

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

G.R CASE NO: 1631 OF 2009
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI NABIN MORANG AND 4 ORS.

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

GR CASE NO: 1631 / 2009

U/S 324/34 OF I.P.C

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI NABIN MORANG AND 4 ORS.

PRESENT: MR. F.U. CHOUDHURY, AJS

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

CHARGE FRAMED ON : 25/08/2017
EVIDENCE RECORDED ON : 12/01/18, 18/04/18, 18/05/18
11/06/18.
ARGUMENT HEARD ON : 12/02/2020
JUDGMENT DELIVERED ON : 12/02/2020

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the F.I.R is that on 08.12.2009 at about 4.00 PM, all the five accused persons named in the F.I.R called informant's husband Sri Benu Mili to the house of accused Sri Nabin Morang and then stabbed on the head of informant's husband with a sharp weapon with the intention to kill him. The accused persons then left informant's husband on the side of road and fled away from the place of

occurrence. Subsequently, the neighbours saw informant's husband and accordingly sent him to North Lakhimpur Civil Hospital on 108 Ambulance. The informant thereafter lodged an FIR about the occurrence before the In-charge of Silonibari police out-post.

2. On receipt of the F.I.R, the I/C Silonibari police out-post forwarded the same to the O/C of North Lakhimpur police station. Accordingly, a case was registered being numbered as North Lakhimpur P.S Case No. 855/2009 and after investigation I.O of the case submitted charge sheet against accused persons Sri Nabin Morang, Sri Dilla Pawe, Sri Guna Taye, Sri Sorte Orang and Sri Phanidhar Basumutary for the offence punishable u/s 324/34 of IPC and summonses were issued to them. However, on the summonses were returned unserved and on the basis of report of the executing officer, NBWA along with proclamation were issued against all the five accused persons. Subsequently, accused Sri Nabin Morang appeared but the other accused persons remained absent and could not be arrested till then. As such, the case was split up against the remaining four accused vide order dated 25.08.2017.

3. Thereafter, copies of relevant documents were furnished to accused Sri Nabin Morang u/s 207 of CrPC. After hearing both sides and upon considering the materials in the case record, charge was framed for the offence punishable u/s 324/34 of IPC against accused Sri Nabin Morang. The charge was then read over and explained to the said accused to which he pleaded not guilty and stood to face the trial.

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

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

6. **POINT FOR DETERMINATION:**

(i) Whether on 08.12.2009 at about 4.00 PM at UjaniKhuti village under North Lakhimpur police station, accused Sri Nabin Morang in furtherance of his common intention with other four co-accused persons, stabbed on the head of informant's husband Sri BenuMili with a sharp weapon with the intention to cause hurt, and thereby caused injury, and thereby committed an offence punishable u/s 324/34 of IPC?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

7. As regards the aforesaid point for determination, the prosecution has examined victim Sri Benu Mili as PW-2. The PW-2 in his evidence-in-chief has stated that at the time of occurrence, he went to the house of accused in connection with his job. At that time the accused stabbed on his head from the backside with an axe, as a result of which blood oozed out from his head and he somehow managed to go back to his house and then he became senseless.

8. In his cross-examination, the PW-2 has specifically denied the suggestion of defence that he did not mention the aforesaid allegations in his statement before police. However, PW-6 ASI Jonminath Buragohain, who investigated this case, in his cross-examination has confirmed that the PW-2 did not mentioned the aforesaid allegation in the statement made before him/PW-6. In my opinion, the aforesaid allegation made by PW-2 is the crux of the alleged occurrence, and hence, had the occurrence took place as alleged then the PW-2 would have definitely mentioned those allegations in his very initial statement before I.O/PW6. Therefore, the omission of PW-2 to mention the aforesaid allegations in his statement before I.O is a material contradiction in view of section 162 of CrPC which creates doubt regarding the credibility of the aforesaid allegations.

9. In the above context, informant Smt. Subhadra Mili, who is the wife of victim/PW-2, in her evidence-in-chief has supported the case of prosecution by reiterating the aforesaid allegations made by PW-2. However, the PW-1 in her cross-examination has made it clear that she was at her home at the time of occurrence and she did not saw the alleged occurrence. As such, the allegations made by PW-1 in her evidence-in-chief are nothing but pieces of

hearsay evidence which cannot be believed unless corroborated by some other reliable evidence.

10. PW-3 Sri Rohit Mili and PW-4 Sri Kushal Morang in their respective evidence-in-chief have supported the case of prosecution by stating that the accused has hit informant's husband Sri Benu Mili on the head and caused injury. However, the PW-3 in his cross-examination has stated that he do not know that how Sri Benu Mili sustained injury, and said Benu Mili did not informed him (PW3) that who caused the injury to him (Benu Mili). Also, the PW-4 in his cross-examination has stated that he did not see the occurrence and he do not know why the occurrence took place. Therefore, from the foregoing evidence, it is clear that the PW-3 and PW-4 have not seen the actual occurrence, i.e. the accused causing injury to Sri Benu Mili by hitting with an axe, and as such, the aforesaid statements made by PW-3 and PW-4 in their respective evidence-in-chief are clearly hearsay evidence which cannot relied upon unless corroborated by some other reliable evidence.

11. In addition to the above, it is noticeable that PW1, PW2, PW3 & PW4 in their respective evidence have stated that about 8 to 12 stitches were given on the head injury of Sri Benu Mili. However, PW5 Dr. Subha Laxmi Deuri, who being the on duty medical officer examined Sri BenuMili in her evidence has not stated anything about any such stitch; rather as per PW-5 she found only lacerated injury on the right parietal region of scalp which was caused by blunt weapon. Therefore, it is evident that the findings of PW-5/M.O is inconsistent with the claim made by PW-1 to PW-4, and the same do not support the case of prosecution properly. In fact, the version deposed by PW-5 creates doubt as regards the credibility of the allegations made by PW1 to PW4.

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

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

ORDER

13. In view of the discussion made above and the decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Nobin Morang has committed the offence punishable under section 324/34 of I.P.C as alleged, and as such, the above named accused person is acquitted of the charge under section 324/34 of I.P.C on benefit of doubt 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 12th day of February, 2020.

The case is disposed of on contest.

F.U. Choudhury
Additional Chief Judicial Magistrate
North Lakhimpur

APPENDIX

- (A) PROSECUTION EXHIBITS
Exhibit.1 – F.I.R
Exhibit.2 – Injury report
Exhibit.3 – Sketch Map
Exhibit.4 – Charge Sheet.
- (B) DEFENCE EXHIBITS
Nil
- (C) PROSECUTION WITNESSES
P.W. 1 – Smt. Subhadra Mili
P.W. 2 – Sri Benu Mili
P.W. 3 – Sri Rohit Mili
P.W. 4 – Sri Kushal Morang
P.W. 5 – Dr. Subha Laxmi Deuri
P.W. 6 – Sri Jonminath Buragohain (I.O)
- (D) DEFENCE WITNESSES
Nil

F.U. Choudhury

Additional Chief Judicial Magistrate

North Lakhimpur