

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 2345 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI KAUSHIK PHUKAN

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 2345 / 2016

U/S 324 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI KAUSHIK PHUKAN

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: SRI S GOGOI

CHARGE FRAMED ON : 26.12.2017
EVIDENCE RECORDED ON : 26.02.2018, 07.07.2018, 15.07.2019 &
05.03.2020
ARGUMENT HEARD ON : 06.03.2020
JUDGMENT DELIVERED ON : 06.03.2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 11.09.2016 at about 10.00 PM, informant's brother Sri Rupam Sonowal went to Lilabari English school to enjoy Lakhimi theatre play which was going on at that place. Thereafter, the informant's brother came out to have a cup of tea, and at that time, accused Sri Kaushik Phukan along with two others restrained informant's said brother and then hit him with a bottle and stick on his head and thereby

caused severe injury. The informant thereafter lodged an FIR about the occurrence before the OC of Boginadi police station.

2. On receipt of the F.I.R, a case was registered being numbered as Boginadi P.S Case No. 129/16 and after investigation I.O of the case submitted charge sheet against accused Sri Kaushik Phukan for the offence punishable u/s 324 of IPC. Copies of relevant documents were furnished to the accused u/s 207 CrPC. Considering the relevant documents and hearing both the parties, charge was framed against the accused for the offence punishable u/s 324 of IPC. The charge was then read over and explained to the accused person to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined four witnesses, whereas the defence did not examine any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statement made by the accused and also the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. POINTS FOR DETERMINATION:

(i) Whether the accused on 11.09.2016 at about 10.00 PM at Kadam English school under Boginadi police station, voluntarily caused hurt to Sri Rupam Sonowal by hitting with a bottle, which is an instrument of stabbing and cutting, and thereby committed an offence punishable u/s 324 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

6. As regards the aforesaid point for determination, victim Sri Rupam Sonowal as PW-1 in his evidence-in-chief has stated that at the time of occurrence he went to enjoy theatre play near Lilabari High School. Thereafter, he came out to have snacks outside the theatre premises in a vendor shop. Thereafter, the accused came there along with his companions and started to talk using obscene language. He then protested for using obscene language in public place. At that time the accused armed with a bottle and gave a blow on his head.

7. At the time of cross-examination, PW-1 has specifically denied the suggestion of defence that he did not mentioned the aforesaid allegations in his statement before police. However, in this respect, PW-3 Sri Budhin Pegu, who investigated this case as the O/C of Boginadi police station, in his cross-examination has confirmed that PW-1 Sri Rupam Sonowal did not mentioned the aforesaid allegations in his statement u/s 161 of CrPC. In my opinion, had the occurrence took place as alleged then the victim/PW-1 should have definitely mentioned the same in his initial statement u/s 161 of CrPC before the I.O. Therefore, omission of PW-1/victim to state the aforesaid allegations in his statement u/s 161 of CrPC is clearly a contradiction in view of the provision of section 162 of CrPC, and the same creates doubt as regards the credibility of the aforesaid allegations made by PW-1.

8. In the above context, PW-2 Sri Randeep Saikia in his evidence-in-chief has claimed that at the time of occurrence he was enjoying the theatre play along with victim Rupam Sonowal. Thereafter, while enjoying the theatre, in between, he along with Rupam Sonowal went out to have some water. At that time, while he was having a talk with some other persons, a pull and push took place between the accused and said Rupam Sonowal. In his cross-examination, PW-2 has confirmed that he only saw pull and push between the accused and Rupam Sonowal.

9. From the evidence deposed by PW-2 as narrated above, it is clear that his version is totally contradictory with that of the version of victim/PW-1. To be more particular, though PW-1 and PW-2 have both claimed themselves to be present at the place of occurrence, but as per PW-2 only a push and pull took place between the parties, while on the other hand, as per PW-1 the accused assaulted him physically. In my opinion, had the occurrence took place as alleged then both the eye witnesses should have consistently stated the same facts. Under such circumstances, the aforesaid contradiction in the versions of PW-1 and PW-2 creates serious doubt as regards the credibility of the allegations made by PW-1 against the accused.

10. Besides the above, though PW-4 Dr. Tulsi Prasad Chutia, who being the medical officer examined victim/PW-1, in his evidence has stated that he found three numbers of incised wound with blood coated on the head of victim/PW-1,

but there is nothing specific in the evidence of PW-4 which can show that the accused caused the aforesaid injuries on the body of victim. Similarly, there is nothing in the evidence of PW-3/I.O which can show that the accused caused the aforesaid injury on the body of victim.

11. Before parting with the discussion, I deem it fit to mention here that the informant of this case could not be examined as he expired after lodging of this case.

12. Considering the entire discussion made above, it is evident that the witnesses examined by prosecution have failed to prove beyond reasonable doubt that the accused has committed the offence as alleged.

DECISION: This point is therefore decided in the negative and goes against the prosecution.

13. In view of the discussions made above and the decisions reached in the foregoing points for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Kaushik Phukan has committed the offence punishable under section 324 of IPC as alleged, and as such, the said accused is acquitted of the charge under section 324 of IPC and he be set at liberty forthwith.

The bail bond of the accused person shall remain in force for another six months from today.

This judgment is given under my hand, and seal of this court on this the 6th day of March, 2020.

The case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**Exhibits:**

Exhibit.1 – Sketch map

Exhibit.2 – Charge-sheet

Exhibit.3 – Medical report

Prosecution Witnesses:

PW-1 – Sri Rupam Sonowal

PW-2 – Sri Randeep Saikia

PW-3 – Sri Budhin Pegu (I.O)

PW-4 – Dr. Tulsi Pd. Chutia

Defence Witnesses:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur