

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

TEZPUR, ASSAM

P.R CASE NO: 871 OF 2018

Under Section 341/352/34 of the Indian Penal Code

State of Assam

.....PROSECUTOR

-Vs.-

1. Md. Amir Hamza

S/o Sri Abdul Jalil

P.S-Tezpur, Dist- Sonitpur

2. Md. Guljar Hussain

S/o Sri Jalal Uddin

P.S- Tezpur, Dist-Sonitpur

.....ACCUSED

PRESENT: VISHEK BHUYAN, LL.M, AJS

JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR

FOR PROSECUTION: LD. APP. Mr Tapan Das

FOR THE ACCUSED: Gautam Sarkar, Purba Das

EVIDENCE RECORDED: 01.02.2021

JUDGEMENT DELIVERED ON: 08.02.2021

JUDGMENT

1. The accused persons Md. Amir Hamza and Md. Gulzar Hussain stood trial for offences punishable under Sections 341/352/34 of Indian Penal Code (hereinafter IPC).

Information and Investigation

2. The genesis of this case has its roots with the lodging of Ejahar by informant Sri Nurul Haque on 16.04.2018 wherein the informant has alleged that on 13.04.18 at around 10 P.M, in Panch Mile Center, Tezpur, his brother Sri Saidul Haque was beaten up by the accused persons with their hands as well as stick. As a result of which he sustained injury on his body. To this extent, the victim started running in order to escape the accused persons, but he was soon caught by them. Since the incident, the informant suspects that the accused persons have kidnapped the victim and hence he has not returned home.
3. The Ejahar was registered as Tezpur P.S Case no 778/18 U/s 341/325/365/34 IPC. The police after investigation submitted charge sheet against the accused persons under sections 341/294/352/506/34 IPC.

Trial

4. Cognizance was taken of the Charge sheeted offences and processes were issued upon which the accused persons appeared and copies of the relevant documents were furnished to them in compliance with section 207 of Code of Criminal Procedure (hereinafter referred as CrPC). The particulars of the offences were explained to the accused persons, to which they pleaded not guilty and claimed to be tried.
5. In this case, the prosecution has examined the informant as PW-1. Considering testimony of the informant, the prosecution declined to further adduce evidence in this case. Hence, the evidence of prosecution side is closed. Examination of accused persons u/s 313 CrPC dispensed with as the prosecution did not adduce any implicating evidence against them.

6. After hearing the learned Counsel of both sides and after perusal of the case record, I do hereby frame the following points of determination.

POINTS FOR DETERMINATION

i. Whether the accused persons Sri Amir Hamza and Sri Gulzar Hussain, on 13.04.18 at around 10 p.m at Panch mile center, Tezpur wrongfully restrained Sri Saidul Haque and thereby committed an offence punishable under Section 341 IPC?

ii. Whether the accused persons, at the same time and place, assaulted the victim and thereby committed an offence punishable under section 352 IPC?

PROSECUTION EVIDENCE

Evidence of the informant

7. **P.W 1 Sri Nurul Haque** is the informant in this case. He states that the incident took place in 2018 and that the accused persons are known to him. He filed the case as he couldn't find his brother/victim, but since then his brother has been found and states that the case was instituted due to misunderstanding. He also goes on to state that he has no objection if the accused persons are acquitted.

DISCUSSIONS, DECISIONS AND REASONS THEREOF

8. Upon a perusal of the evidence, it is clear that the informant of this case does not wish to proceed with the case, as the case was lodged by him due to his brother/victim missing but since then he has returned home and hence the case was filed as a result of misunderstanding.
9. As such the prosecution has failed prove that the accused persons have committed the offences u/s 341/352/34 IPC beyond reasonable doubt.

ORDER

In light of the above, it is held that the prosecution has failed to prove the case U/s 341/352/34 of IPC against the accused persons Md. Amir Hamza and Md. Guljar Hussain beyond all reasonable doubt. Hence, both the accused persons hereby are **acquitted** and set at liberty forthwith.

However, their bail bond shall remain in force for a period of next 6(six) months as provided by section 437A Cr PC.

Given in my hand and under the seal of this court on this the 08th day of February, 2021.

Typed by Me: Sri Vishek Bhuyan, JMFC, Sonitpur, Tezpur

(Mr Vishek Bhuyan)
Judicial Magistrate First Class
Sonitpur, Tezpur

APPENDIX

Prosecution Witness:

PW-1: Sri Nurul Haque

Defence Witness:

NIL

Prosecution Exhibits:

Ext-1: Ejahar

Ext-2: Chargesheet

Ext 3: Medical injury Report

Defence Exhibits:

NIL

(Mr Vishek Bhuyan)
Judicial Magistrate First Class
Sonitpur, Tezpur