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**G.R No-2234 of 2016**  
**(State of Assam Vs Md. Safiqul Ali & Ors)**

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR:: TEZPUR**

**G. R. Case No. 2234 of 2016**

Under section-323/34 of I.P.C

Present:-**Sri N. J. Haque, AJS,**  
**Chief Judicial Magistrate,**  
**Sonitpur, Tezpur**

State of Assam

-Vs-

1. Md. Safiqul Ali
2. Md. Safiqul Islam
3. Md. Rafiqul Islam

All are R/O:- Gudamghat

P/S:- Chariduar

Dist:- Sonitpur, Assam

.....Accused Persons

**Advocate appeared:**

Mr. N. K. Mishra, Addl. P.P..... For the State

Mr. K. Tamang & Ors, Ld. Advocates.....For the accused persons

Evidence recorded on :- 19.01.2021 & 24.02.2021

Date of Statement of defence :- 24.02.2021

Argument heard on :- 24.02.2021

Judgment delivered on :- 24.02.2021

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

**History of Prosecution's Case**

1. Prosecution case appears to be in a nutshell is that on 08.07.2016 one Md. Abdul Hai lodged an Ejahar before the O/C, of Chariduar PS alleging inter alia that on the said date at about 03 PM, the FIR named accused persons playing "Ludu" with the children in the backside of his brother-in-law's house named Babul Ali and when said Babul Ali obstructed the accused persons, the accused persons physically assaulted said Babul Ali. It is also stated that when the wife of said Babul Ali named Must. Noor Babu tried to separate them, the accused

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persons torn her clothes and also physically assaulted and due to that she sustained injuries.

**"INVESTIGATION & CHARGE"**

2. On receipt of the Ejahar, Chariduar P.S Case No-111 of 2016 under section-325/354/34 of I.P.C was registered and investigation into. On completion of the investigation, finding no sufficient materials against the accused persons, the I.O. of this case submitted Final Report (FR) against them. After receiving the final report submitted by the I.O, this court after finding prima-facie materials against the accused persons took cognizance u/s-323/34 of IPC vide order dated-04.08.2017 as the same is non-cognizable in nature.

**CHARGE & TRIAL**

3. In pursuant to the court's process, the accused persons appeared before the court and they were allowed to go on bail. Copies u/s-207 of Cr.P.C was furnished to the above-named accused persons. After hearing both side, particulars of offences u/s-323/34 of I.P.C was read over and explained to the accused persons by my Ld. Predecessor in office, to which they pleaded not guilty and claimed to be tried.

**STATEMENT OF DEFENCE**

4. During the trial prosecution side able to examine as many as 03 (Three) numbers of witnesses including the informant and the victim of this case. Considering the testimonies of the witnesses, prosecution side declined to adduce further evidence before this court and accordingly the evidence of prosecution side is closed. Examination of the accused persons under section-313 of CrPC is dispensed with as no implicating material divulges from the evidences on record. Accused declined to adduce evidence on their defence.

**ARGUMENT**

5. I have heard arguments of both sides, gone through the case record in the backdrop of evidences presented before this court by prosecution side.
6. **The points for determination in this case:-**
  - I) Whether on 08.07.2016 at about 03 PM at a place called Gudam Ghat under Chariduar PS, the accused persons in furtherance of their common intention

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voluntarily caused simple hurt to the victims namely, Md. Babul Ali and Must. Nur Banu by way of beating them with lathi and thereby committed an offence punishable under section-323/34 of IPC?

**DECISION, DECISION AND THE REASON THEREOF:**

7. In this case, prosecution side has got the burden of prove that on 08.07.2016 at about 03 PM, the FIR named accused persons playing "Ludu" with the children in the backside of his brother-in-law's house named Babul Ali and when said Babul Ali obstructed the accused persons, the accused persons physically assaulted said Babul Ali. It is also stated that when the wife of said Babul Ali named Must. Noor Babu tried to separate them, the accused persons torn her clothes and also physically assaulted and due to that she sustained injuries. In this case prosecution side to prove the case examined as many as three numbers of witnesses including the informant and the victims of this case. I have carefully travelled through the testimonies of the prosecution witnesses in the backdrop of entire prosecution case and it finds:-
8. PW-1, Md. Abdul Hai being the informant of this case deposed before this court that he knows the accused persons of this case and the incident took place around 05 years back. He also deposed that on the date of alleged incident, he along with Jamal were playing "LODO" at a field situated at their village and then a quarrel took place between Safiqul, Rafiqul, Solema and Babul and later, Babul was assaulted by Safiqul, Rafiqul and Solema and due to that babul sustained injury. Thereafter, Babul was taken to balipara PHC for his treatment and due to that he lodged the ejahar wherein he put his thumb impression.
9. PW-1 in his cross-examination testified that he does not want to proceed against the accused persons as the dispute already settled between them. He also testified that he does not have any objection if the accused persons are acquitted from this case.
10. PW-2, Must. Nur Banu being the victim of this case deposed that the informant is her brother-in-law and the accused persons are known to her. She also deposed that around 4-5 years back, she had an altercation with the accused persons over the matter of LODO game and due to miss-understanding the

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informant lodged the ejahar against the accused persons. She also deposed that she sustained injuries due to dashing pushing took place between them. Now, she does not want to proceed against the accused persons as she has settled the dispute outside the court. PW-2 in her cross-examination testified that she does not have any objection if the accused persons are acquitted from this case.

11. PW-3, Md. Babul Ali who is also a victim of this case deposed that the informant is his brother-in-law and the accused persons are known to him. He also deposed that around 4-5 years back, he had an altercation with the accused persons over the matter of LODO game and due to miss-understanding the informant lodged the ejahar against the accused persons. He also deposed that he sustained injuries due to dashing pushing took place between them. Now, he does not want to proceed against the accused persons as he has settled the dispute outside the court. PW-3 in his cross-examination testified that he does not have any objection if the accused persons are acquitted from this case.
12. Hence, it apparently appears before this court that PW-1 being the informant—of this case contradicted the entire contentions of the ejahar by way of not implicating the accused persons of this case. PW-1 simply deposed before this court that he does not want to proceed against the accused persons and therefore, he does not any objection if the accused persons are acquitted from this case. PW-2 and PW-3 being the victims of this case simply testified that they had an altercation with the accused persons over the matter of “LODO” game and due to misunderstanding the informant (PW-1) lodged this case. Both PW-2 and PW-3 in their evidence admitted that they don’t have any objection if the accused persons are acquitted from this case.
13. To sum up the testimonies of the informant and the victims, it reveals before this court that the informant and the victims appears to be contradictory with the entire contention of the ejahar and their testimonies cannot be relied upon.
14. In view of the above evidence on record, I am of the opinion that prosecution side has failed to prove the charges against the accused persons beyond reasonable doubt and as such all the three accused persons are acquitted from

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the charges u/s-323/34 of IPC and sets at liberty. Surety is extended for six months in view of section-437A of Cr PC.

15. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 24<sup>th</sup> day of February, 2021.

**(Sri N. J. Haque)**  
**Chief Judicial Magistrate,**  
**Sonitpur: Tezpur**

**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1 :- Md. Abdul Hai, Informant

PW-2 :- Must. Nur Banu, Victim

PW-3 :- Md. Babul Ali, Victim

**2. Witnesses for Defence: NIL**

**3. Court Witnesses: NIL**

**4. Prosecution Exhibits: NIL**

**5. Defence Exhibits: NIL**

**6. Material Exhibits: NIL**

Chief Judicial Magistrate  
Sonitpur, Tezpur