

**COURT OF MUNSIFF NO-4 cum JUDICIAL MAGISTRATE FIRST CLASS
KAMRUP (M)**

G.R CASE 654 of 2013

U/S 323/342/379 of IPC

STATE

V

GANESH DAS.....ACCUSED

PRESENT: - SUNDEEP KASHYAP DAS, A.J.S

JUDICIAL MAGISTRATE FIRST CLASS, KAMRUP (M)

FOR THE PROSECUTION:

Smti JITUMONI TAMULI

.....A.P.P. FOR THE STATE

FOR THE DEFENCE

MOBAROQUE HUSSAIN, JUNJUN KALITA, BINA RAJBONGSHI

.....ADVOCATE FOR THE ACCUSED

ARGUMENT HEARD ON: -06.03.2017

JUDGMENT DELIVERED ON: -06.03.2017

JUDGMENT

BRIEF FACTS OF PROSECUTION'S CASE

1. The informant, **MITHILESH KUMAR RAI** lodged an F.I.R stating inter alia that on 21.01.2015 at about 09:30 p.m., while his maternal uncle was waiting at *Lokhra Chariali* for tracker to go to his room, the driver of one Dumper bearing registration no-AS-01-EC-5114 along with two associates assaulted the victim *Mukhlal* and took him to *Jorabat*. Subsequently, he was assaulted and took away Rs 10, 000/- and relevant documents related to the vehicle from the victim. The owner of the dumper vehicle is also connected with the incident. As such, he sustained injury. Hence, the informant filed this case for taking necessary action.

INVESTIGATION

2. On receipt of *ejahar*, *BASISTHA* P.S police registered a case as *BASISTHA* 74/15. After completion of investigation, the police submitted a charge-sheet for the offence under section 325/342/379 of Indian Penal Code (hereinafter referred to as 'IPC') against the accused person namely Sri **GANESH DAS**

APPEARANCE OF THE ACCUSED PERSON

3. The accused persons were called upon and upon his appearance; copies of relevant documents u/s 173 Cr.P.C were furnished to them in compliance with section 207 CrPC.

CHARGE AGAINST ACCUSED PERSON

4. Considering the relevant documents and hearing both parties, charge u/s 323/342/379 of Indian Penal Code have been stated to the accused person to which he pleaded not guilty and claimed to be tried.

WITNESSES EXAMINED AND DOCUMENTS EXHIBITED

5. The prosecution could not examine any witnesses and as such could not exhibit any documents.

EXAMINATION OF ACCUSED u/s 313 Cr.P.C

6. The examination of the accused u/s 313 of Cr.P.C has been dispensed with as there are no incriminating materials against the accused person

ARGUMENT

7. I have heard the arguments submitted by Learned Assistant Public Prosecutor representing the State and Learned Defence Counsel representing the accused **GANESH DAS**

POINTS FOR DETERMINATION

a. *Whether, on the 21st day of January, 2015, the accused, Sri Ganesh Das, voluntarily caused hurt to Mukhlal Ray and thereby committed an offence punishable u/s 323 of Indian Penal Code?*

b. *Whether, on the said date and about said time, the accused person wrongfully confined the victim in a room owned by the owner of one dumper bearing registration no-AS-01-EC-5114 and thereby committed an offence punishable u/s 342 of IPC?*

c. *Whether, on the said date and about said time, the accused committed the theft of Rs 10, 000/- and relevant documents out of the possession of the victim without his consent and thereby committed an offence punishable u/s 379 of IPC?*

DISCUSSION, DECISIONS AND REASONS THEREOF

8. The standard of proof in criminal law is to prove the guilt of the accused beyond reasonable doubt. Basic allegations against the accused reveals from the story of prosecution as stated above. Question arises whether prosecution has been able to discharge the burden? The answer is NO. On perusal of chargesheet, it appears that there are seven witnesses in this case. Several opportunities were granted to the prosecution to bring the witnesses. However, their attendance could not be secured despite the most assiduous of efforts. Since, witnesses could not be brought to dock to support the facts alleged by prosecution, therefore, I can safely conclude that prosecution failed to prove the basic ingredients to warrant conviction against the accused persons.

DECISION

The above points are decided in negative and goes in favour of the accused person

ORDER

In view of the discussions 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 person ***GAMESH DAS*** has committed the offence under section **323/342/379** of IPC as alleged and as such the accused person is acquitted of the charge under section **323/342/379** of IPC on benefit of doubt and he be set at liberty forthwith.

The bail bond of the accused persons shall remain in force for another six months from today.

This judgment is given under my hand and seal of this court on this 06th day of March, 2017

The case is disposed of on contest.

SUNDEEP KASHYAP DAS

JUDICIAL MAGISTRATE FIRST CLASS

KAMRUP (M)

APPENDIX

LIST OF PROSECUTION WITNESS

PW-NONE

DW- NONE

LIST OF PROSECUTION EXHIBITS/DOCUMENTS

NONE

LIST OF DEFENCE EXHIBITS/DOCUMENTS

NONE

SUNDEEP KASHYAP DAS

JUDICIAL MAGISTRATE FIRST CLASS

KAMRUP (M)