

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, NALBARI**

G.R. Case No.644/2014

u/s 447/323/34 of I.P.C

State of Assam

-Vs-

1) Sri Jayanta Das

2) Sri Lava DasAccused persons.

PRESENT : Sri Jayanta Kumar Saikia, A.J.S,

Additional Chief Judicial Magistrate, Nalbari.

ADVOCATES APPEARED:

For the state : Mr. Arjun Barman, Ld. A.P.P.

For the accused : Mr. Jayanta Kalita and Mr. Sonapati
Sarma

Dates of evidence : 07.10.15, 24.01.17, 12.03.18, 17.11.18
& 23.05.19.

Date of argument : 11.08.2021.

Date of judgment : 13.08.2021.

(J U D G M E N T)

1) The prosecution case in brief as unfolded from the 'ejahar' dated 06.05.2014 filed by the informant Smti. Babita Das is that on 05.05.2014 on Monday at about 4 p.m., suddenly the accused persons, namely, Sri Jayanta Das and Sri Lava Das, entered into her dwelling house and gave her illegal gesture and forced upon her and torn her wearing apparels. It is further alleged that when she raised hue and cry then her parents came forward, the accused persons also physically assaulted them. Hence, the case.

2) The said 'ejahar' was received and registered as Nalbari P.S case No.282/2014 u/s 448/354/323/34 I.P.C dated 06.05.14. After completion of investigation charge-sheet No.301/14 dated 31.08.2014 was submitted against accused persons namely Sri Jayanta Das and Lava Das u/s 447/323/34 I.P.C.

3) In due course accused persons appeared before this Court complying with the summons issued by this Court and the relevant copies were furnished to the accused persons u/s 207 of CrPC. The particulars of offences u/s 447/323/34 I.P.C were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4) The prosecution side examined 9 (nine) witnesses including the informant. The statement in defence of the accused persons u/s 313 of the Code of Criminal Procedure were recorded. Defence side examined no witnesses.

5) I have heard the arguments advanced by the Ld. Counsels for both sides and also perused the evidence available on record.

6) The prosecution side argued that they have able to prove their case beyond reasonable doubt and all the witnesses supported their case. Hence, prayed to give exemplary punishment to accused persons.

7) The learned counsels for the defence side argued at length and they pressed on the following points saying due to which prosecution case is not believable:

- i) The I.O is not examined and non-examination of I.O. made the prosecution case not believable,
- ii) There is previous animosity and litigation between parties so their story not to be believed,
- iii) There is contradictions between the statement made by the prosecution witnesses before the IO and their evidence before the court,
- iv) The witnesses are related to each other so their evidences are tutored and motivated,

8) POINTS FOR DETERMINATION:

*I. Whether on 05.05.2014 at village Bala under Nalbari P.S., at about 4 p.m., in the evening in furtherance of their common intention the accused persons committed criminal trespass by entering into or upon property in the possession of informant Smti. Babita Das with intent to commit an offence or to intimidate insult or annoy any person in possession of such property and **thereby committed an offence punishable u/s 447/34 IPC?***

*II. Whether on the same day, time and place, the accused persons voluntarily caused hurt to the informant Smti. Babita Das and **thereby committed an offence punishable u/s 323/34 of I.P.C?***

Evidences Of PWs:

9) PW1 Smti. Babita Das, the informant of the case deposed that she knows the accused persons. On 05.05.14 at about 4:00 P.M., when she was sleeping at her house, the accused persons entered into her house and enquired about her husband. When she said that her husband is not present at home the accused persons hold her hand and torn her worn apparels. When she started shouting her mother, father and

brother came out and the accused persons started fighting with them. Then when the villagers came to the place the accused persons ran away. Her father's teeth got broken and she got injury in her finger. Then she lodged this case . Ext.1 is the Ejahar and Ext.1(1) is her signature.

10) During cross-examination, PW1 first of all stated for accused Jayanta Das. She stated that that it is not a fact that she did not stated before police that accused persons torn her worn apparels. She lodged the ejahar on the day of the occurrence of the incident at about 5:00 P.M. and also went to medical for treatment on the same day at about 6:00 P.M. While she was going to police station to lodge her complain her husband, mother and father went along with her. Her husband resides at her home ever since their marriage. She, her husband and her parents reside together at same courtyard. Her mother's name is Niroda Das, her father's name is Hemanta Das and her brother's name is Dipankar Das. She did not give her torn apparels to police. Her child aged 5 years old was with her. Her husband used to work at the resident of accused Jayanta Das and had good relation with him. Accused Jayanta Das is their neighbour and accused Lava Das is a friend of accused Jayanta Das. She does not know whether mother of Jayanta Das lodged case against them. She denied the defence suggestion that she stated falsely and lodged false case to rescue themselves from the case lodged by the mother of

Jayanta Das. She denied defence suggestion that she deposed falsely. She then stated for accused Lava Das. She stated that police enquired her about the incident on the next day of the occurrence of the incident. She stated before police that the incident took place in the courtyard of their house. She denied defence suggestion that she did not stated before police that her father's teeth got broken and she got injury in her finger and also not written in the ejahar. She and her parents reside in different house with common courtyard. She did not went to doctor for treatment. No village bichar took place in the village regarding the incident. She denied defence suggestion that as they lodged false case the villagers do not contact with them. She denied defence suggestion that she deposed falsely.

11) PW2 Smti. Patali Das, deposed that the informant is her granddaughter. She knows the accused persons. The incident took place three years ago at afternoon. She was at her house at the time of the incident. The accused persons entered into her house and fought with her granddaughter Babita and torn her worn apparels. The accused persons also beaten her son Hemanta Das in face as a result blood ooze from his mouth. Her son went to medical in Kamarkuchi. Babita also went along with him. Police enquired her.

12) In her cross-examination she denied defence suggestion made by defence that she did not told before police that she was present at her house at the time of incident rather she told

that she was in nearby shop. She denied the defence suggestion that she did not told police that blood oozed from mouth of Hemanta There are two house situated in the same courtyard. Her younger son resides backside. Her son Hemanta, Dipankar, Babita, Lovita her granddaughter were present at house. She was also present at house. Her younger son's name is Manu Das. She knows that accused Jayanta's mother Bakuli Das lodged a case against Babita's husband Kamal alleging that Kamal had attempted to outrage her modesty. It is not a fact that no fighting took place. She denied defence suggestion that Babita taught her to depose falsely.

13) PW3 Smti. Nirada Das deposed that informant is her daughter. She knows the accused persons. The incident took place around 3 years ago at 4:00 P.M. At that time she was at her house. It was summer season so she was sitting in the courtyard of the house. The accused persons entered into her courtyard in drunk condition and beat her elder daughter Babita then beat her son Dipankar with bamboo stick. When her husband tried to rescue them, Jayanta Das gave punch to her husband in face as a result blood started oozing from his face. Then he was taken to medical. Babita lodged this case. Police came and enquired her.

14) During cross-examination PW3 deposed that Babita is her daughter. She married Kamal and they reside in her house. There are 3/ 4 families residing in same courtyard. 50/60

people were present there. She denied defence suggestion that she did not told that Jayanta beat her husband in face and to her daughter Babita and her son Dipankar in backside. She denied defence suggestion that she told before police that she heard hue and cry. She knows that accused Jayanta's mother lodged case against her son-in-law Kamal as he attempted to outrage her modesty. She stays along with her husband Hemanta and family members. Near her house is house of her brother-in-law Manu Das and also Aurobinda Das's house. She denied defence suggestion that she deposed falsely for sake of her daughter Babita.

15) PW4 Sri Dipankar Das deposed that informant is his elder sister. He knows the accused persons. The incident took place around 3 years ago at about 4:00 P.M. After having lunch he went to play ball in field. On hearing hue and cry when he came to his house he saw the accused persons gave blows to his father in face. As a result, blood oozed from the teeth of his father. Accused Lava Das hit him in his back. He entered his house. He, his father, mother and his sister went to Kamarkuchi medical for treatment. Police enquired him.

16) In his cross-examination he stated that he was not present at his house at the time of the incident. He heard hue and cry in his house from field. Police enquired him.. He denied defence suggestion that he did not stated before police that the accused persons entered into their house in drunk situation. He

denied defence suggestion that he did not stated before police that accused Lava Das hit him in his back. He did not noticed other people who were present at the place of occurrence. He knows that accused Jayanta Das's mother Bakuli lodged case against his brother-in-law Kamal as he attempted to outrage her modesty. House of Babu Das, Bipin Das is near the place where he goes to play ball. Family members of his uncle Munu Das were not present at house at the time of the incident. He denied defence suggestion that he deposed falsely as per the instruction of the informant.

17) PW5 Sri Hemanta Das deposed that informant is his daughter. He knows the accused persons. The incident took place around 3 years ago at about 4:00 P.M. After having lunch he was sitting in the courtyard. The accused person Jayanta and then accused Lava gave blows in his face. He got hurt in his teeth. There was hue and cry. Villagers visited the place. Accused persons fought with his family members. He took treatment in Kamarkuchi medical. Police enquired him.

18) During cross-examination PW5 deposed that he went to the medical on the day of the incident. He denied defence suggestion that he did not informed doctor regarding his teeth. He denied defence suggestion that he got tooth problem due to his age. He visited the police station at evening of the day of occurrence of incident. His son-in-law's name is Kamal Das. Prior to 3 days of the incident Jayanta's mother Bakuli lodged a

case against his son-in-law Kamal regarding which he does not have any knowledge. Aurobindo Das and Manu Das are his neighbours. He does not know regarding the family members of Aurobindo Das. He denied defence suggestion that as Bakuli gave case against his son-in-law so he also gave this false case.

19) PW6 Smti. Manju Das deposed that she knows the informant and the accused persons. The incident occurred in the year 2014 at about 4:00 pm. She was sleeping after lunch. Hearing 'hulla' she woke up from bed and saw 'marpit' between Hemanta Das and Naba Das and Jayanta Das. Hemanta Das was assaulted by Naba Das and Jayanta Das. Both the parties had settled their dispute. Police recorded his statement.

20) During cross-examination PW6 deposed that the mother of the accused Jayanta Das had also filed a case against her bhatija Kamal Das regarding the same incident. There was a verbal dual between the parties due to misunderstanding. She only saw the verbal dual.

21) PW7 Sri Mantu Das deposed that he knows the informant and the accused persons. The incident occurred in the year 2014. He came home for lunch. He saw a verbal dual between both the parties. Both sides were involved in 'marpit'. Both the parties had settled their dispute.

22) During cross-examination PW7 deposed that he do not know who assaulted whom.

23) PW8 Smti. Lavita Das deposed that the informant is her elder sister. She knows the accused persons. The incident took place in the year 2014 at about 4:00 pm. She was in her parental house. After having lunch her parents were sitting in their courtyard. The accused persons came and assaulted her parents and her elder sister. Blood came out of the tooth of her father. The accused tore the wearing apparel of her elder sister. After the incident she went to her matrimonial house. Police did not record her statement.

24) During cross-examination PW8 deposed that the accused persons are the neighbours of the informant. Now the matter has been resolved amicably between the parties. She has no objection if the accused persons are acquitted. She had not stated before police that accused persons came and assaulted her father and tore the wearing apparel of her elder sister.

25) PW9 Dr. Ganapati Das deposed that on 05-05-2014 he was at Kamarkuchi P.H.C. as a Senior M& H.O. On that day at about 8.20 PM he examined following persons:

1) Sri Hemanta Das aged about 50 years S/O- Lt Kajiram Das vill- Bala, P.S. Nalbari escorted by AG Banamali Kumar in reference to I/C Kamarkuchi O.P. Case. He found abrasion mark over the back right side

bellow the right shoulder joint caused by blunt weapon which was fresh.

2) Niroda Das, 45 years female W/O Hemanta Das vill-Bala, P.S. Nalbari, he found Swelling and tenderness over the dorsal aspect of the right hand advised X-ray of AP and lateral. Report of the X-ray not yet submitted.

3) Smti Lovita Das, 14 years, D/o- Hemanta Das, vill-Bala,P.S. Nalbari No abnormality found.

4) Smti Babita Das, 20 years, female, W/o Sri Kamal Das, vill- Bala. P.S. Nalbari. NAD

5) Sri Dipankar Das, 13 years, S/o Hemanta Das, vill-Bala,P.S. Nalbari. NAD

Exhibit 2 is the injury report and Exhibit 2(1) and 2(2) are his signatures.

26) During cross-examination PW9 deposed that there is no mention of any reference no in the injury report but he examined the injured persons on police requisition. Swelling could be due to allergy. He found Swelling and tenderness over the dorsal aspect of the left hand of Niroda Das. The injury could be sustained due to falling over hard surface. He denied defence suggestion that he has not prepared the injury report correctly.

DISCUSSION, DECISION AND REASONS THERE OF:

27) PW1, Babita Das is the informant and victim of the case. In her evidence she reiterated her statement made in the FIR and also whatever she has stated in her statement recorded u/s 161 CrPC. According to her on 05.05.2014 at 4:00 P.M. she was sleeping at her house and at that time the accused persons entered into her house and enquired about her husband. When she informed them about the absence of her husband, the accused persons entered into her house, hold her hand and torn her nighty. When she screamed her parents and younger brother came out. The accused persons had beaten her mother, father and younger brother. In that incident, her father got his tooth broken, her mother's finger had been twisted. However, her younger brother did not get any injury. During her cross-examination she said that on the day of the incident, she went to medical and her 5 years old child was with her. During her cross-examination she also admitted that she stated the police that the incident took place at the courtyard and she did not visited the doctor.

28) Nirada Das, PW3, mother of the informant/victim (PW1) says that at the time of the incident she was sitting at her courtyard. Her evidence states that the accused persons entered into her courtyard, had beaten her daughter Babita

Das. The accused persons also beaten her son Dipankar with a bamboo stick and when her husband Hemanta tried to rescue them the accused Jayanta Das punched on his face, due to which her husband's teeth got loosen and blood spilt out.

29) During the evidence another victim Dipankar Das says that at that time he was playing ball at the field. It is to be noted that at the time of recording the statement the witness was 17 years old and the incident occurred in the year 2014. Hearing hue and cry he came to home and saw that the accused persons punched at the face of his father and blood came out from the teeth of his father. Lava Das hit him on his back with a stick. He took his mother, father and sister Babita to the medical for treatment.

30) PW5 Hemanta Das is the father of the victim PW1 and PW4. He is husband of PW-3. According to him he was sitting in his courtyard and the accused persons had beaten him and punched him on his face. His tooth got broken. The villagers came.

31) Now, evidence of record transpires that PW1 (informant/victim), PW3 (mother of the PW1), PW4 (younger brother of PW1) and PW5 (father of PW1 and victim) are all related. There is another witness i.e PW8 is also daughter of PW3 and PW-5 and sister of informant PW-1. However, her statement is not recorded by police.

32) According to them all of them were present at the place of occurrence. As they lived at same household and time of occurrence 4:00 P.M., their presence at place of occurrence i.e., their courtyard is quite natural. However, during cross-examination of PW5, he says that prior to three days of the alleged incident Bakuli, mother of one of the accused person namely Jayanta, lodged a case against Kamal and he says that he has no knowledge of it. PW4 admitted that Bakuli mother of Jayanta Das lodged a case against the brother-in-law Kamal (husband of PW1) prior to this incident alleging that Kamal had attempted to outrage her modesty. PW3 also admitted in her cross-examination that Bakuli (mother of the accused Jayanta Das) lodged the case against Kamal, husband of PW1/informant alleging that he outraged her modesty. Though PW1 denied this suggestion, but, evidence of PW3, PW4 clearly shows that there is previous animosity between these parties and PW2, grandmother of PW1 also admitted that Bakuli, mother of accused Jayanta Das lodged the case against the husband of PW1 alleging that he outraged her modesty. Though no such document or reference or details of that case was brought out by the defence side but the clear admission on the part of prosecution witnesses including some of the star witnesses it clearly shows that prior to this incident mother of the accused Jayanta Das lodged a case against the husband of

PW1/informant which makes this court believe to proceed with precautions while scrutinizing the evidences on record.

33) It is admitted fact that previous animosity is a double wedge weapon and there is possibility that alleged incident may happen due to previous animosity or offence has been committed or the case was falsely lodged due to the previous enmity. At this juncture I consider it will be very proper to carefully weigh the evidence at hand.

34) Now, coming to the evidence of PW1, it is seen that though she have stated that her nighty (wearing apparel) was torn by the accused persons inside her house, but PW3 and PW5 who are parents of PW1 and who were sitting at the time of the alleged incident at the courtyard clearly says that incident occurred at the courtyard. PW1 also admitted during her cross-examination that the incident happened at the courtyard. Her younger brother (PW4) and her parents (PW3 and PW5) who says that they have seen the incident have not narrated anything to the affect that the accused persons torn the wearing apparels of the informant/victim (PW1) inside the house of PW1. Apart from the informant, none of her family members corroborated her evidence to the effect that the accused entered in to her house and torn her nighty. In that case I have no hesitation to hold that the evidence of the informant/victim suffers from exaggeration.

35) However, it is a settled principle that the court must evaluate the entire material on record by excluding the exaggerated version given by the witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact unless it goes into the root of the matter so as to demolish the whole prosecution case.

36) Here we can rely on the observation made by Hon'ble Supreme Court in **Sohrab v. State of Madhya Pradesh, 1972 Cri LJ 1302 at p. 1305: AIR 1972 SC 2020 at p. 2024 observed:**

" This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered."

37) Now coming to the evidence of PW3, PW4 and PW5 it is found that all of them have stated that the accused persons

have hit on the face of the victim PW5 due to which his teeth got dislocated and blood oozed out from his mouth. From the evidence of M.O. it is found that regarding the injury he found abrasion mark over the back right side below the right shoulder joint caused by blunt weapon which was fresh. Regarding dislocation of teeth nothing was found in the medical report, though Hemanta Das denied the suggestion that he did not inform the medical officer regarding his teeth. But, the evidence of PW9 (M.O.) and injury report Exhibit 2 does not disclose anything to substantiate this claim. However, M.O. stated in his evidence that he found abrasion mark over the back right side below the right shoulder joint caused by blunt weapon which was fresh of Hemanta Das who was examined on 05.05.2014 i.e., the day of the incident. PW3 (wife of PW5) did not say anything regarding the injury present in PW5. However, PW5 Hemanta Das clearly says that the accused persons Jayanta Das and Lava Das hit him on his back and PW4 Dipankar Das also corroborated his evidence saying that he has seen his father was beaten by the accused persons on his back. This statement of PW5 is corroborated by PW4 and the M.O. (PW9).

38) Coming to the evidence of PW2 who is the grandmother of PW1/informant, it is found that at the time of the incident she was not present. Being hearsay witness her evidence is not going to help the prosecution case. Coming to the evidence of

PW6, a neighbour it is found that hearing hulla she woke up from bed and saw marpit between Hemanta Das and Naba Das and Jayanta Das. Hemanta Das was assaulted by Naba Das and Jayanta Das. The evidence of PW7, another neighbour, also reveals that he saw that both side were involved in marpit. PW8 (sister of PW1) says that her statement was not recorded by police. Her evidence shows that she has no objection if the accused persons are acquitted. She stated that the accused persons came and assaulted her parents and her elder sister. Blood came out of the tooth of her father. The accused tore the wearing apparel of her elder sister. Her evidence shows that on the day of the incident the accused persons came to their house.

39) Now, the defence side strongly argued that the story depicted by the prosecution side is not believable because one of the important witness i.e., the Investigating Officer was not examined in this case. The case record transpires that on various occasions the prosecution side tried to produce the I/O but, they have failed. Hence, the evidence of the I/O was closed as per the prayer of the prosecution side.

40) In this context, we can humbly rely upon the Judgment in **Shiv Shankar v. State of U.P.** cited in 2002 CriLJ 2673 in which the Hon'ble Allahabad High Court discussed the issue of non-examination of I/O in the light of various decisions passed by the Hon'ble Apex Court and reached at the conclusion that

non examination of the I/O is not fatal to the prosecution case if the defence side was not put to any prejudice by non-examination of investigating officer. The discussion of Allahabad High Court can be cited as below:

“The effect of non- examination of Investigating Officer has been considered by the Apex Court in various cases. In the case of Ramdeo v. State of U.P., reported in 1995 Supl. (1) Scc, 547, the Apex Court held that it is always desirable for the prosecution to examine the Investigating Officer. However, non-examination of the Investigating Officer does not in any way create any dent in the prosecution case, much less affect the credibility or otherwise trustworthy testimony of the eye witness. In the case of Bihari Prasad v. State of Bihar reported in (1996)2 SCC, 317, AIR 1996 SC, 2905 the Apex Court held that for non-examination of the Investigating Officer the prosecution case need not fail. It would not be correct to contend that if the Investigating Officer not examined the entire case would fall to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon facts of each case and no universal strait jacket formula should be laid down that non-

examination of Investigating Officer per se vitiates the criminal trial.

In the case of Ambika Prasad v. State (Delhi Admn.) AIR 2000 SC 718, it was held that non-examination of Investigating Officer could not be a ground for disbelieving eye witnesses. In the case of Bahadur Naik v. State of Bihar, AIR 2000 SC, 1582, 2000 Cri.L.J. 2466 it was held by the Apex Court that non examination of an investigating officer was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination.

Lastly, it was held in the case of Ram Gulam Chaudhary v. State of Bihar, 2001 AIR, SCW, 3802 AIR 2001 SC 2842 as below:

In our view, in this case also non examination of Investigating Officer has caused no prejudice at all. All that Mr. Mishra could submit was that the examination of the Investigating Officer would have shown that the occurrence had taken place not in the courtyard but outside on the road. The Investigating Officer was not an eye-witness. The body had already been removed by the Appellants. The Investigating Officer, therefore, could not have given any evidence as to the actual place of occurrence. Their were witnesses who have given credible

and believable evidence as to the place of occurrence. Their evidence cannot be discarded merely because the Investigating Officer was not examined. The non-examination of the Investigating Officer has not lead to any prejudice to the Appellants. We, therefore, see no substance in this submission.

As such non examination of Investigating Officer is not fatal to the prosecution case and non-examination of Investigating Officer is not a ground to disbelieve the ocular witnesses. As mentioned above, the learned counsel for the appellant could not show that any prejudice has been caused to the appellant on account of non-examination of the Investigating Officer. The evidence of the ocular witnesses further shows that no contradiction was put to them regarding any fact stated by the eye witnesses from their statements under Section 161 Cr.P.C. or about the place of occurrence. There was also no cross examination regarding the place of occurrence stated by the witnesses and as such the appellant was not put to any prejudice by non-examination of Investigating Officer and therefore, we find no substance in the submission that non examination of Investigating Officer was fatal to the prosecution story.

From the evidence of ocular witnesses, medical evidence and other circumstances it was proved beyond all

reasonable doubts that the appellant committed murder of Smt. Usha Devi deceased and therefore, the offence punishable under Section 302 I.P.C. was fully established against him."

41) We can also humbly rely upon the judgement of **Bijay Singh And Ors. vs The State of Bihar** on 8 February, 2005; 2005 (1) BLJR 819; it was held that

"It is a settled principle of law that non-examination of Investigating Officer or the doctor is not fatal for prosecution in each and every case. It depends upon the facts and circumstances of the case. In order to take advantage of non-examination, the defence has to show that it has caused serious prejudice to them. In support of the above principle learned A.P.P. appearing on behalf of the State has relied on the case of Raj Kumar Rajwar v. State of Bihar, reported in 1993(3) PLJR 831 and Om Prakash Sohar v. State of Bihar, reported in 1986 PLJR 827. 11. In Paragraph 14 of case reported in 1993(3) PLJR 831 it has been held; that non-examination of the Investigating Officer is not fatal for the prosecution case, if no prejudice has been caused to the appellants on this score. If actually some prejudice is caused to the accused, because of non-examination of Investigating Officer, only then the benefit of this lacuna would help the accused. Similarly, in case reported in 1986 PLJR 827 at paragraph 4 it has been held that non-examination of the

doctor is of no gain to the defence. It is because of the fact that if the statement that the appellant had inflicted dagger injury on the neck is accepted without going into the nature of injury, that is enough to find the appellant guilty for the offence under Section 307 of the Code.”

42) In the present case at hand, the ocular evidence adduced by the prosecution side clearly shows that at the time of the occurrence Sri Jayanta Das and Sri Lava Das entered into the courtyard of the informant (PW1). They assaulted PW5 Sri Hemanta Das at the courtyard exhibit 2 i.e., injury report and evidence of M.O. (PW9) also corroborated the same. The evidence of PW3, PW4 and PW8 supported and corroborated their evidence that both of the accused entered into the courtyard of the informant PW1 and assaulted Sri Hemanta Das PW5. One independent witness Smti Manju Das i.e., PW6 also clearly says that Hemanta Das was assaulted by Sri Jayanta Das and Sri Lava Das and she saw the marpit.

43) In the light of aforesaid discussion and reason I am of the considered opinion that the prosecution has succeeded to adduce cogent, trustworthy and credential evidence in favour of their case, which made this court to believe that the accused persons have committed offence u/s 447/323/34 of I.P.C. on the relevant day at the place of occurrence.

ORDER

In the light of aforesaid reasons and discussions, it is held that prosecution side has established the case against the accused persons namely Sri Jayanta Das and Sri Lava Das, beyond all reasonable doubt and they are found guilty of offence punishable u/s 447/323/34 of IPC and they are convicted accordingly.

I have considered the applicability of section 3 & 4 of the Probation of Offenders Act, 1958 or section 360 of the Cr.P.C., 1973 to the convict. Considering the nature of offence and the conduct of the accused, I hold that it is not a fit case to grant them the benefit of probation.

I have heard the convicted persons on the point of sentencing. The accused person Sri Jayanta Das has submitted that he is a tractor driver and earns his livelihood by doing as a daily wager. He also says that his two minor son, his wife and widow mother totally depend upon him. The accused person Sri Lava Das has stated that he works as a labourer. He lives with his aged father, his wife and his 4 years son. They are totally dependent upon him. Both the accused persons have stated that considering the socio-economic condition and background of them they should be treated leniently in this case. Both the accused persons have

also stated that they were never convicted in any case previously by any court.

The offences, for which the accused persons are convicted, are under section 447/323/34 of IPC. Section 447 of IPC is punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both. Section 323 of IPC is punishable with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

Considering the overall facts and circumstances of the case, the convict persons, namely, Sri Jayanta Das and Sri Lava Das punished under section 447 of IPC with a fine of Rs. 300/- (Three hundred only) each. In default of payment of fine, they will undergo simple imprisonment of 20 days (twenty days). The accused persons are also punished with fine of Rs. 400/- (four hundred) each for commission of an offence under section 323 of IPC. In default of payment of fine, they will undergo simple imprisonment of 20 days (twenty days).

It is also made clear that the sentence in this case shall run concurrently with previous sentence of the accused, if any by court, under section 427 Cr.P.C. Benefit of section 428 Cr.P.C. be also given to the convict and period of undergone

by them till date of this case shall be set off against the term of imprisonment imposed on them on conviction.

The I/O shall dispose of the seized property, if any, in due course of time as per provision of law.

Copy of this judgment and order be given to the convict free of cost immediately under due acknowledgment.

Given under my hand and seal of this court on this 13th day of August, 2021 at Nalbari.

Sri Jayanta Kumar Saikia, A.J.S,

**Additional Chief Judicial Magistrate,
Nalbari, Assam.**

APPENDIX

Prosecution witness:

PW 1- Smti Babita Das (Informant of this case)

PW 2- Smti Patali Das

PW 3- Smti Nirada Das

PW 4- Sri Dipankar Das

PW 5- Sri Hemanta Das

PW 6- Smti Manju Das

PW 7- Sri Mantu Das

PW 8- Smti Lavita Das

PW 9- Dr. Ganapati Das

Prosecution Exhibits:

Exhibit 1 – Ejahar

Exhibit 2- Injury Report

Defence witnesses :

Nil

Defence Exhibits :

Nil

Court Witness:

Nil

Sri Jayanta Kumar Saikia, A.J.S,

Additional Chief Judicial Magistrate, Nalbari