

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

Present : Imdad Ahmed, Chief Judicial Magistrate, Nalbari.

Date of Judgment – 30/09/2022

Case – PRC no. 355/2018

The case arose out of FIR lodged by informant Md. Merajul Haque, registered on 28/04/2018 vide Ghograpar P.S case no. 92 u/s 341/325/379/384/34 IPC under Nalbari District.

Complainant :	State of Assam Or Name of the complainant (Md. Merajul Haque)
Represented by	Mr. D. Talukdar (Ld. APP)
Accused	1. Rahul Amin / A-1, 2. Ratul Amin / A-2, Both are S/o –Md. Mokshed Ali, Village – Larama Batahkuchi, PS – Ghograpar & Dist – Nalbari;
Represented by	Mr. Abhijit M.B. Baruah (Ld. Defence Advocate)

Date of Offence	27/04/2018
Date of FIR	28/04/2018
Date of Charge sheet	30/06/2018 vide Charge sheet no. 103/18
Date of Framing of Charges	03/12/2018
Date of commencement of evidence	02/05/2019
Date on which judgment is reserved	26/09/2022
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 28/04/2018 filed by the informant Merajul Haque is that he is a Sub-Contractor and on 27/04/2018 he along with his friend Anowar Hussain were coming from Baharghat towards Nalbari after completing road work at Puthimari on his Glamour motorcycle bearing registration no. AS-01-BB-4659 and when he reached Khakrabari 'chowk' near Hajo – Nalbari road at about 7:30 pm, the FIR named accused persons namely Rahul Amin and Ratul Amin obstructed their path and thereafter punched him and assaulted Anowar Hussain and forcefully snatched away Rs. 70,000/- from Anowar Hussain. Thereafter,

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both the accused dropped Anowar Hussain at Tilana 'chowk' and picked him up on his Glamour motorcycle and took him to their house and then assaulted him and caused injury to him and later called some unknown person and through them pointed gun to his head and threatened to kill him and forcefully took his signatures on blank papers attached with revenue ticket and also forcefully kept his motorcycle. After getting information, when 4 – 5 persons belonging from his village came to the P.O, the accused persons forcefully took their signature also. Hence the case.

2. The said 'ejahar' was received and registered as Ghograpar PS case no. 92/18 u/s 341/325/379/384/34 I.P.C. After completion of investigation charge-sheet no. 103 dated 30/06/2018 was submitted against accused Rahul Amin and Ratul Amin u/s 341/323/34 I.P.C. Copy was furnished to the accused persons. Particulars of offence u/s 341/323/34 IPC were explained to the accused persons to which the accused pleaded not guilty and claimed to be tried.

### **3. POINTS FOR DETERMINATION**

(i) Whether the accused persons on 27/04/2018 at about 7:30 pm at Khakrabari 'chowk' near Hajo – Nalbari road and Larama Batahkuchi under Ghograpar P.S, in furtherance of common intention wrongfully restrained the informant from proceeding in a direction in which he had right to proceed and thereby committed an offence punishable u/s 341/34 I.P.C?

(ii) Whether the accused persons on the aforesaid date, time and place in furtherance of common intention voluntarily assaulted the informant and thereby committed an offence punishable u/s 323/34 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, Merajul Haque who is the informant deposed that he knows the accused persons and that the occurrence took place on 27/04/2018 at 7:30 pm. He was working at Puthimari road and on that day he was returning from work with Anowar Hussain towards Nalbari on bike and as he reached Khakrabari 'chowk', accused Rahul Amin and Ratul Amin along with three unknown persons restrained his path and both of them beat them with their bare hands. Anowar Hussain had Rs. 70,000/- with him and the accused snatched his bike and Rs. 70,000/- and escaped from the P.O. The accused took him to the house of Rahul Amin leaving Anowar Husain. The accused locked him in a room and forcefully took his signatures on a blank paper. After 1 hour, the accused informed his villagers and when they reached his house, the accused unlocked him from the room and brought him to the courtyard

and asked to inform his parents in front of his villagers. Anowar Hussain informed his family members and when his family members arrived in the house of Rahul Amin at about 11 pm, the accused took the signature of his family members on a paper and allowed them to come but kept his bike. Later he did his medical at Nalbari medical and filed the ejahar. Exhibit 1 is the ejahar and Exhibit 1(1) is his signature.

6. PW-1 during cross-examination deposed that Ratul drove the bike while he was taken to Rahul Ali's house. Rahul Ali and he was the pillion rider. The other unknown persons were left there. Anowar Hussain was also left there. Nobody was present in Khakrabari 'chowk' while he was restrained. He has not shouted as the accused warned them not to shout. Anowar Hussain took Rs. 70,000/- with him as he had to buy necessary articles for his work. Anowar Hussain is a contractor. He has no registered contract number. Rahul Ali's house is 13 km away from Khakhrabari 'chowk'. He knows the accused as they are relatives of him. The accused person has beaten him on his cheek. He did not undergo medical check-up on the next day of occurrence on his own. PW-1 admitted that he has given a LIC policy to the parents of both the accused. PW-1 admitted that mother of accused has filed an ejahar against him alleging that he had misappropriated the LIC money. She has filed the same after he filed this case. PW-1 admitted that in Pratidin newspaper, it was published that he had misappropriated LIC money.

7. PW-2, Monowar Hussain deposed that he know both the informant and the accused persons. The occurrence took place 1 year ago. Merajul took money from Ratul and Rahul in disguise of a LIC policy holder. But he went somewhere else. Later when accused persons arranged a meeting, the informant had assured that he would return the same but later he filed the ejarah against the accused Ratul and Rahul.

8. Cross-examination of PW-2 was declined.

9. PW-3, Anowar Hussain deposed that he know the informant and the accused persons. The occurrence took place on 27/04/2018. The informant and he do work together. On the day of incident while they were coming back from work in Khakrabari 'chowk', Ratul and Rahul along with two others restrained their path and Ratul and Rahul gave fist blow to Merajul and while he tried to obstruct them, they gave blow on his chest. Rahul Amin snatched away Rs. 70,000/- from his pocket. They took them towards Elengidol and left him there and took away Merajul with them. He informed Merajul's family and then they went to Rahul's house and rescued him.

10. PW-3 during cross-examination deposed that he know the accused persons since long as they are from his village. Merajul is a maternal uncle of the accused person. He has not license of him being a Sub-contractor. Ratul took him on his bike and Merajul was taken by Rahul and another on a bike. He did not inform the police. He does not know if Merajul collects money from others as LIC agent.

11. PW-4, Dr. Trailokya Haloi who is the M.O deposed that on 28/04/2018 he examined Anowar Hussain and found injury to his chest. On examination mild diffuse tenderness was present. No external injury was seen. The injury was simple caused by blunt object. On the same day he also examined Merajul Haque and found injury to his upper back. On examination diffuse tenderness was present. No external injury was seen. The injury was simple in nature and caused by blunt object. Both the patients attended by self.

12. PW-4 during cross-examination deposed that the injury may be caused by getting hit on hard substance.

13. PW-5, Babul Kr. Medhi is the I/O and his evidence is of routine nature depicting the various stages of investigation.

14. PW-5 during cross-examination deposed that he has not mentioned the date of visiting the P.O at Larama Batahkuchi in Exhibit 4 sketch map. He has not cited Faiz Ali, Mridul Ali as witness in the charge-sheet. He has not cited Alakesh Barman, Lakhi Barman, Ananta Barman, Paresh Das, Lalita Barman as witness in the charge-sheet. He has not mentioned the name of witness Nazrul Islam, Gagan Ch. Deka as seizure witness in the charge-sheet who were witness during seizure of motorcycle bearing registration no. AS-01-BB-4659. PW-1 did not state before him that accused had confined him inside a room. PW-1 stated before him that no other person accompanied the accused persons at the time of incident. PW-1 did not state before him that the accused forced the informant to bring his

family members to the house of accused. He recorded statement of 13 witnesses' u/s 161 CrPC during investigation. He has cited 3 independent witnesses at the time of filing charge-sheet.

15. The offence of wrongful restraint which is punishable under Section 341 IPC is defined under Section 339 IPC. Section 339 IPC defines the offence of wrongful restraint in the following manner – "339. Wrongful restraint – Whoever voluntarily obstructs any person so as to prevent that persons from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person." 11.

16. Now, I have examined the prosecution evidence as to the manner in which the occurrence took place and the statements of the witnesses which are relevant for that purpose.

17. Although in the FIR the informant alleged that the accused persons along with three unknown persons wrongfully restrained him and Anowar Hussain on their way, however, in his cross PW-1 stated that nobody was present in Khakrabari 'chowk' while he was restrained. Other witness PW-3 also stated that on the day of incident while he and PW1 were coming back from work, Ratul and Rahul along with two others restrained their path at Khakrabari 'chowk' and though the I/O has stated in his cross that he has cited 3 independent witnesses, but their testimonies were completely silent in this regard. PW-1 has stated that he was taken by both the accused



persons on a bike to the house of Rahul Ali and then locked him in a room whereas PW3 Anowar Hussain has stated in cross that he was taken on a bike by Ratul from the P.O and Merajul was taken by Rahul and another on a different bike. Hence, the evidence of PW-1 and PW-3 are contradictory regarding the person who abducted Merajul from the road. Further the prosecution failed to examine any villagers before whom the informant Merajul was unlocked from the room. The family members of Merajul who came to rescue him were also not examined by the prosecution for the reasons best known to the prosecution. PW-1 has stated that he sustained injury on his cheek on being beaten by the accused but the medical report exhibited by PW-4 does not disclose any injury on the cheek of PW-1. Hence, the verbal evidence of the injured is not in consonance with the medical evidence adduced by the M.O. Further, PW-1 did not state before the I/O that the accused had confined him inside a room. PW-1 further stated before the I/O that no other persons accompanied the accused persons at the time of the incident which is contradictory to the deposition of PW-1 before the court. Though I/O examined 3 independent witnesses in this case, but not a single independent witness deposed in support of the prosecution.

18. Under Section 341 IPC the intention of the accused is to voluntarily restrain a person from proceeding in a particular direction. Hence, it has not been proved by the prosecution that there was any particular intention of the

accused persons to voluntarily obstruct the informant (PW1) from proceeding in any particular direction.

19. Now regarding offence u/s 323 IPC and on close observation of the deposition of PW-1, PW-2 and PW-3 it will make it clear that there was a quarrel between the informant and the accused persons relating to some misappropriation of Life Insurance money of the parents of the accused. Further PW-1 in his cross also admitted that he has given a LIC policy to the parents of both the accused and that the mother of accused had filed ejahar against him alleging that he had misappropriated their LIC money. PW-2 also stated in his evidence that informant / Merajul took money from accused persons Ratul and Rahul in disguise of a LIC policy holder but he went somewhere else and later when the accused persons arranged a meeting, the informant had assured that he would return the same but later he filed the ejahar against the accused Ratul and Rahul.

20. It appears from the evidence of PW-1 and PW-3 that there was previous animosity between the parties for misappropriation of Life Insurance money by the informant which was meant for the parents of the accused. Hence, in view of such animosity between the parties, this Court before relying upon the evidence of PW-1 and PW-3, tried to find out evidence which can corroborate the evidence of PW-1 and PW-3, but prosecution failed to adduce any evidence to corroborate the evidence of PW-1 and PW-3 and therefore, it raises doubt in the

mind of the court regarding the alleged offence. I.O exhibited the seizure list regarding recovery of the bike of the informant as exhibit 6, but the seizure witness were not examined by the prosecution. Exhibit 6 reveals that the bike of the informant was recovered from one Islam Ali. The prosecution failed to examine how Islam Ali is connected with the accused persons or the alleged offence. Hence, the recovery of the bike from the custody of the accused persons could not be proved by the prosecution beyond reasonable doubt.

21. Considering all aspects, it can be safely concluded that the prosecution side has failed to prove its case beyond all reasonable doubt against the accused persons. Hence, the accused persons Rahul Amin and Ratul Amin are not found guilty of the offence under sections 341/323/34 of I.P.C and are accordingly, acquitted and set at liberty forthwith. Their bail bonds stand extended for another six months under the spirit of section 437A of Cr. P.C.

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

23. Given under my hand and seal of this court on this 30<sup>th</sup> 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	Rahul Amin	27/05/2018	27/05/2018	341/ 323/ 34 IPC	Acquitted	N/A	N/A
A-2	Ratul Amin	27/05/2018	27/05/2018	341/ 323/ 34 IPC	Acquitted	N/A	N/A

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**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	Merajul Haque	Informant
PW-2	Monowar Hussain	Other witness
PW-3	Anowar Hussain	Eye witness
PW-4	Dr. Trailokya Haloi	Medical Officer
PW-5	Sri Babul Kr. Medhi	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 2	Injury report
4.	Exhibit 2(1)	Signature of Medical Officer
5.	Exhibit 3	Injury report
6.	Exhibit 3(1)	Signature of Medical Officer
7.	Exhibit 4	Sketch map
8.	Exhibit 4(1)	Signature of Investigating Officer
9.	Exhibit 5	Sketch map
10.	Exhibit 5(1)	Signature of Investigating Officer
11.	Exhibit 6	Seizure list
12.	Exhibit 6(1)	Signature of Investigating Officer
13.	Exhibit 7	Charge-sheet
14.	Exhibit 7(1)	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