

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, LAKHIMPUR,  
NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur, Assam

**G.R. 105/2016**

Under section 341/323/34 of the Indian Penal Code

**State of Assam**

**-Vs-**

**1. Md. Ismail Ali**

S/O: Late Asraf Ali

R/O: Balijan

P.S: North Lakhimpur

District: Lakhimpur, Assam

**2. Md. Eusuf Ali**

S/O: Late Asraf Ali

R/O: Balijan

P.S: North Lakhimpur

District: Lakhimpur, Assam

.....Accused persons

Date of offence explanation	: 06.10.2016
Date of recording evidence of PWs	: 23.11.2017, 12.07.2018, 30.08.2018, 04.07.2019, 16.10.2019
Date of recording of statement u/s 313, Cr.P.C:	07.11.2019
Date of argument	: 03.12.2019
Date of judgment	: <b><u>26.12.2019</u></b>

**Advocates appeared in the case:-**

Mr. Prasanta Dutta, Addl. P.P., for the State

Mr. Homen Das, Advocate, for the accused persons

**J U D G M E N T**

1. The prosecution case, in brief, is that on 08.01.2016 informant Md. Dadul Ali lodged an FIR with the In-charge of Lilabari Police Outpost under North Lakhimpur Police Station alleging that at about 7:00 AM on 08.01.2016

while he was going to pull out his 'jeura' (bamboo fencing) of his boundary in order to enter a tractor in his land, at that time, accused persons Md. Ismail Ali, Md. Eusuf Ali, Musstt. Monira Begum, Musstt. Anju Begum and Musstt. Sunjani Begum, in a group, came angrily and opened his 'gamucha' (towel) for which he became naked. Accused persons Md. Ismail Ali, Md. Eusuf Ali were armed with sharp weapon and they inflicted cut injury on his head. That apart, all the accused persons assaulted him as a result of which he sustained grievous injuries on his eyes, head and hand along with bleeding from there. Hence, the case.

2. After receiving the ejahar, the In-charge of Lilabari Police Outpost effected a G.D. Entry vide Lilabari O.P. G.D Entry No. 116 dated 08.01.2016 and forwarded the ejahar to the Officer-in-charge of North Lakhimpur Police Station to register a case under proper section of law. On receipt of the ejahar, the Officer-in-charge, North Lakhimpur Police Station registered a case vide North Lakhimpur P.S. Case No. 51/2016 under section 143/326/325 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 341/323/34 of the Indian Penal Code against the accused persons Md. Ismail Ali and Md. Eusuf Ali to stand trial in the Court. The FIR-named accused persons Musstt. Monira Begum, Musstt. Anju Begum and Musstt. Sunjani Begum were not sent up for trial.

3. On receipt of the charge-sheet, cognizance of the offence under section 341/323/34 of the Indian Penal Code was taken as per section 190(1)(b) of the Code of Criminal Procedure. The accused persons entered their appearance before the Court after receiving the summons. Copies were furnished to the accused persons as per provision contained in section 207 of the Code of Criminal Procedure. The particulars of the offence under section 341/323/34 of the Indian Penal Code were explained to the accused persons to which they pleaded not guilty and claimed to be tried.

**POINTS FOR DETERMINATION:**

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether the accused persons, at about 7:00 AM, on 08.01.2016, at village No. 1 Balijan, under North Lakhimpur Police Station, in furtherance of their common intention, wrongfully restrained Md. Dadul Ali, and thereby committed an offence punishable under section 341/34 of the Indian Penal Code?

(b) Whether the accused persons, at about 7:00 AM, on 08.01.2016, at village No. 1 Balijan, under North Lakhimpur Police Station, in furtherance of their common intention, voluntarily caused hurt to Md. Dadul Ali, and thereby committed an offence punishable under section 323/34 of the Indian Penal Code?

5. During the trial the Prosecution side examined as many as 6 (six) prosecution witnesses, including the Medical Officer and the Investigating Officer, namely, Md. Dadul Ali (PW-1), Md. Sarupuna Ali (PW-2), Musstt. Hajera Begum (PW-3), Md. Haresh Ali (PW-4), Dr. Prabin Mili (PW-5), ASI Phul Kumar Barman (PW-6) and exhibited 5 (five) document (as shown in the appendix). On closure of the prosecution witnesses all the incriminating materials surfaced thereon against the accused persons were put to their explanation under section 313 of the Code of Criminal Procedure. The defence plea was in complete denial. I have heard the Argument of both sides and thereupon come to the following finding:

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. Let me set forth with the discussion by assessing the testimony of the medical officer at first.

7. PW-5 Dr. Prabin Mili, Medical Officer, has stated that at 10 AM on 08.01.2016, he examined Md. Dadul Ali, son of Late Yusuf Ali, resident of village No. 1 Bagalijan, P.O: Bogalijan, P.S: North Lakhimpur, District Lakhimpur, at North Lakhimpur Civil Hospital on being identified and escorted by police. According to him there was alleged history of physical assault by Yusuf Ali and Ismail Ali. On examination, he found the following- (1) Tenderness over the occipital region of scalp; (2) Bruise of size 2 cm x 3 cm over left shoulder; (3) Abrasion of size 0.5 cm x 0.5 cm x 0.5 cm over left shoulder and; (4) Abrasion of size 0.5 x 0.5 x 0.5 cm over right upper eye lid. All the above injuries were

simple in nature and caused by blunt object and the age of the injury was fresh. Ext-2 is the injury certificate. In his cross-examination, he has stated that such type of injuries may also be caused by falling leading to pushing and pulling with each other.

8. Thus, the evidence of the PW-5 Medical Officer substantiated the fact that at 10 AM on 08.01.2016 victim PW-1 Dadul Ali had Tenderness over the occipital region of scalp; Bruise in left shoulder; Abrasion in left shoulder and upper eye-lid. All the above injuries were fresh and simple in nature.

9. PW-1 Md. Dadul Ali, informant-cum-victim, has stated that at about 7:00 AM on 08.01.2016 in the compound of his house the occurrence took place. According to him the accused persons reside behind his house and as such they have to go to their house by the path beside his house. On that day, he was removing his boundary 'jeura' (bamboo fencing) for making passage for entering truck into his compound for unloading sand gravel when the accused persons came and charged him as to why he was removing the 'jeura' without asking them. He was wearing only 'ganjee' and 'gamusha' (loin cloth) at that point of time. He told them that after passing the truck into his compound he would again put up the 'jeura'. But the accused persons did not pay heed to his words and loosened his 'gamusha' as a result of which he became naked and as a result he laid down on the ground with his face downwards when one of the accused persons gave a blow on his head with something as a result of which blood came out from his nose. Thereafter, the neighbours came and separated him from the accused persons and put clothes on him. The accused persons left that place. He lodged an ejahar in this connection at Lilabari Police Outpost. Ext-1 is the ejahar, Ext-1(1), Ext-1(2) and Ext-1(3) are his signatures. In his cross-examination, he has stated that the accused persons are his related uncles. The plot of land where he was constructing house was given by the father of the accused persons to his father. There is a 'nala' (drain) in front of his house. On the other side of the road from his house, there is the house of one Boga Das. He has admitted that he had made a passage for passing truck into his compound by putting soil over the drain passing inside his land. He does not know if any case was filed against him in the police station with the allegation that he had assaulted the mother of the accused persons. He does

not know if that case number is NLPS Case No. 52/2016 (G.R. Case No. 106/2016).

10. PW-2 Md. Sarupuna Ali, has stated about a year ago (from 12.07.2018), one afternoon an altercation had taken place between Dadul Ali and Yusuf Ali. At that point of time, he was not present out there as he had gone to Hiyabari for bringing bamboos. He heard about the occurrence after returning from Hiyabari. In his cross-examination, he has stated that he does not have good relation with Dadul Ali. The police had not examined him in connection with the occurrence. He does not know as to how the occurrence had taken place.

11. PW-3 Musstt. Hajera Begum, has stated that the house of Dadul Ali is behind their house on the other side of the village road and the house of the accused persons is after the house of Dadul Ali. The occurrence had taken place at about 7:00 AM in the year 2015. Dadul Ali was going to construct a kitchen on his land. For bringing sand and stone chips on a tractor of his land, he filled up the drain in front of his land by the side of the village road with soil. While the soil filling work was going on, the accused persons went there and rebuked Dadul Ali with unparliamentary words and asked him as to why he was filling up the drain. Dadul Ali was wearing gangee and a towel. Accused Yusuf Ali came from behind of Dadul Ali and assaulted Dadul Ali on his head with an iron rod. As a result, Dadul Ali fell down on the ground and the towel which he was wearing got unfolded and he became naked. Thereafter, both the accused persons together assaulted Dadul Ali for which his head and nose bled. There was also injury on the cheeks of Dadul Ali because of being scratched by the accused person. Seeing the occurrence, she raised an outcry for which the villagers came there and separated both the parties from each other when the accused persons left that place and the family members of Dadul Ali took him away to the hospital. She witnessed the entire occurrence from the backside of his house. In her cross-examination, she has stated that when the villagers came and separated both the parties from each other, she did not notice who were those villagers, but she saw Harej Ali there. The police had examined her regarding the occurrence. She did not state before the police that at that point of time Dadul Ali was wearing ganjee and towel and after being assaulted he fell down on the ground and his towel got unfolded and he became naked and

that blood came out from the head and nose of Dadul Ali. She admitted that through that drain water passes from the house of the accused persons and that because of filling up of the drain with soil by Dadul Ali, the water flow in the drain had been blocked. The altercation had started between both the parties because of blocking of the said drain. She does not have good relation with the accused persons but has good relation with Dadul Ali.

12. PW-4 Md. Hareh Ali, an independent witness, has stated the occurrence had taken place at about 6:00 AM about two years ago (from 30.08.2018) on the path by the side of the house of Dadul Ali. In the morning, he was going out of his house for selling bamboo. The house of the informant as well as accused persons are behind his house. He saw that Dadul Ali and Yusuf Ali were altercating with each other. Thereafter, both of them got hold of each other and fell on the ground and there was 'bogora-bogori' (rolling over each other) between them on the ground. Thereafter, he went there and separated both of them from each other. Accused Ismail Ali was rebuking the informant from his house and threatening him that they would file a case against him. Thereafter, he returned to his house. In his cross-examination, he has stated that he does not know why there was altercation between Dadul Ali and Yusuf Ali and why they had rolled over each other.

13. PW-6 ASI Phul Kumar Barman, Investigating Officer, has stated that during the course of investigation he examined the informant/victim Dadul Ali at the police outpost itself and recorded his statement and sent him to North Lakhimpur Civil Hospital for his medical examination. Thereafter, he visited the place of the occurrence and inspected the same and also prepared a rough sketch-map of the place of the occurrence. He also examined the witnesses found at and around the place of the occurrence and recorded their statements. He searched for accused persons Yusuf Ali and Ismail Ali and on finding them he brought them to the police station and interrogated them and on finding incriminating materials against them he arrested them and forwarded to the Hon'ble Court. He did not find any incriminating materials against the FIR-named accused persons namely Musstt. Munia Begum, Musstt. Anju Begum and Musstt. Hunjoni Begum. In the meantime, the Officer-in-Charge of North Lakhimpur Police Station registered a case vide NLPS Case No.

51/2016 u/s 143/326/325, IPC and entrusted him with the charge of the investigation of the case. He also collected the medical report of the informant/victim and on completion of his preliminary investigation, he submitted the case diary to the Officer-in-Charge of North Lakhimpur Police Station. On perusal of the case diary, it appears that subsequently the case was investigated by SI Kameswar Gogoi and on being satisfied with the investigation conducted by him he submitted charge-sheet against accused persons Eusuf Ali and Ismile Ali under section 341/323/34 of the Indian Penal Code. Ext-3 is the extract copy of the G.D. Entry. Ext-4 is the sketch-map of the place of the occurrence and Ext-5 is the charge-sheet. He has confirmed that PW-2 Md. Sarupuna Ali told him that at about 7:00 AM while he was on the road he saw that Dadul Ali was making a path but later on Musstt. Munira Begum came there and closed the said road and as she raised hue and cry Ismile Ali and Eunos Ali came there and assaulted Dadul Ali with a wrench causing grievous hurt to him and the 'gamusha' which he was wearing got unfolded. In his cross-examination, he has stated that on the same day Munira Begum lodged an ejarah at the police outpost against informant Dadul Ali, Bhonti Begum, Edul Ali, Janmoni Begum and Dalimi Begum. He conducted the investigation of both the sides. After completing his preliminary investigation of both the cases, he submitted the case diary of both the cases to the Officer-in-Charge of North Lakhimpur Police Station. He is not aware whether charge-sheet was submitted in the case filed by Munira Begum. Witness Dadul Ali did not tell him that the accused persons opened his 'gamusha' and he became naked and thereafter he lay with his face downwards and then one of the accused person gave a blow on his head with something and blood came out from his nose. He has confirmed that witness Hajera Begum did not tell him that the accused persons went there and rebuked Dadul Ali with unparliamentary words and accused Eusuf Ali came from behind of Dadul Ali and assaulted him on his head with an iron rod; that at that point of time Dadul Ali was wearing ganjee and towel and after being assaulted he fell down on the ground and his towel got unfolded and he became naked; that blood came out from the head and nose of Dadul Ali; that as she raised outcry, the villagers came and separated both the parties from each other.

14. Thus from the testimony of PW-1 Dadul Ali it has come out that he had filled up the drain with soil in order to make passage for a truck upto his land. This fact is also corroborated by PW-3 Musstt. Hazera Begum and he has further stated that because of the filling of the soil in the drain the water flow got blocked which led to the altercation between the parties. So, the apple of discord between the parties is the blocking of the drain by informant Dadul Ali. Now let me see how the occurrence started and if the accused persons had the voluntariness in assaulting the victim.

15. According to PW-1 Dadul Ali while he was removing the bamboo fencing at the relevant time of the occurrence the accused persons came there and had remonstrated with his acts and has removed his wearing loin cloth making him naked and thereafter they gave blow in his head with some object causing bleeding from his nose. According to him his neighbour rescued him. Amongst the neighbour that were examined PW-2 Md. Sarupana Ali admitted that he has good relation with accused; and PW-3 Musstt Hajera Begum had good relation with the informant. Thus, both PW-2 and 3 are partisan witnesses. The only independent witness in true sense is PW4 Md. Hareh Ali. Although PW-1 Dadul Ali stated that he was made naked by accused persons but his supporter witness PW-3 Musstt. Hajera Begum has stated that when accused Yusuf Ali attacked victim Dadul from behind, he fell down and thereby his wearing cloth got unfolded. It means the accused persons did not intentionally disrobe the victim.

16. PW-1 victim Dadul Ali has stated that neighbouring people came and separated her from the accused persons. Pw-3 Hajera Begum has averred that when she saw the accused persons beating the victim she raised alarm when nearby people came and separated both the parties. According to her, Harej Ali (PW-4) also came there at that point of time. But according to PW-4 Harej Ali at first both the parties altercationd with each other and thereafter they got hold of each other and fell down whereupon both the parties had rolled over on the ground. He separated the quarreling parties. Thus, the overall fact that has emerged out is that the victim had blocked the drain causing inconvenience to the accused persons and over this matter there had been an altercation between both the parties which eventually lead to a mutual fight between

them and in the scuffle they rolled over on the ground causing injuries to the victim. The story painted by the prosecution that it was the accused persons who had assaulted the victim with a wrench is found to have no basis as the I/O has also not seized any such instrument of assault. It has also come out from the version of the I/O that accused side had also a lodged a case against the victim which he had investigated. Since it has appeared in evidence that PW-2 and 3 are partisan witnesses of which PW-3 has admitted to have shared a good relation with the victim, leaves her deposition tinged with doubt given the fact that PW-4 Harej Ali has brought out the fact that it was a mutual fight.

17. To perorate, the prosecution has failed to bring out the fact that accused persons had wrongfully restrained the victim and had voluntarily caused hurt to him and as such the offence under section 341/323/34 of the Indian Penal Code stands not proved against the accused persons.

### **ORDER**

18. In view of the discussion made above, I hereby acquit accused Md. Ismail Ali and Md. Eusuf Ali from the accusation under section 342/323/34 of the Indian Penal Code and as such they are set at liberty forthwith. The bail bonds of the accused persons shall remain in force for a further period of six months.

19. The judgment is delivered and operative part of the same is pronounced in the open court on this 26<sup>th</sup> day of December, 2019.

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Transcribed & typed by-

Sri Narayan Chetri, Stenographer

Contd. .... Appendix

**A P P E N D I X**

**WITNESSES FROM THE PROSECUTION SIDE**

Md. Dadul Ali (PW-1)  
Md. Sarupuna Ali (PW-2)  
Musstt. Hajera Begum (PW-3)  
Md. Haresh Ali (PW-4)  
Dr. Prabin Mili (PW-5)  
ASI Phul Kumar Barman (PW-6)

**PROSECUTION EXHIBITS**

Ejahaar (Ext-1)  
Injury Certificate (Ext-2)  
Extract Copy of G.D. Entry (Ext-3)  
Sketch-map of the P.O (Ext-4)  
Charge-sheet (Ext-5)

**DEFENCE WITNESSES**

Nil

**DEFENCE EXHIBITS**

Nil

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur