

GAHC010009842012



2024:GAU-AS:12240

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./246/2012

PARIMAL NATH
S/O MONORANJAN NATH, VILL. JAROILTOLA, P.S.BORKHOLA, DIST.
CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, GAUHATI HIGH COURT AT
GUWAHATI, ASSAM.

2:SRI SANKAR BIJOY NATH
S/O LATE SURENDRA KUMAR NATH
R/O VILLAGE-JARAIN TOLA
P.S.-BORKHOLA
DIST.-CACHAR
ASSA

Advocate for the Petitioner : MR.A A R KARIM, MR.J ISLAM,MR.A M S MAZUMDER,MS.S F
MAITAI

Advocate for the Respondent : MR SARFRAZ NAWAZ, AMICUS CURIAE, PP, ASSAM,,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 04-12-2024

1. As none appeared for the appellant, when the matter was

called for hearing on 04.11.2024, Mr. S Nawaz, learned counsel was appointed as Amicus Curiae. The matter was again listed on 20.11.2024, 26.11.2024, 27.11.2024, 03.12.2024 and 04.12.2024 and in the aforesaid dates, none of the learned counsel for the appellant whose names are reflected in the cause list was present before the court. Accordingly, this court has heard Mr. S Nawaz, learned Amicus Curiae. Also heard Mr. P Borthakur, learned Addl. PP, Assam.

2. This appeal under section 374(2) Cr.P.C is filed against the impugned judgment dated 19.07.2012, passed by the learned Addl. Sessions Judge, FTC, Cachar at Silchar in Sessions Case No.38/2007, whereby the appellant was convicted under section 324 IPC and was sentenced to undergo Rigorous Imprisonment of two years and fine of Rs.10,000/- and in default rigorous imprisonment of six months.

3. The prosecution was launched on the basis of an FIR, which was registered as Barkhala PS Case No.207/2005, under sections 326/307 IPC.

4. The prosecution case, in brief, is that on 22.12.2005 at about 6.00 am, accused Parimal Nath with an attempt to commit murder, gave an axe blow on the neck and forehead of victim Sekhar Bijoy Nath, as a result, the victim sustained severe injuries on his person.

5. After completion of the investigation, the investigating authority submitted charge sheet under sections 326/324/307 IPC. The offence being Sessions triable, the Jurisdictional Magistrate committed the matter to the court of learned Sessions Judge, Silchar,

who in turn transferred the matter for trial before the learned Addl. Sessions Judge, Cachar, Silchar. Charges were framed under sections 324/326/307 IPC and when the appellant pleaded not guilty, the matter went for trial.

6. The prosecution examined as many as 11 witnesses to bring home the charges. The statement of the accused under section 313 Cr.P.C was recorded. However, defence did not examine any witness.

7. After considering the materials available on record and appreciating the same, the learned trial court held the appellant guilty under section 324 IPC and accordingly, he was sentenced to undergo the imprisonment as recorded hereinabove. Being aggrieved, the present appeal is preferred.

8. Before recording the submission of the learned counsel for the parties, let this court first record all the depositions of the witnesses.

I. PW-1 Sankar Bijoy Nath deposed in his evidence that he knows the accused. The incident took place on 22.12.2005 at around 6:45 a.m. One Pratyush Nath came to his house and informed him that Parimal Nath had attacked his brother Sekhar Bijoy Nath with an axe and grievously injured him. As he came out of the house, he saw a car (van) taking his injured brother from the place of occurrence at Nimatabari to Jarailtola Market. He immediately took his brother to the police station. The axe was also taken to the police station and the same was kept in the police station and they were

sent to the hospital. Considering the injuries sustained by his brother, the doctor at the hospital sent them along with the police to Silchar Medical College and Hospital. At that time, his brother was unconscious and he regained consciousness that very day and then his brother said that Parimal had hit his brother with an axe and injured him. That evening, he lodged a written ejahar. PW-1 in his cross examination denied the suggestion put to him that Pratyush Nath came to his house and stated that Parimal had attacked his brother with an axe and caused grievous injuries to him. He further deposed that he lodged the FIR at around 8 o'clock in the night and denied the suggestion that was put to him that the Material Exhibit – 1 belongs to him and he handed it over to the police in order to concoct a case. He further denied the suggestion that the accused Parimal did not assault his brother, Shekhar in any way and because of an old enmity, he had concocted a fake case against the accused and he deposed falsely against him.

II. PW-2 Manoranjan Nath in his evidence deposed that knows both the parties. At the time of the incident he was VDP Secretary of *Dolsar BDP*. On the day of occurrence, at about 6 to 6:30 AM. One Pratyush Nath came to house and called me. He deposed that he saw Sekhar Nath in an injured condition in a vehicle and requested him to hospitalize Sekhar Nath as he was in a hurry to attend his office. On enquiry, he told that Sekhar was assaulted in Nematabari by Parimal

Nath. PW-2 admitted the injured person in hospital. Later on, he told that before admission doctor asked him to inform the matter to police station. Accordingly, Pw-2 took the injured person to Borkhola Police Station. thereafter police escorted them to the hospital. The doctor at Borkhola PHC instructed to take the victim to SMCH, Silchar. Pw-2 deposed that he did not accompany him to Silchar Medical College. His brother, Sankar was with the injured person. Police seized one axe (Koral) with bamboo handle. Ext – 2 is the seizure list (under objection); Ext-2(2) is his signature. Mat. Ext – 1 is the said Koral (under objection). Pw-2 in his cross examination deposed that his house is at Village Jarailtola. He further deposed that he has no personal knowledge as to the occurrence of Nematabari. He denied the suggestion that Protosh did not report to him that accused Parimal assaulted and injured Sekhar by an 'Axe' (Kural) at Nematabari Tempo (temple). Instrument like Material Ext – 1 is commonly found in every house of the village. In Material Ext – 1, there is no special mark of identification. PW-2 further deposed that cannot say who are the other persons (who) signed in the seizure list Ext-2 and on which day at what time and at which place, he has put his signature Ext 2(2). He did not remember the time of putting his signature Ext 2(2) whether Ext-2 was written or not. He further deposed that he did not state to police that he filed the FIR and that he has deposed as being tutored.

III. PW-3 Sekhar Bijoy Nath is the victim of the incident and the incident took place on 22.12.2005 at about 6:30 AM. At the time of the incident, he was near the temple of Nimatabari Shiv Mandir. Suddenly, he heard a sound behind and he saw Parimal Nath who hurt him by an axe (koral) on the left side of his head. Again he hurt him 2nd time with the said axe (koral) on the right side of his neck. When he fell down on the ground, he again hurt him with the same axe on his stomach. But due to wearing of sweater and having his belt, he did not get hurt by the said assault. Due to fall on the ground, he also sustained some injuries behind his head. After that he became senseless and when he regained his senses at Medical College Silchar he told the incident to his brother and the other people who were present there. Police recorded his statement at SMCH after three days of the incident. After release from SMCH police again recorded his statement. Before this incident, a "Bichar" was held at Nematabari Shiv Mandir against Parimal Nath and others in respect of theft of 2 bags (of) cement. Those cements were bought by the PW-3 for construction of his house. Those cements were kept in the house of Sobuj Nath. Parimal was working near the house of Sobuj Nath. On the 'Bichar' Parimal agreed to return back 2 bags of cement to the victim. On the 'Bichar', he requested the members of the 'Bichar' Committee to use the 2 bags of returned cement to the Mandir. On the next day that is the day of the occurrence, Parimal Nath along

with Sushanta Nath and Sanku Nath returned the 2 bags of cement at Mandir. The 2 bags cement were carried by Sushanta Nath and Sanku Nath. Parimal Nath (was) standing on a road by wearing a "chaddar". Later on, he approached towards the Mandir and suddenly, assaulted him with an axe (koral). The weapon axe (Koral) was concealed under the "chaddar". Material Ext 1 is the said 'koral'. Material Ext 2 is the sweater. Material Ex 3 is the 'Belt'. Material Ext 2 and 3 (were) seized by the police vide Seizure List Ext – 3 and Exhibit 3(1) is his signature. The Material Ex 2 was washed by his relative at Medical College. After that it was seized by police. During assault, one Pratyush Nath and one Brojon Nath were also present at the time of the assault. Later on, PW-3 deposed that Brojon Nath was not present at the time of the assault as because he was sent for bringing the keys of the store room of the Mandir. In the year, 2000, there was a theft case against Parimal Nath and I deposed before the Court as a witness against Parimal Nath. PW-3 in his cross examination deposed that during winter, there appears heavy fog at Jarailtola and the occurrence took place during winter. He deposed that he cannot say whether any of his clothes were stained with blood. Material Ext – 1 is a common household article available in every house in village. There is no blood mark in Material Exhibit – 1 'axe'. The sweater he was wearing was seized by police while he was at home after about 11 days of alleged occurrence. He further deposed in

his cross examination that the alleged occurrence took place while they were waiting in the verandah of the temple to keep the cement in the store room. He denied the suggestion put to him that the accused Parimal never entered on the alleged date and time of occurrence inside the temple house. It is not disputed that hearing a sound he turned back and then accused Parimal hurt him with an axe on his head, neck and stomach. It is also not disputed that he did not sustain any injury on the back of his head due to fall. PW-3 also denied the suggestion put to him that because of village rivalry against accused Parimal, he has deposed falsely implicating him.

IV. PW-4 Manik Nath in his evidence deposed that he knew both the parties. The incident took place 3 years ago at about 6:30 AM. At the time of occurrence, he was returning from farming field after keeping the buffaloes in the grazing field. After hearing commotion, he rushed near the Nimatabari Temple and saw one Protosh Nath snatching an 'Axe' from the hand of the accused Parimal Nath and saw Sekhar Bijoy Nath lying on the ground with injury. At the place of occurrence, he saw Sanku Nath, Mona Nath and others. He deposed that the injured person was taken by Bhajan Nath and Protosh Nath in a cart. PW-4 in his cross examination deposed that he is the brother-in-law of Sekhar Nath and Bhajan is the "thela" owner. He further deposed that he did not accompany Bhajan and Protosh when they were

taking injured Sekhar. About 4-5 days after, police recorded his statement and before recording of his statement, he had the occasion to meet Sekhar Bijoy, the injured. He denied the suggestion as to the statement of seeing Protosh snatching 'axe' from Parimal the accused is false. He further denied the suggestion of hearing halla and seeing snatching of axe by Protosh while returning from the field. He further deposed that he did not deposed falsely in the interest of Sekhar Bijoy being his brother-in-law.

V. PW-5 Pratyush Nath on his evidence deposed that before the incident a meeting was held at Nimatabari Mandir. In the said meeting Sekhar Bijoy nath informed that his two bags of cement were stolen. And it was decided that Sanku Nath will give two bags of cement in the Nimatabari Mandir. While he was on his way to the Mandir, he heard a sound and saw Sekhar fell down on the gate with head injury and blood was ozing out. During cross examination Pw-5 was declared hostile by the prosecution as the prosecution failed to explicit anything more from the mouth of PW-5.

VI. P.W.6 Bishadev Nath deposed in his evidence that there was a meeting before the incident alleging theft of two bags of cement of Sekhar Bijoy Nath and it was decided that Sonku will compensate the theft and will donate the cement to Nimatibari mandir. It was also decided that PW-5 will remain present at the time of handing over the cement.

PW-6 also stated that the accused assaulted Sekhar Bijoy Nath. During cross-examination he denied the defence suggestion that report of assault on Sekhar by Parimal is not correct.

VII. PW-7 Khitish Ch. Nath also deposed in the same line as that of PW-6.

VIII. PW-8 Bhajan Nath stated in his evidence that on the date of occurrence, PW-5 called him to bring the key of the mandir and when he went to bring the key, he heard the sound of bachaw bachaw and he saw Pratyush Nath lifting Sekhar Nath from Nimatibari Mandir. PW-8 further deposed that PW-5 told him that accused Parimal Nath assaulted Sekhar Nath.

IX. PW-9 Dr. Pinak Pani Dhar (MO) deposed that on 22.12.05, he examined Sekhar Bijoy Nath aged about 38 yrs under Hospital No. 245803 and MRT No. 497108. He found the following injuries:

A. An insize wound over the left temporal to the left maxillary eminence by the lateral aspect of the outer canthus of the left eye involving the left temporal maxillary and zargonatic bones above 25 cm long with profuse bleeding. CT PNS reveals multiple fracture of left maxillary antral walls, left temporal bone and floor of the left middle cranial fosse, with

hemocynus involving maxillary antrum and ethmoid.

B. A linear cut injury over right side of the neck about 25 cm long.

C. A sharp insize (incise) wound over left temporal region causing intracranial injury. CT Scan of the brain reveals left temporal hemorrhagic contusion with left temporal bone fracture.

D. All the injuries are caused by sharp weapon.

E. Injury no 1 and 3 are grievous in nature.

F. Injury no 2 is simple in nature

G. All the injuries are fresh.

H. Ext-4 Injury Report; Ext 4(1) is my signature.

Such type of injuries may be caused by Kural (axe)

PW-9 in his cross examination deposed that temporal and maxillary bones are on the frontal and lateral aspect of a human body. Temporal aspect of a human body is the upper level of the ear. Maxilla means upper jaw. Injuries can be classified in three different categories such as homicidal, accidental and suicidal. Injuries both over front and parietal bone at a time on the same person goes in favour of non homicidal injury. Then says it is not. When PW-9 examined

the patient, he was in unconscious stage. He further deposed in his cross examination that the length between the temporal zone and the maxillary zone on the same side of a person cannot be 25 cm in length. He denied the suggestion that one side of a neck of a human body cannot be 25 cm in length. He further deposed that the injuries no 1, 2 and 3 cannot be caused by a single blow. He denied the suggestion that he had not examined the injured person personally and that the report is also not correct.

X. PW-10, Nirmal Ali Laskar, in is evidence deposed that on 22.12.05, he was at Borkhola PS as attached officer and on that day he was the Incharge as O.C. On the same day at about 9.30 am one Bijoy Nath of Jarailtola came to the P.S in an injured condition and he forwarded him to Borkhola P.H.C. for his treatment. Later on the Borkhola P.H.C referred him to S.M.C.H, Silchar for his treatment. He made G.D.Entry being No.347 dtd. 22.12.05. Ext.5 is the copy of the G.D.Entry (under objection). On 22.12.09 at 8-30 pm FIR was filed by Sri Sankar Bijoy Nath. Ext.1 is the FIR and Ext.1(2) is his signature. After that he visited the P.O. and recorded the statement of the witnesses. He draw a sketch map of the P.O. Ext.6 is the sketch map of the P.O. and also collected the injury report. On the next day he again visited the P.O. and recorded the statement of the witnesses. From the P.O., he seized one Axe and one sweater and one leather belt. Vide Ext.2 he seized Material Ext.1, axe and Ext.3 is his signature.

Vide Ext.3, the another seizure list by which he seized one sweater and one belt and Ext.3 (2) is his signature. After that he was transferred and the case was handed over to the O.C. Borkhola P.S. for further investigation. PW-10 in his cross examination deposed that the case was registered on 22.12.05 at 8-30 pm. Ext.5 is the copy of the General Diary being No.347 dtd.22.12.05 was made at 9.30 am. he further deposed that in Ext.5 there is no mention as to how the alleged injured sustained the injury. As per Ext. 5 he referred the injured to Borkhola P.H.C. he deposed that he had nothing to show what happened in Borkhola PHC. In the Charge Sheet forwarded there is no mention that any sketch map was forwarded to the court alongwith the C/S. Ext.6 is the sketch map. He reached at the P.O. on 22.12.05 at 10-30 am. On 3.1.06 at 7 pm he seized one sweater and one leather belt. In Ext.2 it is specifically stated that he seized article was produced by the complainant. As per Ext.3 the sweater and belt were produced by one Sekher Bijoy Nath. For maintaining a case Diary there is provision for printed form. At that time the printed forms are not available. There is no mention in the entire case diary that at the relevant time the printed forms are not available. He denied the suggestion put to him that the case diary is manipulated one including the seizure list and also the statement of the witnesses. He further denied that the Ext.2 & 3 the seizure list are manufactured by him for the purpose of the case so also the statement of

statement of P.W.5. He further deposed in his cross examination that in the Diary all the statement of the witnesses were recorded in separate white sheet and not in the printed form as prescribed by the Govt due to the non-availability of the printed prescribed form. It is disputed that the Case Diary is not a compact volume and there is no any endorsement in the Case Diary that at the relevant time the printed pages of Diary sheet in compact volume were not available.

XI. PW-11 Pabitra Kr. Sarma stated in his evidence that on 01.02.2006 he was posted at Borkhola PS and on that day the O.C Borkhola PS handed over the case diary of the case for completion of investigation and during his investigation he examined three witnesses and also collected the medical report. PW-11 further deposed that he made several attempts to arrest the accused but he was found absconding. Therefore, he submitted charge sheet against the accused. In his cross examination PW-11 stated that PW-6 informed PW-5 that Parimal Nath assaulted Sekhar Bijoy Nath.

9. Based on the aforesaid evidence brought on record by the prosecution side, the learned Sessions Judge had convicted the appellants under section 324 IPC and sentenced him as stated herein below.

10. Mr. Nawaz, learned amicus curie submits that the prosecution has failed to prove beyond reasonable doubt that the

accused has committed the offence. He also submits that from the evidence of the witnesses it is established that prior to the actual incident, quarrel took place between both the parties and there is no specific material against the accused person. According to the learned amicus curie, from the evidence of the prosecution witness, it is crystal clear that when the quarrel started, along with the accused some other persons were also there and there was a free fight. According to him, PW-1, PW-2 are interested witness and the evidence of PW-4 cannot be relied on for the reason that he is not an eye witness though has been projected by the prosecution to be an eye witness.

11. Per contra, Mr. Borthakur, learned Addl. PP submits that from the deposition of PW-2, PW-3 & PW-4, it has been established beyond reasonable doubt that on the day of occurrence, the accused inflicted the fatal blow upon the injured and by the doctors evidence the injury inflicted has duly been corroborated. According to Mr. Borthakur through the evidence of PW-4 and the victim it is established that it is none other than the accused who inflicted the blow on the deceased. It is the further contention of Mr. Borthakur, learned Addl. PP, that there are clear overt acts on the part of the accused.

12. I have considered the submission advanced by the learned counsel for the parties and also perused the materials and evidence available on record.

13. From the evidence as recorded hereinabove, it is seen that PW-1, PW-3, PW-4 and PW-9 are the star witnesses of the

prosecution. PW-4 is projected to be an independent eye witness. From the evidence recorded hereinabove and in the considered opinion of this court, the following facts have been established by the prosecution beyond reasonable doubt.

I. From the evidence of PW-4, it is established that on 22.12.2005 there was a commotion near one Nimatabari Temple and this independent witness saw one Protosh Nath snatching an axe from the hands of accused Parimal Nath and he also saw the victim Sekhar Bijoy Nath lying on the ground with injuries. Thus, it is proved beyond doubt that the incident took place on the said date at Nimatabari Temple and at the time of occurrence, the accused was holding an axe and such axe was taken away by one Protosh Nath

II. From the evidence of PW-1, (the informant,) it is established beyond reasonable doubt that he saw a vehicle (van) where the injured victim was taken from the Nimatabari Temple in an injured condition. It is also established that being the brother of the victim, he also accompanied the victim to the hospital.

III. From the evidence of PW-9, (the doctor) who was present at the hospital, it is established that on 22.12.2005 i.e., on the date of incident, the victim was treated by him at Silchar Medical College Hospital, under Hospital No.245803 and MRT No.497108 and according to him, he found the injuries as disclosed in his medical report.

IV. The evidence of PW-4 who reached the place immediately after the incident and testified that he saw the victim lying in the road had also remained corroborated at the place of occurrence i.e. Nimatabari Shiva Mandir.

The testimonies of the aforesaid witnesses remained unshaken. Thus, the three injuries inflicted were established. To summaries, it is established beyond reasonable doubt that on 22.12.2005, the victim got injured at Nimatabari Temple and was brought to Silchar Medical College & Hospital for treatment.

14. In the aforesaid backdrop of established fact, now this court is to consider whether the prosecution has been able to establish beyond reasonable doubt that it is the appellant who had inflicted such injury.

15. The Hon'ble Apex court in the case of ***State of MP vs. Mansingh*** reported in ***(2003) 10 SCC 414*** has held that the evidence of an injured eye witness has great evidentiary value and unless compelling reason exists, their statements are not to be discarded lightly.

16. In the case in hand, from the evidence of injured victim i.e., PW-3, as recorded hereinabove, it was projected that on 22.12.2005 at 6.30 AM, when he was near the Nimatabari Temple, the accused hurt him by an axe on the left side of his head and again the accused hurt him second time with the axe on his right side of the neck and due to such fall he also sustained some injuries behind his

head. Thus, through testimony of this injured eye witness, the prosecution has been able to establish beyond reasonable doubt that the accused inflicted three injuries and such injuries were corroborated by the medical evidence.

17. Though cross examination was done by the defence on different points, however, the defence has not challenge the position that the accused was present at the place of occurrence or that the victim did not receive the injuries. The defence of the accused person is that the victim, due to the foggy winter weather on that day at 6.30 AM could not identify the accused person, however, the testimony of the victim that it is the accused who inflicted the three injuries remained firm during the cross examination. He also denied the defence suggestion that he could not identify the accused due to foggy weather. Thus in the considered opinion of this court the prosecution has been able to establish beyond reasonable doubt that it is the accused appellant and none other who inflicted the blow resulting in the injury.

18. The second defence is that the weapon used in the commission of the offence (material Ext-1) was not properly seized as well as the weapon did not have blood marks. In this regard this court is of the firm opinion that when the prosecution through the direct evidence of the victim, the doctor and PW-4 has been able to establish that it is the accused who inflicted the blow with an axe upon the victim, the defect in seizure of the weapon used in the commission of offence shall not be fatal.

19. Therefore from the aforesaid evidence the prosecution have

been able to establish that the accused Parimal Nath inflicted injuries upon the victim on 22.12.2005 at around 6.30 AM in the premises of Nimatabari Shiva Mandir and that the victim was lying on the floor was witnessed by PW-4 and that the victim was taken by PW-1 immediately to the Silchar Medical College Hospital, wherein the PW-9 examined him and found injuries on his person. Thus it is established beyond reasonable doubt that it is the accused Parimal Nath who had inflicted the injury upon the victim.

20. Therefore in the aforesaid backdrop the learned trial court has rightly convicted the appellant. Accordingly the appeal stands dismissed.

21. The LCR be returned back forthwith.

22. While parting with the record, this court appreciates the assistance rendered by Mr. S Nawaz, learned counsel as Amicus Curiae. Accordingly registry shall ensure that Mr. S Nawaz, learned counsel be paid the legal fee, as payable to a Legal Aid Counsel as per the norms fixed by the Legal Services Authority.

JUDGE

Comparing Assistant