

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS:: NALBARI

G.R. CASE NO. 613 OF 2017

U/S 341/342/323/427/34 I.P.C.

STATEPROSECUTOR.

Vs.

1. HARENDRA NATH TALUKDAR

2. GIRISH TALUKDAR

3. NIPON TALUKDARACCUSED.

:PRESENT:

SMRITI REKHA BHUYAN, A.J.S.

JUDICIAL MAGISTRATE FIRST CLASS, NALBARI.

**ADVOCATE FOR STATE : HEM SARMA,
LEARNED A.P.P.**

ADVOCATE FOR ACCUSED : J. U. AHMED.

**EVIDENCE RECORDED ON : 20.01.2018, 16.02.2018,
17.05.2018, 28.06.2018,
01.10.2018, 26.11.2018
02.01.2019, 26.06.2019,
29.11.2019.**

**ARGUMENTS HEARD ON : 12.12.2019, 24.12.2019,
23.04.2021, 05.05.2021.**

JUDGMENT DELIVERED ON : 07.05.2021.

J U D G M E N T

1. Prosecution case is unfurled from an F.I.R., lodged on 02/05/2017 at Mukalmua Police Station by the informant Rupa Das, wherein it has been stated that on 29/04/2017, at night at about 2-30 a.m., the informant and her husband went to watch bihu-function at a naamghar near their house, then the accused persons Haren Talukdar, Girish Talukdar and Nipon Talukdar dragged her husband to the courtyard of Haren Talukdar and then they locked the gate of their boundary and after that the accused persons restrained and assaulted her husband by tying him up with ropes and then hit him with a "lohar sik" (iron-stick) and also poured water on his body and as a result her husband got severe injury on his body. The informant created commotions. On hearing her hue and cry neighboring people came, but as the gate was locked they could not rescue her husband. At last, they informed the police and police rescued her husband. Further, it has been stated that the accused persons snatched-away the money-purse containing Rs.5000/-, Identity Card of job, Driving-license, ATM Card etc. and also snatched-away one torch-light and mobile-phone of the victim. Hence, this case.

2. The police has registered the case as Mukalmua P.S. case No. 149/2017 u/s 341/342/325/379/34 I.P.C. and investigated the matter. On completion of investigation, police filed charge sheet against the accused Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar u/s 341/342/323/427/34 I.P.C.
3. During trial, the accused persons were allowed to go on bail. Relevant copies of the documents were furnished to 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 Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar u/s 341/342/323/427/34 I.P.C. and particulars of the offences were read over and explained to the accused persons to which, they pleaded not guilty and claimed to be tried.
4. Prosecution in support of the case has examined 11 (eleven) witnesses and exhibited 4(four) numbers of exhibit and declined to adduce further evidence.
5. The accused persons had been examined u/s 313 of Cr.P.C. Their pleas were of total denial. The accused persons declined to adduce any evidence to defend their case.
6. This court has heard argument of both sides.

POINTS FOR DETERMINATION:

7. Upon hearing and perusal of the record, this court has framed the following points for determination:

- I. Whether the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar on 19.04.2017 at about 2.30 A.M., at Kaldi village, under Mukalmua P.S., in furtherance of their common intention wrongfully restrained the husband of the informant and thereby committed an offence punishable u/s 341/34 I.P.C.?**

- II. Whether the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar on the same date and time and at the same place at the house of accused Harendra Nath Talukdar as aforementioned wrongfully confined the husband of the informant and thereby committed an offence punishable u/s 342/34 I.P.C.?**

- III. Whether the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar on the same date and time and at the same place as aforementioned voluntarily caused hurt to the husband of**

the informant and thereby committed an offence punishable u/s 323/34 I.P.C.?

IV. Whether the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar on the same date and time as mentioned above, in furtherance of their common intention committed mischief causing loss or damage to the property of the victim and thereby committed an offence punishable u/s 427/34 I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF:

A. THE ARGUMENTS:

8. Learned A.P.P. has submitted in argument that the allegations against the accused persons are duly proved as there are independent eye-witnesses in the present case. Thus, learned A.P.P. has submitted that prosecution has succeeded to prove the case beyond all reasonable doubts and as such, the accused persons are liable to be convicted under all the relevant sections as alleged and sentenced in accordance with law.
9. Per-contra, learned defence counsel has submitted inter-alia in argument that the informant has made a false allegation against the accused persons, as there is a cross case against the husband of the informant u/s 379 I.P.C., because in the fateful night, the

husband of the informant trespassed into the shop of the accused persons with an intention of theft. Thus, learned defence counsel has submitted that to make save from that cross-case the informant lodged a false case only. Learned defence counsel has further submitted that there are material omissions and contradictions in the evidence of the prosecution witnesses, which have been pointed out by him during argument. As such, the learned defence counsel has argued that the prosecution has failed to prove the case against the accused beyond all reasonable doubt and accordingly accused persons deserve acquittal.

B. THE LAWS:

10. There are allegations of offence U/S 341/342/323/427/34 I.P.C. against the accused persons in the instant case and this court has to consider the evidence-on-record in the light of the law of the land to determine the fate of this present case.

11. **Section 341 I.P.C.:** The essential ingredients of the offence punishable under section 341 are as follows:

- i. Accused obstructed a person;*
- ii. He did it voluntarily;*
- iii. It prevented such person from proceeding in certain direction in which*

he had the right to proceed.

12. **Section 342 I.P.C.:** The essential ingredients of the offence punishable under section 342 are as follows:

- i. Accused confined a person*
- ii. He did it voluntarily*
- iii. Such confinement prevented the victim from proceeding beyond certain circumscribed limit.*
- iv. The confinement was wrongful.*

13. **Section 323 I.P.C.:** The essential ingredients of Section 323 I.P.C. are as follows:

- a. The accused caused hurt to another person;*
- b. The accused caused such hurt voluntarily and;*
- c. Such a case was not covered under Section 334 I.P.C.*

14. For the applicability of Section 323 I.P.C., the material relied upon by the prosecution in support of such charge must show that the concerned accused had committed the act complained of at least with the knowledge that by such act he was likely to cause hurt to the victim.

15. **Section 427 I.P.C.:** To convict a person under the section 427 I.P.C., the prosecution must establish the following ingredients:

(a) The accused committed mischief.

(b) Such mischief caused loss or damage amounting to not less than Rs. 50/-.

16. For application of Section 427 I.P.C., it is sufficient that the accused intends to cause, or knows that he is likely to cause wrongful loss or damage amounting to not less than Rs. 50/- to any person by injuring any property, whether it belongs to that person or not.

17. Let us, find out whether any offence is made out against accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar u/s 341/342/323/427/34 I.P.C., satisfying the above mentioned ingredients of the said sections.

C. APPRECIATION OF EVIDENCE:

18. Upon hearing the arguments of learned A.P.P. and the Defence Counsel and in view of the laws, now this court has proceeded to find out the relevant facts of the instant case from the evidence-on-record for appreciating the same to reach in a conclusion.

19.This court has carefully gone through the entire evidence-on-record and materials placed before this court.

20.The evidentiary facts that need to be appreciated in the points for determination no. (I), (II), (III) and (IV) are interlinked; as such let us take up those together for discussion for the sake of convenience.

21.Let us first of all find out, whether the accused persons obstructed the husband of the informant voluntarily and it prevented him from proceeding in certain direction in which they had the right to proceed? And whether the accused persons confined the husband of the informant voluntarily and wrongfully and it prevented him from proceeding beyond certain circumscribed limit? And whether the husband of the informant i.e. victim sustained any injury? And if so, let us find out whether the accused persons assaulted and caused hurt to him? And if so, whether they did it voluntarily? And if so, let us see whether there is any direct evidence against the accused persons?

22.In the instant case, after perusal of the entire evidence-on-record, it is seen that P.W.1 is the informant and P.W.9 is the husband of the informant, who is the victim of this case. P.W.2 Namita Das is the sister-in law of P.W.1. Further, it is seen P.W.1 is

the nephew of P.W.3/Pradip Rajbongshi. Further, it is seen P.W.1 is the daughter-in-law of P.W.4 and P.W.5. Further, it is seen P.W.1 is the cousin brother of P.W.10. As such, it is found that P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.9 and P.W.10, all these prosecution witnesses are close or distant relatives. Let's have a glance on the following germane facts finding out from the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.9 and P.W.10 respectively, for consideration.

a. P.W.1/ the informant Rupa Das deposed in her examination-in-chief that on 29.04.17 at about 2:30 a.m., at night, when she went to watch bihu at a naamghar near their house then the accused persons Haren Talukdar, Girish Talukdar and Nipon Talukdar restrained her and her husband on the road and assaulted both of them. P.W.1 further stated that her husband was dragged to the courtyard of Haren Talukdar and they locked the gate of their boundary. She created commotion holding the gate. She saw through the gate that the hands and legs of her husband were tied up by the accused persons and hit him with an iron rod, piece of wood by the accused persons and also poured water on his body. On hearing her hue and cry two/four people and some other co-villagers came from bihu-toli. The accused persons did not open

their gate. After that her father and sister went to the Mukalmua P.S. and then police rescued her husband. The police of Doulashal outpost came to rescue her husband upon calling over phone from Mukalmua P.S. and the police took her husband to the medical. After that, she lodged ejahar. Exhibit 1 is the ejahar and Exhibit 1(1) is her signature.

b. During cross, P.W.1 deposed that she could not recollect who came first on hearing commotion. But, Trailukya Rajbongshi, Pradip Rajbongshi, Nilakanta Baisya etc. came. No neighbours came. P.W.1 denied the defence suggestion that at 2:30 a.m., the bihu function was ended. P.W.1 further denied the defence suggestion that her husband involved in various unsocial work after drinking alcohol and he used to trespass into the houses of other people's house and for that reason bicher was held. P.W.1 further stated that accused Nipon Talukdar is a member of V.D.P. and he came from his V.D.P. duty before half an hour of occurring the incident. P.W.1 further denied the defence suggestion that her husband entered into the house of accused Nipon Talukdar and Nipon saw the same when coming back from his duty. P.W.1 further denied the defence suggestion that when her husband tried to run-away then Nipon Talukdar caught hold him and there was hand-to-hand struggle. P.W.1 further

denied the defence suggestion that she was not with his husband and she arrived on hearing commotion. P.W.1 further denied the defence suggestion that she did not state before police that the accused persons beat her and that her father and sister went to Mukalmua P.S., which is situated at a distance of 3/4 K.M. from her house. P.W.1 further stated that she did not know whether there is a case lodged on her husband by the accused person. P.W.1 further denied the defence suggestion that her husband trespassed into the house of the accused in order to commit theft, that as because the accused persons lodged a case hence, she lodged this false case, that the accused persons did not assault her and her husband and that she deposed false evidence. She lodged ejahar on the day of occurrence.

c.P.W.2 namely Namita Das deposed that informant is her sister-in-law. On 29.04.17 at about 2:30 A.M., her brother and sister-in-law's children went to attend a bihu function. There was hue and cry, after her sister-in-law went. On hearing hue and cry, she went to road and saw that her sister-in-law was crying and many people gathered there. She saw that accused took her brother and beat him. VDP party came there. Then, the people gathered there and they raised hue-cry. But accused did not leave

her brother. The accused also locked the gate of their premises. Because, they did not leave his brother and hence, she along with Anil Das went to Mukalmua P.S. From Mukalmua P.S. O/C rang up to Daulashal P.S. Police arrived to the P.O. and asked the accused to open the door. But they did not open the door. When police threatened of firing, accused opened the door. Her brother was lying on ground with leg and hand tied up. Her brother was then taken to Doulashal P.S. and from there he was taken to Nalbari Civil Hospital. Accused was jealous of her brother and they used to compete with his family. Accused involved in quarrel with some other person and they thought that the quarrel took place due to her brother and hence they assaulted him. Her brother was admitted in S.M.K. Civil Hospital for 7/8 days. Her brother got hurt in head, nose, chest and leg. Police enquired about the incident.

d. During cross, P.W.2 deposed that when she went to the P.O., there were gathering of 70/80 people. Mulkanta Das, Lohit Das, Pankaj Talukdar, Jayanta Rajbongshi, Pradip Rajbongshi, Trailokya Rajbongshi were present there. There were many other people. Pradip Rajbongshi is uncle of her sister-in-law Rupa Das. She denied the defence suggestion that she did not state before police that his brother and sister-in-law went to bihutoli to take their children.

She denied the defence suggestion that she did not tell before police that in the house of Haren Talukdar accused beat her brother Deep Das. She denied the defence suggestion that she did not tell before police that he informed the matter to his father and then he along with his father informed to Mukalmua P.S. She denied the defence suggestion that she did not tell before police that when O/C of Mukalmua P.S. called Doulashal P.S., then police arrived at the P.O. She denied the defence suggestion that she did not tell before police that on threatening of firing the accused opened the gate. She denied the defence suggestion that she did not tell before police that her brother's hands and legs were tied up. She denied the defence suggestion that she did not tell before police that the accused persons quarreled with some other people. She denied the defence suggestion that she and her father did not went to Mukalmua P.S. She denied the defence suggestion that she told falsely that when police threatened of firing, then the accused opened the door. She denied the defence suggestion that she did not tell before police that her brother got hurt in head, nose and chest. She denied the defence suggestion that her brother after drinking alcohol engaged himself in some unsocial activities. She also denied the defence suggestion that there were some 'public-bichar' regarding entry

of his brother in some other's house. She admitted that accused Nipon Talukdar was on VDP duty. She denied the defence suggestion that when accused Nipon Talukdar during VDP duty, saw her brother entering in his shop, then Nipon Talukdar shouted as "chor chor" and her brother ran away. She denied the defence suggestion that when Nipon Talukdar caught hold of her brother, her brother was unable to run and they both fell down and the pushed each-other. She denied defence suggestion that on hearing scream of Nipon Talukdar, other accused and they came to the P.O. She denied defence suggestion that Haren Talukdar filed theft case after calling police. P.W.2 further stated that no theft case was happened against her brother. She denied defence suggestion that her sister-in-law lodged false case in order to save from that case. She denied defence suggestion that her brother got hurt due to that hand to hand struggle.

e. P.W.3 Pradip Rajbongshi deposed that on 29.4.17 at about 2:30 A.M., he was on VDP duty at Kaldi village. On that day, there was open ceremony of bihu function in their village. He got to know that hue and cry took place at the house of Harendra Nath Talukdar and informant's husband Deep Das was tied-up at the courtyard of Harendra Nath Talukdar. They informed the police and Deep Das

was taken by in-charge of Daulashal P.S. Police seized the clothes of Deep Das in front of him. Exhibit 2 is seizure list. Exhibit 2(1) is his signature. Material Exhibit A is the clothes seized by police. He further deposed that he did not know the reason of occurrence.

f. During cross-examination P.W.3 deposed that at the time of occurrence of incident, function was going on. People were coming and going. He heard from the people going from the function. 5 numbers of people were there with him. There were many people in the courtyard of Haren Talukdar. Exhibit 2 is the seizure list. He forgot on which date and where he signed. Afterwards he heard police seized the materials. When he signed in Exhibit 2 he did not know what was written on it. He denied the defence suggestion that he deposed in front of police that Deep Das went to commit theft. Deep Das is his nephew-in-law and the informant is his nephew. He denied the defence suggestion that Deep Das was not tied in the courtyard of Harendra Nath Talukdar.

g. P.W.4 Jayanti Das deposed that informant is her daughter-in-law. Incident took place on 29.4.17 at around 12:00 – 1:00 A.M. At that time her son and daughter-in law went to attend a bihu function. Then, she heard crying. On coming out she saw that

Harendra Nath Talukdar and outside of her gate Rupa was crying. Inside the grill of Harendra Nath Talukdar's house accused persons were beating her son and blood also oozing out. P.W.4 further stated that though she wanted, she was not allowed to enter there and her son got senseless. VDP party came but accused persons did not allow them to enter. They forcefully entered. Her husband informed to Mukalmua P.S. Later on, police came from Daulashal P.S. When police tried to enter but the accused did not open the grill, then when police threatened of firing, accused opened the grill. Police took his son to Mukalmua P.S. first and after that he was taken to Nalbari SMK Civil Hospital. Her son stayed there for 3/4 days as an indoor patient. Her daughter-in-law lodged the case. Police interrogated them.

h. During cross-examination P.W.4 denied the defence suggestion that her daughter-in-law did not go to watch bihu function. She upon hearing shout went there. There was no family member in the house of Haren Talukdar. She saw VDP party people inside the grill. Pradip Das, Pradip Rajbongshi, Trailokya Rajbongshi and some ladies were there. She denied the defence suggestion that she did not state before police that Rupa Das was lying and crying. She denied the defence suggestion that she did not

state before police that her son was bleeding. She denied the defence suggestion that her son is engaged in various anti-social deeds and he used to enter into other's residence on drinking alcohol. Accused Nipon Talukdar is member of VDP. She denied defence suggestion that at the time of incident accused Nipon Talukdar was in VDP duty. She denied the defence suggestion that after coming from duty Nipon Talukdar saw her son in their house and on shouting "chor-chor" her son was trying to ran away and Nipon Talukdar caught hold him and they then pushed each-other and Nipon talukdar created commotion and then he and his daughter-in-law proceeded there and other people also gathered in the courtyard of Haren Nath Talukdar and so they closed the grill. She denied the defence suggestion that the fact of beating Deep Das and blood oozing from his mouth is false. She denied the defence suggestion that the accused persons did not beat her son. She denied the defence suggestion that his son got hurt in his nose, due to pushing each-other with Nipon Talukdar. She denied the defence suggestion that police came on calling Haren Talukdar. She denied the defence suggestion that she falsely deposed that when police told of firing then only accused opened the door. Accused gave a case against her son. She denied defence suggestion that on the day of

incident her son entered at the house of the accused.

i. P.W.5 Anil Das deposed that informant is his daughter-in-law. The incident took place on 29.4.17 at about 2:30 a.m. He was sleeping at the time of incident. Bihu function was going on in their village. His son Deep Das and Rupa Das went to see bihu function at night at 2:30 a.m. Suddenly, he heard commotion of his daughter-in-law and he went to the house of Haren Talukdar and Girish Talukdar. He went and saw there was lock in the gate Haren Talukdar and inside gate his son Deep Das was tied up in the courtyard and Haren talukdar, Girish Talukdar and Nipon Talukdar stabbed him as a result he starts bleeding. He told them not to beat his son. His son's dress got torn up. On not opening the gate he along with his daughter went to Mukalmua P.S. in winger vehicle. Mukalmua P.S. rang up to Daulashal P.S. After some time i/c Pulakesh Rabha of Daulashal P.S. came and told to open the gate but they did not open the gate. When Pulakesh Rabha threatened to fire then accused persons opened the gate. Police entered and opened the rope with which his son was tied up and took his son to Mukalmua medical. Police seized the torn clothes of his son stained with blood. He saw two pieces of green woolen shirt, one white T-shirt

and one Khaki-pant in court that day. Exhibit 2 is the seizure list and Exhibit 2(2) is his signature. Material Exhibit A is those clothes. Police entrusted their son to them and they admitted him in United Hospital for treatment.

j. During cross-examination, P.W.5 deposed that on hearing commotion of his daughter-in-law, he went out. He saw Pradip Rajbongshi and Rohit Das. There was no one inside except the accused persons. He denied the defence suggestion that he did not tell before police that the three accused persons tied his son with rope. He denied defence suggestion that he did not told before police that he saw blood in face, hand and leg of his son. He denied the defence suggestion that he did not state to the police that he did not see jathi at the hand of Haren Talukdar and lathies at the hand of other accused. He denied the defence suggestion that he did not tell police that he went to Mukalmua Thana with his daughter and then police asked to open the lock and then i/c threatened of firing and then only they opened the door. He denied defence suggestion that he did not tell police that he opened the rope and his son was taken to Mukalmua Thana. He denied the defence suggestion that his son was engaged in various anti-social activities. He denied defence suggestion that he deposed falsely that accused

persons tied his son with rope, his son was beaten, blood oozing from his face, hand and leg and he went to police station with his daughter and accused were not opening the gate and when i/c told of firing then only they opened the door and rescued his son. He declined the defence suggestion that he did not saw the incident as he was sleeping. He denied defence suggestion that his son after drinking alcohol try to enter to other people's house and for that reason many public bichar held. Nripen Talukdar on the day of occurrence kept vigilance with VDP. He declined the defence suggestion that on the day of incident, Nripen Talukdar after doing guard duty at night at 2.30 a.m., while he entered to his house, then seeing Deep Das inside his house he shouted as 'chor-chor' and then his son tried to run away, then Nripen Talukdar caught hold him and his son got very tiny injury due to hand-to-hand struggle. He further declined the defence suggestion that on hearing Nipon Talukdar's shout Haren Talukdar and Girish Talukdar came to the courtyard and they and other people from bihu function also came there. He declined the defence suggestion that on seeing too many villagers at the courtyard of Nripen Talukdar they locked the gate. He declined the defence suggestion that the police arrived on calling by the accused persons and V.D.P. party. Accused persons also lodged case regarding the

same incident. On the day of the incident, police seized clothes of his son from the house of Haren. He declined the defence suggestion that after 4 days from the day of occurrence police seized the clothes. He declined the defence suggestion that they handed-over old clothes to the police. He declined the defence suggestion that he deposed falsely for the sake of his son.

k. P.W.9 Dip Kumar Das deposed that on 29.4.17 at about 2:30 a.m., the occurrence took place in Kaldi village. He along with his wife Rupa Das was going to watch bihu function. Bihu function was organized in Kaldi village. Nipon Talukdar caught hold him in front of the house of Haren Talukdar. When he asked as "Kon oii" (who is), Nipon Talukdar told that he will be killed today. Then, Girish Talukdar caught hold of his neck. P.W.9 further stated that Haren Talukdar assaulted him with a taangon and took him to the courtyard inside the grill and closed the grill. P.W.9 further stated that Girish Talukdar beat him with wooden lathi on his head and as he band his head he got assaulted on his back. P.W.9 further stated that Nripen beat him with his hands on his legs. Haren Talukdar stabbed him anywhere with a lathi length measuring 1½ feet. Haren Talukdar let him tied with rops. Haren and Girish tied him with ropes and Nripen caught hold him. P.W.9 further

stated that he created commotions and shouted as "marile oii" (beaten). At the entrance gate, VDP people gathered and asked to open the gate, but the accused did not open the gate. Then police and VDP people rescued him. Blood oozed from his nose and got hurt on his head, hand and chest. Police took him to the Mukalmua P.H.C. P.W.9 further stated that he was brought to Doulashal P.S. to Mukalmua P.S. On next day, police entrusted him to his father. His father admitted him in Nalbari United Nursing Home. Ext.2 is the seizure list. P.W.9 further stated that he heard that his wife created commotions outside. His wife was also assaulted. His wife lodged ejahar.

1. During cross, P.W.9 denied that at the time of occurrence, the bihu fuction was ended. P.W.9 denied that people were returning home due to slight raining. P.W.9 further stated that at the time of occurrence, he knew existence of his wife only and did not know about other people. P.W.9 further stated that he created commotions when he was taken by pulling. No other person came inside. P.W.9 denied that he did not state police that his neck was caught hold, that Girish Talukdar beat him with piece of wood like boat-oars. P.W.9 further denied that he did not state police that Nipon Talukdar beat him with hands, legs and Haren

Talukdar beat him with sharp piece of wood', 'that VDP people came and told open the gate, open the gate', 'that blood oozed from his nose, hands, legs, chest and head', 'that his wife running by shouting', 'that his wife was beaten'. P.W.9 further denied that at the time of occurrence he created uproar. P.W.9 further denied 'that the accused Nipon Talukdar found him after doing his VDP duty', 'that he tried to escape as Nipon Talukdar shouted as chor-chor', 'that he and Nipon Talukdar fell when Nipon Talukdar caught him hold and as such he got injury, 'that many people gathered when Nipon Talukdar shouted and hence Haren Talukdar locked their gate.' P.W.9 further denied 'that police came on calling by Haren Talukdar over phone', 'that he did not know whether Girish Talukdar lodged any F.I.R. against him', 'that the accused persons did not assault him', 'that his wife was not with him'. P.W.9 further stated that police seized his cloths and took those in the police station. P.W.9 further denied 'that he trespassed into the house of the accused with ill-motive', 'that he was not assaulted'.

m. P.W.10 Nayan Kumar Das deposed in his examination-in-chief that the occurrence took place on 29th April, 2017 at about 2-30 A.M. at night. There was bihu-function in their village and he was the secretary. Suddenly, there was incident of

running by people towards accused Haren Talukdar's house as the Dip Das was confined and assaulted in the house of the accused. He was husband of Rupa. Next day he went to Doulashal out post for taking information. Police seized wearing cloth. Police seized black colour pant and shirt of Dip Das. P.W.10 further deposed that he saw the same in the court on the day of his deposition. Ext. 2 is the seizure list and Ext. 2(1) is his signature.

n. During cross, P.W.10 deposed that Dip Das is his uncle's son. P.W.10 denied that he did not state before police that he was the secretary and incident of running by people. P.W.10 denied 'that it was false that Dip Das was assaulted in the house of the accused', 'that it was false that in the morning, he went to police station. He gave signature. The date 2/5/17 and the time was mentioned in the seizure list. There was also mentioned about the cloths. He gave signature. The A.S.I. Lalchan Ali Ahmed had seized the said things accordingly as shown by injured person Dip Das. P.W.10 denied that he adduce false evidence as Dip Das is his uncle's son.

23. In the instant case, the evidence adduced by P.W.1 as regards to the offence alleged to be committed by the accused persons is corroborated with the

Ext.1/F.I.R. and thereby the allegation leveled against the accused persons in the Ext.1 is substantiated by the evidence of P.W.1.

24. From the perusal of the above evidence-on-record, it is seen that P.W.1. and P.W.9 have alleged to have restrained in the alleged incident by the present accused persons, Further, P.W.9/victim has alleged to have confined and injured in the alleged incident by the present accused persons, which is also clearly narrated by P.W.1./informant in the FIR. After going through the aforesaid evidence-on-record, it is found that P.W.1 and P.W.9 being the vital witnesses have clearly alleged that the accused persons had restrained, confined and injured P.W.9 and as such, voluntarily caused hurt to him, which is further corroborated by the evidence of P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, and P.W.10.

25. Having a prevue at the offences enumerated in section 341, 342 and 323 I.P.C., the incriminating facts which satisfy the ingredients of these three sections are come to light from the depositions of that P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.9 and P.W.10, who are the close/distant relatives of the same family. The evidence of all of them is found to be corroborative to each other in material particulars. However, as all of them related to each other, hence,

it is to find out whether there is any independent witness to the alleged incident? And if so, let us scrutinize their evidence to arrive at a just and proper decision.

26. It is found that P.W.6, P.W.7 and P.W.8 are the independent witnesses. Let's have a glance on the following germane facts finding out from the evidence of P.W.6, P.W.7 and P.W.8 for consideration:

o. P.W.6 Jagadish Baishya deposed that the incident took place on 29.4.17 at around 2-2:30 p.m. at day time. He went to watch bihu-function at Kaldi village. He heard shout. Deep Das was tied with a rope at the house of Haren Talukdar. He saw he was lying and also saw blood oozing from his face. He did not see anything else. At that time, he went inside. Then, Haren Talukdar sent them out of the house and locked the gate. They informed the police. Police interrogated the matter. Police came and took Deep.

p. During cross-examination, P.W.6 deposed that he was not alone. There were many people. He was not asked anything. He denied the defence suggestion that he did not state before police that Deep Das was lying on the ground. He denied the

defence suggestion that he did not state before police that he saw blood in the face of Deep.

q. P.W.7 Pankaj Talukdar deposed that the occurrence took place on 29.4.16 at about 2:30 a.m. He went to watch bihu function in Kaldi namghor. He heard shout at the house of Haren Talukdar, he went and saw that accused persons Haren Talukdar, Nipon Talukdar and Girin Talukdar tied up Deep Das at the courtyard of Haren Talukdar. He saw from outside of the gate of Haren Talukdar that Deep Das's mouth was bleeding. Gate was locked. Police came and rescued Deep Das. Police interrogated him.

r. During cross-examination, P.W.7 deposed that the bihu function ended when he came back from the function. When he was coming from bihu function, it was already over and at that time, it was raining and the people were returning to their house from the function. While he reached at the house of Haren Talukdar, there were already 20/25 nos. of people. He could not remember the names of those people. He denied the defence suggestion that he did not state before police that Haren Talukdar, Nipen Talukdar and Dipen Talukdar tied Deep Das. He denied the defence suggestion that he did not state before police that Deep Das's mouth was bleeding. P.W.7 further stated that he did not see any other complaint regarding Deep Das's

trespassing into other person's house. He denied the defence suggestion that there is complaint against Deep Das regarding Deep Das's trespassing into other person's house. Police interrogated him on the next day of the incident. Deep das's father Anil Das took him to the police station next day. He denied the defence suggestion that he deposed false evidence that he went on hearing halla, that he saw Deep Das was tied-up in the house of the accused and that his mouth was bleeding. He denied the defence suggestion that he deposed false evidence for the sake of Deep Das and Anil Das.

s. P.W.8 Lohit Das deposed that he knew both the informant and the accused persons. The occurrence took place on 29.4.17. He was coming back home from bihu function at 2-30 A.M. While coming, he saw that Rupa was crying in front of the house of the accused. She said that in the courtyard of the house of accused, they are beating her husband. He saw that the husband of informant was tied up with a rope inside the closed grill of accused person's house. VDP party's Ram Das, Jagdish Baishya and Pradip Rajbongshi came after guarding. Police came from Doulashal and rescued the husband of informant. Police interrogated him and seized two dresses namely T-shirt and Dungaree. Exhibit 2 is

the seizure list and Exhibit 2(3) is his signature.

t. During cross-examination P.W.8 deposed that he only saw Rupa Das. Later on, when VDP party arrived, many people came to the place of occurrence. He denied defence suggestion that he did not state before police that Deep Das was tied up and was lying on the ground. He denied defence suggestion that he did not state before police that there was blood in the body of Deep das. He on the day of deposition saw the dresses which he saw in the body of the injured person. He was called to the police station to take his signature in Exhibit 2. Exhibit 2 was already written while he was putting his signature. He put his signature in Exhibit 2. He addressed Dip das as elder brother. He denied defence suggestion that Deep Das is his uncle's son. He denied the defence suggestion that he deposed falsely. He denied the defence suggestion that he stated falsely that he saw blood in the body of the injured person.

27. After meticulous scrutiny of the above evidence of the independent witnesses viz. P.W.6, P.W.7 and P.W.8, it is found that P.W.6 stated that the incident happened in day time at 2-2:30 p.m., which is contradictory to the fact stated by other Prosecution Witnesses. However except it, P.W.6 corroborated

some other substantive facts stated by other Prosecution Witnesses. P.W.6, P.W.7 and P.W.8 all stated to have clearly seen the husband of informant i.e. Dip Das was tied up with a rope inside the closed grill of accused person's house. Thus, it is found that P.W.6, P.W.7 and P.W.8 all stated to have seen the occurrence of restraining and confining Dip Das and also stated to have seen injury on his body, as all of them stated that they saw Deep Das's mouth was bleeding at the house of Haren Talukdar. As such, this court finds that prosecution story has the ring of truth.

28. At last, let's have a look on the evidence of the investigating officer i.e. P.W.11.

u. P.W.11 Lalchan Ali Ahmed deposed in his examination-in-chief that on 02.05.2017, Rupa Das filed a written FIR in the Doulasal OP. He was endorsed with the task of investigation. He visited the place of occurrence, recorded the statement of the witnesses drew a sketch map of the place of occurrence. Ext. 3 is the sketch map of the PO and Ext 3(1) is his signature. During the course of investigation, he seized (i) two pieces of shirt green colour, (ii) one white t-shirt (iii) one brown colour dangri in presence of witnesses. Ext. 2 is the seizure list and Ext. 2(6) is his signature. The injured was

sent to medical. He collected the medical report of the injured from Mukalmua medical. Upon completion of investigation, he filed charge-sheet against accused persons namely Harendra Talukdar, Girish Talukdar and Nipon Talukdar u/s 341/342/427/323/34 IPC. Ext. 4 is the charge-sheet and Ext. 4(1) is his signature.

v. During cross-examination P.W.11 deposed that the FIR has been received on 02.05.2017. As per FIR, the date of occurrence is on 29.04.2017. The delay in filing the FIR has not been explained before him by the complainant. He prepared the seizure list on 02.05.2017. It is mentioned in the seizure list that the place of seizure is the place of occurrence. He admitted that he made correction regarding date of seizure and place of seizure in the seizure list. He had not put his signature in the seizure list regarding correction of date of seizure and place of seizure. He seized the articles from the Place of Occurrence as shown by the injured is mentioned in the seizure list. He had mentioned in the seizure list that he seized vide No. 1 two pieces of torn shirt of green colour and check containing blood stained. He had not sent the seized blood stained or other cloths to F.S.L. for ascertaining whether it was blood stained or other colour. He denied defence suggestion that he obtained the signature of the

seizure witnesses in the police station. As per Sketch map, the letter "G" indicates the residence of Ananta Talukdar. He had not recorded the statement of Ananta Talukdar. The complainant Rupa Das did not state before him that she was assaulted by the accused persons and that her father and sister went to Mukalmua P.S. PW Namita Das did not state before him that her elder brother and elder sister-in-law went to bihu toli to bring the children. She also did not stated before him that she went home to inform her father and she and her father went to Mukalmua PS. She also did not state before him that after the O.C. of Mukalmua P.S. directed over telephone, the police of Doulasal O.P. came. She also did not state before him that the gate was opened when the police threatened to fire. P.W. Namita also did not state before him that her elder brother's hands and legs were tied and that accused engaged into quarrel with other persons. P.W. Namita did not state before him that her elder brother sustained injuries on his head, nose and eye. He recorded the statement of Pradip Rajbongshi. Pradip Rajbongshi stated before him that he could know from Haren Talukdar that Dip Das went to their home for committing theft. He denied defence suggestion that he seized the articles in the police station. He recorded the statement of Jayanti Das. She did not state before

him that Rupa Das fell down and was crying and that her son was bleeding from his person. He recorded the statement of Anil Das. He did not state before him that the three accused persons tied his son with a rope and assaulting him and that he saw blood in the legs and hands of his son. He also did not state before him that he saw spare (jathi) in the hands of Haren and that there was lathi in the hands of co-accused. He did not state before him that he along with his daughter went to police station. He also did not stated before him that after arrival of police along with O.C. and when police threatened to fire, then, the lock was opened. He recorded the statement of Jagadish Baishya. He did not state before him that he saw Dip Das lying on the ground and that Dip Das was bleeding from his face. He recorded the statement of Pankaj Das. He did not state before him that on hearing hue and cry, he came to the place of occurrence and that the accused persons tied Dip Das and that Dip Das was bleeding from his face. He recorded that statement of Lohit Das. He did not stated before him that he saw Dip Das was lying after he was tied and that Dip Das was bleeding from his person. He recorded the statement of Dip Das on 14.05.2017. He did not state before him that Girish Talukdar gagged his neck and that he was assaulted by means of a wooden piece like botha. He did not state before

him that Nripen Talukdar assaulted with hand and leg and Haren Talukdar stabbed with pointed wooden piece. He did not stated before him that VDP persons came and asked them to open the gate and that he was bleeding from his nose., hand, feet, chest and head. He also did not state before him that his wife went running after raising hulla. He also did not state before him that the accused also assaulted his wife. He recorded the statement of P.W. Nayan Kr. Das. He did not state before him that he was the Secretary of the Bihu committee and that on hearing hulla, the public ran dither and hither. He did not state before him that accused assaulted Dip Das in the residence of Haren Talukdar and that he accompanied Dip Das to police station on the next morning. He had no knowledge regarding accused Girish Talukdar filed a case upon Dip. There are large numbers of cases between both the sides. He denied defence suggestion that he did not investigate the case properly.

29. From the above, it is found that, nothing comes out from the evidence of the investigating officer which could be a reason of disbelieving the present case. In the case at hand, although the investigating officer/P.W.11 has admitted in cross that Rupa Das/P.W.1, Namita Das/ P.W.2, Jayanti Das/P.W.4, Anil Das/ P.W.5, Jagadish Baishya/P.W.6, Lohit Das/

P.W.8, Dip Das/P.W.9 and Nayan kumar Das/P.W.10 did not tell him some facts in the like manner, but the core of the fact remained intact that the trustworthiness of these witnesses does not stand arraigned merely by proving contradictions on record because all of them reiterated the same facts, which cannot be disparaged, notwithstanding the truth of lingering some minor contradictions. As such, their evidence cannot be cast-off as a whole.

30. After discussing the evidence of all the witnesses as above, it is found that the prosecution witnesses corroborate each other on the point that the accused persons and the victim were present at the place of occurrence at relevant time of the incident and the victim was restrained and confined by them and there were injuries on the body of the victims.

31. The learned defence counsel has argued that the evidence of the close/distant relatives of the informant/victim could not be believed as they may be called as interested witnesses and as such, their evidence may be contaminated. To this contention, let's take the help of Hon'ble Apex court's observations. In **State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182 at page 81** the Hon'ble Apex Court observed:

"19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a

related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinising the evidence of the interested witness."

32.As such, this court has deeply scrutinized the evidence of all the close/distant relatives of the informant/victim. In the cross of these related prosecution witnesses, though the defence measurably tried to shake their credit, nothing is come out which can make the prosecution story unbelievable. As such, it is found that the prosecution story has hints of truth. As such, this court does not find any reason to discard their evidence.

33.From perusal of the corroborating evidence of the prosecution witnesses, it is found that they portrayed an unblemished picture that the accused persons obstructed and confined Dip Das i.e. P.W.9 voluntarily and it prevented him from proceeding in certain direction in which he had the right to proceed. The ingredients of section 341 and 342 I.P.C. are clearly satisfied in the above discussed

incident against the accused persons. It is evident that the victim/P.W.9 was restrained and confined by the present accused persons, as it is clear from the corroborating evidence of the prosecution witnesses including the independent eye-witnesses of the alleged incident. The evidence of prosecution witnesses revealed the names of accused Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar of committing offence of wrongful restraint and wrongful confinement and they could be correctly brought into the purview of Section 34 I.P.C. As such, the accused Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are held guilty of offence U/S 341/342/34 I.P.C. beyond all reasonable doubt.

34. Coming to the allegation u/s 323 IPC against the accused persons. Generally, to substantiate the allegation of injury on the body of a victim as a result of assault by any accused, the medical report exhibited by the prosecution side and the oral evidence of doctor take a significant part to prove allegation of injury on the body of the victim and if prosecution fails to adduce medical evidence, it casts shades of doubt to the allegation of injury leveled against any accused. In the present case, the prosecution side failed to summon the M/O of this

case and the injury report of the victim was also not exhibited.

35. The defence counsel has contended that since prosecution side failed to summon the M/O of this case and the injury report of the victim was also not exhibited, hence, the accused persons cannot be convicted for the offence U/s 323 IPC for voluntarily causing hurt. However, in the case **(1996) 1 RCR (Cri) 702 (P & H) Hon'ble High Court** inter alia held as under:

"It is not a sinequanon that in cases of simple hurt, a medical certificate must be forthcoming. The facts of each cases have to be determined on their own merits. Herein fist blows and slaps are alleged to have been given.....In face of that fact it is not necessary that medical evidence must also be forthcoming. The medical evidence is corroborative and not substantive evidence".

36. This court put emphasis on the evidence of the injured person/victim i.e. P.W.9 as such type of evidence has special status in the eye of law. When there is a strong probability that the victim got hurt and it is alleged by the victim that the accused persons have caused the hurt to him/her, then there is no room for the contention. In the case of **State of Uttar Pradesh vs Naresh and others., (2011) 4 SCC 324**, the Hon'ble Supreme Court held as follows,

"The evidence of an injured witness must be given due

weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of the injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies.”

37. The above ratio is pointer to the fact that testimony of an injured witness comes up with an inbuilt guarantee of its truthfulness unless it is beset with major contradictions and discrepancies. It appears from the evidence of P.W.9 as he clearly stated that Girish Talukdar caught hold of his neck, Haren Talukdar assaulted him with a *taangon*, Girish Talukdar also beat him with wooden *lathi* on his head and as he band his head he got assaulted on his back, Nipon beat him with his hands on his legs. Haren Talukdar assaulted him anywhere with a *lathi* length measuring 1½ feet. Haren Talukdar let him tied with ropes. Haren and Girish tied him with ropes and Nipon caught hold him. P.W.9 further stated that

he created commotions and shouted as "maarile oii" (beaten). The prosecution witnesses more particularly, the P.W.1, P.W.2, P.W.4 and P.W.5 deposed that they have seen the accused persons assaulting the victim/P.W.9.

38. Thus, in the instant case though the prosecution neither examined the M.O. nor exhibited the medical report, which may more clearly prove the facts of the victim/P.W.9 of being injured at the hands of the present accused persons, yet, from the forgoing evidence of P.W.1, PW2, P.W.4 and P.W.5, it is found that all have stated that Dip Das i.e. the victim/P.W.9 was assaulted by the accused persons and that they saw the accused persons assaulting the victim/P.W.9. Further, fortifying the fact of causing hurt to Dip @ Deep Das, P.W.6, P.W.7 and P.W.8 all stated that they saw Dip @ Deep Das's mouth was bleeding at the house of accused Haren Talukdar. As such, it is found that they saw injury on Dip @ Deep Das's mouth. From the evidence of P.W.6, P.W.7 and P.W.8, it is found that they did not see the incident of assaulting, but saw incident of restraining, confining and the injury of Dip Das, at the house of the accused. In cross-examination of these witnesses, defence could not discredit them and it is clear that their evidence is not beset with any kind of major contradictions and discrepancies. In fact, their

evidence is a strong support to the prosecution story, which pours more light to the incident and substantively corroborates the prosecution story against the three accused persons as narrated by the informant. As such, it can clearly be said that the injury so caused to Dip @ Deep Das was inflicted by the present accused persons.

39. There is no material on record which suggests that the informant, victim or the eyewitness were having any grudge against the accused persons to falsely implicate them.

40. It is settled principle that the nature of hurt that may be punishable u/s 323 I.P.C may not be always of such a nature which may require medical examination. Oral evidence of the incident is sufficient to prove the charge. Therefore, while it may be advantageous to have a medical report or certificate to prove a charge u/s 323 IPC, it is not mandatory to have such a medical certificate for proving such charge. It may also be proved by oral evidence of the witnesses. This Court finds that there is consistent oral evidence on record adduced by the prosecution witnesses against the present accused persons, which can clearly prove the charge u/s 323 IPC beyond all reasonable doubt against them. The prosecution witnesses including the victim have been

thoroughly cross- examined regarding the charge u/s 323 IPC and their evidence remained steady. The little divergences in the evidence the prosecution witnesses did not hamper the merits of this case.

41. This Court has carefully scrutinized the evidences of the witnesses, which reveal the facts with regard to assault committed to the victim Dip @ Deep Das and this Court has found sufficient evidence of injury sustained by him. The evidence of prosecution witnesses revealed the names of accused Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar of committing offence of simple hurt and they could be correctly brought into the purview of Section 34 I.P.C. As such, the accused Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are held guilty of offence U/S 341/342/34 I.P.C. beyond all reasonable doubt.

42. Situated thus, the points for determination no. (I), (II) and (III) are decided in affirmative and decided against the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar.

43. To decide the point for determination no. (IV), this court has gone through the entire evidence on record for finding out the relevant facts regarding the allegation of mischief under section 427/34 of I.P.C.

44. From the evidence adduced by the prosecution witnesses, it is found that not a single witness adduced that the accused caused wrongful loss to the victim by diminishing its value at least to the amount of fifty rupees as depicted under section 427 of I.P.C.

45. Thus, it appears that the prosecution side could not satisfy the ingredients of the offence of mischief alleged to have committed by the accused persons. The prosecution side has failed to bring into light the ingredients of section 427/34 of I.P.C. To hold a person guilty under Section 427 I.P.C., it has to be proved by the prosecution that the accused had the intent to cause or knowing that he is likely to cause wrongful loss or damage to any person and thereby causes destruction or any other change to the property of the person. In the instant case, the allegation made in the F.I.R by the informant was that the accused persons snatched-away the money-purse containing Rs.5000/-, identity card of job, driving-license, ATM Card etc. and also snatched-away one torch-light and mobile-phone of the victim. But, in the prosecution evidence, there was no any deposition/proof of diminishing the value or utility of any property of the victim. The informant in his evidence did not state about any intent or knowledge of the accused likely to cause wrongful loss or

damage to the destruction of any property. None of the witnesses deposed any single materials u/s 427/34 IPC, against the accused which is likely to cause, wrongful loss or damage by injuring any property by their act. Their evidences do not reveal any ingredients of mischief against the accused persons. As such, the prosecution has totally failed in establishing the guilt of the accused persons under Section 427/34 of I.P.C. beyond all reasonable doubts, thereby making them not guilty under the said Section.

46. Thus, nothing comes into evidence-on-record, which could substantiate of causing any damage to the property of the informant or victim. In view of above, in the considerate opinion of this court, it cannot be said that the accused persons committed mischief and thereby caused loss to the informant. As such the accused persons are held not guilty of offence u/s 427/34 IPC.

47. Hence, the points for determination no. (IV) is decided in negative and decided in favour of the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar.

48. Having considered the matter in its entirety, in the light of the above discussions, this court is of the view that the prosecution has succeeded in

establishing the offence u/s 341/342/323/34 I.P.C. against the present accused persons beyond all reasonable doubts and as such, **the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are convicted u/s 341/342/323/34 I.P.C.** But prosecution could not prove the offence against the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar u/s 427/34 I.P.C. beyond all reasonable doubts and as such, **the accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are acquitted from the charge u/s 427/34 I.P.C.**

49. In the present case, it is seen that the manner of committing the offence is not at all desirable in a civilized society. Hence, considering the facts and circumstances of the present case and the proof of facts beyond reasonable doubt against the accused persons, this court does not find it a fit case for applying the provision of section 360 of the Code of Criminal Procedure nor the benefit of the Probation of Offenders' Act, 1958 can be provided to the convicted persons.

50. This court has heard the convicted persons on the point of sentencing u/s 248(2) of the Code of Criminal Procedure. The convict Harendra Nath Talukdar stated that he is 59 (fifty nine) years old.

The convict Girish Talukdar stated that he is the sole bread-earner of his family. The convict Nipon Talukdar stated that he is a college-going student. As such, they seek mercy of the court or seek lenient punishment.

51. Statement of the convicted persons regarding proposed sentence is considered and as such this court thinks it fit to impose lenient punishment on them.

ORDER

52. All the present accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are held guilty u/s 341/34 of the Indian Penal Code. Considering the plea of leniency, all the convicts viz. Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are sentenced to pay fine of Rs. 400/- (Rupees four hundred only) each, in default to suffer simple imprisonment for 10 (ten) days for committing offence under section 341/34 of the Indian Penal Code.

53. The accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are further held guilty u/s 342/34 of the Indian Penal Code. However, considering the plea of leniency, hereby, they all are sentenced to pay a fine of Rs. 700/- (Rupees seven

hundred only) each, in default to undergo simple imprisonment of 12 (twelve) days for committing offence under section 342/34 of the Indian Penal Code.

54. The accused persons Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are further held guilty u/s 323/34 of the Indian Penal Code. However, considering the plea of leniency, this court thinks it fit to impose lenient punishment upon them and hereby, they all are sentenced to pay a fine of Rs. 700/- (Rupees seven hundred only) each, in default to undergo simple imprisonment of 12 (twelve) days for committing offence u/s 323/34 I.P.C.

55. All the accused persons viz. Harendra Nath Talukdar, Girish Talukdar and Nipon Talukdar are acquitted of the offence u/s 427/34 I.P.C.

56. The total fine amount as payable by the accused persons would be paid as compensation to the victim namely Dip @ Deep Das.

57. Bail bonds stand cancelled.

58. Seized articles are to be disposed of in due course as per law.

59. Given under my hand and seal of the Court on this 7th day of May, 2021.

60. Give a free copy of the judgment to the convicts forthwith.

SMRITI REKHA BHUYAN

J. M. 1ST CLASS, NALBARI.

Typed & corrected by me

Smriti Rekha Bhuyan, J.M.F.C., Nalbari.

A P P E N D I X

LIST OF PROSECUTION WITNESSES:

P.W.1 : RUPA DAS

P.W.2 : NAMITA DAS

P.W.3 : PRADIP RAJBONGSHI

P.W.4 : JAYANTA DAS

P.W.5 : ANIL DAS

P.W.6 : JAGADISH BAISHYA

P.W.7 : PANKAJ TALUKDAR

P.W.8 : LOHIT DAS

P.W.9 : DIP KUMAR DAS

P.W.10: NAYAN KUMAR DAS

P.W.11: LALCHAN ALI AHMED

LIST OF DEFENCE WITNESS:

D.W. : NIL

PROSECUTION EXHIBITS:

- EXHIBIT 1 : EJAHAR**
EXHIBIT 1(1) : SIGNATURE OF P.W.1
EXHIBIT 2 : SEIZURE LIST
EXHIBIT 2(1) : SIGNATURE OF P.W.3
EXHIBIT 2(2) : SIGNATURE OF P.W.5
EXHIBIT 2(3) : SIGNATURE OF P.W.8
EXHIBIT 2(6) : SIGNATURE OF P.W.11
MATERIAL EXHIBIT A : SEIZED CLOTHS
EXHIBIT 3 : SKETCH MAP
EXHIBIT 3(1) : SIGNATURE OF P.W.11
EXHIBIT 4 : CHARGE-SHEET
EXHIBIT 4(1) : SIGNATURE OF P.W.11

SMRITI REKHA BHUYAN

JUDICIAL MAGISTRATE FIRST CLASS, NALBARI.