

**APPENDIX -12**

<p>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR, TEZPUR</p> <p>Present: <b>Smt. Priyanka Saikia, JMFC</b></p> <p>(Date of the Judgment)</p> <p><b>10-11-2022</b></p> <p><b>(CASE NO- G.R. 1544/2016)</b></p> <p>(Details of FIR/Crime and Police Station)</p>	
Complainant	State of Assam or Md. Abdul Ali
Represented By	Smti. Bandana Baro, Learned APP
Accused persons	1. Md. Usman Ali 2. Md. Helaluddin 3. Md. Ismail Hussain @ Babul All are sons S/o- Md. Hafijuddin Residents of village Keherukhanda Pathar P.S.- Dhekiajuli Dist- Sonitpur, Assam
Represented by	Shri Kabin Sarma

**APPENDIX -13**

Date of offence	16-05-2016
Date of FIR	18-05-2016
Date of charge sheet	30-05-2016
Date of charge frame	21-09-2017
Date of commencement of evidence	30-07-2018
Date on which judgment is reserved	28-10-2022
Date of judgment	10-11-2022
Date of the sentencing order, if any	NIL

**Accused Details**

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
A-1	Md. Usman Ali	NIL	20-07-17	Sections 447, 323, 325, 506, 34 of IPC	Convicted under Sections 447, 323, 325, 34 of IPC	<p>i) Rs. 500/- each u/s 447, 34 of IPC i/d S.I. for 7 days.</p> <p>ii) Rs. 1,000/- each u/s 323, 34 of IPC i/d S.I. for 15 days.</p> <p>iii) S.I. for 6 months with Rs. 5,000/- each u/s 325, 34 of IPC i/d S.I. for 2 months.</p>	NIL

A-2	Md. Helaluddin	NIL	20-07-17	Section 447, 323, 325, 506, 34 of IPC	Convicted under Sections 447, 323, 325,34 of IPC	i) Rs. 500/- each u/s 447, 34 of IPC i/d S.I. for 7 days. ii) Rs. 1,000/- each u/s 323, 34 of IPC i/d S.I. for 15 days. iii) S.I. for 6 months with Rs. 5,000/- each u/s 325, 34 of IPC i/d S.I. for 2 months.	NIL
A-3	Md. Ismail Hussain @ Babul	NIL	20-07-17	Section 447, 323, 325, 506, 34 of IPC	Convicted under Sections 447, 323, 325,34 of IPC	i) Rs. 500/- each u/s 447, 34 of IPC i/d S.I. for 7 days. ii) Rs. 1,000/- each u/s	NIL

						323, 34 of IPC i/d S.I. for 15 days. iii) S.I. for 6 months with Rs. 5,000/- each u/s 325, 34 of IPC i/d S.I. for 2 months.	
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**APPENDIX -14****LIST OF PROSECUTION / DEFENSE / COURT WITNESSES****A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Abdul Ali	Informant
PW2	Farida Khatun	Other witness
PW3	Firuja Khatoon	Other witness
PW4	Jamir Ali	Other witness
PW5	Lakshmi Prasad Kachary	Police witness
PW6	Dr. Queen Gogoi	Medical witness

**B. Defense Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**LIST OF PROSECUTION/ DEFENSE/ COURT EXHIBITS****A. Prosecution:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext. 1	Ejahaar
2	Ext. 1(1)	Signature
3	Ext.2	Sketch map
4	Ext.2(1)	Signature
5	Ext.3	Medical Certificate
6	Ext.3(1)	Signature
7	Ext.4	Medical Certificate
8	Ext.4(1)	Signature
9	Ext.5	Charge Sheet
10	Ext.5(1)	Signature

**B. Defense:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
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NIL	NIL	NIL
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**C. Court Exhibits:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

**D. Material Objects**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
NIL	NIL	NIL

## **JUDGMENT**

**1.** The informant, Abdul Ali lodged an FIR before the Dhekiajuli P.S. on 16-05-2016 stating that on 15-05-2016 the accused persons had dug out a drain by which the dirty water of their house flows and entered to his pond. On 16-05-2016, at about 2.00 PM when the informant noticed the drain and his wife Musst. Farida Khatun had seized the drain, then, the accused persons along with sticks came to informant's boundary and forcefully break the boundary fencing and illegally entered into informant's courtyard and started to attack the informant and his wife by the sticks. As a result the informant and his wife got severely injured. Also threatened them to dire consequence. The accused persons had been inflicting, torturing upon the informant from long ago. Hence, this case.

**2.** Upon receipt of the ejahar, the police registered Dhekiajuli Police Station case no: 308/2016 under Sections 447, 323, 325, 427, 506, 34 of Indian Penal Code, 1860 (hereinafter referred to as IPC). After completion of the investigation the police submitted charge-sheet against accused persons under Sections 447, 323, 325, 506, 34 of IPC.

**3.** The accused persons entered trial and after furnishing the copies of the relevant documents in compliance with Section 207 of Cr.P.C and upon finding sufficient materials against the accused persons charge

under Sections 447, 323, 325, 506, 34 of IPC was framed against them and the same has been explained to them to which they pleaded not guilty and claimed to be tried.

**4.** During trial the prosecution examined 6 numbers of witnesses and closed its evidence. Accused persons were examined under Section 313 of Cr.P.C. Defense is of total innocence. Accused persons defense declined to adduce evidence. I have heard the arguments for both sides.

**5.** The learned Counsel for the State has submitted that the prosecution has able to prove the charges under Sections 447, 323, 325, 506, 34 of IPC beyond all reasonable doubt, as such accused persons may be punished. Resisting the learned A.P.P the learned defence counsel has submitted that the prosecution has failed to prove its case and accused persons deserve acquittal. It is argued that delay occurred in lodging of the FIR and there is no evidence that accused persons have committed offence. It is also argued that there is no mark of injury on victim as per opinion of doctor, as such accused persons may be acquitted.

**6.** Upon hearing and on perusal of the case record I have framed the following points for determination-

**(I)** Whether the accused persons infurtherance of common intention on 16-05-2016 at about 02.00 PM, trespassed into the boundary of informant with a view to

commit an offence and thereby committed an offence punishable under Sections 447, 34 of Indian Penal Code?

**(II)** Whether the accused persons infurtherance of common intention on 16-05-2016 at about 02.00 PM, voluntarily caused hurt to the informant and his wife and thereby committed an offence punishable under Sections 323, 34 of Indian Penal Code?

**(III)** Whether the accused persons infurtherance of common intention on 16-05-2016 at about 02.00 PM, committed voluntarily caused grievous hurt to the informant by means of stick and thereby committed an offence punishable under Sections 325, 34 of Indian Penal Code?

**(IV)** Whether the accused persons infurtherance of common intention on 16-05-2016 at about 02.00 PM, intimidated the informant with dire consequences and thereby committed an offence punishable under Sections 506, 34 of IPC?

**DISCUSSION, REASONS AND DECISION THEREOF:**

7. PW 1/ Abdul Ali had deposed in his evidence in chief that exhibit is the FIR which was filed in the year 2016. The accused persons were his neighbour. There was a small pond in his land which he used for his household chores. The accused persons dig out a drain and let the dirty water to flow in his pond. He asked not to flow the

dirty water in his pond, on which the accused persons had verbally altercation with him and accused persons hold him and assaulted him with a bamboo stick. After assault he went to police station and lodged the FIR. Police sent him for medical examination. At the time of incident his wife Farida Begum went to rescue him but the accused Usman Ali and Babul Ali pushed her to the ground and also pulled her hair and lacerated her clothes. She also sustained injury in that incident.

In his cross examination PW 1 had deposed that on the day of incident, he lodged the FIR. The incident took place at afternoon at about 1.00-2.00 PM. Accused persons had dug the drain from the border of his and accused persons land. The FIR was written as per his narration and after read the FIR he signed on it. He has stated in his FIR, the time of occurrence as 1.00 PM or 2.30 PM or 3.00 PM. PW-1 went for medical examination. On the day of incident no medical examination was done on him. Police did not seized any bamboo stick and lacerated clothes of his wife. Police went to the place of occurrence.

**8.** PW-2/ Farida Khatun had deposed in her evidence in chief that she knew the accused persons. The informant is her husband. The incident if of one year ago at around 2.00 PM. They had a fight with the accused persons. Accused Hallaluddin digged as a result of which the dirty water flows in PW-2's pond. She and her husband obstructed the accused persons from doing that.

Hallaluddin came and hit her husband at his feet and slapped him. On seeing the accused persons assaulting her husband, she came for his rescue. Then accused Babul Ali hold her hair and pushed her to the ground and lacerated her clothes. After that her husband went to the police station to lodge FIR. Police send PW-2 and her husband for medical examination.

In her cross examination she deposed that on the day of occurrence police came to her house after the FIR was lodged. She had not stated before police that Hallaluddin assaulted her husband. Police did not seized the bamboo stick and her lacerated clothes. Police did not seized the fencing of their boundary.

**9.** PW-3/Firuja Khatoon had deposed in her evidence in chief that she knew the informant and the accused persons. The incident is of 2016 at around 2.00 P.M. The accused persons entered the house of the informant and beat him and his wife. The fight arouse because the informant obstructed the path through which the accused persons released dirty water.

In her cross examination she deposed that the informant Abdul Ali is her husband's elder brother. Police examined her. Police came when the incident happened. The distance between her house and police station is approximately 10 KM. Police did not seized anything from the place of occurrence.

**10.** PW-4/Jamir Ali had deposed in his evidence that he knew the informant and the accused persons. The incident is of 2016 at around 2.00 PM. The accused persons beat only the informant who sustained injuries. Informant broke his leg. The fight occurred due to some reasons. He was at house at the time of the incident. On seeing them fighting, she stopped the fight.

In his cross examination he deposed that informant was his own brother. He used to go for work daily but sometime he stayed at home. There were other houses near there house. At the time of incident the neighbours did not come but they came afterwards.

**11.** PW-5/Lakshmi Prasad Kachary (I.O.) had deposed in his evidence that on 18-05-2016, he was attached officer at Dhekiajuli P.S. and that the informant filed a ejahar which was registered and he was given charge of the investigation. He completed the formality of preparing a sketch map, examined the informant, along with other witnesses also he collected the injury reports of the victims i.e. PW-1 and PW-2. Thereafter, he prepared a charge sheet against the accused persons under Section 447, 323, 325, 506, 34 of IPC.

In his cross examination PW-5 deposed that the O/C received the ejahar on 18-05-2016 and on that day the case was registered being Dhekiajuli Case No. 308/2016. In exhibit 1 the filing date of ejahar was written as 16-05-2016. He visited the place of occurrence on 18-05-2016. It

is mentioned in the case dairy on what day the victim was sent for medical examination. There was no mention of GD entry in the charge sheet. He did not seized anything from the place of occurrence. He did not mentioned about the drain in the sketch map. In the charge sheet the FIR has been over written after being whitened. There is no initial on it. There is no mention of GD entry and police case number in Exhibit 3 and Exhibit 4.

**12.** PW-6/Dr. Queen Gogoi(M.O.) had deposed in her evidence that On 16-05-2016 she was working as a medical and health officer at Dhekiajuli CHC. On the same day she had examined PW-1/Md. Abdul Ali, age 48, S/o- Late Tahar Ali r/o Keherukhanda, P.S.- Dhekiajuli. He was escorted by UBC/139 Aswani Dutta. History of assault- 1.30 PM of 16-05-2016 under Dhekiajuli P.S., Case Number Nil.

On examining PW-6 found abrasion over left calf including knee with swelling, size 1 cm x 1.5 x 1.5.

She advised X-ray examination of left leg and knee. X-ray report was fracture bone of Fibula. She advised for orthopaedic consultation at TMCH. Nature of injury – grievous injury caused by blunt object.

On the same day she had examined PW-2/Farida Khatun, w/o- Md. Abdul Ali, r/o Keherukhanda, P.S.- Dhekiajuli. Dhekiajuli P.S., Case Number Nil. Escorted UBC/139 Aswani Dutta. History of assault- 1.30 PM of 16-05-2016 under Dhekiajuli P.S., Case Number Nil. On examination there were no specific injuries. Simple injury

caused by blunt object. P.Ext.3/PW-6 is medical report of PW-1/Abdul Ali and P.Ext.4/PW-6 is medical report of PW-2/Farida Khatun.

In her cross-examination PW-6 deposed that as per medical report the injury is on 16-05-2016. The victim/PW-1 has stated before her that he was assaulted. PW-6 had not done alcoholic test of victim PW-1/Abdul Ali. There was no facility of orthopaedic technician in their hospital. There was no GD entry or case number in the injury reports. From Keherukhanda, the Dhekiajuli P.S. comes first then the hospital. In P.Ext.4/PW-6 of medical report of Farida Khatun, PW-6 had not found any specific injuries. After examination she did not get any external injury but as stated by the victim/PW-2/Farida Khatun, she had written as simple injury. In both the medical reports the injuries are simple in nature. Such type of injury can be occurred by falling on some hard substance.

### **APPRECIATION OF EVIDENCE**

**13.** From the evidence of the witnesses, it can be said that there is no dispute about the examination of the victims by the Doctor and there is no dispute that informant/PW-1 & PW-2 sustained injuries. To understand how the victims sustained injuries, it will be proper to see the evidence of victims. Moreover, it has been corroborated other evidences on record or other witnesses that injury sustained by the victims were actually caused by the accused persons.

**14.** In this case, the prime accusations levelled against the accused persons by the informant/PW-1 that the accused persons had beaten him/PW-1 and his wife/PW-2. The accused persons had assaulted them with stick. The condemnations upon which the criminal law sets in motion against the accused persons of this case needs to be demonstrate by the prosecution beyond any reasonable doubt to prove the guilt of the accused persons.

**15.** In this case the prosecution side able to examine 6 (six) numbers of witnesses to substantiate the accusations against the accused persons and on meticulous perusal of the evidences on record, this court finds that all PWs have corroborated the prosecution story.

**16.** Now, coming to the evidence presented by the informant, who is appears to be the star witness to the prosecution case, this court finds that PW-1 & PW-2 i.e. the victims, had deposed that the accused persons assaulted them.

**17.** The evidence presented by PW-1 & PW-2 appears that they had corroborated the fact of PW-1's grievous injury by the accused persons on the date of alleged incident. Hence, from the evidences on record, it is seen that the witnesses' right from PW-1 to PW-4 have supported the prosecution.

**18.** PW-6/Dr. Queen Gogoi (M.O.) medically examined the victims and found on PW-1 abrasion over left calf including knee with swelling, size 1 cm x 1.5 x 1.5. X-ray report was fracture bone of Fibula and on PW-2, she found no specific injuries. It was Simple injury caused by blunt object.

**19.** Having considered the medical opinion on the presence of and the nature of injuries on the victims, let me now move on to the substantive evidence fed into the case.

**20.** In any injury related case, the victims are the best persons to adduce evidence as they are the least likely to exculpate the real offenders and incriminate an innocent one. If their evidence is found to be credible, it carries immense evidentiary value and is sufficient in most cases to warrant the conviction of the accused on its own.

**21.** PW-1, has stated that the accused persons had dug up a drain on the boundary of his land and their land. On the date of occurrence at around 1:30 p.m., the accused persons came with a stick and assaulted him and PW-2. The above assertion of the victim/PW-1 and PW-2 could not be dislodged by the defence and that apart nothing material could be brought out from the victims to show that the victims/PW-1 & PW-2 had any reason to falsely implicate the accused persons.

**22.** I would like to point out herein that for the argument of delay in lodging of the FIR the Court reiterated what the Supreme court held in **State of Punjab v. Gurmit Singh, reported in (1996) 2 SCC 384** that delay in lodging of the FIR in such cases does not vitiate the Prosecution case.

**23.** Regarding the first point for determination Section 447 of IPC prescribes punishment for the offence of criminal trespass. It is necessary for an offence punishable under Section 447 of IPC that essential ingredients of criminal trespass must be fulfilled.

**24.** Section 441 of IPC provides that whoever enters into or upon property, in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass". Section 447 of IPC provides for the punishment of Criminal-trespass. In order to sustain conviction under Section 447 of IPC, the evidence on records must be to the conclusion that the intention of the accused persons were to commit an offence or to intimidate insult or annoy the informant.

**25.** Now let me examine as to whether the prosecution has been able to establish the guilt of the accused persons under Section 441 of IPC which is punishable under Section

447 of IPC. From perusal of the evidence of the PW-1 it is seen that he has alleged that accused persons trespassed into his boundary on the day of occurrence and assaulted him by bamboo stick. Thereafter, his wife/PW-2 tried to rescue him but the accused persons also assaulted her physically. The evidence of PW-1 is corroborated by PW-2, PW-3 and PW-4.

**26.** In the instant case from the evidence of the PW's it is clear that there exist a dispute between the family of the informant and the accused persons. Now coming to whether the accused persons had trespassed into the property of the informant/PW-1, it is clear from the evidence of PW-1, PW-2, PW-3, and PW-4 that the accused persons had trespassed into the land of the informant on the day of occurrence and had an altercation with the informant. Learned defence counsel has argued that no independent witnesses were examined by the prosecution and all the PW's are interested witness.

**27.** The rule of evidence is that the evidence of a related or interested witness should be meticulously and carefully examined. Merely because the witnesses are related to the informant their evidence cannot be thrown out. The learned counsel for the defence has argued that the prosecution has only brought in interested witness to prove their case. Their testimony is not sufficient to warrant the conviction of the accused persons. At this juncture, let me point out that if the testimony of prosecution witnesses are

cogent, reliable and confidence inspiring, it cannot be discarded merely on the ground that the witness happened to be relatives of the informant. The plea of "interested witness" and "related witness" has been succinctly explained by the Hon'ble Supreme Court in **State of Rajasthan vs. Smt. Kalki & Anr. reported in (1981) 2 SCC 752** wherein it has held: "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested". Just because the witnesses are the relatives of the informant does not mean that their evidence has to be discarded.

**28.** In the present case at hand if we scrutinize the evidence of PW-1, and PW-2 as also the facts and circumstances of the instant case, the evidence of PW-1 & PW-2 are found to be trustworthy and reliable. The evidence of the PW's has remained consistent. Thus it transpires from the testimony of the prosecution witnesses that their evidence is consistent with regard to the accused persons trespassing into the land of the informant to commit an illegal act i.e. to assault the informant and his wife. The accused persons are therefore found guilty for committing offence under Section 447, 34 of IPC.

**29.** Now let me discuss the second and third point for determination. The essential ingredients of Sections 323 & 325 of IPC are as follows:

**Section 323 of IPC** (Punishment for voluntarily causing hurt): The essential ingredients of the offence under Section 323 of IPC are –

- a. That the accused caused hurt to any person.
- b. That such hurt was caused voluntarily.
- c. That such a case was not provided for by Section 334 IPC.

**Section 325 of IPC** (Punishment for causing grievous hurt): Essential ingredients of the offence under Section 325 IPC are:

- a. That the accused caused grievous hurt to any person
- b. That such hurt was caused voluntarily
- c. That such a case was not provided for by section 335 IPC.

**30.** Chapter 16 of Indian Penal Code deals with offences against human body. As per its Section 319 IPC 'hurt' is described as under: "319. Hurt -Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt".

**31.** Vide Section 320 IPC 'hurt' will become 'grievous' under any one of the following categories: " 320. Grievous hurt-The following kinds of hurt only are designated as "grievous"-

First. - Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. -Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

**32.** Hence, in the light of the above mentioned provisions, in order to prove the commission of the offence under Section 323 of the Indian Penal Code, 1860 by the accused person, it must be proved that (a) the accused caused either bodily pain or disease or infirmity to the injured;(b) such bodily pain or disease or infirmity was caused by the accused (i) intentionally, or (ii) with the knowledge that his act shall cause hurt.

**33.** And To bring home an offence under Section 325 IPC the prosecution has to prove that a) that the accused has caused bodily pain, disease or infirmity to the victim; b) this hurt has been caused voluntarily; c) and this hurt has been caused without being provoked by anyone, d) that the hurt that has been caused answers any of the hurt described in Section 320 of IPC.

**34.** Hurt' is commonly known as 'simple hurt/injury' is punishable under Section 323 of IPC. However, when the said hurt was caused by a dangerous weapon or means then it is punishable under Section 324 of IPC and if the hurt is "grievous" as defined in Section 320 of IPC then it is punishable under Section 325 of IPC.

**35.** Now let us see as to whether the accused persons are found guilty under Sections 323 & 325 of IPC or not. After going through the entire evidence adduced by the prosecution side it has been found that except for PW-1 and PW-2, none of the other P.W's have witnessed the occurrence. Now if we go through the evidence of PW-1, we find that PW-1 has testified that on the alleged day of occurrence the accused persons physically assaulted him and his wife/PW-2. It is revealed from the evidence all the PW's that the informant along with her family has been staying at the accused persons land at the time of occurrence. The same has been corroborated by all the witnesses. Now if we carefully go through the evidence of all the PW's it is clear that the main cause of dispute among the accused persons and the informant arose due to coming dirty water from the accused persons house through the drain.

**36.** I have carefully gone through the evidence on record. From the evidence on record it appears that there was a quarrel between the accused persons and the

informant with regard to the flow out of dirty water and all the accused persons assaulted the informant/PW-1 and PW-2.

**37.** Now coming to the evidence on record we all know that the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of contradiction. In the instant case there exist a clear fact that the accused persons and the PW's had a dispute with regard to flowing out dirty water. Except a minor discrepancy as stated by PW-1 and PW-2 that they filed the Ejahar on the date of occurrence itself there is no other discrepancy found in their other statement. It is natural on the part of human brain to miss out some minor omissions. Further it is also amply clear that since defence did not take the plea under Section 334 of IPC, it is implied that there was no provocation from the victims side.

**38.** In the instant case both PW-1 and PW-2 are the alleged victims and apart from PW-3 and PW-4, no independent witnesses had witnessed the occurrence. Discarding their evidence on the ground that they are related witness would be causing injustice to them. Simply because they are related does not make their evidence unbelievable. If we carefully peruse the evidence of prosecution witnesses all of them have corroborated the fact that there was a dispute between the accused persons and informant with regard to flow out of dirty water. The

fact that the informant and the accused persons had a dispute is well proven.

**39.** Considering the nature of the injuries it is highly improbable that the same has been inflicted by the victims on their own. Defence has not put up any plea regarding the presence of injuries. The guilt of the accused persons is however apparent both from the evidence of the victims and the injury reports. In the case of **State of M.P vs Mansingh , (2003) 10 SCC 414**, the Hon'ble Supreme Court held as follows, "The evidence of injured witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly."

**40.** The medical evidence in the instant case has supported the case of the prosecution. PW-6, has testified that on 16.05.2016 examined PW-1 & PW-2 and found on PW-1 abrasion over left calf including knee with swelling, size 1 cm x 1.5 x 1.5. X-ray report was fracture bone of Fibula and on PW-2, she found no specific injuries. It was Simple injury caused by blunt object. According to her the nature of injury of PW-2 was simple and caused by blunt object. On examination she found grievous injury on PW-1. According to her the nature of injury was grievous and caused by blunt object.

**41.** Here in the instant case PW-1 have deposed that while the accused persons had assaulted him, his wife/PW-

2 tried to save him and then he and his wife/PW-2 received injury. PW-3 & PW-4 have deposed that the injured were assaulted by the accused persons. The PW-6/M.O. has proved that the fracture of fibula bone of PW-1 was injured and caused by blunt weapon. **In the Sec. 320 IPC grievous injury is described in seventh no.** that "Fracture or dislocation of a bone or tooth". Here in the instant case it is proved that the fracture of fibula bone of PW-1, hence considering the definition seventh of Section 320 IPC it is proved beyond doubt that the injury of the PW-1 was grievous hurt. The injury of the PW-1 was caused by the accused with blunt object. The defence side could not prove that there was any grave and sudden provocation from the side of the PW-1, hence I am of the considered opinion that prosecution has succeeded to prove the ingredients of Section 325 IPC against the accused persons.

**42.** From the testimony of PW-1 and PW-2 as well as from the testimony of the M.O. together with the injury reports vide Exhibit-3 and Exhibit-4 it is crystal clear that the accused persons had indeed subjected the informant/PW-1 and PW-2 to physical assault in furtherance of their common intention and had caused hurt voluntarily to PW-2 and caused grievous hurt to the informant/PW-1 without any provocation on the part of the victims. The accused persons are therefore found guilty for committing offence under Sections 323, 325, 34 of IPC.

**43.** Further, to prove the allegation under Section 506 of IPC it has to be proved by the Informant/PW-1 that he had been intimidated as a result of the threatening given by the accused persons. In the instant case, none of the prosecution witnesses had deposed anything about any criminal intimidation meted to the informant/PW-1 by the accused persons. As such it is held that the prosecution has failed to prove that the accused persons had committed the offence of criminal intimidation under Section 506, 34 of IPC.

**44.** In the light of the above discussion of evidence on record, coupled with my reasoning, I hold the accused persons are guilty of the offence punishable under Sections 447, 323, 325, 34 of IPC. However they are acquitted of the offences under Section 506, 34 of IPC.

**45.** The accused persons are heard on the point of sentence. They state that they are poor people and they are own brothers and they are only earning members of their family along with their widow mother and pray for leniency as this is their first offence.

**46.** In view of the nature of the offence and injury of the victims and as the accused has no remorse and caused injury to the PW-1 & PW-2 on a flimsy ground I am not inclined to provide the benefit of probation of offenders act against the accused persons. But, in view of the

submission and prayer of the accused persons and considering that this is their first offence and taking note about the nature of the offences and hoping of reconciliation between the parties in future, I punish the accused persons leniently which in my view is just and adequate.

### **ORDER**

**47.** The accused persons are convicted and sentenced to pay a fine of:-

(i) Rs. 500/- each under Section 447, 34 of IPC in default simple imprisonment for 7 (seven) days.

(ii) Rs. 1,000/- each under Section 323, 34 of IPC in default simple imprisonment for 15 (Fifteen) days.

(iii) Simple Imprisonment for 6 (six) months with Rs. 5,000/- each under Section 325, 34 of IPC in default simple imprisonment for 2 (two) months.

**48.** The sentences of imprisonment are to run concurrently.

**49.** Any period of detention undergone by the accused persons/convicts shall be set off against the term of their sentence under Section 428 of Cr.P.C.

**50.** Let the fine, if paid, be deposited in the State Treasury under the proper head.

**51.** Let a copy of the judgment be given to the accused persons immediately free of cost as per the provisions of Section 363(1), Cr.P.C.

**52.** Accused persons are also informed of their right of appeal to higher court against the judgment and order of conviction and sentence.

Given under my hand and seal of this court on this 10<sup>th</sup> day of November, 2022 at Sonitpur Assam.

(Priyanka Saikia, AJS)  
Judicial Magistrate 1<sup>st</sup> Class  
Sonitpur, Tezpur