

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

G.R CASE NO: 1029 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: MD. ASHIM UDDIN & 2 ORS

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

GR CASE NO: 1029 OF 2016

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

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: MD. ASHIM UDDIN & 2 ORS

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P
ADVOCATE FOR THE ACCUSED: SRI R. GOGOI

OFFENCE EXPLAINED ON : 18/04/2018
EVIDENCE RECORDED ON : 20/06/18, 26/11/18, 30/01/19, 11/06/19

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

JUDGMENT

BRIEF FACTS OF THE CASE:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 29/04/2016 at about 06:30 A.M in the morning, the accused persons restrained informant Md. Atikul Islam in front of their house and thereafter at the instruction of accused Md. Ashim Uddin the other two co-accused persons tied the hands of informant with a rope and then beat him and caused severe injury. The accused

persons also rebuked the informant by using obscene words. The informant thereafter lodged an F.I.R about the occurrence before the O/C of Laluk P.S.

2. On receipt of the F.I.R, police registered a case and after investigation submitted charge sheet u/s 341/325/34 of IPC against accused Md. Ashim Uddin, Md. Ennash Ali, and Md. Mannash Ali. Copies of relevant documents were furnished to the accused person u/s 207 CrPC. Considering the relevant documents and hearing both the parties, particulars of the offences punishable under section 341/323/34 of I.P.C are read over and explained to all the three accused persons to which they pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined five witnesses whereas the accused did not examine any witness in support of his defence. The accused persons are examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by the accused persons and the tenor of cross-examination of prosecution witnesses by defence.

4. I have heard the learned counsel for both the parties.

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

POINTS FOR DETERMINATION:

(i) Whether the accused persons on 29/04/2016 at about 06:30 A.M, in furtherance of their common intention, voluntarily obstructed informant Md. Atikul Islam in front of their house and then tied his hands with a rope so as to prevent him from proceeding in any direction in which he had a right to proceed, and thereby committed an offence under section 341/34 of I.P.C?

(ii) Whether the accused persons on 29/04/2016 at about 06:30 A.M, in furtherance of their common intention, beat informant Md. Atikul Islam with the intention to cause hurt, and thereby actually caused hurt to the informant, and thereby committed an offence punishable under section 323/34 of I.P.C?

DISCUSSION OF EVIDENCE, REASONS AND DECISION THEREOF:-

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

7. As regards the aforesaid points for determination, PW1 Md. Atikul Islam in his evidence in chief has stated that on 29/04/2016 at about 06:30 A.M, while he was going to Jubanagar, at that time the accused persons beat him in front of

their house. The accused persons tied him with a rope and then beat him with their hands. The people nearby then gathered at the place of occurrence after hearing hue & cry raised by him and thereafter rescued him. He then lodged an F.I.R about the occurrence. Exhibit -1 is that F.I.R in which exhibit -1(1) is his signature. Police took him for medical treatment.

8. In his cross-examination, PW1 has stated that he showed his injuries to the medical officer. However, in this respect, PW2 Dr. Mridul Borah, who was the Medical Officer at Laluk Hospital during the relevant time, in his evidence has stated that he examined the informant on 29/04/2016 but found no sign of any visible injury. As such, it is clear that the evidence deposited by PW1 is contradictory to the findings of PW2. In my opinion, had the informant sustained any injury as stated by him in his evidence then the PW2/ medical officer must have been able to detect the injury as the informant was examined by PW2 on the very day of alleged occurrence. Under such circumstances, the statements made by PW1 that the accused persons beat him and caused injury, becomes doubtful and unreliable.

9. In the above context, PW3 Md. Abdul Karim in his evidence in chief has stated that he learnt that the accused persons dragged the informant and tied him in their house. During his cross-examination, PW3 has denied the suggestion that he did not make the aforesaid statement before police. However, as confirmed by I.O/PW5 Sri Dipankar Jyoti Bora, PW3 did not state before him in the statement that the accused persons dragged the informant and tied him in their house. The aforesaid allegation made by PW3 is the material part of alleged occurrence, and hence, in the usual course of the things he should have stated the aforesaid alleged facts before the I/O. Failure of PW3 to state the aforesaid alleged facts before I.O, in my opinion, is a material contradiction which creates doubt as regards the truthfulness of the aforesaid statement made by PW3.

10. Moreover, PW3 in his cross-examination has stated that he cannot say the truth of the fact he heard. This shows that the PW3 actually did not see the accused persons dragging or tying the informant; and the same was heard by him from others. Similarly, PW4 Dilwar Hussain in his evidence in chief has stated that he was not at his house at the time of occurrence and subsequently he learnt that the accused Ashim Uddin assaulted the informant. During his cross-examination, PW4 has stated that he cannot say the truth of what he heard. The aforesaid statements made by PW4 in his evidence clearly shows that he actually did not see

accused Md. Ashim Uddin assaulting the informant; and the same was heard by him from others. Therefore, the aforesaid allegations made by PW3& PW4 against the accused persons are nothing but piece of hearsay evidence which cannot be relied upon unless corroborated by some other reliable evidence.

11. Besides the above, though PW1 has deposed that the people nearby came to the place of occurrence after hearing hue & cry and then rescued him, but the prosecution has not examined any such witness who could corroborate and support the aforesaid version of PW1. Had the occurrence took place as alleged by PW1 then the prosecution should have been able to examine those persons who allegedly rescued the PW1 from the place of occurrence. Therefore, failure of the prosecution to examine such witnesses creates doubts as regards the truthfulness of the allegations made by PW1 against the accused persons becomes

12. In addition to the above, it is specifically stated by I.O/PW5 that the F.I.R was lodged on 05/05/2016. Perusal of case record shows that the alleged occurrence took place on 29/04/2016. Therefore, apparently there is a delay of six days in lodging the F.I.R. However, the prosecution has not adduced any evidence to explain the reasons for such delay in lodging the F.I.R. Such unexplained delay, in my opinion, creates doubts as regards the truthfulness of the entire prosecution.

13. Considering the above discussion, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that the accused persons have committed the offences punishable under section 341/323/34 of I.P.C as alleged.

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

ORDER

10. 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. Ashim Uddin, Md. Ennash Ali, and Md. Mannash Ali have committed the offences punishable under section 341/323/34 of IPC as alleged, and as such, the above named three accused persons are acquitted of the charges under section 341/323/34 of IPC on benefit of doubt 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 28th 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 – F.I.R
- Exhibit.2 – Medical Report.
- Exhibit.3 – Sketch Map
- Exhibit.4 – Charge Sheet.

(B) DEFENCE EXHIBITS

Nil

(C) PROSECUTION WITNESSES

- P.W. 1 – Md. Atikul Islam
- P.W. 2 – Dr. Mridul Borah
- P.W. 3 – Md. Abdul Karim.
- P.W. 4 – Md. Dilwar Hussain
- P.W. 5 – Sri Dipankar Jyoti Bora

(D) DEFENCE WITNESSES

Nil

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur