

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE (F.T.C.),  
LAKHIMPUR, NORTH LAKHIMPUR.**

Present: Syed Burhanur Rahman, A.J.S.,  
Addl. Sessions Judge (F.T.C.),  
Lakhimpur, North Lakhimpur.

**Criminal Appeal No.7(1)/2017.**

Accused/Appellants : 1) Sri Prabhat Borah.  
2) Sri Dilip Borah.

-Vs-

Respondent : State of Assam.

Advocate for Accused/Appellants : Mr J. Borah.  
Advocate for Respondent : Mr M.P. Hazarika.

Date of Argument : 11/03/2022.

Date of Judgment : 11/03/2022.

**JUDGMENT**

1) This criminal appeal has been preferred by the accused/appellants namely, Sri Prabhat Borah and Sri Dilip Borah under Section 374 of Cr.P.C. against the impugned judgment and order dated 09/03/2017 passed by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, convicting the accused/appellants to pay a fine of Rs.500/- (rupees five hundred) only each, in default, to undergo simple imprisonment for 7 (seven) days under Section 341/34 of I.P.C. Further both the accused/appellants are to undergo simple

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imprisonment for 7 (seven) days under Section 323/34 of I.P.C.

- 2) Being highly aggrieved and dissatisfied with the above mentioned judgment and order passed by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, the accused/appellants preferred this appeal and have prayed to set aside the impugned judgment and order and to acquit them.
- 3) The prosecution case in brief is that the informant Sri Nabin Borah lodged the F.I.R. alleging that on 23/11/2014 at village No.2 Khalihamari under Bihpuria P.S., while the informant as well as his brother-in-law Bhumidhar Borah were returning home from market by a motorcycle, the accused/appellants in furtherance of their common intention wrongfully restrained them on the way in front of the house of one Jiten Kataki and thereafter assaulted both of them causing grievous hurt to them. Accordingly, an ejahar was lodged bearing Bihpuria P.S. Case No.394/2014 under Sections 341, 325, 294 and 34 of I.P.C.
- 4) During the trial the prosecution examined as many as six witnesses including the I.O. Thereafter, the accused/appellants were put with the incriminating materials and examined under Section 313 of Cr.P.C. Both of them denied all the allegations. However,

the accused/appellants declined examining any witnesses in defence.

- 5) In the Memorandum of Appeal, the appellants have taken various grounds to challenge the impugned Judgment and Order. It is stated that the learned trial court has failed to consider the evidence on record in a judicious manner and ought to have taken into consideration that there are various lacunae regarding the evidence available on record. It is stated that learned court below ought to have drawn adverse inference for non-examination of one Jiten Kataki, whose is located near the place of occurrence. Further, it is stated that learned court below ought to have taken into consideration about the lacunae of the medical report while sentencing the accused/appellants u/s 323 of the IPC.

**Point for determination.**

- 6) Whether the learned lower Court was justified in convicting the accused/appellants under Section 341/34 of I.P.C. and under Section 323/34 of I.P.C. on the basis of the legal evidence on record?

**Discussion, decision and reason thereof.**

- 7) Before entering into the merit of appeal, let me discuss the evidence available on record.
- 8) P.W.-1 has stated in his evidence that on 22/11/2014, he and Nirmal Saikia, Tejen Saikia,

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Thapai Borah and other had gone to Hawajan evening market. He and Bhumidhar returned from market by a bike. When they reached in front of the house of Jiten Kataki of their village, the accused/appellants restrained them. Immediately after he stopped the bike, the accused uttered obscene/filthy words and assaulted him and Bhumidhar Borah with bamboo fencing stick. As a result he sustained injuries on his back and left hand and Bhumidhar Borah sustained injuries on his head and hand. He fled away along with Bhuidhar and came to Dhalpur Police O.P. and lodged an ejahar (Ext.1).The police got them medially treated at Dhalpur hospital.

9) In his cross-examination, P.W.-1 has stated that there was darkness during the time of incident. P.W.-1 denied all the suggestions made by the defence including the one that they were asked only to put off the upper light of their motorcycle and they had sustained injury only by falling.

10) P.W.-2 has stated that he knows the accused/appellants as well as the victims. Nabin Borah and Bhumidhar Borah were traveling in the same bike. The accused/appellants initially abused them with the filthy languages. Then the accused/appellants assaulted both Nabin Borah and Bhumidhar Borah.

- 11) In his cross-examination, P.W.-2 has stated that they were coming from behind and the informant was traveling and preceding them. They reached the place of occurrence when the fight was ending. They did not witness the occurrence in the beginning. P.W.-2 has also denied the defence suggestions that he had not stated before the police that Nabin Borah, Bhumidhar Borah and others were coming by bicycles and bikes and that they were returning from bazaar together.
- 12) P.W.-3 has deposed that he knows the informant Nabin Borah and also the accused/appellants. He failed to recall the exact date of occurrence. He has stated that he along with Nabin Borah, Tapai Borah and other were returning from Hawajan market in 3 motorcycles and on the way he saw the accused/appellant Prabhat Borah assaulting Nabin Borah.
- 13) In his cross-examination, P.W.-3 has stated that he was coming in the last bike. He was not present at the beginning of occurrence. He did not know earlier why the fighting had taken place.
- 14) P.W.-4 has stated in his evidence that on the day of occurrence, he along with one Nabin Borah were returning home from market on a motorcycle and on the way when they arrived in front of the courtyard of one Jiten Borah, the accused/appellants

rebuked them with unparliamentary words for which they stopped their motorcycle. Then the accused/appellants assaulted them with bamboo sticks for which he got injured on his hands, back and ear and Nabin Borah got injured on his head and hand.

- 15) In his cross-examination, P.W.-4 has admitted that the accused/appellants had also lodged a case against them. Besides that he has denied all the suggestions made by the defence.
- 16) P.W.-5 has stated that on 25/11/2014, he was working as a Medical Officer, Dhalpur Block P.H.C. and he examined both Nabin Borah and Bhumidhar Borah. He found small/simple injuries caused by the blunt weapon. Ext.2 is the medical report against those injuries.
- 17) In his cross-examination, P.W.-5 has stated that there was no mention of date and time of examination in the said Ext.2 Also there was no mention in which part of the body the injuries were caused. There was no mention how old the injuries were. Besides that he has also admitted that there was no mention about the alleged history of the injuries. Also he has admitted that such simple injuries may be caused by falling down also.
- 18) P.W.-6 is the Investigating Officer of the instant case. On completion of investigation, having found

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sufficient incriminating materials against the accused/appellants namely, Prabhat Borah and Dilip Borah, he submitted the charge-sheet against them under Sections 341, 323, 294 and 34 of I.P.C.

19) Both the accused/appellants were duly examined under Section 313 of Cr.P.C. and they have stated that in the evening on that fateful day they were returning home from paddy field on their bicycles. Accused Dilip Borah was riding on one bicycle and accused Prabhat Borah and Dudu Borah were in another bicycle. As they reached near the house of one Jiten Kataki the road was bad and there was a pit on that road. Nabin Borah and Bhumidhar Borah were coming on their motorcycle from behind. They dip their motorcycle light and they could not see in front and as a result they fall down from their bicycle. Then accused Dilip Borah asked Nabin Borah that whether he knows how to ride the motorcycle properly. Then they stopped their motorcycle and assaulted accused Dilip Borah and Prabhat Borah. Thereafter, both of them went to police station and lodged an ejahar in this connection.

20) Bare perusal of the case record goes on to show that there are 2 injured witnesses i.e., P.W.-1 and P.W.-4 and they have uniformly implicated both the accused/appellants. P.W.-2 and P.W.-3 are two

independent witnesses which also corroborated the version projected by the prosecution.

- 21) The Hon'ble Supreme Court while appreciating the evidentiary value of the injured witness has held in catena of judgments that such witness should be given due weightage in considering the evidence and generally such witness is considered reliable. In **Abdul Sayeed v. State of M.P. (2010) 10 SCC 259** has held that

*"The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness". 27. While deciding this issue, a similar view was taken in, **Jarnail Singh v. State of Punjab (2009) 9 SCC 719**, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:*

*Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In **Shivalingappa Kallayanappa v. State of Karnataka 1994 Supp (3) SCC 235**, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.*

*In **State of U.P. v. Kishan Chand (2004) 7 SCC 629**, a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide **Krishan v. State of Haryana (2006) 12 SCC 459**). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.*

*28. The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."*

22) Further the stand taken by the prosecution is also corroborated by P.W.-5 who has duly adduced evidence as a Medical Officer. He found the injury which is simple in nature. No doubt in the injury certificate date and time of examination, age of injury and history are not mentioned. But the very fact that there was small and simple injury on the body of both victims and also that they were duly escorted by U.B.C. Janmoni Das, S.P.O. Hiranya Borah clearly goes on to show that there was injury upon the body of the victims. Besides that upon perusal of the said medical report which was duly exhibited as Ext.2, it was found that P.W.-5 also put his short signature and the date was mention there as 25/11/2014, which also corroborates the fact that

the said medical was done immediately after the lodging of the F.I.R on 24.11.2014.

- 23) However, it is to be noted here that the prosecution failed to adduce the evidence of one Sri Jiten Kataki or any of the person who resides in that house to make a water tight case against the accused/appellants. But, merely on the basis of non-examination of Jiten Kataki, whose residence was located near the place of occurrence, this Court cannot give the benefit to the appellants for the lapse on the part of Investigating Officer.
- 24) Thus the learned Court below appears to have considered the evidence brought on record in its correct perspective and rightly came to the conclusion that the accused/appellants are guilty under the offences under Section 341/34 of I.P.C. and under Section 323/34 of I.P.C. and consequently I see no force in contention of the accused/appellants made in the instant appeal that the learned Court below has failed to appreciate the evidence on record in correct perspective.
- 25) Accordingly, I have no hesitation in mind to hold that the prosecution has been able to establish the charges under Section 341/34 of I.P.C. and under Section 323/34 of I.P.C. against the accused/appellants beyond all reasonable doubts. Hence, I find no illegality in the impugned judgment

and order passed by the learned Court below and accordingly, the impugned judgment and order of conviction so passed by the learned trial Court is hereby affirmed.

- 26) Coming to the sentence part, it is seen that the learned lower Court has directed the accused/appellants to pay a fine of Rs.500/- (rupees five hundred) only each, in default, to undergo simple imprisonment of 7 (seven) days under Section 341/34 of I.P.C. and further directed to undergo simple imprisonment for 7 (seven) days under Section 323/34 of I.P.C. As in the instant matter the medical report has indicated that there was small and simple injury upon the body of the victim. But this Court cannot close its eyes regarding the fact that the said Medical Officer is only an Ayurvedic Practitioner which is clear from the seal as used in the said medical report. Besides that the medical report was not in any printed format, but in a simple white paper. Only on the basis of the fact that the victims were escorted by the police and in the short signature the date was mentioned as 25/11/2014, this Court has drawn a presumption with the aid of Section 114 of the Evidence Act, that the said medical report is correctly prepared. Moreover, there is also a stand taken by the accused/appellants that they have also lodged an F.I.R. regarding the same incident stating that the present victims had actually

assaulted them. No doubt that mere filing of a counter F.I.R. will not dilute the offence committed by the accused/appellants herein. But, considering the matter in entirety and in the interest of justice, this Court is of the view that the punishment imposed by the learned Court below can be modified to the extent that the convicts are directed to pay a fine of Rs.500/- (rupees five hundred) only each, in default, to undergo simple imprisonment for 7 (seven) days under Section 341/34 of I.P.C. and to pay a further fine of Rs.1,000/- (rupees one thousand) only each, in default, to undergo simple imprisonment for 7 (seven) days. The fine amount if paid by the convicts be given in equal proportion to the victims i.e., P.W.-1 and P.W.-4 as compensation.

- 27) Accordingly, the appeal is disposed of in terms of above stated.
- 28) Send down the lower Court records along with a copy of Judgment to the learned trial Court.

Given under my hand and seal of this Court on this the 11<sup>th</sup> day of March, 2022.

(Syed Burhanur Rahman)  
Addl. Sessions Judge (F.T.C.),  
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(Syed Burhanur Rahman)  
Addl. Sessions Judge (F.T.C.),  
Lakhimpur, North Lakhimpur.

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