

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

**GR CASE NO: 442/10
U/S 341/323/427 IPC**

**PROSECUTOR: STATE OF ASSAM
VERSUS
ACCUSED: BASISTHA CHAUHAN.**

PRESENT: BISWADEEP BARUAH, JMFC, HOJAI

ASSISTANT PUBLIC PROSECUTOR: SRI. SUNIL DAS

ADVOCATE FOR THE ACCUSED: SRI. SHARIFUDDIN AHMED

EVIDENCE RECORDED ON:

ARGUMENT HEARD ON: 09/02/2017

JUDGMENT DELIVERED ON: 20/02/2017

JUDGMENT

1. The prosecution in this case was launched by the lodging of the ejahar with the Officer in Charge of Hojai P.S. by the informant Sri. Mangi Singha on 17/05/10 to the effect that on the evening of 16/05/10 at about 8 p.m., the informant had booked an auto bearing No. AS-02E-1614 from Hojai Railway Station and was traveling in it towards his house. On the way, the accused Basistha Chauhan entered the auto forcibly near Siring Mari Tiniali and assaulted the informant with a stick and also snatched away cash, driving license, and wristwatch belonging to the informant.
2. The police upon receipt of the ejahar registered Hojai Police Station case no. 117/2010 u/s 341/325/379/427 of IPC and started investigation in the case. After completion of the investigation the police submitted chargesheet against the accused, Basista Chouhan under sec 341/323/427 of IPC.

3. The accused was called upon to enter trial and copies of all the relevant documents were furnished to him. Upon hearing and on perusal of record, and based on the materials on record, particulars of offence under sec 341/323/427 of IPC was read over and explained to the accused to which he pleaded not guilty and claimed trial.
4. The prosecution could not procure the attendance of a single witness. The informant remained conspicuous by his absence despite due receipt of summons. The informant did not appear even after execution on BWA issued against him. The offence was explained to the accused on 30/06/12 and for more than four and half years the Prosecution failed to produce any witness. Meanwhile the accused was regular in his attendance. Considering the undue harassment faced by the accused because of failure of the Prosecution to produce a single witness in four and half years, I finally closed the evidence vide order dated 09/02/17. 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 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 had on 16/05/10 at about 8 p.m., unlawfully restrained the informant when he was travelling in an auto near Siring Mari Tiniali and thereby committed offence punishable under sec 341 of IPC?
 - (2) Whether the accused had on 16/05/10 at about 8 p.m., voluntarily assaulted and caused simple injury to the informant when he was travelling in an auto near Siring Mari Tiniali and thereby committed offence punishable under sec 323 of IPC?
 - (3) Whether the accused had on 16/05/10 at about 8 p.m., caused damage to tune of Rs. 50 and above to the belongings of the informant when he was travelling in an auto near Siring Mari Tiniali and thereby committed offence punishable under sec 427 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. I have taken up all the points for consideration together to arrive at a definitive finding.
10. The prosecution in support of its case could not produce a single witness. The informant remained conspicuous by his absence despite due receipt of summons. The informant did not appear even after execution on BWA issued against him. The offence was explained to the accused on 30/06/12 and for more than four and half years the Prosecution failed to produce any witness. Evidence of the prosecution was finally closed vide Order dated 09/02/17.
11. DECISION: In light of absence of a single prosecution witness, there was no material to incriminate the accused person and hence the points of determination are 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; as such the accused Basistha Chauhan is held not guilty of the charge under section 341/323/427 of IPC and acquitted.
2. The case is disposed of on contest accordingly.
3. The seized articles if any, shall be disposed as per law.
4. 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 20th day of February, 2017 at Hojai.

BiswadeepBaruah,
Judicial Magistrate First Class, Hojai.