

IN THE COURT OF ASSISTANT SESSIONS JUDGE::UDALGURI, ASSAM

SESSIONS-133/2018

u/s-326/307IPC

THE STATE OF ASSAM-----Smti AnjanaKakoti(Informant).

-Vs-

SRI DHANJIT HARIJAN----- Accused person.

PRESENT: NUR MUHAMMAD ABDULLAH AHMED, (LL.M, AJS)

Asstt. Sessions Judge, Udalguri, Assam

APPEARANCE:

(1) MrB. K Chetry: LdAddl. PP for the State.

(2)MrTarunBoro: LdLegal Aid Counsel.

EVIDENCE RECORDED ON :11.01.19, 07.02.19, 21.02.2019, 06.03.2019,
18.03.19, 07.05.19, 17.06.19 & 01.07.2019.

ARGUMENTS HEARD ON : 16.08.2019.

JUDGMENT DELIVEREDON:29.08.2019

J U D G M E N T

1. The brief facts of the case leading to the prosecution of the accused Sri DhanjitHarijanis that on 06/05/2018one Smti AnjanaKakoti lodged an FIR with the Officer-in-charge of RowtaP.S stating *inter alia* that on 05/05/2018 at about 12 noon, while his son Sri Tutu Kakoti was going to market, the accused Sri DhanjitHarijanattacked on the head, chest and other parts of body of Tutu Kakoti with 'bhelcha' (sharp iron structured object)and rod in an attempt to kill him. Hence the Case.

2. On receipt of the FIR,Rowta P.S Case No-49/2018, u/s-307IPCwas registered against the accused Sri DhanjitHarijan. Investigation into the case was commenced and after completion of usual investigation, charge-sheet u/s-307 IPC was submitted against the accused Sri DhanjitHarijan, to face the trial.

3. In due course, the case was committed to the Court of Hon'ble Sessions Judge, Udalguri by the learned CJM, Udalguri and then the case was transferred to this Court for trial.

4. Trial of the case was commenced. The accused was produced before the Court from Jail to face trial. After hearing both the sides and perusing the case record, charges in writing u/s-326/307 IPC were framed against the accused. On being read over and explained the contents of the charges u/s-326/307 IPC, the accused pleaded not guilty and claimed to face the trial.

5. Points for Determination:- After considering the materials on record, I have found the following point for determination-

I) Whether on 05.05.2018 at about 12 pm, the accused Sri Dhanjit Harijan caused grievous hurt to Sri Tutu Kakoti by a 'bhelcha' (sharp iron structured object) and rod by assaulting on his head, face and various other parts of his body?

II) Whether on the same date, time and place, the aforesaid accused attacked Sri Tutu Kakoti with 'bhelcha' and rod on various parts of his body, with such intention and under such circumstances that, if by that act death was caused, accused would have been guilty of his murder?

6. To bring home its charges, the prosecution side examined as many as eleven (11) witnesses namely, Smti Kalpana Das as PW-1, Smti Bobita Kakoti as PW-2, Sri Jogen Kalita as PW-3, Sri Papu Das as PW-4, Dr Ronel Soibama as PW-5, Sri Jun Kumar Das as PW-6, Smti Anjana Kakoti (informant) as PW-7, Sri Naba Kishor Kakoti as PW-8, Sri Tutu Kakoti (victim) as PW-9, Dr. Yaseng Pegu as PW-10 and IO Md Amirul Islam as PW-11. The prosecution side exhibited the Seizure List as Ext-1, Medical/Injury Report of victim from Sankardeva Netralaya (Guwahati) as Ext-2, Ext-4 & Ext-5, FIR as Ext-3, Photographs of Victim having injury as Ext-6, Ext-7 & Ext-8, Medical/Injury Report of Victim issued from Narayan Super Specialty Hospital as Ext-9, Sketch Map of PO as Ext-10 and charge-sheet as Ext-11. After the closure of prosecution

evidence, the accused was examined u/s-313 Cr.P.C, wherein his stand was of total denial. I have also heard the arguments of both the sides.

APPRECIATION OF EVIDENCE, DECISION AND REASONS THEREOF:

7. To determine the above-mentioned points and to reach a judicial decision on the same, let me now adumbrate the germane evidences on record.

POINT NO-I:

8. The allegation is that on 05/05/2018 at about 12 noon, while Sri Tutu Kakoti, the son of the informant, was going to market, the accused Sri Dhanjit Harijan attacked on his head, chest and other parts of body with 'bhelcha' and rod in an attempt to kill him. Now let me travel through the germane evidences of PWs to decide the point in hand.

9. Turning to the evidences of the PWs, it can be seen that the victim Sri Tutu Kakoti (PW-9) stated in his deposition that in the month of May, 2017, he was attacked by the accused Dhanjit with a 'talwar' in his house, due to which he got grievous injury on various parts of my body. After that he lodged an FIR with the Rowta PS. PW-9 further stated that during the pendency of the aforesaid case, while the accused was on bail, the accused once again attacked him in the month of May, 2018 with 'belcha' and rod, causing grievous injury on his head, face, eyes and chest. PW-9 stated that he is unable to walk without the assistance of others and he is also unable to see properly. It may be stated here that the injury marks were apparent on the face of the victim below the eye when he appeared for deposing before the Court. Further PW-9 had to be supported by his mother for standing in the witness box. PW-9 has also identified the 'bhlecha (Mat. Ext-A) and Rod (Mat. Ext-B) in the Court by which he was assaulted by the accused. Victim (PW-9) also produced some of his photographs having injuries on his body. Prosecution exhibited those photographs as Ext-6, Ext-7 & Ext-8. Those photos, as per PW-9, were clicked during his treatment in the hospital. The exhibited photos speak volume of the injuries sustained by the victim (PW-9) and the ferocious nature of attack on the

victim. The defence side has failed to demolish the stand of PW-9 during his cross-examination.

10. **Informant** Smti AnjanaKakoti (**PW-7**), who is the mother of the victim, stated in her deposition that in the month of May, 2017, her son Tutu Kakoti was assaulted by the accused Dhanjit by a 'talwar' in his house, due to which her son got grievous injury on various parts of his body, for which her son lodged a case. PW-7 further stated that during the pendency of that case, the accused got bail and one day in the month of May, 2018 at about 11.30 am, while she was going to field with her goat, one of her neighbour informed her that the accused had once again attacked her son Tutu Kakoti with 'belcha' and rod, causing grievous injury on his body. Then she rushed to the spot and found her son lying on the ground and was bleeding from his eye and head and there was a huge gathering of people there.

STANDS OF INDEPENDENT EYE WITNESSES:

11. Coming to the stands of independent witnesses, **PW-2** Smti BobitaKakoti stated in her deposition that on 05/05/2018 at about 11/11.30 am, while she was bringing her daughter from School, she had seen the accused assaulting Tutu Kakoti with a 'bhelcha' and rod on the road at some distance from his house. She further stated that when the accused had seen her, he ran away from the spot. At that time Tutu Kakoti was bleeding profusely from his face and was lying on the ground. PW-2 further stated that on hearing her hue and cry, neighbouring people reached the spot and called police and ambulance. Then the people followed the accused and caught him from his house along with the 'belcha' and rod. PW-2 also stated that at that time the wife of the accused also told them that the accused had assaulted Tutu Kakoti with 'Bhelcha' and rod.

12. The stand of PW-2 is corroborated by PW-1 and PW-6. **PW-1** Smti Kalpana Das deposed that on 05/05/2018 at about 11.30 am, while she was going to market, she heard some hue and cry from the side of the informant's house. Then she had seen the accused assaulting the victim Tutu Kakoti with a 'bhelcha'. PW-1 also stated that the accused had pressed the mouth of Tutu

Kakoti with a 'gamocha' and assaulted on his left eye and face, causing grievous injury on the eye and face of Tutu Kakoti. PW-1 also stated that then the accused ran away to his house and concealed himself below the bed by leaving the 'bhelcha' below his bed. At that time the wife of the accused also told her that the accused had assaulted Tutu with 'Bhelcha'. **PW-6** Sri Jun Kumar Das stated in his deposition that on 05/05/2018 at about 11/11.30 am, while he was going to market after dropping his daughter to his house from School, he had seen the accused assaulting Tutu Kakoti with a 'bhelcha' and a 'rod' at some distance from his house on the road. So, the eye-witnesses have corroborated the stands of the victim (PW-9) and informant (PW-7) without any sort of contradiction.

STANDS OF OTHER INDEPENDENT WITNESSES:

13. Independent witness **PW-4**(Sri Papu Das) stated in his deposition that about six months back while he was going to market, he found Tutu Kakoti lying on the road with injury all over his body. At that time two other persons were also near Tutu Kakoti. Immediately he informed the family members of Tutu Kakoti. PW-4 further stated that after that the family members reached the spot and at that time the victim told them that the accused had assaulted him with 'bhelcha'. PW-4 stated that Tutu Kakoti was having injury on his head and face. **PW-3** Sri JogenKalita stated in his deposition that about six months back, after he returned from duty, he came to know that the accused had assaulted the victim Tutu Kakoti with a 'bhelcha' on the road in front of his house. He also stated that one of the eye of Tutu Kakoti has been badly injured in that incident and as such he is bed ridden now. **PW-8** Sri Naba Kishore Kakoti stated in his deposition that the incident took place about 8/9 months ago at about 11.30 am. On that day one of hisneighbour told him that the accused had assaulted Tutu Kakoti with a 'bhelcha' and rod. After that he had gone to the spot and found the victim lying on ground with blood all over his body.

14. The defence has failed to demolish the stands of the aforesaid independent witnesses. Albeit the defence has advanced some suggestions to

the PWs but the same were denied by the witnesses and as such whatever the PWs have deposed have remained unshaken during their cross-examination. There is no reason for the independent witnesses to implicate the accused by hiding the actual culprit. The depositions of the aforesaid PWs are corroborative to each other. The depositions of all the aforesaid independent witnesses have vindicated the stands of the informant (PW-7) and victim (PW-9). I do not find any missing link in their depositions rather their depositions are coherent enough showing that the accused attacked the victim (PW-9) with 'bhelcha' and rod.

15. Having found that it was none but the accused who had attacked the victim (PW-9) with 'bhelcha' and rod, let me proceed to the medical evidences to determine the nature of injuries caused to the victim (PW-9) by the accused. In this regard, the evidences of **doctors (PW-10 & PW-5)** are vital. PW-10 stated that on 05/05/2018 while she was working at Narayan Super-specialty Hospital, Amingaon, one Sri Tutu Kakoti was produced before the hospital with history of alleged physical assault by sharp instrument over face and head and accordingly she examined him. On examination of Sri Tutu Kakoti, PW-10 found laceration of size 3 cm X 4 cm over the left cheek. The injury was fresh, caused by sharp instrument and was grievous in nature. Prosecution exhibited the medical/injury report as Ext-9 and the signature of PW-10 as Ext-9(1). Albeit PW-10 admitted during his cross examination that such injuries may also be caused by falling on sharp object but such admission cannot rescue the defence in as much as the evidences on record has pointed out that it was the act of the accused which resulted such injuries to the victim (PW-9). Further PW-10 nowhere admitted that the injury was infact caused by falling on sharp object rather he admitted that such type of injuries may also be caused by falling on sharp object.

16. Admittedly the victim (PW-9) also suffered eye injury due to the assault by the accused and accordingly he was taken to SankardevNetralaya (Guwahati) from Narayan Super-specialty Hospital. **PW-5** Dr. Ronel Soibam, who examined the victim at SankardevNetralaya, deposed that on 18.05.2018 Sri Tutu Kakoti was presented to their OPD with chief complaints of diminution of vision of left eye. On examination of victim, PW-5 found that there was trauma with sharp

instrument for which he was admitted at Narayan Hospital and was diagnosed to have sub-arachnoid hemorrhage and sub-Dural hemorrhage along with multiple maxilla facial injuries. PW-5 stated that the patient was advised 'iris' repair of left eye and accordingly PP Lensectomy and 'iris' Repair was done on 22.05.2018. PW-5 further stated that as part of follow-up, the patient was checked from time to time and finally on 28.01.2019 he again operated the left eye of the patient (Tutu Kakoti) for 'iris' repairing. Prosecution exhibited the medical report submitted by PW-5 as Ext-2 and the signature of PW-5 as Ext-2(1).

17. The medical evidence of PW-10 & PW-5 have remained unshaken so far as the injuries caused to the victim (PW-9) is concerned. The evidences adduced by the victim and other witnesses as adumbrated above regarding nature and place of injury is vindicated by the evidence of MOs (PW-10 & PW-5). Further perusal of Ext-6, Ext-7 & Ext-8 (the photographs of victim with injuries on his body) also corroborated the medical evidence. These photos were clicked while the victim was taken to hospital immediately after the incident. There is no doubt that the injuries suffered by the victim is one falling within the definition of Section-320 IPC which defines grievous hurt (punishable u/s-326 IPC). There is no doubt that the injuries sustained by the victim endangers his life and it has caused him to be in severe bodily pain during the space of twenty days and he is still unable to follow his ordinary pursuits as stated by the witnesses. There is also permanent privation of the sight of left eye of the victim (PW-9).

18. From what have been adumbrated above, it can be said without hesitation that the prosecution has been able to prove beyond reasonable doubt that the accused Sri Dhanjit Harijan caused grievous hurt to Sri Tutu Kakoti by a 'bhelcha' (sharp iron structured object) and rod by assaulting on his head, face and various other parts of his body on 05.05.2018 at about 12 pm. Hence the point in hand is decided in favour of the prosecution.

POINT NO-II:

19. Further allegation of the prosecution is that the accused made an attempt to commit murder of the victim Sri Tutu Kakoti on 05.05.2018 at about 12 pm,

by attacking him with a 'bhelcha' (sharp iron structured object) and rod. As we know that in order that a person may be guilty of attempt to murder u/s-307 IPC, the following two ingredients must be proved:

- a) an intention or knowledge of committing murder &
- b) the doing of an act towards it.

20. Now let me come to the question as to whether the accused in this case had requisite intention or knowledge as required for an offence under section-307 IPC. As is known such intention or knowledge of the accused must be gathered from the overall circumstances of the case and not from the consequences that was ensued. This is because of the fact that for the purpose of section-307 IPC, what is material is the intention or knowledge, not the consequence of the actual act done for the purpose of carrying out the intention. In the case in hand, it has already been decided that the prosecution has been able to prove beyond reasonable doubt that the accused caused grievous injury to the victim (PW-9) by assaulting him with a 'bhelcha' (sharp iron structured object) and rod. Medical evidences (PW-5 & PW-10) has corroborated that the injuries caused to the victim (PW-9) were on his vital parts of his body (face and eye). When a person assaults a person's face and eye with 'bhelcha' (sharp iron structured object) and rod, he would be deemed to have the requisite intention or knowledge as required under section-307 IPC. In that sense, the intention of the accused for committing murder is apparent as he has assaulted the victim (PW-9) with a 'bhelcha' (sharp iron structured object) and rod on vital part of body and but for the presence of the people, he would have succeeded in his design. I have also seen the photographs of victim with injuries on his body (Ext-6, Ext-7 & Ext-8). The violent motive of the accused is also apparent from the injuries as are seen in the aforesaid photos which were clicked while the victim was taken to hospital immediately after the incident.

21. As stated above, the defence side has cross-examined the PWs but the defence has failed to demolish the aforesaid vital stands of the PWs except for giving some suggestions which were denied by the witnesses. It is admitted

position of law that suggestions which are denied by the witnesses would not provide any help to the defence. In **Billal Ahmed Barlaskar -Vs- State of Assam** [(2013)4 GLR 160], the Hon'ble Gauhati High Court held that mere suggestion not supported by any specific statement made by the accused person and not supported by any defence evidence has no evidentiary value. It is settled law that suggestions denied is no evidence and no importance could be attached to such suggestions made during cross examination.

22. So, having regard to the aforesaid appreciation of evidences, it can be said that the prosecution has succeeded in proving beyond reasonable doubt that the accused Sri Dhanjit Harijan attempted to kill Sri Tutu Kakoti by attacking him with a 'bhelcha' (sharp iron structured object) and rod on 05.05.2018 at about 12 pm. Hence the point in hand is also decided in favour of the prosecution.

23. From the above appreciation of evidences and the decisions reached in the foregoing points, it can be said that the prosecution has proved its case against the accused Sri Dhanjit Harijan u/s-326/307 IPC beyond all reasonable doubt. As such the accused Sri Dhanjit Harijan is convicted u/s-326/307 IPC.

BENEFIT OF PROBATION UNDER THE PROBATION OF OFFENDERS ACT, 1958:

24. As far as the benefit of probation to convict Sri Dhanjit Harijan under the relevant provisions of the Probation of Offenders Act, 1958 is concerned, this Court is of the considered opinion that if such a person is allowed to go scot-free without giving any punishment by extending the benefit of Probation of Offenders Act, the same would give a wrong message to the like-minded criminals in the society and would give them encouragement to commit such crime and disturb peace in the society. As such the benefit of probation under the Probation of Offenders Act, 1958, is not granted to the convict Sri Dhanjit Harijan.

HEARING ON SENTENCE:

25. Convict Sri Dhanjit Harijanis heard on the question of sentence. He pleaded for leniency in sentence on the ground that he has to look after his wife and two minor children. I have also duly taken into account the facts and circumstances under which the offences have been committed by the convict. Admittedly the convict is undergoing sentence of rigorous imprisonment for five years in another case (Sessions Case No-46/2017) for assaulting the same victim earlier. Considering all these aspects *vis a vis* the nature of offences committed by the convict, this Court is of the considered opinion that imposing a sentence of rigorous imprisonment (RI) for seven (7) years and a fine of Rs-10,000/-, i/d to simple imprisonment for two months for offence u/s-326 IPC and rigorous imprisonment (R.I) for seven (7) years and a fine of Rs-10,000/- i/d to simple imprisonment for two months, for offence u/s-307 IPC on the convict would meet the ends of justice.

SENTENCE & ORDER:

26. The convict Sri Dhanjit Harijanis, thus, sentenced to rigorous imprisonment (RI) for seven (7) years and a fine of Rs-10,000/-, i/d to simple imprisonment for two months for offence u/s-326 IPC and rigorous imprisonment (R.I) for seven (7) years and a fine of Rs-10,000/- i/d to simple imprisonment for two months, for offence u/s-307 IPC. Considering the facts and circumstances under which the offences were committed by the convict and that the convict committed the aforesaid offences while he was enlarged on bail in another case (Sessions Case No-46/2017) for assaulting the same victim, I hereby order that the aforesaid substantive sentences shall run consecutively i.e the second substantive sentence of imprisonment shall commence at the expiration of the first one. The period already undergone by the convict in judicial custody in connection with this case be set off with the substantive sentences imposed in view of Section-428 CrPC. Further admittedly the convict Sri Dhanjit Harijan was convicted u/s-341/323/307 IPC in Sessions Case No-46/2017, in which case also the victim was Sri Tutu Kakoti and he is undergoing rigorous imprisonment for five years in that case. The offences for which the accused/convict faced trial in the instant case was committed by the convict while he was on bail during the

trial of Sessions Case No-46/2017 and as such I do not find any reason to show leniency to the convict by ordering running of sentences of imprisonment imposed in this case concurrently with the previous sentence. Hence in view of the provision of Section-427 IPC, the sentences of consecutive substantive imprisonment as passed in this case shall commence at the expiration of the imprisonment to which the convict has been previously sentenced in Sessions Case No-46/2017.

27. I also recommend the appropriate authority of District Legal Services Authority, Udalguri to consider granting of compensation u/s-357A CrPc to the victim Sri TutuKakoti(S/O Late KunjalalKakoti of Vill- No-6, Dhansiri under Rowta PS) under the Assam Victim Compensation Scheme. Record reveals that the victim Sri Tutu Kakoti has been given *interim* compensation of Rs-100,000/- (one Lakh) in Misc (V/C)-21/2018 by the DLSA, Udalguri.

28. Judgment in separate sheets is tagged with the CR.

29. A copy of the judgment be given free of cost to the convict Sri DhanjitHarijan u/s-363(1) CrPc.

30. The convict be sent to District Jail, Udalguri to serve out the sentences.

31. Let a copy of the judgment be also sent to the District Magistrate, Udalguri as per Section-365 Cr.P.C

32. Given under my hand and seal of this Court on this 29th day of August, 2019.

(NUR MUHAMMAD ABDULLAH AHMED)

Asstt. Sessions Judge, Udalguri, Assam

APPENDIX

1. PROSECUTION WITNESSES--

- I) PW-1:Smti Kalpana Das;
- II) PW-2 : Smti BobitaKakoti;
- III) PW-3 : Sri JogenKalita;
- IV) PW-4 :Sri Papu Das;
- V) PW-5 :DrRonelSoibam;
- VI) PW-6 : Sri Jun Kumar Das;
- VII) PW-7 : Smti AnjanaKakoti (informant);
- VIII) PW-8 : Sri NabaKishorKakoti;
- IX) PW-9 : Sri Tutu Kakoti (victim);
- X) PW-10 : Dr. YasengPegu&
- XI) PW-11: MdAmirul Islam.

2. PROSECUTION EXHIBITS-

- I) Ext-1 :Seizure List;
- II) Ext-2, Ext-4 & Ext-5:Medical Reports of victim issued from SankardevNetralaya (Guwahati).
- III) Ext-3 :FIR;
- IV) Ext-6, Ext-7 & Ext-8: Photographs of Victim having injury

V) Ext-9 : Injury Report of Victim issued from Narayan
Super Specialty Hospital Charge-sheet.

VI) Ext-10 : Sketch Map of PO &

VII) Ext-11 : Charge-sheet.

3. DEFENCE WITNESSES : Nil
4. COURT WITNESSES/EXHIBITS : Nil.

(NUR MUHAMMAD ABDULLAH AHMED)

Asstt. Sessions Judge, Udalguri, Assam