

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

Present: Dr. M Baruah.
Session Judge,
Nalbari.

(Criminal Appeal Case No. 13/09)

(Appeal against the Judgment & order dated 21/03/2009
passed by learned CJM, Nalbari in connection with GR Case
No. 418/2006 u/s- 326/34 IPC)

1. Sri Gopal Haloi

S/o- Bhogi Haloi

2. Sri Mone Haloi

S/O- Bhogi Haloi

All are R/o- Vill- Nkheti

P.S- Nalbari

Dist- Nalbari Appellant/ Accused

-Versus-

1. State of Assam,

Represented by P.P.

2.Niladhar Hazarika

S/O- Lt. Bagala Kaibarta

Vill- Na-Kheti

P.S & Dist- Nalbari, AssamRespondent/Informant

Advocates appeared:

For Appellant

:- Mr. Pankaj Sarma

For Respondent

:- Sri D N Barman, PP

Argument heard :- 14/07/2022, 03/08/2022
30/08/2022
Judgment delivered :- 23/09/2022

JUDGMENT

1. The instant appeal has been preferred by appellant/accused Sri Gopal Haloi and Mone Haloi u/s 374 Cr.P.C being highly aggrieved and dissatisfied with the impugned judgment and order dated 21/03/2009 passed by learned CJM, Nalbari, in connection with G.R Case No. 418/2006 u/s 326/34 IPC whereby learned CJM, Nalbari convicted the accused Sri Gopal Haloi and Sri Mone Haloi u/s 326 IPC and sentenced to suffer R.I. Of 2 ½ years each also sentenced to pay a fine of Rs. 1000/- each I/D R.I. For three months offence u/s 326 IPC r/w sec. 34 of IPC.

2. The brief fact leading to this appeal is that on 05/06/2006 Niladhar Hazarika lodged and ejahar inter alia stating that on the morning of 03.06.2006 at about 8 A.M. when Shri Bhupen Hazarika along with four labourers was busy in panting banana trees in his land, accused Shri Gopal Haloi came with a dao in his hand, suddenly gave dao blow on the Bhupen Hazarika's neck causing grievous injuries on his neck and then left the spot. Later on eye witnesses shifted the victim Shri Bhupen Hazarika to Guwahati Medical college Hospital, Guwahati for treatment in serious condition.

3. On receipt of the ejahar, O/C Nalbari PS registered a case being Nalbari PS Case No. 145/2006 u/s 448/447/326/34 IPC and endorsed ASI M. Ahmed to investigate the case. On completion of the investigation I/O of the case submitted charge-sheet against both the accused Sri Gopal Haloi and Sri Mone Haloi u/s 447/326/34 IPC.

4. Learned trial court took cognizance of the case and issued process to the accused person. On appearance of the accused person before the court to face trial, necessary copies of prosecution documents were furnished to the accused person and on finding prima facie materials against the accused, framed charge u/s 447/326 IPC r/w sec. 34 of IPC against both the accused which was read over and explained to the accused persons to which accused pleaded not guilty and claimed to be tried.

5. In order to prove the charge against the accused, prosecution adduced evidence of 10 numbers of witnesses and exhibited 3 nos of documents. The learned trial court recorded statement of accused u/s 313 CrPC and after hearing the learned counsel, delivered judgment convicted the accused Sri Gopal Haloi and Sri Mone Haloi u/s 326/34 IPC and sentenced to suffer R.I. for 2½ years each and also sentenced to pay a fine of Rs. 1000/- each, in default R.I. for

three months.

6. Being aggrieved by the Judgment & order dated 21/03/2009 passed by learned CJM, Nalbari, in connection with G.R Case No. 418/06 u/s 326/34 IPC, the appellant has preferred this appeal on the following grounds:

- I. That, the impugned judgment and order of the Ld. Court below is erroneous, hence it is to be set aside.
- II. That, the Ld. Court below failed to consider the evidence on record which does not warrant conviction, sentence and fine of the accused/appellant.
- III. That, there is no prime facie case against the accused/appellant u/s 326 IPC and alleged in the case and the alleged offence u/s 326/34 is not proved against the appellants.
- IV. That, there is no concrete evidence and materials to convict the accused/appellants for the offence punishable u/s 326/24 IPC.
- V. That, the prosecution examined as many as 10 (Ten) witnesses including the informant and injured person, amongst them. PW 8 and 9 is the doctor and PW 10 is the I/O of the case. PW 1 is not eye witness, PW 2 is the victim, PW 3 is the hearsay witness, PW 5 and 6 knows nothing about the facts of the case, PW 7 is the I/C of kamarkuchi O.P. PW 4 stated before the court

that the place of occurrence is in the house of Bhupen Hazarika, so it is clear from the evidence on record that the P/O is different as stated in the FIR as well as stated by other witnesses.

- VI. That, from the discussion from the prosecution witnesses it is clear that their evidence are full of contradiction no one corroborated each other, no witness is trustworthy to sum up with a judicious conclusion holding that the prosecution has established its own case. It is well established rule that it is the duty of the prosecution to establish its own case beyond all reasonable doubt of law as well as facts. But in the instant case prosecution witnesses in all aspects of their evidence left clear shadow of doubts as to the occurrence, which trial court ought to have calculated, and Ld. Court below failed to do so, and hence the said impugned Judgment is liable to be set aside and quashed.
- VII. That, the judgment and order is perverted on the ground that the evidence on record is not supported by the independent eye witness as well as the alleged eye witness have not corroborated the versa stated in the FIR and the other witnesses.
- VIII. That, there is a land dispute regarding possession of the land has been continued in between the parties prior to the occurrence and the injured person along

with other person entered into the premises of the accused person and assaulted the family members of the accused person and demolished all the houses of the accused person, where the informant, injured person and some of the witnesses made accused and the said case is also pending under trial. So this case is a concocted and fabricating case.

7. I have heard arguments of Ld. Advocate for the appellants as well as for respondents. The learned Council for the appellants submitted that there are no eye witness of the incident. The case was filed due to enmity as the victim and his men had damaged the house of the accused. He further submitted that there is no evidence that accused Mone Haloi had voluntarily caused hurt to the victim. The medical officers failed to give proper description of the injury. As such the grievousness of the injury sustained by the victim is doubtful. The Learned Court below failed to appreciate the evidence properly.

The Ld. Public Prosecutor submitted that the Ld. Court below after discussing the evidences properly convicted the accused persons. There is nothing to be interfered with in the impugned judgment.

8. **Point for determination:**

Whether the impugned judgment & order of conviction dated 21/03/2009 passed by learned CJM, Nalbari in

connection with GR Case No. 418/06 u/s- 447/326/34 IPC is sustainable in law or requires any interference by this Court?

9. Findings and Reasons thereof are as follows:

The prosecution examined 10 witnesses to prove the alleged offence against the accused persons. The victim Sri Bhupen Hazarika deposed as PW-2 and he stated that on 03/06/2006 in between 9 to 10 am he along with Ganesh, Rubul, Jiten and Krishna went to work in their agriculture field. When he was working accused Mone Haloi came near him and they were having conversation and accused Gopal Haloi was standing behind him with a dao, while he was talking to Mone Haloi, Gopal Haoi struck with a dao on his head from behind and he fled away from the scene. Rubul, Ganesh and Krishna were working at a distance of 30/40 ft and they took him on a by-cycle to hospital. On the way Anjana Kalita tied the injured portion of his head by a cloth. Thereafter, Dharani Medhi, Achyut Das and others took him by and auto to Kamarkuchi hospital. Thereafter, he was taken to Guwahati International Hospital.

During cross examination he stated that accused Mone Haloi did not assault him but he planned the incident. He denied the suggestion that he had damaged the house of the accused person with the help of labours and also assaulted the accused persons.

10 (i). PW-4 Kishor Das stated that on 03/06/2006 at about 9.30 am he went to the residence of the victim Bhupen Hazarika (PW-2) to work. He along with Rubul Das, Jiten Choudhury and Arup Hazarika were present. At that time Mone Haloi and Bhupen Hazarika had an altercation and accused Gopal Haloi had struck at Bhupen Hazarika on his neck below the ear. He saw the incident and started shouting "katile-katile". Accused Gopal Haloi fled away from the agriculture field and nearby villagers gathered. They brought Bhupen Hazarika with a cycle to Kamarkuchi Hospital. Thereafter, the injured was referred to GMCH.

In his cross he stated that along with Rubul and Jiten were working near the place of occurrence at the time of incident. He saw accused Gopal Haloi brought a dao and he was holding the dao on his back. Gopal Haloi was not engaged in altercation with Bhupen Hazarika, Gopal had struck Bhupen from behind and Bhupen did not notice it.

10 (ii). PW-5 Jitu Choudhury stated that on the day of occurrence at about 10.30 am he was working in the house of Bhupen Hazarika. He was planting banana plants. He heard hue and cry and then he saw that large number of people gathered. He went to the place and saw Bhupen Hazarika had got injury near his neck and blood oozing out. People present there stated somebody inflicted cut injury on Bupen

10 (iii). PW-6 Rubul Hazarika deposed that on the day of occurrence at about 9.30 to 10 am he along with Bhupen Hazarika were working a little distance away from the Bhupen's residence. He was plating banana tree. He was Bhupen was having altercation with one of the accused. Thereafter, he and Kishor Hazarika went near Bhupen Hazarika. In the mean time, Gopal Haloi struck a dao blow on the neck below the ear of Bhupen Hazarika. Blood was oozing out from the injury, he and Arup chased to catch Gopal Haloi but Gopal Haloi fled away. Thereafter, they brought Bhupen Hazarika to his residence.

During cross examination he said that he has no idea for what reason injured Bhupen Hazarika had altercation with Mone Haloi. He did not go with police for the recovery of dao. He denied the suggestion that Bhupen had broken the house of accused persons and Bhupen being his uncle's son so he wa has given false evidence.

10 (iv). PW-1 Niladhar Hazarika stated that on the day opf occurrence at about 8.30 am he took his cows to the paddy field for grazing and at 9 am he took tea and snacks to the paddy field and heard hue and cry. He ran to the place of occurrence and saw his son Bhupen Hazarika lying in an injured condition and they brought the victim to his house and thereafter taken to Kamarkuchi hospital. Later on the victim

was sent to Guwahati for treatment. He lodged the ejahar. Ext-1 is the ejahar filed by him.

10 (v). PW-3 Sri Baputi Das deposed that on the day of incident at about 10 AM he was returning after taking his cows to paddy field for grazing. He heard scream from the river side that Gopal had cut the neck. Thereafter he saw injured Bhupen was carried by 4 to 5 persons.

10 (vi). PW-8 Dr. Chawangrolien Chownik and PW-9 Dr. Pradip Kr. Deka deposed that on 03/06/2006 they were working as consulting surgeon and on that day they examined Bhupen Hazarika and found one cut injury posterior aspect of the neck with active bleeding along with transverse cut injury of right ear and compound fracture of right mastoid, the injuries are grievous in nature caused by sharp weapon. Ext-2 is the medical certificate they issued.

During cross examination they stated that did not mention for how many days the patient was admitted in the hospital. The colour of the injuries was not mentioned.

10 (vii). PW-7 Majnuruddin Ahmed deposed that on 3/6/06 he received an ejahar from Niladhar Hazarika in the out post and made G D Entry N0.36 dated 3/6/06 and sent it to the police station for registering a case. He made preliminary investigation. He visited the place of occurrence and prepared sketch map. He stated that the victim was taken to Interna-

tional Hospital Guwahati for treatment. He collected medical certificate. After investigation he handed over the case diary to O/C showing the accused persons as absconder.

During cross examination he stated that he did not seize any material. He stated that he investigated a case and filed charge sheet where it was alleged that the victim had broken the house of the accused.

10 (viii). PW-10 Sri Someswar Kalita deposed that he was entrusted by O/C Nalbari P S to investigate the case. He filed the charge sheet in this case. Ext-3 is the charge sheet.

11. On scrutinizing the evidences on record, I found that PW-2 being the victim stated that he along with Rubul. Ganesh, Jiten and Krishna went for working in their agricultural field in between 9 AM to 10 AM. He further stated that when he was working accused Mone Haloi came near him and they were having conversation and accused Gopal Haloi was standing behind him with a dao, while he was talking to Mone Haloi, Gopal Haoi struck with a dao on his head from behind and he fled away from the scene. Rubul, Ganesh and Krishna were working at a distance of 30/40 ft and they took him on a by-cycle to hospital. The said fact has been corroborated by PW-6 Rubul Hazarika stating that on the day of occurrence at about 9.30 to 10 am he along with Bhupen Hazarika were working a little distance away from the Bhupen's residence. He was plating banana tree. He was Bhupen was

having altercation with one of the accused. Thereafter, he and Kishor Hazarika went near Bhupen Hazarika. In the meantime, Gopal Haloi struck a dao blow on the neck below the ear of Bhupen Hazarika. Blood was oozing out from the injury, he and Arup chased to catch Gopal Haloi but Gopal Haloi fled away. The PW-6 is an eye witness of the incident. PW-4 is another eye witness to the incident. He stated that on 03/06/2006 at about 9.30 am he went to the residence of the victim Bhupen Hazarika (PW-2) to work. He along with Rubul Das, Jiten Choudhury and Arup Hazarika were present. At that time Mone Haloi and Bhupen Hazarika had an altercation and accused Gopal Haloi had struck at Bhupen Hazarika on his neck below the ear. He saw the incident and started shouting "katile-katile". Accused Golap Haloi fled away from the agriculture field and nearby villagers gathered. PW-3 and PW-5 heard the scream from the place of occurrence and they saw the injuries of the victim. PW-1 is the father of the victim and he also ran to the place of occurrence after hearing hue and cry and saw his son lying injured. It is clear from the evidence of the above witnesses that Bhupen Hazarika sustained cut injuries on the neck region below the ear. The victim, PW-4 and PW-6 have deposed that the accused Golap Haloi caused such injuries by giving a dao blow on Bhupen Hazarika. The witnesses also stated that accused Mone Haloi was having a conversation/altercation with Bhupen Hazarika and accused Golap Haloi

gave the dao blow from behind. PW-7 stated that he made GD Entry and conducted preliminary investigation. He also stated that the victim got treatment at International Hospital Guwahati. PW-8 and PW-9 are the medical officers who had treated the victim at International Hospital, Guwahati. They have corroborated the evidence of witnesses regarding the nature of injuries sustained by PW-2 due to the assault by accused Golap Haloi. They opined that the injuries are grievous in nature and caused by sharp weapon.

12. During cross examination the defence brought a fact that a case has been filed against the victim of this case by the accused persons for breaking their house and PW-7 deposed that he had investigated the said case and submitted charge sheet against the victim in that case. From the said fact it is clear that there was enmity between the accused persons and victim. The evidences of the witnesses regarding the assault made by Gopal Haloi to Bhupen Hazarika from behind by a dao are believable beyond doubt. The defence could not break the evidence of the witnesses for creating a doubt. Considering the nature of injuries sustained by PW-2, I found that there are sufficient materials to hold the accused Gopal Haloi guilty of causing grievous hurt. I found that the prosecution has been able to prove the offence u/s 326 IPC against the accused Gopal Haloi. I found that the Ld. C J M Nalbari has rightly convicted accused Gopal Haloi for the offence u/s 326 IPC. I also found that the

place of occurrence is near the embankment of a river. So the possession of the land is not clear. As such prosecution has failed to prove beyond doubt that the accused have caused criminal trespass into the land of the victim. The Ld. CJM Nalbari, has rightly held that the prosecution has failed to prove the offence u/s 447 IPC against the accused persons. I therefore do not find it necessary to interfere in the decision of learned trial court in convicting the accused Gopal Haloi u/s 326 IPC.

13. The learned trial court had convicted accused Mone Haloi for the offence u/s 326 IPC on the basis of evidence of PW-2. learned trial court hold that PW-2 in his evidence stated that accused Mone Haloi is involve in the incident as he was planning so that the accuse Gopal Haloi can commit the offence. On scrutinizing the evidence of PW-2, PW-4 and PW-6 it is clear that accused Mone Haloi and victim (PW-2) was having a conversation and the accused Gopal Haloi who was behind the victim struck by a dao from behind. It is very much clear that the accused Mone Haloi did not assault the victim. It is not proper to presume that the accused Mone Haloi had a common intention with accused Gopal Haloi for assaulting the victim. On the basis of presumption of PW-2 that the accused Mone Haloi had a plan with Gopal Haloi in committing the offence, the accused Mone Haloi cannot be held guilty of assaulting the victim causing grievous hurt. I found that the learned trial court convicted accused Mone

Haloι u/s 326 IPC without having concrete evidence that he along with Gopal Haloι committed the offence in-furtherance of common intention. As such I found it proper to interfere in the decision of learned CJM Nalbari, in convicting accused Mone Haloι for committing the offence u/s 326 IPC.

14. I hold that the learned trial court below has rightly concluded that the accused Gopal Haloι voluntarily inflict grievous hurt to Bhupen Hazarika. As such, I found no necessity to interfere with the sentence passed by the learned trial court against accused Gopal Haloι.

15. I found that there are no such evidence against accused Mone Haloι of committing the offence u/s 326 IPC. As such the judgment and order passed by Ld. CJM Nalbari convicting the accused Mone Haloι u/s 326 IPC and sentencing the accused to undergo R.I. for 2 ½ years and to pay a fine of Rs.1000/- is set aside.

16. I hold that prosecution has failed to prove the alleged offence u/s 447/326/34 IPC against accused Mone Haloι beyond reasonable doubt. As such accused Mone Haloι is acquitted and set at liberty.

17. The appeal is partly allowed and the conviction and sentence passed against accused Gopal Haloι is affirmed.

18. Send the LCR to the Court of Learned CJM, Nalbari.

19. Set my hand and seal of this case on the 23rd day of September, 2022.

(Dr. M Baruah),
Sessions Judge, Nalbari

Dictated & corrected by me:

(Dr. M Baruah),
Sessions Judge, Nalbari

Transcribed by-
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Stenographer Gr-III.