

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

Present : Imdad Ahmed, Chief Judicial Magistrate, Nalbari.

Date of Judgment – 23/09/2022

Case – PRC no. 1640/2019

The case arose out of FIR lodged by informant Smti Riju Bhuyan, registered on 04/03/2019 vide Ghograpar P.S case no. 88 u/s 325/506 IPC under Nalbari District.

Complainant :	State of Assam Or Name of the complainant (Smti Riju Bhuyan)
Represented by	Mr. D. Talukdar (Ld. APP)
Accused	1. Sri Jyotish Medhi / A-1, S/o – Sri Chakra Medhi, Village – Pub Balitara, PS - Ghograpar & Dist – Nalbari.
Represented by	Mr. Kamalendra Talukdar (Ld. Defence Advocate)

Date of Offence	03/03/2019
Date of FIR	04/03/2019
Date of Charge sheet	30/03/2019 vide Charge sheet no. 54
Date of Framing of Charges	18/12/2019
Date of commencement of evidence	17/01/2020
Date on which judgment is reserved	12/09/2022
Date of Judgment	23/09/2022
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 04/03/2019 filed by the informant Smti Riju Bhuyan is that on 03/03/2019 at about 8:15 pm, the FIR named accused Sri Jyotish Medhi called her over phone and asked her to come to her courtyard for discussing something and when she went out to the courtyard, the accused without any rhyme or reason punched and slapped her and pressed her neck and she somehow managed to run away and took refuge in the house of Sri Debajit Kalita. At that time there were no male members present in the house of Debajit Kalita and when the wife of Debajit Kalita tried to intervene in the matter, the

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accused threatened the wife of Debajit Kalita. When her husband arrived at the P.O, the accused fled away and threatened to kill her and dump her in the river. Due to the assault she sustained injuries. Hence the case.

2. The said 'ejahar' was received and registered as Ghograpar PS case no. 88/2019 u/s 325/506 I.P.C. After completion of investigation charge-sheet no. 54 dated 30/03/2019 was submitted against accused Sri Jyotish Medhi u/s 323/341 I.P.C. Copy was furnished to the accused person. Particulars of offence and substance of accusation u/s 323/341 IPC was read over and explained to the accused person to which the accused pleaded not guilty and claimed to be tried.

3. POINTS FOR DETERMINATION

(i) Whether on 03/03/2019 at about 8:15 pm, at village Pub Balitara under Ghograpar P.S, the accused voluntarily caused hurt to the informant and thereby committed an offence u/s 323 I.P.C?

(ii) Whether on 03/03/2019 at about 8:15 pm, at village Pub Balitara under Ghograpar P.S, the accused wrongfully restrained the informant from proceeding in a direction in which she had right to proceed and thereby committed an offence u/s 341 I.P.C?

4. DECISION AND REASONS THEREOF:

The prosecution examined six (6) witnesses. The defence declined to adduce any evidence. The statement in

defence of the accused person 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, Riju Bhuyan who is the informant deposed that the incident took place 10 months ago at about 8:15 pm at night. The accused called her over phone and asked her to come to the road to talk about something and when she came out of her house to the outside, the accused pulled her and assaulted her. The accused tore her wearing clothes. She ran away to the house of Debajit Kalita. The accused came chasing her inside the house of Debajit Kalita and grabbed her neck. The wife of Debajit Kalita tried to restrain the accused person. At that time her husband came to the P.O and after seeing her husband, the accused fled away. The accused threatened to kill her and dump her in the river before running away from the P.O. She filed ejahar on the next day of incident at Ghograpar P.S. Police took her for treatment. Exhibit 1 is the ejahar and Exhibit 1(1) is her signature.

6. PW-1 during cross-examination deposed that the incident took place inside the courtyard of her house. The incident took place 12 foot away from her residence. Her family consists of her in laws, her two sons and her husband. One of her son studies in class X and other in class VII. Her father in law is a 'mistri'. The house of Jyotish is at distance of 10 houses apart from her house. There is the house of Naniram Kalita in

front of her house. She raised 'hulla'. She went to the house of Nilakshi Kalita. When the accused called her, her family members were present in their house. She did not inform her family members when the accused called her over phone. She did not have any prior enmity with the accused. No quarrel took place at the time when accused assaulted her. She does not have any relation with the accused person. She raised hue and cry but no one came to save her. There is a shop near her house belonging to Haricharan Bhuyan.

7. PW-2, Haricharan Bhuyan deposed that he knows both the parties. The incident took place 1 year ago at night. He was busy in his shop. On the next day he came to know that a quarrel took place between both the parties. He does not know the reason of their quarrel. Police recorded his statement on the next day.

8. PW-2 during cross-examination deposed that on the day of incident he closed his shop at 9 pm. Both the house of informant and accused are located nearby. He did not hear anything on the day of incident. He heard about the incident from others on the next day.

9. PW-3, Nilakshi Kalita deposed that she knows both the parties. The incident took place 1 year ago at about 8:30 pm. At that time she was in her house. She heard hue and cry. At that time she was pregnant and she saw the accused chasing the informant. Later the husband of informant came and took her away.

10. PW-4, Dr. Aarupakshya Das who is the M.O deposed that on 04/03/2019 at 11:30 am, he had examined Riju Bhuyan and found pain in right elbow joint. He advised the patient for X-ray, but no evidence of fracture was found. He diagnosed the case as clinically simple in nature caused by blunt object. Exhibit P-2 / PW-4 is the injury report and Exhibit P-2(1) / PW-4 is his signature.

11. PW-4 during cross-examination deposed that the injury may be sustained by falling over hard substance or may be self-inflicted.

12. PW-5, Naniram Kalita deposed that he knows both the informant and the accused. The incident took place 2 year ago. He heard some conflict occurred between the accused and the informant. Police recorded his statement after 2 days.

13. PW-5 during cross-examination deposed that he did not see the incident by himself and does not know more about the incident.

14. PW-6, Bhabesh Kalita is the I/O and his evidence is of routine nature depicting the various stages of investigation.

15. The prosecution examined four witnesses apart from M.O & I.O. PW-1 is the informant and victim of this case. The evidence of PW-2 & PW-5 are hearsay witness as they did not see or hear anything on the day of the incident. PW-2 & PW-5 stated that they heard that a fight took place between the two parties. PW-1 stated that in her cross that house of PW-5 is situated in front of her house. But PW-5 deposed that he did

not see the incident. Though PW-1 stated that she raised hue and cry, the prosecution could not examine none of her neighbours though PW-1 stated that there are several houses near the P.O. Further it is surprising that PW-1 instead of taking shelter in her own house, went to the house of PW-3 Nilakshi Kalita when the accused assaulted her. Though PW-3 stated that she heard hue and cry and testified that the accused came running to her house chasing the informant, but evidence of PW-3 and PW-1 does not inspire confidence due to the fact that none of their neighbours were examined to prove the case though the accused chased the informant through the public path to the house of PW-3 and the informant raised hulla for about 100 meters while running from the P.O to the house of PW-3. The sketch map exhibited as Exhibit P-3 reveals that there are houses of PW-5 (Naniram Kalita) and one Sachin Kalita as well as one Hari Mandir near the P.O, but apart from PW-1 and PW-3, no evidence is adduced by the prosecution. Further it is surprising that none came to rescue her when she preferred to run towards the house of PW-3 instead of her own house which is more nearer from the P.O than the house of PW-3. The prosecution did not examine the husband and other family members of the informant though her husband came to rescue her to the house of PW-3. Further the injury report exhibited by PW-4 reveals that there was no patent injury except pain in her right elbow joint. PW-1 stated that she was assaulted by the accused in front of her house as well as in the house of PW-3. It is surprising that despite such assault, she

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did not sustain any apparent injury on her body. Further the FIR was filed on the next day at about 2:00 pm, whereas the incident occurred on the previous night at about 8:15 pm. Hence, there is delay in lodging the ejahar and the delay has not been properly explained by the informant in her FIR as well as in her evidence.

16. On appreciation of the testimonies of witnesses and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

17. Accordingly, accused Sri Jyotish Medhi is found not guilty u/s 323/341 I.P.C and hence, acquitted and set at liberty forthwith. Bail bond shall remain in force for a further period of six months.

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

19. Given under my hand and seal of this court on this 23rd 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	Jyotish Medhi	10/03/2019	10/03/2019	323/341 IPC	Acquitted	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	Riju Bhuyan	Informant
PW-2	Hari Charan Bhuyan	Other witness
PW-3	Nilakshi Kalita	Eye witness
PW-4	Dr Aarupakshya Das	Medical Officer
PW-5	Naniram Kalita	Other witness
PW-6	Bhabesh 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-4	Injury report
4.	Exhibit P-2(1) / PW-4	Signature of Medical Officer
5.	Exhibit P-3 / PW-6	Sketch map
6.	Exhibit P-3(1) / PW-6	Signature of Investigating Officer
7.	Exhibit P-4 / PW-6	Charge-sheet
8.	Exhibit P-4(1) / PW-6	Signature of Investigating Officer

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