

IN THE COURT OF ADDL. C.J.M :::::::::::::::::::::NALBARI

Present: *Sri Jayanta Kumar Saikia,*
Addl. CJM, Nalbari.

(Date of judgment: 13/09/2022)

(State CR Case No. 23/2018)

U/S 323/34 of IPC.

INFORMANT:	Md. Biju Ali
REPRESENTED BY	Sri. Arjun Barman, Ld. APP
ACCUSED	Md. Najim Ali, Md. Gol Mahammad Ali, Md. Anowar Ali @ Hussain and Md. Rashid Ali
REPRESENTED BY	Sri Sonapati Sarma, Ld. Advocate
Date of Judgment	13/09/2022

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charge with	Whether acquitted or convicted	Sentence imposed	Period of detention under gone during trial for the purpose of section 428 of IPC
A-1	Md. Najim Ali,			U/S 323 of IPC	Acquitted	N/A	N/A
A-2	Md. Gol Mahammad Ali,						
A-3	Md. Anowar Ali @ Hussain						
A-4	Md. Rashid Ali						

APPENDIX-13

Date of offence	14/08/2016
Date of FIR	15/08/2016
Date of charge-sheet	N/A
Date of O.E.	22/05/2019
Date of commencement of evidence	31/07/2019
Date on which judgment is reserved	13/09/2022
Date of judgment	13/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

1. The prosecution case sets into motion by filing a FIR by the informant, Md. Biju Ali stating that on 14/08/2016 at 9:30 P.M., the accused persons namely Md. Najim Ali, Md. Gol Mahammad Ali, Md. Anowar Ali @ Hussain and Md. Rashid Ali quarrelled with him regarding some land dispute and accused Md. Najim Ali physically assaulted him with hand and threatened to kill him and his family members. Hence, informant lodged this case.
2. The Officer-in-charge, Nalbari Police station, on receipt of the Ejahar registered Nalbari P.S. Case No. 558/16, Under Section 447/323/506/34 of IPC and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted final report against the accused

persons namely Md. Najim Ali, Md. Gol Mohammad Ali, Md. Anowar Ali @ Hussain and Md. Rashid Ali Under Section 323 of IPC which is non-cognizable to police. On perusal of the final report and relevant materials cognizance of offence u/s 323 of IPC is taken against the accused persons namely Md. Najim Ali, Md. Gol Mohammad Ali, Md. Anowar Ali @ Hussain and Md. Rashid Ali vide order dated 20.11.2018.

3. In due course, the accused persons appeared before the Court and the copies of relevant documents were furnished to them as per section 207 of Cr.P.C. Particulars of offence u/s 323/34 IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. The prosecution, in support of its case, examined five (05) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.
5. The statements of the accused persons under section 313 of Cr.P.C. are recorded wherein they took the plea of innocence and false implication. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Learned Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused persons, Md. Najim Ali, Md. Gol Mohammad Ali, Md. Anowar Ali @ Hussain and Md. Rashid Ali, in furtherance of their common intentions,*

on 14/08/2016 at 9:30 P.M., at Khudra Dingdingi under the jurisdiction of Nalbari P.S. caused hurt to informant Md. Biju Ali and thereby committed an offence punishable u/s 323/34 of IPC?

EVIDENCES OF PWs:

- 8.** PW-1 Md. Biju Ali deposed that he is the informant. He filed this case against Md. Nazim Ali, Md. Gol mohammad Ali, Md. Anowar Ali and Md. Rashid Ali. On 14-08-2016 at about 9.00-9.30 PM the accused persons came to his house chasing. All the accused persons assaulted him with blows and 'takon'. He sustained injury over his head and blood came out of his injury and stained his clothes. He took treatment at Kamrkuchi PHC. Exhibit 1 is the 'ejahar' and Exhibit 1(1) is his signature. Police recorded his statement.
- 9.** During cross-examination PW-1 says that he has not filed any other case regarding land dispute. The accused Rashid Ali is his 'Khura' and the remaining accused persons are the sons of his 'Bor Baba'. He stated in the ejahar that the name of father of all the accused persons is Ajir Ali. He denied defence suggestion that police had not collected any materials against the accused persons after the investigation. On the next day of the incident at about 11.00-11.30 AM he took medical treatment. About 4-5 persons accompanied him to medical but he does not remember their names. He does not remember whether police seized the blood stained clothes. He went to police station then he took medical treatment. His

mother Jabeda Begum, brother Pinku Ali were present at the time of incident. The medical is 1 ½ Km from his house and the police station is 2 ½ km from his house. About 100-150 village people assembled at the P.O.on the date of incident. Ajarh Ali,Dudul Ali, Rubul Ali, Rijul Ali, Mesu Ali, Badrul Ali,Gia Ali, Papu Ali, Merajul Ali and others were present at the time of incident. The house of Gol Mohammad Ali is on the left side of his house and the house of Arab jan Begum and Hasna Begum on the right side of his house. Police did not seized any 'takon' or other articles. Police arrested him at Guwahati in a case of collecting illegal parking fees where he was in jail for about 26 days. He denied defence suggestion that the accused does not have any land in their name. He has not shown police any land documents. He denied defence suggestion that he sustained injuries by falling down. He denied defence suggestion that the accused persons had not assaulted him. He denied defence suggestion that he is deposing falsely.

- 10.** PW-2, Md. Jaber Ali deposed that he knows the informant Biju Ali. He knows the accused persons. He heard that a quarrel took place between Biju and Nazir. He does not know anything more about the incident. He was not present in P.O at the time of incident. Later Biju Ali filed case. Police came to the P.O and recorded his statement. Defence declined to cross-examine this witness.

- 11.** PW-3, Musstt. Hasna Begum deposed that she knows the informant Biju Ali. She knows the accused persons. She does not know anything about the incident. Defence declined to cross-examine this witness.
- 12.** PW-4, Md. Samser Ali deposed that he knows the informant. He is his co-villager. He knows the accused persons present in the dock. Their house is adjacent to his house. He could not say when the incident occurred. He was absent at the time of occurrence. He heard a verbal altercation took place between both the parties later on. Police had not recorded his statement.
- 13.** During cross-examination PW-4 stated that both the parties had land dispute regarding their ancestral property. Biju Ali demanded land from his father which is not partitioned there and as the accused persons forbid they used to fight regarding this matter.
- 14.** PW-5 (IO), SI Jagadish Kalita deposed that on 14-08-2016, he was on duty as I/C Kamarkuchi under the jurisdiction of Nalbari PS. On that day, he received one FIR lodged by Biju Ali alleging that on 14-08-2016 at 9.30 PM accused Najim Ali, Gol Mahammad, Anowar Ali and Rasid Ali had verbal altercation with regarding land dispute, chased him to his house and assaulted him with fist and blow. On receipt of the same, vide Kamarkuchi GD entry no. 247 dated 14-08-2016, in charge K.C. Sarma forwarded to the Nalbari PS for registering a case under proper section of law. On receipt

of the same Nalbari PS case no. 558/2016 u/s 447/323/506/34 of IPC is registered by OC Nalbari PS. On the basis of GD entry, he took up investigation of the case. He recorded the statement of the informant at the police station. Thereafter, he forwarded the victim for medical examination on police requisition. He visited the place of occurrence and prepared the sketch map. Exhibit P-2 is the sketch map and Exhibit P-2(1) is his signature. He recorded the statements of witnesses namely Latif Ali, Juber Ali, Samsar Ali and Hasna Begum u/s 161 CrPC. He collected the medical report and found that there is material u/s 323 of IPC. As per the direction of the OC, he submitted FR no. 251/2016 dated 31-08-2016 in the case as section 323 of IPC is non cognizable to the police. Exhibit P-3 is the FR and Exhibit P-3(1) is his signature.

- 15.** During cross-examination PW-5 (IO) says that PW-1 has not stated to him in his statement recorded u/s 161 CrPC that the accused assaulted him Takun and he sustained injury over his head and blood came out over his injury and strained his cloths. During his investigation he found that the dispute occurred due to land dispute. He had not met the complainant on the day when he filed the ejahar. He forwarded the victim on 15th August at about 11.00 AM for medical examination. He denied defence suggestion that he has not found any material and submitted the FR.

DISCUSSION, DECISION AND REASONS THEREOF:

- 16.** From the evidence of **PW1** (informant), Md. Biju Ali, reveals that the accused persons came to his house chasing. All the accused persons assaulted him with blows and 'takon'. He sustained injury over his head and blood came out of his injury and stained his clothes. During cross-examination PW-1 (informant) says that he went to police station then he took medical treatment. His mother Jabeda Begum, brother Pinku Ali were present at the time of incident. Police had not seized any 'takon' or other articles.
- 17.** However, from the evidence of the I/O (PW5), SI Jagadish Kalita it is found that PW1 (informant) had not stated in his statement recorded u/s 161 Cr.P.C. that the accused assaulted him with Takun and he sustained injury over his head and blood came out over his injury and strained his cloths.
- 18.** This is the vital contradiction found between the statement of informant (PW-1) recorded u/s 161 Cr.P.C. and deposition made by PW1 (informant) in the court. Moreover, this allegation is freshly made in his testimony which was not made in the FIR too. This contradiction goes to the root of the prosecution case and to inspire confidence in his evidence, corroboration is required.

- 19.** PW-2, Md. Jaber Ali clearly stated that he heard that a quarrel took place between Biju and Nazir. He does not know anything more about the incident. He was not present in P.O at the time of incident.
- 20.** PW-3, Musstt. Hasna Begum also says that she does not know anything about the incident.
- 21.** Hence, no incriminating material is found against the accused persons from the testimonies of PW-2 and PW-3.
- 22.** PW-4, Md. Samsar Ali also deposed that he could not say when the incident occurred. He was absent at the time of occurrence. He heard a verbal altercation took place between both the parties later on.
- 23.** However, during cross-examination PW-4 says that both the parties have land dispute regarding their ancestral property. This statement of PW-4 corroborated with the testimony of PW-5 (IO) and with the ejahar lodged by the informant which is exhibited as Exhibit 1 that there was dispute between both the parties regarding land.
- 24.** It is a settle principle that previous animosity is double edged weapon. It is possible that due to previous animosity the alleged crime has been committed or due to previous animosity the accused persons are wrongfully framed by filing false FIR. The testimony of the witness who has previous animosity with the accused persons to be appreciated with precaution.

25. In the instant case from the evidence of PW-1 it is clear that his evidence suffers from exaggeration as there is vital contradiction found in the FIR and testimony of PW-1 which goes to the root of the prosecution story and shake the credentiality of PW-1.

26. Hence, the entire evidence on record if stitched together, it is found that prosecution side miserably failed to prove the guilt of the accused persons. Not a single independent witness has testified that they saw the accused persons assaulted the informant (PW-1). Nothing incriminating against the accused persons are found in the record that they have committed an offence u/s 323/34 of IPC.

CONCLUSION

27. The prosecution side failed to prove its case that accused persons have committed an offence u/s 323/34 of IPC.

ORDER

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused persons beyond reasonable doubt.

Accordingly, the accused persons namely Md. Najim Ali, Md. Gol Mahammad Ali, Md. Anowar Ali @ Hussain and Md. Rashid

Ali are acquitted from the offence under section 323/34 of IPC and they are set at liberty forthwith.

The bail bonds of the accused persons and their sureties shall remain in force for a period of 6 months from today as per amended Cr.P.C.

Given under my hand and seal of this court on this 13th day of September, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

		NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Md. Biju Ali	Informant
PW-2	Md. Jaber Ali	Other witness
PW-3	Musstt. Hasna Begum	Other witness
PW-4	Md. Samser Ali	Other witness
PW-5	SI Jagadish Kalita	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Ejhar
2	Exhibit 1(1)	Signature of PW-1, Md. Biju Ali
3	Exhibit P-2	Sketch map
4	Exhibit P-2(1)	Signature of PW-5 (IO), SI Jagadish Kalita
5	Exhibit P-3	FR
6	Exhibit P-3(1)	Signature of PW-5 (IO), SI Jagadish Kalita

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects: Not applicable

Sr. No.	Exhibit Number	Description
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Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari