalbari

Jitul

APPENDIX:

Witnesses for the prosecution

- PW.1 - Md. Manowar Hussain, informant.
- PW.2 - Elima Begum
- PW.3 - Jyotshna Begum.
- PW.4 - Lily Bibi.
- PW.5 - Muslim Ali.
- PW.6 - Mahrum Ali
- PW.7 - Afzan Bibi.
- PW.8 - Jahanara Bibi.
- PW.9 - Jiaur Ali.
- PW.10 - I.O Baikuntha Baishya.
- PW.11 - M.O Dr. Jayanta Talukdar.
- CW.1 - Imamul Ali.

Witnesses for the defence

- DW.1 - Hasmat Ali.

Prosecution Exhibits

- Ext.1 - FIR.
- Ext.1(1) - Signature of informant.
- Ext.2 - Inquiry report.
- Ext.2(1) - Signature of I.O.
- Ext.3 - Medical report.
- Ext.4 - Charge-sheet.
- Ext.4(1) - Signature of I.O.
- Ext.5 - Medical report.
- Ext.5(1) - Signature of M.O.

Defence Exhibits

- Ext.kha - Duty Card.
- Ext.kha(1) - Signature of Sadananda Nath.

(Sri K.C. Boro)
Chief Judicial Magistrate,
Nalbari