

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS::NALBARI

G.R CASE 1758 of 2016

U/S 341/325/34 OF IPC

STATE OF ASSAM

vs.

1. HIRAKJYOTI BARMAN

2. SUNANDA BARMAN

3. JINTUBARMA....ACCUSED PERSONS

PRESENT: - SMRITI REKHA BHUYAN, A.J.S
JUDICIAL MAGISTRATE 1ST CLASS, NALBARI.

ADVOCATE FOR THE STATE : HEM SARMA

ADVOCATE FOR THE ACCUSED : RUBI TALUKDAR,
RAJIB KUMAR BARMAN

EVIDENCE RECORDED ON: 19.12.2018, 02.02.2019,
28.02.2019 05.04.2019,
21.05.2019, 20.06.2019

ARGUMENTS HEARD ON: 19.10.2020

JUDGMENT DELIVERED ON: 07.11.2020

JUDGMENT

1. The vignette of the prosecution case is that on 14.11.2016, Smti. Kalpana Thakuria lodged an ejarah to the effect that on the same day at about 9.30 A.M, her son Apurba Thakuria was going to hospital for taking injection by riding a bicycle. As he reached at Balijar Chowk, the accused persons namely Sri Munu Barman, Sri Sunanda Barman and Sri Babu Barman restrained him on the road and dragged him through the road and assaulted him with an iron rod on various parts of his body. As a

result, he got grievous hurt on his head and lips. Hence, this prosecution case.

2. On receiving the ejahar, the Officer-in-Charge of Belsor Police Station registered a case as Belsor P.S. Case No.238/16 u/s 341/325/34 I.P.C. and started investigating the case. On completion of investigation, the investigating officer submitted the charge-sheet against the accused person namely Sri Hirakjyoti Barman@ Dhrubajyoti Barman, Sri Jintu Barman and Sunanda Barman u/s 341/325/34 I.P.C.
3. After charge-sheet was filed, cognizance was taken by the court u/s 341/325/34 I.P.C. and issued summons for appearance of the accused person. All the necessary copies of police report and other documents relating to the case were supplied to the accused persons. Finding prima facie materials against the accused person u/s 341/325/34 I.P.C., charges of the offences u/s 341/325/34 I.P.C. are framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. During the trial of the case, the prosecution side examined as many as 7 (seven) witnesses in support of the case. The cross-examination of P.W.7 on behalf of accused Sri Sunanda Barman is dispensed with under Section 309(2)(c) of Cr.p.c.
5. The accused persons had been examined u/s 313 of Cr.P.C. Their pleas were of total denial. The accused persons declined to adduce any evidence to defend the case.
6. I have heard the argument of both side, perused the case record and considered the same.

POINTS FOR DETERMINATION:

- (I) *Whether the accused persons viz. Sri HIRAKJYOTI Barman @ Dhrubajyoti Barman, Sri Jintu Barman and Sri Sunanda Barman on 14.11.2016 at about 9.30 A.M. at Balijar Chowk under Belsor P.S., in furtherance of their common intention wrongfully restrained the son of the informant Sri. Apurba Thakuria and thereby committed an offence punishable u/s 341 /34 I.P.C.?*
- (II) *Whether the accused persons on the same date and time as mentioned above, in furtherance of their common intention, voluntarily caused grievous hurt to the informant's son Sri Apurva Thakuria and thereby committed an offence punishable u/s 325/34 I.P.C.?*

DISCUSSION, DECISION AND REASONS THEREOF:

7. Let us, first of all, re-produce herein below the gist of the testimonies of the witnesses examined by the prosecution in this case.
8. P.W.1, Sri Apurba Thakuria the victim of this case deposed in his examination-in-chief that the informant is his mother and he knows the accused persons. The incident occurred on 14.11.2016 at about 9.30 A.M. He was suffering from fever so he was going to doctor by riding a bicycle towards Nalbari and when he reached at Purana Supa Namghar then Sunanda asked him to stop. Then Apurba said that as he was suffering from fever so, he wanted to go, then Sunanda ran and caught on the carrier of his bicycle and stopped him and gave two slaps to him. Before he could ask Sunanda why he slapped him Sunanda gagged his mouth and then HIRAKJYOTI and Jintu came out from their house and HIRAKJYOTI hit on his hand with iron rod and Jintu hit on his head by his hand. All of the accused punched him and his hand was fractured as HIRAKJYOTI hit his hand with rod and he sustained injury on various parts of his body. As Jintu punched on his lips, his lips cracked and he got unconscious. His parents took him to Belsor P.H.C., but as injuries were grievous he was referred to SMK Civil Hospital and he was admitted in hospital for 7 days,

and his hand was bandaged for 45 days as the bone of his hand was cracked.

9. In his cross-examination P.W.1 stated that as he was suffering from fever hence he was feeling bad on his head. P.W.1 denied the defence suggestion that he did not state the facts before police that Sunanda asked him to stop at the place of Purana Sufa and that when P.W.1 denied to stop, Sunanda stopped him by holding the carrier of his cycle, that Sunanda slapped him two times, that P.W.1 asked why he assaulted him and that Sunanda had punched him. P.W.1 further denied that as he was suffering from ailment hence he got hurt because he fell down from the bicycle. P.W.1 further denied the defence suggestion that he did not state before police that his hand was fractured due to assault caused by Hirak Barman and that due to punching by Jintu Barman his lips were cracked. P.W.1 further denied that he did not state before police that he had been staying in hospital for one week, that he got injury on his head and that he got unconscious.

10. P.W.2, Smt. Kalpana Thakuria the informant of this case deposed in her examination-in-chief that the victim is her son and she knew the accused persons as they were from the same village of her. The incident occurred in the year 2016 in the month of Aaghun at around 8.00 A.M to 9.00 A.M. and at that time she was scrubbing her temple and her son told her that he is not feeling well so he is going to the medical, and while coming back he met Khunanda on the road, and she heard that Khunanda called her son as "Mokkel" and demanded Rs.500/- from him for Lakhi Puja. P.W.2 further stated that her son told Khunanda that as he was dependant on his father, he did not have money and he proceeded, then Khunanda called the other two accused Hirakjyoti and Jintu. Near Balijar Chowk all the accused persons stopped her son and Dhrubajyoti@ Munu brutally assaulted her son with an iron rod from his tempo, and fractured his right hand, broke his nose and her son sustained injury on his head, chest etc. She heard shouts and ran to the place of occurrence and saw

Dhrubajyoti assaulting her son with rod and Jintu Barman@ Munu punched her son everywhere, and tried to stop them, and the mother of Dhrubajyoti gave a dao to all the accused and said to kill her son and nearby people gathered and stopped the fight. After the incident, she took her son to the Police Station, and from there she took her son to the Belsor medical. Her son was referred to Nalbari Civil Hospital from Belsor Medical, and he underwent treatment for one week. After that she lodged an ejahar against the accused persons. P.W. further stated that Exhibit 1 is the ejahar and Exhibit 1(1) is her signature.

11. P.W.2 in her cross-examination denied the defence suggestion that at the time of incident she was in full concentration on scrubbing the floor of her temple and so, she did not see the incident. P.W.2 admitted that there were three shops at Balijar Chowk, and it was a busy place and at the time of incident around 15 persons gathered, but she did not know those people's names. P.W.2 further denied the defence suggestion that she did not state in her statement under Section 161 Cr.p.c., that she was scrubbing floor, and she heard the accused Khunanda calling her son as 'Mokkel' and demanding money, and her son told him that at that time he did not have money, as he is dependent on his father, and her son proceeded, and the accused Khunanda called the other accused persons and near Balijar Chowk the accused persons stopped his son and the accused Dhrubajyoti @ Munu brutally assaulted her son with an iron rod from his tempo, and fractured his right hand, broke his nose, and her son sustained injury in his head, chest etc., and accused Jintu Barman @ Babu punched her son everywhere and tried to stop them. P.W.2 further stated that she did not know whether the police seized the rod and her son's bicycle. P.W.2 admitted that on the day of incident her son was not feeling well and he got hurt in his hand and his skin near the fingers were lacerated. P.W.2 further denied that her son was weak and had epilepsy (mrigi bemar) and felled down and when he came to give evidence, he felled down, as his head started spinning. P.W.2 further denied that they had prior jealousy with the accused persons and so they lodged this false

case with false facts and her son himself fell down and got hurt, after having epileptic attack. P.W.2 admitted that from the place of occurrence, the Nalbari Civil Hospital is nearby than Belsor P.H.C., and the communication is better towards the Civil Hospital. P.W.2 further denied that her son showed earlier injuries by falling, and showing those injuries, they lodged a false case against the accused persons. P.W.2 admitted that she did not know nicely what was written in the ejahar.

12. P.W.3, Sri Prafulla Barman and P.W.4 Sri Tarini Barman deposed in their examination-in-chief that they knew the informant and the accused persons, as they were from his same village. Both of them stated that they knew nothing about the incident.

The cross-examination of P.W.3 and P.W.4 were declined by defence.

13. P.W.5, Sri Gopal Sarma deposed in his examination-in-chief that he knew the informant as well as the accused persons and both the parties were living in his same village. The occurrence took place in the year of 2016. P.W.5 further stated that he had not seen the incident, but after the incident, both parties came to him and informed that a quarrel was took place between the son of the informant Sri Apurba Thakuria and the accused persons. P.W.5 further stated that informant and her husband informed him that in the quarrel Apurba got injuries. P.W.5 also stated that he gave advice to both parties to compromise the matter. P.W. 5 further stated that he went to the police station with the informant.

The cross-examination of P.W.5 was declined by the defence.

14. P.W.6 ,Dr. Gokul Patowary, M.O. of this case has deposed in his examination-in-chief that on 14.11.2016, he examined Sri ApurbaThakuria, and on examination he found (i) Swelling of rightarm , size 4 cm x 2.5 cm (B), (ii) Swelling in upper lip, size 1.5 cm x 1 cm (B) and (iii) Swelling in right parietal region 4 cm (L) x 3 cm (B), and he advised for CT scan of the brain and X-ray of chest, AP view, X-ray PNS, X-ray PNS, X-ray AP and lateral of right forearm, including right elbow

joint. On perusal of the X-ray of the forearm, he found fracture of the right ulna and in his opinion the injury was grievous, fresh in nature and caused by blunt object. P.W.6 further stated that the patient was initially treated in Belsor Model Hospital. P.W.6 further stated that Exhibit 2 is the Medical Report and Exhibit 2(1) is his signature.

15. In his cross-examination, P.W.6 admitted that at the time of examination, he did not find any police requisition. P.W.6 further admitted that he did not mention the age of the patient, color of injury. P.W.6 also admitted that such type of injury could be sustained by falling over hard substance.

16. P.W.7, Sri Dilip Deka, the investigating officer of this case deposed in his examination-in-chief that he had visited the place of occurrence, examined the informant and recorded her statement and drew a rough sketch map, recorded the statement of other witnesses of the place of occurrence. The victim ApurbaThakuria, himself went for medical treatment in Belsor N.J.M. Hospital, then he was referred to S.M.K. Civil Hospital, Nalbari, and he on requisition collected the medical report of the victim. P.W.7 further stated that he got sufficient materials against the three accused persons, and appeared before him, and he recorded their statement, and released them on police bail. P.W.7 further stated that after completion of investigation, he found sufficient incriminating materials against the three accused persons, namely Sri Hirakjyoti Barman @ Munu Barman, Sri Jintu Barman @ Babu and Sri Sunanda Barman and accordingly he submitted the charge sheet against the accused persons u/s 341/325/34 I.P.C. P.W.7 further stated that Exhibit 3 is the sketch map, Exhibit 4 is the charge sheet and Exhibit 3(1) and Exhibit 4(1) are his signatures.

17. P.W.7 was cross-examined on behalf of accused Sri Hirakjyoti Barman @ Munu Barman and Sri Jintu Barman @Babu. In his cross P.W.7 admitted that the informant lodged the ejahar at 12.00 p.m. and he went to the place of occurrence at 12.30 p.m. P.W.7 denied the defence suggestion

that as the road is bad so he could not reach the place of occurrence in half hour. P.W.7 admitted that he did not seize any article from the accused or the place of occurrence and he recorded the statement of victim at his home, on 25/11/16. P.W.7 further admitted that the victim/P.W.1 Apurba Thakuria, in his statement recorded under section 161 of Cr.p.c, did not say that his right hand was fractured, as Hirak hit him in his hand, and Jintu, punched him on his lips, and he sustained injury in head, and got senseless. P.W.7 also admitted that the P.W.2, Smti. Kalpana Thakuria in her statement recorded under section 161 of Cr.p.c., did not say that she was cleaning the temple, and Dhrubojyoti @ Hirak, hit her son with iron rod, and her son sustained injury on chest, head and his right hand was fractured, and Dhrubojyoti's mother brought a dao. P.W.7 denied that there were 8/10 shops near the place of occurrence and he did not record the statement of all the shopkeepers. P.W.7 further denied that there were 100 to 150 person's residence near the place of occurrence, but he did not record the statement of the witnesses. P.W.7 further denied that he submitted charge sheet against the accused persons, without proper investigation.

THE LAWS:

18. Now, for better appreciation, let us go to see the requirements of law. The charges in the instant case were framed in U/S. 341/325/34 I.P.C. Let us have a look in the ingredients of the two sections.

19. Charge under section 341 of I.P.C. : (punishment for wrongful restraint)
The essential ingredients of the offence punishable under section 341 are as follows:

- (1) Accused obstructed a person;
- (2) He did it voluntarily;
- (3) It prevented such person from proceeding in certain direction in which he had the right to proceed.

20. Charge u/s 325 of I.P.C. :(punishment for voluntarily caused grievous hurt)

The essential ingredients of section 325 I.P.C. are as follows:

- (1) That the accused caused grievous hurt to any person.
- (2) That such hurt was caused voluntarily
- (3) That such a case was not provided for by section 335 I.P.C.

21. A hurt to be a "grievous hurt" must have to fulfill the following ingredients. As per section 320 I.P.C. following the kinds of hurt only are designated as "grievous":-

- a. First- Emasculation.
- b. Secondly- Permanent privation of the sight of either eye.
- c. Thirdly- Permanent privation of the hearing of either ear.
- d. Fourthly- Privation of any member or joint.
- e. Fifthly- Destruction or permanent impairing of the powers of any member or joint.
- f. Sixthly – Permanent disfiguration of the head or face.
- g. Seventhly- Fracture or dislocation of a bone or tooth.
- h. Eighthly- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

22. Let us find out whether any offence is made out against accused persons Hirakjyoti Barman, Sunanda Barman and Jintu Barman u/s 341/325/34 I.P.C., satisfying the above mentioned ingredients of the said sections.

APPRECIATION OF EVIDENCE:

23. The evidentiary facts that need to be appreciated in the two points of determination are intertwined; as such let us take up those together for discussion for the sake of convenience.

24. Learned A.P.P. has submitted that the prosecution has succeeded to prove the case beyond all reasonable doubt in as much as the victim has clearly stated in his evidence that the accused persons assaulted him and the injury sustained by the victim has been supported by the medical evidence. Thus, learned A.P.P has submitted that the accused persons are liable to be convicted and sentenced in accordance with law.
25. On the other hand, learned defence has submitted that the evidence of the victim has not been supported by independent prosecution witnesses and if the alleged incident had happened, there would have been independent eye witness to the occurrence. Learned counsel for the accused person has further submitted that since the victim has been suffering from the disease i.e. Epilepsy, hence on the day of incident he felled down as a result of sudden attack of his ailment and got injured and the F.I.R. was lodged due to personal grudge only. Thus, learned defence counsel has submitted that the prosecution has failed to prove the case against the accused persons beyond all reasonable doubt and as such accused persons deserve acquittal.
26. Now, let us find out whether the accused persons obstructed the victim voluntarily and it prevented the victim from proceeding in certain direction in which he had the right to proceed? And whether the victim /P.W.1 was sustained any injury ? And if so, let us find out whether the accused persons assaulted and caused hurt to the victim? And if so, whether they did it voluntarily? And let us see whether there is any direct evidence against the accused persons?
27. The evidence of Victim/P.W.1 is corroborated by the evidence of P.W.2 i.e. the informant/mother of the victim as both of them stated that the victim was assaulted by the accused persons at the relevant time at the place of occurrence. Now, let us have a glance to the version of other witnesses. P.W.5 Sri Gopal Sarma, an independent witness deposed that he did not see the incident, but after the incident, both parties came to him and told him that a quarrel was took place between the son of the

informant and the accused persons. P.W.5 stated that he heard from the informant and her husband that in the quarrel, Apurba got injuries. P.W.3 and P.W.4 are two other independent witnesses, who have stated to have known nothing about the occurrence.

28. From the evidence of the Medical Officer/P.W.6 & the Medical Report (Ext.1), it is found that the victim has sustained swelling of right arm, size 4 cm x 2.5 cm (B), swelling in upper lip, size 1.5 cm x 1 cm (B) and swelling in right parietal region 4 cm (L) x 3 cm (B). PW6/medical officer also stated that he found fracture of the right ulna Apurba Thakuria on perusing the X-Ray Report of the forearm of him. In the opinion of PW6/Medical Officer the injury was grievous, fresh in nature and caused by blunt object. However, PW6 also admitted in cross that the type of injury to the victim could be sustained by falling over hard substance and he also admitted in cross that at the time of examination, he did not find any police requisition and he did not mention the age of the patient and color of injury. But, the victim/P.W.1 has stated clearly in his evidence that the accused Sunanda Barman gave two slaps to him and gagged his mouth, Hirakjyoti Barman hit on his hand with iron rod and Jintu Barman hit on his hand with his hand and all of the accused persons punched him and his hand was fractured as a result of hitting his hand with rod by Hirakjyoti Barman , his lips were cracked as a result of punching on his lips by Jintu and he got unconscious and thus he sustained injury all over his body. Further P.W.2, the mother of the victim has corroborated the evidence of P.W.1 stating that Dhrubajyoti brutally assaulted her son with an iron rod taking from his tempo and fractured his right hand, broke his nose and her son sustained injury on his head, chest etc. She stated that she heard shouts and ran to the place of occurrence and saw Dhrubajyoti assaulting her son with rod and Jintu Barman@ Munu punched her son everywhere. Thus, P.W.1 as a victim and PW2 as a direct and eye witness deposed against the accused persons almost in same version. In the cross of P.W.1 and P.W.2, though the defence

measurably tried to shake the credit of the witnesses, nothing is come out which can make the prosecution story unbelievable.

29. The above analysis shows that none of the independent witnesses have stated anything material about the occurrence in support of the prosecution story and as such, the prosecution story wholly relies on the evidence of P.W.1/victim and P.W.2/ the victim's mother and P.W.6/the medical officer.

30. As it is found that P.W.2 is the mother of the victim/P.W.1, as such P.W.1 may be called as related/interested witness. Now, we would like to analyze that if the prosecution story is based on related witness and if there is no independent witness, then whether it can cause damage to the prosecution case? Or whether it is right to discard the evidence of P.W.2, only because of she is the mother of the victim? To analyze and to get an answer of these two questions come in mind, let's take the help of Hon'ble Apex court's observations. In ***State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182 at page 81*** the Hon'ble Apex Court observed: *"19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinising the evidence of the interested witness."*

31. Moreover, in ***State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182 at page 81*** the Hon'ble Apex Court observed: *"18. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been*

accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the court has a duty to scrutinise their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded."

32. Moreover, I would like to highlight the case law which is reported in **2005 (2) GLT 295 (Captain Tanti –vs- State of Assam)** wherein it was held that – *"the allegation that all the prosecution witnesses are related to each other and thus interested witnesses having relationship with the victim, by itself is not sufficient for disbelieving their testimony unless any motive is alleged and proved against them."*

33. Thus, it can't be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated in material particular by independent witness. Relationship is not the factor which affects credibility, the only thing is that evidence of interested witness is to be scrutinized with greatest care and weighed in golden scale before being relied upon. More often than not, a relative would not conceal the actual culprit and inculcate an innocent person. Each case must be judged on its own facts. A close relative who is a natural witness cannot be regarded as an interested witness having a direct interest in having the accused somehow or the other convicted. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested. Over insistence upon

outside witnesses who might not have seen anything as compared with natural eye witnesses may result in criminal injustice. Interestedness does not require outright rejection of evidence, only necessitate deeper scrutiny.

34. Hon'ble Apex Court in **Kartik Malhar Vs. State of Bihar, (1996) 1 SCC 614**, defined "interested witness" as:- "*A close relative who is a natural witness cannot be regarded as an interested witness. The term "interested" postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason.*" Evidence of related witness can be relied upon provided it is trustworthy. Mere relationship does not disqualify a witness. Witnesses who are related to the victim are as competent to depose the facts as any other witness. Such evidence is required to be carefully scrutinized and appreciated before reaching to a conclusion on the conviction of the accused in a given case. (Reference Case- **Himanshu @ Chintu V. State (NCT of Delhi), (2011) 2 SCC 36**; and **Bhajan Singh @ Harbhajan Singh and others V. State of Haryana, (2011) 7 SCC 421**).

35. In view of above, it is considered that mere interestedness by itself is not a valid ground for discarding or rejecting the sworn testimony and nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction. Now, so far the evidence of witness is concerned, we also do not agree with the argument of learned defence counsel, because section 134 of Evidence Act speaks that no particular number of witnesses shall in any case be required for the proof of any fact. Further, it has been laid down in **Binay –vs- State (1997) 1 SCC 283** that – "*Evidence has to be weighed and not counted.*" In the instant case, P.W.2/mother of the victim claimed that she was present at the place of occurrence at relevant time as after hearing about the occurrence, she ran to that place and there she saw the accused persons assaulting her son. This court after appreciating the entire evidence on

record considered the fact of presence of P.W.2/mother of the victim as natural and the evidence tendered by her is found in the light of the surrounding circumstances and probabilities of the case to be true.

36. In cross, P.W.6/the medical officer admitted that at the time of examination he did not find any police requisition. But, regarding this P.W.7/the investigating officer stated that the victim Apurba Thakuria, himself went for medical treatment in Belsor N.J.M. Hospital, then he was referred to S.M.K. Civil Hospital, Nalbari, and he on requisition collected the medical report of the victim. It is seen that the Investigating Officer of this case was failed to seize the weapon of assault. The investigating officer could not recover or seize any object i.e iron rod supposed to be used in commission of the offence. Since the investigating officer failed to recover any object, it cannot be held that the injury was caused by the iron rod. But, merely because of some defective investigation, the accused persons are not entitled to get any benefit as no prejudice has been caused to him. [**1997CrLJ (SC) 452** relied upon]. Be it also noted that the doctor found fracture injury. In such case, I would say that it is lapse on the part of the investigating officer for which the case cannot be thrown away which has ring of truth.

37. It is also seen from the evidence of P.W.7/the investigating officer of the case, who admitted in his cross that the victim/P.W.1 Apurba Thakuria, in his statement recorded under section 161 of Cr.p.c., did not say that his right hand was fractured, as Hirak hit him in his hand and Jintu punched him on his lips, and he sustained injury in head and got senseless. P.W.7 also admitted in cross that the P.W.2, Smti. Kalpana Thakuria in her statement recorded under section 161 of Cr.p.c, did not say that she was cleaning the temple at that time and Dhrubojyoti @ Hirak hit her son with iron rod and her son sustained injury on chest, head and his right hand was fractured, and Dhrubojyoti's mother brought a dao. Thus, from the admission of investigating officer/P.W.7 in cross, it appears that P.W.1 and P.W.2 did not tell him the facts of this case in the like manner, which

they deposed in court. Now, the question arises in mind is, how far the evidence of the victim/PW1 and P.W.2/informant can be relied on where there is omission to state the statement before the investigating officer? To analyze and to get an answer of the question come in mind, let's take the help of Hon'ble Apex court's observations. Hon'ble Supreme Court held in reported case (**AIR 1956 SC 181**) *that Statements made by the prosecution witnesses before the investigating officer being the earliest statement made by them with reference to the facts of the occurrence are valuable materials for treating the veracity of the witnesses examined in Court, with particular reference to those statements which happen to be at variance with their earlier statements but the statements made during police investigation are not substantive evidence. Hence the record made by a police investigating officer has to be considered by the Court only with a view to weighing the evidence actually adduced in Court.*

38. Moreover, in **C. MuniappanVs. State of Tamilnadu, AIR 2010, SC 3718**, Hon'ble Supreme Court held *"Even if there are some contradictions and omissions and discrepancies the entire evidence cannot be disregarded. After exercising care and caution and sifting through evidence to separate truth from untruth, exaggeration and improvements the court can come to a conclusion as to whether residuary evidence is sufficient to convict the accused. Thus undue importance should not be attached to them which do not go to the heart of the matter. Minor discrepancies are bound to occur in the statement of witnesses".* In the instant case, this court finds from the medical and ocular evidence that in the incident the victim/P.W.1 got assaulted and as a result of assaulting he sustained injury. It has reflected from the corroborating evidence of P.W.2 and P.W.6/medical officer. The injury report of the victim takes significant part as medical evidence. Thus, although the investigating officer/P.W.7 has admitted in cross that P.W.1 and P.W.2 did not tell him the fact in the like manner, but the core of the fact remained intact that P.W.2 had seen the occurrence. We have relied upon the Apex Court's observation in this regard, wherein **Kathi Bharat**

Vijaur Vs. State of Gujarat (AIR 2012 SC 2163), the Hon'ble Supreme Court held: "*Inconsistencies or contradictions in oral evidence do not rule out when medical evidence is in consonance with the principal part of oral/ocular evidence*". Moreover, after considering the omission so appeared, this court does not hold that the credibility of witnesses stands impeached merely by proving contradictions on record.

39. This court also put emphasis on the evidence of the injured person/P.W.1, as such type of evidence has special status in the eye of law. In the case of **State of Uttar Pradesh vs Naresh and others., (2011) 4 SCC 324**, the Hon'ble Supreme Court held as follows, "*The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of the injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies.*"

40. The above ratio is pointer to the fact that testimony of an injured witness comes up with an inbuilt guarantee of its truthfulness unless it is beset with major contradictions and discrepancies. In her evidence P.W.2 stated to have seen the occurrence, as she stated when she heard shouts, she ran to the place of occurrence and saw Dhrubajyoti assaulting her son.

41. Learned counsel for the accused person submitted that since the victim was examined by medical officer without police requisition. But, it appears

from the evidence that the victim got unconscious and was taken to the hospital by his parents immediately after the incident even without informing the police and the victim was examined thereafter by a doctor. After going through the facts and circumstances of the case, I find it very natural if there is serious injury to any person, then medical treatment is much more urgent for the injured person instead of approaching to the police station for lodging any case.

42. It is also found that both P.W.1/victim and his mother P.W.2 had corroborated each other on the point that the accused persons Hirakjyoti Barman, Sunanda Barman, Jintu Barman and victim were present at the place of occurrence at relevant time of the incident and the victim/P.W.1 was restrained and assaulted by them and there was injury on the body of the P.W.1/victim. Thus, from the medical and ocular evidence, it is confirmed that the victim/P.W.1 sustained injury. Apparently, the injury sustained by P.W.1 is found well proved from the evidence of entire record.
43. Thus, though the Defence Counsel argued that the victim had the disease of epilepsy and for that reason due to sudden attack of epilepsy, he felled down and got injured and but, accumulation of evidence of P.W.1 and P.W.2 shows that the victim was assaulted by the accused persons. It is also found that the victim Sri Apurba Thakuria was injured at the hands of the accused persons and the evidence of the P.W.1 and P.W.2 have got its strength by the evidence of P.W.6. Now, the question arises, whether that injury was grievous in nature? In the court of law to decide whether an injury is grievous or simple depend upon the medical report, evidence of the injured person as well as relevant provision of Law. In the instant case, the testimony of P.W.1, P.W.2 and P.W.6 reveals that the injury was grievous. Dr. Gokul Patowary, the M/O, who had examined the victim Apurba Thakuria at Belsor Model Hospital, on examination he found : Swelling of right arm , size 4 cm x 2.5 cm (B), Swelling in upper lip, size 1.5 cm x 1 cm (B) and Swelling in right parietal region 4 cm (L) x 3 cm (B). P.W. 6 advised for CT scan of the brain and X-ray of chest, AP view,

X-ray PNS, X-ray PNS, X-ray AP and lateral of right forearm, including right elbow joint. On perusal of the X-ray of the forearm, the doctor/P.W. 6 found fracture of the right ulna and in his opinion the injury was grievous, fresh in nature and caused by blunt object.

44. It reveals that the medical officer as P.W.6 after examination of the victim Apurba Thakuria had found "swelling" injuries on some parts of his body and fracture of the right ulna of his forearm on X-ray report. Thus, the medical report reveals that the injury was grievous in nature and it has been corroborated by the special evidence of the victim/P.W.1 and the eye witness/ P.W.2. From the evidence of the victim/P.W.1 and P.W.2, it appeared that the victim was admitted at hospital for one week. The victim/P.W.1 also stated that his hand was bandaged for 45 (Forty Five) days. P.W.2 corroborated the grievous injury of the victim by stating that the right hand of her son was fractured. Thus, after perusal of the ocular as well as the documentary evidence i.e. medical report, it is found that the victim sustained grievous injury on his body. Thus, the injury of fracture of the right ulna of the forearm of the victim falls within the category of "Severely- Fracture or dislocation of bone or tooth" as described U/S 320 I.P.C. Hence, it is considered that nature of injury sustained by the victim is grievous hurt.

45. Now question is, whether the grievous injury to the accused was caused voluntarily to the victim by the accused persons namely, Hirakjyoti Barman, Sunanda Barman and Jintu Barman? Here, in the instant case, P.W.1/victim and P.W.2 clearly reveal the names of three accused persons in this case. Though, the Defence Counsel argued that the F.I.R. was lodged due to personal grudge, but the defence side could not show that P.W.1 and P.W.2 wanted to falsely implicate the accused persons and there is also no proof of previous enmity between the victim and the three accused persons. Though, P.W.2 is the mother of P.W.1/victim, yet from the evidence on record, we have found her evidence as cogent. From the evidence of P.W.1/victim and P.W.2, it is clear that the accused

Hirakjyoti @ Dhruvajyoti Barman had caused grievous injury on P.W.1/victim Apurba Thakuria and as a result of which his hand was fractured. P.W.1 and P.W.2 have deposed in a straight forward manner and corroborated each other and no exaggeration, vital omission and the contradiction could be proved by the defence side that the grievous injury to the victim was not caused voluntarily by the accused persons. Moreover, from the evidence-on-record, it appears that the F.I.R. was lodged without any unreasonable delay. The incident took place in the afternoon on 19/04/2016 and the F.I.R. was lodged on the same day in the evening. The F.I.R. discloses that the accused persons assaulted the victim physically with an iron rod for which the victim sustained serious injuries on his body. The defence side could not create any doubt in regard to the F.I.R. and the F.I.R. is corroborated by P.W.1/victim and P.W.2/informant. In view of prompt lodging of the F.I.R., it is improbable for the informant to implicate the accused persons falsely and shows that there was no time for manipulation. Hon'ble Supreme Court has stated in the **(MANU/SC.1107/20011) Rakesh and another Vs. State of Madhya Pradesh** that "*Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. Allegations may not be an afterthought or having a colourable version of the incidents.*" **(Kishan Singh (dead) through L.Rs V. Gurpal Singh and others, MANU/SC/0591/2010: AIR 2010 SC 3624).**

46. Thus, when the victim/P.W.1 being the principal witness has clearly alleged that the accused persons had caused hurt to him and that too with an iron rod, he has been corroborated by P.W.2, who is an eye witness to the incident and also corroborated by medical evidence. P.W.2 has stated that she saw the accused persons assaulting her son, when she ran to the place of occurrence after hearing shouts which further pours more light to the incident and corroborates the prosecution story against the three accused persons as narrated by the victim P.W.1.

47. When there is a strong probability that the victim/P.W.1 was caused grievous hurt and as alleged by him that the accused persons have caused the hurt to him, there is no room for the contention. It appears from the evidence of the P.W.1/victim that he was assaulted and injured by the accused persons and in cross-examination of this vital witness defense could not discredit him.
48. Having a glimpse at the offence enumerated U/S 341 I.P.C., it is come to light that when victim/ P.W.1 was going to a doctor by riding a bicycle towards Nalbari and when he reached at Purana Supa Namghar then Sunanda asked him to stop. Then, he told Sunanda that as he was suffering from fever and so, he wanted to go, then Sunanda ran and caught on the carrier of his bicycle and stopped him at the place of occurrence. Subsequently, the other two accused persons Hirakjyoty and Jintu came on calling by Sunanda and all of them assaulted the victim/informant and caused him multiple injuries. Thus, it is appeared that all of the accused persons voluntarily obstructed the victim and restrained him from proceeding ahead and with an intention to commit an offence. Accordingly, it is proved beyond reasonable doubt that all the accused persons in the instant case are held guilty u/s 341 I.P.C.
49. In view of what have been discussed herein-above coupled with reasons and upon full appraisal of evidence on record, we are constrained to hold that prosecution has successfully proved beyond all reasonable doubt that the accused person at the relevant time and at the place of occurrence wrongfully restrained victim Apurba Thakuria. Moreover, it is seen that all the accused persons all of a sudden started attacked and assaulted the victim as discussed above. The manner of attack and assault clearly proves that the accused persons had premeditated and prior meeting of mind before launching the attack. Hence, it can safely be said that they had acted in furtherance of their common intention as depicted under section 34 of I.P.C.

50. Now, from the evidence and discussions made above certain conclusions as to the guilt of the accused persons can be drawn. **The accused Hirakjyoti @ Dhrubajyoti Barman had caused grievous injury on P.W.1/victim Apurba Thakuria, which is clear from the evidence of P.W.1/victim and P.W.2 and as a result of which his hand was fractured.** Further, the other accused persons are also found involved in the act in view of section 34 I.P.C. Similarly, all the accused persons were complicit in the act and they are directly found involved in assaulting Apurba Thakuria. However, it is seen that the grievous injury on the hand of the victim was caused by Hirakjyoti alone. **Now, as regards the individual liability of the accused persons it is stated that the liability of others cannot be equated with the liability of Hirakjyoti who caused fracture on the hand of the victim.** In this case I would like to take a queue of Section 35 I.P.C. which reads as follows. *"Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act was done by him with that knowledge or intention."* **Provision of this act makes it clear that if several persons join in an act each having different knowledge or intention with others, each is liable according to his own criminal intention or knowledge and he is not liable to any further.**

51. In view of above, let us have a look in the ingredients of Section 323 I.P.C. The essential ingredients to constitute an offence under section 323 I.P.C.(Punishment for voluntarily causing hurt) are as under:

(a) Accused voluntarily caused bodily pain;

(b) Disease or infirmity to the victim;

(c) The accused did so with intention of causing hurt or with knowledge

he would thereby cause hurt to the victim.

52. Section 323 of I.P.C. is a lesser offence of the same nature than the offence u/s 325 I.P.C. Thus, both the offences are cognate offence.
53. In the instant case, it has been proved that the accused HIRAKJYOTI resulted in fracture of the hand of the Apurba Thakuria. There is no prove that other two accused Sunanda and Jintu did similar attack on him. Under such circumstance, I am of the considered opinion that the accused person HIRAKJYOTI had the intention to cause grievous injury, while the other two accused persons Sunanda and Jintu had the intention to cause simple hurt and cause panic to the victim.
54. From the foregoing discussion, it is already proved beyond reasonable doubt that all the accused persons are equally guilty u/s 341 I.P.C. Hence, HIRAKJYOTI Barman @ DHRUBAJYOTI Barman is convicted and found liable to be punished under sections 341 and 325 of I.P.C. and the other two accused persons Sunanda Barman and Jintu Barman are convicted and liable to be punished under sections 341 and 323 of I.P.C. beyond reasonable doubt.
55. In the present case, it is seen that the nature of injury sustained by the victims particularly victim was of cruel nature and he had suffered lot and underwent medical treatment lying in hospital and he also suffered from pain in various parts of his body. And if such inhuman acts of the present accused persons are excused without imposing sufficient punishment, then in my considered opinion, it will be a failure of justice and shall defeat the great belief of society towards the justice delivery system. Hence, in view of facts and circumstances of the present case and considering the nature and gravity of the offence and in view of the above reasons, we do not find it a fit case for applying the provision of section 360 of the Code of Criminal Procedure nor the benefit of the Probation of Offenders' Act, 1958 can be provided to the convicted accused person.

56. This court has heard all the three accused persons on the question of sentencing u/s 248(2) of the Code of Criminal Procedure. All the accused persons stated that they are the sole bread earners of their respective families. They have their old/ailing parents and there is none to look after them. As such, all the accused persons seek mercy of the court or seek lenient punishment.

57. Statement of the accused persons regarding proposed sentence is considered, as they have stated that there is none to look after their old/ailing parents. Also, considering the accused persons as sole bread earners of their respective families this court thinks it fit to impose lenient punishment.

ORDER

58. This court has considered that all the convicts HIRAKJYOTI BARMAN, SUNANDA BARMAN and JINTU BARMAN are sentenced to pay fine of Rs. 500/- (Rupees five hundred only) each, in default to suffer simple imprisonment for 10 (ten) days under section 341/34 of the Indian Penal Code.

59. In view of the discussions made above with regard to individual criminal liability, the accused person HIRAKJYOTI BARMAN is convicted u/s 325 I.P.C. However, considering the accused HIRAKJYOTI BARMAN as a sole bread earner of family this court thinks it fit to impose lenient punishment and hereby he is sentenced with simple imprisonment of 6 (six) months and to pay a fine of Rs. 5000/- (Rupees five thousand only), in default to undergo simple imprisonment of 1 (one) month.

60. The other two accused persons SUNANDA BARMAN and JINTU BARMAN are convicted u/s 323/34 and are sentenced with fine of Rs. 1000/- (Rupees one thousand only) each, in default of the payment of the aforesaid fine amount each of the accused persons shall undergo simple imprisonment of 10 (ten) days.

61. This court has also considered that whether the victim i.e. the Informant of this case viz. Apurba Thakuria is entitled to any relief under the provision of section 357 (1) (A) Cr.P.C. and after going through the entire materials as available on the case record we are of the considered opinion that as the said victim has gone through medical treatment for the grievous injuries sustained by him hence he is genuinely entitled for the same.

62. Therefore, the total fine amount i.e Rs. 8,500/-(Rupees Eight thousand and five hundred only) as payable by the accused persons would be paid as compensation to the victim Apurba Thakuria.

63. Bail bonds stand cancelled.

64. Given under my hand and seal of the Court on this 7th day of November, 2020.

65. Give a free copy of the judgment to the accused persons/convicts forthwith.

Typed & corrected by me

SMRITI REKHA BHUYAN

J. M. 1ST CLASS, NALBARI.

Smriti Rekha Bhuyan,

J.M.F.C., Nalbari.

APPENDIX

LIST OF PROSECUTION WITNESS:

P.W.1: APURBA THAKURIA

P.W.2: KALPANA THAKURIA

P.W.3: PRAFULLA BARMAN

P.W.4: TARINI BARMAN

P.W.5: GOPAL SARMAH

P.W.6: DR. GOKUL PATUWARY

P.W.7: DILIP DEKA

LIST OF DEFENCE WITNESS: NIL

LIST OF PROSECUTION EXHIBITS:

EXHIBIT 1: EJA HAR

EXHIBIT 1(1): SIGNATURE OF P.W.2

EXHIBIT 2: MEDICAL REPORT

EXHIBIT 2(1): SIGNATURE OF P.W.6

EXHIBIT 3: SKETCH MAP

EXHIBIT 3(1): SIGNATURE OF P.W.7

EXHIBIT 4: CHARGE SHEET

EXHIBIT 4(1): SIGNATURE OF P.W.7

LIST OF DEFENCE EXHIBITS: NIL

SMRITI REKHA BHUYAN

J. M. 1ST CLASS, NALBARI