

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

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

(Date of judgment: 07/09/2022)

(State CR Case No. 11/2021)

u/s 323 of IPC.

INFORMANT:	Md. Khalilur Rahman
REPRESENTED BY	Sri. Arjun Barman, Ld. APP
ACCUSED	Md. Osman Goni, Md. Amzad Ali @ Amzad Hussain, Md. Guljar Hussain, Md. Najir Hussain @ Najir Hussain Talukdar, Md. Jalaluddin, Md. Sahadot Ali @ Shahadat Hussain Talukdar, Md. Saddam Hussain, Md. Abu Bakkar, Md. Abdur Rahim and Md. Abdul Baten
REPRESENTED BY	Md. Shahjahan Ali, Ld.

	Advocate
Date of Judgment	07/09/2022

Accused details

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. Osman Goni			U/S 323 of IPC	Acquitted	N/A	N/A
A-2	Md. Amzad Ali @ Amzad Hussain						
A-3	Md. Guljar Hussain Md.						

A-4	Najir Hussain @ Najir Hussain Talukda r						
A-5	Md. Jalalud din						
A-6	Md. Sahado t Ali @ Shahad at Hussain Talukda r						
A-7	Md. Sadda m Hussain						
A-8	Md. Abu Bakkar						

A-9	Md. Abdur Rahim						
A-10	Md. Abdul Baten						

APPENDIX-13

Date of offence	21/02/2017
Date of FIR	22/02/2017
Date of charge-sheet	N/A
Date of O.E.	07/01/2022
Date of commencement of evidence	02/09/2022
Date on which judgment is reserved	07/09/2022
Date of judgment	07/09/2022
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. Khalilur Rahman stating that on 21/02/2017 at

9:20 P.M., the accused persons namely Md. Osman Goni, Md. Amzad Ali, Md. Guljar Hussain, Md. Najir Hussain, Md. Jalaluddin, Md. Sahadot Ali @ Shahadat Hussain Talukdar, Md. Saddam Hussain, Md. Abu Bakkar, Md. Abdur Rahim and Md. Abdul Baten physically assaulted him and his brother as a result of which they sustained injury. Hence, informant lodged this case.

2. The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 62/17, Under Section 147/148/447/325/506 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. Osman Goni, Md. Amzad Ali @ Amzad Hussain, Md. Guljar Hussain, Md. Najir Hussain @ Najir Hussain Talukdar, Md. Jalaluddin, Md. Sahadot Ali @ Shahadat Hussain Talukdar, Md. Saddam Hussain, Md. Abu Bakkar, Md. Abdur Rahim and Md. Abdul Baten Under Section 323 of IPC as 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. Osman Goni, Md. Amzad Ali @ Amzad Hussain, Md. Guljar Hussain, Md. Najir Hussain @ Najir Hussain Talukdar, Md. Jalaluddin, Md. Sahadot Ali @ Shahadat Hussain Talukdar, Md. Saddam Hussain, Md. Abu Bakkar, Md. Abdur Rahim and Md. Abdul Baten vide order dated 06-03-2021.

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 CrPC. Particulars of offence u/s 323 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 only two (02) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence as informant and victim of the case does not support the prosecution case.
5. The statement of the accused persons under section 313 of Cr.P.C. are dispensed with as there are no incriminating materials found against the accused persons. 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. Osman Goni, Md. Amzad Ali @ Amzad Hussain, Md. Guljar Hussain, Md. Najir Hussain @ Najir Hussain Talukdar, Md. Jalaluddin, Md. Sahadot Ali @ Shahadat Hussain Talukdar, Md. Saddam Hussain, Md. Abu Bakkar, Md. Abdur Rahim and Md. Abdul Baten, on 21/02/2017 at 9:20 P.M., at Kaudhbari under the jurisdiction of Mukalmua P.S. caused hurt to informant Md. Khalilur Rahman and his brother thereby committed an offence punishable u/s 323 of IPC?*

DISCUSSION, DECISION AND REASONS THEREOF:

- 8.** In the instant case, the prosecution side adduced the evidence of two witnesses.
- 9.** The evidence of **PW1** (informant), Md. Khalilur Rahman, reveals that the accused persons are his cousins. He further stated that due to misunderstanding, he lodged this case, but now he has no grievance against the accused persons and he is living peacefully along with the accused persons. During cross-examination PW-1 deposed that he has no allegation against the accused persons. He has no objection if the accused persons get acquittal in this case.
- 10.** From the evidence of **PW-2** (victim), Md. Abdul Ali it is seen that the informant is his elder brother. The accused persons are his cousins and they are staying near his house. Due to misunderstanding, his elder brother lodged this case, but now he has no grievance against the accused persons and he is living peacefully along with the accused persons. During cross-examination PW-2 deposed that he has no allegation against the accused persons. He has no objection if the accused persons get acquittal in this case.
- 11.** From the evidence of PW1 (informant) and PW-2 (victim), it is seen that they have no allegation against the accused persons and the case is lodged due to misunderstanding and now they have no grievance against the accused persons. Thus, there is nothing in the evidence

incriminating against the accused persons that they have committed offence under section-323 of IPC.

- 12.** Situated thus, in my considered opinion the prosecution side has failed to bring home the guilt of the accused persons under section 323 of IPC as the informant and victim of the case did not support the prosecution story.

CONCLUSION

- 13.** The prosecution side failed to prove its case that accused persons have committed an offence u/s 323 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.

Accordingly, the accused persons namely Md. Osman Goni, Md. Amzad Ali @ Amzad Hussain, Md. Guljar Hussain, Md. Najir Hussain @ Najir Hussain Talukdar, Md. Jalaluddin, Md. Sahadot Ali @ Shahadat Hussain Talukdar, Md. Saddam Hussain, Md. Abu Bakkar, Md. Abdur Rahim and Md. Abdul Baten are acquitted from the offence under section 323 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 07th
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. Khalilur Rahman	Informant
PW-2	Md. Abdul Ali	Victim

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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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