

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

Present : Imdad Ahmed, Chief Judicial Magistrate, Nalbari.

Date of Judgment – 30/09/2022

Case – G.R no. 978/2017

The case arose out of FIR lodged by informant Mira Begum, registered on 27/06/2017 vide Nalbari P.S case no. 433 u/s 120(B)/294/506/147/323 IPC under Nalbari District.

Complainant :	State of Assam Or Name of the complainant (Mira Begum)
Represented by	Mr. D. Talukdar (Ld. APP)
Accused	1. Md. Rafikul Ali, 2. Md. Jakir Ali, 3. Md. Jeherul Islam, 4. Md. Mafij Ali, 5. Md. Nousad Ali, 6. Md. Nizam Ali, 7. Md. Mahnur Ali, 8. Md. Majibur Rahman, 9. Md. Nur Mohammad Ali, 10. Md. Islam Ali, 11. Md. Sintu Ali, 12. Aminul Haque
Represented by	Mr. Pradip Kr. Sarma, Mr. Paban Das (Ld. Defence Advocates)

Date of Offence	27/06/2017
Date of FIR	27/06/2017
Date of Charge sheet	31/07/2017 vide Charge sheet no. 271/17
Date of Framing of Charges	28/06/2018 & 25/09/2018
Date of commencement of evidence	08/08/2018
Date on which judgment is reserved	16/09/2022
Date of Judgment	30/09/2022
Date of the Sentencing Order, if any	N/A

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the 'ejahar' dated 27/06/2017 filed by the informant Mira Begum is that she is an SW employee of Malaria Department under Govt. of Assam. The accused persons are illegally occupying her cultivation land by dispossessing her and are intending to illegally sale her land to other persons. As she objected to the accused persons from doing the same, the accused persons on several occasions tried to kill her. On 27/06/2017 at about 9 am, while she was going to attend her Govt. duty, accused Islam Ali and Chintu Ali came on a Kwid vehicle bearing registration no. AS-01-BZ-0111 at a high speed and thereafter

restrained her and hurled abusive words to her and threatened to kill her. She managed to run away from the P.O and came to her house and hearing her 'hulla', when her husband Mitul Hussain, her brother-in-law Mantu Ahmed and her brothers came out, they saw the accused persons forming a group along with 20-25 other persons and thereafter armed with 'dao', dagger, iron rod and sling chased the informant and her family to assault them. Accused Raful Ali and Rafikul Ali hit a sling shot on the head of her in law Mantu Ahmed due to which her in law sustained injury on his chin. Out of fear, she came inside her house and called the I/c of Kamarkuchi Outpost but the I/c did not come to the P.O. Out of compulsion she along with her in law Mantu Ahmed themselves went to Nalbari PS and informed about the incident after which the official at Nalbari PS asked them to go to Kamarkuchi O.P. The accused persons are threatening to kill them and as such she along with her family apprehends fear of their life. Hence the case.

2. The said 'ejahar' was received and registered as Nalbari PS case no. 433/17 u/s 120(B)/294/506/147/323 I.P.C. After completion of investigation charge-sheet no. 271/17 dated 31/07/2017 was submitted against accused Md. Rafikul Ali, Md. Jakir Ali, Md. Jeherul Islam, Md. Mafij Ali, Md. Nousad Ali, Md. Nizam Ali, Md. Mahnur Ali, Md. Majibur Rahman, Md. Nur Mahammad Ali, Md. Islam Ali, Md. Sintu Ali u/s 147/506/323 I.P.C. Accordingly vide order dated 28/06/2018 particulars of offence u/s 147/506/323 IPC was explained to the aforesaid accused persons. Later, on finding incriminating materials for

offence u/s 147/506/323 IPC, this Court decided to proceed against the accused Aminul Hoque along with others vide order dated 08/08/2018 and accordingly vide order dated 25/09/2018 particulars of offence u/s 147/506/323 IPC was explained to the said accused. Copy was furnished to the accused persons.

3. POINTS FOR DETERMINATION

(i) Whether the accused persons on 27/06/2017 at about 9 am at village Korla (Betkata) under Nalbari PS, were members of an unlawful assembly and in prosecution of common object of such assembly used force or violence and thereby committed an offence punishable u/s 147 I.P.C?

(ii) Whether the accused persons on the aforesaid date, time and place being members of an unlawful assembly and in prosecution of common object of such assembly criminally intimidated the informant with injury to her person with intend to cause alarm and thereby committed an offence punishable u/s 506 I.P.C?

(iii) Whether the accused persons on the aforesaid date, time and place being members of an unlawful assembly and in prosecution of common object of such assembly voluntarily caused hurt to the informant and her brother-in-law thereby committed an offence punishable u/s 323 I.P.C?

4. DECISION AND REASONS THEREOF:

The prosecution examined five (5) witnesses. The defence declined to adduce any evidence. The statement in

defence of the accused persons u/s 313 Cr.P.C was recorded. I have heard the argument advanced by learned counsel of both the sides and also perused the evidence available on record, my findings with reasons are as follows –

5. PW-1, Mira Begum who is the informant deposed that she knows the accused persons. The incident took place on 27/06/2017 at 9:30 am. At that time she was waiting at Karia tempo stand and then one white colour Kwid vehicle came and stopped and Islam Ali and Sintu Ali disembarked from the vehicle and scolded her with obscene language with regard to some land matters. Out of fear she went to her home and informed the same to her brother-in-law Mantu Ahmed. The other accused persons were waiting at a distance. When they inquired, all the accused persons namely Nur Mohammad, Jakir Ali, Hamid Ali, Tabib Ali, Ataur Rahman, Matiur Ali, Mohnur Ali, Aminul Haque, Nousad Ali, Matiur Ali, Nizam Ali, Mafiz Ali, Islam Ali, Sintu Ali, Raful Ali, Rafikul Ali, Jeherul Ali chased to assault Mantu Ahmed. Aminul Haque and Jeherul Ali hit Mantu Ahmed with sling shot. The accused persons armed with 'juung', 'lathi', 'dao' came chasing them. They somehow came inside their house and called I/c of Kamarkuchi Outpost but to no avail. Later she filed ejahar at Nalbari P.S. The accused hit Mantu Ahmed with sling shot and caused injury to his chin due to which he took treatment at Nalbari medical. Exhibit 1 is the ejahar and Exhibit 1(1) is her signature.

6. PW-1 admitted that she has not mentioned in the ejahar that she was waiting at Karia tempo stand on the day of incident and that Sintu Ali, Islam Ali had got down from one vehicle. There is no tempo stand near her house. She embarks on tempo on the road. She does not know if any other person was present at the P.O during the time of incident. She does not know if Islam Ali has filed case against her family with regard to the said incident. Prior to this case, there were cross-cases going on between them. She does not know if Islam Ali is the step brother of Mantu Ali. She does not know if Islam Ali has filed case demanding land from the father of Mantu Ali. The house of Islam Ali is at Kalitakuchi. If he needs to come to Nalbari, he has to cross through their road. Apart from Islam Ali, none of the accused persons are their relatives. In her ejahar she has mentioned that accused no. 12 and 13 hit her brother-in-law with 'gilti'. She admitted that she has not written in the ejahar that Jeherul Ali and Aminul Haque hit with sling shots. PW-1 admitted that Jeherul Ali and Aminul Haque did not hit sling shots but they chased her and her family. She admitted that she filed the ejahar at S.P Office. Her ejahar was not accepted by Kamarkuchi and Nalbari Police station. Police did not record her statement. Police did not seize anything. At the time of second incident she did not come out of her house. She has not mentioned other people present at the P.O. The entire incident took place within a period of 15 minutes. Her brother-in-law took treatment after she filed the ejahar. She knows

Sima Begum and Rubul Ali. On the day of incident she went to her duty.

7. PW-2, Mantu Ahmed deposed that he knows the informant and the accused persons. The incident took place on 27/06/2017 at 9:30 am. The informant is his 'jeth'. The informant was waiting at the road for a tempo for going to her duty. Islam Ali, Noor Md. Ali and Sintu Ali and some other came and hurled abusive words to the informant and thereafter tried to pull the informant inside one vehicle. The accused persons came on a Kwid vehicle bearing registration no. AS-01-BZ-0111. The informant out of fear came running inside her house. They then came out of their house. Accused Hamid, Tabib, Raful, Ataur, Nizam, Nausad, Jakir, Tabib, Mazibar, Jeherul, Amirul Haque, Rafiku, Mohnul, Nur Mahammad, Mafiz, Sintu armed with 'tangon', 'ballam', 'gilti', 'dao' came chasing them. Raful and Aminul used sling shots due to which one blow fell upon his chin. The other accused persons came chasing. The other accused persons did not entered into physical fight. Later his 'bou' Mira Begum filed the ejahar.

8. PW-2 during cross-examination deposed that when his 'bou' came running from the road towards her house, then his mother, father, and other members of the family were present. There is no specific tempo stand near their house. His 'bou' was waiting at the tempo stand for about 15 minutes. He does not know if at that place other people were present or not. Islam Ali is said to be step brother of theirs. A civil case is

pending between them and Islam Ali. The other accused persons are also involved in that case. Civil case is pending between them for the last 15 years. Except Islam Ali and Sintu Ali, all the other accused persons are their relatives. His house is close to their houses. Prior to this incident, and except Islam Ali, there was enmity between them and the other accused persons. Prior to this case, he had filed case against Islam, Nur Mahammad and Sintu Ali. His sister in law did not undertake any medical treatment. The house of Islam Ali is at Hajo Kalitakuchi. While coming to Nalbari they have to come through their land. He has not seen any police at the P.O at the time of incident. He does not know if G.R 1773/16 was posted on the day of occurrence. The accused persons filed a case upon them with regard to the said incident and in that case Islam Ali alleged that when he came to Court for the purpose of case, he along with his family members restrained them at the road and assaulted him and his wife. He told the informant that Aminul had used sling shot. He came when the informant filed the ejahar. He did not read the whole ejahar. The ejahar was given to S.P, Nalbari. The house of Rubul Ali and Sima Begum is near the P.O. He himself went to the medical.

9. PW-3, Rubul Ali deposed that he knows both the parties. He does not know anything about the incident.

10. PW-4, Sima Begum deposed that she knows both the parties. The incident took place 1 ½ years ago. She does not know much about the incident. She heard that a quarrel

took place but she does not know between whom the quarrel had taken place.

11. The cross-examination of PW-4 was declined.

12. PW-5, S.I Jagadish Kalita is the I/O and his evidence is of routine in nature depicting various stages of investigation.

13. PW-5 during cross-examination deposed that during his investigation, he did not found two incident taking place in two different places. During investigation he did not find any place where accused threatened the informant and Exhibit 1 is silent regarding the place of said occurrence. He has not seized any alleged weapon used in the incident. He has not found evidence regarding the threatening given to the informant by the accused at the first instance of the case. In the FIR, informant did not state that accused Aminul Haque and Jeherul Ali assaulted the victim Mantu with a 'gilti'. PW-2 Mantu Ahmed did not state before him that Raful and Aminul carried the weapon 'gilti' with them and Aminul assaulted him with the weapon 'gilti'. The distance of S.P Office is 15 km away from the P.O and their police station is 2.5 km away from the P.O. The informant lodged the FIR directly before the S.P, Nalbari. Regarding the incident the accused person informed them over phone and their party reached the place at the relevant time of occurrence. The accused person also lodged written FIR before their outpost against the informant and others. During investigation, he came to know that there are dispute going on between them for landed property.

14. I have gone through the evidence adduced by the prosecution witnesses meticulously. The prosecution examined the informant as PW1, Mantu Ahmed as PW2, Rubul Ali as PW3, Sima Begum as PW4 and the I/O as PW5. The prosecution failed to examine the M.O who examined the injured. Hence, the injury upon the injured (PW2) remained unproved. PW3 and PW4 are independent witnesses examined by the prosecution but they did not state anything incriminating against the accused persons. The entire case of the prosecution rest upon the evidence adduced by PW1 and PW2 who are interested witness as civil ligation was going on between both the parties over their ancestral land and the pendency of cases between the two parties has been admitted by the PW's. Hence, when there is enmity between the parties, it is necessary to find out evidence which corroborates the evidence of interested witness. PW1 and PW2 belong to the same family. PW3 and PW4 did not support the case of the prosecution. Hence, the evidence of PW1 and PW2 remains uncorroborated. The complainant in his FIR has stated that accused Raful Ali and Rafikul Ali caused injury to Mantu Ahmed by shooting a sling shot on him, but in the evidence of PW-1 he stated that Amirul Haque and Jeherul Haque caused injury to Mantu Ahmed by shooting with a sling shot. PW-2, on the otherhand stated that Raful and Aminul caused injury on his chin by shooting a sling shot. Hence, the evidence of complainant / PW-1 is not in consonance with the evidence of PW-2 as well as with the statement made in the complaint regarding name of

the person who shot the sling shot, as both PW-1 and PW-2 has mentioned the name of different accused who shot the sling shot. Therefore, it appears that PW-1 and PW-2 are inconsistent regarding the person who shot the sling shot.

15. Further, PW-2 stated that the accused Islam Ali and Nur Mahammad Ali and Sintu Ali tried to pull the informant inside a car, but PW-1 is silent in this aspect. The evidence of PW-2 is therefore found exaggerated.

16. After going through the evidence of the prosecution witnesses, it is found that there is animosity between the parties as there are civil as well as criminal cases pending between the parties and the evidence of PW-1 and PW-2 is not corroborated by the evidence of any other independent witness. Though prosecution examined PW-3 and PW-4, but PW-3 and PW-4 expressed total ignorance about the incident. The M.O who examined PW-2 was not examined by the prosecution and therefore, the injury of PW-2 remains unproved. The prosecution has also failed to prove the culprit who shot the sling shot on the victim Mantu Ahmed as the evidence of PW-1 and PW-2 differs in this point. Even the contents of the complaint differ from the evidence of PW-1 on this point.

17. Though PW-1 and PW-2 stated that the accused persons attacked them and intimidated them after forming an unlawful assembly, but prosecution failed to examine any other witness who saw the presence of the accused persons together at the P.O. The previous animosity between the parties has

compelled this court to search for corroborative evidence before relying upon the evidence of PW-1 and PW-2. The total ignorance of PW-3 and PW-4 regarding the incident and non-examination of the M.O, are the factors for which PW-1 and PW-2 remain uncorroborated and hence, this court restrains itself from totally relying upon on the evidence of PW-1 and PW-2 as gospel truth in the absence of any corroborative evidence.

18. Therefore, it is held that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt. All the accused persons are accordingly given benefit of doubt and they are acquitted of the charges u/s 147/506/323 IPC and set at liberty.

19. The bail bonds of the accused persons stands extended for a further period of six months as per the provision of section 437-A CrPC.

20. Judgment is pronounced in open court. Case is disposed of on contest.

21. Given under my hand and seal of this court on this 30th day of September, 2022.

Chief Judicial Magistrate
Nalbari

Accused Details

Rank of the accused	Name of accused	Date of Arrest	Date of release on bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C
A-1	Md. Rafikul Ali,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-2	Md. Jakir Ali,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-3	Md. Jeherul Islam,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-4	Md. Mafij Ali,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-5	Md. Nousad Ali,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-6	Md. Nizam Ali,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-7	Md. Mahnur Ali,	On police bail	28/06/2018	147/506/323	Acquitted	N/A	N/A
A-8	Md. Majibur	On police bail	28/06/2018	147/506/	Acquitted	N/A	N/A

	Rahman,			323	ed	A	
A-9	Md. Nur Mahammad Ali	On police bail	28/06/2018	147/ 506/ 323	Acquitt ed	N/ A	N/A
A-10	Md. Islam Ali,	On police bail	28/06/2018	147/ 506/ 323	Acquitt ed	N/ A	N/A
A-11	Md. Sintu Ali,	On police bail	28/06/2018	147/ 506/ 323	Acquitt ed	N/ A	N/A
A-12	Aminul Haque	05/09/2018	05/09/2018	147/ 506/ 323	Acquitt ed	N/ A	N/A

Chief Judicial Magistrate
Nalbari

List of Prosecution / Defence / Court Witnesses

A. Prosecution:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
PW-1	Mira Begum	Informant
PW-2	Mantu Ahmed	Eye witness
PW-3	Rubul Ali	Other witness
PW-4	Sima Begum	Other witness
PW-5	S.I Jagadish Kalita	Investigating Officer

B. Defence Witnesses, if any:

Rank	Name	Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Nil		

C. Court Witnesses, if any:

Rank	Name	Nature of evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Nil		

Chief Judicial Magistrate

Nalbari

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit number	Description
1.	Exhibit 1	Ejahaar
2.	Exhibit 1(1)	Signature of informant
3.	Exhibit P-2 / PW-5	Sketch map
4.	Exhibit P-2(1) / PW-5	Signature of I/O
5.	Exhibit P-3 / PW-5	Charge-sheet
6.	Exhibit P-3(1) / PW-5	Signature of I/O

B. Defence:

Sr. No.	Exhibit Number	Description
Nil		

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
Nil		

D. Material Objects:

Sr. No.	Exhibit Number	Description
Nil		

Chief Judicial Magistrate

Nalbari