

**IN THE COURT OF SUB DIVISIONAL JUDICIAL**  
**MAGISTRATE, GOHPUR, SONITPUR**

**P R C 263/2018**

**(G R – 160/18)**

**U/S 341/323 I.P.C.**

State

Vs

Sri. Deep Saikia, S/o. Lt. Khandiram  
Saikia

Vill. Nigam Maj-Shari, P.S. Gohpur,

Dist: Biswanath, Assam.

..... Accused.

Present: Shri. A. A. Choudhury, S.D.J.M (M), Gohpur.

For prosecution: Ms. Barnali Chetia, Id. A.P.P

For defence: Mr. Debajit Dutta, Ld. Advocate.

Date of evidence: 19.01.2019, 27.02.2019,  
18.06.2019, 09.01.2020.

Argument heard on: 17.08.21.

Judgment delivered on: 23.08.21.

### **JUDGMENT**

1. The prosecution case in a nutshell is that the informant namely Smti. Sonmoni Das lodged an ejahar/FIR on 22.05.18 inter-alia alleging that on the same day ie., 22.05.18 at about 08:00 pm; accused Deep Saikia and informant's husband namely Sri. Kush Das entered into an argument and thereafter accused Deep Saikia hit the head of Sri. Kush Das resulting in grievous injuries.
2. The ejahar/FIR was initially registered as Hawajan O.P. GDE No. 454/18 dated 29.05.18 and thereafter the same was registered as a case vide Gohpur P.S. Case No. 145/18 U/S 341/325 I.P.C on 04.06.18 and investigation was initiated.

3. On completion of the investigation, Charge-Sheet under Section 341/323 I.P.C was submitted against the accused person namely Sri Deep Saikia.
4. Accordingly, cognizance was taken and copies were served to the accused person and when particulars of offence under the aforesaid sections of law was read over and explained to the accused person, the accused pleaded not guilty and claimed to be tried.
5. During the trail, the prosecution side has examined 05 (Five) Prosecution witnesses, whereas, the case of accused person is of denial

**6. Point for determination:**

- (i) Whether the accused person has voluntarily caused hurt to the informant's husband namely Sri. Kush Das?
- (ii) Whether the accused person has voluntarily obstructed and prevented informant's husband namely Sri. Kush Das from

proceeding in a direction in which he had a right to proceed?

**Decision thereon and Reasons for the decision:**

7. PW 1 namely Sri Kush Das deposed that the informant is his wife and he knows the accused. The incident occurred on a Tuesday in the year 2018 at ChengmaraTiniali at about 06:00 pm while accused Deep Saikia bought a chicken from PW 1's shop but when PW 1 asked the payment of the chicken from Deep Saikia; accused Deep Saikia refused to pay money and pushed PW 1 and as a result, PW 1 hit the wall and sustained injuries on his head causing blood haemorrhage. PW 1 was treated at Guwahati and later got well.
8. In cross examination PW 1 stated that the incident occurred in last year at Chengmara Centre at about 08:00 pm. Shop of accused and one Khargeswar's shop are nearby the place of occurrence. Police recorded his statement after 03 months of incident. PW 1 denied the suggestions put to him.

9. In evidence, the informant as PW 2 namely Smti. Sonmoni Das deposed that she is the informant of this case and has filed the ejahar/FIR against Deep Saikia. Fight occurred between Sri Kush Das and accused Sri Deep Saikia at Chengmara on last year. PW 2 deposed that one Baap Rajkhowa informed PW 2 about the incident at about 09:00 pm. Father-in-law and mother-in-law of PW 2 arrived at the place of incident. Accused person undertook the CT Scan Test (Brain) of victim Kush Das. Kush Das was also treated at GMCH, Guwahati for 3-4 days. About Rs. 30,000/- was spent for treatment of Kush Das.

10. In cross examination, PW2 stated that the incident occurred at Chengmara. PW 2 has not seen the incident. After 2 days of the incident, PW 2 filed the ejahar in the police station. Kush Das is a regular drunkard. Police did not record her statement. PW 1 denied the suggestions put to her.

11. PW 3 namely Smti. Budheswari Das deposed that the informant is her daughter-in-law. PW 3 knows the accused person. Incident occurred about 5-6 months ago at

Chengmara Market at about 09:00 pm. PW 3 deposed that she came to know that accused Deep Saikia has injured her son. PW 3 also deposed that on being informed by a person namely Baap, PW 3 came to the place of the incident and saw that her son was lying on the ground in injured condition. The injured was taken to the police station and then taken to Kolabari, Difalu Civil Hospital. Subsequently Kush Das was taken to Catholic Hospital as well as to Guwahati for treatment.

12. In cross examination, PW 3 stated that the place of the incident is about 5 km distance from her house. PW 3 cannot remember the names of 2 persons who were present when PW 3 reached the place of occurrence. PW 3 has not seen the incident. PW 1 denied the suggestions put to her.

13. PW 4 namely Sri Ananta Rajkhowa stated that he knows both the parties. About 01 year ago at about 07:00 - 08:00 pm at Chengmara Centre, PW 4 saw Kachari Das, who runs a chicken shop, was lying in front of his shop. PW 4 called Kachari Das but found no response. Kachari Das is a

habitual drunkard and is often found lying in intoxicated condition. PW 4 informed the parents of Kachari Das and also brought them with him in his bike to the place of occurrence.

14. In cross examination, PW 4 stated that he has not heard about beating of Kachari Das. PW 4 has not seen any injury on the victim's body on the day of occurrence. Police did not record statement of PW 4. It may be noted that PW 4 has used the name 'Kachari Das', whereas, other particulars, as in, the vocation of the victim, place of occurrence, parents of victim and other facts of the case, undoubtedly suggests that PW 4 in his evidence referred to Kush Das although he used the name Kachari Das. Moreover, it cannot always be expected that a person knows the exact proper name of shopkeepers in the local market.

15. PW 5 namely Dr. Tolan Das deposed that on 22.05.2018 at 9:30 am at Kolabari Model Hospital PW 5 has examined Sri Kush Das S/O Bijuli Das, Vill- Nigam and found right side

external ear injury with bleeding which is Simple injury. Probable weapon used is blunt. Age of injury is recent.

16. In cross examination PW 5 stated that in Exhibit 2 no police station case no is mentioned. Age of patient not mentioned. 'Recent' implies within 24 hours. The mentioned injury may be due to fall over rough surface.
17. On appreciation of the evidence, it could be seen there are no eye-witnesses in this case. PW 2 (informant) and PW 3 were informed about the incident by PW 4. PW 4, in his cross examination stated that he has not heard about beating of Kachari Das and has not seen any injury on the victim's body on the day of occurrence. The witnesses have also deposed that victim Kush Das is a drunkard and is sometimes found lying in an intoxicated condition. However, exhibit 2, which is the Medical examination report does not state anything with regard to intoxication and none of the witnesses have stated that the victim Kush Das was intoxicated on the day of occurrence and as such, victim being under influence of alcohol on the day of occurrence when he was also medically examined is ruled



out. Rather, injury of simple nature is recorded in Exhibit 2. PW 4, the Medical Officer has corroborated the nature and other particulars of injury in his evidence. As such, in my opinion, that the victim Kush Das sustained injuries as detailed in Exhibit 2 remains a fact. That the victim was not under the influence of alcohol on the day of occurrence is also acceptable for reasons stated above.

Corroboration is found as regards the place of occurrence which is Chengmara. PW 2, who is the informant as well as wife of victim Kush Das deposed in her evidence that accused person undertook the CT Scan Test (Brain) of victim Kush Das. This statement of PW 2 has not been refuted or rebutted in her cross examination by the defence side. Though PW 5, Medical Expert deposed in his cross examination that similar injury may be due to accidental fall over rough surface but at the same time it has not been ruled out that such an injury cannot be caused due to human fist blow.

18. As the prosecution side has been able to show that the victim sustained simple injury for which treatment was required and that the incident occurred at Chengmara,

where victim Kush Das has a shop and considering these factors, I find that evidence of PW 1 (victim) Kush Das does not suffer from any inconsistency or contradiction. It appears quite possible that on a busy market, suddenly there starts a confrontation in which one person strikes a blow to the other, for which there might not be any eye witness who have seen the exact moment of strike. Moreover, accused person has undertaken the CT Scan Test (Brain) of victim as deposed by PW 2, which further goes to show that there is involvement of accused in causing hurt to the victim.

19. After considering evidence of the PWs and other materials on record and upon hearing Ld. Counsels of both sides, the issues are answered accordingly:

(i). Whether the accused person has voluntarily caused hurt to the informant's husband namely Sri. Kush Das is answered in the affirmative and in favour of the victim for reasons stated above.

(ii) Whether the accused person has voluntarily obstructed and prevented informant's husband namely

Sri. Kush Das from proceeding in a direction in which he had a right to proceed is answered in the negative as there are no materials-on-record indicating that accused person has voluntarily obstructed and prevented Sri. Kush Das from proceeding in a direction in which he had a right to proceed.

20. As a result of the foregoing discussions, the following Order is passed in this case.

**ORDER**

21. Accused Sri Deep Saikia stands convicted in this case on being found guilty of offence U/S 323 IPC charged against him for reasons discussed above.
22. This Court has also given due consideration as to whether the provisions of the Probation of Offenders Act, 1958 can be applicable in the instant case, but in this case, such an offence is not a fit case to release the accused persons under the Act of 1958 as the offence pertains to causing hurt in a non provocative fight. Also, the said incident caused pain, financial loss, medical cost etc to the victim.

23. Later on, also heard accused person on the question of sentence. Accused pleaded clemency as the instant offence being the first and only offence ever committed by him and has also assured that henceforth he will never commit any offence. Accused also stated that he was provoked by the informant and in a fit of rage, the offence was committed, which was very much unintentional.

24. Hence, considering the entire circumstances; accused Sri. Deep Saikia is sentenced to Custody till rising of Court and in addition to pay fine of Rs. 1,000.00 (Rupees one thousand) only and in default to Simple Imprisonment for 01 month.

25. The judgement is pronounced in open Court in the presence of the accused person.

26. Let free copy of the Judgement and Order be furnished to the accused person.

27. Accordingly, case disposed off.

Bail bond, if any, shall remain in force for a period 06 (six) months as specified under provisions of law.

Given under my hand and seal of this court on this the 23<sup>rd</sup>  
day of August, 2021.

A. A. Choudhury,  
S.D.J.M (M), Gohpur.

SONITPUR DISTRICT JUDICIARY

## **APPENDIX**

### **Prosecution Witness:**

- PW. 1. –Kush Das.  
PW. 2. –Sonmoni Das.  
PW. 3. –BudheswariDas.  
PW. 4. –Ananta Rajkhowas.  
PW. 5. –Dr. Tolan Das.

### **Prosecution Documents.**

1. Exhibit 1 – FIR/Ejahaar.
2. Exhibit 2 - Medical Report.

### **Material Exhibits: NIL**

### **Defence Witness: NIL**

### **Defence Documents: NIL**

### **Court Witness: NIL**

A. A. Choudhury,  
S.D.J.M (M), Gohpur.

**23.08.21:**

Accused person is present in Court today.

Judgment and Order is pronounced in open Court today in presence of the accused person and his learned counsel.

The following Order is passed in this case.

Keep the original copy of Judgment and Order alongwith the C/R.

**O R D E R**

21. Accused Sri Deep Saikia stands convicted in this case on being found guilty of offence U/S 323 IPC charged against him for reasons discussed above.
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A. A. Choudhury,

S.D.J.M (M), Gohpur.