

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

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

**SESSIONS CASE NO.: 112/2019**

U/S 323/294/307 IPC

STATE OF ASSAM

--- VS ---

**Hari Chandra Nath**

..... Accused person.

Committed by Learned SDJM (S), Nalbari, vide order dated 13/08/19 in connection with PRC. Case No. : 1309/2019.

**APPEARANCE :**

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

Advocate for the defence : Mr. Pankaj Sarmah.

Date of Evidence : 17.09.2019, 25.10.2019 and  
06.12.2019

Date of Argument : 03.01.2020.

Date of Judgment : 08.06.2020.

**J U D G M E N T**

1. The gist of the prosecution case in brief is that on 17/07/19 the informant/victim Smti. Jamini Nath lodged an ejahar at Daulashal Outpost alleging inter alia that on the same day at about 8 AM accused Hari Chandra Nath assaulted his 10 years old son. When the informant restrained the accused from beating his son, the accused hit her twice with pieces of bricks on her chest and on her head as a result of which she fell on the ground. Immediately, after the incident the local people took her to the medical. Hence this case.

2. On receipt of the ejahar, Doulashal Outpost forwarded the case to Mukalmua PS. Police registered a case as Mukalmua PS Case No. 343/2019 u/s 325/326/307 IPC and started investigation. After completion of investigation the I/O submitted charge-sheet against accused Hari Chandra Nath u/s 323/294/307 IPC. Since the offence u/s 307 IPC is exclusively triable by the Court of Sessions, the Ld. SDJM (S), Nalbari committed this case to the court of Hon'ble Sessions Judge, Nalbari. On receipt of the committal paper and PRC 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 323/294/307 IPC. The charges 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 6 (six) witnesses including the informant/victim to prove the charges against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in separate sheets. The defence plea was of complete denial and the defence side has not adduced any defence evidence.

5. **POINTS FOR DETERMINATION**

- a) Whether the accused on 17/07/2019 at about 8:00 AM in the village of Gorakhattary under Mukalmua PS in the district Nalbari committed an obscene act by uttering abusive words against the informant in a public place and that such an act or uttering was obscene and caused annoyance to others ?
- b) Whether the accused on the same date, time and place voluntarily caused hurt to the informant ?
- c) Whether the accused on the same date, time and place caused hurt to the informant by assaulting her with bricks on her head and chest with such intention (or knowledge) and under such circumstances that by that act he would have been guilty of murder and that he thereby caused the hurt to the said person ?

**DISCUSSION DECISION AND REASONS THEREOF**

6. I have heard learned counsel for both the parties and have 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 323/294/307 IPC.

7. On the other hand, the learned defence counsel has submitted that the 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, Jamini Nath sustained any injury, let us go through the evidence of PW-5, Dr. Ratul Das, who is the medical officer. PW-5 stated that on 17-06-2019 while he was working as M & HO in Doulashal MPHIC, he examined one, Smti Jamini Nath aged about 60 years at 12:15 pm on police requisition vide Mukalmua P.S. Case No. 343/2019 U/S 325/326/307 IPC. According to PW-5 on examination, he found the following:-

- a) Three stitched on left side of the forehead. The stitches were done outside the hospital.
- b) Tenderness on the chest.

In the opinion of PW-5 as well as from the contents of Ext-1, it appears that on the day of occurrence i.e. on 17-06-2019 the victim, Jalimi Nath sustained injury and she was examined by PW-5 on the same day few hours after the occurrence.

10. Now let us find out whether the injury sustained by the victim was caused by the accused or not. For determining this let us go through the evidence of PW-1, Smti Jamini Nath, who is the informant/victim of this case. PW 1 stated that about three months back one day at about 7 AM the accused was beating his son Rahul, aged about 13 years in their courtyard. According to PW 1, her house and the house of the accused is situated in the same compound. At that time, when she asked the accused not to beat his son, the accused picked up a brick which was lying near him and hit her on the left side of her head. He again picked up another brick and hit PW 1 on her chest. As a result, her head started bleeding and she fell down on the ground. On hearing her screaming her neighbours came to their courtyard. PW 1 further stated that Kutumoni and Sankar took her in a rickshaw to a compounder. Thereafter she was taken to the police station and there she lodged the ejahar. From there PW 1 was sent to Nalbari Civil Hospital and after the treatment, she

returned back to her house.

11. PW 3, Smti. Alaka Nath stated in her evidence that one day about 4 months back she heard hue and cry on the road near her house. PW 3 stated that she went out of her house and saw Jamini Nath standing on the road with her head bleeding. According to PW 3 she tore her chadar and tied a piece of it on the head of the victim. PW 3 further stated that thereafter Jamini Nath was taken to the hospital for treatment by a person.

12. Coming to the evidence of PW 2, Sri Kutumoni Nath, we find him stating in his evidence that one day about 2 ½ months back he saw the informant in an e-rickshaw while she was going to the doctor. According to PW 2 when he asked her what happened, she told him that the accused had hit her with a brick. PW 2 further stated that her head was wrapped with a "gamosa" at that time and Sankar Nath was with her. After that PW 2 returned home and they went to Doulashal for treatment.

13. Now let us find out what PW 4, Sri Sankar Nath stated in his evidence. According to PW-4, about 3 months back while he was returning home on his bicycle from Rampur Chowk, he met the informant on the way. PW 4 stated that the victim was coming towards the chowk in an e-rickshaw and a cloth was tied on her head as it was bleeding. According to PW 4 she told him that the accused had assaulted her. PW 4 further stated that he took her to a pharmacy at Rampur Chowk where she received three stitches on her head.

14. The Ld Counsel for the defence has tried to bring out the fact while examining the PWs that at the time of occurrence no one had seen the accused assaulting the victim. After going through the evidence of the PWs, we find all the PWs corroborating with each other while narrating about the incident. However, we find none of PWs witnessing the accused assaulting the the victim. In our case, PW-1 happens to be the sole eye witness to the occurrence being the victim. The Ld Counsel for the defence submitted that as none of the PWs has seen the occurrence, the evidence of PW-1 alone can not

be relied upon.

15. At this point, I would like to highlight the decision of the Hon'ble Supreme Court of India in **Anil Phukan -vs- State of Assam reported cited in 1993 AIR 1462** wherein it is held that,

“ Conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided that the sole eye witness passes the test of reliability. So long as the single eye witness is a wholly reliable witness the courts have no difficulty in passing conviction on his testimony alone. However, where the single eye witness not found to be wholly reliable witness in the sense that there are some circumstances which may show that he could have any interest in the prosecution within the course generally insists upon some independent corroboration of his testimony.”

16. It was held by the Hon'ble Supreme Court in **Abdul Sayed -Vs- State of MP reported in (2010) 10 SCC 259** that “ the question of the weight to be attached to the evidence of a witness that was himself injured in the course of occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is likely to spare his actual assailant(s) in order to falsely implicate someone.” It was held in **Ramlagan Singh -Vs- State of Bihar (1973) 3 SCC 881** that convincing evidence is required to discredit an injured witness. In **State of UP -Vs- Kishan Chand reported in (2004) 7 SCC 629** a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence.

17. Now if we carefully scrutinise the evidence on record, the entire case rests on the circumstantial evidence. The Hon'ble Supreme Court has in

number of cases held that all the circumstances relied upon by the prosecution must be established by cogent and succinct and reliable evidence, all the proved circumstances must provide a complete chain in as much as no link in the circumstances should be missing and such chain of circumstances should unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence.

18. After going through the evidence on record, the following circumstances has been relied upon:-

a) The victim being hit by the accused on 17-06-2019 on 8:00 AM with two pieces of bricks one after the other on her head and chest respectively.

b) The neighbour, PW-3 on hearing hue and cry on the road, went out of her house and saw the victim bleeding. Thereafter, she tore her *Chadar* and tied a piece of it on the head of the victim.

c) PW-4, Sankar Nath seeing the victim coming towards the Chowk in an e-rickshaw and a cloth being tied on her head as it was bleeding.

d) PW-2, Kutumoni Nath also meeting Sankar Nath and the victim, with a 'Gamosa' tied on her the head while she was going to the doctor in an e-rickshaw.

e) PW-4 taking the victim to a pharmacy at Rampur Chowk where she received three stitches on her head.

f) PW-5, the M.O. on examination of the victim finding three stitches on the left side of the forehead which according to him were done outside the hospital.

g) PW-5, the M.O. also finding tenderness on the chest.

h) PW-6, the I.O. seizing the broken piece of brick used by the accused to assault the informant from the house of the accused.

19. The circumstantial link which is made out from the evidence of the PWs, it itself clear about the involvement of the accused in the offence of causing hurt to the victim. All these links provides a complete chain of

circumstances and corroborates with the evidence of the victim in this case.

20. The Ld Counsel for the defence has tried to bring out the fact while examining the PW-6, the I.O. that the broken piece of bricks which he had seized were not seen in the court during his examination. With regard to the seized weapons being produced before the court or not, I feel that when there is overwhelming direct evidence which inspires confidence, these type of minor drawbacks or variations becomes irrelevant.

21. In this case, the injured in PW-1, she was hit by the accused on 17.07.2019 at 8:00 AM. Thereafter, she was taken to a pharmacy where she received three stitches. After that, she was sent to Doulashal MPHC on Police requisition at about 12:15 pm wherein she was examined and injuries were found on her forehead and chest, though, they were opined to be fresh and simple injury caused by blunt object.

22. Therefore, in view of the above discussion, as the ingredients of section 323 IPC are fulfilled against the accused, he is found guilty under the said section. The prosecution has failed to prove the ingredients of section 294 IPC by leading cogent evidence as such he can not be held guilty under the said section.

23. Regarding the attraction of section 307 IPC, generally we presume that the provision of section 307 IPC are applicable if the assailant acts with the intention or knowledge that such action might cause death and hurt is caused. But the Hon'ble Supreme Court has held in a number of cases that an injury sustained by the victim on vital part can not be said to be essential ingredients of section 307 IPC. To the contrary, the Hon'ble Supreme Court has also held in a number of cases that to justify conviction U/S 307 IPC it is not essential that fatal injury capable of causing death should have been caused. The intention of the accused is to be gathered from the circumstances like the nature of weapon used, words used by the accused at the time of incident, motive of the accused, parts of the body where the injury was caused

and the nature of injury and severity of the blows given etc.

24. In our case we find PW-5, the M.O. stating in his evidence that the injury was simple in nature. Secondly, the first piece of brick was thrown on the forehead of the victim and the second piece of brick was thrown on her chest. If the accused had the intention to kill her, he would have thrown the second piece of brick again on her forehead. The guilt of the offence punishable U/S 307 IPC has not been proved as the prosecution could not prove that the accused person had the intention to kill the victim. Hence, the accused is acquitted from the charge U/S 307 IPC and is set at liberty from the offence under the said section. The accused is found guilty of the commission of offence punishable U/S 323 IPC only and he deserves punishment.

25. The accused and the informant happens to be nephew and aunt. They reside in the same compound and also share a common kitchen. It is revealed from the evidence of PW-1 that she was only restraining the accused from beating his son. But the accused picked up a brick lying on the ground and hit her on the left side of her head. The accused could have stopped there. But he again picked up another brick and hit her on her chest. This type of behaviour of the accused shows that he is a quarrelsome person. Considering the conduct of the accused, I am of the view that this is not a fit case to extend the benefit of section 3/ 4 of the Probation of Offenders Act, 1958 to the accused person.

26. The accused person is head on the point of sentences in view of the section 248 (2) CrPC where he claims leniency. The pleas of the accused are recorded in a separate sheets and tagged with the case record. Considering the facts and circumstances of the case no leniency can be taken in respect of the punishment to be imposed upon the accused.

**O R D E R**

27. The accused, namely Hari Chandra Nath stands sentenced to undergo simple imprisonment for a period of 8 months for the offence committed U/S 323 IPC.

Let the period of detention, if any, undergone by the accused person during inquiry, investigation or trial be set of as per section 428 CrPC.

Let a copy of judgment be furnished to the accused free of cost.

Judgment is prepared and pronounced in open court.

Given under my hand and seal of this court on this the 8th 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 : Smti. Jamini Nath (Informant/Victim)

PW 2 : Sri Kutumoni Nath

PW 3 : Smti. Alaka Nath

PW 4 : Sri Sankar Nath

PW 5 : Dr. Ratul Das (MO)

PW 6 : ASI Tarun Barman (I/O)

(B) **Prosecution exhibited documents :**

- Ext. 1 : Medical Report
- Ext. 1(1) : Signature of PW 5
- Ext. 2 : Ejahar
- Ext. 2(1) : Signature of S.I. Munimoy Tamuli
- Ext. 2(2) : Signature of O.C. Jayanta Kr. Barman
- Ext. 3 : Sketch Map
- Ext. 3(1) : Signature of PW 6
- Ext. 4 : Charge-sheet
- Ext. 4(1) and 4(2) : Signatures of PW 6

(C) **Defence witnesses** : Nil.

(D) **Defence exhibited document** : Nil.

Asstt. Sessions Judge,  
Nalbari