

**IN THE COURT OF Munsiff No. 1 cum JMFC,
Nalbari**

Present: Dr. Nabanita Kalita

(Date of Judgment)
09.09.2022

Stae CR Case No. 14/2019

(Details of FIR/Crime and Police Station)

COMPLAINANT:	STATE OF_Assam
REPRESENTED BY	SMTI. PRITIMA DEVI, APP.
ACCUSED	1) NAGAR ALI (2) MALEK ALI
REPRESENTED BY	RASHED BHUYAN, ADVOCATE

Date of Offence	09.02.2018
Date of FIR	10.02.2018
Date of Final Report	25.02.2018
Date of offence explanation	07.11.2019
Date of commencement of evidence	09.09.2022
Date on which judgment is reserved	NIL
Date of Judgment	09.09.2022
Date of the Sentencing Order, if any	NIL

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date 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	Nagar Ali			352 IPC	Acquitted	N/A	N/A
A-2	Malek Ali			352 IPC	Acquitted	N/A	N/A

JUDGMENT

1. The case of the prosecution in a nutshell is that on 20.11.2017 the second installment of Rs. 1,50,000/- was granted as grant-in-aid for infrastructure of Kandhabari, Chakla Masjid for the year 2015-16 under 60 no. Kandhabari Dagapara Goan Panchayat. But due to the anomalies in implementation of money of the said scheme, local people were disappointed and on 08.02.2018 under the leadership of AMSU informed reporter of electronic media. Reporters arrived and took opinion of local people and published news. It is alleged that on 09.02.2018 about 6 pm the accused persons resisted the informant at Baraliarpar Chowk Bazar suspecting that informant had informed the reporter and assaulted him and caused injury. It is also alleged that accused persons physically

assaulted the informant and tried to kill him strangulating on his neck and though the accused persons snatched away cash amount of Rs. 11,210/- from his pocket, but local people recovered the same from the accused persons.

2. On receipt of the FIR, police of Mukalmua PS registered the same Mukalmua PS Case no. 47/18 under Section 341/325/379/34 IPC against the accused persons and conducted investigation into the matter.

3. On completion of the investigation, the police submitted Final Report against the accused persons namely Ainal Haque, Nagar Ali and Malek Ali under Section 352 of IPC which is non cognizable to police. As such, Id. Addl. CJM, Nalbari registered the instant case as State Complaint case.

4. The accused persons entered their appearance in response to the process issued. Copies of relevant documents were furnished to the accused persons in accordance with section 207 Criminal Procedure Code.

5. Particulars of offence under section 352 of IPC were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. As accused Ainal Ali had died on 15.12.2021, vide order dtd. 17.03.2022 case is abated against him.

7. During trial, the prosecution examined 1(one) witness.

8. The statement of defence of the accused persons have been dispensed with due to lack of incriminating materials against them. Defence declined to adduce DW evidence.

POINTS FOR DETERMINATION

i) Whether the accused persons on 09.02.2018 at about 6 pm assaulted the informant and thereby committed an offence punishable under section 352 IPC?

9. I have heard the learned counsel for both sides and have gone through the case record.

EVIDENCE ON RECORD

10. PW 1 Lokman Ali is the informant of this case. He deposed in his examination-in-chief that he lodged his case against Ainal Ali, Nagar Ali and Malek Ali. PW 1 stated that the occurrence took place in the year 2017. At that time grant-in-aid was sanctioned from the government for infrastructure of the Masjid. Reporters were called for, for anomaly of money of grant-in-aid. PW 1 stated that difference of opinion took place with the accused persons as they thought that he had called for the reporter. As such, the case was lodged due to misunderstanding. Now the matter is amicably settled between them. PW 1 further stated that they are from same village. He does not want

to proceed with the case, as he has no allegation against the accused persons. Ext P1/PW1 is ejahar. Ext. P1(1)/PW 1 is his signature.

11. During cross examination, PW 1 stated that he has no objection, if accused person is acquitted.

DISCUSSION, DECISION AND REASONS THEREOF

12. After going through the evidence of PW 1 who is the informant of this case, it transpires that the PW 1 has derailed from the allegations set forth in the FIR. From the deposition of the PW 1, it is seen that he has stated nothing incriminating against the accused in his evidence rather he deposed that he lodged the FIR due to misunderstanding and he has compromised the matter with the accused. He also expressed his unwillingness to proceed with the case. Moreover, PW1 in his cross examination has stated that he has no objection if the accused person is acquitted in this case. Since the PW 1 being the most vital witnesses did not implicate the accused person to the alleged crime, I do not find any force in the prosecution case to hold the accused persons guilty of the alleged crime.

13. Now it is the burden of the prosecution to establish the guilt of the accused person. From the evidence of the prosecution witnesses, it appears that the witnesses have not adduced any evidence to hold the accused persons guilty under the

alleged sections of IPC. Due to insufficient evidence on the part of the prosecution side, it is a fit case in my view to acquit the accused from the charges levelled against them. Hence, the accused person deserves acquittal.

14. Situated thus, it is found that the prosecution has failed to implicate the accused persons Nagar Ali and Malek Ali of any offence u/s 352 of IPC. As such, the points for determination are answered in negative and in favour of the accused persons.

ORDER

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution failed to prove beyond reasonable doubt that the accused person had committed the offence under Section 352 IPC. As such, the accused persons namely Nagar Ali and Malek Ali are acquitted of the charge under Section 341/352/294/506 IPC and set at liberty forthwith.

The bail bonds of the accused persons and their sureties shall remain in force for a period of six months from today in compliance with section 437(A) Criminal Procedure Code.

Case is disposed of on contest.

Given under my hand and seal of this court on this 9th day of September, 2022 at Nalbari, Assam.

(DR. NABANITA KALITA)
Judicial Magistrate, 1st Class,
Nalbari.

APPENDIX**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)
PW1	Lokman Ali	Informant

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	NIL	N/A

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	NIL	N/A

**LIST OF PROSECUTION/ DEFENCE /
COURT EXIBITS**

A. Prosecution:

Sr. No	Exhibit Number	Description
1	P.Ext-1/PW1	FIR
2	P.Ext-1 ₁ /PW1	Signature of PW1

B. Defence:

Sr. No	Exhibit Number	Description
1	Exhibit D1/ DW1	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
1	Exhibit C1/ CW1	NIL

D. Material Objects:

Sr. No	Exhibit Number	Description
1	MO1	NIL

DR. NABANITA KALITA)
Judicial Magistrate 1st Class,
Nalbari.