

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**SESSION CASE NO. 56 of 2013**

Under section 326/307 IPC  
(Arising out of G. R Case No.2421/11)

**State of Assam**

**-Vs-**

1. Md. Abdul Rahman ..... Accused person

**Present : Smti I. Barman, AJS  
Sessions Judge,  
Sonitpur, Tezpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. K. Kalita, Advocate

Date of Argument : 23-06-2020

Date of Judgment : 07-07-2020

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

**1.** The criminal case was set into motion on filing the FIR on 05-11-2011 by Moinul Haque (PW1) the uncle of the injured Majibur Rahman before the In-Charge of Borghat Out Post alleging that on 03.11.2011 at around 09.30 PM on being called by Abdul Rahman, when his brother Majibur Rahman went to the house of accused Abdul Rahman, the accused along with Abdul Mannan, Abdul Kasem and Alauddin dealt him with Khukri and dao as a result of which he sustained injuries.

**2.** On receipt of the ejahar, the I/C of Borghat Out Post entered the GD Entry No. 84 dated 05.11.2011 and forwarding the FIR to the O/C Tezpur PS launched investigation of the case. Receiving the FIR, O/C of Tezpur PS

registered the case being Tezpur P.S. Case No. 1236/11 u/s 342/326/307 of the IPC and entrusted A.S.I. Idrish Ali to investigate the same. Accordingly the Investigating Officer visited the place of occurrence, recorded the statement of the witnesses and after completion of investigation laid charge-sheet against the accused person Md. Abdul Rahman u/s 342/326/307 of IPC.

**3.** On appearance of the accused person before the Court, the Learned Chief Judicial Magistrate, Sonitpur, Tezpur, furnishing copies of the documents under section 207 Cr.P.C committed the case to the Court of Session being the offence u/s 307 IPC exclusively triable by the court of Session. On committal, the case was transferred to the Court of the learned Addl. Session Judge Sonitpur, Tezpur. Accordingly, after going through the police report and hearing both sides, the Ld. Additional Sessions Judge, Sonitpur, Tezpur framed charge u/s 326/307 of IPC against the accused person Md. Abdul Rahman and particulars of the charges on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried. Later on, the case was withdrawn to this Court.

**4.** To substantiate the case, prosecution examined six witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations leveled against him. Defence plea is of total denial and adduced no evidence.

**5.** I have heard argument advanced by the learned counsel of both sides and also have gone through the evidence on record.

**6. The points to be determined in this case are as follows—**

*(i) Whether the accused person Md. Abdul Rahman on 03.11.2011 at about 9.30 PM, at Pungpani village under Tezpur PS, voluntarily caused grievous hurt to Md Majibur Rahman by means of 'Khukri' and 'dao' the sharp cutting weapons and thereby committed an offence punishable u/s 326 of the IPC ?*

*(ii) Whether the accused person Md. Abdul Rahman on 03.11.2011 at about 9.30 PM, at Pungpani village under Tezpur PS, had inflicted blows on Md. Majibur Rahman by means of 'dao', and 'khukri' with*

*such intention and under such circumstances that if he by that act caused the death of Majibur Rahman, he would have been guilty of murder and thereby caused hurt to Majibur Rahman and thereby committed an offence punishable u/s 307 of the IPC ?*

**7.** In order to appreciate the argument advanced on behalf of both the sides, I deem it appropriate to briefly recapitulate the evidence on record as follows:

**8.** PW 1 Moinul Haque the informant of this case testified that on 03.11.2011 at around 9.30 pm while he was at home, his sister Fatema Khatoon coming to his house informed him that a quarrel was going on where her son-in-law Majibur Rahman was assaulted, hence asked him to go there. Then he went to the place of occurrence and found that in the meantime Fatema and Abdul Jalil took the injured Majibur Rahman to Tezpur Civil Hospital. Later on he met the injured Majibur Rahman in the hospital who on being asked reported him that his brother accused Abdul Rahman calling him to his house, inflicted him blows with a dao. He saw cut injury over scalp of Majibur Rahman and stitched over the wound. Regarding the incident he lodged the FIR on 04.11.2011 (Ext. 1).

During cross he stated that he had not seen the incident. He did not know if there is any land dispute between the accused Abdul Rahman and his step brother the injured Majibur Rahman who were next door neighbours.

**9.** PW 2 Abdul Jalil the uncle of the injured as well as the accused testified that on the day of incident at around 9.30 PM hearing halla in the house of injured Majibur Rahman, he went to the house of the accused Abdul Rahman and had seen Majibur Rahman with bleeding injury over his head and he was lying in the courtyard of accused Abdul Rahman. Injured Majibur Rahman reported him that Abdul Rahman inflicted him blows with dao. Thereafter Majibur Rahman was taken to Tezpur Civil Hospital.

During cross he stated that the distance between the house of the accused and the injured is only 20 feet. He further stated that the house of

Abdul Sobhan, Abdul Jalil, Rahman Ali and others are situated near the house of the accused. He deposed that besides himself, Kasem Ali, Mannaf and one another came to the place of occurrence. He stated that there is land dispute between the accused Abdul Rahman and injured Majibur Rahman. He clearly stated that he had not seen the incident. He admitted that he had cordial relation with the injured but his relation with the accused is not good.

**10.** PW 3 Habijuddin and PW 5 Kulsum Bibi turned hostile. They mentioned their ignorance about the incident.

**11.** The Medical Officer Dr. Bijay Pal Das (PW 4) examined the injured Md. Majibur Rahman on 03-11-2011 on police requisition in reference to Tezpur PS Case No. 1236/11 u/s 342/326/307/34 IPC and found the following:

i) Sharp cut injury over the scalp on frontal bone size 5cm x 3cm x 2cm.

ii) Another cut injury left parietal bone of scalp size 6cm x 3cm x 2cm.

iii) Small cut injury in left hand, size 2cm x 1cm x 1cm

iv) Another cut injury over right forearm size 3cm x 2cm x 1cm and cut seen in the parietal and frontal bone.

In his opinion, injury was fresh caused by sharp object and grievous in nature. He proved the medical report as Ext. 2.

During cross he stated that the cut injuries sustained by the injured may be cause by falling on sharp object.

**12.** The evidence of PW 6 Idrish Ali the Investigating Officer is formal in nature. He visited the place of occurrence, prepared the sketch map of the place of occurrence vide Ext. 3, recorded the statement of the witnesses including the injured, collected the medical report, arrested the accused Abdul Rahman and on completion of preliminary investigation, he handed over the case diary to the I/C Jagdish Chandra Debnath who later on submitted the charge-sheet against the accused Abdul Rahman u/s 342/326/307 IPC.

During cross he stated that the incident occurred on 03.11.2011 and the FIR was received on 04.11.2011 by Borghat Out Post. According to him there are only two houses near the place of occurrence i.e. one belongs to the accused and other to the victim. He admitted that he did not record the statement of Abdul Sobhan and Rahman Ali whose houses are situated near the place of occurrence.

**13.** In this case, admittedly the accused and the injured are step brothers and there are land dispute between them. PW 1 the informant and PW2 testified that they were reported by the injured Majibur Rahman that the accused Abdul Rahman inflicted him blows with a dao as a result of which he sustained injuries. The medical evidence reveals that the injured sustained grievous injury caused by sharp object. However, the final report to be given by surgeon concerned was admitted not collected by the Investigating Officer. Though during cross the medical officer stated that the cut injuries sustained by the injured may be caused by falling on sharp object but neither in cross examination nor in statement u/s 313 Cr.P.C. defence took the plea that the injured sustained injuries due to fall on sharp object.

**14.** In such circumstances, let us see who caused the injuries. According to PW1, his sister Fatema Khatun coming to his house reported that her son-in-law Majibur Rahman was assaulted and asked him to go to the place of occurrence and accordingly when he reached the place of occurrence found that in the meantime injured was taken to hospital. In hospital injured Mojibur Rahman reported him that accused Abdul Rahman calling him to his house, inflicted him blows with a dao. So, he met the injured in hospital on the very day. The evidence of PW 1 reveals that Fatema Khatun who reported him first about the incident mentioned name of none as to who assaulted the injured. Fatema Khatun, the mother-in-law of the injured who reported the informant first that the injured was assaulted was also not examined by prosecution. Moreover none of the family members of the injured was examined who were the best persons to know if the accused called the injured to his house. So far as evidence of PW 2, the uncle of the injured is concerned, on the day of incident hearing hulla when he rushed to the house of the accused, had seen the injured lying in the courtyard of the

accused with head injury who told him that the accused Abdul Rahman gave him blows with a dao. The evidence of PW 1 and PW 2 reveals that neither PW 1 nor PW 2 was present at the place of occurrence. Though according to PW 2, Kasem Ali, Mannaf and another were present at the place of occurrence but they were not examined by the prosecution. Non examination of eye witnesses to the occurrence draws an adverse inference against the prosecution. In this case the most vital witness the injured Majibur Rahman could not be examined by the prosecution side as during trial he expired as per report of police. Other two witnesses PW 3 and PW 5 turned hostile and deposed that they knew nothing about the incident. No weapon was also seized by the Investigating Officer.

**15.** Further, the alleged incident occurred on 03.11.2011 at 9.30 PM and the FIR was lodged on 05.11.2011 at 4.20 PM and as such there is delay of two days in filing the FIR. No explanation was given for these two days delay. If PW1 and PW2 were reported by the injured about inflicting him blows with dao by the accused on the very day of incident, lodging the FIR after two days without explaining delay is fatal to the prosecution.

**16.** Moreover, in the FIR the informant implicated other three persons besides the present accused Abdul Rahman who allegedly attacked the injured with Khukri and dao but in deposition he stated that the injured Majibur Rahman reported him that accused Abdul Rahman inflicted him blows. When PW 1 and PW 2 are not eye witnesses and the injured could not be examined, it raises suspicion as to who actually caused the injuries amongst those four persons. As such involvement of the present accused in commission of the crime is doubtful. Further, as per deposition, the informant heard about the incident on the same day from the injured himself in hospital. Hence, lodging FIR after two days, implicating three others creates serious doubt about the prosecution version. Evidence of PW 1 and PW 2 also reveals that there was enmity between the accused and the injured due to land dispute which is a double edged weapon. Hence, possibility of falsely implicating the accused cannot be ruled out. In the above, the evidence of PW1 and PW 2 being interested witnesses and

admittedly PW 2 who had cordial relation with the injured but having no good relation with the accused, their evidence cannot be believed in toto.

**17.** On a threadbare analysis of the materials available on record discussed above, it becomes clear that the evidence on record are not only grossly inadequate, but wholly deficient to hold the accused guilty of offences, which had been charged with and in these circumstances I am of the considered opinion that the accused is entitled to benefit of doubt.

**18.** In the result, accused Md. Abdul Rahman is acquitted from the charge u/s 326/307 IPC and set him at liberty forthwith. His bail bond shall remain in force till next six months.

**19.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **7<sup>th</sup> day of July, 2020.**

( I. Barman )  
SESSIONS JUDGE  
SONITPUR :: TEZPUR

Dictated and corrected by me

(I. Barman)  
SESSIONS JUDGE,  
SONITPUR :: TEZPUR

## **APPENDIX**

### **Prosecution Witness**

- |                                    |           |                                    |
|------------------------------------|-----------|------------------------------------|
| <b>1. Prosecution Witness No.1</b> | <b>:-</b> | Moinul Haque,                      |
| <b>2. Prosecution Witness No.2</b> | <b>:-</b> | Abdul Jalil,                       |
| <b>3. Prosecution Witness No.3</b> | <b>:-</b> | Habijuddin,                        |
| <b>4. Prosecution Witness No.4</b> | <b>:-</b> | Dr. Bijay Pal Das, Medical Officer |
| <b>5. Prosecution Witness No.5</b> | <b>:-</b> | Kulsum Bibi.                       |
| <b>6. Prosecution Witness No.6</b> | <b>:-</b> | Idrish Ali, I.O.                   |

### **EXHIBITS**

- |                        |           |                |
|------------------------|-----------|----------------|
| <b>1. Exhibit No.1</b> | <b>:-</b> | FIR            |
| <b>2. Exhibit No.2</b> | <b>:-</b> | Medical Report |
| <b>3. Exhibit No.3</b> | <b>:-</b> | Sketch Map     |

(I.Barman)  
SESSIONS JUDGE  
SONITPUR: TEZPUR