

**G.R Case No-793 of 2012  
(State of Assam Vs Md. Muklesh Ali & Ors)**

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

**G. R. Case No. 793 of 2012**

Under section-447/323/354/34 of I.P.C

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

**State of Assam**

**-Vs-**

- 1. Md. Muklesh Ali**
- 2. Md. Hatem Ali**
- 3. Md. Moijul Haque @ Mofizul Islam**
- 4. Md. Ajijul Islam @ Haque**

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

**P/S:- Dhekiajuli**

**Dist:- Sonitpur, Assam**

.....Accused Persons

**Advocate appeared:**

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

Mrs. S. Begum, Ld. Advocate.....For the accused persons

Evidence recorded on	:- 02.09.2019 & 15.02.2021
Date of Statement of defence	:- 15.02.2021
Argument heard on	:- 15.02.2021
Judgment delivered on	:- 15.02.2021

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

**History of Prosecution's Case**

1. Prosecution case appears to be in a nutshell is that the informant named Md. Mainuddin Miya lodged an ejahar before the O/C, of Tezpur PS through I/C of Borghat Police Outpost on 01.04.2012 alleging inter alia that on 28.03.2012 at about 8 AM, the FIR named accused persons armed with dao, lathi, etc illegally entered into his courtyard with intend to kill him. It is also stated that all the accused persons also tried to kidnap him and when he raised hue and cry, the accused persons physically assaulted him with lathi and dao. It is further stated

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that when his wife named Mallika Begum rescued him, all the accused persons dragged her by pulling her hairs and further abused her with filthy languages and also torn his clothes like Genji, Kamij etc.

**“INVESTIGATION”**

2. On receipt of the Ejahar, Tezpur P.S Case No. 437 of 2012 u/s-447/325/354/427/34 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-447/325/354/34 of IPC vide order dated-27.05.2016 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-447/323/354/34 of Indian Penal Code 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 as many as 02 (Two) numbers of witnesses in support of this case. On perusal of the case record, it disclosed that instant case is pending since from the year 2012 and till date only two witnesses are examined out of which one is the informant-cum-victim. The prosecution side having sufficient opportunity failed to bring all the remaining PWs. Considering the nature of evidence and also considering the submission of prosecution, this court finds it sufficient to close the evidence, stopping the further proceeding in view of Section-258 of CrPC. Accordingly, evidence is closed and further proceeding is stopped. Accused persons are examined u/s-313 of Cr.P.C and their pleas of denial were recorded

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in separate sheet and the same kept with the case 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 28.03.2012 at about 8 AM, at a place called Rajbhoral under Tezpur P.S all accused persons in furtherance of their common intention illegally entered into the courtyard of the informant with intend to commit an offence and thereby committed an offence punishable u/s-447/34 of IPC?
  - (ii.) Whether on the same date, time and place the accused persons in furtherance of their common intention voluntarily caused simple hurt by way of beating the informant, named, Md. Mainuddin Miya and thereby committed an offence punishable u/s-323/34 of IPC?
  - (iii.) Whether on the same date, time and place all the accused persons in furtherance of their common intentions assaulted the victim named Must. Mallika Khaton @ Begum with intend to outrage her modesty and thereby committed an offence punishable u/s-354/34 of IPC?

**EVIDENCES OF PROSECUTION SIDE**

7. In this case prosecution side to prove the contentions of the Ejahar examined two numbers of witnesses including informant-cum-victim. Let us reproduce the evidences of prosecution side for the sake of proper appreciation.
8. PW-1, Md. Mainuddin being the informant of this case deposed that he knows all the accused persons of this case. He further deposed that the incident took place in the year 2012 in between 5 AM to 6 AM and on the date of alleged incident, the accused persons went inside his courtyard and started abusing him and his wife with filthy languages and further physically assaulted his wife. Thereafter, he lodged the ejahar.

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9. PW-1 in his cross examination testified that the incident took place over a matter of land dispute. He deposed that he had not filed any civil suit. He also deposed that regarding the same incident, the accused persons had filed a case against him and his wife.
10. PW-2, Must. Mallika Begum @ Khatoon deposed that she knows all the three accused persons of this case. She further deposed that on 28.03.2012 at about 8 AM, while they were present at home, all the accused persons went to their house and started quarrelling with them regarding a land dispute pending between them. She also deposed that the accused persons abused them with filthy language and further physically assaulted her husband and due to that her husband sustained injuries on his back. She deposed that accused persons have not misbehaved with her in any manner as she was busy in sending her children to school and consequent to that her husband treated at hospital. Later, her husband lodged the ejahar.
11. PW-2 in her cross examination testified that now, they have settled their dispute amicably outside the court and the accused persons did not torn out her clothes. She admitted that she has no objection if the accused persons are acquitted from this case.

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

12. In the foregoing discussions, it already disclosed that the Criminal law sets in motion against the accused person on the basis of ejahar lodged by the informant Md. Moinuddin Miya. In the light of accusations levelled against the accused person in this case the prosecution side has got the burden of prove that on 28.03.2012 at about 8 AM, the FIR named accused persons armed with dao, lathi, etc illegally entered into his courtyard with intend to kill him and further tried to kidnap him and when he raised hue and cry, the accused persons physically assaulted him with lathi and dao. It is also stated that when his wife named Mallika Begum rescued him, all the accused persons dragged her by pulling her hairs and further abused her with filthy languages and also torn his clothes like Genji, Kamij etc. Accordingly, particulars of offences punishable under section-447/323/354/34 of IPC were explained to the accused

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persons, to which they pleaded not guilty and claimed to be tried. The condemnations upon which the criminal law sets in motion against the four accused persons of this case needs to be demonstrate by the prosecution beyond any reasonable doubt to prove the guilty of the accused persons.

13. For the sake of proper appreciation of indications accessible before this court, let us deliberate all the facts in the background of the evidences on record. On cautious and scrupulous scrutiny of the evidence on record, it disclosed before this court that PW-1 is the informant of this case and he appears to be inconsistent with his version as he contended in his ejahar vide Ext-1. PW-1 in his ejahar empathically pleaded that on the date of alleged incident, he was physically assaulted by way of beating him with dao, lathi etc. and due to that he sustained injury. Although, he in his evidence-in-chief claimed that accused persons physically assaulted him and his wife named Must. Mallika Khatoon on the date of alleged incident. The fact of physical assault of his wife by accused as deposed by the informant in his evidence-in-chief had not been pleaded in his ejahar. PW-1 in his evidence claimed that he was abused by the accused persons with filthy languages and in the same time he had not uttered any single words as to what filthy languages used against him and his wife by all the accused persons. PW-1 also failed to depose anything to substantiate the offence of causing voluntarily simple hurt upon his body by the accused persons. The PW-1, being the informant of this case in his examination-in-chief did not utter any single words to support the incident dated 28.03.2012. He has also not supported and corroborated the fact of threatening him in his evidence-in-chief as he claimed in his ejahar. PW-1 had not deposed specifically as to which of the accused has inflicted physical assault upon his body. However, PW-2 Must. Mallika Khatoon, being the victim of this case displayed a complete good bye to the case of the prosecution by way of not implicating the accused persons to the alleged incident. She simply deposed that they have settled the dispute amicably outside the court and therefore, she has no objection if the accused persons are acquitted from this case.

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14. PW-2 being the wife of informant in her evidence supported the fact of physical assault of her husband by the accused persons and she also claimed that on the date of alleged incident, the accused persons used filthy languages although she had failed to mention the specific language which was used against her. Regarding the fact of physical assault both the informant and his wife stated that informant was physically assaulted on the date of incident. There is no injury report of informant found enclosed with the case record upon which the court may presumed that the informant was actually received any physical assault from the accused. The version of the victim further contradicts the testimony of her husband as she in her evidence-in-chief claimed that accused persons not misbehaved her in any manner. The victim also in her cross-examination affirmed that the accused persons not tore off her clothes. If so, then the entire prosecution story regarding inflicting physical assault on the body of PW-2 and disrobing her clothes as claimed by the informant appears to be contradictory in nature. PW-1 and PW-2 in their evidences supported the fact of physical assault of the informant but both the witnesses contradicted the remaining material facts of disrobing the clothes of the victim to outrage her modesty and abusing her with filthy languages. Hence, in that circumstances the fact of physical assault cannot be relied upon as the witness cannot be relied upon partly on the material facts.
15. As such, it becomes crystal clear that the testimony of PW-2 contradicts the entire contentions of the ejahar as well as the version of the informant (PW-1). The evidence of PW-2 cannot be overlooked as she is one of the victim of this case and her evidence makes the testimony of the informant contradictory in nature.
16. Now, coming to the another important aspect of this case, this court finds that the occurrence allegedly took place on 28.03.2012 at about 8 AM. Ejahar of this case was lodged on 01.04.2012, which shows that the ejahar was lodged after 04 days of the alleged incident. The delay of lodging the ejahar has not been explained in this case. There is no endeavour seen from the part of the prosecution to explain such inordinate delay during the time of adducing the

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evidence before the court. The delay of lodging ejahar not makes the entire prosecution case fatal where such delay properly explained by the prosecution during the trial before the court. Whatever may be length of delay if it is explained in that circumstance the court cannot raise any question over the prosecution case due to the fact of delay in lodging the ejahar? There is no explanation given in the ejahar as well as the evidence of the prosecution side. Hence, inordinate and unexplained delay in this case makes the prosecution story weaker and afterthought.

17. To sum up the aforesaid conversation, this court treasures that the evidences of the victim, her husband and other witness are not appearing to be contradictory, supportive and coherent, rather their evidences are found to be full with lot of shortcomings and which purifies their evidences doubtful and untrustworthy. In attendance of such inconsistencies this court is unable to put its reliance upon their evidences. More also, sole testimony of the victim not appears to be supportive and fully corroborative.
18. Therefore, in the light of aforementioned conversations this court is of painstaking estimation that prosecution side failed to prove the guilty of the accused persons beyond any reasonable doubt and accordingly, accused persons are entitled to get the benefit of doubt.
19. In the result all the four accused persons are acquitted from the charges u/s-447/323/354/34 of IPC and sets at liberty. Surety is extended for six months in view of section 437A of Cr PC.
20. Accordingly, the case is disposed of. Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 15<sup>th</sup> day of February, 2021 at Tezpur.

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

**ANNEXURE**

**1. Witnesses for Prosecution:-**

PW-1:- Md. Moinuddin Miya,

PW-2:- Must. Mallika Khaton,

**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**