

**IN THE COURT OF SRI K. K. PATHAK, JUDICIAL  
MAGISTRATE, 1ST CLASS : SONITPUR AT TEZPUR**

GR CASE NO: 664/11

U/S 447/326 IPC

PRESENT	: K. K. PATHAK, A.J.S, Judicial Magistrate, 1 <sup>st</sup> Class, Tezpur.
PARTIES	: STATE  --- V-----  : NETRA BAHADUR NEWAR  -----ACCUSED
EVIDENCE RECORDED ON	: 10.02.12, 27.02.12, 26.04.12, 07.06.12, 19.07.12
STATEMENT U/S 313 CRPC	: 19.07.12
ARGUMENTS ON	: 22.08.12
JUDGMENT ON	: 04.09.12
LAWYERS ( FOR STATE)	: A.P.P.
( FOR DEFENCE)	: D. CHOUDHURY, Advocate

**JUDGMENT:**

In the present matter, SOOTEA P.S. CASE NO 36/11 u/s 447/326 IPC was registered on the basis of an FIR lodged by one Smti Goma Devi. She alleged that on 07.04.2011 at about 7 in the evening, the accused trespassed into the premises of her father Surja Man Dorjee , assaulted him and her sister in law Sunita Devi by means of sharp weapons thereby causing injuries.

The matter was investigated and on completion thereof, charge sheet u/s 447/326 ipc was submitted against the accused.

Case was endorsed to this court. Copies were furnished. Charge u/s 447/326 ipc were framed against the accused. He denied the same and claimed to be tried.

During trial , the following individuals were examined by the prosecution:

- 1.GOMA DEVI ----- PW1 (INFORMANT)
2. SUNITA DORJI -----PW2 (VICTIM)
3. TIKARAM DAKHAL -----PW3
4. NARAYAN THAPA -----PW4
5. SURYAMAN DORJI -----PW5(VICTIM)
6. BABUL PRASAD -----PW6
7. NIREN SWARGIARY -----PW7
8. SISIR BAIDYA -----PW8(DOCTOR)
- 9.S.I. KAILASH MALAKAR-----PW9(I/O)

Besides the oral evidence, the prosecution also adduced documentary evidence in the form of FIR(EXT 1),SEIZURE LIST (EXT 2), MEDICAL/INJURY REPORTS( EXTS 3&4), SKETCH MAP(EXT 5) and the CHARGESHEET(EXT 6).

Statement of the accused u/s 313 crpc was recorded. Defence did not adduce any evidence . Arguments were heard.

**POINT FOR DETERMINATION:**

1. Whether the accused on 07.04.2011 trespassed into the premises of the victim Suryaman Dorji and voluntarily caused grievous hurt to him and Sunita Dorji by sharp/dangerous weapon ?

**DECISION AND REASONS:**

Out of the examined pws, I find that Babul Prasad/pw6 had in his examination in chief stated that both the victims had been assaulted by the accused by 'dao'. On being cross examined, he admitted that he had not witnessed the incident and had reached the place of occurrence on hearing hulla and after the incident was over. The p/o, as per his version ½ km away from his house. Evidence of this witness ,regarding assault by the accused is hearsay and being inadmissible cannot be acted upon.

Turning to the other oral evidence, the victims being Sunita Dorji/pw2 and Suryaman Dorji/pw5 have implicated the accused. Pw2 had deposed that the accused under the influence of alcohol was shouting. Her father was sitting. At that moment the accused struck her father/pw5 by dao. Thereafter , when she came out, the accused also inflicted cut injuries over her cheek and hands.

Co victim/pw 5 had also testified that the accused under influence of alcohol was shouting and entered their premises and assaulted him by 'dao' because of which he became unconscious. During cross examination, he stated that as torch was pointed in his direction, he could not make out as to who assaulted him. Although from cross of this victim, it appears that this victim is not sure about the identity of the assaulter. But pw2 who was also present at the p/o has clearly stated about the accused as having assaulted both of them. The evidence of an injured witness has a special status in law. He/ she is unlikely to let the actual assailant get away and rope in innocent persons. Keeping all aspects in view, evidence of the victims is found to have a ring of truth in it, inspires confidence and is thus wholly reliable. It is found and concluded that they were assaulted by the accused.

Corroborating the victims is the evidence of the informant/pw1--- Goma Debi. She during corss examination admitted that she had not witnessed the actual assault but on coming out of the house immediately after the incident , she saw injuries on the victims. She is also corroborated by Tikaram Dakhal/pw3 . He had also gone to the p/o on hearing hulla and saw the accused at the p/o along with dao in his hands. In addition, he also saw injuries on the victims. The injuries were over over head of Surjaman and over cheek and hands of Sunita. Though pw3 he had not witnessed the actual assault, but his evidence regarding witnessing the injuries on the victims is found cogent.

The ocular evidence is corroborated by the medical evidence. Pw 8 / Sisir Baidya was the doctor who had examined both the victims.

On examination of Sunita Dorjee he had found----

- 1 . Deep cut injury over the left cheek measuring 10 cm x 3 cm and one cm depth and there was active bleeding.
- 2.Cut injury over the dorsal aspect of left forearm measuring 10 cm x 1 cm x 1 cm and there was active bleeding.

Further , on examination of Suryaman Dorjee, he had found-

1. Deep cut injury over the left temporal region extending from left eyebrow to the temporal hair line, measuring 15 cm x 1 cm x bone deep. BONE WAS EXPOSED and there was active bleeding.

In both the cases, he found the injuries were ' sharp cut' and fresh in nature. Injuries in both cases were grievous and caused by sharp weapons. Ext 3 and 4 being the medical reports were submitted by him in this regard.

The doctor was cross examined and he admitted that he did not mention history of injury in his report. In this context, I find that there is nothing in law which makes stating of history of injury mandatory in the medical/ injury reports. This omission is a mere technical irregularity and does not make the medical evidence inadmissible.

Now as to recovery of the weapon of assault, I find that Narayan Thapa /pw4 and Niren Swargiary/pw7 are the seizure witnesses. They have both in their evidence deposed that the 'dao' was seized from the accused. During cross examination, it was elicited out of them that the seized dao was not produced in court when they deposed in court.

The point to be decided is as to whether non production of the seized weapon of assault would prove fatal to the case of the prosecution. Evidence of the seizure witnesses discloses that not even a suggestion was put forward to them that the dao was not seized from the accused. So the evidence of the prosecution regarding seizure of the dao from the accused remained undisputed. In other words the accused has not disputed the seizure. The presence of the witnesses at the spot is also not disputed.

In such a situation, non production of the seized item in court is not fatal. In making this observation, I am fortified by a Division Bench decision of the GAUHATI HIGH COURT in the case of DIGANTA DAS -V---STATE OF ASSAM, CRIMINAL APPEAL NO 14(J) OF 2005. In view of the settled position of law, I hold the non production of the seized weapon in court as not being fatal to the case of the prosecution.

The i/o(pw 9) corroborates regarding the other aspects like the p/o which was the courtyard of victim Suryaman Dorji and seizure.

After going through the oral and medical evidence, I find the offence u/s 326 ipc is made out against the accused. The hurt caused would in my opinion come within the ambit of the eighth circumstance being " any hurt which endangers life". Dao is a sharp cutting weapon. Section 447 IPC is also applicable in case of the accused since the evidence shows that the accused had entered the premises of the victim with the intention to commit an offence and was armed for this.

Thus , after sifting through the evidence, I find the charges against the accused u/s 447/326 IPC to be proved beyond doubt. The charges having been found to be proved, accused is found and held guilty of committing the offences u/s 447/326 IPC.

On the point of probation, the manner in which the offence was committed and the nature of the injuries sustained by the victim do not befit the grant of probation. Granting the benefit of probation in matters such as these would violate the principle of 'PUNISHMENT SHOULD BE COMMENSURATE WITH THE NATURE OF THE OFFENCE'. Considering all aspects, benefit of probation is not extended to the accused.

The accused was heard on the point of sentence. He stated that he is a poor man working as a chowkidar and has three children.

ORDER

The accused having been found guilty u/s 447/326 IPC is sentenced as under:

1. u/s 447 IPC -----3 MONTHS R.I.
2. u/s 326 IPC-----3 YEARS R.I.

Sentences to run concurrently. Period of detention already undergone by convict during investigation and trial be set off.

Bail bonds stand cancelled.

Seized weapon be destroyed in due course of time in accordance with law.

Provide a copy of this judgment free of cost to the convict.

Given under my hand and seal on this the 04 th day of September 2012.

(K. K. Pathak)  
Judicial Magistrate,  
1<sup>st</sup> Class, Tezpur.