

**G.R No-2122 of 2014**  
**(State of Assam Vs Dildar Hussain & Ors)**

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

**G. R. Case No. 2122 of 2014**

Under section 323/34 of I.P.C

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

**State of Assam**

-Vs-

- 1. Md. Dildar Hussain**
- 2. Md. Nur Hussain**
- 3. Md. Kasem Ali**
- 4. Musstt. Halima Khatoon**

**All are R/O:- Dhekiajuli,**

**P/S:- Dhekiajuli**

**Dist:- Sonitpur, Assam .....Accused Persons**

**Advocate appeared:**

Mrs. Niva Devi, Addl. P.P..... For the State

Md. Fazlul Haque & other Ld. Advocates.....For the accused persons

Evidence recorded on : - 09.11.2016

Argument heard on : - 18.11.2020

Judgment delivered on : - 18.11.2020

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

**History of Prosecution's Case**

1. Prosecution case appears to be in a narrow campus is that on 31.08.2014 the informant Habibur Rahman lodged an Ejahar before O/C of Dhekiajuli P.S. alleging inter-alia that on 31.08.2014 at 2 PM his dumb and deaf sister-in-law Miss Anwara Khatoon went to bring their cattle from the river side and then the accused persons without any reasons physically assaulted on her hand with lathi for which she sustained injuries.

**"INVESTIGATION"**

2. On receipt of the Ejahar, Dhekiajuli P.S Case No. 532 of 2014 u/s 326/34 of I.P.C was registered and investigation into. On completion of the investigation,

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the I.O. of this case submitted charge sheet u/s 325/34 of I.P.C against the accused persons, namely, Md. Dildar Hussain, Md. Nur Hussain, Md. Kasem Ali and Musstt. Halima Khatoon.

**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. The prosecution side to prove the guilty of the accused persons examined 1 (One) witness i.e. the informant. Considering the evidence of informant prosecution side declined to adduce further evidence before this court. Hence, the evidence of prosecution side is closed. Examination of the accused persons under section-313 of Cr.P.C dispense with as no implicating materials found against them from the evidence of prosecution.

**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:-**

**Whether on 31.08.2014 at 2 PM all the accused persons in furtherance of their common intention caused voluntarily simple hurt upon Anwara Khatoon by beating her with lathi causing injury on her hand and thereby committed an offence u/s 323/34 of IPC?**

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

7. In this case particulars of offence u/s- 323/34 of IPC was read over and explained to the accused persons on which they pleads not guilty. The prime accusation leveled by the informant Habibur Rahman against the accused persons are appears to be that on 31.08.2014 at 2 PM when his sister-in-law went to bring cattle from bank of river, the accused persons physically assaulted her with lathi. The prosecution side has got the burden of prove to

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establish that on the date of alleged incident the sister-in-law of the informant Anwara Khatoon who is a deaf and dumb person physically assaulted by the accused persons. In this case the prosecution side examined single witness i.e. the informant Habibur Rahman. The I.O on conclusion of investigation submitted charge-sheet while without citing victim Anwara Khatoon to be a witness and as per the versions of the Ejahar victim Anwara Khatoon appears to be deaf and dumb. The case is pending since from the year 2014 for its disposal and from the year 2016 the case is pending at the stage of evidence and on numerous occasions the court had issued summons upon the witnesses but the witnesses did not turns up. Consequently considering the evidence of informant who is the brother-in-law of the victim the prosecution side declined to adduce further evidence. The prosecution side even did not pray to issue notice upon the victim as a court witness. The prosecution side further submitted before the court that the victim as per the version of the informant is a dumb and deaf person and as such she cannot be examined. More also the prosecution side did not cite the victim to be a witness in this case on the ground of her deafness and dumbness. Thereafter considering the submissions of prosecution and also considering the old pending nature of the case this court stopped the further proceeding of this case in the light of Section 258 of Cr.P.C. and accordingly the case came up to the stage of judgment.

8. Now coming to the evidence of informant who is the brother-in-law of victim Anwara Khatoon disclosed before this court that the informant himself fully contradicted his own version as he contradicted in his Ejahar vide Exhibit 1. The informant in his ejahar pleaded that on the date of alleged incident his sister-in-law Anwara Khatoon went to bring the cattle from the river side area of their village and the accused persons physically assaulted her with lathi. Unpredictably, he in his evidence testified that on the day of incident his sister-in-law went to bring her cow and at that time an altercation between his sister-in-law and the accused persons. He also testifies that Anwara Khatoon is a deaf and dumb person and presently resides with him. He lodged ejahar out of that incident as informed by his sister-in-law Manowara Khatoon. Exhibit 1 is his Ejahar, Exhibit 1(1) is his signature. He also testified that they are now living

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peacefully and he has no objection if the accused persons acquitted from this case. Hence, it is said the informant failed to implicate the accused persons in his evidence rather he has contradicted his own version by way of testifying that there was only altercation took place between the accused persons and Anwara Khatoon. That part of his evidence makes his earlier version to be contradictory which renders the entire prosecution case to be doubtful in nature.

9. Certainly, an Ejahar is not considered to be a substantive piece of evidence which has been settled by Honorable Apex Court in various judgments. The only use of an Ejahar is to contradict and corroborate the versions of its maker to test the veracity of allegations. In this case indisputably the informant found to be contradicting his own version as he contended in his Ejahar and that contradiction makes the case of prosecution to be doubtful and untrustworthy in nature.
10. Therefore in the light of all the aforesaid discussion this court is of considered opinion that prosecution side failed to prove the guilty of the accused persons beyond any reasonable doubt. As such the accused persons are entitled to get benefit of doubt and consequent to that all the accused persons are acquitted from the charge u/s 323/34 of IPC accused person's sets at liberty. Bail bonds are extended for six months in view of 437 (A) of Cr.P.C. the case is disposed off accordingly.
11. Judgment is pronounced in the open court, which is given under my hand and seal of this court on 18<sup>th</sup> day of November, 2020.

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

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**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW 1: Md. Habibur Rahman, Informant

2. **Witnesses for Defence:** NIL

3. **Court Witnesses:** NIL

4. **Prosecution Exhibits:**

Ext 1 :- Ejahar

Ext 1(1) :- Signature of PW-1

5. **Defence Exhibits** : NIL

6. **Material Exhibits** : NIL

**Chief Judicial Magistrate  
Sonitpur, Tezpur**