

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

G.R CASE NO: 3465 OF 2017
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. ASROF ALI & 2 ORS

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

GR CASE NO: 3465 / 2017

U/S 447/323/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. ASROF ALI & 2 ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SRI G. SAHU

OFFENCE EXPLAINED ON : 02/02/2019
EVIDENCE RECORDED ON : 28/06/2019

ARGUMENT HEARD ON : 28/06/2019
JUDGMENT DELIVERED ON : 28/06/2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R is that on 02/12/2017 at about 09:00 P.M in the night, the accused persons named in the F.I.R in a drunken condition started to create chaos in the locality of informant. Thereafter, one Md. Yunus Ali raised objection to such activities of the accused persons, but the accused persons chased said Md. Yunus Ali and thereby assaulted him on the courtyard of the house of informant Musstt. Jahira Begum. The informant then

somehow stopped the accused persons but in the meantime they caused cut injury on the head of said Md. Yunus Ali. The informant thereafter lodged an F.I.R about the occurrence before the in-charge of Lilabari Police Out post.

2. On receipt of F.I.R, the in-charge of Lilabari Out post forwarded the same to O/C of North Lakhimpur P.S who then registered a case being numbered as North Lakhimpur P.S Case No. 1474/17. After investigation, I.O of the case submitted charge sheet against accused persons Md. Asrof Ali, Md. Arab Ali, and Musst. Momi Begum for the offences punishable under section 447/325/34 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, particulars of offences under section 447/323/34 of I.P.C are 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 two 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 on 02/02/2017 at about 9.00 AM at Kakoi Rajgarh under North Lakhimpur police station, the accused persons in furtherance of their common intention, unlawfully entered into the courtyard of informant's house with the intention to beat Md. Inus Ali, or to intimidate, insult or annoy the informant, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether on 02/02/2017 at about 9.00 AM at Kakoi Rajgarh under North Lakhimpur police station, the accused persons in furtherance of their common intention, beat Md. Inus Ali with the intention to cause hurt, and thereby caused injury on his head, and thereby committed an offence punishable under section 323/34 of I.P.C?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO.1, 2, & 3

5. For the sake of convenience, and as because point no.1 & 2 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. Yunus Ali in his evidence-in-chief has stated that the informant is his sister. He knows the accused. About two years back on a day at about 08:30 P.M, the informant and the accused persons had an altercation near his house with respect to boundary of their land. Thereafter people nearby came to the place of occurrence. Subsequently the informant lodged a case about the occurrence. After filing of the FIR the aforesaid dispute between both the parties got settled amicably for which he is not interested to proceed with this case. Today he came to court with the informant and submitted copy of voter card and driving licence in support of his identity. During his cross-examination, PW-1 has stated that the accused persons are his family members. The accused persons also filed another case against him and the same is withdrawn by the accused persons. He has not objection if the accused persons are acquitted from this case.

7. PW2 Smti Jahira Begum in her evidence in chief has stated that she is the informant and she knows the accused persons who are her relatives. About two years back on a day at about 08:30 P.M, the accused persons had an altercation with her brother Md Yunus Ali outside her house. Thereafter, when she came out to stop the altercation at that time the accused started an altercation with her too. Later on she lodged an F.I.R about the occurrence. Exhibit -1 is that F.I.R in which exhibit – 1(1) is her signature. After filing of the FIR the aforesaid dispute between both the parties got settled amicably for which he is not interested to proceed with this case. PW1 Md. Yunus Ali, who deposed before this court today, is her said brother. During her cross-examination, PW2 has stated that the accused persons are her family members. At present she is having good relations with the accused persons. The accused persons also filed another case against her and the same is withdrawn by the accused persons. She has not objection if the accused persons are acquitted from this case.

8. 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.

9. On going through the evidence deposed by PW-1 and PW-2 as narrated above, it is found that at the time of alleged occurrence, the accused persons had an altercation with the informant and her brother Yunus Ali in connection with a land boundary dispute. There is nothing in the evidence of PW-1 and PW-2 to show that the accused persons have assaulted and caused hurt to said Md. Yunus Ali as alleged. Also, the PW1 & PW2 have not mentioned the exact location where the aforesaid altercation took place. As such, there is nothing in the evidence on record which can show that the accused persons entered into any premises in possession of informant or said Md. Yunus Ali at the time of alleged occurrence. Therefore, it is evident that there is no iota of to show that the accused persons have committed the offences as alleged in the F.I.R. The witnesses examined by prosecution have not stating anything incriminating against the accused persons and failed to prove the case of prosecution against the accused persons as alleged.

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

ORDER

10. In view of the discussion made above and the decision reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove that accused Md. Asrof Ali, Md. Arab Ali, and Musstt. Momi Begum have committed the offences punishable under section 447/323/34 of I.P.C as alleged, and as such, the above named accused persons are acquitted of the charges under section 447/323/34 of I.P.C and they be set at liberty forthwith.

The bail bond of the accused persons 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 28th day of June, 2019.

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. Yunus Ali

PW-2 – Smti Jahira Begum

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur