

**GR 316/2016**  
**State Vs Fajal Ali & 3 Ors.**



DISTRICT: BONGAIGAON.  
IN THE COURT OF MUNSIF CUM JUDICIAL MAGISTRATE FIRST CLASS,  
BONGAIGAON

**G.R. CASE NO. 316/2016 UNDER SECTION 323/34 IPC**

1. FAJAL ALI @ FARAL  
SON OF SABARUDDIN ALI SK  
RESIDENT OF DOLAIGAON UJANPARA  
POLICE STATION & DISTRICT: BONGAIGAON (ASSAM)
2. SALIM ALI  
SON OF LATE MOHAR ALI  
RESIDENT OF BARTALWA, PS: DHALIGAON  
DISTRICT: CHIRANG
3. JAHAR ALI  
SON OF ABDUL BAREK ALI  
RESIDENT OF BHATIPARA, CAMP BAZAR, PS: MORNOI
4. GUL BAHAR ALI  
SON OF LATE ATAB ALI  
RESIDENT OF MUATARI, PS: CHAPAR  
DISTRICT: DHUBRI

**-VERSUS-**

**.....ACCUSED PERSONS**

STATE OF ASSAM –

**.....PROSECUTOR**

PRESENT: UTTAM CHETRI, MUNSIF CUM JUDICIAL MAGISTRATE FIRST  
CLASS, BONGAIGAON

ADVOCATE FOR THE PROSECUTION:	APP, S. MAZUMDAR
ADVOCATE FOR THE ACCUSED PERSONS:	ADV. M. RAHMAN
OFFENCE EXPLAINED ON:	15.09.2016
EVIDENCE RECORDED ON:	03.12.2016,
	15.12.2016,
	25.01.2017,
	01.03.2017
	14.06.2017
ARGUMENT HEARD ON:	31.10.2017
JUDGMENT DELIVERED ON:	06.11.2017

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### **JUDGMENT**

1. The prosecution case in a nutshell is that the informant Mokbul Hussain lodged an FIR with the Bongaigaon Police Station on 16.04.2016 stating inter alia that on 15.04.2016 at about 7:45 PM in the evening, the accused persons named in the FIR abducted Kifuluddin Akand from the road situated near Ujanpara and took him to accused no. 1 Fajal Haque's house. The informant further alleged in his FIR that the accused persons then jointly assaulted him with lathi, rod etc. and falsely accused him of stealing their cow. The informant also alleged that later on the local residents informed the police about the aforesaid incident and police came to the place of occurrence to rescue Kifuluddin but the accused persons stopped them from doing so. The informant further alleged that the accused persons also took away a sum of Rs. 1,000/- (Rupees one thousand) only from Kifuluddin.

2. On receipt of the FIR, the police registered Bongaigaon Police Station Case No. 212/2016 under Sections 143/147/325/379 IPC and conducted investigation into the matter. On completion of the investigation, the police submitted FR against the accused persons namely Fajal Ali @ Faral, Salim Ali, Jahar Ali and Gul Bahar Ali under Section 323 IPC as offence under Section 323 is non cognizable. The learned CJM, Bongaigaon later on took cognizance of offence under Section 323 IPC against the accused persons and transferred the same to this Court for disposal.

3. The accused persons entered their appearance in response to the process issued. Copies of the relevant documents were furnished to the accused persons in accordance with Section 207 Criminal Procedure Code, 1973. Offence under Section 323 IPC was, accordingly, read over and explained to the accused persons to whom they pleaded not guilty and claimed to be tried.

4. During trial, the prosecution examined 7 (seven) witnesses and exhibited 4 (four) documents after which the prosecution evidence was closed. The statement defence of the accused persons was, accordingly, recorded as per the mandate of Section 313 Criminal Procedure Code wherein the accused persons denied the entire allegations made against them. Defence did not adduce any evidence.

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5. Upon hearing both the parties and on perusal of the case record, the following point for determination has been formulated by this Court.

i) Whether the accused persons namely Fajal Ali @ Faral, Salim Ali, Jahar Ali and Gul Bahar Ali on 15<sup>th</sup> day of April, 2016 in furtherance of their common intention voluntarily caused hurt to Md. Kifuluddin Akand and, thereby, committed an offence punishable under Section 323 IPC read with Section 34 IPC?

6. I have heard the learned counsel for both sides and have gone through the evidence on record which is outlined below.

#### **EVIDENCE**

7. PW1 in his examination in chief had stated that he is the informant in the present case and he knows the accused persons who are standing at the dock; that the incident took place on 17.04.2016 at about 7:30 PM in the evening; that on the day of incident his nephew Kifuluddin Akand was abducted by the accused persons from a road situated near Dolaigaon Ujanpara and was severely assaulted by tying him in a tree. Exhibit 1 is the ejahar and Exhibit 1(1) is his signature.

8. PW1 in his cross-examination had stated that his house is situated at about a distance of 100 (hundred) kilometers from Fajal's house; that Kifuluddin is his nephew. PW1 had denied the suggestion that his nephew Kifuluddin had been teasing the daughter of Fajal Ali namely Farida Khatun from 6 (six)- 7(seven) months and has been harassing her mentally. PW1 had also denied the suggestion that accused Fajal Ali had given several public meeting in respect of the aforesaid incident. PW1 had also denied the suggestion that they had not called for any public meeting. PW1 had also denied the suggestion that on the day of incident at about 8:00 PM in the evening his nephew Kifuluddin illegally entered into the house of Fajal Uddin and tried to kidnap the daughter of Fajal Uddin namely Farida Khatun and when Farida made hue and cry, people from the nearby houses gathered therein, caught hold of Kifuluddin and handed him over to the police. PW1 had also denied the suggestion that Farida had filed a case against Kifuluddin in respect of the aforesaid incident and the same has been registered as Bongaigaon Police Station Case No. 213/16/G.R. Case No. 317/16. PW1 had further denied the suggestion that he had not stated

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in the FIR that Kufuluddin was assaulted after being tied in a tree. PW1 had also denied the suggestion that he had falsely lodged the present case.

**9.** PW2 in her examination in chief had stated that she knows the informant and the absent accused Jahar Ali and the other accused persons who are standing at the dock; that Kufuluddin has been disturbing her for a long time prior to 15.04.2016; that Kufuluddin stalks her in a scooty and harasses her mentally; that in spite of the request from her father, Kufuluddin did not stop harassing her; that on 15.04.2016, Kufuluddin entered into their house and knocked the window of her room; that she made hue and cry on which her family members and people residing nearby came to the place of occurrence, caught hold of him and took him to a public meeting; that nobody had assaulted Kufuluddin.

**10.** PW2 in her cross-examination had stated that Kufuluddin was handed over to the police by public.

**11.** PW3 in his examination in chief had stated that the informant is his father and he knows the absent accused Jahar Ali and the other accused persons who are present; that on the day of incident, hearing hue and cry when he went to the place of occurrence, he saw that Kufuluddin was tied in a tree by the accused persons and was assaulted alleging that he had stolen their cows; that seeing him, the accused also assaulted him.

**12.** PW3 in his cross-examination had stated that Kufuluddin is his cousin. PW3 had denied the suggestion that Kufuluddin had teased the daughter of Fajal Ali. PW3 had further denied the suggestion that on 15.04.2016, Kufuluddin illegally entered into the house of Fajal Ali and tried to kidnap his daughter. PW2 had further stated in his cross-examination that on the day of the incident, the family members of Fate Begum handed over Kufuluddin to the police; that the mother of Fate Begum had lodged an FIR against Kufuluddin in respect of the aforesaid incident. PW3 had further stated in his cross-examination that he had not stated before the police that Kufuluddin was assaulted after being tied in a tree. PW1 had denied the suggestion that he had falsely filed the case against the accused persons to save his brother. PW3 had further denied the suggestion that he had falsely deposed in the present case.

**13.** PW4 in his examination in chief had stated that the informant is his uncle and he knows the accused persons who are standing at the dock and the absent accused person Jahar Ali; that on 15.04.2016 at about 7:00-

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7:30 PM when he was returning back from his shop situated at Bengtol to his house situated at Dolaigaon, the accused persons caught hold of him near the road and took him to their house; that the accused then tied him on a betel tree and assaulted him due to which he was severely injured; that after few hours, O/C, North Bongaigaon came to the place of occurrence and rescued him from the clutches of the accused persons.

**14.** PW4 in his cross-examination had denied the suggestion that he had not told before the police that accused persons had not assaulted him. PW4 had also denied the suggestion that he was teasing and harassing the daughter of Fajal Ali namely Farida Khatun about 1 (one) month prior to the date of occurrence. PW4 had also denied the suggestion that a public meeting was organized by Fajal Ali as he had teased his daughter. PW4 had further denied the suggestion that on the date of the incident he illegally trespassed into the house of Fajal Ali and tried to kidnap the daughter of Fajal Ali namely Farida Khatun and when Farida Khatun made hue and cry, the people living nearby came to the house of Fajal Ali, caught hold of him and handed him over to the police station. PW4 had further denied the suggestion that Fajal Ali had lodged an FIR against him in respect of the aforesaid incident and the same has been registered as Bongaigaon Police Station Case No. 213/16 (G.R. Case No. 317/16). PW4 had also denied the suggestion that he had stated before the police that he knows Farida Khatun. PW4 had further denied the suggestion that as the accused persons had caught him red handed, as such, his uncle had lodged a false case against the accused persons. PW4 had also denied the suggestion that the accused persons had not assaulted him by tying him up in a betel nut tree.

**15.** PW5 in his examination in chief had stated that he knows the informant and the accused persons who are standing at the dock; that on 15.04.2016 at about 7:30 - 8:00 PM in the evening hearing hue and cry when he came out of his house, he saw that the accused persons were assaulting Kifuluddin; that seeing the aforesaid incident, he asked the accused persons not to assault the victim Kifuluddin but they did not listened to him and took him to the house of Fajal Ali and tied in a betel nut tree.

**16.** PW5 in his cross-examination had stated that he and Kifuluddin reside as tenant in the same house; that at the time of the incident, he was watching TV; that the police had taken his statement at the Police Station. PW5 had denied the suggestion that he had not stated before the police

  
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that accused persons had assaulted Kufuluddin and had taken him to the house of Fajal Ali and tied him in a betel nut tree. PW5 had also denied the suggestion that accused persons had not assaulted Kufuluddin. PW5 had further denied the suggestion that he had deposed falsely.

**17.** PW6 in his examination in chief had stated that on 16.04.2016 he examined Kufuluddin Ali, son of Late Abejuddin Ali, aged about 19 (nineteen) years, male, resident of Dolaigaon Ujanpara accompanied and escorted by HG Tilak Majumdar on Hospital Registration No. ML 479/16; that on examination he did not find any injury on the body of the victim. Exhibit 2 is the Medical report and Exhibit 2 (1) is his signature; that on the same day, he examined Kazin Hussain, son of Mokbul Hussain, aged about 18 (eighteen) years, male, resident of Dolaigaon Ujanpara escorted by HG Tilak Mazumdar on Hospital Registration No. ML 479/16; that on examination, he found one abrasion size 3 cm x 1 cm on the left supraorbital region with minimal swelling on the body of the victim; that the injury was simple in nature caused by blunt object; that the time since injury 6 (six)- 12 (twelve) hours. Exhibit 3 is the Medical report and Exhibit 3 (1) is his signature.

**18.** PW6 in his cross-examination had stated that he had not mentioned police requisition number in his report; that the injury suffered by victim Kazin Hussain might be caused by falling down on own.

**19.** PW7 in his examination in chief had stated that on 16.04.2016 informant Mokbul Hussain lodged an FIR before the North Bongaigaon PP which was sent to O/C, Bongaigaon for registration; that on receipt of the aforesaid FIR, O/C, Bongaigaon Police Station registered the same as Bongaigaon Police Station Case No. 212/16 under Sections 143/147/325/379 IPC and entrusted him to investigate the case; that he, accordingly, went to the place of occurrence, prepared the sketch map of the same, recorded the statement of the witnesses, sent the victim for Medical examination and later on collected the Medical report of the victim; that on 30.04.2016, he submitted FR in the present case. Exhibit 1 is the 'ejahar' and Exhibit 1 (2) is his signature. Exhibit 4 is the final report and Exhibit 4 (1) is his signature.

**20.** PW7 in his cross-examination had stated that PW4, Kufuluddin had stated in his 161 statement that he knows Farida Khatun; that North Bongaigaon PP is at a distance of about 1 (one) kilometer from the place of occurrence.

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**APPRECIATION OF EVIDENCE**

**16.** The informant Mokbul Hussain had alleged in his FIR that accused persons abducted his nephew Kufuluddin Akand from the road situated near Ujanpara, took him to accused no. 1 Fajal Haque's house and jointly assaulted him with lathi, rod etc.

**17.** To prove its case, the prosecution had examined 7 (seven) witnesses including the I/O. Although PW1 (informant), PW3, PW4 (victim) and PW5 had corroborated the allegations of the informant in respect of the alleged assault on the victim by the accused persons but the evidence of PW2 suggests the contrary. PW2 in her examination in chief had stated that the victim Kufuluddin used to stalk her in a scooty and mentally harass her and on 15.04.2016 Kufuluddin entered into her compound and knocked the window of her room on which she made hue and cry and her family members and people residing nearby caught hold of Kufuluddin and took him to a public meeting. PW2 had further stated in her examination in chief that nobody had assaulted Kufuluddin. Although cross-examined, her evidence in this respect has remained intact. In fact PW2 in her cross-examination had stated that Kufuluddin was handed over to the police by the public.

**18.** On perusal of the case record, it also appears that PW1 (informant), PW3, PW4 (victim) and PW5 are related to each other.

In *Sansab Ali Mondal and Anr v State of Assam* (2009 (3) GLJ 624) it was observed by the Hon'ble Gauhati High Court that **"It is a settled position of law that the evidence of a witness cannot be discarded merely on the ground that he is a related witness, if otherwise his testimony is found to be credible. As because the witness is a related witness, it does not mean that his testimony is to be rejected in totality. The Court, however, is to be more careful in the matter of scrutiny of the evidence of the related and interested witnesses and if on scrutiny, such witness is found to be trustworthy, the same cannot be discarded merely on the ground that the witness is a related or interested witness. The Court normally, in such circumstances, would look for corroboration by any independent witness."**

**19.** On perusal of the case record, it appears that there are vital contradiction in the deposition of the evidence of PW1 (informant), PW3, PW4 (victim) and PW5 on the one hand and PW2 on the other. While

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PW1 (informant), PW3, PW4 (victim) and PW5 had stated that Kufuluddin was assaulted by the accused persons, PW2 had deposed the contrary. Further although the informant had alleged that Kufuluddin was assaulted by the accused persons with lathi, rod etc. but the evidence of PW6 who had examined Kufuluddin on 16.04.2016 had stated that on 16.04.2016 he examined Kufuluddin Ali, son of Late Abejuddin Ali accompanied and escorted by HG Tilak Majumdar on Hospital Registration No. ML 479/16 and on examination he did not find any injury on the body of the victim.

**20.** Thus non corroboration of the allegations of assault and subsequent injury on the victim Kufuluddin by the medical report together with vital contradiction between the evidence of PW2 on the one hand and other PWs on the other creates reasonable doubt on the prosecution story. Thus non corroboration of the evidence of related witness by any independent witnesses although the incident allegedly took place in front of public at large creates reasonable doubt on the prosecution story and the accused deserves benefit of doubt in this respect.

**21.** From the discussions aforesaid, it clearly transpires that the prosecution has failed to prove beyond reasonable doubt that the accused persons namely Fajal Ali @ Faral, Salim Ali, Jahar Ali and Gul Bahar Ali in furtherance of their common intention had committed the offence punishable under Section 323/34 IPC.

**22.** Accordingly, I held that the prosecution has failed to prove beyond reasonable doubt that the accused persons namely Fajal Ali @ Faral, Salim Ali, Jahar Ali and Gul Bahar Ali in furtherance of their common intention had committed the offence punishable under Section 323/34 IPC. As such, the point for determination is answered in the negative in favour of the accused persons.

### **ORDER**

In view of the discussion made above and the decisions reached in the foregoing points for determination, it is held that the prosecution has failed to prove beyond reasonable doubt that the accused persons namely Fajal Ali @ Faral, Salim Ali, Jahar Ali and Gul Bahar Ali in furtherance of their common intention had committed the offence punishable under Section 323/34 IPC.

*J.M.*  
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As such, the accused persons namely Fajal Ali @ Faral, Salim Ali, Jahar Ali and Gul Bahar Ali are acquitted of the charges under Section 323/34 IPC. The bail bond of the accused persons and their surety shall remain in force for 6 (six) months from today in compliance with Sec. 437-A, Criminal Procedure Code. Case is disposed of on contest.

Given under my hand and the seal of this court on this 6<sup>th</sup> day of November, 2017 at Bongaigaon.

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JM, 1st Class  
(Uttam Chettri)  
Bongaigaon  
Munsif cum Judicial  
Magistrate First Class,  
Bongaigaon

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**APPENDIX**

**PROSECUTION EXHIBITS:**

- Exhibit 1: FIR dated 16.04.2016  
Exhibit 2: Medical examination report dated 26.04.2016  
Exhibit 3: Medical examination report dated 26.04.2016  
Exhibit 4: Charge sheet dated 30.04.2016

**DEFENCE EXHIBITS: NONE**

**PROSECUTION WITNESS:**

- PW1- Mokbul Hussain  
PW2- Fate Begum  
PW3- Kazi Hussain  
PW4- Kifuluddin  
PW5- Asadul Islam  
PW6- Dr. Gautam Das (M.O)  
PW7- Debojit Sarma (I.O)

**DEFENCE WITNESS: NONE**

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