

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE  
AT NORTH LAKHIMPUR**

G.R CASE NO: 1506 OF 2016  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: MD. AFAZUDDIN AND 5 ORS

DISTRICT: NORTH LAKHIMPUR  
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 1506 / 2016

U/S 147/148/341/323/149 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD AFAZUDDIN AND ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P  
ADVOCATE FOR THE ACCUSED:

CHARGE FRAMED ON : 28/02/2018  
EVIDENCE RECORDED ON : 28/03/18, 17/04/18, 29/05/18, 21/06/18

ARGUMENT HEARD ON : 27/06/18  
JUDGMENT DELIVERED ON : 27/06/18

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the F.I.R is that on 16.06.2016 at about 7.00 AM in the morning, while informant's son Md. Giasuddin

was going to paddy field with his own tractor, at that time the tyre of said tractor came into contact with the nearby bamboo fencing because of sand gravel kept by accused Afazuddin on the side of that road. At about 8.00 PM on that day, while the aforesaid son of informant was coming back to home with his said tractor, at that time, the accused persons named in the F.I.R armed with 'Lathi', 'Dao' etc restrained informant's said son and asked him to stop the tractor. The informant's said son then raised hue and cry and the accused persons started to chase him. Hearing the hue and cry raised by informant's said son, informant's son-in-law Md. Hussain Ali and grandson Hibjur Rahman came there but the accused persons assaulted them and caused injury. Informant thereafter lodged an FIR about the occurrence before the In-charge of Doolahat police out-post.

2. On receipt of F.I.R, the I/C Doolahat police out-post forwarded the F.I.R to the O/C Laluk P.S who registered the same as a case being numbered as Laluk P.S Case No. 198/16. After investigation, I.O of the case submitted charge sheet against accused persons Md. Billal Uddin, Md. Afaz Uddin, Md. Mofiz Uddin, Musstt. Sofiron Nessa, Musstt. Swarifa Begum, and Md. Anowar Hussain for the offences punishable under section 147/148/341/323 of I.P.C. Copies of relevant documents were furnished to the accused persons u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charges were framed against the above named six accused persons for the offences punishable under section 147/148/341/323/149 of I.P.C. The charges are then read over and explained to the accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined seven witnesses whereas the accused persons did not examine any witness in support of their defence. The examination of the accused persons u/s 313 of CrPC is dispensed with finding no incriminating materials in the evidence on record. I have heard the learned counsel for both the parties.

Upon hearing and on perusal of record I have framed the following points for determination-

4. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons on 16/06/2016 at about 08:00 P.M, at No.1 Salmoria under Laluk P.S, were members of an unlawful assembly, the common objection of which was to caused restrain and cause hurt to informant's son Md. Giasuddin Ahmed, and thereby committed an offence punishable under Section 143 of I.P.C?

(ii) Whether the accused persons on 16/06/2016 at about 08:00 P.M, at No.1 Salmoria under Laluk P.S, were members of an unlawful assembly, the common objection of which was to caused restrain and cause hurt to informant's son Md. Giasuddin Ahmed, and in prosecution of that common object, the accused persons or anyone of them being armed with deadly weapon used force or violence, and thereby committed an offence punishable under Section 148 of I.P.C?

(iii) Whether the accused persons on 16/06/2016 at about 08:00 P.M, at No.1 Salmoria under Laluk P.S, were members of an unlawful assembly, the common objection of which was to caused restrain and cause hurt to informant's son Md. Giasuddin Ahmed, and in prosecution of that common object, the accused persons or anyone of them voluntarily obstructed informant's son Md. Gias Uddin Ahmed so as to prevent him from proceeding in any direction in which he had a right to proceed, and thereby committed an offence punishable under Section 447 of I.P.C r/w Section 149 of I.P.C?

(iv) Whether the accused persons on 16/06/2016 at about 08:00 P.M, at No.1 Salmoria under Laluk P.S, were members of an unlawful assembly, the common objection of which was to caused restrain and cause hurt to informant's son Md. Giasuddin Ahmed, and in prosecution of that common object, the accused persons or anyone of them voluntarily beat informant's son Md. Giasuddin and informant's relative Md. Hussain Ahmed, Md. Asadur Rahman and Md. Hibjur Rahman with the intention to cause hurt, thereby causing injury, and thereby committed an offence punishable under Section 323 of I.P.C r/w Section 149 of I.P.C?

**DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:**

**POINT NO.1, 2, 3 & 4**

5. For the sake of convenience, and because point no.1, 2, 3 & 4 are interconnected, hence they are taken up herein together for discussion and decision as follows:

6. As regards the aforesaid points for determination, PW-1 Md. Habibur Rahman who is the informant of this case, in his evidence-in-chief has stated that on 16.06.2016 at about 7.00 AM in the morning, his son Md. Giasuddin Ahmed was going to paddy field with his own tractor through the road in front of the land of accused persons. At that time the said tractor came into contact with the bamboo fencing of the accused persons and caused some damage. The accused persons then started altercation with his said son. Thereafter, his son-in-law Hussain Ahmed, grandson Hibjur Rahman and Asadur Rahman came to the place of occurrence and the accused persons started altercation with them too. On the next day he lodged an F.I.R against the accused persons. Exhibit-1 is the F.I.R in which Exhibit-1(1) is his signature. After a few days of filing the case, the aforesaid misunderstanding between both the parties got settled amicably. During his cross-examination, PW-1 has stated that he has no objection if the accused persons are acquitted from this case.

7. PW-2 Hussain Ahmed (son of Sador Ali Munsif) and PW-3 Md. Hussain Ahmed (son of Md. Lt. Joynal Abedin) in their respective evidence-in-chief have stated that they know both the parties of this case. About 1 ½ years back the occurrence took place. They were in their respective houses at the time of occurrence. Later on, they came to know that there took place an altercation between both the parties. Cross-examination of PW-2 and PW-3 were declined by defence.

8. PW-4 Md. Giasuddin, who is the son of informant, in his evidence-in-chief has stated that at the time of occurrence, he was driving a tractor and the same came in contact with the bamboo fencing belonging to accused persons and thereby caused slight damage. The accused persons then started an altercation with him due to the aforesaid damage. Subsequently, the accused persons filed a case against him and his family members. His family members also filed a case. After filing of the case,

both the sides settled the matter amicably. Cross-examination of PW-4 was declined by defence.

9. PW-5 Md. Asadur Rahman in his evidence-in-chief has stated that about three years back on a day in the evening, his relative brother Giasuddin hit the bamboo fencing of accused Md. Anowar Hussain with a tractor and thereafter both of them had an altercation in that respect. Subsequently, the informant lodged a case in police station. After filing of the case, the dispute between both the parties got settled amicably. During cross-examination, PW-5 has stated that he was not present at that time when the tractor hit the bamboo fencing.

10. PW-6 Md. Hibjur Rahman in his evidence-in-chief has stated that about 2 years back the informant and accused persons had an altercation with respect to causing damage of a bamboo fencing by a tractor. Thereafter, the informant filed a case. After filing of that case, the dispute between both the parties got settled amicably.

11. At the time of arguments, learned counsel for the defence submitted that there is no incriminating material against the accused persons, and hence, the accused persons are liable to be acquitted.

12. On going through the evidence deposed by prosecution witnesses as narrated above, it is seen that at the time of alleged occurrence informant's son Md. Giasuddin was going to paddy field with his tractor and the said tractor came into contact with the bamboo fencing belonging to the accused persons thereby causing slight damage as a result of which informant's said son had an altercation with the accused persons. The witnesses examined by prosecution have not stated anything specifically about any obstruction being given by the accused persons to said Md. Giasuddin Ahmed, or any assault being committed by the accused persons to said Md. Giasuddin, Md. Hussain Ahmed, Md. Hibjur Rahman and Md. Asadur Rahman as alleged. There is no iota of evidence to show that the accused persons even went to the place of occurrence with the intention to commit any offence as alleged by prosecution. Hence, it is clear that there is nothing in the evidence on record to show that the accused persons were a member of unlawful assembly at the time of alleged

occurrence. Therefore, it is held that the witnesses examined by prosecution have failed to prove that the accused persons have committed the offences as alleged.

*DECISION: Point no.1, 2, 3 & 4 are therefore decided in the negative and goes against the prosecution.*

**ORDER**

13. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove that accused Md. Billal Uddin, Md. Afaz Uddin, Md. Mofiz Uddin, Musstt. Sofiron Nessa, Musstt. Swarifa Begum, and Md. Anowar Hussain have committed the offences punishable under section 143/148/341/323/149 of IPC as alleged, and as such, the above named accused persons are acquitted of the charges under section 143/148/341/323/149 of IPC and they be set at liberty forthwith.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 27<sup>th</sup> day of June, 2019.

The case is disposed of on contest.

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur

**APPENDIX**

(A) **PROSECUTION EXHIBITS**

Exhibit.1 – FIR

(B) **DEFENCE EXHIBITS**

Nil

(C) **PROSECUTION WITNESSES**

PW-1 – Md. Habibur Rahman

PW-2 – Md. Hussan Ahmed (son of Hador Ali Munsu)

PW-3 – Md. Hussain Ahmed (son of Lt. Joynal Abedin)

PW-4 – Md. Giasuddin

PW-5 – Md. Asadur Rahman

PW-6 – Md. Hibjur Rahman

(D) **DEFENCE WITNESSES**

Nil

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur