

**:: IN THE COURT OF THE SESSIONS JUDGE, NALBARI ::**

Present: Smti S. Bhuyan.  
Sessions Judge,  
Nalbari.

**(Criminal Appeal Case No. 8/18)**

**Appeal against the judgment and order dated 21-05-18  
passed by learned JMFC, Tihu in connection with G.R. Case  
No. 112/16 u/s 392/323/34 IPC.**

**1) Brajen Das**

S/o- Bhagirath Das

**2) Tapan Das**

S/o- Sabir Das

Both are R/o- Vill- Jalkhana

P.S- Tihu, Dist-Nalbari, Assam. ....Appellant/ accused.

-Versus- ...

**State of Assam** .....Respondent.

**Advocates appeared:-**

For the Appellant :- None appeared.

For the Respondent :- Mr. D. Barman, PP

Date of judgment :- 08-07-19

**JUDGMENT**

1. The instant appeal has been preferred by convicted accused/appellant Brajen Das and Tapan Das u/s-374(3)(a) Cr.P.C against the judgment and order dated 21-05-18 passed by learned JMFC, Tihu in connection with G.R. Case No. 112/16 whereby learned JMFC, Tihu convicted both the accused appellants u/s-323/34 IPC and sentenced them to undergo S/I for one month and to pay fine of Rs. 1,000/- each i/d, S/I for another seven days for committing offence u/s- 323/34 IPC.

2. Fact leading to the appeal is that on 12/09/16 Lachit Medhi lodged one written ejahar before O/C, Tihu PS against convicted accused Brajen Das and Tapan Das alleging that on the said date i.e.

on 12/09/16 at about 9.15 PM when he was coming to his house riding on his motorcycle from Tihu, the accused persons, who were present at the place of occurrence, restrained him, demanded money, and when he refused to give the money they pushed him, kicked on his bike, which fall on the road and when he was about to lift his bike, both the accused persons assaulted on his head, he fell down, nearby persons came, and accused persons ran away taking Rs. 15,000/- from his pocket. O/C, Tihu PS registered Tihu PS Case No. 112/16 u/s- 392/324/34 IPC, sent injured before the doctor and on completion of investigation I/O of the case submitted charge sheet u/s- 392/323/34 IPC against both the accused Biraj Das and Tapan Das showing them absconder.

2. On receipt of the charge sheet learned JMFC, Tihu took cognizance, issued process and on appearance of the accused persons learned trial court allowed accused to go on bail and after furnishing necessary copies, framed charge u/s- 392/323/34 IPC against the accused persons which were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. In order to prove the charge, prosecution examined 6 nos of witnesses including informant, I/O and M/O and exhibited ejahar, seizure list, injury report, sketch map of place of occurrence and charge sheet, in total 5 nos of documents. On completion of prosecution witnesses, learned JMFC, Tihu recorded statement of the accused persons u/s- 313 CrPC, accused persons plea is of denial and declined to adduce defence evidence and learned JMFC, Tihu after hearing both sides, delivered judgment convicting both the accused persons Brajen Das and Tapan Das u/s- 323/34 IPC and sentenced them to undergo S/I for one month and to pay fine of Rs. 1,000/- each i/d S/I for seven days for committing offence u/s- 323/34 IPC and acquitted both the accused persons from charge of section 392/34 IPC.

4. At the time of taking up the appeal none appeared for the appellant and therefore I have taken the appeal for final disposal as appeal is posted today for hearing.

5. I have scrutinized the impugned judgment and order dated 21/05/18 passed by learned JMFC, Tihu in GR case No. 112/16, also scrutinized the evidence on record.

6. Ext-1 is the ejahar. In Ext-1 ejahar PW-1 Lachit Medhi, informant, stated incident took place on 12/09/16 at about 9.15 PM. At that time he was returning home from Tihu and accused persons restraining him made demand of money, assaulted him with a sharp weapon and he sustained injury. At the time of adducing his evidence he stated incident took place on 12/09/16 in between 9.00 PM to 9.15 PM and at that time he was returning home after collecting "Sanchay" amount and at Uttor Kathalmara both the accused persons asked him to stop his vehicle, made demand of money and when he refused, they kicked on his bike and bike fell down when he is about to lift the bike both accused assaulted him with a sharp weapon. He sustained injury above the left eyebrow and nose, blood oozing out from his nose. He further deposed that few persons came to the place of occurrence and they took him to Tihu police station and from Tihu police station he was sent to Tihu hospital for treatment.

7. PW-2 Dhiraj Medhi and PW-4 Dimbeswar Kalita stated incident took place in the month of September 2016 at about 9- 9.30 PM and at that time both were present at road. PW-2 deposed incident took place on the road passing in front of his house and he noticed at the Tiniali chowk accused persons quarreled with informant Lachit Medhi, accused Tapan kicked the bike of Lachit Medhi and thereafter both the accused persons assaulted Lachit Medhi and they ran away. He rushed to the place of occurrence noticed Lachit sustaining injury above the eyebrow and he with another person took injured to police station and police sent Lachit Medhi to hospital. PW-4 stated

while he was coming from Kasuguri to Nannartari, at Kathalmuri on the light of his bike he noticed accused persons assaulting Lachit Medhi and blood oozing out from the injury of Lachit Medhi. Lachit Medhi told him that accused persons took away Rs. 15,000/- from his pocket.

8. On scrutiny of cross examination of PW-1, PW-2 and PW-4 I have seen that defence only put suggestions. From the statements of PW-1, PW-2 and PW-4 it is seen that incident took place on 12/09/16 in between 9- 9.30 PM and at that time informant was coming towards his home by his bike and at Kathalmura, accused persons assaulted the informant, PW-1 Lachit Medhi, as a result Lachit Medhi sustained injury on his left eyebrow and nose.

9. PW-3 Dr. Tapan Talukdar is the M/O of this case. His evidence pointed at about 10.05 PM on 12/09/16 he examined injured Lachit Medhi and found a linear cut injury over left upper eyebrow of size 2cm long X 0.5cm deep and active bleeding was present and swelling over nasal bridge, tenderness was present on palpation and mild bleeding was present from right nostril. Thereafter, injured was referred to SMK Civil Hospital, Nalbari.

10. PW-1 deposed he sustained injury on left eyebrow and nose. PW-2 and PW-4 deposed they notice injury on the left eyebrow and nose of PW-1. The ocular and medical evidence on the point of injury is similar and consistent with each other. PW-1 is the injured. PW-2 and PW-4 are eye witnesses. There is nothing comes out against PW-1, PW-2 and PW-4 why they would falsely implicate the accused persons for commission of the said offence.

11. Statement of PW-5 Victor Kalita revealed police seized blood stained cloths of Lachit Medhi on the next day of incident in his presence vide Ext-2. Statement of PW-6 SI Bhaskar Kalita (I/O) pointed on 12/09/16 informant and two persons came to police station and he recorded their statement on the date of incident. It is

he, who sent the injured to medical after issuing requisition for treatment of the injured. Statement of PW-6 further corroborated the statement of PW-1, PW-2 and PW-4 that injured was first taken to police station and thereafter police sent him to Tihu hospital for treatment. Statement of PW-3 pointed that injured was escorted by home-guard.

12. On scrutiny of the evidence on record there is nothing comes out to disbelieve the evidence of prosecution witnesses and their evidences are being cogent, convincing and corroborated by each other, learned trial court has rightly relied upon the same and prosecution fairly able to bring home the charge of section 323/34 IPC against the accused persons beyond all reasonable doubt and learned trial court rightly convicted the accused Brajen Das and Tapan Das u/s- 323/34 IPC.

13. I do not find any infirmity and illegality in the judgment of conviction passed by the learned trial court convicting the accused Brajen Das and Tapan Das u/s- 323/34 IPC and accordingly, judgment and order dated 21/05/18 passed by learned JMFC, Tihu in GR Case No. 112/16 is hereby upheld.

14. With regard to sentence of imposing fine, after perusal of case record, nature of the offence committed by the accused persons, I am of the opinion that if sentence of imprisonment is converted to sentence of fine only it would meet the ends of justice. Accordingly, the sentence of simple imprisonment for one month is converted to only payment of fine. With regard to imposition of amount of fine, I do not find any reason to interfere the same. Accordingly, the fine amount imposed by the learned trial court is upheld.

15. In result both the accused persons Brajen Das and Tapan Das are sentenced to pay fine of Rs. 1,000/- (one thousand) only each i/d simple imprisonment for 7 (seven) days for committing offence u/s- 323/34 IPC. Both the accused persons are directed to pay the fine

amount before the learned trial court within 30 days from today. On payment of the fine, the same be given to the injured Lachit Medhi.

16. In the light of above directions, appeal is partly allowed and same is disposed off.

17. Send the LCR to the learned trial court with a copy of judgment immediately.

18. Judgement delivered under hand and seal of this court on this 8<sup>th</sup> day of July, 2019 at Nalbari, Dist- Nalbari

(Smti S. Bhuyan)  
Sessions Judge, Nalbari

Dictated and corrected by me.

(S. Bhuyan)  
Sessions Judge, Nalbari

Typed by:  
Jitumani Talukdar  
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