

IN THE COURT OF ASSTT. SESSIONS JUDGE :::::::::::::::NALBARI

Present : Himakshi Thakuria Buragohain.
Asstt. Sessions Judge,
Nalbari.

SESSIONS CASE NO : 20/2019
U/S 447/307/326 IPC

STATE OF ASSAM

- VS -

Sri Dipjyoti Dutta.

..... Accused person.

Committed by learned Chief Judicial Magistrate, Nalbari, vide order dated 02.02.2019 in connection with P.R.C. Case No. : 552/2018.

APPEARANCE :

Advocate for the prosecution : Mr. Mrigen Das, Learned Addl. PP.

Advocate for the defence : Mr. N. Dutta, Advocate.

Date of Evidence : 14/03/19, 01/04/19, 04/05/19,
10/06/19, 11/09/19 & 30/01/20

Date of Argument : 01/06/2020.

Date of Judgment : 15/06/2020.

J U D G M E N T

1. The gist of the prosecution case, in brief, is that on 10.06.2018 at about 10.30 p.m. the accused picked up a quarrel with some boys and was creating disturbance of peace on the road in front of the house of the informant. At that time the aged father of the informant came out and asked

the accused and the boys to leave. After that when the father of the informant returned back to his house the accused out of anger illegally entered into the courtyard of the informant with a knife in his hand and stabbed the father of the informant in his stomach with an intention to kill him. Initially the father of the informant was taken to Belsor PHC from there he was taken to SMK Civil Hospital, Nalbari and from there he was referred to GMCH. Hence, this case.

2. On receipt of the ejahar police registered a case as Belsor PS Case No. 116/2018 u/s 447/307/326 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against the accused u/s 447/307/326 IPC. On perusal of the case record the Learned Chief Judicial Magistrate, Nalbari committed this case to the court of Hon'ble Sessions Judge, Nalbari u/s 447/307/326 IPC. On receipt of the committal paper and GR Case record, Hon'ble Sessions Judge, Nalbari started Sessions case against the accused and thereafter transferred this case to this court for disposal.

3. After hearing the learned counsels for both sides and on perusal of the case diary, charge was framed against the accused u/s 447/307/326 IPC. The charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial, prosecution side examined only 10 (ten) witnesses including the MO and I.O to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in separate sheets. The defence case was of compete denial and the defence side has not adduced any defence evidence.

5. **POINTS FOR DETERMINATION**

i) Whether the accused on 10.06.2018 at about 10.30 p.m. committed criminal trespass by entering into the courtyard of informant with an intent to commit an offence or to intimidate or insult or annoy the family

members of the informant?

ii) Whether the accused on the same date, time and place stabbed the father of the informant with a sharp weapon in his stomach and under such circumstances that by that act he would have been guilty of murder?

DISCUSSION DECISION AND REASONS THEREFOR:

6. I have heard learned counsel for both the parties and gone through the evidence on record. Learned counsel for the prosecution has submitted that all the witnesses have supported the prosecution story and this is a fit case to convict the accused u/s 447/307/326 IPC.

7. On the other hand learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence adduced before the court and the statements of the witnesses recorded u/s 161 CrPC. Learned defence counsel has further submitted that the victim has nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

8. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

9. In order to find out whether the victim Umesh Dutta sustained any injury at the time of examination, let us go through the evidence of PW-7, Dr. Jayanta Deka who is the M.O in this case. PW-7 stated that on 17.06.18 while he was working as a Registrar at GMCH Guwahati, he issued a medical certificate in the name of Umesh Ch. Dutta, aged about 72 years, a resident of Vill- Niz Pokowa Belsor in the district of Nalbari on the basis of a medical report given by a doctor of Surgery Department. According to PW-7, the patient had an alleged history of stab injury over abdomen at 10-30 PM on 10/06/2018. Though the initial treatment was given at Belsor Hospital, the patient was brought to the Casualty Department, GMCH at 4-58 PM on 11/06/18 by an

attendant. At the time of admission the pulse rate was 80 per minute and the blood pressure was 120/80. According to PW-7 on local examination a 3 CM lacerated wound was found over left side hypochondrium and the peritoneum was breached with active bleeding. PW-7 opined that the nature of the injury was grievous and caused by blunt object. It appears that the full name of the attending Doctor was Dr. Bhabani Bordoloi.

10. From the evidence of PW-7 it appears that he had not examined the victim but he had only issued a medical certificate in the name of the victim on 17.06.18 on the basis of a medical report of the doctor who had actually examined the victim. However, on perusal of Exhibit-2 the medical certificate there is no doubt that on 10.06.18 the victim had sustained an injury over the abdomen and on 11.06.18 he was brought to the casualty department of GMCH with active bleeding. In view of the above discussion it appears that the victim, Umesh Dutta had an injury at the time of examination.

11. Now let us find out whether the injury sustained by the victim was caused by the accused on the day of occurrence or not. For determining this let us go through the evidence of PW-1 Prabal Kishore Dutta who is the informant as well as the son of the victim. PW-1 stated on 10.06.18 at about 10.30 p.m. Apurba Dutta, Sanjeeb Dutta, Parag Choudhury, Anjan Dutta, Partha Pratim Choudhury and some other boys were sitting on the culvert and talking. At that time the accused joined them. After some time Partha Pratim Choudhury and Parag Choudhury from the group was about to leave. At that time the accused restrained them by catching hold of their cycle and bags. The accused forcefully tried to restrain Parag Choudhury. Thereafter there was a quarrel between them. When Partha Pratim Choudhury tried to obstruct, the accused hit him with his hand as a result of which he fell down. On hearing hue and cry PW-1's father Umesh Ch. Dutta came out of the house and went to the road. He asked the boys not to quarrel. Then the accused started altercation with his father. At that time Parag and Partha left the place. But the remaining boys came and stopped the quarrel. Thereafter his father returned home. But within 2-3 minutes the accused came to their courtyard and started

calling his father. When his father came out the accused hit him on the left side of his stomach. When his father started bleeding he took a bamboo lying nearby and hit the accused on his back. At that time PW-1's mother was standing in the varena. On hearing hue and cry Apurba Dutta and Sanjib Dutta rushed to their house and took away the accused. At that time they saw a knife in the hand of the accused. On the next day at about 8 AM - 9 AM PW-1 was informed over phone about the occurrence. According to PW-1 at that time he was at Guwahati. He reached home and saw injury on the stomach of his father. He took him to Belsor PS in the beginning. From the Police Station he was advised to take his father to Belsor PHE. From Belsor PHE his father was taken to Nalbari Civil Hospital and from there he was referred to GMCH. PW-1 stated that his father was operated at GMCH and he was admitted there from 11-06-18 to 18-06-18.

12. After going through the evidence of PW-1 it appears that he had not seen the occurrence as he was in Guwahati at the time of occurrence and came only on the next day of the occurrence.

13. Now let us go through the evidence of PW-2 Umesh Dutta who is the victim in this case. According to PW-2 on 10.06.18 after having dinner between 10 p.m. to 10-30p.m. he heard some hue and cry on the road. When he went to the road he saw Deepjyoti, Parag Choudhury, Anjan Dutta, Partha Pratim Choudhury and some other boys there. He saw the accused hitting Parag Choudhury and asked him not to quarrel. But the accused started altercating with him. Thereafter the boys stopped the quarrel. He returned home after that. However, the accused came to their courtyard within few minutes and started calling him outside. He came out and asked him to leave as it was too late. At that time he saw a knife in the hand of the accused. But before he could stop him the accused stabbed him on the left side of his stomach. In order to save himself he took a bamboo and hit him. The people from the neighborhood came to their house on hearing hue and cry and took the accused from their house. According to PW-2 the father of the accused also came to their house at that time. But he gave him a blow on the back side

of the neck. On the next day he went to Belsor PS with his youngest son. The OC, Belsor PS asked him to go to Belsor PHE for treatment. From Belsor PHE he was asked to go to Nalbari Civil Hospital and from there he was referred to GMCH. According to PW-2 he was admitted in GMCH from 11-06-18 to 18-06-18 and operated there. PW-2 stated that he did not inform his sons about the occurrence at that time as he thought that the matter might have worsen.

14. PW-8 Swarnalata Dutta who is the wife of the victim stated in her evidence that about one year back between 10-30 p.m. to 11-30 p.m. there was a quarrel on the road. She came out of the house and saw her husband on the road and by that time the quarrel had already stopped. She brought her husband along with her to their house. When they were about to sleep accused Dipjyoti called her husband from their courtyard. Both she and her husband came out of the house and saw a knife in the hand of accused Dipjyoti. Dipjyoti then stabbed her husband on his waist. Then her husband took a bamboo and gave a blow on the back side of the accused. PW-8 alleged that at that time father of the accused gave two blows on the shoulder of her husband. She caught her husband. Her husband was bleeding. She wiped the blood with a gamosa and brought her husband inside the house. Thereafter, the accused was taken away by Apurba and some villagers.

15. PW-3 Apurba Dutta stated in his evidence that on 10.06.18 between 10 p.m. to 10-30 p.m. he along with Anjan Dutta, Partha Pratim Choudhury, Parag Choudhury, Fulkan Dutta @ Dipak, Utpal Dutta were sitting on the culvert near the PWD road. After sometime accused Dipjyoti Dutta came there. Then Parag Choudhury and Partha Pratim Choudhury were about to leave as it was too late. At that time accused Dipjyoti Dutta asked them not to go by catching hold of their bicycle and their bag. Then there was an altercation between them. Then he, Anjan Dutta and Utpal Dutta tried to stop the quarrel. On hearing "halla" Umesh Dutta came out from his house to the road and asked them why they were quarreling. Thereafter Partha Pratim and Parag went to their house. After that went Umesh Dutta was advising the accused not to quarrel. But then there was an altercation between the accused

and Umesh Dutta. They were about to hit each other. But they stopped the quarrel and asked them to leave. When Umesh Dutta went to his house, after sometime he saw the accused running to the house of Umesh Dutta. After a few minutes he went to the house of Umesh Dutta and saw him and the accused standing face to face in the courtyard. He caught the accused's hands from behind. When he was catching Dipjyoti's hands he found that something was in his hand. But he could not notice what was that as it was dark. At that time Sanjib Dutta was also with him. They took Dipjyoti out of the house of Umesh and asked him to go to his house. While they were standing in the threshold of the house of Umesh Dutta, his wife came out and asked them to come in and see what has happened to him. When they went inside they found that there was an injury in the stomach of Umesh Dutta and the same was bleeding. When he asked Umesh Dutta what happened, he told him that he might have sustained the injury by falling on bamboo fencing.

16. PW-5 Sanjeeb Kr. Dutta stated in his evidence that about 9 to 10 months back between 10-30 p.m. to 11 p.m. He heard hue and cry near the culvert between the house of accused and the victim. He saw Apurba Dutta, Anil Dutta, Pranab Dutta, Dipjyoti Dutta and his family members present there. At that time the quarrel was already over. Then he saw accused Dipjyoti Dutta running to the house of Umesh Dutta. After that he and Apurba Dutta followed Dipjyoti to the house of Umesh Dutta and caught him there. Thereafter they brought him outside the house and handed him to his family. When they were bringing Dipjyoti out of the house of Umesh Dutta, he saw a knife in the hand of the accused. On the next morning the wife of Umesh Dutta came to their house and told that on the previous night the accused had stabbed Umesh Dutta on his stomach.

17. PW-6 Partha Pratim Choudhury stated in his evidence that about 9 to 10 months back between 10 p.m. to 10-30 p.m. he along with Anjan Dutta, Apurba Dutta, Parag Dutta were sitting on the culvert near the road and chatting. After sometime Dipjyoti Dutta joined them. After talking for a while, when he and Parag Dutta were about to leave Dipjyoti Dutta stopped them.

They stopped for some time and after that they told him that they had to leave as it is too late. Thereafter they left the place. While leaving they saw the victim, Umesh Dutta coming out of his house towards the culvert. The culvert on which they were sitting is in front of the house of the victim. Umesh Dutta asked them to go to their house. Thereafter he and Parag returned to their house. On the next day he heard that the accused had stabbed the victim.

18. PW-4 Parag Choudhury stated in his evidence that on 10.06.18 at 10 p.m. he along with Apurba Dutta, Anjan Dutta and Partha Pratim Choudhury were sitting on the culvert near the PWD road. Then accused Dipjyoti Dutta came there and started talking with them. After sometime he and Partha Pratim Choudhury were about to leave as it was too late. At that time accused Dipjyoti Dutta asked them to wait for some time. When they did not wait and were about to leave accused caught hold of his bicycle. Then there was an altercation among them. Then Apurba Dutta and Anjan Dutta pulled Dipjyoti on the side. On hearing "halla" Umesh Dutta came out from his house to the road and asked them why they were quarreling. He advised them not to quarrel and also asked them to go to their house. Thereafter he and Partha Pratim came to their house. On the next morning one of his aunt Dipti Dutta called him over phone and informed him that on the previous night after they left there was a quarrel between the accused and Umesh Dutta and in that quarrel Umesh Dutta sustained injury. She asked him to take a Doctor's appointment.

19. After going through the evidence of PWs it appears that except PW-2 and PW8 none of other PWs are eye witness to the occurrence. PW-3 and PW-5 stated in their evidence that they had seen accused running towards the informant immediately after the quarrel was over. It appears that when PW-3 went to the house of the informant he saw the accused standing face to face with victim in the courtyard. According to PW-3 he caught the hands of the accused from behind and at that time he found that something was in his hand though he could not notice it because of darkness. It also appears from the evidence of PW-3 that he along with PW-5 took the accused out of the

house and while they were waiting outside, PW-2's wife came and asked them to see what had happened to him. They went inside and found PW-2's stomach bleeding. According to PW-3 when he asked Umesh Dutta what had happened, he told him that he might have sustained injury by falling on the bamboo fencing or bamboo post of fencing. From the evidence of PW-3 it appears that PW-5 Sanjeeb Dutta was with him at that time. But PW-5 stated in his evidence that while bringing Dipjyoti out of the house of Umesh Dutta, he saw a knife in his hand. However, PW-5 stated that it was only on the next morning the wife of Umesh Dutta came to their house and told that on the previous night accused had stabbed Umesh Dutta on his stomach. Again we find PW-8 stating in her evidence that she wiped the blood of her husband with a gamosa and brought him inside the house. If both PW-3 and PW-5 were present in the house of the informant at the time occurrence both of them should have known that the accused had knife in his hand and also should have known together about the injury sustained by the victim in his stomach. But we find contradictions in the version of both the PWs. According to PW-3 he saw injury on the stomach of PW-2 on that night itself. Whereas PW-8 stated that he came to know about the injury on the next morning when both of them were together. It also cannot be believed that when both PW-3 and PW-5 caught the accused one did not notice what was in the hand of the accused whereas the other could say it clearly that the accused had a knife in his hand. And if PW-8 had noticed the blood in her husband's abdomen she should have informed PW-3 and PW-5 then and there.

20. Again neither PW-2 nor PW-8 stated about the presence of PW-3 and PW-5 at the time of occurrence except the facts as stated by PW-8 that, after her husband was brought inside the house the accused was taken away by PW-3 Apurba and the villagers. Both PW-2 and PW-8 stated in their examination-in-chief only about the presence of the father of the accused at the time of occurrence. But neither PW-3 nor PW-5 stated anything about the presence of the father of the accused nor about the assault by the father of the accused upon the victim. Whereas PW-3 clearly stated in his cross-examination that when he went to the house of Umesh Dutta, he only saw the

accused, Umesh Dutta and his wife. PW-3 could not say if there was any hullah in the house of the Umesh Dutta before he reached there. But when he reached there he did not hear any hullah. PW-3 also stated that when the wife of Umesh Dutta had called them there were many people in the road. But he could not name them. At that time he and PW-5, Sanjeeb went inside the house first. It is very clear from the evidence of PW-3 and PW-5 that if anything happened to the victim it was before their arrival but after their arrival they only saw the accused standing in the courtyard of the victim and after that they took him out. If the accused would have stabbed the victim just before the arrival of PW-3 and PW-5 they would have seen victim screaming in pain and raising alarm. But nothing happened like that. Therefore, considering the contradiction revealed from examination-in-chief as well as the cross-examination of PW-2, PW-3, PW-5 and PW-8 it appears that PW-3 and PW-5 were not present in the house of the victim at the time of occurrence.

21. Another thing revealed from the cross-examination of PW-2 and PW-8 is that many people including the brother of the victim resides near their house. It is further revealed that the incident which took place in their house lasted for 18 to 20 minutes. PW-2 stated in his cross-examination that his brother was standing on the road but they did not come inside his house. It appears that some villagers were also present at that time. PW-2 also stated that neither his brother nor the villagers arranged for any medical treatment at that time.

22. Now if we go through the cross-examination of PW-8 we find her stating that she does not know if any other persons had come at the time of occurrence. According to PW-8 whole night no one came to their house to inquire about the incident. Hence, we find vast contradiction in the statement made by PW-2 and PW-8 in their cross-examination.

23. If we believe in the version of PW-2 that at the time of occurrence his brother and some villagers were standing outside his house, we fail to understand why they did not come to stop the accused. And if so many

persons were outside the house PW-2 could have screamed and told them that the accused had hit him. PW-8 also could have raised alarm as she stated that before taking her husband inside the house she had wiped the blood with gamosa. Apart from that when PW-3 and PW-5 were present in the house at the time of occurrence PW-2 could have told them about the assault done by accused then and there.

24. Regarding the injury sustained by the victim we find PW-8 stating in her cross-examination that she informed about the occurrence to the villagers and her brother-in-law, Anil on the next day at 8 a.m. Even at that time her husband was not taken to the hospital. It also revealed from the cross of PW-2 and PW-8 that there is a chowk near their house and there is a Health Centre in the Chowk. It is revealed from the cross of PW-8 that owner of the pharmacy of the said Health Centre resides near their house. But even then then they did not come to his house. It is further revealed from PW-8's cross-examination that except the informant she has two other sons who reside in Guwahati but they did not come to their house after knowing about the occurrence. PW-2 stated in his cross-examination that before arrival of his younger son he did not take treatment in Nalbari Civil Hospital with the help of his brother or villagers. It is revealed from the cross-examination of PW-8 that his younger son Prabal Kishore Dutta (i.e informant) reached home on the next day of the occurrence. It is also revealed from her cross that her two other sons did not come to their house even after knowing about the occurrence. Had the victim Umesh Ch. Dutta sustained serious injury his son would have come immediately on hearing about the incident. Secondly, the victim and his wife would have raised alarm because of the serious condition of the victim.

25. Again we find PW-1 and PW-2 stating in their evidence that victim was admitted in GMCH from 11/06/18 to 18/06/18. It was also stated by them that the victim was operated there. Now if we go through the evidence of PW-7 it appears that he did not examine the victim but only issued a medical certificate in his name. It is already discussed earlier that the victim

had sustained injury on the date of occurrence but nowhere in the medical certificate, it is mentioned that victim was admitted in the hospital from 11/06/18 till 18/06/18 or about any operation undergone by victim in connection with the incident. We also did not find any discharge certificate issued from GMCH in the case record. Hence, in view of the above discussion, it appears that the victim did not sustain major injury. Moreover, it is revealed from the cross-examination of PW-3 that the injury sustained by victim was not so serious though it was bleeding. Therefore it can be presumed that the victim sustained injury because of fall over bamboo fencing.

26. Regarding the seizure of the knife if we go through the evidence of PW-10 ASI, Ramcharan Nath who is the I/O of this case, we find him stating that he was told by the accused that the knife by which he stabbed the victim was kept in the kitchen of his house near the Gas cylinder. It is stated by PW-10 that he went to the house of the accused and searched for the knife in the house of the accused. But he could not find the knife. Later, on that night the village Headman Nagen Saud informed him over phone that the father of the accused handed over the knife to him. Accordingly, on 14/06/18 PW-10 went to the house of the village Headman and saw the knife. Thereafter he asked village Headman to take the knife along with him and both of them went to the house of the accused and there PW-10 seized the knife and recorded statement of seizure witnesses.

27. Now let us find out what PW-9, the village Headman, Nagen Saud, deposed in his evidence. We find PW-9 not corroborating with the evidence of the I/O. Whereas he stated that after three days of the occurrence police came of his house and asked him about the knife. Police also asked him to show the house of Prabin Dutta, but as he was sick his son Diganta went with the police and showed them the house of the informant. Later his son came home and told him that Prabin Dutta had handed over a knife to the police. Thereafter police again came to his house and showed him the knife and also asked him to put signature in the seizure list.

28. So from the evidence of PW-9 it is clear that he was neither handed over any knife by the father of the accused nor he had seen police seizing the knife from the father of the accused. It is also revealed from the evidence of the PW-9 that police took his signature on the seizure list in his house. Hence, we find contradiction between evidence of PW-9 and PW-10 for which I have doubt regarding the investigation conducted by the I/O and as such the same cannot be relied upon.

29. Hence, considering the entire facts and circumstances as well as contradiction in the statements made by PWs it appears that on the date of occurrence the accused neither went to the house of the victim nor did he stab the victim in his stomach. Therefore, the accused cannot be held guilty for the offence committed u/s 447/307/326 IPC.

O R D E R

30. From the discussion made above, I find that the prosecution has miserably failed to prove the offence u/s 447/307/326 IPC against the accused.

Hence, the accused Dipjyoti Dutta is found not guilty and is acquitted from the charge of offence u/s 447/307/326 IPC.

The accused person is set free at his liberty forthwith.

Bail bond furnished by the accused shall stand cancelled after period of 6 months.

Given under my hand and seal of this court on this 15th day of June/2020.

Asstt. Sessions Judge,
Nalbari

Dictated & corrected by me

Asstt. Sessions Judge, Nalbari

A P P E N D I X

- (A) **Prosecution witnesses:**
PW 1 : Prabal Kishore Dutta,
PW 2 : Umesh Ch. Dutta,
PW 3 : Apurba Dutta,
PW 4 : Parag Choudhury,
PW 5 : Sanjeeb Dutta,
PW 6 : Partha Pratim Dutta
PW 7 : Jayanta Deka (M.O)
PW 8 : Swarnalata Dutta.
PW 9 : Nagen Saud.
PW10 : Ramcharan Nath (I.O)
- (B) **Prosecution exhibited documents :**
Ext-1 : Ejahar,
Ext-1(1) : Signature of PW-1,
Ext-2 : Medical certificate.
Ext-2(1) : Signature of PW-7,
Ext-3 : Seizure list,
Ext-3(1) : Signature of PW-10,
Ext-3(2) : Signature of PW-2,
Ext-3(3) : Signature of Prabin Dutta,
Ext-4 : Sketch Map,
Ext-4(1) : Signature of PW 10.
Ext-5 : Charge-sheet.
Ext-5(1) : Signature of PW-10,
- (C) **Defence witnesses** : Nil.
- (D) **Defence exhibited document** : Nil.

Asstt. Sessions Judge,
Nalbari