

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

G.R CASE NO: 780 OF 2017  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: MD. NUR MOHAMMAD ALI

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

GR CASE NO: 780 / 2017

U/S 341/294/323/506 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. NUR MOHAMMAD ALI

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA  
ADVOCATE FOR THE ACCUSED: MR. N. C BORAH

OFFENCE EXPLAINED ON : 18.05.2018  
EVIDENCE RECORDED ON : 30.07.2018, 22.10.2018, 17.08.2019, 01.07.2019,  
08.02.2021  
ARGUMENT HEARD ON : 25.03.2021  
JUDGMENT DELIVERED ON : 30.03.2021

**JUDGMENT**

**PROSECUTION'S CASE IN BRIEF:**

1. Prosecution's case in brief as it reveals from the FIR is that on 26.03.2017 informant Md. Nurul Islam got information that his niece Phulbanu had been murdered by the family members of accused Nur Mohammad. The informant after getting the aforesaid information proceeded towards the house of his said niece but the accused obstructed him on the way at Aranya basti and thereafter assaulted the informant and snatched away cash Rs. 14,500/- (rupees

fourteen thousand five hundred) along with one mobile handset from the informant. The accused also threatened to kill the informant. The informant thereafter lodged an FIR about the occurrence before the Officer-In-charge of Silonibari police out-post.

2. On receipt of the F.I.R, a case was registered being numbered as North Lakhimpur P.S Case No. 325/2017. After investigation, I.O of the case submitted charge sheet against accused Nur Mohammad Ali for the offences punishable u/s 341/294/323/506 of IPC. Copies of relevant documents were furnished to the accused u/s 207 CrPC. Considering the relevant documents and after hearing both the parties, particulars of offences punishable u/s 341/294/323/506 of IPC are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined eight witnesses, whereas the defence did not examined any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

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

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused on 26.03.2017 at Aranya Basti area, voluntarily obstructed informant Md. Nurul Islam so as to prevent him from proceeding in any direction in which he had a right to proceed, and thereby committed an offence punishable u/s 341 of IPC?

(ii) Whether the accused on 26.03.2017 at Aranya Basti area, voluntarily assaulted the informant with the intention to cause hurt, and thereby caused injury, and thereby committed an offence punishable u/s 323 of IPC?

(iii) Whether the accused on 26.03.2017 at Aranya Basti area, uttered obscene words in or near any public place to the annoyance of informant or others, and thereby committed an offence punishable u/s 294 of IPC?

(iv) Whether the accused on 26.03.2017 at Aranya Basti area, threatened the informant with injury to his person, with the intent to cause alarm, and thereby committed an offence punishable u/s 506 of IPC?

**DISCUSSION, DECISION AND REASONS THEREOF:**

**POINT NO. 1, 2, 3 and 4:**

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

7. As regards the aforesaid points for determination, the crux of allegation made by informant/PW-1 Md. Nurul Islam and PW-2 Md. Miraj Ali in their respective evidence is that, at the time of occurrence they were going to the house of informant's niece Phulesha and on their way the accused threatened them by saying that "I have killed one and I shall kill another". The accused thereafter assaulted them by hitting blows and also snatched away cash Rs. 14,500/- along with one mobile handset from the informant/PW-1. Now, in my opinion, the foregoing evidence if presumed to be believable will attract the ingredients of the offences punishable u/s 323/506 of IPC. Hence, it is necessary to find out that whether the above evidence deposited by PW-1 and PW-2 can be relied upon in order to form a conclusive opinion against the accused.

8. In the above context, upon perusal of cross-examination of PW-1 and PW-2, it is seen that they have specifically denied the suggestions of defence that they did not mentioned in their statement before I/O that the accused had threatened them by saying that "I have killed one and I shall another". However, in this regard, I.O/PW-8 Sri Siba Prasad Bonia, who investigated this case, in his evidence, has confirmed that the PW-1 and PW-2 have not mentioned the aforesaid allegations in their statement recorded u/s 161 of CrPC. In my opinion, the aforesaid allegation being a material part of alleged occurrence ought to have been mentioned by PW-1 and PW-2 in their statement before I/O had the occurrence took place as alleged. Therefore, omission to mention the aforesaid allegation by PW-1 and PW-2 in their respective statements before I/O is clearly a material contradiction as per section 162 of

CrPC and the same creates serious doubt regarding the credibility of their aforesaid allegations. In that view of the matter, I am of the opinion that the aforesaid allegation made by PW-1 and PW-2 in their evidence cannot be believed.

9. As regards the alleged assault, it is seen that the informant/PW-1 in his FIR and evidence has alleged that the accused assaulted him/PW-1. The PW1/informant has nowhere stated anything about any assault upon PW-2 Miraj Ali by the accused. In fact, the informant/PW-1 in his FIR has not even mentioned that that PW-2 was present with him at the time of occurrence. However, the PW-2 has alleged that the accused has assaulted him and also the informant by hitting blows. In my opinion, if the accused had actually assaulted both of them then the informant/PW-1 would have definitely mentioned the same in his FIR and evidence. Under such circumstances, the allegation of assault by accused upon PW-2 becomes doubtful.

10. Besides the above, PW-5 Dr. Kiran Ch. Chetia, who being the medical officer posted at Nowboicha PHC at the relevant time, examined the PW-1 and PW-2 after the occurrence and found only tenderness in the left arm and chest of PW-1/informant, and tenderness on the back and chest of PW-1. At this juncture, it is important to note that as per PW-1 and PW-2, they fell down on the ground as a result of the blow being hit by the accused. In my opinion, a blow which caused PW-1 and PW-2 to fall down on the ground will definitely cause some more injury (like swelling etc.) than simple tenderness. Under such circumstances, I am of the opinion that the findings of M.O/PW-5 do not properly support the allegations of assault.

11. Moreover, having regard to the common course of human conduct, it is quite difficult to believe that an unarmed person will be in a position to assault two persons by hitting blows and cause them to fall down on the ground and sustain injury.

12. In the above context, though PW-3 Jahed Ali and PW-4 Matleb Ali in their respective evidence-in-chief have corroborated the version of PW-1 and PW-2 but in their cross-examination have specifically stated that they have not seen the accused assaulting PW-1 and PW-2. Under such circumstances, it is

clear that the allegations made by PW-3 and PW-4 are clearly hearsay and the same cannot be believed unless corroborated by some other reliable evidence. Again, PW-6 Md. Hafijul Islam in his evidence-in-chief has stated that he do not know anything about the occurrence of this case. The remaining two witnesses i.e. PW-7 Sri Nikhil Rajkhowa and PW-8 Sri Siba Pd. Bonia are both investigating officers of this case and there is nothing specific in their evidence which in itself can go to prove that the accused persons have committed the offences as alleged.

13. Considering the entire discussion made above, I find that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused persons have committed the offences as alleged in the FIR and as quoted in the aforesaid points for determination.

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

14. 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 beyond reasonable doubts that accused Md. Nur Mohammad Ali has committed the offences punishable under section 341/294/323/506 of IPC as alleged, and as such, the said accused is acquitted of the charges under section 341/294/323/506 of IPC on benefit of doubt and he be set at liberty forthwith.

The bail bond of the accused 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 30<sup>th</sup> day of March, 2021.

This case is disposed of on contest.

(F. U Choudhury)  
Additional Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

**APPENDIX****PROSECUTION EXHIBITS:**

Exhibit.1 – Medical report

Exhibit.2 – Medical report

Exhibit.3 – Charge-sheet

Exhibit.4 – GD entry

**PROSECUTION WITNESSES:**

1. PW-1 – Md. Nur Islam @ Nurul

2. PW-2 – Md. Miraj Ali

3. PW-3 – Md. Jahed Ali

4. PW-4 – Md. Matleb Ali

5. PW-5 – Dr. Kiran Ch. Chetia

6. PW-6 – Md. Hafijul Islam

7. PW-7 – Sri Nikhil Rajkhowa

8. PW-8 – Sri Siba Pd. Bonai

**DEFENCE EXHIBITS:**

NIL

**DEFENCE WITNESSES:**

NIL

(F. U Choudhury)  
Additional Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur