

IN THE COURT OF JMFC-20,  
SONITPUR, TEZPUR

Present: **Shri Vishek Bhuyan,**  
**AJS**

[Date of the Judgment]  
**28-10-2022**

[GR Case No : 644 of 2014]

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM  OR  Sri Bablu Singh
REPRESENTED BY	Learned A.P.P Sri Niranjan Saikia
ACCUSED PERSONS	A1. Sri Mangal Kumar S/o- Ram Kumar A2. Sri Tunia Kumar S/o- Gabardhan A3. Sri Kamal Das S/o- Late Umesh Das A4. Sri Promod Sah @ Sonari S/o- Sri Mathura Sah A5. Sri Sunu Sah @ Sonari S/o- Sri Promod Sah All are resident of Vill- T.M Road Betanijhar P.S- Tezpur, Sonitpur (Assam)
REPRESENTED BY	I. Ansari and Md. H. A. Ansari

**FORM B**

Date of Offence	18.03.2014
Date of FIR.	18.03.2014
Date of Charge-sheet	31.05.2014
Date of charge framed	16.11.2015
Date of commencement of evidence	17.05.2018
Date on which judgment is reserved	NIL
Date of the Judgment	28.10.2022
Date of the Sentencing Order, if any	NIL

**Accused Details**

Rank of the 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.
	A1 Sri Mangal Kumar	NA	02.05.2014	341/325/34	Acquitted	NIL	
	A2 Sri Tunia Kumar	NA	02.05.2014	341/325/34	Acquitted	NIL	
	A3 Sri Kamal Das	NA	02.05.2014	341/325/34	Acquitted	NIL	
	A4 Sri Promod Sah	NA	02.05.2014	341/325/34	Acquitted	NIL	
	A 5 Sri Sunu Sah	NA	02.05.2014	341/325/34	Acquitted	NIL	

**Form C****A. Prosecution**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Punu Chundi	Other Witness
PW2	Bablu Singh	Informant
PW3	Dr. Hiranjan Saikia	Medical Officer
PW4	Laxmi Pd. Kachari	Other witness

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

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

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

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1	Jai Kishan Prashad	Other Witness

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

Sr. No	Exhibit Number	Description
1	Exhibit 1	FIR
2	Exhibit 1(1)	Signatures of informant
3	Exhibit 2	Medical Report
4	Exhibit 2(1)	Signature of M.O
5	Exhibit 3	Sketch Map
6	Exhibit 3(1)	Signature of ASI Biren Ch. Saikia
7	Exhibit 4	Charge Sheet
8	Exhibit 4(1)	Signature of ASI Biren Ch. Saikia

**A. Defence:**

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

**A. CourtExhibits**

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

**A. MaterialObjects:**

Sr. No	Material Object Number	Description
NIL	NIL	NIL

**BEFORE THE COURT OF JUDICIAL MAGISTRATE**  
**1<sup>ST</sup> CLASS**

**TEZPUR, SONITPUR**

**Present :- Sri Vishek Bhuyan, AJS**  
**Judicial Magistrate 1st Class Sonitpur, at Tezpur**  
**(G.R CASE NO.: 644 OF 2014)**

**Under Sections 341/325/34 of IPC**

**State of Assam**

***-VERSUS-***

**A1. Sri Mangal Kumar**

S/o- Ram Kumar

**A2. Sri Tunia Kumar**

S/o- Gabardhan

**A3. Sri Kamal Das**

S/o- Late Umesh Das

**A4. Sri Promod Sah @**

**Sonari**

S/o- Sri Mathura Sah

**A5. Sri Sunu Sah @**

**Sonari**

S/o- Sri Promod Sah

All are resident of Vill- T.M

Road Betanijhar

P.S- Tezpur, Sonitpur

-Accused persons.

**Appeared**

Ld. APP for State : Sri Niranjan Saikia.  
Ld. Counsel for Defence : I. Ansari and Md. H. A. Ansari  
Offence explained on : 16.11.2015  
Dates of Evidence : 17.05.2018, 24.07.2018, 20.03.2019, 06.01.2020.  
Dates of Court Witness : 11.12.2021  
Date of Argument : 26.09.2022  
Date of Judgment : 28.10.2022

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

**1.** The present case arose out of an FIR lodged by informant Bablu Singh who states that on 18.03.2014 at around 9 AM the accused persons restrained the brother of the informant Sri Jai Kishan when he was coming by his motor cycle from godown situated at J.M Road. Further more, the accused persons physically assaulted the brother causing grievous hurt. Hence, this case.

**2.** On receipt of the FIR, officer in charge of Tezpur police station registered a case vide Tezpur P.S. case no. 309/2014 under Sections 341/325/34 of the Indian Penal Code (IPC) and endorsed the case for investigation. Accordingly, investigating officer (I/O) initiated investigation of this case and on completion

of investigation, I/O submitted charge sheet against the accused persons under Sections 341/325/34 of the IPC.

**3.** Thereafter, on basis of the contents of the case diary, FIR, charge sheet and other relevant documents, cognizance was taken of the offence prima facie appeared to have been committed by the accused persons and summons were issued against them.

**4.** On appearance, accused persons were furnished with copy of relevant documents under Section 207 of the Criminal Procedure Code (Cr.P.C.).

**5.** On perusal and consideration of the material on record and upon hearing the learned Assistant Public Prosecutor (APP) and the learned counsel appearing on behalf of the accused persons, prima-facie material of offence under Sections 341/325/34 of the Indian Penal Code (IPC) were found against the accused persons and accordingly particulars of said offence under the aforesaid sections were framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

**6.** In support of its case, prosecution examined 4 (four) number of witnesses and 1 (one) number of court witness. There are 8 (eight) exhibits. The

witnesses were cross-examined by the defence and thereafter the witnesses were discharged.

**7.** Statements of defence of the accused persons under section 313 Cr.P.C. have been recorded and kept with the case record. Defence pleas were of complete denial and further stated that the complainant filed this case against them to escape liability from another case filed against them and declined to adduce any evidence.

**8.** I have perused the material on record and heard the arguments advanced by the learned A.P.P. and the learned counsel appearing for the accused persons.

**9.** Upon hearing and after perusal of the record, following points are formulated for proper adjudication of this case:

**POINTS FOR DETERMINATION :**

**(A) Point No. 1 :** Whether the accused persons in furtherance of common intention on 18.03.2014 at 9 AM wrongfully restrained the brother of the Informant Sri Jai Kishan when he was coming by his motorcycle from godown situated at JM Road and thereby committed an offence punishable under section 341/34 of IPC ?

**(B) Point No. 2 :** Whether the accused persons in furtherance of common intention on the same date,



place and time voluntarily caused grievous hurt to the brother of Informant Jai Kishan and thereby committed the offence under section 325/34 of IPC?

### **PROSECUTION EVIDENCE**

#### **Evidence of informant**

**10. P.W 2 Babul Singh** states that he is the informant of the case. He knows the accused persons. The incident took place on 18.03.2014 at about 9:30 AM. The incident took place near the house of the accused Promod Sahani. His brother Jai Kishan Prashad was going from the godown at T.M Road by his bike. His brother while going was beaten up by the accused persons and when he reached the place of occurrence he saw the accused persons beating up his brother while his brother was lying on the ground. His brother was attacked with dao, stick etc. He took his brother to hospital and then filed the ejarah. His brother sustained injury on his leg and arms. **In his Cross examination** he stated that the place of occurrence about half kilometer away from his house. His godown is also half kilometer away from the place of occurrence. His office is near Hanuman Mandir. A case in Sessions Court is pending against him wherein there is accusation that he along with his brother and a few others together tried to kill Balbir Singh, the case is still pending at the time of his evidence. Akash, Raju, Mahesh, Jatin Munda and

Bikki Das were also with him. Balbir Singh's house is near the place of occurrence, there are also houses of other 5 to 6 people near the place of occurrence. He went along with Punu to the place of occurrence. Punu's house is about half a kilometer away from the place of occurrence. When they reached the place of occurrence they saw the accused persons running away. There were about 4 to 5 other people present at the place of occurrence but he does not remember their name. His brother Binod Singh along with Sanjeev Acharjee took the victim to hospital.

### **Evidence of independent witnesses**

**11. P.W 1 Punu Sundi** states that he knows the informant as well as the accused persons. The incident took place in the month of March, 2014. On the day of the incident at about 7 AM at Goroimari near Hanuman Mandir, while he was going from Goroimari towards his house, when he reached near Hanuman Mandir. Infront of the house of Promod Saha, the accused persons assaulted Jai Kishan with hockey stick, cricket bat and lathi. The bike of Jai Kishan was lying nearby. He did not go near Jai Kishan out of fear that the accused persons will also assault him. Thereafter, he informed the brother of the victim Bablu Singh and also took him to the hospital. **In his Cross examination** he stated that at the time of the incident he was studying in

Haleswar High School, Class X. His house is about half kilometer away from the the place of occurrence. Binod's house as well as his pan shop was nearby the place of occurrence. He states that he does not know whether on the day prior to the incident Bablu Singh attacked Akash Munda or not. He states that he knows the accused persons but other then Kamal he does not know the name of the rest of the accused persons. The place of occurrence is not located on the way to his house. He states that he stated before the police that the incident occurred about 20 meters from the main road. He does not know what weapon was used by the accused persons and also does not know on which part of the body the accused persons attacked the victim. He further deposed that he saw injury marks on the back of the victim.

**12. P.W 3 Dr. Hiranjan Saikia** states that on 18.03.2014 he was working as M.O at KCH and examined Sri Jai Kishan Prashad, S/o- Late Chandan Singh of Haleswar, Tezpur. Patient was identified by himself and escorted by a police personal. On examination it was found that there was history of alleged assault, inside cut injury size of 6x2x1 cm and 1 inch size of 1x1 cm in right leg. CT scan and X-ray of leg normal finding. Type of injury was simple caused by sharp weapon and age of injury was less than 24 hours. In his **Cross examination** he states

that there is no mentioned of police requisition and police case no in Exhibit 2. Hence, he cannot say whether the contents of Exhibit 2 are connected with the instant case or not. The patient was voluntary patient. There was no mentioned of treatment provided to the patient in Exhibit 2. There is no mentioned about blood stain. The injury was not fresh. And that kind of injury can be caused by falling on hard substents.

**13. P.W 4 Laxmi Prashad Kachari** states that on 18.03.2014 she was working as incharge at Salonibari Out Post. An FIR was lodged by Bablu Singh which was recorded by her vide GD entry No. 420 dated 18.03.2014. And the same was forwarded to O/C, Tezpur for registration. Vide registration no. Tezpur PS Case 309/2014 u/s 341/325/34 of IPC. Thereafter, the investigation was entrusted to Biran Ch. Saikia who conducted the entire investigation and submitted charge sheet against the accused persons u/s section 341/325/34 of IPC. In her **Cross examination** she states that she has only received a FIR in this case, she has not conducted the investigation. Hence, she can not say on what basis charge sheet was submitted by Biren Ch. Saikia. Prior to the incident one cross case was also lodged relating to hurting Balbir Singh by the accused Jai Kishan Prashad, Bablu Singh and Akash Munda.

Relating to the same incident 3 cases were registered. In one of those cases lodged by Minu Das, she conducted the investigation and submitted charge sheet.

### **COURT WITNESS**

**14. C.W 1 Jai Kishan Prashad** states that he knows the accused persons. Informant is his elder brother. He also knows the accused person Sonu Kumar @ Shah. The incident happened on 18.03.2014 during Holi at morning time around 9:00 AM. The place of incident was on the road near (approximately 50 meter) Hanuman Mandir, Tezpur. He saw the accused persons on the road while he was on his to inspect his godown which is near Hanuman Mandir, Tezpur. When he returned back, the accused persons accosted him and accused person Sonu Kumar @ Shah hit his bike and him on his head using a cricket bat. Then the rest of the accused persons along with few others who had not been charge sheeted started hitting him using hockey stick, cricket stump, cricket bat and rod etc. He sustained injuries on his head and leg. In his **Cross examination** he states that it is not a fact that during day time on 17.03.2014, a day before the said incident, he, his elder brother Bablu Singh, Akash Munda, Jatin Munda and 4 others had assaulted Balbir Singh due to which Balbir Singh sustained

serious injuries on his head. It is not a fact that the accused persons in this case saved Balbir Singh from them and took him to the hospital for treatment. Due to the incident on 17.03.2014 a case was registered against them. He was arrested along with 6 others in this case. The said case is proceeding in Sessions Court, Sonitpur, Tezpur against him and 7 others. He does not remember the date when he was arrested. He was admitted in KCH, Tezpur on 18.03.2014. He does not remember exactly the number of days he was admitted in hospital; it must be approximately around 3 to 4 days. He was taken to hospital by his brother without police escort. He knows Minu Das who along with his mother filed an FIR regarding the incident on 18.03.2014 and another incident during night on 17.03.2014. Regarding the incident of 18.03.2014, Bablu Singh i.e. his elder brother filed an FIR in the instant case. He does not remember whether he was examined by police or not in this case. It is not a fact that when he returned back from inspecting his godown, the accused persons accosted him and accused person Sonu Kumar @ Shah hit his bike and him on his head using a cricket bat. Then the rest of the accused persons along with few others who had not been charge sheeted started hitting on his head and leg. He does not remember and he can not recollect whether he stated before police whatever he had deposed in court today in his

examination on chief. It is not a fact that the incident on 18.03.2014 did not occur. It is not a fact that the he had deposed falsely that he could not recollect whether he had stated the particulars of the incident before police. It is not a fact that he was not admitted in hospital for 3 to 4 days due to the incident on 18.03.2014. It is not a fact that the instant case has been registered against the accused persons on false grounds by his brother and Minu Das to save him and brother along with other persons from the case registered against them due to the incident on 17.03.2014 as the accused persons in the instant case are witnesses in that case. It is not a fact that the accused persons in the instant case have been falsely implicated due to the case against them.

**DISCUSSIONS, DECISIONS AND REASONS**  
**THEREOF**

**15.** Upon perusal of the evidence it is seen that there are several lacunae/contradictions in the evidences of the prosecution witnesses.

**16.** Firstly, PW-1 who is an eye witness, stated in his evidence in chief that the accused persons were attacking the victim who is the brother of the informant with hockey stick, cricket bat and lathi but he contradicted himself in his cross examination by stating that he did not see which accused was using which weapon while attacking Jai Kishan.

Furthermore, he stated in his cross examination that the place of occurrence is about  $\frac{1}{2}$  Km away from his home and the same is not located on the way to his home but in his examination in chief he deposed that on the day of the incident he was going from Goroimari Center to his home. Now, PW-1 has not assigned any reason as to how he happen to be present at the place of occurrence as he already contradicted himself when he stated that the place of occurrence is not located on the way to his home.

**17.** Another point to be noted in the evidence of PW-1 is that, he deposed in his cross examination that in his statement before Police he stated that the place of occurrence is about 20 meters from the main road, which he failed to mention in his examination in chief. Now, 20 meters is not a very large distance and it is prudent to assume that many other people and vehicle would have been plying on the main road at 9 AM, and considering the fact that Jai Kishan was assaulted by multiple accused persons there should have been other witnesses present due to the commotion it would have created. But PW-1 failed to mention about other witnesses. PW-1 also deposed in his cross examination that he saw the victim sustaining injury on his back, but the same does not find corroboration in Ext-2 as well as PW-2 who stated in his examination in chief that the victim sustained injury on his arms and legs.



**18.** PW-2 who is the informant and brother of the victim Jai Kishan has stated in his examination in chief that when he reached the place of occurrence he saw the accused persons assaulting his brother but in his cross examination he stated that when he reached the place of occurrence he saw the accused persons running away, hence a contradiction.

**19.** Another pertinent point to be noted is that, PW-2 has mentioned in his cross examination that he along with his brother Jai Kishan and a few others are accused of trying to kill Balbir Singh and that a case regarding the same is pending in Hon'ble Court of Sessions. CW-1 Jai Kishan has also deposed in his cross examination that a case is pending in Session Court, Tezpur against him and 7 others wherein they were arrested by Police for allegedly assaulting Balbir Singh due to which Balbir Singh sustained serious injuries. In the statement of accused recorded U/s 313 of CrPC, the accused persons have also stated that on the day prior to that of the incident, the Informant, his brother and a few others together attacked Balbir Singh with a dao as a result of which Balbir Singh sustained sharp cut injury on his as well as right hand and also received 26 stitches as well as a fractured skull. Now, from the analyzing the evidence of PWs brought into record and considering the contradictions it seems plausible that the informant has filed the instant case to escape their

liability in the case pending against them in Hon'ble Court of Sessions and also to further reinforce their defence in the said case.

**20.** PW-2/informant deposed in his examination in chief that his brother Jai Kishan was taken for treatment soon after the incident occurred, CW-1 Jai Kishan Prasad also deposed in his cross examination that he taken for treatment to Hospital at KCH on 18.03.2014 which is the day of the incident. But PW-3 who is the Medical Officer that examined the victim stated in his cross examination that injury sustained by the victim was not a fresh injury, furthermore he deposed in his examination in chief that the victim was escorted by Police personnel which was not stated by PW-2.

**21.** In the instant case, charge U/s 325 of IPC has been brought against the against accused. Section 325 of IPC states about causing of **grievous hurt** but in the present case, it can be seen from Ext-2 that the injury is a simple as deposed by PW-3. Hence, the essential requirement for constituting an offence U/s 325 of IPC is not met. Furthermore, it needs to be stated that no Police case number has been mentioned in Ext-2.

**22.** Considering the above thread of discussion it appears to this Court that there exist a lot of lacunas, omissions and contradictions in the prosecution

evidence which creates reasonable doubt as to the guilt of the accused persons.

**23.** As such the prosecution has failed prove that the accused persons have committed the offences u/s 341/325/34 of IPC beyond reasonable doubt.

**ORDER**

**24.** In light of the above discussion, the accused persons namely Sri Mangal Kumar, Sri Tunia Kumar, Sri Kamal Das, Sri Promod Sah and Sri Sunu Sah are acquitted of the charges of offence alleged to have been committed by them u/s 341/325/34.

**25.** Set the accused persons at liberty forthwith.

**26.** Bail bond for the accused persons are extended for a further period of six months in view of section 437(A) of the Cr.P.C.

**27.** Given under the hand and seal of this court on this **28<sup>th</sup> day of October, 2022** at Tezpur, Sonitpur.

**(Sri Vishek Bhuyan)**  
**Judicial Magistrate First Class**  
**Tezpur, Sonitpur.**

**Appendix**

**Name of the witness of Prosecution:-**

1. P.W-1 : Punu Chundi
2. P.W-2 : Bablu Singh
3. P.W-3 : Dr. Hiranjan Saikia
4. P.W-4 : Laxmi Pd. Kachari

**Name of the Court Witness:-**

1. C.W-1 : Jai Kishan Prashad.

**Documents exhibited by Prosecution :-**

1. Ext-1 : Ejahar
2. Ext-1(1): Signature of informant.
3. Ext-2 : Medical Report
4. Ext-2(1): Signature of M/O.
5. Ext-3 : Sketch Map
6. Ext-3(1): Signature of ASI Biren Ch. Saikia.
7. Ext-4 : Charge sheet.
8. Ext-4(1): Signature of ASI Biren Ch. Saikia.

**Name of the witness of Defence:-Nil.**

**Documents exhibited by Defence :- Nil.**

**(Sri Vishek Bhuyan)  
Judicial Magistrate First Class  
Tezpur, Sonitpur.**