

HEADING OF JUDGMENT IN SESSION CASE
: IN THE COURT OF ASSTT. SESSIONS JUDGE
:NALBARI:

Present:- Smti S. Handique,
Asstt.Sessions Judge,
Nalbari.

Sessions Case No-32 of 2020
u/s-307/294/325/506 IPC.

STATE

Versus

Sri Sanjit Debnath

Accused person

(Committed by Chief Judicial Magistrate, Nalbari in PRC
Case No-PRC- 563/2020 u/s 294/506/325/307 of IPC.)

Advocate appeared:-

For the state:- Mr. M. Das, learned. Addl.P.P

For the accused:- Mr. P. Sarma, learned Advocate.

Date of framing charge :- 05/02/2021

Date of prosecution evidence :- 09/03/2021,23/03/2021

19/04/2021.

Statement of accused recorded on :- 27/04/2021.

Date of Argument :- 27/04/2021,31/08/2021.

Judgment delivered :- 31/08/2021.

JUDGMENT

1. The brief facts of this case are that on 17/10/2020 the informant Rajkumar Debnath lodged an FIR before Dhamdhama Out post under Ghograpar PS alleging that accused Sukumar Debnath, Sanjit Debnath and Dipankar Debnath severely assaulted his son Kamal Debnath after calling him out on the road on the previous night at about 10 pm and tried to kill his son with sharp weapon. As a result his son was grievously injured.
2. On receipt of the ejahar O/C Ghograpar PS registered Ghograpar PS Case No.437/2020 u/s-120-B/326 of IPC. ASI Basav Thakuria investigated the case. During investigation stage, accused Sanjit Debnath was arrested and remanded to judicial custody and thereafter he was released on bail in due course of time. After completion of the investigation, the I/O submitted charge-sheet against accused Sanjit Debnath u/s-294/506/325/307 of IPC. The case was committed to the court of Sessions by the learned Additional Chief Judicial Magistrate, Nalbari as the offence u/s-307 of IPC is exclusively triable by the Sessions court. Thereafter, the case was transferred to this court.

Accused was released on bail and formal charge was framed against him u/s-294/506/325/307 of IPC. The accused pleaded innocence and trial proceeded.

3. In due course of time, the prosecution examined eight witnesses including M/O & I/O. Accused was examined u/s-313 CrPC which is of total denial. Defence declined to adduce any evidence. Arguments were heard from both sides. The following points for determination are framed in this case :-

POINTS FOR DETERMINATION:-

I. Whether the accused person on 16/10/2020 at about 10:00 pm at Rangfali village under Ghograpar PS in the district of Nalbari committed an obscene act by uttering bad words in a public place and that it caused annoyance to others and thereby committed an offence punishable u/s-294 of IPC ?

II. Whether the accused person on the same date, place and time threatened the victim, Sri Kamal Debnath with dire consequences to cause him hurt and thereby committed an offence punishable u/s-506 of IPC ?

III. Whether the accused person on the same date, time and place voluntarily caused grievous hurt to Kamal Debnath in his hands and thereby committed an offence punishable u/s-325 of IPC ?

IV. Whether the accused person on the same date, time and place committed an act of hitting the victim by sharp weapon with such intention (or knowledge) and under such circumstances that by that act he would have been guilty of murder and that he thereby caused the hurt to the said person and thereby committed an offence punishable u/s-307 of IPC ?

DISCUSSIONS, DECISIONS AND REASONS THEREOF

4. Let me now go through the oral testimony of the prosecution witnesses. **PW-1 Rajkumar Debnath** is the complainant. According to him, on 16/10/2020 at 10 PM, on the road in front of his house, his son Kamal Debnath was assaulted by the accused. Victim was called out from the house by Sukumar Debnath and Sanjit Debnath. When Kamal came out on the road, he was pushed down by Dipankar Debnath. Then Sanjit Debnath attacked Kamal with a sharp weapon. When Kamal tried to avert the blow with his left hand, he sustained injury on the hand. He sustained injury on his left hand fingers. The accused wanted to give him more blows but Kamal started screaming and the neighbors came there hearing his cries. The accused fled from the place of occurrence. PW1 also rushed to the place of occurrence. He saw his son who was injured and bleeding from his left hand. He sent the victim

to SMK Civil Hospital for treatment. Thereafter he went to Dhamdhama Police Outpost and lodged the Ejahar (Ext. 1) on that very night. Police recorded his statement.

5. In cross examination he stated that he was not present at the place of occurrence so he did not witness the actual incident. Accused is his nephew. They share the same boundary and their houses are within the same campus. The boundary of the place of occurrence is as follows:

West: house of Samar Debnath

East: House of Amar Debnath, Ranjit Debanath

South: No house nearby.

North: House of Subal Debanath, Madan Debnath.

According to him, on the date of occurrence no any quarrel took place between the parties. PW1 admitted that Sanjit Debanath's mother Manika Devi has lodged a case against Kamal Debnath for the alleged assault upon Sanjit Debnath, his wife Milan Devi and daughter Nandini Devi. He admitted that Sukumar Debnath is an ailing person but denied that Dipankar Debnath stays with his maternal uncle in Namati. He reached the place of occurrence about 20 minutes after the occurrence. About 20/30 people were gathered at the place of occurrence. He found his son at a place which was about 40 meters distance from the actual place of occurrence and at that time the people were taking him to the hospital after putting some bandage on

his hand. He saw Kartik Debnath was putting the bandage on Kamal's hand. Utpal Debnath, Mithun Debnath and Sajal Debnath (driver) took the victim to the hospital. Police came to the place of occurrence after about 4 (four) days. He does not know if his son drinks a lot. He denied that on that day Kamal Debnath was beaten by the public in Rangafali Boro Suburi for being heavily drunk. He further denied that Kamal Debnath then attacked Sanjit Debnath, his wife and daughter with a lathi under the influence of alcohol. He further denied that he did not state before I.O. that Dipankar Debnath pushed Kamal Debnath down, Sanjit Debnath attacked his son with a sharp weapon, when his son tried to avert the blow with his left hand, he sustained injury on the hand and he sustained injury on his left hand fingers and that he saw his son who was injured and bleeding from his left hand. He also denied that he has filed this case to save his son from the case filed by the other side alleging assault upon Sanjit Debnath, his wife and daughter.

6. **PW-2 Samar Debnath** deposed that he knows the accused, complainant and victim. It was Friday but he does not remember the exact date. On that night he returned from the market at about 7:00 PM and then fell asleep without taking his dinner. At about 10:00 PM, his family members woke him up and they came to the road. He saw a crowd in front of his house. He came to know that a

fighting took place between Kamal Debnath and Sanjit Debnath. He does not know why they fought. He saw the broken boundary fencing of the accused but does not know who broke it. His cross examination reveals that he has no personal knowledge about the occurrence.

7. **PW-3 Dr. Trailokya Haloi** deposed that on 16/10/2020 he was posted as Senior Medical & Health Officer in SMK Civil Hospital, Nalbari. On that day, he was on emergency duty at night and he examined one, Kamal Debnath, 30 years, male, son of Rajkumar Debnath, village- Rangafali, PS- Ghograpar Dist- Nalbari, in reference to Ghograpar PS case No. 473/2020 and vide OPD No. 23876/2020. The patient appeared himself with a history of alleged assault. Time of examination was 11:30 PM.

On examination he found the following injuries upon the victim:-

1. *Lacerated wound of size 3 CM x 0.5 CM x 0.5 CM on left forearm. There were localised tenderness, swelling and deformity on left forearm. Margin of wound irregular. X-ray of the left forearm (Patient ID 12116) revealed displaced fracture mid shaft of radius.*
2. *Lacerated wound of size 1 CM x 0.5 CM x 0.5 CM present over right wrist joint.*

Nature of injury:-

Injury No. 1 was grievous in nature. Injury No. 2 was simple in nature. Both injuries were fresh and caused by blunt object.

He proved Ext. 2 as the injury report, Ext. 2(1) as his signature.

In cross examination he stated that the PS case number mentioned in his report was known later on. According to him, the injury No. 1 and 2 may also be caused by falling on hard substance.

8. **PW-4 Kamal Debnath** is the victim. According to him, the incident took place on 16/10/2020 at about 10:00 PM. Accused is his adjacent neighbour. After dinner, the father of the accused called him so he came out on the road. Then the accused scolded him in obscene language. When he was about to enter their compound, the accused attacked him from back side with a Dagger. When he was about to give him the first blow, he held it with his left hand. As a result, he sustained cut injury on his left hand fingers. He tried to avert further blows and he sustained injury on left hand bone. He also sustained injury on his right hand. As he started screaming, the nearby people came. He was taken to the SMK Civil Hospital, Nalbari. Thereafter his father lodged the case on that very night. As his injury was grievous, he was taken to GNRC. Though he was referred to GMCH, he took treatment in GNRC. He had to undergo surgery for his injury on the left hand bone. He

was released next day. The incident took place on the road in front of his *Basti*.

In cross examination he stated that there was no one on the road at that time. According to him, the courtyard of his family and that of the accused was same earlier. Later on bamboo fencing was erected to separate the courtyard. There is a common access road leading to the house of accused and them. The family of the accused consists of his parents, wife, daughter and son. He denied that the son of the accused stays in his maternal uncle's house. He admitted that the father of the accused is old and the other side has lodged a case against him alleging that on 16/10/2020 he went their house in drunken condition, broke their house with a bamboo and assaulted the accused, his wife and daughter. According to him, it was a market day in Tamulpur market and he had gone to the market on that day. But he denied that on that evening he had a quarrel in Bodo Chuba and he was drunk. He also denied that he got beaten in Bodo Chuba. He stated that the dagger was about 3 feet long. Initially no one came to attend him. Then his brother, Utpal Debnath, driver Sajal Debnath @ Pradip Debnath and Mithun Debnath took him to hospital. He was released from Nalbari hospital after putting bandage on the wound. Police recorded his statement after three days. He denied that he did not state before IO that the father of the accused had called him, he sustained injury on left hand fingers, that he was taken to

GNRC, though he was referred to GMCH, he took treatment in GNRC, he had to undergo surgery for the injury on the left hand bone and he was released next day. He further denied that this case was filed only to save him from the cross case. The police did not seize his blood stained clothes. He denied that the accused did not assault him.

9. **PW-5 Gobinda Debnath** deposed that on that night at about 10:30 PM, while he was sleeping, he heard Halla. He came to the place of occurrence and saw a crowd of 100/150 people. Kamal Debnath was injured and he was taken to the hospital. According to him, the accused is related to him by blood. Kamal Debnath was bleeding from his wound on the hand.

In cross examination he stated that accused and victim are cousins. Victim is also related to him by blood. He does not know how Kamal got injured.

10. **PW-6 Narayan Debnath** deposed that the incident took place at night. He was sleeping. He heard Halla and came to the road. He saw a crowd on the road. He came to know that Kamal and Sanjit had a fighting. As Kamal was grievously injured he was taken to the hospital. In cross examination he stated that the accused was also injured, though his injury was not severe. He didn't see

how they got injured. He does not have personal knowledge about their dispute.

11. **PW-8 Bashav Thakuria** is the investigating officer. He deposed that on 17/10/2020, he was working as I/C in Dhamdhama Outpost under Ghograpar PS. The then O/C was Bhaskar Malla Patowary. On that day, he received an Ejahar from Rajkumar Debnath which he sent to Ghograpar PS for registration. The case was registered as Ghograpar PS case No. 473/2020 u/s 120(B)/326 IPC. He was given the formal charge of investigation. He immediately proceeded to the place of occurrence. Prior to that, he recorded the statement of the complainant in the Thana. He examined witnesses at the place of occurrence. He prepared a sketch map of the place of occurrence. The place of occurrence was in front of the gate of the accused. Victim's statement was recorded after his discharge from the hospital on 17/10/2020. Victim did medical examination without police requisition and thereafter he collected the medical report. Accused Sanjit Debnath was arrested on 24/10/2020. He found no evidence against the other two FIR named accused. After completion of investigation, he submitted the charge-sheet against Sanjit Debnath u/s 294/506/325/307 IPC. He proved Ext. 2 as sketch map and Ext. 4 as charge-sheet.

In cross examination I/O stated that the sketch map does not show the location of the complainant and

victim's house. There is no any note in the sketch map about the distance between place of occurrence and the house of the complainant. He did not seize any weapon of offence from the place of occurrence. He did not seize the blood stained cloth of the victim. He confirmed that **PW-1 Rajkumar Debnath** did not state before him that victim was pushed down from back side by Dipankar Debnath, when his son tried to avert the blow with his left hand, he sustained injury on the hand, that victim sustained injury on his left hand fingers and that he saw his son who was injured and bleeding from his left hand.

I/O further confirmed that PW-4 did not state before him that he sustained cut injury on his left hand fingers and he was referred to GMCH. According to I/O, the victim did not produce his medical documents showing his treatment in GMCH and GNRC.

12. The accused in his examination u/s 313 Cr. PC stated that the victim was drunk on that day and he came to their house, scolded them and assaulted him, his wife and daughter. Therefore, a case was filed against the victim in the thana. He denied that he gave dagger blows to the victim. During arguments the Id. Addle PP submitted that the materials on record sufficiently proves the case, whereas the Id. Defence counsel argued that the testimony of the victim and his father are not trustworthy as they have made material improvements during trial. I

have given due consideration to the rival submissions and perused the evidence of PWs carefully in the light of the contradictions elicited by the defence.

13. As per FIR accused Sanjit Debnath, Sukumar Debnatha and Dipankar Debnath called out the victim from his house to the road on 16-10-20 at 10 pm and scolded him in obscene language and attacked him with sharp weapons. As a result the victim sustained injury on both hands. The evidence of PW1/ Informant reveals that he did not witness the actual occurrence. He reached the PO after twenty minutes. Though he alleged during trial that Dipankar pushed Kamal from behind, it is seen that he failed to state this fact to I/O during trial and I/O has confirmed it. Further he made categorical mention of Sanjit attacking his son with sharp weapon and his son averting the blow with hand and eventually getting injured in that process. But his cross examination and testimony of I/O reveals that he did not specifically took the name of Sanjit as an attacker during investigation. According to him, his son sustained injuries on left hand fingers and he was bleeding. Again PW4 Kamal Debnath, the victim stated during trial that Sanjit attacked him with a dagger which he averted with his hands and got injured on left hand bone and right hand. He sustained cut injury on left hand fingers as he held the dagger with his hand. But the injury report does not show any cut injury caused by sharp weapons.

The injury report shows only lacerated injury on both hands and fracture of left radius. The I/O did not seize any weapon of offence. The injury report rules out the use of any sharp weapon. In this regard the statement of the victim about the use of a dagger by the accused appears to be an exaggeration of facts. Further, the victim stated that he took treatment in GNRC and undergone a surgery. But there is no medical document in support of that fact. I/O also confirmed that the victim did not hand him over any such document. The victim tried to implicate Sukumar Debnath by saying that he had called him out on that night. But this was a vital omission on his part as he failed to state as such before I/O. The other witnesses did not see the incident but only found the victim in injured condition. They heard about the fight between the accused and victim. But none of them saw the accused at the place of occurrence.

14. The defence argued that the victim had gone to the house of the accused in an inebriated state and assaulted accused, his wife and daughter with bamboo and he fell down himself and got hurt. The victim and his father have admitted that a cross case has been filed against the victim for the alleged assault upon the accused, his wife and daughter. The place of occurrence as per sketch map and victim was in front of the house of the accused. The evidence of victim and his father reveal that they shared

the common boundary with the accused and afterwards fencing was raised to separate the courtyard. The sketch map does not show the house of the victim, but it is proved that both houses are adjacent. PW2 saw broken fencing of the accused. The testimony of victim and his father shows that they have improved their version and the fact that he was called out of his house by the accused or his father and then attacked or involvement of his son Dipankar is not proved. It is rather proved that the incident took place in front of the house of the accused and the victim was not called to that place by the accused. He went himself and a quarrel took place between the two. The presence of injury upon the victim is not disputed, but it is seen that the injury was not caused by any sharp weapon as stated by victim and his father. No one saw the incident except the victim. No doubt the victim is an injured witness; but his testimony is not blemish free. Though minor embellishments, contradictions are bound to crop up during examination of a witness, but in this case I find that there are vital contradictions as to the manner of occurrence, type of weapon of offence.

In order to prove offence under [Section 307](#) IPC, prosecution has to establish (i) the intention to commit murder and (ii) the act done by the accused. The burden is on the prosecution that accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another

person would depend upon the facts and circumstances of each case.

*In **State of M.P. v. Kanha @ Omprakash, AIR 2019 SC 713** the hon'ble Supreme Court held that:*

" that proof of grievous or life threatening hurt is not a sine qua non for the offence under [Section 307](#) of the Penal Code. The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and severity of the blows inflicted can be considered to infer intent."

15. In the present case, the injury upon the victim was not found on a vital part of the body and it is not proved that the accused aimed at a vital part but it fell upon the hands of the victim. The prosecution could not bring on record that the accused had the intention to cause murder of the victim and by such act he caused the injury. The evidence on record shows that the accused and victim had a fighting and a cross case is pending against the victim. It is not proved who first attacked whom. The evidence on record in all probability leads to the conclusion that it was the victim who went to the house of the accused and fought with him. The doctor also opined that the injury sustained by the victim may also be caused by falling upon hard surface. In view of the above, I hold that the accused deserves benefit of doubt. Further as regards the allegation u/s 294/506 IPC it is found that none of the witnesses stated anything. Mere verbal argument or quarrel between the accused and victim without proof of specific obscene words being spoken by the accused in a public place to the

annoyance of others is no proof u/s 294 IPC. The victim did not even state that the accused threatened him or otherwise. As such the offence u/s 294/506 IPC stands disproved. In my opinion the prosecution has miserably failed to prove the case beyond reasonable doubt. The points for determination are decided in the negative.

ORDER

16. In result I hold the accused not guilty u/s 294/506/325/307 IPC and acquit him. Accused is set at liberty forthwith. Surety extended for next six months. The seized articles if any shall be disposed as per law. Judgment is delivered in the open court. The case is disposed off.

Given under my hand and seal of the court on 31st day of August,2021.

Asstt. Sessions Judge,
Nalbari.

Dictated and corrected by

Asstt. Sessions Judge,
Nalbari.

APPENDIX

A. PROSECUTION EVIDENCE

PW1 RAJKUMAR DEBNATH

PW2 SAMAR DEBNATH

PW3 DR. T. HALOI

PW4 KAMAL DEBNATH

PW5 GOBINDA DEBNATH

PW6 NARAYAN DEBNATH

PW7 RABI DEBNATH

PW8 S I BASAB THAKURIA

B. PROSECION EXHIBITS.

EXT.1 FIR

EXT.2 SKETCH MAP

EXT.3 INJURY REPORT

EXT.4 CHARGESHEET

C. DEFENCE EVIDENCE NONE

Asstt. Sessions Judge,
Nalbari.