

**DISTRICT: NAGOAN  
IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, HOJAI**

**GR CASE NO: 161/15  
U/S 447/427/336/34 IPC**

**PROSECUTOR: STATE OF ASSAM  
VERSUS  
ACCUSED: ISMAIL ALI & ANR.**

**PRESENT: BISWADEEP BARUAH, JMFC, HOJAI**

**ASSISTANT PUBLIC PROSECUTOR: SRI. SUNIL DAS**

**ADVOCATE FOR THE ACCUSED: SRI. A. J. SAIKIA**

**EVIDENCE RECORDED ON: 10/01/17**

**ARGUMENT HEARD ON: 10/01/2017**

**JUDGMENT DELIVERED ON: 20/01/2017**

### **JUDGMENT**

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of Doboka P.S. by the informant Md. Moinuddin on 20/01/15 to the effect that on the instant date at about 1 p.m., accused Md. Ismail Ali, Rahmat Ali, Abdul Majid and Akbar Ali were cutting a 'Segun' tree located in the land of the informant. When the informant and other people, obstructed the accused, the latter attacked them with dao and sticks. The accused persons also set fire in their own houses.
2. The police upon receipt of the ejahar registered Doboka Police Station case no. 24/2015 u/s 447/427/336/34 of IPC and started investigation in the case. After completion of the investigation the police submitted chargesheet against the accused, Md. Ismail Ali and Rahmat Ali under sec 447/427/336/34 of IPC.

3. The accused were called upon to enter trial and copies of all the relevant documents were furnished to them. Upon hearing and on perusal of record, particulars of offence under sec 447/427/336/34 of IPC was read over and explained to the accused to which they pleaded not guilty and claimed to be tried.
4. The prosecution in support of its case examined one witness who is the informant/victim of the instant case. The defense did not adduce any evidence.
5. The statement of defense of the accused u/s 313 Cr.P.C. was discarded with since the accused was not incriminated by the Prosecution Witness.
6. I have heard both the parties. I have heard the learned counsel for the accused persons who submitted that there is no material against the accused; as such the accused needs to be acquitted.
7. Upon hearing and on perusal of record I have formulated the following point for determination-
  - (1) Whether the accused persons had on 20/01/15 at about 1 p.m., criminally trespassed into the land belonging to the informant in furtherance of their common intention and thereby committed offence punishable under sec 447/34 of IPC?
  - (2) Whether the accused persons had on 20/01/15 at about 1 p.m., committed mischief and caused loss of over Rs. 50/ by cutting the segun tree belonging to the informant in furtherance of their common intention and thereby committed offence punishable under sec 427/34 of IPC?
  - (3) Whether the accused persons had on 20/01/15 at about 1 p.m., endangered the life and safety of public by their rash or negligent act done in furtherance of their common intention and thereby committed offence punishable under sec 336/34 of IPC?
8. Now let me discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

**DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

**POINT FOR DETERMINATION NOS.1, 2 and 3:**

9. The prosecution in support of its case examined one witness who is the informant of the instant case. The defense did not adduce any evidence.
10. PW1, Moinuddin is the informant of the instant case. He stated that the accused were his neighbours. He stated that on the date of occurrence, there was an argument between him and the accused over cutting of a tree and he had filed the case in anger. Exhibit 1 being the ejahar and Exhibit 1(1) being his signature was proved by PW1.
11. In his cross examination, PW1 stated that the matter has been amicably settled and he had no objection to the acquittal of the accused.
12. DECISION: In analyzing the depositions of the Prosecution Evidence, it is seen PW1 who is the informant has not implicated the accused persons in any manner. PW1 has merely stated that there was an argument between him and the accused who are neighbours over felling of a tree. Moreover it appears that the matter has been amicably settled and the informant does not want to implicate the accused. PW1 further stated that he did not object to the acquittal of the accused. Hence in light of the evidence of the informant, the point of determination is answered in negative, in favour of the accused.

#### ORDER

1. In view of the discussions made above and the decision reached therein it is held that the prosecution has failed to prove the charge against the accused; the Prosecution witness has not supported the case and incriminated the accused in any manner; as such the accused Md. Ismail Ali and Rahmat Ali are held not guilty of the charge under section 447/427/436/34 of IPC and acquitted.
2. The case is disposed of on contest without cost.
3. The bail bonds of the accused stands extended for a period of six months.

Given under my hand and the seal of this court on this the 20<sup>th</sup> day of January, 2017 at Hojai.

Biswadeep Baruah,  
Judicial Magistrate First Class, Hojai.

**APPENDIX:**

**WITNESS FOR THE PROSECUTION:**

**PW1      Moinuddin**

**WITNESS FOR THE DEFENSE: NONE**

**EXHIBITS:**

**Exhibit 1      Ejahar**

**Exhibit 1(1) Signature of PW1**