

District :Lakhimpur

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE, (M)  
DHAKUAKHANA, LAKHIMPUR**

**G.R. case no. 45 of 2016  
U/S 341/326/34 IPC**

State of Assam

VS

1. Sri BichitraHazarika
2. SmtPadumiHazarika
3. Sri Gigi Hazarika
4. Sri PapuHazarika

.....Accused persons

**Present:Smt. SaraswatiJohoriPadun, LL.M, AJS,  
Sub-Divisional Judicial Magistrate (M)  
Dhakuakhana, Lakhimpur**

**Advocates :**

Mr.PrasantaHiloidori, Ld. Additional APP for the Prosecution  
Mr.AnjanjyotiChamuah, Ld. Defence Counsel

Evidence recorded on: 08.09.2016, 22.09.2016, 14.10.2016,  
19.01.2017, 12.11.2018

Argument heard on: 03.02.2020

Judgment delivered on: 20.02.2020

## **JUDGMENT**

1. The prosecution case arose from an ejahar lodged by one Sri NirmalHazarika alleging that his son Sri BhabeshHazarika is a daily wage labour and on 23.02.2016 at about 6:00 PM while he was returning home from work the accused persons restrained him in the lane in front of their house and attacked him with a sharp weapon and bamboo. As a result he sustained grievous injury on his person. Hence this case. lane
2. In connection with the aforesaid incident, the informant lodged an ejahar at Dhakuakhana P.S. On receipt of the FIR, the police registered Dhakuakhana P.S case 32/2016 U/S 341/325/326/34 IPC and conducted investigation into the matter. On completion of investigation, the police laid charge sheet against the accused persons u/s 341/326/34 IPC.
3. In due course the accused persons entered their appearance in response to the process issued. Copies of relevant documents were furnished to the accused in accordance with Sec. 207 CrPC. Formal charge of offence u/s 341/326/34 IPC was framed against the accused persons. The accused persons pleaded not guilty on charge being read over to them and claimed to be tried.
4. The prosecution side examined as many as ten witnesses including the victim, the I.O. and the M.O. The statement of accused persons U/S 313(1)(b) Cr.P.C was recorded. Their plea is of total denial. But as they refused to adduce evidence in defence the defence evidence was closed.

### **Points for determinations :**

5. The following point is required to be determined in this case:
  - I. Whether the accused persons Sri BichitraHazarika, SmtPadumiHazarika, Sri Gigi Hazarika and Sri PapuHazarika on 23.02.2016 at about 6:00 PM in the lane in front of the gate of their

house in furtherance of common intention wrongfully restrained the alleged victim Sri BhabeshHazarikaand thereby committed an offence punishable U/S 341/34 IPC ?

- II. Whether the accused persons above named on the same date, time and place in furtherance of their common intention voluntarily caused grievous hurt to Sri BhabeshHazarika by means of sharp weapon and and thereby committed an offence punishable U/S 326/34 IPC ?

**Discussion, Decisions and reason thereof:**

6. I have gone through the evidence on record and heard the arguments of learned counsels on both sides and I shall now discuss and decide the points formulated.
7. PW1 Sri NirmalHazarika in his evidence stated that Sri BhabeshHazarika is his son. He stated that the incident took place about 6 month ago at about 6:00 PM inthe lane in front of the house of the accused persons while his son was returning from work. He was at his shop at that time. At that time the accused SmtPadumi asked for payment of Rs.50/ from his sonBhabeshHazarikaagainst the purchase of chicken meat by him. He told her that he will not be able to pay the amount on that day. At which accused Padumi directed papu and Gigi to hit his son. He stated that Gigi assaulted his son with a 'Mit da' and Papu assaulted him with an iron rod. He stated that he had seen the incident. He was under the impression that accused were just kidding with his son. He stated that he took his injured son to his house. On the day of the incident he informed the V.D.P. and took his son to the police who got him medically examined at Dhakuakhana medical which referred his son to Dhemaji Hospital. The Doctor at Dhemaji hospital referredhim to Dibrugarh hospital. Thereafter he took him to Dibrugarh by 108 ambulance. He exhibited his ejahar as Ext-1 and identified his signature as Ext-1(1).

During his cross-examination PW-1 stated that the police recorded his statement after 21 to 22 days of the incident at his house. He stated that there is no electricity connection at their village. He does not know what the police had seized from the place of occurrence. He denied to the suggestion that he did not tell the police that accused has asked for Rs.50/- and about purchasing of hen by his son. He denied to the suggestion that son of the accused SmtBichitraHazarika does not do business of sale and purchase of hen/chicken. He denied to the suggestion that BichitraHazarika and PapuHazarika were not present at the place of occurrence on that day. He stated that accused was to get Rs.50/- from his son for selling chicken. He denied to the suggestion that his son in an inebriated condition verbally abused the accused Padumi. He stated that there was only a scuffle between Gigi Hazarika and his son. He denied suggestion that his son sustained injury by falling.

8. PW-2 Sri BhabeshHazarika in his evidence in chief stated that informant is his father. He stated that incident took place about 6 month ago from the date of recording of evidence about 6:00 PM in the evening. He stated that 3 to 4 days before the incident he had purchased a chicken meat from SmtPadumiHazarika with a condition that he will pay the price later on. On the day of incident while he was returning home from his daily work the accused SmtPadumiHazarika asked for the payment of the said money. In reply he told her that he will not be able to pay the money at that moment and he may be able to pay on the next day. At that time the accused Padumi directed the accused Papu and Gigi to assault him. PW-2 further stated that Gigi assaulted him with a "mit da" on his left shoulder and Papu assaulted him with an iron rod on left side of his head. As a result he became unconscious. He regained his senses at Dibrugarh medical.

During his cross-examination PW-2 stated that the police recorded his statement after returning from Dibrugarh medical at his house. He denied to the suggestion that he did not tell the police that accused Padumi had given him chicken meat. He denied to the suggestion that accused Sri Gigi Hazarika

and SmtBichitraHazarika were not present at the place of occurrence on that day. He denied to the suggestion he had verbally abused accused SmtPadumiHazarika inebriated condition. He denied to the suggestion that he misbehaved with SmtPadumiHazarika. He denied to the suggestion that they have filed false case about the accused persons.

9. PW-3 SmtDuluHazarika in her evidence in chief stated that informant is her father-in-law and victim injured is her brother-in-law. PW-3 stated that he cannot say about the date of the incident but she stated that about 3 months ago at about 6:00 PM she heard her brother-in-law shout "MaaMorilu". When she came out she saw accused Sri Gigi Hazarika was holding one with meat da in his hand and Sri PapuHazarika was holding iron rod in his hand. The injured was lying on the ground. The accused Bichitra and Padumi were standing nearby. She told her father-in-law that injured had died. He further stated that her father-in-law, Titho and Sanatan took the injured home and thereafter took him to the medical.

During her cross-examination PW-3 stated that police interrogated her the next day after the incident. He denied to the suggestion that BichitraHazarika and Gigi Hazarika were not present at the place of occurrence on that day. He denied to the suggestion that she did not tell the police that she saw mit da in the hands of Gigi. She denied to the suggestion that the injured was in a drunken state at the time of occurrence. She denied to the suggestion that she deposed falsely in favour of the informant.

10. PW-4 Sri TithowBharali in his evidence in chief stated that he knows both the accused persons and the informant. He stated that incident took place at about 6:30 PM about 6 month ago. He was at the shop of informant at the time of occurrence. He stated that injured is his collegeau. He stated that whileBhabeshwas returning home from work the accused persons assaulted him. He stated that Gigi and Papu assaulted the injured. He stated that he had seen the incident from a distance. He went to the place of occurrence after hearing hue and cry and saw that injured was lying in the house of the

accused Sri BichitraHazarika. Thereafter he along with Gopal, Nitul and Punadhar took the injured to the hospital.

During his cross-examination PW-4 stated that informant Nirmal was with him on the day of occurrence. He denied to the suggestion that Bichitra and Papu were not present at the place of occurrence on that day. He denied to the suggestion that he did not go to the place of occurrence on that day. PW-4 stated that he very blurrily saw the incident. He denied to the suggestion that he reached the place of occurrence after the incident. He stated that it takes about half an hour to reach the place of occurrence by magic vehicle. After one hour of the incident they took the injured to the medical. He denied to the suggestion that accused Gigi did not assaultBhabesh.

11. PW-5 Sri DitulHazarika in his evidence in chief stated that he knows both the accused persons and the informant is his father and injured is his younger brother. PW-5 stated that he went to the place of occurrence after hearing a hue and cry. The injured told him that Gigi had cut him. He stated that they first went to the police station and thereafter to the medical. PW-5 stated at present the injured victim cannot do any work due to his injury on the left shoulder.

During his cross-examination PW-5 stated that it took them about one and a half hour to take the injured to the hospital. He stated that police recorded his statement after three days of the incident. He denied to the suggestion that SmtBichitrahazarika was not present at the place of occurrence. He denied to the suggestion that injured had verbally abused the accused SmtPadumiHazarika.

12. PW-6 Sri GopalHararika in his evidence in chief stated that he was at the shop of the informant at the time of the incident. PW-6 stated that he went to the place of occurrence after hearing hue and cry. The injured told him that Gigi had cut him. He stated that they first went to the police station and thereafter to the medical. PW-5 stated at present the injured victim cannot do any work due to his injury on the left shoulder. Due to which he became handicap. He stated that he did not see the incident himself.

During his cross-examination he stated that the police did not record his statement.

13. PW-7 Sri SanatanBharali in his evidence in chief stated that he knows the accused persons, informant and the injured. He stated that the incident took place six months ago from the date of evidence at about 6:00 PM in the evening in the lane in front of the house of Bhabesh. At that time he was at the shop of the informant. Bhabesh and accused persons are neighbours and their house are adjacent to each other. He saw blood on the injured and he was lying on the ground. The injured told him that accused Gigi had assaulted him with a dao on his left shoulder. Thereafter, they took him to the medical. First they took the injured to the Dhemajiand thereafter to the Dibrugarh medical. He accompanied them to the Dhemaji medical. At the present that the injured is not in a position to work.

During his cross-examination he stated that he has not seen the occurrence but has come to know about it from the injured. Police took his statement after 3 days of the incident.

14. PW-8 is the M.O. Sri IshankarSaikiawho in his evidence in chief stated that on 25.02.2016 he was in Assam Medical College as Registrar of Surgery. He stated that on that day one Sri BhabeshHazarika was admitted in their hospital at (ML) OPD no.0359/2016. On examination he found that there was an allege history of physical assault on 23.02.2016 at around 6:00 PM at Nakapahua. He stated that there was no history of lossof consciousness vomiting and ENT bleeding. On his examination his pulse was 80 p/m, BP was 130/70 M/hg.On his examination of the chest, cardio vascular system, central nervous system and the abdomen, the findings were within normal limits. He further stated that there was pre stitch wound over left shoulder measuring 5 Cm insize. He stated that on ultra-sonography of the abdomen there was pleural collection (hematomas) C.T. scan of brain was within normal limit. The injury was of grievous in nature and caused by penetrating type of weapon. The victim was discharged on 15.03.2016.He exhibited the

medical report of BhabeshHazarika as Ext-2 and identified his signature on the report as Ext-2(1).

During his cross-examination PW-8 stated that as per medical report there was no permanent disfiguration of the victim/patient. He stated that there was no bone cut injury or fracture. He denied to the suggestion that the patient was not admitted in the hospital for continuous period of 20 days. He further stated that there was no phythalogy and medico legal request in the in the medical report. He denied to the suggestion is that he could not find the injury and stitch on the body.

15. PW9 another M.O. Dr.Monudoley in his evidence-in-chief stated that on 23.02.2016 on examination of Sri Bhabesh Das he found incise wound on his person and it was grievous in nature caused by sharp cutting weapon. He stated that injured was brought by Home Guard Biren. He exhibited the medical report of the injured prepared by him as Ext.3 and identified his signature on the report as Ext.3(1).

16. PW-10 ASI Umesh Borah in his evidence-in-chief stated that initially the case was investigated by ASI SaratKakati who had died. He stated that he knows his signature and handwriting as he was his colleague. After the death of earlier I.O. the then O/C of the dhakuakhana P.S. handed over the case diary to PW-10 who completed the investigation and submitted chargesheet against the accused persons u/s 341/326/34 IPC. He exhibited Sketch map of the place of occurrence as Ext.4 and identified the signature of deceased I.O. as Ext.4(1). He exhibited the charge sheet as Ext.5 and identified his signature as Ext.5(1).

During his cross-examination PW-10 stated that no weapon was seized in this case. He stated that the incident occurred on the road. That the statement of NirmalHazarika and BhabeshHazarika were recorded at the police station. The statement of Dulu Das was recorded at the place of occurrence. He stated that PW1 and PW2 did not state before him about the purchase of chicken by PW2 from PadumiHazarika.

17. Let us now discuss the evidence described above to conclude this case. The main person in this case is the injured himself. In this case the injured victim Sri Bhabesh Hazarika has been examined as PW2. The ejahar was filed by his father Sri Nirmal Hazarika. PW-2 in his evidence stated that Gigi assaulted him with a "mit da" on his left shoulder and Papu assaulted him with an iron rod on left side of his head. PW1 reiterated the evidence of the PW2. PW3 stated that after hearing the PW2 shout "Maa Morilu" when she came out she saw accused Sri Gigi Hazarika was holding one with meat da in his hand and Sri Papu Hazarika was holding iron rod in his hand. The injured was lying on the ground. PW5 and PW6 stated that PW2 told them that Gigi had cut him. PW7 stated that Bhabesh told him that Gigi had cut him on his left shoulder. The defence side could not shake the evidence of the PW1 to PW9 by way of cross-examination. The accused persons also did not adduce any evidence in defence. The accused persons could not explain as to how the PW2 sustained cut injury on his left arm with a sharp weapon. The first medical report dated 23.02.2016 is exhibited as Ext.3 by the PW9. The PW9 has reiterated the Ext.3. The defence counsel did not put much question to him. From perusal of the Ext.3 it reveals that the PW2 was examined by the PW9 on 23.02.2016 and found incise wound of the size 3cmx3cm on the left upper arm. The Ext.3 also revealed that the injured Sri Bhabesh Hazarika was administered five stitches on left upper arm. The evidence of injured and the doctor who examined him could not be tainted and impeached by the defence side. However, the weapon of assault was not seized by the then I.O. But that is not sufficient to discredit the evidence of the injured, the eye witnesses and the doctor. Regarding the seizure of weapon of offence it is settled position of law that non recovery of weapon will not be fatal to the case of the prosecution if the evidence of the injured and other ocular witnesses inspires confidence as to their credibility and reliability. In the instant case after considering the entire evidence on record it is clear as crystal that accused Sri Gigi Hazarika assaulted the injured Sri Bhabesh Hazarika with a sharp weapon after wrongfully restraining him. The guilt of remaining accused persons

under charged sections could not be established by the prosecution beyond all reasonable doubt. Although the injured PW2 stated that accused Papu assaulted him with an iron rod on his head. The medical report i.e., Ext.3 does not reveal any injury on his head further the Ext.2 also shows that the CT scan report was normal. Thus, the prosecution could not prove that Papu or remaining accused persons assaulted Bhabesh with iron rod.

Thus, on the basis of above discussion I hold that the prosecution has failed to prove offence charged Section 341/326/34 IPC against the accused Sri BichitraHazarika, Sri PapuHazarika and Smt. PadumiHazarika. As such they are acquitted of the offence charged and set at liberty forthwith. But the accused Sri Gigi Hazarikais held guilty of committing offence under Section 341/324 IPC. Although charge against all the accused were framed for offence under Section 326 IPC. But the injury as proved by the prosecution against the accused Sri Gigi Hazarikadoes not fall under the definition of grievous hurt provided under Section 320 IPC as the injury report only reflect incise wound. Although the Doctor opined that the injury was of grievous in nature. But the injury to be grievous in law must fall under the definition of grievous hurt under Section 320 IPC. There is nothing on record to show that the injured Sri BhabeshHazarikasustained or suffered grievous hurt. Considering the same and in exercise of provision of Section 222(2) of the code of Criminal Procedure the accused Sri BhabeshHazarika is convicted of offence punishable under Section 324 IPC and 341 IPC.

#### **Sentence hearing**

18. Heard the convicts Sri Gigi Hazarika on the point of sentence. The convict prays for leniency stating that he is a fish seller and is living hand to mouth and that it is his first offence.

#### **Probation**

19. Considering the serious nature of the offences I am not inclined to grant benefit of the Probation of offenders Act to convicts. However, considering the fact that it was his first offence instead of sentencing the convicts to imprisonment I am of the opinion that imposition of fine will serve the ends of justice.

**Sentence and order**

20. Considering the discussion and reasons given for decisions arrived at above the convict Sri Gigi Hazarikais sentenced to pay a fine of Rs.2500/- for offence punishable under Section 324 IPC and in default to undergo simple imprisonment for a period of three month. The convict Sri Gigi HazarikaHira is sentenced to pay a fine of Rs. 500/- for offence punishable under Section 341 and in default to undergo simple imprisonment for fifteen days. The period of detention already undergone, if any, by the convict in jail custody during trial and investigation of the case shall be set off as per provision of section 428 of the Code of Criminal Procedure.

The case is disposed of on contest.

21. Let a free copy of judgment be furnished to the convicts forthwith as per provision of Section 363(1) of the Code of Criminal Procedure.

22. The judgment is delivered and pronounced in open Court in the presence of both sides and is given under my hand and seal of this Court this 20<sup>th</sup> day of February 2010 at Dhakuakhana, Lakhimpur.

SaraswatiJohoriPadun

**Sub-Divisional Judicial Magistrate (M)**

**Dhakuakhana, Lakhimpur**

## **APPENDIX**

- A. Prosecution witness  
PW1- Sri.NirmalHazarika  
PW2- Sri.BhabeshHazarika  
PW3- Smt. DuluHazarika  
PW4- Sri.TitowBharali  
PW5- Sri.DitulHazarika  
PW6- Sri.GopalHazarika  
PW7- Sri.SanatanBharali  
PW8- Sri.IshankurSaikia  
PW9- Sri.Dr.MonuDoley  
PW10- ASI Sri.Umesh Borah
- B. Defence Witness & Exhibits  
Nil
- C. Prosecution's Exhibits  
1. Ejahar.  
2. Medical Report.  
3. Medical Report.  
4. Sketch-Map.  
5. Charge-Sheet.
- D. Court's Exhibit  
Nil
- E. Defence exhibit  
None
- F. Defence Witness  
None

G.R.45/2016

20.02.2020 : The accused persons are present.

On the basis of above discussion I hold that the prosecution has failed to prove offence charged Section 341/326/34 IPC against the accused Sri BichitraHazarika, Sri PapuHazarika and Smt. PadumiHazarika. As such they are acquitted of the offence charged and set at liberty forthwith. But the accused Sri Gigi Hazarikais held guilty of committing offence under Section 341/324 IPC. Although charge against all the accused were framed for offence under Section 326 IPC. But the injury as proved by the prosecution against the accused Sri Gigi Hazarikadoes not fall under the definition of grievous hurt provided under Section 320 IPC as the injury report only reflect incise wound. Although the Doctor opined that the injury was of grievous in nature. But the injury to be grievous in law must fall under the definition of grievous hurt under Section 320 IPC. There is nothing on record to show that the injured Sri BhabeshHazarikasustained or suffered grievous hurt. Considering the same and in exercise of provision of Section 222(2) of the code of Criminal Procedure the accused Sri BhabeshHazarika is convicted of offence punishable under Section 324 IPC and 341 IPC.

#### **Sentence hearing**

Heard the convicts Sri Gigi Hazarika on the point of sentence. The convict prays for leniency stating that he is a fish seller and is living hand to mouth and that it is his first offence.

#### **Probation**

Considering the serious nature of the offences I am not inclined to grant benefit of the Probation of offenders Act to convicts. However, considering the fact that it was his first offence instead of sentencing the convicts to imprisonment I am of the opinion that imposition of fine will serve the ends of justice.

#### **Sentence and order**

Considering the discussion and reasons given for decisions arrived at above the convict Sri Gigi Hazarikais sentenced to pay a fine of Rs.2500/- for offence punishable under Section 324 IPC and in default to undergo simple

imprisonment for a period of three month. The convict Sri Gigi HazarikaHira is sentenced to pay a fine of Rs. 500/- for offence punishable under Section 341 and in default to undergo simple imprisonment for fifteen days.The period of detention already undergone, if any, by the convict in jail custody during trial and investigation of the case shall be set off as per provision of section 428 of the Code of Criminal Procedure.

The case is disposed of on contest.

Let a free copy of judgment be furnished to the convicts forthwith as per provision of Section 363(1) of the Code of Criminal Procedure.

The judgment is delivered and pronounced in open Court in the presence of both sides and is given under my hand and seal of this Court this 20<sup>th</sup> day of February 2010 at Dhakuakhana, Lakhimpur.

SDJM(M), Dhakuakhana  
Lakhimpur, Assam.

Later on,  
20.02.2020

The convict Sri Gigi Hazarika vide petition no. 327/2020 prayed for another date to pay the fine imposed.

Heard and allowed.

Fixed 05.03.2020 for payment of fine.