

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
UDALGURI, ASSAM.**

**G.R. CASE NO. 297 of 2018
(U/S- 143/341/342/323 IPC)**

STATE

-VS-

**MD. JANAL ALI
MD. IMMAN ALI,
MD. LAL MIYA,
MD. BABUL ALI AND
MD. AMIR ALI**

-----Accused persons.

Present: Smti. Nilakshi Lahkar, A.J.S.

Advocate for the Prosecution : Mrs. N. Narzari

Advocate for the Defence : Mr. M. C Narzari

Evidence recorded on : 04.07.2019 and 16.07.2019

Argument heard on : 26.07.2019

Judgment delivered on : 07.08.2019

J U D G M E N T

- 1.** The prosecution case, in brief is that, informant Ahej Uddin had lodged the F.I.R before Ranipukhuri OP by stating inter-alia that on 22.03.2018 his brother Sahajuddin went to the house of Jamaluddin for purchasing cow. Afterwards the informant went to the house of Imman Ali at about 06:00 PM for inviting them due to marriage ceremony of his son, but due to previous enmity between the father-in-law and son-in-law, Sahajuddin was assaulted severely by the accused persons with lathi, leg and sandal, for which Sahajuddin got senseless. After hearing noises, Rahim Badsha, who is the son of Sahajuddin and nephew Lokman Ali rushed to the place of occurrence. When they reached at the place of occurrence then they were assaulted by the accused persons. After getting about the information the daughter of Sahajuddin also came to the place of occurrence, but she was also assaulted by the accused persons. During the quarrel between the parties, someone had stolen away Rs. 45,000/- from Sahajuddin, who bring the money for

purchasing cow. Accused Babul Ali also snatched away one Oppo mobile phone from the pocket of Lokman Ali. Thereafter police reached there and sent the victims Sahajuddin and his son Rahim Badsha to Udalguri Civil Hospital for treatment. Hence this case.

2. After receiving the aforesaid ejahar, I/C of Ranipukhuri OP had forwarded the FIR to the O/C of Udalguri PS for register the case under the proper sections of law. Accordingly, the O/C of Udalguri PS had received the FIR and registered a case vide Udalguri PS case no. 24/2018, u/S 143/341/342/325/379 IPC. Investigating Officer investigated the case, recorded the statement of witnesses, prepared the sketch map, collected the medical report and after completing the investigation, IO submitted the charge sheet against the accused persons namely Janal Ali, Imman Ali, Lal Miya, Babul Ali and Amir Ali u/S 143/341/324/323 IPC vide CS No. 28 of 2018 dated 30.04.2018.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused persons before the court. Accordingly accused persons appeared. The copies of relevant documents were furnished to the accused persons. Considering the materials on record, particulars of offence u/S 143/341/324/323 IPC was read over and explained to the accused persons to which all the accused persons pleaded not guilty and claimed to be tried.
4. During trial the prosecution has examined as many as six (6) PWs including the informant. The statement of defence of the accused person u/S 313 Cr.PC has been recorded. The defence case is of total denial. No witness been examined by the defence. Argument had been heard from both sides.
5. I have considered the evidence on record, statement u/S 313 CrPC and the argument advanced. For the purpose of clarity, the following points for determination is hereby framed:

6. POINTS FOR DETERMINATION OF THE CASE:

(i) Whether on 22.03.2018 at about 06:00 PM the accused persons had formed an unlawful assembly and also wrongfully restrained him and

thereby committed the offence punishable u/S 143/341 IPC?

(ii) Whether on the same day, time and place the accused persons had also pulled the informant along with his son Rahim Badsha, Lokman Ali and his daughter Sabia Khatoon to their and there they were wrongfully confined by the accused persons and also voluntarily caused hurt to them and thereby committed the offence punishable u/S 342/323 IPC?

7. DISCUSSION, DECISION AND REASONS FOR THE DECISION: The prosecution had examined as many as six witnesses:

PW 1 Ahejuddin (informant)

PW 2 Sahajuddin Ali

PW 3 Sabina Yasmin

PW 4 Sultan Mamud

PW 5 Ramzan Ali and

PW 6 Sabia Khatoon

8. PW1 Ahejuddin, the informant herein this case has deposed in his evidence that he knows the accused persons. About 1 year ago the incident was occurred. On the day of the incident his brother Sahajuddin went to the house of Lal Miya for inviting him due to marriage ceremony of his son. Lal Miya is the son-in-law of Sahajuddin's brother Suruj Ali. At that time he was at another house. After hearing noises he rushed at his house and then he came to know that Imman and Lal Miya had assaulted Sahajuddin. Immediately he went to the house of Lal Miya, but police had taken Sahajuddin for treatment. On the next day of incident he met Sahajuddin at hospital and lodged the FIR. He has identified the FIR as Exhibit 1.

9. During cross-examination he has stated that he had read over the contents of the FIR. His house is about 6 KM distance away from the house of Lal Miya. He had not seen the marpit when he reached the place of occurrence. He had not seen the incident. He has denied the fact that Sahajuddin has been suffering from heart decease at the time of occurrence. When he reached the place of occurrence he did not find other persons. He has denied the fact that he deposed falsely.

- 10.** PW2 Sahajuddin Ali has deposed in his evidence that the informant is his elder brother. He knows the accused persons. On the day of the incident he went to the house of Lal Miya to give invitation due to the marriage of his son. Thereafter he asked some water from his niece Samia for reading "Namaj" and then suddenly Lal Miya came and started to punch him. At that time the accused Babul and Amir Ali came and assaulted him. Afterwards he got senseless.
- 11.** During cross-examination he has denied the fact that when the wife of Lal Miya came to his brother's house then he asked his wife not to go to the house of Lal Miya. Rests of his cross-examination are the suggestions which he has denied.
- 12.** PW3 Sabina Yashmin has deposed that the informant is the elder brother of her father. Accused Lal Miya is her husband and other accused persons are her relatives. On the day of the incident Sahajuddin came to invite her due to marriage ceremony of his son and she was forced to take with him. When she refused to go with him then her husband entered into an argument with Sahajuddin. There was no marpit took place on the day of the incident.
- 13.** Her cross-examination was declined by the learned defence counsel.
- 14.** PW4 Sultan Mamud has deposed in his evidence that he knows both the parties. About 1 year ago at about 07:00 PM the incident was occurred. That day Sahajuddin went to the house of the accused persons to bring his niece due to marriage ceremony of his son. But his niece refused to go with him and then Sahajuddin wanted to eat one tablet by saying that he has a liver problem. Afterwards he was given water. Thereafter the family members of Sahajuddin were informed about his illness and then two boys namely Lokman Ali and Rahimuddin came and assaulted Imman Ali, Lal Miya. Accused persons had not assaulted Ahejuddin. At the time of incident he was at the place of occurrence.
- 15.** Her cross-examination was declined by the learned defence counsel.
- 16.** PW5 Ramzan Ali has deposed in his evidence that he knows both the parties. About one year ago Sahajuddin went to the house of the

accused persons for inviting them due to marriage ceremony of his son. There was previous enmity between Sahajuddin and accused persons, for which accused persons Jamal, Imman, Lal Miya, Amir Ali, Babul Ali had assaulted Sahajuddin. Afterwards Rahim Badsha and Lokman Ali reached there and they were also assaulted by the accused persons. He had also came there and took the victims namely Rahim, Sahjuddin and Lokman for treatment. Sahjuddin sustained chest injury.

- 17.** During cross-examination he has deposed that there was village meeting took place at the house of the father-in-law of Lal Miya regarding the wife of Lal Miya. On the day of the incident he did not know whether Lal Miya and his wife refused to come to the marriage of the son of Sahjuddin or not. He had not seen that accused persons had assaulted Sahajuddin. His wife had called Rahim Badsha and Lokman Ali. His father-in-law has been suffering from heart decease.
- 18.** PW6 Sabia Khatoon has deposed in her evidence that she knows both the parties. The incident was occurred about 1 year ago at about 05:00 PM. On the day of the incident her father Sahajuddin came to her house for inviting them due to the marriage ceremony of his son. Afterwards Sahajuddin went to the house of the accused persons for giving invitation to them. Sahajuddin asked water for reading 'namaj' from the accused persons and then accused persons had assaulted him. Thereafter she rushed there and found that the accused persons had assaulted him and accordingly she restrained the accused persons. Then accused Amir Ali had scolded her and her brother Rahim Badsha came there and then he was also assaulted by the accused persons. Thereafter someone had informed the matter to police and police came and brought her father and brother for treatment. Rahim Badsha sustained chest injury. Her father had lost Rs. 45,000/- from the pocket at the time of occurrence.
- 19.** During cross-examination he has stated that her father has been suffering from heart decease since long. After getting the news about the occurrence she rushed to the place of occurrence and found her father was sitting on the chair. She had not seen that the accused persons had assaulted her father. He did not know whether there was a meeting held regarding the wife of Lal Miya in the house of his uncle. At

the time of occurrence Rahim Badsha was accompanied by Lokman Ali. When Rahim Badsha and Lokman Ali came and asked as to who had assaulted his father then her father got senseless. Rests of her cross-examination are the suggestions which she has denied.

20. Learned defence counsel has stated that except the informant no one of the prosecution witnesses have implicated the accused persons for the alleged offence. He further stated that the prosecution witnesses are contradictory to each other. He further argued that IO had not seized any articles relating to the incident. So, he prayed to acquit the accused persons from this case.

21. Let the case be decided on the basis of the evidence available in this case record. After careful perusal of the evidence of the informant as PW1 Ahejuddin and and the victim as PW2 Sahajuddin and the other prosecution witnesses i.e PW3 Sabina Yasmin, PW4 Sultan Mamud, PW5 Ramzan Ali and PW6 Sabia Khaton all are found to be contradictory to each other. Whereas the informant Ahejuddin in his evidence as PW1 had deposed that on the day of the incident his brother Sahajuddin went to the house of the accused Lal Miya for inviting them for the marriage ceremony of his son. Thereafter he heard that Imman Ali and Lal Miya had assaulted Sahajuddin and immediately he went to the house of Lal Miya and found that already Sahajuddin was brought for treatment. PW2 Sahajuddin, the victim herein this case had deposed in his evidence that when he went to the house of the accused Lal Miya for inviting them for the marriage ceremony of his son then accused Lal Miya had made a blow upon him and the accused persons Babul and Amir also had assaulted him. PW3 Sabina Yasmin had made a complete deferent version from the evidence of the informant and the victim. She had deposed in her evidence that the informant is her father's elder brother and on the day of the incident the victim forced her to go with him for the marriage ceremony of his son. She she was refused for the same there had an argument between her husband Lal Miya and Sahajuddin. There was no marpit took place at that time. PW4 Sultan Mamud had narrated the same fact in his evidence as deposed by PW3. PW5 Ramjan Ali had deposed in his evidence that on the day of the incident when Sahajuddin went to the house of Lal Miya for inviting them for the marriage ceremony of his son he was assaulted by the accused persons

namely Jamal Ali, Imman, Lal Miya, Amir Ali and Babul Ali. Then Rahim Badsha and Lokman Ali came for rescue, but the accused persons had also assaulted them. Then he came there and brought them for treatment. During cross-examination he had deposed that he had not seen the occurrence himself. PW6 Sabia Khatoon had deposed in her evidence that on the day of the incident when Sahajuddin went to the house of the accused persons for inviting them for the marriage ceremony of his son then he was assaulted by the accused persons. On being seeing it, she rushed to the place of occurrence and prohibited the accused persons and then she was scolded by the accused Amir Ali. Thereafter, her brother Rahim Badsha arrived there and the accused persons had also assaulted him. After that her father and her brother were brought for treatment.

22. A conjoint reading of the evidence of all the PWs, it is found that PW1, PW2, PW5 and PW6 all are the near relatives. The only independent witness i.e PW4 Sultan Mamud who had not supported the prosecution case at hand. A clear analysis of the evidence of PWs goes to show that PW1, the informant and PW2 Sahajuddin, the victim had not deposed in their evidence about the injury of Rahim Badsha and Lokman Ali. But PW5 had deposed in his evidence that besides Sahajuddin, Rahim and Lokman were also assaulted by the accused persons on the day of the occurrence. On the other hand, Sabia Khatoon as PW6 had deposed during her evidence that on the day of the incident her brother Rahim Badsha only was assaulted by the accused persons. Thus, the injury caused to the victims Sahajuddin, Rahim Badsha and Lokman Ali are found to be doubtful due to the lake of sufficient evidence. Prosecution has also failed to adduce the evidence of the MO to prove the injuries of the victims in this case. Furthermore the contents of the FIR and the evidence of the informant is also found to be contradictory to each other. Thus, this court holds that prosecution has failed to prove the alleged offence against the accused persons namely Janal Ali, Imman Ali, Lal Miya, Babul Ali and Amir Ali u/S 143/341/342/323 IPC beyond all reasonable doubt.

ORDER

Under the facts and circumstances of the instant case, it is found that

prosecution has not been able to prove the case u/S 143/341/342/323 IPC against the above named accused persons beyond reasonable doubt and hence accused persons are acquitted under the above sections of law and set at liberty forthwith.

The bail bonds of the accused persons shall remain in force for next six months as per provision of section 437(A) CrPC.

The judgment is given under the hand and seal of this Court on this 07th day of August, 2019.

(N. Lahkar)

Addl. Chief Judicial Magistrate
Udalguri, Assam.

Dictated and corrected by me:

(N. Lahkar)

Addl. Chief Judicial Magistrate.
Udalguri, Assam.

APPENDIX

- A. Prosecution witnesses :PW 1 Ahejuddin (informant)
PW 2 Sahajuddin Ali
PW 3 Sabina Yasmin
PW 4 Sultan Mamud
PW 5 Ramzan Ali and
PW 6 Sabia Khatoon
- B. Court witnesses :Nil
- C. Defence witness :Nil.
- D. Documents exhibited :Ext. 1 - FIR

Addl. Chief Judicial Magistrate
Udalguri, Assam.

Typed by Rupam Das/Stenographer.