

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS**

**North Lakhimpur, Lakhimpur**

**PRESENT: Ms. Sparsita Garg, M.A, LL.M, AJS**

Judicial Magistrate First Class,  
Lakhimpur, North Lakhimpur

**G.R. Case No.885/2014**

**State**

**Versus**

**Kalipada Nomo Sarmah**

**( Under section 325/34 IPC )**

Charge framed on	: 04.02.2015
Evidence recorded on	: 14.07.2015, 16.09.2017, 09.05.2018, 04.09.2018, 21.06.2019, 29.07.2019, 26.02.2020.
Statement recorded on	: 09.03.2021
Arguments heard on	: 24.03.2021
Judgment delivered on	: 20.04.2021
Advocate for the Prosecution	: Mr. Jangki Doley
Advocate for the accused	: Mr. Bogendra Kumar Buragohain

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

1. Accused stood for trial for commission of offence u/s 325/34 IPC.
2. The case of the prosecution in brief is that the son of the informant

**GR CASE NO.885/2014**

Dipon Majumdar had an altercation with the accused persons and on 16.05.2014 at about 12:20 p.m., the accused persons assaulted the son of the informant on his head with a dao. The victim sustained to injuries and he was found lying on the ground. The family of the victim immediately took him to Harmoti Primary Health Center and thereafter he was referred to Civil Hospital, North Lakhimpur for better treatment. The victim was admitted at the private nursing home where he is struggling with his life. Hence this case.

3. On receipt of the ejahar, In-charge of Harmoti Police Outpost forwarded the same to the Officer-in-Charge, Laluk Police Station. Thereafter, the Officer-in-Charge, Laluk Police Station registered the case as Laluk P.S. case no.83/2014 u/s 326/34 IPC. Thereafter Investigating Officer launched investigation of the case and submitted chargesheet u/s 325/34 of the Indian Penal Code against the accused persons namely Kalipada Nomo Sarmah and Rupchand Nomo Sarmah.
4. Thereafter, cognizance has been taken and summon have been issued to the accused persons. On appearance of accused persons, necessary documents required u/s 207 Cr.P.C have been furnished to them. On perusal of the materials on record formal charges u/s 325/34 IPC is read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
5. Prosecution in support of its case has examined only thirteen (13) witnesses.
6. Accused Kalipada Nomo Sarmah is examined under section 313 Cr.P.C., wherein he denied the allegations levelled against him. Accused denied adducing evidence in defence. Accused Rupchand Nomo Sarma expired during the trial of this case for which the case stood abated against him.
7. I have heard the arguments advanced by the learned counsel for the accused and Ld. A.P.P. Perused the materials available in the case record. Upon hearing both the parties and on perusal of the record, following point for determination is formulated for proper

adjudication of this case.

**POINT FOR DETERMINATION:**

**Point No 1:** Whether the accused persons on 16.05.2014 at about 12:30 p.m., in furtherance of their common intention, voluntarily caused grievous hurt to the son of the informant Sri Dipon Majumdar and thereby committed the offence under section 325/34 of the Indian Penal Code?

**DISCUSSIONS, DECISIONS AND REASONS THEREOF:**

8. Now let me try to decide the above points by appreciating the evidence available in the case record. I have carefully considered the evidence available in the instant case. **P.W-1 Khukhan Majumdar** is the informant of this case. In his evidence he stated that the accused persons assaulted his son causing serious injuries on his head. On being informed by his younger son Bikash Majumdar, he went out and saw the villagers carrying his injured son Dipon Majumdar. On being asked the victim (son of the informant) told him that the accused persons assaulted and caused injuries to him.

The cross examination of P.W-1 shows that the accused persons also lodged an ejahar against the son of the informant which goes to show that the victim earlier pelted stones on one Kalpana and there was an incident for which an ejahar has been lodged against son of the informant. Further it appears that P.W-1 is a reported witness and he has not seen the actual occurrence.

9. **P.W-2.Dipon Majumdar** is the victim who stated that in the year 2014 the accused persons assaulted him for pelting stones and thereafter he fled away. On the next day while he was in miya basti, the accused persons chased him. As he was hiding behind a tree both the accused persons armed with sharp weapon caught him and thereafter assaulted him with one side of dao. The victim sustained to bleeding injuries on his head and he was prosusclly bleeding. P.W-1 fell down on the ground and lost consciousness. After regaining

senses he went to the house of one Habizul who informed his parents. Later on, his father and villagers took him to Harmoti Bahbari hospital and thereafter to North Lakhimpur Civil Hospital for treatment.

In his cross examination the victim/P.W-2 admitted that he had a dispute with one Kalpana and Sima and he assaulted them. He also admitted that for this incident the accused persons lodged an ejahar against him. Further, the defence suggested that the victim was running around to evade arrest and thereby received self inflicting injuries. However, defence admitted that fact that the victim did receive injury on his person. There is nothing to show that the present ejahar has been lodged to counter the earlier case lodged against him.

10. **P.W-3 Bikash Majumdar** is the brother of the victim and he stated that on the date of occurrence while he was having a bath in the river, he heard hue and cry and saw his brother Dipon Majumdar being carried by the villagers. He saw his brother in an unconscious state and immediately informed his father and accordingly they took him to Bahbari hospital. However, the witness stated that he was not examined by the police. The witness also remained silent as to how his brother Dipon Majumdar received injuries. However, his evidence remained unchallenged that the victim did receive injuries on his person.

11. **P.W-4 Aradhan Majumdar** is the paternal uncle of the victim who stated that incident occurred two to three years back while he was having a cup of tea in his home. He heard hue and cry and went out and saw the accused persons and his family members were assaulting the victim/ P.W-2. He went forward and intervened and at this the victim fled away. P.W-4 came to know that the accused persons lodged an ejahar against his nephew Dipon Majumdar/P.W-2. Later on, he came to know that the accused persons assaulted P.W-2 in a field and caused injuries. On reaching hospital he saw injury on the head of Dipon Majumdar. For this incident the informant a lodged case against the accused persons.

In his cross examination he admitted that he has not seen how the accused persons assaulted the victim/P.W-2. P.W-4 nowhere denied that the fact that the victim received injury on his head while he saw the victim at the hospital.

12. **P.W-5 Kunja Guwala** stated that she heard the accused persons assaulted the victim who received injuries. She thereafter went to the hospital and saw the victim received injury on his head. In her cross examination she admitted that she has not seen the occurrence and does not know how the victim received injuries.

13. **P.W-6 Bobby Majumdar** is the paternal aunt of the victim. She stated that on hearing hue and cry her husband Haradhon Majumdar went to the place of occurrence and intervened between them. She heard that the accused persons assaulted the victim/P.W-2.

However, in her cross examination she stated that she has not seen the occurrence as well as the injuries sustained by the victim. However, her evidence that the victim received injuries remained unchallenged and the defence also did not deny this fact.

14. **P.W-7 Md.Usman Ali** is an independent witness and in his evidence he stated that on the date of occurrence he saw the elder brother of the accused and another person running towards the southern direction of the river bank. His evidence shows that the two persons were running near the river bank. The alleged incident took place near the river bank. However, he stated that he does not know anything about the incident.

15. **P.W-8 Hazara Khatoon** is an independent witness and she stated that she does not know anything about the incident. However she heard that a quarrel took place between both sides. Thus, the witness did not support the prosecution case.

16. **P.W-9 Hafijul Islam** is also an independent witness. He stated that he heard that the son of the informant was enticed away by some persons. In the evening when the victim returned home he saw blood on his body and he received injury on his head. Police thereafter took him away. The evidence of this witness shows that he has not

witnessed the occurrence and he could not say as to how the victim received injuries. However, the witness has seen blood on the body of the victim and also saw injuries on the son on the victim.

17. **P.W-10 Dr. P.K. Deori** is the medical officer of this case and in his evidence he stated that on 16.05.2014 he was posted as medical officer at Harmuti Mini PHC and he examined the victim Dipan Majumdar and found lacerated injury on the scalp on the victim. The medical officer opined that the injury was caused by assault with blunt object. Thereafter the victim was referred to North Lakhimpur Civil Hospital. He proved the medical report marked as exhibit 2. The evidence of the medical officer shows that he examined the victim and found one lacerated injury on the scalp of the victim.

18. **P.W-11 Sariful Islam** is an independent witness and he stated that he does not know anything about the incident. Thus, the witness did not support the prosecution case.

19. **P.W-12 Dr. Banani Sarma** is the medical officer and he stated that while he was posted as Medical and Health Officer No.1, at North Lakhimpur Civil Hospital he examined Dipon Majumdar on 16.05.2014 on being referred by Dr. P.K. Deori. After examination he found stitched wound over mid-part of scalp of size 2cm x 1cms. After examination he opined that the injury was caused by blunt force. However, the medical officer remained silent as to the nature of injury sustained by the victim. Thus, it must be held that the injury must be simple in nature caused by blunt weapon.

20. **P.W-13 Kamaleswar Deka** is the investigating officer of this case who described the steps taken by him during investigation. The investigating officer also proved various exhibits which include the sketch map marked as Exhibit 4 and the charge-sheet marked as Exhibit-5.

21. The evidence of the medical officers clearly shows that the victim received one lacerated injury on the mid-part of the scalp and there was bleeding from the injury for which stitch was given to the victim. Now it is to be seen whether the accused persons inflicted injuries on

the victim. In the instant case none of the witnesses except for the victim has seen the accused persons inflicting the injuries on him. The informant and other witnesses namely P.W-1, P.W-3, P.W-4, P.W-5 and P.W-9 have seen the injury on the victim. The victim in his evidence stated that on the date of occurrence he was chased by the accused persons and while he was hiding behind a tree the accused persons caught hold of him and thereafter assaulted him with the blunt side of a dao carried by them.

22.P.W-1 stated that his son was carried by the villagers and he saw the injuries on his son. P.W-3 is the brother of the victim and he stated that he saw his brother in an unconscious state and immediately he informed his father and accordingly they took him to Bahbari hospital. P.W-4 stated that he saw the accused persons and his family members assaulting the victim in a field causing injuries on him. P.W-5 stated that she went to hospital and saw that the victim received injury on his head. P.W-9 stated that he saw blood on the body of the victim and that and he received injury on his head. According to the victim the incident took place in a field. The sketch map prepared by the investigating officer shows that the place of occurrence is No.1 Bagali village near the paddy field which directly supports the version of the victim. Absence of eye-witness itself cannot be a ground to discard the entire prosecution case. The evidence of the victim that he received injury on his head due to assault by the accused persons with the blunt side of dao carried by them is supported by the medical officers as they found lacerated injury on the mid-scalp of the victim. The other witnesses also saw the injuries received by the victim. Though the defence took a plea that the victim received injury as he was trying to flee away but the defence nowhere denied that the victim did not receive injury on his head. In view of the admitted fact that the victim received one lacerated injury on the mid-part of the scalp, the evidence of the victim must be accepted that the injury was caused due to assault on him by the accused persons.

23.Considering the evidence in entirety, it appears that the accused persons in furtherance of their common intention assaulted the

victim Dipon Majumdar and caused injury on him. Now, it is seen to be seen whether the injury was simple or grievous in nature. In order to attract section 325 IPC, the following ingredients are to be fulfilled as per Section 320 IPC. The two medical officers (P.W- 10 and P.W-12) in their medical report remained silent regarding the nature of injury sustained by the victim. Thus it must be held that the injury sustained by the victim was simple in nature and thus I hold that the accused persons have committed an offence u/s 323/34 IPC. During the trial of this case one of the accused namely Rupchand Namo Sarma expired and the case against him was abated. Thus the prosecution could successfully prove the ingredients of section 323 IPC and accordingly I hold the accused Kalipada Nomo Sarmah guilty of commission of offence u/s 323 IPC.

24. Heard the accused on the point of sentence. I have recorded his statement.
25. Considering the nature of the offence and considering the fact that no previous conviction could be proved against the accused, hence lenient punishment will meet the ends of justice.
26. Accordingly, in light of all, I sentence the convict Kalipada Nomo Sarmah - (a) to pay a fine of Rs.1,000/- (Rupees One Thousand) only in default to undergo simple imprisonment for one month.
27. If the fine is realised, same be paid to the victim as compensation under Section 357 CrPC.
28. His bail bond shall remain in force for a further period of six months as per provision of section 437-A of the Code of Criminal Procedure.
29. Let a copy of the judgment be given to the convict immediately free of cost as per provision of section 363(1) of the Code of Criminal Procedure. The convict is also informed of his right to appeal against the judgment and order of conviction and sentence.
30. Copy of the judgment be forwarded to District Magistrate, Lakhimpur in compliance with section 365 CrPC.

31.The case is disposed of on contest accordingly.

Given under my hand and seal on this 20<sup>th</sup> day of April, 2021 at  
North Lakhimpur, Lakhimpur.

(Ms. Sparsita Garg)  
Judicial Magistrate First Class  
Lakhimpur, North Lakhimpur

**APPENDIX****A. WITNESSES OF PROSECUTION:**

1. P.W-1 Kukhan Mazumdar
2. P.W-2 Dipon Mazumdar
3. P.W-3 Bikash Mazumdar.
4. P.W-4 Aradhan Mazumdar
5. P.W-5 Kunja Guwala
6. P.W-6 Bobby Mazumdar
7. P.W-7 Md. Usman Ali
8. P.W-8 Musstt. Hazara Khatoon
9. P.W-9 Hafijul Islam
- 10.P.W-10 Dr. P.K. Deori
- 11.P.W-11 Sariful Ali
- 12.P.W-12 Dr. Banani Sarma
- 13.P.W-13 Kameswar Deka

**B. EXHIBITS OF PROSECUTION:**

1. Exhibit 1 : Ejahar
2. Exhibit 1(1) : Signature of the informant in the ejahar.
3. Exhibit 2 : Medical Report
4. Exhibit 2(1) : Signature of P.W-10 in the Medical Report.
5. Exhibit 3 : Injury Certificate
6. Exhibit 3(1) : Signature of P.W-12 in the Injury Certificate.
7. Exhibit 4 : Sketch Map
8. Exhibit 4(1) : Signature of P.W-13 in the sketch map.
9. Exhibit 5 : Chargesheet
- 10.Exhibit 5(1) : Seal and signature of the then Officer-in-Charge Nirmal Chandra Biswas in the chargesheet.
11. Exhibit 5(2) : Signature of P.W-13 in the chargesheet.

**C. WITNESS OF DEFENCE: NIL**

**D. EXHIBITS OF DEFENCE: NIL**

(Ms. Sparsita Garg)  
Judicial Magistrate First Class  
Lakhimpur, North Lakhimpur