

**IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS,
LAKHIMPUR, NORTH LAKHIMPUR.**

GR CASE NO.3507/2017
U/s 326/506 IPC

PRESENT:

SMT. SWEETY BHUYAN
Judicial Magistrate 1st Class
Lakhimpur, North Lakhimpur.

PARTIES:

STATE OF ASSAM
VS
BIJAY TALUKDAR @ BABU

..... **ACCUSED PERSON**

Appearance:

For the State: MR. JANGKI DOLEY

For the accused: MR. APURBA JYOTI SARMA

Dates of Evidences: 28.03.2019, 03.05.2019,
13.06.2019, 27.08.2019,
24.10.2019

Date of Argument: 09.01.2020

Date of Judgment: 01.02.2020

(The date of judgment was fixed on 20.01.2020 but on that day the accused remained absent with steps, as such, the next date was fixed on 28.01.2020 and on that date it was declared as government holiday and, as such, the case record was put up on the next open day, i.e., 30.01.2020 and the next date for judgment was fixed on 01.02.2020)

J U D G M E N T

- 1.** The accused person, namely, **Bijay Talukdar @ Babu**, Son of Sri Hari Talukdas, resident of village- Bowalguri, P.S.- North Lakhimpur, in the District of Lakhimpur, here in this case has been put to trial to answer the charges for the offence Punishable under section 326/506 of IPC.
- 2.** The prosecution case in brief is that on 09.12.2017 at about 9:30 A.M. one broiler chick entered into the boundary of the informant and his dog killed it. As such, his elder brother went to give Rs.30/- to the accused persons named in the ejahar as a compensation for their loss, but they did not accept it and they came carrying lathi in their hands and assaulted the wife of the informant Gita Barek and broke her left shoulder. They attacked her by forming a group and when the informant went to stop them, the accused Babu Talukdar punched him on his face. The entire incident took place in the courtyard of the house of the informant. The accused also threatened to kill them wherever he found them. Hence, the case, and it was registered as North Lakhimpur Police Station Case No.1497/2017 under Sections 447/325/323/506/34 of the Indian Penal Code against Bijay Talukdar @ Babu, Bishal Talukdar and Smt. Bobita Talukdar,

named in the ejahar. The Investigating Officer submitted Charge Sheet against the accused person Bijay Talukdar @ Babu under Sections 447/325/506 of the Indian Penal Code.

3. After perusing CR, formal charges under Sections 326/506 of the Indian Penal Code were framed and read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. In support of the case, the prosecution has adduced 7(seven) PWs. The statement of the accused was recorded under Section 313 Cr.P.C. in which the accused person denied of committing the alleged offence and also denied to adduce evidence in his support.
5. After perusing the case record and hearing both sides the following points of determination are framed:

(i) Whether the accused person, on 09.12.2017 at about 7:30 A.M. at Bowalguri, voluntarily caused grievous hurt to the wife of the informant, namely, Gita Barik, by means of a stick which if used as a weapon of offence is likely to cause death, and thereby committed offence under Section **326** of IPC?

(ii) Whether the accused person, on 09.12.2017 at about 7:30 A.M. at Bowalguri, criminally intimidated the informant and his wife with the threatening to cause death, and thereby committed offence under Section **506** of the Indian Penal Code?

Decisions and Reasons for decision:

6. I have heard the argument from both sides.

7. Point for determination no.1 is : *Whether the accused person, on 09.12.2017 at about 7:30 A.M. at Bowalguri, voluntarily caused grievous hurt to the wife of the informant, namely, Gita Barik, by means of a stick which if used as a weapon of offence is likely to cause death, and thereby committed offence under Section **326** of IPC?*

The informant stated in his ejahar that the accused person with a lathi hit on the right shoulder of the wife of the informant, namely, Gita Barek which was fractured and she sustained grievous injuries.

The informant in his evidence as PW1 stated that on the day of the incident, the accused alongwith his wife Babita Talukdar and brother Bishal Talukdar came to the courtyard of

the informant and assaulted his wife Gita Barek and broke her right hand.

The PW2, who is the wife of the informant/victim, stated in her evidence that on the day of the incident, the accused alongwith his wife Babita Talukdar and brother Bishal Talukdar came to their courtyard carrying bamboo stick and assaulted her and broke her right shoulder and backside and head.

The PW3, who is the neighbour of the informant and the accused person, stated in her evidence that on the day of the incident, there was a quarrel between the informant and the accused. The accused assaulted the informant with stick and also assaulted the wife of the informant on her left hand, which was fractured. The PW3 saw the incident herself and they stopped the quarrel.

The PW4, who is the neighbour of the informant and the accused person, stated in her evidence that on the day of the incident, she was cooking inside her house and then she heard noises outside and saw that the informant and the accused were quarreling and thereafter, she went inside. Later on, she heard that the dog of the informant ate one chicken of the accused due to which the quarrel took place.

The PW5, who is the neighbour of the informant and the accused person, stated in her evidence that at the time of the incident, she was inside her house and then she heard noises outside and saw that the informant and the accused were quarreling and thereafter, she went inside. Later on, she heard that the quarrel was in connection with a chicken.

The PW6, who is the Medical Officer, stated that on 09.12.2017 he examined Gita Barek and on examination he found : tenderness with restricted movement of right shoulder joint. Right shoulder joint on X-ray there was dislocation. The injuries were grievous caused by blunt weapon. Age of injury was fresh. Tenderness on the right hip, which was simple, caused by blunt weapon and the age of injury was fresh. Sub conjunctival hemorrhage on the right eye, which was simple, caused by blunt and the age of injury was fresh.

The informant and his wife/victim alleged that the accused assaulted the wife of the informant and broke her right shoulder. The PW3 who is a neighbour of the accused claims that she saw the incident and saw that the accused assaulted the wife of the informant on her left hand. The PW4 deposed that she saw the quarrel between the informant and the accused and that as the dog of the informant ate the chicken of the accused, the quarrel

took place. The PW5 also deposed that she saw the quarrel between both the parties and she heard that the quarrel was in connection with a chicken.

Hence, from the evidences, it can be known that there was a quarrel between both the parties in connection with a chicken. The PW3 who is an independent witness saw the accused assaulting Gita Barek. The other PWs although did not depose about any assault, but they have deposed about the quarrel between both the parties thereby making their evidences circumstantial to the alleged incident. The medical evidence shows that the victim sustained dislocation on her right shoulder joint and the alleged assault as per the medical report was on 09.12.2017, i.e., on the day as alleged by the informant. The examination was done at about 9:35 A.M. on the said date and the ejahar states the time of the incident to be 7:30 A.M. on the same day. The discrepancy as to the deposition of PW3 that the accused assaulted the wife of the informant on her left hand instead of right hand is minor as because the PW3 being a neighbour although saw the incident but it is not necessary that she should have remembered the exact hand on which the victim was assaulted. It is sufficient that she deposed that she saw the accused assaulting the victim on her hand. The defence

could not rebut the fact that the accused assaulted the wife of the informant. Considering the nature of evidences adduced by the prosecution, it can be said that the prosecution has sufficiently been able to prove the guilt of the accused under Section 326 of the Indian Penal Code beyond all reasonable doubts as dislocation of a bone is a grievous hurt as described under Section 320 of the Indian Penal Code and thereby establishing that the accused is guilty of the offence alleged by the informant.

8. Point for determination no.2 is : *Whether the accused person, on 09.12.2017 at about 7:30 A.M. at Bowalguri, criminally intimidated the informant and his wife with the threatening to cause death, and thereby committed offence under Section **506** of the Indian Penal Code?*

The informant stated in his ejahar that on the day of the incident the accused also threatened to kill them wherever he found them.

The informant in his evidence as PW1 stated that on the day of the incident the accused threatened that wherever he will find them, he will assault them.

The PW2, who is the wife of the informant/victim, deposed that on the day of the incident, the accused person before

leaving threatened that he will kill them wherever he will find them.

The PW3, PW4 and PW5 did not mention about any criminal intimidation or threatening by the accused against the informant and his wife.

As such, the evidence of the prosecution has fallen insufficient to prove that the accused had criminally intimidated the informant and his wife. The deposition of the informant and his wife unsupported by any independent witness are not found sufficient enough to hold that the prosecution has been able to prove the guilt of the accused under Section 506 of the Indian Penal Code beyond all reasonable doubts thereby making the accused not guilty of the said offence.

JUDICIAL FINDING:

In view of the above discussions, it is held that the prosecution has been able to prove the guilt of the accused person Bijay Talukdar @ Babu beyond all reasonable doubts under Section 326 IPC, and thereby convicted of the said charge.

It is also held that the prosecution has not been able to prove the guilt of the accused person Bijay Talukdar @ Babu

beyond all reasonable doubts under Section 506 IPC, and thereby acquitted of the said charge.

THE PROBATION OF OFFENDERS ACT, 1958:

I have considered the case of the convict under the germane provision of THE PROBATION OF OFFENDERS ACT, 1958. The accused person has been found guilty of assaulting a woman. As such, to curtail the commission of such offences against any woman, I find no reason to release the accused person on probation.

SENTENCE HEARING:

I have heard the convict on the points of sentencing. The convict prayed for mercy on the ground that he is the only bread earner of his family consisting of his old parents, a minor brother, a sister studying in H.S. 2nd year, a wife and minor son aged about 18 months and that all are dependent upon him for their livelihood.

I have considered all the aspects together. And conclude my judgment by passing the following order:

ORDER

The judgment is pronounced in the open court today.

The accused, Bijay Talukdar @ Babu, is hereby held guilty under Section 326 IPC and convicted thereon. The accused is hereby sentenced to simple imprisonment for six months and a fine of Rs.2000/- for the said offence and in default of payment of fine to undergo simple imprisonment for fifteen days.

The accused, Bijay Talukdar @ Babu, is hereby not found guilty under Section 506 IPC and acquitted of the said charge.

The case is disposed of on contest.

Furnish a free copy of the judgment to the accused.

**Given under my hand and seal of this court on 1st
February, 2020.**

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
Lakhimpur, North Lakhimpur

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC,NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)

APPENDIX

Prosecution witnesses

1. PW1 : SRI BULBUL BAREK
2. PW2 : SMT. GITA BAREK
3. PW3 : SMT. MONI NATH
4. PW4 : SMT. MAMPI DAS
5. PW5 : SMT. RINA DAS
6. PW6 : DR. BHUPEN SAIKIA
7. PW7 : ASI RAJIB DAS

Defence witnesses

NIL

Documents exhibited by the prosecution

1. EXT.1: EJA HAR
2. EXT.2: INJURY CERTIFICATE
3. EXT.3: SKETCH MAP
4. EXT.4: CHARGESHEET

Documents exhibited by the Defence

Nil.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
Lakhimpur, North Lakhimpur

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC,NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)