

**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. 1589/2014**

U/s 324, IPC

**State of Assam**

**-Vs-**

**Smti. Gita Shah**

W/O: Late Bharat Shah

R/O: 2 No. Parbatipur Banderdewa

P/S: Bihpuria

District: Lakhimpur, Assam

.....Accused person

Date of framing of charge : 11.08.2015  
Dates of recording evidence of PWs : 06.12.2016, 24.03.2017,  
16.06.2017, 08.03.2018,  
16.03.2018  
Date of examination u/s 313, Cr.P.C. : 22.06.2018  
Date of recording evidence of DW : 12.02.2019  
Date of Argument : 01.03.2019  
Date of judgment : **20.03.2019**

**Advocates appeared in the case:-**

Sri Prasanta Dutta, Addl. P.P., for the State

Smti. Minakhi Dutta Gohain Baruah, Advocate, for the accused person

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

1. The factual matrix of the prosecution is that on 13.08.2014 informant Sri Kashmir Chetry Koirala lodged an FIR with the In-charge of Banderdewa Police Outpost under Bihpuria Police Station alleging that at about 4:00 PM on 13.08.2014 he along with his father Sri Prem

Bahadur Chetry and his son were waiting at the Bus counter in order to go to Dhekiajuli when his mother Smti. Ganga Chetry went to the complex where shop of accused Smti. Gita Shah is located. Her mother had been talking with Sri Raju Chetry in his shop regarding mobile phone, at that time, accused Smti. Gita Shah armed with an iron lever shop assaulted his mother, as a result, his mother sustained grievous injury on her head. Hence, the case.

2. On receipt of the ejahar, the In-charge of Banderdewa Police Outpost effected a G.D. Entry vide Banderdewa O.P. G.D.E. No. 228 dated 13.08.2014 and forwarded the ejahar to the Officer-in-charge of Bihpuria Police Station for registering a case under proper section of law. Accordingly, the Officer-in-charge, Bihpuria Police Station, after receiving the ejahar, registered a case vide Bihpuria P.S. Case No. 271/2014, under section 325 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 324 of the Indian Penal Code against accused person Smti. Gita Shah to stand trial in the Court.

3. On receipt of the charge-sheet, cognizance of the offence under section 324 of the Indian Penal Code was taken as per section 190(1) (b), Cr.P.C. The accused person entered his appearance before the Court after receiving the summons. Copies were furnished to the accused person as per provision contained in section 207, Cr.P.C. Considering the material on record and upon hearing the learned lawyers of both the sides charge has been framed under section 324 of the Indian penal Code. The particular of charge when being read over and explained the accused person she pleaded not guilty and claimed to be tried.

**Point for determination**

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

Whether accused person, at about 4:00 PM, on 13.08.2014, at Parbatipur Banderdewa, under Bihpuria Police Station, voluntarily caused hurt to Smti. Ganga Chetry by means of an iron lever i.e. a sharp cutting weapon, and thereby committed an offence punishable u/s 324 of the Indian Penal Code ?

5. During the trial the Prosecution side could examine 6 (six) witnesses namely Sri Kashmir Koirala Chetry (PW-1), Smti. Ganga Koirala (PW-2), Smti. Ganga Koirala (PW-3), Smti. Rupa Ranjan (PW-4), Dr. (Mrs.) Kalpana Goswami (PW-5) and ASI Ajit Kumar Sarkar (PW-6). The prosecution has also exhibited 6 (six) documents (Shown in the Annexure appended below). The defence has cross-examined prosecution witnesses and thereafter all the incriminating materials appeared in the evidence of the prosecution witnesses against accused person was put to her explanation under section 313, Cr.P.C. The defence plea was in completed denial. The defence examined one witness namely Sri Raju Chetry as DW-1.

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

**DISCUSSION, DECISION AND REASONS THEREOF:**

7. Before moving forwards with the discussion, let's have a brief resume' of the facts emanated in evidence.

8. PW-5 Dr. (Mrs.) Kalpana Goswami, Medical Officer, deposed that on 13.08.2014 at 5.50 PM she examined Smti. Ganga Chetry at North Lakhimpur Civil Hospital in the casualty department and found one incised cut injury size 1" X ½" X 1/8" on the frontal area of scalp above the forehead. She opined that the injury was simple in nature and was inflicted by sharp weapon. According to her the age of injury was within four hours. Victim Ganga Chetry was admitted and the case was referred to M.O. concerned (Surgeon). She exhibited Ext-2 injury certificate. In cross-examination, PW-5 has clarified that the victim was not produced under any police requisition and she wrote down her

name as Ganga Chetry on the identification of one Suroj Chetry but that Suroj Chetry is also not known to her. She further explained that such type of injury may be caused by falling on or dashing against sharp-edged hard substance like iron machine etc.

9. Thus, the above evidence reflects that at about 5.50 PM on 13.8.14 victim Ganga Chetry had incised wound in frontal scalp area of her forehead.

10. PW-2 Smti Ganga Koirala, is the victim in this case and she has averred that at the time of the occurrence, she along with her husband Sri Prem Bahadur Koirala, her son Sri Kashmir Koirala Chetry, her daughter-in-law Smti. Ganga Koirala and her grandson had been waiting at the bus stoppage for going to Dhekiajuli. Although they were waiting at the bus stoppage, but her husband could not be found there. Her son Kashmir Koirala Chetry told her that his father (her husband) was in the house of the accused and asked her to go and bring back her husband from there. She accordingly set for the house of the accused but before she could reach there, the accused hit her with an iron rod on her head as a result she fell down and became unconscious. After four days she regained her consciousness in the hospital at North Lakhimpur. In her cross-examination, PW-2 has stated that the house of the accused is situated near the place where they were waiting for bus and that distance is so low that if one shouts or talks loudly from that place, a person can hear from the house of the accused. She admitted that the accused had lodged an ejahar against her and her son and that case is pending in trial. She has further explains that the accused has a tyre shop in her house.

11. PW-1 Sri Kashmir Koirala Chetry, is the informant in this case and according to him at about 2.30/ 3 PM on the day of the occurrence, he along with his father, mother, wife and son had been proceeding to Dhekiajuli and as such waiting at the bus stoppage. But as they were waiting for the bus, his father Sri Prem Bahadur Koirala suddenly disappeared from the place and on look out he found his father sitting

beside the accused on her bed inside her house which is near the bus stoppage. Then he came out from there and asked his mother to bring back his father from inside the house of the accused. His mother went inside the house of the accused and asked his father to come out when accused suddenly hit his mother with a two feet long iron metal lever from front side. His mother lost consciousness due to the assault. Thereafter, one boy named Raju Chetry, who was staying in the house of the accused for last 3-4 years back, had taken his injured mother to the hospital. At the time of occurrence, he was at the bus stoppage with his wife and son which was about 13/14 yards from the house of the accused. He thereafter, went to the Bihpuria Police Station and lodged an ejahar (Ext-1) in this connection. His mother was in hospital for 8 (eight) days. In his cross-examination, PW-1 has stated that for the same occurrence the accused had also filed an ejahar against him and that case is pending for trial. He clarified that the accused has tyre business named Geeta Tyres which she is running from the same building where the occurrence had taken place. Raju Chetry is running his own shop which is adjacent to the shop of the accused. He admitted that when he saw his father inside the house of the accused, he became very angry for which he closed the door from outside and called his mother. He does not know if the accused was shouting from inside to open the door and Raju Chetry came and opened the door. He was not present in the spot when his mother had sustained injury.

12. PW-3 Smti. Ganga Koirala, is wife of the informant and daughter-in-law of the victim. According to her, at about 10 AM on 13.8.14 she along with her husband, her son Debraj Koirala, her father-in-law Prem Bahadur Koirala and her mother-in-law Smti. Ganga Koirala (victim) were waiting for bus at the bus-stand for going to Tezpur Dhekiajuli to her mother's house. While they were waiting there, her father-in-law went missing. Her husband went searching for her father-in-law and could trace him inside the house of the accused. Her husband called his father from the house of the accused but his father did not come for which her husband told her mother that his father had not been coming. Thereafter, her husband took her mother-in-law to the house

of the accused but by that time her father-in-law and slipped away from the house of the accused. Thereafter, a fighting took place between her mother-in-law and the accused when accused assaulted her mother-in-law with an iron rod on her head consequently, her mother-in-law fell down and thereafter a neighbour of the accused took her mother-in-law to the hospital. But in her cross-examination, PW-3 has stated that she was at the bus stand and she did not see the occurrence. She further clarified that when her mother-in-law and her husband went to the house of the accused, they saw her father-in-law not present there. According to her it will take around five minutes to go by walking from the bus stand to the house of the accused.

13. PW-4 Smti. Rupa Ranjan, neighbours of both the sides expressed her ignorance about the occurrence.

14. PW-6 ASI Ajit Kumar Sarkar, Investigating Officer, deposed that during investigation he examined the informant and the victim at the Police Outpost and recorded their statements and thereafter, he sent the victim to Bahbari PHC for her medical examination, thereafter, he visited the place of occurrence and prepared a rough sketch map of the same and examined the available witnesses found at the place of occurrence and recorded their statements, he seized one iron rod (flat) length approximately 1½ ft. and ½" breadth at the place of occurrence which was produced before him by the informant Kashmir Chetry. He further deposed that the accused in this case Smti. Gita Shah had also lodged a ejarah against Kashmir Chetry and Ganga Chetry and he investigated that case also and sent Gita Shah i.e. the informant of that case for her medical examination to Bahbari PHC and later on accused Smti. Gita Shah appeared before him with a copy of bail order of this Hon'ble Court. Accordingly, he interrogated her in connection with this case. After completing the preliminary investigation of this case, he handed over the Case Diary to I/C Sri Mohidhar Taye who thereafter, submitted charge-sheet u/s 324, IPC against accused Gita Shah. He exhibited Ext-3 extract of G.D. Entry, Ext-4 sketch map of the place of occurrence, Ext-5 seizure list and Ext-6 charge sheet.

15. In his cross-examination, PW-6 I/O has averred that the date and time of occurrence as mentioned in FIR form is correct. The injury certificate (Ext-2) was collected by him from North Lakhimpur Civil Hospital and submitted before this Court with the charge sheet. He did not collect any medical report from Bahbari PHC. In Ext-2 injury certificate, the reference case number is not mentioned and it is also not mentioned as to whether the injured was identified by any police personnel. The North Lakhimpur Civil Hospital will be around 25-30 kilometers away from Bandardewa Police Outpost. In Ext-5 seizure list, he had not mentioned that the seized article was seized from the place of occurrence.

16. As against the above prosecution evidence, the defence side has adduced the evidence of DW-1 Raju Chetry, who stated that on the day of the occurrence victim had come to the tyre shop of accused and indulged in an altercation with her and when he reached the place of the occurrence he found victim Ganga Chetry lying on a machine with injuries in her head.

#### **APPRECIATION OF EVIDENCE**

17. It has transpired from the above evidence that it is indeed a fact that on 13.8.2014 at about 5.50 PM victim Ganga Chetri had fresh incised cut injuries in her frontal area of scalp above the forehead. Ext.1 FIR depicts the fact that victim Ganga Chetri had gone to the shopping complex of accused Smti Gita Shah and had been talking with one Raju Chetri when accused Gita Shah assaulted victim Ganga with an iron liver. But the fact that has emerged from the version of PW-1 informant Kashmir Koirala Chetri, PW-2 victim Ganga Chetri and PW-3 Smti Ganga Koirala shows that the husband of victim Ganga Chetri had entered the house of accused and as such Kashmir (informant) and victim Ganga Chetry had gone to the house of accused Geeta Shah to bring her husband back. But neither Kashmir nor Ganga Koirala (daughter-in-law of victim) had witnessed the occurrence. It has also appeared that the occurrence took place in the tyre shop of accused

which usually has number of machineries in it. Smti Ganga Koirala, the daughter-in-law of victim had stated that when her mother-in-law victim Ganga Chetry had gone to the house of accused at that time both had a fight. This fact is also corroborated by DW-1 Raju Chetry. As per version of PW-1 Kashmir, it was this Raju Chetry who took her mother to the hospital after the occurrence. Except victim Ganga none had witnessed the occurrence of assault by accused. DW-1 Raju Chetry has deposed to have heard that Ganga Chetry sustained the injuries by falling on machines. According to the I/O and victim, the assault was meted out the victim by means of an iron lever but Ext.2 Medical Report shows that the injury caused by sharp weapon. Iron liver is not a sharp weapon and if at all any injury would cause by hitting of an iron lever it would be a lacerated injury. So, the manner in which the injury stated to have been inflicted by accused does not match with Ext. 2 Medical Report.

18. Since, it was victim herself went to the house of accused to bring back her husband and as revealed that there had been a fight between both of them. In the instant case, it is only the victim who is the eye-witness of the occurrence. Now how much credence need to be lent to her version depends upon the fact of the case. Informant Kashmir Koirala i.e. son of victim has admitted to have bolted the door of the house of accused upon seeing his father inside the house of accused. Mere presence of his father with accused may not have propped up such knee jerk reaction on the part of the informant unless the relation between both the sides had not been sour. Moreover, the I/O has admitted to have recovered the instrument of assault i.e. the iron lever from the possession of informant Kashmir Koirala. If the iron lever had caused incised wound it would definitely have the blood stain. But these aspects are silent in the prosecution case. Further, the place of seizure is also not mentioned in the Ext.5 Seizure List. So, these facts push the version of victim in the realm of doubt. The bolting of door of the accused from outside would naturally cause grievance in the mind of accused. Since, the presence of husband of informant also enraged her as such, I am of the reasonable opinion that the version of PW-3

Ganga Koirala that there had been a fight between accused and victim could not be ruled out. But the place where the fight took place is inside the tyre shop of accused and as such scope is there that the victim might have fall on the machine or tools of that shop. This view of mine invigorate by the version of DW-1 Raju Chetry who reached the place of the occurrence after the occurrence and when he reached there he found the victim lying on a machine. Now, who initiated the fight and who defended the assault has not been clearly established by the prosecution. Since, it is the victim who admittedly went to the house of accused as such scope is there to believe that she is the initiator of the fight. But due to lack of material on this point, I refrain from drawing any such conclusion.

19. Another point of viewing the version of victim with circumspection lies on the fact that in Ext.1 FIR it has mentioned that when she was talking to Raju Chetry at that time accused hit her. But in evidence this fact gone missing and a new fact emerged about the venture of victim to trace out her husband from the house of accused. This departure in the version is material contradiction on the part of the victim's case.

20. To perorate, in the instant case none had seen actual assault except victim but her version is also come out to be tainted, so there exists reasonable ground of probability that in the fighting between them the victim might have fall over some machine or tool inside the shop of accused and sustained the injuries. It is an axiomatic principle of criminal jurisprudence that when there exists any doubt in the prosecution case the benefit need to be given to the accused. In view of the above, I am of the conclusive opinion that the prosecution case has failed to establish the charge under section 324 IPC against accused Smti. Gita Shah.

### **ORDER**

21. In the result of the above discussion, I hereby acquit accused Smti. Gita Shah from the charge under section 324 IPC and as such she

is set at liberty forth-with. Considering the nature of the offence and the materials surfaced in evidence, I hereby extend the validity of the bail-bond of accused for 6(six) month. Seized articles be disposed of as per law in due course.

22. The judgment is delivered and operative part of the same is pronounced in the open court on this 20<sup>th</sup> day of March, 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 Kashmir Koirala Chetry (PW-1)  
Smti. Ganga Koirala (PW-2)  
Smti. Ganga Koirala (PW-3)  
Smti. Rupa Ranjan (PW-4)  
Dr. (Mrs.) Kalpana Goswami (PW-5)  
ASI Ajit Kumar Sarkar (PW-6)

**PROSECUTION EXHIBITS**

Ejahaar (Ext-1)  
Injury Certificate (Ext-2)  
Extract copy of G.D. Entry (Ext-3)  
Sketch map (Ext-4)  
Seizure list (Ext-5)  
Charge sheet (Ext-6)

**WITNESSES FROM THE DEFENCE SIDE**

Sri Raju Chetry (DW-1)

**DEFENCE EXHIBITS**

Nil

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

Transcribed & typed by-  
Sri Narayan Chetri, Stenographer