

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

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

**(Criminal Appeal Case No. 19/15)**

**(Appeal against the Judgment & order dated 11/05/15  
passed by learned JMFC, Tihu in connection with GR Case  
No. 39/12, u/s-325 IPC)**

**Sri Dipak Haloi**

S/O- Late Maheswar Haloi

R/O-Vill-Bali

P.S- Tihu

Dist- Nalbari, Assam. ....Appellant/ accused.

-Versus-

**State of Assam.** .....Respondents.

**Advocates appeared:-**

For the Appellant :- Smti Pranita Haloi, Advocate.  
For the Respondent :- Mr. D. Barman, Public Prosecutor.  
Date of argument :- 04/06/2020, 15/06/2020  
Date of judgment :- 17/06/2020

**JUDGMENT**

1. The instant appeal has been preferred by appellant Dipak Haloi u/s-374 (3b) Cr.P.C against the impugned judgment and order passed by the then learned JMFC, Tihu in connection with G.R. Case No. 39/12 u/s-325 IPC whereby the learned JMFC, Tihu convicted the accused Dipak Haloi under section 325 IPC and sentenced him to undergo simple imprisonment for 2 (two) years and to pay fine of Rs.1,000/- (Rupees one thousand) only in default, to undergo simple imprisonment for another period of 15 days.

2. Fact of the prosecution case is that informant Babita Haloi, PW-1 lodged written ejahar before O/C, Tihu PS on 18/04/12 inter alia citing at about 12 noon in absence of her husband at house, accused Ramani Haloi and Dipak Haloi entered into her courtyard

regarding boundary fencing, misbehaved her rigorously, beat her and fractured her left hand for which she is unable to breast feed her baby.

3. O/C, Tihu PS on receipt of ejahar at 10 pm, registered Tihu PS Case No. 39/12 u/s-447/325/509/34 IPC and started investigation. I/O of the case on completion of investigation collecting injury report of the injured submitted charge sheet against both the ejahar named accused Ramani Haloi and Dipak Haloi u/s-447/325/509/34 IPC for trial of the accused persons.

4. The then learned JMFC, Tihu took cognizance of the case on receipt of the charge sheet issued process to the accused to face trial. Learned trial court framed charge against the accused, read over to the accused to which they pleaded not guilty and claimed to be tried and after hearing counsel, recording statement of the accused u/s-313 CrPC where plea of accused is denial, delivered judgment and acquitted accused Ramani Haloi from the charge of section 447/325/509/34 IPC and accused Dipak Haloi from the charge of section 447/509/34 IPC but convicted accused Dipak Haloi u/s-325 IPC and sentenced him to undergo Simple Imprisonment for 2 years and to pay fine of Rs.1,000/- in default of payment of fine to undergo simple imprisonment for another period of 15 days.

5. I have heard learned PP in the virtual court through VC. Learned appellant counsel submitted written argument. Perused the evidence and material on record of the trial court, impugned judgment and order of the learned trial court to decide the appeal.

6. Learned PP made submission that learned trial court rightly delivered the judgment and convicted the accused.

7. Learned appellant counsel made submission that PW-1, informant made different statement before the I/O and before the learned court which was confirmed by I/O. Learned counsel further

stated that there is contradiction in the statement of PW-2 as confirmed by I/O. Learned counsel further contended that the Ext-2 medical report was signed by Pw-5 on 30/04/12 without putting initial signature and there was serious contradiction regarding issuing dates of all medical documents which learned court below did not take into consideration and delivered the judgment convicting the accused Dipak Haloi and prays for setting aside the impugned judgment and order of the learned trial court.

8. PW-1 Babita Haloi is the informant injured of the case. Her evidence is that incident took place at 12 noon at their boundary. She stated accused Dipak and Ramani with a labour erecting bamboo post on their boundary. As her husband was not present at home, she told accused to erect the bamboo post at a little distance from her boundary. She called her bardeuta Mahendra and her bardeuta Mahendra also asked to revert back the bamboo post from the boundary and at that point of time accused assaulted her bardeuta. When she came to restrain, accused beat with her with the bamboo post, as a result she fractured her left hand. She stated at that time her 1 ½ years daughter was in her lap. Her bardeuta went to his house and he did not sustain any external injury. In the evening her husband came home and on said evening she came to police station, police took her to the hospital and she lodged the ejahar. Ext-1 is the ejahar. In cross stated ejahar was written by her elder brother Dhaneswar Haloi and she lodged ejahar at 8 pm. Her husband having mobile at the time of incident. She did not inform the incident to her husband after the incident. Her bardeuta did not take her to the hospital as they did not think that she sustained serious injury. She denied defence suggestion that she did not make statement before the police that accused are erecting bamboo post at her boundary, she asked them to post the same at a little distance, her 1 ½ years old girl was in her lap at that time.

9. PW-2 Mahendra Haloi, bardeuta of PW-1, stated that accused are their boundary man. At about 10-11 am, incident took place at

the place where boundary fencing is put. On that day, informant's husband went to Nalbari and accused persons pushed east side fencing towards the land of informant. At that time, she came to call her and he came and told accused why they are about to erect the fencing in that way and asked them to erect the fencing after measuring the land, to that there is altercation took place. Accused refused to oblige. Accused Ramani came and pushed back him, he fell down face upward and when Babita came forward, Dipak gave one blow with the bamboo post on her hand and she fractured her hand. Babita was first taken to Tihu Hospital, thereafter, she was taken to Nalbari and then to Guwahati for treatment. In cross he stated prior to this incident mandal came and measured the land and determined the boundary. Thereafter, in the said determined boundary accused gave fencing which informant side did not accept. He denied that on the date of incident he went to erect fencing with a labour in the boundary of Babita. He again stated in cross that Babita stays at his house after the quarrel incident. Tihu hospital is 5 km away from their house. Police recorded his statement on the 3<sup>rd</sup> day of the incident. He denied that injury on Babita was caused earlier by falling.

10. PW-3 Bhabendra Medhi in his evidence stated the incident took place in the boundary of accused and informant at about 10/11 am and he was doing boundary fencing work in the house of Babita. Altercation took place in between Ramani and Babita for giving boundary fencing. Babita questioned about erecting boundary by the accused restrain them, but they do not listen. Thereafter, Babita called her 'sarupita'. Sarupita came and Dipak pushed back him, Babita came forward and at that time Dipak gave a bamboo blow on her hand, at that time child of Babita was on her right hand and they are separated by family members of accused and Babita. In cross stated police recorded his statement in the house of Babita. He did not make statement before the police that Babita called sarupita, Dipak pushed back sarupita of Babita, Dipak beat Babita by three finger wide bamboo, Babita's baby was on her lap and hand of Babita was fractured. He further

stated in cross when Babita shouted he pulled hand of Babita and he did not disclose name of accused before the police.

11. Evidence of PW-4 Nagendra Nath Baishya is that both sides are known to him and subject matter of the incident is with regard to boundary fencing and he heard that there is push and pull (scuffle) and Babita Haloi fractured her hand. In cross stated that mandal measured and determined the boundary of Babita and accused. He again stated kanungo, gaon unnayan sammittee determined the boundary of the parties and he was present at that time. Accused person accepted the same and incident took place when informant side came to erect boundary fencing towards the side of accused persons on their land. He again stated in cross that few days prior to the incident Babita fractured her hand by falling on the veranda of her house. Altercation took place within the boundary of accused. There was no incident of beating, scuffle took place and only altercation took place and no incident took place as narrated by informant.

12. Evidence of PW-5, M/O Dr. Pramod Talukdar is that on 18/04/12 he was working as Sr. Medical & HO at Tihu CHC and on that day at about 1.05 PM, he examined Babita Haloi w/o Tiken Haloi and on examination found swelling in left arm, tenderness and crackling sound present on movement, suspected fracture. Advdivsed x-ray arm (left) AP and lateral view and x-ray report shows comminuted fracture distal shaft of humerus (left) and inference is injury is fresh, caused by blunt object and injury is grievous. Ext-2 is the medical report. In cross stated he received police requisition at the time of furnishing injury report. Patient not disclosed history of injury at the time of examination.

13. PW-6, Tridip Kr. Dutta I/O of the case submitted that he laid down the charge-sheet against the accused Ramen Haloi and Dipak Haloi u/s-447/325/509/34 IPC. PW-7, ASI Tarun CH Barman, I/O of the case deposed that on 18/04/12 O/C Tihu PS on receipt of ejahar from PW-1 Babita Haloi registered Tihu PS case No. 39/12 u/s-447/325/509/34 IPC and entrusted him with the investigation

and on 19/04/12 he visited the place of occurrence, drawn sketch map of the place of occurrence and recorded statement of the witnesses and vide police requisition gave treatment to injured. He further deposed that on 19/04/12, accused surrendered before him at the police station and arrested the accused and accused was allowed to go on bail. In cross stated the injury report which he received was dated 05/05/12 and the date below the signature of Dr Pramod Talukdar in Ext- 2 was may be written as 30/04/12 after erasing the earlier date. He further deposed that informant Babita Haloi did not mention about beating her by bamboo in the ejahar and while making statement before him.

14. PW-8 is another M/O, Dr Mukesh Kr Aqarwal and his statement is that on 26/04/12 he was working at Marwari Hospital & Research Centre as consultant orthopedic surgeon and on 27/04/12 he conducted operation upon Smti Babita Haloi, 22 yrs female on her left humerus fracture and on 29/04/12 she was discharged. Ext-5 is the medical report, Ext-6 is the discharge certificate and Ext-5(1) and Ext-6(1) are his signatures. In cross stated he did not mention the nature of injury in the medical certificate and when he conducted the operation, history of injury has been written in the discharge as due to fall and sustained injury to left hand and injury found on the patient may be caused 20 days prior from the date of examination and patient came for treatment.

15. I have scrutinized the record. Ext-1 is the ejahar. In the ejahar, informant Babita Haloi made allegation that accused beat her coming to her courtyard and they fractured her hand. While making her statement u/s-161 CrPC, she made statement that accused beat her in her courtyard. That is as per ejahar and her statement made in Ext-1, place of occurrence is her courtyard. At the time of adducing evidence she contended that the incident took place in the boundary where bamboo post posted in the boundary between her and accused land. The plea taken by the defence is that on the date of incident, it is informant side engaged

one labour to construct boundary fencing defying the measurement and boundary determination made by the mandal. The statement of PW-3 corroborated the defence plea. He stated on the date of incident he was doing boundary fencing work in the house of informant. Defence plea is established from statement of PW-3. Statement of PW-4 further pointed that mandal kanungo i.e. revenue personal and gaon unnayan samittee measured, determined and earmarked the boundary which is accepted by accused but denied by the informant and informant side came to put fencing defying mandal kanungo earmarked boundary and altercation, push and pull between the parties took place.

16. Statement of PW-8 one of the M/O at the time of cross is that injury caused to the patient may be caused 20 days ago from the date of her examination. At the time of adducing his in chief he exhibited medical report as Ext-5 and discharge certificate as Ext-6. On perusal of the Ext-5, it appeared that this is not a medical report. This can be treated only as a certificate issued by PW-8 on 07/05/12 after issuing discharge certificate on 29/04/12. Ext-6 is the discharge certificate and Ext-6, contained the investigation, diagnosis, treatment, status on discharge, medicine prescribed and case summary with address of the patient, date of examination, date of admission, date of discharge. In the column of case summary it is mentioned as history of fall and sustained injury to left arm. On examination found pain, deformity and swelling. PW-4 in his cross stated prior to the incident of altercation regarding erectment of fencing on the boundary, Babita fell down while stepping down from the veranda. PW-8 examined PW-1 on 26/04/12 and perform operation on 27/04/20. If 20 days is counted from the date of 1<sup>st</sup> examination then date of fracture is 07/04/12. But incident took place on 18/04/12. Therefore, the history of fall and sustained injury and age of the fracture injury 20 days prior to the date of examination of PW-8 caste doubt on the prosecution allegation against the accused Dipak Haloi that it is he who voluntarily caused injury to PW-1. The statement of PW-8, PW-4 makes the prosecution charge against the accused weak and is not

believable beyond all reasonable doubt and I am constrained to hold that prosecution failed to establish the charge of section 125 IPC against the accused Dipak Haloi beyond all reasonable doubt and accused entitled benefit of doubt.

17. In view of aforesaid discussion which I arrived at, I find that interference from this appellate court on the judgment and order of conviction passed by learned trial court dated 11/05/15 in GR Case No. 39/12 is called for, accordingly same is interfered and accordingly impugned judgment & order of sentence dated 11/05/15 passed by learned JMFC, Tihu in connection with GR Case No. 39/12, u/s-325 IPC is hereby set aside and accused Dipak Haloi is acquitted from the charge of section 325 IPC and is set at liberty. Surety stands discharged.

18. In the light of above direction, appeal is allowed. No costs.

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

Judgment delivered under hand and seal of this court on this 17<sup>th</sup> day of June, 2020 at Nalbari, District- Nalbari

(Smti S. Bhuyan)  
Session Judge, Nalbari

Dictated and corrected by me.

(Smti. S. Bhuyan)  
Session Judge, Nalbari

Typed by:  
Biswajit Bhattacharjya,  
Copyist