

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

G.R CASE NO: 2147 OF 2018
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. TAIJUDDIN ALI AND ANR

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

GR CASE NO: 2147 / 2018

U/S 341/323/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. TAIJUDDIN ALI AND ANR

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MD MUKSED ALI

OFFENCE EXPLAINED ON : 22.08.2019
EVIDENCE RECORDED ON : 03.10.2019

ARGUMENT HEARD ON : 03.10.2019
JUDGMENT DELIVERED ON : 03.10.2019

JUDGMENT

PROSECUTION'S CASE IN BRIEF

1. Prosecution's case in brief as it reveals from the F.I.R is that on 26.08.2018 at about 8.30 PM while informant Md. Baharuddin Ali was coming back to his house from the house of his neighbour at that time accused Tajjuddin Ali and Rafiqul Ali restrained the informant and thereafter hit him with a stick and also dragged him on the ground as a result of which he sustained injury on his neck, hand and shoulder. The accused persons then

tried to kill the informant by strangulating his neck but at that time two of the companions of informant saved him from the grasp of accused persons. The accused persons then threatened to kill the informant in future. The informant thereafter lodged an FIR about the occurrence before the OC of Boginadi police station.

2. On receipt of the F.I.R the O/C Boginadi P.S registered a case being numbered as Boginadi P.S Case No. 145/18 and after investigation I.O of the case submitted charge sheet against accused persons Md. Tajuddin Ali and Rafiqul Ali for the offences punishable under section 341/323/34 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 punishable u/s 341/323/34 of IPC read over and explained to the accused to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined one witness whereas the accused did not examine any witness in support of his defence. The examination of the accused person u/s 313 CrPC was dispensed with finding no incriminating materials against him. 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-

POINTS FOR DETERMINATION:

(i) Whether the accused persons on 26.08.2018 at about 8.30 PM on the road at Kuchiamari village under Boginadi police station, in furtherance of their common intention, voluntarily obstructed the informant 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 341/34 of IPC?

(ii) Whether the accused persons on 26.08.2018 at about 8.30 PM on the road at Kuchiamari village under Boginadi police station, in furtherance of their common intention, voluntarily hit blows on the face of informant with a stick with the intention to cause hurt and thereby caused hurt to the informant, and thereby committed an offence punishable u/s 323/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO. 1 & 2

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

6. As regards the aforesaid points for determination, informant Md. Baharuddin Ali as PW-1 in his evidence-in-chief has stated that about 8 months back on a day at about 8.30 PM in the night, he had an altercation with the accused persons on the way while coming back to his house from the house of his neighbour. Thereafter, he lodged an FIR against the accused persons in the police station. Exhibit-1 is the FIR in which Ext-1(1) is his signature. After lodging of that FIR, the aforesaid dispute between both the parties got settled amicably for which he is not interested to proceed with this case any further. During his cross-examination, PW-1 has stated that he do not have any objection if the accused persons are acquitted from this case. This case was lodged out of misunderstanding.

7. At the time of argument, learned counsel for the defence submitted that the prosecution has failed to prove its case as alleged and hence the accused is liable to be acquitted from this case.

8. On going through the evidence deposited by PW-1 as narrated above, it is seen that at the time of occurrence the informant allegedly had an altercation with the accused persons. There is nothing in the evidence deposited by PW-1 which can show that the accused persons voluntarily obstructed the informant, or physically assaulted and caused injury to the informant as alleged. The PW-1 in his evidence has not stated anything about any wrongful restraint, or any hurt, caused to him by the accused persons. A simple altercation between both the parties cannot be understood as a wrongful restraint within the meaning of section 341 of IPC. Therefore, considering the foregoing discussion, it is evident that the witness examined by prosecution has not deposited any incriminating material against the accused and has failed to prove the allegations made by the prosecution against the accused persons in the FIR.

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

ORDER

9. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witness examined by prosecution has failed to prove that accused Md. Taijuddin Ali and Rafiqul Ali have committed the offences under section 341/323/34 of IPC as alleged, and as such, the said accused persons are acquitted of the charges under section 341/323/34 of IPC and they 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 3rd day of October, 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

P.W. 1 – Md. Baharuddin Ali

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur