

**APPENDIX -12**

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,  
SONITPUR, TEZPUR.**

Present: Dr. C. Khanikar, AJS  
Assistant Sessions Judge, Sonitpur, Tezpur

**(05<sup>th</sup> September, 2022)**

**(Sessions Case No 106 / 2020)**

(FIR NO.803/2019 DATED 12-05-2019 / ATTEMPT TO MURDER CASE /AND  
TEZPUR POLICE STATION)

<b>COMPLAINANT :</b>	SRI JATIN RAJOWAR
<b>REPRESENTED BY</b>	SMT. NIVA RAHMAN, ADVOCATE ADDITIONAL PUBLIC PROSECUTOR
<b>ACCUSED</b>	SRI PHANI RAJOWAR S/O SRI SAHADEV RAJOWAR VILL- NIZ BAHBARI PUKHURIGAON P.S.- TEZPUR DIST- SONITPUR, ASSAM
<b>REPRESENTED BY</b>	MR. R. BHARALI, ADVOCATE

**APPENDIX -13**

Date of Offence	15-03-2019
Date of FIR.	12-05-2019
Date of Charge-sheet	31-07-2019
Date of Framing of Charges	03-02-2021
Date of commencement of evidence	05-03-2021
Date on which judgment is reserved	02-09-2022
Date of the Judgment	05-09-2022
Date of the Sentencing Order, if any	None

**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 428, Cr.P.C.
1	Sri PhaniRajowar	15-05-2019	20-07-2019	447/342 /326/307 IPC	Acquitted	none	N/A

**IN THE COURT OF ASSISTANT SESSIONS JUDGE, SONITPUR,  
TEZPUR**

**SESSIONSCASE No. 106 of 2020**

**G.R. Case No.1581 of 2019**

U/S.447/342/326/307 of IPC

State of Assam .....Prosecutor

- *Versus*-

Sri Phani Rajowar .....Accused

Present: Dr. ChetanaKhanikar, AJS

For the prosecution : Smt. N. Rahman, Addl. P. P.

For the defence : Sri R. Bharali, Advocate

Evidence recorded on: 05-03-2021, 30-10-  
2021, 18-11-2021 &  
20-08-2022

Argument heard on : 02-09-2022

Judgment delivered on : 05-09-2022

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

1. The prosecution case in brief as stated in the FIR is that on 15.03.2019 at about 1 A.M, while the informant was sleeping he heard some noise and came out from his house, then Phani Rajowar along with 2 other persons had grabbed him and pushed into the ground. They also hold the mouth of the informant and took him to the bank of a nearby pond. With intent to kill the informant, the said 3 persons have stabbed the neck of the informant with dagger and threw him into a pond. While the informant was lying in the pond with severe injury, local people

rescued him and admitted in GMCH. He was discharged from GMCH on 22-04-2019.

2. On the basis of aforesaid FIR, police registered a case as Tezpur PS Case No. 803/2019. Police investigated the case and on completion of investigation submitted charge-sheet against the accused person Sri Phani Rajowar U/S 447/342/326/307 of IPC.

3. On appearance of the accused person Sri Phani Rajowar, copies of relevant documents were furnished to him as required U/S 207 of Cr. P. C. and the case was committed to the Court of Hon'ble Sessions Judge, Sonitpur as the case was exclusively triable by the Hon'ble court of Sessions. Thereafter, the case has been transferred to this court. Considering the relevant documents and hearing both the parties and having found sufficient material to presume that the accused had committed offences U/S 447/342/326/307 of IPC charge under those sections was framed against him. The accused pleaded not guilty and claimed to be tried when the charge was read over and explained to him.

4. During trial the prosecution side has examined eight witnesses and also adduced five documentary evidences.

5. At the close of the prosecution evidence, the accused was examined U/S. 313 of the Cr.P.C. in reference to the incriminating circumstances appearing against him in the

prosecution evidences. Defence side has adduced no evidence and plea of the accused is of total denial.

6. After perusing the records, considering the materials produced, hearing the arguments of the learned counsels for both the sides and the accused the following points are taken as POINTS FOR DETERMINATION:

(i) Whether on 15-03-2019 at about 1 A.M the accused had entered the courtyard of Sri Jatin Rajowar with intent to commit an offence thereof?

(ii) Whether on the same day, time and place the accused had wrongfully confined Sri Jatin Rajowar?

(iii) Whether on the same day, time and place the accused had voluntarily caused grievous hurt to Sri Jatin Rajowar by dangerous weapon?

(iv) Whether on the same day, time and place the accused had stabbed on the neck of Jatin Rajowar with a dagger and threw him into a pond with intention or knowledge that under such circumstance, if by that act he had caused the death of Jatin Rajowar, the accused would have been guilty of murder?

**DISCUSSION, DECISION AND REASONS THEREOF:**

**Point No. (i), (ii), (iii) and (iv):**

7. For convenience of discussion and to avoid unnecessary repetition, points No.(i), (ii), (iii) and (iv) are taken together for discussion.

8. In this case PW-1 is the informant. He deposed that, by hearing the sound of dogs, he went out and while returning back, suddenly 3 persons grabbed him and tied his eyes with cloths. He saw accused Phani Rajowar. After that, the said persons took him from his courtyard and stabbed his neck with a sharp knife. Then he became senseless and the said persons threw him into a pond and left the place. He somehow managed to come back home and later on public took him to hospital for treatment. He was admitted at GMCH for 33 days. He sustained grievous injury on his neck. During cross-examination he has stated that at the time of incident, it was dark. He could not say who stabbed his neck and who threw him into the pond because his eyes were tied up with clothes. He further stated that, prior to this incident, Bogai Rajowar gave a complaint against him for the incident of alleged rape of Monu Rajowar. The defence side has put some suggestions like that he took attempt to commit rape upon Monu Rajowar, that, this is a false case filed against the accused for the said complaint against him of attempting rape, no incident as stated in the FIR has taken place etc. But PW.1 has denied the said suggestions.

9. PW.2 is the wife of the informant. She stated that she could not say when her husband went out from home. But when he came and fell down on the verandah, she switched on the lights and saw that her husband sustained injury on his neck and blood was oozing out from his neck. His wearing clothes were wet by mud and

blood. Her husband could not say anything due to his neck injury. On hearing hue and cry, the neighbouring people gathered at their house and her husband was taken to Tezpur Civil Hospital from where he was referred to GMCH, Guwahati. During cross-examination she has stated that at the time of incident it was dark. Her husband through his fingers has shown that three persons were involved in the incident.

10. PW.3 is the younger brother of the informant. He stated that in the early morning, he saw that the informant was lying on the bank of a pond in injured condition. Thereafter, he informed the family members and neighbourer. They took the informant to the hospital for treatment. He saw cut injury on the neck of the informant and the informant was senseless at that time. During cross-examination he stated that he doesn't know who has committed the incident. He took the informant to Kanaklata Civil Hospital and then to TMCH and therefrom the informant was referred to GMCH.

11. PW.4 has stated that, in the early morning he saw that the informant was lying on the bank of a pond and he knows nothing more than that.

12. PW.5 has stated that, someone has informed him that the informant was stabbed on his neck with sharp weapon. But he doesn't know who has committed the offence.

13. PW.8 is the M.O. He has stated that he has examined the informant Jatin Rajowar at GMCH on 16-03-2019 at 2.10 pm and found laceration over front neck. The nature of injury was grievous caused by blunt weapon. During cross-examination he has stated that no police case No., GDE No. or police requisition No. is mentioned in the Medical report. The age of injury or color of injury is also not mentioned in the medical report.

14. PW.6 and PW.7 are I.Os. PW. 6 has stated that the FIR was received on 12-05-2019 and on 16-03-2019 an information was received from the Gaonburah of Niz Bahbari village that some culprit has stabbed Jatin Rajowar on the neck and Jatin Rajowar was lying on the bank of a pond in injured condition. He stated that upon that information the GDE was made and accordingly statement of the witnesses were recorded. He drew the sketch map of the P.O. Injured was referred to GMCH and the statement of the injured was also recorded. He also arrested the accused Phani Rajowar. During cross-examination he stated that he started the investigation on the basis of GDE No. 306 dated 16-03-2019. He has recorded the statements of Smti. Sonali Rajowar and Barjo Rajowar. But they have not mentioned the name of any offender. He further stated that he has recorded the statement of the injured/informant Sri Jatin Rajowar also. In his statement Jatin Rajowar stated that 3 culprits were involved in the incidents. PW.7 is another I.O, who stated that he has made the GDE No. 306 dated 16-03-2019 on

received of the information from the Gaonburah of Niz Bahbari village. He has collected the medical report of the victim Jatin Rajowar and submitted charge-sheet against the accused. During cross-examination he stated that he came to know from secret source that the accused Phani Rajowar was involved in the incident.

15. These are the evidences adduced by the prosecution side. From these evidences it is seen that only PW.1 i.e the informant has stated against the accused Phani Rajowar. Other witnesses have stated that there was injury in the neck of Phani Rajowar. But they have stated nothing as to who has caused the injury to Jatin Rajowar. In the GDE, which was made in the next morning of the incident, name of no offender is mentioned. From the C/D also it is seen that till filling the FIR, i.e till 12-05-2019, none of the witnesses has stated anything against the accused Phani Rajowar. From the deposition of Jatin Rajowar as well as deposition of the M.O, it is seen that Jatin Rajowar was discharged from hospital on 12-04-2019. During the one month period from 12-04-2019 to filing of the FIR i.e 12-05-2019, nothing was stated by the injured or by any other witness against the accused Phani Rajowar. No written FIR was also filed for 2 months from the date of incident and one month from the date of discharge of the injured from the hospital. On the other hand, the injured has admitted during his cross-examination that, a complaint was lodged against him for the incident of alleged rape of Monu Rajowar. He has

stated in his statement u/s-164 of Cr.P.C, about the fact of an incident with Phani Rajowar regarding an issue of rape of a cousin (sister) of Phani Rajowar. Thus, there is every possibility that due to the incident with Phani Rajowar/ or alleged rape of cousin of Phani Rajowar, the FIR dated 12-05-2019 was filed against the accused Phani Rajowar after about 2 months of the incident. Although, the I.O has stated that he has collected information against the accused Phani Rajowar from secret source, nothing is clearly found in the C/D regarding that. Apart from that, the evidences available have not supported the secret source even if there is any such source. None except the informant has stated anything against the accused. On the other hand, the informant has admitted his enmity with the accused, prior to the filling of the FIR. Under such circumstance, it appears that the injury of the informant is proved. But it is not proved beyond reasonable doubt that the injury was caused by the accused.

16. Ld. Defence counsel has cited the decision of Hon'ble Supreme Court passed in ***Madala Venkata Narshimha Rao vs. State of A.P: 2013 (122) AIC 216 (S.C)***, wherein it is held that each relevant circumstance must lead to a high degree of probability that it is only accused and none else who committed the offence.

17. In the case in hand, no direct or circumstantial evidence has led to the guilt of the accused except the oral testimony of the informant.

18. Ld. Defence counsel has also cited decision of Hon'ble Delhi High Court regarding delay in filing the FIR, which can be considered as a persuasive precedent. However, it is settled principle of law that, un-explained delay in filing the FIR decreases the credibility of the FIR. In this case, the FIR was filed after 2 months of the incident. The delay was not explained. The GDE was silent against any offender. So till after two months of the incident there was no allegation against the accused. In view of the aforesaid circumstance, I am of the opinion that the prosecution side has failed to prove the allegations against the accused beyond reasonable doubt. Hence, I hold that the prosecution side could not prove beyond reasonable doubt that on 15-03-2019 the accused had entered the courtyard of Sri Jatin Rajwar with intent to commit an offence thereof or that the accused had wrongfully confined Sri Jatin Rajowar or that the accused had voluntarily caused grievous hurt to Sri Jatin Rajowar by dangerous weapon or that the accused had stabbed on the neck of Jatin Rajowar with a dagger and threw him into a pond with intention or knowledge that under such circumstance, if by that act he had caused the death of Jatin Rajowar, the accused would have been guilty of murder.

Hence point no. (i), (ii), (iii) & (ii) are decided **negative.**

19. From the above discussions I come to the conclusion that prosecution has failed to establish the allegations against the accused beyond reasonable doubt. Hence the accused Sri Phani Rajuwar is acquitted from the case on benefit of doubt. Bail bond extended for next six months.

Given under my hand and the seal of this Court on this 05<sup>th</sup> day of September, 2022.

( **C. Khanikar** )  
Asstt. Sessions Judge,  
Sonitpur, Tezpur

**APPENDIX -14**  
**LIST OF PROSECUTION / DEFENCE / 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)
PW: 1	Sri Jatin Rajuwar	informant
PW: 2	Smt. Sonali Rajuwar	Other witness
PW:3	Sri Jiten Rajuwar	Other witness
PW:4	Sri Borjo Rajuwar	Other witness
PW:5	Sri Bipul Rajuwar	Other witness
PW:6	ASI Surya Saikia	I.O
PW:7	SI Sarat Ch. Das	I.O
PW:8	Dr. Taufiqul Islam	M.O

**B. Defence 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/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution:**

<b>Sr. No</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Ext.1	FIR
2.	Ext.2	164 statement of victim
3.	Ext.3	Sketch Map
4.	Ext.4	Medical Report
5.	Ext.5	Charge-Sheet

**B. Defence:**

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

**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

( **C. Khanikar** )  
Asstt. Sessions Judge,  
Sonitpur, Tezpur