

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,  
LAKHIMPUR,  
NORTH LAKHIMPUR, ASSAM**

Present: Shri Narayan Kuri, AJS,  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur, Assam

**G.R. 1596/2015**  
U/s 447/323/34 IPC

**State of Assam**

**-Vs-**

**1. Sri Manik Das**

S/O: Sri Dharani Das  
R/O: Borpukhuri  
P/S: North Lakhimpur  
District: Lakhimpur, Assam

**2. Sri Syamal Das**

S/O: Sri Sunil Das  
R/O: Borpukhuri  
P/S: North Lakhimpur  
District: Lakhimpur, Assam

**3. Sri Sunil Das**

S/O: Sri Dharani Das  
R/O: Borpukhuri  
P/S: North Lakhimpur  
District: Lakhimpur, Assam

**4. Sri Sumon Das**

S/O: Sri Sunil Das  
R/O: Borpukhuri  
P/S: North Lakhimpur  
District: Lakhimpur, Assam

.....Accused persons

Date of offence explanation : 22.03.2016  
Dates of recording evidence of PWs : 16.08.2016, 03.11.2016,  
10.08.2018, 29.08.2018  
Date of examination u/s 313, Cr.P.C. : 06.02.2019  
Date of recording evidence of DWs : 16.03.2019  
Date of Argument : 05.04.2019  
Date of judgment : **18.04.2019**

**Advocates appeared in the case:-**

Mrs. Ajanta Sharma, Addl. P.P., for the State

Mr. Afiluddin Ahmed, Advocate, for the accused persons

**J U D G M E N T**

1. The factual matrix of the prosecution is that on 17.08.2015 informant Sri Bhaskar Das lodged an FIR with the In-charge of Silonibari Police Outpost under North Lakhimpur Police Station alleging that in the morning of 17.08.2015 the informant went to his paddy field for the purpose of ploughing and at that time accused persons Sri Sunil Das, Sri Manik Das, Sri Syamal Das and Sri Sumon Das 'gheroud' (surrounded) the informant armed with 'dao', 'lathi' etc. and started assaulting him. It is further alleged that accused Sri Sunil Das and Sri Syamal Das caught hold of the informant and accused Sri Suman Das assaulted him on his leg and different parts of his body with the handle of axe causing injury to him and when he raised hue and cry his father Sri Niranjan Das and one Nipen Das came to rescue him and at that time accused Sri Sunil Das assaulted Sri Niranjan Das with axe causing grievous injury on his head and for which he had to undergo medical treatment. The accused persons also criminally intimidated the informant with dire consequences. Hence, the case.

2. On receipt of the ejahar, the In-charge of Silonibari Police Outpost effected Silonibari O.P. G.D.E. No. 375 dated 17.08.2015 and forwarded the ejahar to the Officer-in-charge of North Lakhimpur Police Station to register a case under proper section of law. The Officer-in-charge of North Lakhimpur Police Station, after receiving the ejahar, registered a case vide North Lakhimpur P.S. Case No. 840/2015, under section 447/325/307/506/34 of the Indian Penal Code and got the investigation into the case commenced. The investigating officer, after completing the investigation, submitted charge-sheet under section 447/323/352/506/34 of the Indian Penal Code against accused persons Sri Sunil Das, Sri Manik Das, Sri Syamal Das and Sri Sumon Das to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 447/323/352/506/34 of the Indian Penal Code was taken as per section 190(1)(b), Cr.P.C. The accused persons entered their appearance before the Court after receiving the summons. Copies were furnished to the accused persons as per provision contained in section 207 of the Cr.P.C. The particulars of offence under section 447/323/34 of the Indian Penal Code when being read over and explained the accused persons they pleaded not guilty and claimed to be tried.

**Points for determination**

4. The points which are required to be determined for a just decision of this case are as follows:

(a) Whether accused persons, in the morning of 17.08.2015, at village Borpukhuri, under North Lakhimpur Police Station, in furtherance of their common intention, committed criminal trespass by entering into the paddy field of informant Sri Bhaskar Das with intent to commit an offence, and thereby committed an offence punishable u/s 447/34 of the Indian Penal Code ?

(b) Whether accused persons, in the morning of 17.08.2015, at village Borpukhuri, under North Lakhimpur Police Station, in furtherance of their common intention, voluntarily caused hurt to Sri Bhaskar Das and Sri Niranjan Das, and thereby committed an offence punishable u/s 323/34 of the Indian Penal Code ?

5. During the trial the Prosecution side could examine 7 (seven) witnesses namely Sri Bhaskar Das (PW-1), Sri Niranjan Das (PW-2), Sri Sachindra Das @ Sachin (PW-3), Sri Nipen Das (PW-4), Sri Nanda Das (PW-5), Sri Nikhil Rajkhowa (PW-6) and Dr. Harpal Singh (PW-7). The prosecution has also exhibited 5 (five) documents (Shown in the Annexure appended below). The defence has cross-examined prosecution witnesses and thereafter all the incriminating materials surfaced in the evidence of the prosecution witnesses against accused persons was put to their explanation under section 313, Cr.P.C. The

defence plea was in completed denial. The defence side in support of their plea examined Sri Syamal Das (accused) as DW-1, Sri Debo Bordoloi as DW-2 and Smti. Juli Bordoloi as DW-3.

6. I have heard the vociferous final argument of both sides and thereupon come to the following finding:

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. A common thread of facts are intertwined in both the points for determination as such these points are taken together for discussion for convenience. Since allegedly Niranjan Das and Bhaskar Das had sustained injuries in this case, so let me first discuss the evidence of the medical officer.

8. PW-7 Dr. Harpal Singh Suri deposed that as per the injury certificate, both the patients, namely, Sri Niranjan Das and Sri Bhaskar Das had arrived before the examining Doctor on 17.08.2015 at 8:50 AM at Nowboicha Block PHC under police escort. The findings of examination of the two patients were as follows:

(1) **Sri Niranjan Das:** One laceration on the right temporal region, size 3 cm x  $\frac{1}{2}$  cm x  $\frac{1}{4}$  cm. Injury was simple in nature and was fresh.

(2) **Sri Bhaskar Das:** No sign of injury in his body.

PW-5 exhibited the injury certificate as Ext-5.

9. In his cross-examination, PW-5 has stated that if one is assaulted with an axe having sharp edge and the sharp edge of the axe hits the body, that will cause an incised wound. Laceration may also be caused by falling on a hard substance.

10. The evidence of PW-7 Medical Officer has clearly brought out the fact that on 17.08.2015 at 8:50 AM at Nowboicha Block PHC injured Niranjan Das and Bhaskar Das were examined of which injured Niranjan Das had a laceration on the right temporal region, but no injury was seen in the person of Bhaskar Das. Taking this fact into consideration

let me now cogitate on the fact as to how the injuries were caused and if accused persons had any role in it.

11. PW-1 Sri Bhaskar Das is the informant-cum-victim in this case who has stated that on 17.08.2015, at about 7:00 AM, when he went to his paddy field for ploughing, accused Sunil Das, Manik Das and the other accused persons came with dao, lathi in their hands and assaulted him. Accused Sunil Das, Manik Das and Syamal Das caught hold of him and accused Sumon Das caused injury on his head and other parts of his body. Due to the assault of the accused persons he sustained injuries over his body. When his father Niranjan Das and one Sachin Das came to rescue him, accused Sunil Das cracked the head of his father by giving axe blow inflicting grievous hurt to him. He lodged an ejahar (Ext-1) in connection with the occurrence. Police sent his injured father to hospital for medical examination.

12. In his cross-examination, PW-1 Bhaskar Das has stated that the house of the accused persons is about one 'noll' away from the place where he was ploughing and that the land in which he was ploughing belongs to Kabiranjana and they used to do cultivation by executing agreement. He explained that accused Syamal Das had come out of his house when he had been ploughing the land. He admitted that on the day of occurrence the accused persons had lodged a case against them. He has further stated that in the courtyard of the accused persons his father sustained serious injuries because of rough and tumbling. He has further clarified that his father sustained injuries in the jostling occurred in the courtyard of accused persons.

13. PW-2 Sri Niranjan Das is the father of informant Bhaskar Das and he is also a victim in this case. According to him on 17.08.2015, at about 7:00 AM his son had gone to their paddy field for ploughing where a quarrel took place between his son and the accused persons. The accused persons had waylaid his son and upon hearing the shouts of his son, he went to the place of occurrence and freed him from the clutches of the accused persons, but accused Sunil Das assaulted him

on his head as a result he sustained grievous injuries and fell down on the ground. In his cross-examination, PW-2 has stated that the land where the informant was ploughing and the land where the accused persons are residing is having common boundary. He admitted to have not been present when the occurrence of 'mar-pit' took place. When he arrived at the place of occurrence and tried to stop the quarrel there was pushing and pulling. He admitted that the accused persons also lodged a case against them which is pending in trial stage.

14. PW-3 Sri Sachidra Das @ Sachin has deposed that hearing the shouts of Bhaskar i.e. the informant, he came out from his house and went to the place of occurrence and saw that the accused persons had been assaulting the informant. He and Nipen Das scolded the accused persons and saved the informant from the clutches of the accused persons but at that time, Niranjana Das came there and asked Bhaskar to go away from there. Then accused Sunil Das came with axe in his hand and gave an axe blow on the head of Niranjana Das as a result of which Niranjana Das sustained injury on his head.

15. In his cross-examination, PW-3 has stated that he had seen pushing and pulling going on between the parties. At the time when pushing and pulling had been going on, he did not see Joyarani and Anita Das present out there. He further has clarified that the land where the cultivation work was going on, is situated on the backside of the house of the accused and it was in that place that the occurrence had taken place.

16. PW-4 Sri Nipen Das has averred that at the time of the occurrence he was taking breakfast in his home but upon hearing screaming of Joyarani Das he came out and saw that Sumon Das, Sayamal Das and Sunil Das had grounded Bhaskar Das and they were over his body. Then, he separated them and stopped the fighting. Thereafter, Niranjana Das, the father of informant Bhaskar Das came there and asked the accused persons, the reason for assaulting his son

when accused Sunil Das gave an axe blow on the head of Niranjn Das causing hurt to him.

17. In his cross-examination, PW-4 has stated that Bhaskar Das was ploughing on the plot of land situated near the house of accused persons. According to him, the accused persons used to ingress and egress to their land through an 'ali' (ridge between two lands) by the side of land where informant used to do cultivation. According to him Joyarani Das was present at the place of occurrence.

18. PW-5 Sri Nanda Das is the brother of informant Bhaskar Das. According to him on the day of the occurrence his brother was ploughing the land. Upon hearing a commotion he and his father Niranjn (PW-2) had gone there and saw that the accused persons had been assaulting his brother Bhaskar. His father had set the accused persons apart from his brother but at that accused Sunil Das took away an axe from Sumon Das and hit his father on the head from backside for which his father fell down.

19. In his cross-examination, PW-5 Nanda Das has admitted that the accused persons had also filed a case against him. According to him the land where his brother was ploughing is situated near the house of the accused persons. He went to the place of occurrence after sometime of the hue and cry. He expressed his ignorance as to the main cause for the quarrel. He however, asserted that there is no other way for ingress and egress from the house of the accused person. According to him, after they left the place of occurrence there had been a pushing and pulling out there.

20. PW-6 Sri Nikhil Rajkhowa has deposed that during investigation he examined the witnesses and recorded their statements, sent the victims to hospital for their medical examination and collected the medical examination report, visited the place of occurrence and inspected the same and prepared a sketch map of the same, arrested the accused persons and released them on bail and after completion of investigation, he submitted the charge-sheet u/s

447/323/352/506/34, IPC against accused persons Sri Sunil Das, Sri Manik Das, Sri Syamal Das and Sri Sumon Das.

21. In his cross-examination, PW-6 has admitted that in the ejahar there is no mention as to whom Sunil Das inflicted head injury with 'dao', stick and axe. He did not seize any 'dao', stick and axe in this case. He did not collect any document in connection with the stay of the informant's father in the hospital for three days. He admitted that in his statement, the informant Bhaskar Das told him to have addressed witness Nipen Das as 'mama' (maternal uncle). He did not conduct any investigation for ascertaining the distance between the house of the informant the place of occurrence. He was also the Investigating Officer of a cross-case to this case. In the charge-sheet he did not mention the four boundaries of the land in dispute between both the parties. He admitted to have not investigated regarding the land in dispute between both the parties.

22. As against the above evidence of the prosecution side, let me now see what the defence witnesses have adduced in evidence.

23. DW-1 Sri Shyamal Das is an accused in this case who has stated in evidence that at the time of the occurrence when he had come out of his house, he saw that Bhaskar Das was ploughing on their path so he asked Bhaskar about the reason of his so doing, but Bhaskar had assaulted him instead with bamboo stick used for driving the cattle. At that time his father Sunil Das also came there and both of them had retreated from there but thereafter, informant Bhaskar, his brother Nanda Das, and his father Niranjn Das came to their house and broke their 'jeura' (boundary fencing) and also assaulted them. Niranjn Das was armed with hoe, Nanda Das with 'jeura' post and Bhaskar was wielding a bamboo stick. Then his mother Joyarani Das, aunt Anita Das, uncle Manik Das, brother Suman Das, father Sunil Das were assaulted. When they raised hue and cry their neighbours Juli Bordoloi and Debo Bordoloi separated them. All of them sustained injuries. As the occurrence took place in their courtyard so his father lodged an ejahar at Silonibari Police Outpost against Bhaskar Das, Nanda Das and Niranjn Das. That case was tried by the Court of the learned Addl.

CJM, and the accused persons were acquitted. Ext-A is the FIR certified copy (G.R. No. 1628/2015) and Ext-B certified copy (G.R. No. 1628/2015).

24. DW-2 Sri Debo Bordoloi has stated that the occurrence took place at about 7:00-7:30 AM about 3 years ago. On the day of occurrence hearing hue and cry he came to the courtyard of Sunil Das and found that Bhaskar Das, Niranjn Das and Nanda Das in a body assaulting Sunil Das, Sayamal Das and Sumon Das. Bhaskar Das was armed with bamboo stick, Nanda Das with 'jeura' lathi and Niranjn Das with a hoe in his hand. All three of them (Bhaskar Das, Nanda Das and Niranjn Das) broke the 'jeura' of Sunil Das and assaulted Sunil Das and his associates. They also assaulted Joyarani and Lalita Das. At that time his daughter-in-law Juli Bordoloi was present there. There was pushing and pulling between both the sides and they had separated them. He did not see Sachin Das and Nipen Das at the place of occurrence. Niranjn Das fell down in the pushing and pulling. There was a path for ingress and egress of the accused persons and the said path was ploughed by the informant side and for that reason there was quarrel between both the sides. In cross-examination DW-2 has admitted that he did not come to depose on getting summons from the court but since he is having a good term with accused persons as such he had come to depose evidence.

25. DW-3 Smti. Juli Bordoloi has stated that the occurrence took place in the morning time at about 7:30 AM. It was tea time and accused Sayamal had come out for his work accompanied by his father Sunil Das. But on the way Sayamal saw Bhaskar had been ploughing their path and as such he remonstrated with the act of Bhaskar, but the later had assaulted him. At that time both Sunil Das and Shyamal Das had retreated to their home when Niranjn Das, Nanda Das and Bhaskar had barged into the house of Shyamal Das by breaking the boundary fencing and started assaulting Sunil Das, Jayarani Das, Anita Das, Shyamal Das and Manik Das. At that point of time she had stopped them from fighting and at that time his brother-in-law Debo Bordoloi had also reached that place. Both of them set the accused

persons apart and sent them back. According to her at that time except Debo Bordoloi and her, no other persons had been present at the place of the occurrence not even Sachin Das and Nipen Das. In her cross-examination she had also admitted to have come to depose on being asked by the accused persons to do so.

### **APPRECIATION OF EVIDENCE**

26. PW-1 informant Bhaskar Das has admitted that the place of the occurrence where he had been tiling belong to one Kabiranjan and that the houses of accused is adjacent to that land. He has further clarified that he was cultivating the land under an agreement with Kabiranjan. PW-2 Niranjan Das has clarified that the land where his son was ploughing and that the house of the accused persons situated within same boundary. PW-3 Sachindra Das has also confirmed that the land where the occurrence took place is behind the house of accused persons. PW-4 Nanda Das has admitted that the accused persons used to ingress and egress from their house through the ridge by the side of the land where informant had been ploughing. So, from the above fact it has established that the land is not owned by informant Bhaskar Dutta. Moreover, the prosecution has also failed to establish if Bhaskar Dutta was possessing that land as because prosecution has failed to adduce the evidence of landowner Kabiranjan. Moreover, since it has been adduced in evidence that the accused persons has been using the place of the occurrence as their only way for ingress and egress as such the presence of the accused in that place cannot be termed as criminal trespass. So, I hereby hold that the prosecution has failed to bring home the charge under section 447/34 IPC against the accused persons and as such the first point for determination is decided in negative against the prosecution.

27. From the evidence on record it is reflexive of the fact that when PW- Bhaskar Das was ploughing the land at that point of time accused Sunil Das, Manik Das and Syamal Das caught hold of him and accused Sumon Das caused injury on his head and other parts of his body. When his father Niranjan Das (PW-2) and one Sachin Das (PW-3) came

to rescue him, accused Sunil Das cracked the head of his father by giving axe blow inflicting grievous hurt to him. But he has further clarified that his father had sustained injuries in the jostling occurred in the courtyard of accused persons.

28. PW-2 Niranjan Das has admitted in evidence to have not been present when the occurrence of 'mar-pit' took place and that when he arrived at the place of occurrence and tried to stop the quarrel there had been pushing and pulling going on. He has further averred that the accused persons had waylaid his son Bhaskar Das and upon hearing the shouts of his son, he went to the place of occurrence and freed him from the clutches of the accused persons, but accused Sunil Das assaulted him on his head as a result he sustained grievous injuries and fell down on the ground. PW-3 Sri Sachidra Das @ Sachin when came to the place of the occurrence both the parties had been found jostling and saw that the accused persons had been assaulting the informant. He and Nipen Das (PW-4) scolded the accused persons and saved the informant from the clutches of the accused persons but at that time, Niranjan Das came over there who was allegedly assaulted with an axe by accused Sunil Das. But he admitted to have not seen Joyarani and Anita Das present out there.

29. But PW-4 Sri Nipen Das has averred to have come to the place of the occurrence upon hearing screaming of Joyarani Das. He saw that Sumon Das, Sayamal Das and Sunil Das had grounded Bhaskar Das and they were on his body but he separated them and stopped them from fighting. Thereafter, Niranjan Das came there when accused Sunil Das gave an axe blow on the head of Niranjan Das causing hurt to him.

30. PW-5 Sri Nanda Das is the brother of informant Bhaskar Das, who came to the place of the occurrence with his father Niranjan Das (PW-2) and saw that the accused persons had been assaulting his brother Bhaskar. His father had set the accused persons apart from his brother but at that accused Sunil Das took away an axe from Sumon Das and hit his father on the head from backside for which his father

fell down. But in his cross-examination he clarified to have come to the place of the occurrence sometime after the hue and cry. According to him, after they left the place of occurrence there had been a pushing and pulling out there.

31. Further from the evidence of DW-2 Debo Bordoloi and DW-3 Juri Bordoloi have stated that it were the informant Bhaskar Das, his father Niranjan Das and his brother Nanda Das had been assaulting the accused persons in their courtyard. PW-5 Nanda Das has also admitted the fact that after his departure from the place of the occurrence i.e. the cultivation field another pushing and pulling incident took place. So, from the above assertion it has well established that two incidents took place i.e. one in the cultivation field and another in the house of the accused persons. Ext.B documents pertaining to GR 1628/2015 in which informant Bhaskar Das, Nanda Das and Niranjan Das had been implicated as accused is a pointer to that fact. It has also an admitted fact that accused persons had also filed a case against informant, his father Niranjan Das and brother Nanda Das in which they were acquitted. So, there is no gainsaying that there exists a hardcore enmity between the parties and as such it is incumbent to view their evidence in microscopic lens to wipe out all sorts of contradiction.

32. PW-2 Niranjan Das, PW-3 Sachin Das and PW-4 Nipen Das when came to the place of the occurrence the fighting had already started, so from their version it cannot be ascertained as to who initiated the fight. In this regard only the evidence of informant Bhaskar Das have to be relied upon to look for the fact as to who initiated the fighting. Since, it has come out in evidence that the accused persons had been using the land where informant Bhaskar Das had been ploughing as their only path of ingress and egress as such the act of Bhaskar Das is a clear act of provocation to the accused persons and his audacity is also an act of aggression on his (Bhaskar Das) part.

33. PW-3 Sachin Das and PW-4 Nipen Das stated to have come to the place of the occurrence together but Sachin Das did not see

Jayarani Das present out there, but PW-4 Nipen Das has saw her and in fact he came to the place of the occurrence after hearing the screaming of Jayarani. So, it is a contradictory stand of both these two material eye-witnesses. Almost all the PWs have stated that accused Sunil Das had assaulted PW-2 Niranjn Das with an axe, but PW-1 Bhaskar Das in his cross-examination has stated that Niranjn Das sustained those injuries by falling on the ground in the house of the Courtyard in the pushing and pulling. The I/O has admitted that informant told him that witness Nipan Das is his maternal uncle but this fact has been denied by witness Nipan Das when he was given a suggestion. So this hiding of fact also taints the version of PW-4 Nipan Das. The contradictory stand taken by PW-3 Sachin Das and PW-4 Nipan Das constrained me to view their versions with doubt, but the change of stance by PW-1 Bhaskar Das that his father Niranjn Das sustained the injuries by falling on the ground of the accused person had further aggravated my doubt. The degree of doubt to the prosecution case has further aggravated as the PW-7 Medical Officer has in his opinion has stated that if some one hit with sharp edge of the axe it would cause incise wound. But in the instant case Niranjn Das had sustained laceration injury which might have caused by falling on hard substance as per the version of PW-7 Medical Officer. In other words, there is a gray area in the prosecution case to the fact that accused Sunil Das had indeed assaulted Niranjn Das with an axe, but there is a room to believe that when Niranjn Das went to the house of the accused persons at that time in the jostling he might have fallen down on the ground and sustained those injuries.

34. The omega of the above discussion is that, the version of informant Bhaskar Das that he was initially been beaten by accused persons cannot be taken as gospel truth and when this fact as well as the fact that his father Niranjn Das had been assaulted with an axe is confronted with the version of other witnesses of the prosecution, some serious contradictions have been found which corrodes the prosecution version to the hilt. So, I am of the irrefragable opinion that the prosecution has failed to bring home the charge under section

323/34 IPC against the accused persons and as such the second point for determination is answered in negative against the prosecution as well.

**ORDER**

35. In the result, I hereby hold that the prosecution has failed to bring home the charge under section 447/323/34 IPC against accused Sri Sunil Das, Sri Shyamal Das, Sri Manik Das and Sri Suman Das and as such they are set at liberty forthwith.

36. Considering the facts and circumstances of the case, I hereby extend the bail-bonds of the acquitted persons for a further period of six months.

37. The judgment is delivered and operative part of the same is pronounced in the open court on this 18<sup>th</sup> day of April, 2019.

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Dictated & corrected by me-

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Contd. .... Appendix

**A P P E N D I X****WITNESSES FROM THE PROSECUTION SIDE**

Sri Bhaskar Das (PW-1)  
Sri Niranjan Das (PW-2)  
Sri Sachindra Das @ Sachin (PW-3)  
Sri Nipen Das (PW-4)  
Sri Nanda Das (PW-5)  
Sri Nikhil Rajkhowa (PW-6)  
Dr. Harpal Singh (PW-7)

**PROSECUTION EXHIBITS**

Ejhar (Ext-1)  
Extract copy of G.D. Entry (Ext-2)  
Sketch map (Ext-3)  
Charge sheet (Ext-4)  
Injury certificate (Ext-5)

**WITNESSES FROM THE DEFENCE SIDE**

Sri Syamal Das (DW-1)  
Sri Debo Bordoloi (DW-2)  
Smti. Juli Bordoloi (DW-3)

**DEFENCE EXHIBITS**

FIR certified copy (Ext-A)  
Certified copy (Ext-B)

**(Shri Narayan Kuri)**  
Chief Judicial Magistrate,  
Lakhimpur, North Lakhimpur

Transcribed & typed by-  
Sri Narayan Chetri, Stenographer