

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATESONITPUR, TEZPUR, ASSAM

GR CASE NO:- 2777/13

U/S – 341/326 IPC

State of Assam

Vs

**Md Alom Ali****Accused person**

Present : Sri. Angshuman Bhattacharjee  
Addl. Chief Judicial Magistrate

For Prosecution : Sri. P. Baruah, Learned Addl. Public Prosecutor.

For the accused : Md N Uddin, Ld Defence Counsel

Evidence recorded on : 01-11-14,01-10-14,18-08-15,06-11-15,28-5-19

Arguments heard on : 28-01-2021

Judgement delivered on : 10-02-21

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

**1.** Prosecution case :-The gravamen of the prosecution case is that on 27-10-13 in the morning when Md Dulal Ali, who is the son of the informant had gone near the river side, the accused Md Alom Ali had struck Dulal on his head with a kur (i.e. spade) after following a heated argument between them regarding collection of stone chips and digging of sand near the river. Dulal sustained injuries on his head and he was bleeding profusely. Nearby people raised hue and cry and one Sahar Ali and Hanifuddin took Dulal to his house. Hence this case.

**2.** After completion of investigation the police filed charge-sheet against the accused Md Alom Ali u/s- 341/326 IPC. At the relevant point of time, on receipt of summons the accused appeared before this Court and he was furnished copies as mandated u/s 207 Cr.P.C. Having found a case against the accused u/s- 341/326 IPC, charges under said sections of law were framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

3. The prosecution examined 6 (six) witnesses and defence examined none. The accused was examined u/s-313 Cr.P.C. wherein he stated inter alia that while he was digging sand near the river, Dulal had obstructed him and tried to attack him with a kris which is a cutting weapon and as a result he (i.e. the accused) had to brandish his spade in his self defence. The accused further stated that he cannot say if his act of brandishing the spade had caused injury to Dulal.

**Points for determination**

- i. Whether on 27-10-13 at about 7.30 am the accused person wrongfully restrained the informant's son and thereby committed the offence punishable under Section 341 of IPC?
- ii. Whether the accused on the same day and time, voluntarily caused grievous hurt to the informant's son Dulal Ali by means of a sharp weapon and thereby committed the offence punishable under Section 326 of IPC?

**Discussion of evidence**

4. PW1 Md Lal Miya is the informant and he in his evidence has stated that he knows the accused being his co-villager. About two years ago at about 7.30 am the occurrence took place. At the time of occurrence, he went outside for work. Sahar Ali and Hanifuddin had carried his son Dulal on their shoulders to his house and Sahar Ali informed him that accused Alom assaulted his son with a spade on the bank of the river. He lodged the ejahar at Rakshyasmari OP and police sent his son for medical examination at Tezpur. His son sustained injury on his head.

In cross-examination, he stated that he did not state before police that Sahar Ali and Hanifuddin carried his son Dulal on their shoulders and he asked Sahar Ali about the matter. He denied the fact that Sahar Ali and Hanifuddin did not carry his son on their shoulders and accused did not assault or cause injury to Dulal.

5. Md Sahar Ali is examined as PW2 and he in his evidence has stated that he knows the informant as his neighbour. One year ago at about 7.30 am, the occurrence took place. On that day, he saw Alom stabbing on Dulal with a spade

and again when he tried to stab on him, they raised halla and the accused fled away. He along with Hanifuddin and Alauddin carried Dulal on their shoulder and informed the father of Dulal, Lal Miya about the occurrence.

In cross-examination, he stated that he was 100 meter away from the place of occurrence and was picking up stone. He did not see the altercation between the accused and Dulal. He denied the fact that he stated before police that accused and Dulal altercated each other. He denied that he stated before police that later he came to know that Dulal Ali stabbed on Md Alom Ali with a long knife and so Alom Ali stabbed on Dulal with a spade. He also denied that he did not state before police that Dulal was speaking on the phone at the backside of the tractor and accused stood amongst the labourers with a spade on his hand. He denied that he did not state before police that he along with Hanifuddin and Alauddin carried Dulal on their shoulder and he saw Dulal in injured condition.

6. PW3 Allauddin deposed in tune with PW2 Md Sahar Ali.

In cross-examination, he denied that he was 200 meter away from the place of occurrence. He also denied that he did not state before police that Dulal was speaking on the phone and he tells a lie that accused stabbed on Dulal. He also denied that instead Dulal attempted to stab on the accused with a knife.

7. PW4 Dr Queen Gogoi deposed that on 24-10-13, she was serving at 30 bedded CHC, Dhekiajuli as Medical & Health Officer-I. On that day at 10.20 am, she examined Mr Dulal Ali, S/O Md Lal Miya of Labari, Gusaibheti of Dhekiajuli PS and found the following injuries :-

Abdomen was normal. He was drowsy, not fully conscious. Chest was clear on both sides. Cardio Vascular system examination was within normal limit. Local examination revealed sharp cut injury over left parietal region of scalp. The size of injury was 8x1.5x2 mm (app). There was profuse bleeding from the side with haematoma. The injured person received first aid treatment and was referred to Kanaklata Civil Hospital for further treatment. Nature of injury was sharp cut injury caused by sharp weapon. Injury was recent. He

was advised for citiscan examination of brain. Injury occurred at 7.30 am of 27-10-13.

She has identified her report as Ext.1 whereupon Ext.1(1) is her signature.

In cross-examination, she stated that there is no mention of police requisition number or police station case number in her report. The person accompanying or escorting the patient is also not mentioned. Such injuries can be received by falling over hard substance.

8. PW5 Md Hanif Ali deposed that he knows the informant and the accused. On the day of the occurrence at about 8 am, he was going to the river for work and at that time Dulal and Alom were altercated. When he was walking on the bank of the river, people who were picking up stones raised halla saying that Dulal was assaulted and when he turned back, he saw Dulal was lying with injuries. Alom ran away after assaulting Dulal. He along with others carried the injured to his father's house. Police investigated the matter and seized one spade ( 3 foot by 9 inch) with a long handle and he put his thumb impression in the seizure list. Ext.2 is the seizure list and M.Ext.1 is the seized spade which he has seen in the court.

In cross-examination, he stated that Alom and Dulal had a quarrel for carrying sand from the river. He did not see the accused stabbing on the injured. At the time of the occurrence, Alom was picking up stones in the vehicle and Dulal had prevented Alom. Alom had a spade in his hand. He did not see bow, daggar etc in the hand of anybody. He does not know what was written in the seizure list. He denied the fact that at the time of the occurrence, Dulal had a bow (dagger) in his hand.

9. PW6 SI Danda Dhar Kumar is the investigating officer and he in his evidence has stated that on 27-10-13 he was posted as ASI at Raikashmari OP and on that day, they had received information from VDP Secretary, Hazrat Ali over phone that a riot has been going on in between 2 parties at Guhaybethay near Panchnoi. Immediately they entered the information in their GD and after receiving permission from I/C Raikashmari OP, they proceeded to the place of occurrence. At the place of occurrence they saw injured Md Dulal Ali having injury on his head and with the assistance of public, they sent him for medical examination. Accused Aom Ali surrendered before them at the place of occurrence and confessed his guilt. He also handed over the weapon (kudal) used as instrument to him. The weapon was

seized by him at the place of occurrence in presence of witnesses. He drew the sketch map and recorded statement of witnesses. On the same day FIR was filed by Lal Mia for the aforesaid incident. In the FIR, the Ext.2 the informant had given his thumb impression. Ext.3 is the extract copy of GD entry. Ext.4 is the sketch map. Ext.5 is the seizure list wherein he took thumb impression of two witnesses namely Alal Uddin and Hanif Ali. In the seizure list, he had also obtained signature of accused Alom. Ext.1 is the medical report collected by him. After completion of the investigation, he had handed over the CD to the officer-in-charge, Tilak Taron who had submitted the charge sheet vide Ext.6 U/S 341/326 IPC. M.Ext.A is the weapon (kudal) of offence.

In his cross-examination, he stated that PW1 Lal Mia has not stated before him that on the day of occurrence, Sahar Ali and Hanif Uddin had carried injured Dulal Ali on their shoulder to his house. PW2 had also not stated before him that Hanif Uddin and Alal Uddin shouldered injured Dulal to his house. PW3 had not stated before him that at the time of incident victim Dulal Ali was talking on the phone with somebody. There was a cross-case filed by the accused person in connection with this case.

#### **DECISION AND REASONS THEREOF**

10. I have heard the prosecution and defence side.
11. Let me now analyse how far prosecution side has been able to prove its case beyond all reasonable doubt against the accused.
12. For the sake of brevity and convenience all point for determination are taken for discussion together.
13. In the instant case, charges were framed against the accused persons U/S 341/3326 IPC. As such, at the very outset it would be appropriate to discuss the ingredients of these two offences.

Section 341 IPC says – “Whoever wrongfully restrains any person shall be punished with simple imprisonment of for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both”

Similarly, section 326 IPC says – “Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or, by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

14. The informant Md Lal Miya who is the father of Md Dulal Ali stated in course of his deposition that one morning about 7.30 am two years before the date of his deposition before the court, Sahar Ali and Hanif Uddin brought his son Dulal home on their shoulders. Sahar Ali informed PW1 that the accused Alom had hit Dulal with a 'kur' (i.e. a spade) near the river. When Alom Ali tried to strike Dulal with his kur for the second time, hue and cry was raised and Alom could not succeed in striking Dulal. PW2 Md Sahar Ali and PW3 Md Alaluddin both stated in course of their deposition that at the time of the incident Dulal was taking sand in his tractor which was parked at the spot and then these two witnesses saw that the accused Alom was striking Dulal with a kodal (i.e. a spade). Dulal put his hand on his head and the accused again attempted to strike him with the kodal. It was at that time that hue and cry was raised by the nearby people and the accused fled away from the place of occurrence. PWs 2, PW3 and PW5 then took Dulal to his house. Now, the defence side nowhere suggested while cross-examining PWs 1, 2 and 3 that there was any previous animosity between these witnesses and the accused. Defence side nowhere suggested that these witnesses are the inimically disposed towards the accused which could inspire them to give false evidence against the latter. PW5 Md Hanif Uddin has fully supported the prosecution case. He stated in course of his deposition that at the time of the incident he had seen an altercation going between the accused and Dulal. At that time he was going on foot to the place of occurrence which is located near the river. On hearing hue and cry, he looked back and saw that Dulal was lying in an injured condition and Alom after striking Dulal was going away. In course of his cross-examination, PW5 stated that there was previous animosity between Alom and Dulal regarding extraction of sand

from the river bank. This statement of PW5 further strengthens the prosecution case and explain the motive of the accused behind striking Dulal. The defence side also did not put any suggestion to this PW that he has any animosity with the accused. The defence side has extensively cross-examined PWs 1,2,3 and 5 but nothing could be extracted from these PWs which can eclipse their trustworthiness.

15. PW4 Dr Queen Gogoi is the Medical Officer who was working as M & H O 1 at 30 bedded C.H.C, Dhekiajuli on 24-10-13. She stated in course of her deposition inter alia that on that day at 10.20 am she examined Mr Dulal Miya who was found not fully conscious. On medical examination PW4 found that Dulal had sustained sharp cut injury over left parietal region of scalp. The size of injury was 8x1.5x2mm approximately. PW4 further stated that Dulal was bleeding profusely and he had suffered haematoma. After giving him first aid, PW4 referred Dulal Ali to Kanaklata Civil Hospital for further treatment. PW4 has opined that the nature of injury sustained by Dulal Ali was sharp cut injury caused by sharp weapon and that it was a recent one.

16. It is seen that there is a minor variation in the date of incident mentioned by PW4 in course of her examination-in-chief and that mentioned by her in her medical examination report i.e. Ext.1. In course of examination-in-chief PW4 stated that she has examined Dulal on 24-10-13 whereas in Ext.1, the date of medical examination of Dulal Ali is mentioned as 27-10-13. Now, this court takes judicial notice of the fact that the incident as well as medical examination of Dulal Ali was done in Oct/ 2013 and PW4 i.e. the concerned medical officer was examined before the court in Nov 15 i.e after about two years of medically examining Dulal Ali. Human memory fades with the passage of time and no witness can be considered to be a ready reckoner. The FIR clearly reveals that the incident had actually taken place on 27-10-13 in the morning. Moreover, the medical examination report i.e. Ext.1 contained a remark to the effect that police requisition was brought at the time of medical examination of Dulal Ali from I/C Raikasmari police out post. Since Ext.1, is a contemporaneous document prepared immediately after medical examination of Dulal Ali, there is nothing to disbelieve the same.

17. I have also considered the statement made by the accused Md Alom Ali in course of his examination before the court U/S 313 Cr.P.C. In course of his

7

examination he has stated inter alia that at the time of incident he was digging sand near the river and just at that time victim Dulal prevented him from digging sand and he attempted to strike him with a krish (a cutting weapon), then he i.e. the accused started brandishing his kur (i.e. a spade) in self defence. The accused further stated that he cannot say if the act of his brandishing the spade had caused injury to Dulal. It is interesting to note that the accused has not denied having injured Dulal. Instead he admitted that at the time of the incident, there was a scuffle between him and Dulal and his act might have injured Dulal which he is not sure. This statement of the accused in course of his examination U/S 313 Cr.P.C. when seen in a conjunction with the evidence of all other PWs as well as the evidence of MO, it is clearly established that the accused Alom Ali had inflicted cut injury upon Dulal with his spade. The defence side did not make any attempt to prove that the victim Dulal had attacked Alom Ali with a krish which is used for cutting, at the time of the incident. Moreover, it has also not been proved by the defence side that any provocation was given by the victim Dulal to the accused Alom Ali at the time of the incident. Mere obstruction cannot be a provocation unless facts and circumstance in which the said obstruction was is clearly explained and proved. The defence side by cross-examining the I.O has brought to light certain omissions in stating facts on the part of PW1, PW2 and PW3. The I/O i.e PW6 in cross-examination stated that PWs 1 and 2 had not stated before him that Sahar Ali and Hanif Uddin had shouldered the injured Dulal to the house of the informant and that PW3 has not stated before him that at the time of the incident victim Dulal Ali was talking over phone with somebody. Considering the evidence of PWs discussed above as well as statement made by the accused in course of his examination U/S 313 Cr.P.C, this court is of the opinion that the omissions referred to by PW6 in course of his cross-examination are not strong enough to eclipse the evidence of PWs 1,2, and 3.

18. I have also considered the fact that in this case, the victim Md Dulal Ali could not be examined. The non-examination of the victim was due to his death. However, considering the evidence of all other PWs as well as injury report of the victim Dulal which has been proved by the concerned M & HO, I am of the opinion that non-examination of Dulal is not fatal to prosecution case.

19. Now, coming to the nature of injury inflicted upon the victim Dulal Ali, it is seen that in the medical examination report i.e. Ext.1, the medial officer stated that Dulal had sustained sharp cut injury which was caused by a sharp weapon. He was referred to KCH, for further management. However, further developments in the treatment of Dulal Ali have not been brought on record by the prosecution side. There is nothing on record to suggest as to whether Dulal had actually taken any treatment at KCH or not. Now, going through the medical examination report i.e. Ext.1, it is seen that sharp cut injury was sustained by Dulal with a sharp weapon. A sharp cut injury under all circumstances would cause bodily pain and therefore it is clearly established that accused Alom Ali had caused hurt with a sharp weapon i.e. a kur (spade) to Dulal Ali. Hence, although the commission of offence U/S 326 IPC has not been proved by the prosecution side, yet the latter has been able to prove beyond all reasonable doubt that the accused Alom Ali had voluntarily caused hurt to Dulal with the kur which is an instrument used for cutting or digging.

20. At this stage, it would be appropriate to refer to section 222(2) of Cr.P.C. which says that " when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with".

21. The Supreme Court of India in the case of **Rafique Ali @ Rafi –Vs-State of UP in Crl Appeal 656 of 2005** in para 31 of the said judgment observed inter alia that there is no absolute bar or impediment in law, in punishing a person for an offence less grave than the offences for which the accused was charged during the course of the trial provided the essential ingredients for adopting such a course are satisfied".

22. The essential ingredients of offences U/S 324 IPC and 326 IPC are substantially the same. Both these offences are cognate offences when juxtaposed with one another. The only difference is that the offence U/S 324 IPC is a minor version of the offence U/S 326 IPC. In course of the trial of this case, the accused Alom Ali was adequately informed of the allegation that he has to meet. In course of his examination U/S 313 Cr.P.C. all incriminating materials appearing against him in evidence were brought to his notice. Hence, it cannot be said that prejudice will

be caused to the accused if he is now dealt with U/S 324 IPC after having being charged U/S 326 IPC.

23. Considering all the above aspects, the accused Alom Ali is hereby found guilty of having committed offence U/S 324 IPC and he is convicted under the said section of law.

24. As regards commission of offence U/S 341 IPC it is seen that none of the PWs stated in course of their evidence that the accused tried to wrongfully restrained the victim Dulal at the time of the incident. Hence, it can be concluded that prosecution side has failed to prove commission of offence U/S 341 IPC by the accused beyond all reasonable doubt.

#### **Hearing on Quantum of Sentence**

25. I have heard the prosecution and defence side on quantum of sentence to be imposed upon the accused. The statement of the accused in this regard has also been recorded on a separate paper.

26. Considering the nature of offence committed by the accused as well as the manner in which it was committed, this court is not inclined to deal with him under probation of offender's act as it will give a wrong message to the society at large. The injury report of the victim reveals that he sustained injury over parietal region of his head and he was profusely bleeding at the time of his medical examination. The report further reveals that haematoma was also found in the head of the victim. As such, the injuries sustained by the victim Dulal Ali on account of the act of Alom Ali cannot be said to be trivial one. In fact, it had the potential to put his life at stake. Again in course of his examination U/S 313 Cr.P.C, the accused Alom Ali himself stated that at the time of the incident, he was brandishing his kur (i.e. a spade). This means that he was totally callous to the probable outcome of his act and he was acting in a reckless manner without taking into consideration that his act was likely to cause injury to Dulal Ali. However, it is also to be seen that the convict Alom Ali is facing the instant proceeding since the year 2013 i.e. for the last 7 years. He was also in jail hajot in connection with this case for a period of about two months. The prosecution evidence could not prove the nature of injury sustained by Dulal Ali. There is nothing on record to show as to whether Dulal was

hospitalized or not after sustaining injury. There is also nothing to suggest that the convict Alom Ali had struck Dulal with his spade in furtherance of any prior conspiracy in this regard. In fact PW5 Hanif Uddin stated in course of his deposition that at the time of the incident he had seen a heated argument going on between Dulal Ali and Alom Ali. In course of his cross-examination he further stated that while Alom Ali was collecting stone chips, Dulal had obstructed him from doing so. Thus this fact suggests that it is quite likely that the convict Alom Ali had acted in heat of the moment. Moreover, the article with which Alom Ali had struck Dulal is a kur (i.e. spade) used for digging earth and stone chips and the evidence of PWs make it clear that at the time of the incident Alom Ali was digging stone and collecting stone chips near the river. This means that Alom Ali did not go to the spot with a kur only with the motive to strick Dulal with the same. In addition to the above, a kur cannot be said to be a very dangerous weapon.

27. Considering all the above aggravating as well as mitigating circumstances the convict Md Alom Ali is hereby sentenced to pay a fine of Rs 10,000/- (Ten Thousand) only as compensation to the informant who is the father and next kin of the deceased victim. In default of payment of fine, the convict Md Alom Ali will undergo SI for one month.

28. Seized articles if any, be delivered to his lawful owner after proper verification and following the process of law.

29. Judgement is delivered and pronounced in open court.

30. A free copy of judgment be forthwith given to the accused.

31. Given under my hand and seal of this court on this 10<sup>th</sup> day of February, 2021.

Sri Angshuman Bhattacharjee  
Addl. Chief Judicial Magistrate  
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses:-

PW1 Md Lal Miya

PW2 Md Sahar Ali

PW3 Allauddin

PW4 Dr Queen Gogoi

PW5 Md Hanif Ali

PW6 SI Danda Dhar Kumar

Defence witness:

Nil

Documents exhibited by the prosecution :-

Ext. 1 Medical report

Ext.2 Ejahar

Ext.3 is the extract copy of GD entry

Ext.4 is the sketch map

Ext.5 is the seizure list

Ext.6 charge sheet

M.Ext.A is the weapon (kudal) of offence.

Documents exhibited by the defence -: Nil

Sri Angshuman Bhattacharjee  
Addl. Chief Judicial Magistrate  
Sonitpur, Tezpur