

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

**G.R. CASE NO. 991 of 2018
(U/S- 341/323 IPC)**

STATE

-VS-

SRI DIPAK DEBNATH

-----Accused person

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

Advocate for the Prosecution : Mrs. N. Narzari

Advocate for the Defence : Mr. D. K Boro

Evidence recorded on : 04.07.19, 25.07.19 & 03.08.19

Argument heard on : 07.08.2019

Judgment delivered on : 07.08.2019

J U D G M E N T

- 1.** The prosecution case, in brief is that, informant Sri Gandhi Mandal had lodged the F.I.R before Panery PS by stating inter-alia that on 27.09.2018 at about 07:00 PM the accused person along with an another person had wrongfully restrained the informant on his way near Purani Gadhuli market and pulled him to the public road, for which he sustained injuries. After that he came to know that the incident was occurred with the instigation of Muslem Ali. Hence this case.
- 2.** After receiving the aforesaid ejahar, the O/C of Panery PS has registered a case vide PS case no. 81/2018, u/S 341/323/109/34 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 Dipak Debnath u/S 341/323 IPC vide CS No. 33 of 2018 dated 31.10.18. IO had not sent up the accused Muslim Ali for trial as he did not find any material against him.
- 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 person before the court. Accordingly accused person appeared. The copies of relevant documents were furnished to the accused person. Considering the materials on record, particulars of offence u/S 341/323 IPC was read over and explained to the accused person to which the accused person pleaded not guilty and claimed to be tried.

4. During trial the prosecution has examined as many as five (5) 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:

Whether on 27.09.2018 at about 07:00 AM, the accused person had wrongfully restrained the informant and voluntarily caused hurt to him and thereby committed the offence punishable u/S 341/323 IPC?

7. **DISCUSSION, DECISION AND REASONS FOR THE DECISION:** The prosecution had examined as many as five (5) witnesses:

8. PW 1 Gandhi Mandal, the informant herein this case has deposed in his evidence that about 10 months before the incident took place. On 27.09.2018 the incident was occurred. That day he had taken a Tata vehicle from Gopal Saha on rent. At that time Dipak Debnath came and slapped him on his face. He further stated that the accused person had taken him by pulling his leg. On the day of the incident he had lodged the FIR and he was taken for treatment by the police. He sustained injuries on his head, knee and throat. He has identified the FIR as Exhibit 1 and Exhibit 1 (1) is his signature.
9. During cross examination he has deposed that there were many shops near the place of occurrence. The shop of Gopal Saha was situated near

the place of occurrence. But he did not know the owners of other shops. There were about 4/5 people gathered at the place of occurrence. But he did not know their names. Gopal Saha had seen that accused person had assaulted him. Police had recorded his statement. He had not stated before the police that on the day of the incident he went to discuss with Gopal Saha for taking his vehicle on rent. He has denied the fact that on the day of the incident the accused person had not assaulted him. He has also denied the fact that he borrowed Rs. 4000/- from the accused person and when the accused asked the money from him then he had lodged false case against him.

10.PW2 Gopal Saha has deposed in his evidence that he knows both the parties. About 5/6 months ago at about 07:30-08:00 PM the incident was occurred. That day the informant was coming to take his vehicle on rent and then he refused to give the vehicle to the informant. Then the accused person reached there and entered into an argument with the informant. Afterwards the people who gathered at the place of occurrence had come and broken the quarrel. Litan Chaudhury, N. K Sah, Prakash Debnath etc. were having shops near the place of occurrence. There was no merpit took place at the place of occurrence.

11.During cross examination he has stated that on the day of the incident he heard that the accused person owe some money from the informant. At that time Khairul Ali, Baisagi Nayak were not present at the place of occurrence.

12.PW3 Khairul Ali has deposed that he knows both the parties and he did not know anything about incident.

13.His cross examination was declined by the learned defence counsel.

14.PW4 Dr Dipak Kr. Deori, the MO herein this case has deposed that on 27.09.18 he was at Panery CHC as Senior Medical Officer (Ayu) and on that day he had examined Gandhi Mandal and found the following injuries:-

(i) Abrasion, cut injury over left leg and left big toe, measuring 1X0.5 cm square.

He has opined that the nature of injury was simple and caused by blunt weapon. He has identified the injury report as Exhibit 2 and Exhibit 2 (1) is his signature.

15. During cross examination he has deposed that he had not mentioned any case reference number in his report. He had also not mentioned in his report that as to who had escorted the victim. He had also not mentioned the age of injury in his report. Such type of injury may cause due to felling down on hard substances.

16. PW5 Anil Basumatary, the IO herein this case has stated in his evidence that on 28.09.2018 he was posted at Panery PS as ASI. That day the O/C of Panery PS had received an FIR from the informant Gandhi Mandal and accordingly he registered the case vide Panery PS No. 81/18 u/S 341/323/109/34 IPC and endorsed him for investigation. After that he had recorded the statement of the informant and went to the place of occurrence, recorded the statement of the witnesses. He had collected the medical report of the victim and drawn the sketch map at the place of occurrence. Accused person had appeared before the police station and he was allowed to go on bail as the offence is bailable in nature. After completion of investigation, he had handed over the original CD to the O/C Panery PS. Later on Inspector Mantu Talukdar had submitted the charge sheet against the accused person u/S 341/323 IPC. Exhibit 3 is the charge sheet and Exhibit 3 (1) is the signature of Mantu Talukdar, recognized by him. He has identified the sketch map as Exhibit 4 and Exhibit 4 (1) his signature.

17. During cross examination he has stated that as per the FIR the incident was occurred with the instigation of Muslim Ali. He had not made Muslim Ali as accused or witness in this case. Witness Gandhi Mandal had not stated before him that when he went to take the vehicle of Gopal Saha on rent then the incident was occurred. He has denied the fact that accused was not involved with this case.

18. Learned defence counsel has stated that except the informant no one of the prosecution witnesses have implicated the accused person 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.

19. Let the case be decided on the basis of the evidence available in this case record. After carefully perusal of the case record at hand and also having gone through the evidence available in this case record, it is found that prosecution has only examined 5 witnesses herein this case. PW1 is the informant, PW2 and PW3 are the two independent witnesses, PW4 is the MO and PW5 is the IO in this case.

20. After careful perusal of the evidence of the PW1 i.e Gandhi Mandal, the informant herein this case, it is found that the informant has deposed in his evidence that on the day of incident he went to meet Gopal Saha for taking his Tata mobile vehicle on rent. Then suddenly accused Dipak Debnath came there and started assaulting him. During his cross examination he has deposed that the shop of Gopal Saha was near the place of occurrence and he saw the incident But his evidence has not been supported by the evidence of Gopal Saha who has been examined as PW2 herein this case. Rather he made a complete different statement to that what had been deposed by the informant as PW1 herein this case. PW2 Gopal Saha had deposed in his evidence that on the day of the incident informant came to take his vehicle on rent to which he refused. Then accused came there. There had an argument between the informant and the accused person but no merpit was occurred between them. PW3 Khairul Ali, another independent witness has deposed in his evidence that he does not know anything about the occurrence. Thus, a threadbare discussion of all the evidence on record goes to show that the case of the informant has not been supported by any other prosecution witnesses. This Court does not find any ground to believe the prosecution case at hand which makes it credible. Thus, this court holds that prosecution has failed to prove the alleged offence against the accused person u/S 341/323 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 341/323 IPC against the accused Dipak Debnath beyond reasonable doubt and

hence accused person is acquitted under the above sections of law and set him at liberty forthwith.

The bail bond of the accused person 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 Gandhi Mandal (Informant)
PW 2 Gopal Saha
PW 3 Khairul Ali
PW 4 Dipak Kr Deori and
PW 5 Anil Basumatary
- B. Court witnesses :Nil
- C. Defence witness :Nil.
- D. Documents exhibited :Ext. 1 - FIR
Ext. 2 - Medical report
Ext. 3 - Charge sheet
Ext. 4 - Sketch map

Addl. Chief Judicial Magistrate
Udalguri, Assam.

Typed by Rupam Das/Stenographer.