

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE AT  
MORIGAON**

**G.R. Case No.1332/12**

**Under Section – 326 of Indian Penal Code**

**State of Assam**

Versus

**Sri Minaram Saikia**

S/O – Sri Sarukan Saikia

R/O Vill: Bhurbandha P.S- Morigaon, Dist.- Morigaon, Assam

**.....Accused person**

**Present: Lohit Kumar Sarmah, SDJM(S), Morigaon**

For the Prosecution: Ms. B. Devi, APP

For the Defence: Mr. G. S. Deka, Advocate

Evidence recorded on: 5.2.2013, 10.12.2013, 26.3.2019 and 5.8.2019

Argument heard on: 26.9.2019 and 25.10.2019

Judgment delivered on: 5.11.2019

**JUDGMENT**

1. The informant Sri Tileswar Saikia lodged an ejahar before Morigaon Police Station on 12.11.2012 stating inter alia that on 8.11.2012 at around 9.30 pm when the accused was having fight with his parents then the nephew of the informant namely Sri Lohit Saikia tried to settle down their clash then the accused caused him grievous injury on his head by cutting with a sharp dao. As injury was grievous hence Lohit Saikia has been admitted in the GMCH. As the informant was busy in the treatment of Lohit Saikia hence he got delayed in filing the ejahar.
2. The ejahar was received and registered as Morigaon Police Station case No. 310/12 under section 326 of Indian Penal Code.

3. Police started investigation to trace the root of the case. The Investigating Officer after due investigation of the case submitted charge sheet under section 326 of Indian Penal Code against the accused person.
4. The accused entered trial. The copies of the relevant documents were furnished to the accused in accordance with section 207 of the Criminal Procedure Code.
5. During trial, after hearing the parties and on finding prima facie materials a formal charge under section 326 of Indian Penal Code was framed which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. The prosecution examined as many as six witnesses. The examination of the accused person under section 313 Cr.P.C was recorded. The plea of the accused was in total denial and he had declined to adduce evidence in his defence. Heard arguments by learned APP and learned Advocate for the accused.
7. **The points of determination in the case are framed as:**
  - i) Whether the accused person on 8.11.2012 at around 9.30 pm voluntarily caused grievous hurt to the nephew of the informant namely Sri Lohit Saikia by means of a sharp dao which is an instrument of cutting and thereby committed an offence punishable under section 326 of the Indian Penal Code?

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. PW1- Sri Tileswar Saikia, the informant deposed in his examination-in-chief that the accused person is known to him. Around 2/3 months prior to his deposition when the accused was having fight with his parents then the nephew of the informant namely Sri Lohit Saikia tried to settle down their clash then PW1 heard some noise of Lohit and rushed to the place of occurrence. Upon reaching there, PW1 saw that Lohit was lying on the ground and he was bleeding from head. Then PW1 took Lohit to the Morigaon Civil from where he was referred to Guwahati. Lohit was cut with a straight dao. Ext-1 is the ejahar and Ext-1(1) is his signature.

9. During cross-examination PW1 stated that at the time of incident he was at his house. He had not seen the incident. There were other persons too with Lohit. There are houses of Hiren, Sarukan, Pathak, Bapuali etc. near the place of occurrence. PW1 did not remember the date of occurrence. PW1 can hear less and see less. He had not seen the victim lying on the ground and he was not bleeding. Lohit was not cut by straight dao. Police took his statement. He had not visited to place of occurrence. The rest is just a suggestion to which PW1 denied.
10. PW2- Lohit Saikia, the victim deposed in his examination-in-chief that both the parties are known to him. The complainant is his uncle. The incident took place around 3 months prior to his deposition at around 9 O'clock. Minaram cut PW2. Minaram tried to cut his parents but as PW2 intervened then he cut PW2 on his forehead and then PW2 became senseless. The Court had seen the cut mark. PW2 was taken to Morigaon Civil and then he was referred to GMCH where he regained his senses and had undergone treatment for about 1 week. PW2 stayed in Morigaon Civil for 3 days. At present, PW2 is ill and cannot see clearly with his eyes and feels tiredness.
11. During cross-examination PW2 stated that he did not remember the date of occurrence. The ejahar was filed around 4/5 days later. As there was talk about amicable settlement hence got delayed in filing the ejahar. There are houses of Biren, Mintu, Atul, Amit Saikia etc. nearby the place of occurrence. It was a dark night on the day of incident. The house of accused is about 9 bighas of land away from the house of PW2. The accused has his siblings and parents but the siblings stay in Guwahati. PW2 denied to the fact that he did not state before police about staying in Medical and Civil. It was not a fact that he sustained injury by bamboo while he was cutting bamboo. It was not a fact that he had enmity with the accused. The rest are just some suggestions to which PW2 denied.
12. PW3- Smti. Keteki Saikia deposed that the complainant is her uncle-in-law. The incident took place around 3/4 months prior to her deposition at around 9.30 O'clock. She had not seen the incident. The father of the accused had informed PW3 that Minaram had cut her husband. Then PW3 along with Tileswar Saikia, Bhadra Saikia went to the house of Minaram Saikia and saw her husband lying in there. Lohit Saikia was all blood stained and she saw injury on her husband's right part of forehead in his senseless state. PW3

took Lohit to the Civil from where he was referred to GMCH. The doctor denied keeping Lohit in the Civil but forcibly PW3 kept him there for one night and the next day he was referred to GMCH. When Lohit regained his senses he told that Minaram cut him with dao. Six stitches were put on his wound. Lohit is still not yet recovered. Lohit cannot even see properly now and feels tiredness.

13. During cross-examination PW3 stated that the police inquired her after she returned from the GMCH. She denied to the fact that she did not state before the police that "the father of the accused had informed PW3 that Minaram had cut her husband. Then PW3 along with Tileswar Saikia, Bhadra Saikia went to the house of Minaram Saikia and saw her husband lying in there. Lohit Saikia was all blood strewed." It was not a fact that she did not tell the police that Lohit was taken to Morigaon Civil and that her husband told her that he was cut by the accused and that 6 stitches were put on his wound. It was not a fact that her husband sustained injury while cutting bamboo. The rest are just some suggestions to which PW3 denied.
14. PW4- Romen Saikia deposed in his examination-in-chief that both the parties are known to him. He had not seen the incident, later he heard of the incident. While PW4 was sleeping, the wife of Lohit Saikia came and woke him up saying that Minaram had cut her husband Lohit and hence he needs to be taken to the Civil. PW4 saw injury on Lohit's forehead and he was bleeding.
15. During cross-examination PW4 stated that Lohit Saikia is just a neighbour to PW4 and is not his relative. The wife of Lohit Saikia woke PW4 up at around 9.30/10 pm. There are houses of Anil Saikia, Dharmeswar Saikia, Bakuli Saikia nearby the place of occurrence. It was a dark night on the day of incident. PW4 is not aware if there was any fight with the father of PW4. PW4 denied that he did not state before the police that he heard about the incident from the wife of Lohit and did not state before police as stated in his chief. The rest is just a suggestion to which PW4 denied.
16. PW5- Dr. Ajit Kr. Phukan who is the medical officer deposed that on 9.11.2012 he was working as SDM&HO @ Morigaon Civil and on that day he examined Sri Lohit Saikia in the morning while he was in OPD duty. On examination of Lohit Saikia he found the following findings: severe cut injury on scalp and the patient was immediately referred to GMCH, Guwahati. Type

of weapon was sharp. Nature of injury was grievous. Ext-2 is the Medical report and Ext-2(1) is my signature.

17. During cross-examination PW5 stated that the patient was admitted as an Outdoor patient. None has accompanied the patient and he was also not identified. After giving preliminary treatment the patient was referred to the GMCH. He did not mention the time of examination and also the age of injury in the Ext-2. Such injury cannot be caused by falling on stone or hard object. It is not a fact that the report is not proper as the patient was outdoor patient.
18. PW6- ASI Tarun Ch. Deka who is the investigating officer deposed that on 13.11.2012 he was working as Asstt. Sub-Inspector at Morigaon PS. On that day Tileswar Saikia filed an ejahar which was received and registered by the then Officer-in-Charge under Morigaon PS Case No.310/12 u/s 326 of IPC and he was entrusted with the preliminary investigation of the case. The informant was examined on the same day in the police station. He visited the place of occurrence on the same day, prepared the sketch map and recorded the statements of witnesses including the victim. He arrested the accused Minaram Saikia and forwarded to the Court. On 28.11.2012, he collected the medical report. He handed over the case diary to the then OC after completion of preliminary investigation. Charge sheet against the accused Minaram Saikia u/s 326 IPC was submitted by SI Dhiren Kakati. Ext-3 is the sketch map and Ext- 3(1) is my signature. Ext-4 is the charge sheet and Ext-4(1) is the signature of SI Dhiren Kakati which he can recognize.
19. During cross-examination PW6 stated that the victim's statement was recorded on 13.11.2012 at the place of occurrence at his home. The victim was referred to the GMCH from Morigaon civil hospital. No medical report was collected from GMCH or from the victim. He does not know as to how many days the victim was treated in GMCH. It is not a fact that the victim did not tell him of any treatment taken by him nor supplied any medical report.
20. Let me first analyse the basis of the prosecution story. The incident was occurred on 8/11/12 at around 9.30 pm. The ejahar was filed on 13/11/12, that is, after around 4 days of the incident. It is stated in the ejahar that as the victim was being treated at GMCH the filing of the ejahar was got delayed. The victim during cross examination as PW2 stated that as there was talk about amicable settlement hence got delayed in filing the ejahar.

Further the defence did not try to extract any contradiction in this regard. As such the delay in filing the ejahar does not seem in-ordinate. With this note let me analyse the evidences adduced by the prosecution.

21. Regarding the offence under section 326 of the Indian Penal Code, the informant alleged that on 8.11.2012 at around 9.30 pm when the accused was having fight with his parents then the nephew of the informant namely Sri Lohit Saikia tried to settle down their clash then the accused caused him grievous injury on his head by cutting with a sharp dao. As injury was grievous hence Lohit Saikia has been admitted in the GMCH. During deposition as PW1 the informant reiterated that when the accused was having fight with his parents then the nephew of the informant namely Sri Lohit Saikia tried to settle down their clash then PW1 heard some noise of Lohit and rushed to the place of occurrence. Upon reaching there, PW1 saw that Lohit was lying on the ground and he was bleeding from head. Lohit was cut with a straight dao. The informant is not the eye witness of this case but reached the place of occurrence on hearing hue and cry made by the victim. Hence let us analyse the deposition of the victim. PW2- Lohit Saikia, the victim deposed in his examination-in-chief that Minaram cut him. Minaram tried to cut his parents but as PW2 intervened then he cut PW2 on his forehead and then PW2 became senseless. The Court had seen the cut mark. PW2 was taken to Morigaon Civil and then he was referred to GMCH. PW2, the victim has corroborated the testimony of the informant in every material particulars. The medical report also suggested that the victim had sustained grievous injury by sharp weapon and the medical officer during deposition as PW stated that on examination of Lohit Saikia he found the following findings: severe cut injury on scalp and the patient was immediately referred to GMCH, Guwahati. Type of weapon was sharp. Nature of injury was grievous. Ext-2 is the Medical report and Ext-2(1) is his signature. Thus the medical report supported the testimony of the informant and the victim. Thus it is proved that on the day of the incident the victim was inflicted cut injury on his forehead with sharp weapon. The gravity of the injury shall be decided later on. All the witnesses consistently deposed that the incident was occurred in the house of the accused but there was no eye witness of the incident. The informant and the victim stated that the victim was inflicted cut injury by the accused on his forehead. PW3- Smti. Keteki Saikia deposed that

The father of the accused had informed PW3 that Minaram had cut her husband. Then PW3 along with Tileswar Saikia, Bhadra Saikia went to the house of Minaram Saikia and saw her husband lying in there. Lohit Saikia was all blood stained and she saw injury on her husband's right part of forehead in his senseless state. PW3 took Lohit to the Civil from where he was referred to GMCH. When Lohit regained his senses he told that Minaram cut him with dao. Thus PW3 reached the place of occurrence immediately after the incident and found the victim lying in the house of the accused. The victim stated to her that he was inflicted cut injury by the accused. The evidence of this witness is sufficient to corroborate the testimony of the informant and the victim. PW4, Romen Saikia also corroborated the evidences of the victim and PW3 by stating that While PW4 was sleeping, the wife of Lohit Saikia came and woke him up saying that Minaram had cut her husband Lohit and hence he needs to be taken to the Civil. PW4 saw injury on Lohit's forehead and he was bleeding. Thus the witnesses adduced by the prosecution consistently stated that the victim was inflicted cut injury by the accused with sharp weapon. Now let us discuss whether the defence is successful in assailing the credit of the witnesses or disprove the case by adducing evidences. The defence had taken the plea that the victim sustained injury by bamboo while he was cutting bamboo which was denied by the witnesses. The defence also did not adduce any evidence to prove its contentions. Further the defence could not extract any contradiction from the evidences of the witnesses by suggesting them and by confirming the same by the investigating officer. In view of this the evidences of the witnesses remain intact.

22. The defence also indicated that the victim was although referred to the GMCH but no report was submitted. The assessment of the injury of the victim is to be done with the help of the report issued by the examining doctor of Morigaon Civil Hospital as such the said plea is of no value. However, regarding the gravity of the offence the medical report suggested that the victim sustained grievous injury. The word is used by the doctor in the sense of medical science but not in legal sense. The injury as described is severe cut injury on scalp. For this purpose let me produce here the provision of section 320 of the Indian Penal Code defining grievous hurt.

**23. Section 320 – Grievous hurt – The following kinds of hurt only are designated as “grievous”:-**

**First – Emasculation.**

**Secondly –Permanent privation of the sight of either eye.**

**Thirdly – Permanent privation of the hearing of either ear,**

**Fourthly –Privation of any member or joint.**

**Fifthly – Destruction or permanent impairing of the powers of any member or joint.**

**Sixthly – Permanent disfiguration of the head or face.**

**Seventhly –Fracture or dislocation of a bone or tooth.**

**Eighthly –Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.**

24. The injury alleged in this case does not come under any of the components of the definition of grievous hurt. Thus, in the legal sense the injury of the victim is only a simple one which is only covered by the definition of hurt. Further the prosecution tried to bring to light through the witnesses that the victim at present also see less and feels tiredness. But in view of absence of the medical report the same cannot be considered. As such the prosecution is failed to prove that the injury sustained by the victim was grievous. Thus the injury sustained by the victim is proved to be simple hurt which is punishable under section 324 of the Indian Penal Code. As the medical report suggests that the victim sustained simple injury the offence under section 326 of the Indian Penal Code is not attracted. But the offence under section 324 of the Indian Penal Code is attracted against the accused person. The offence under section 324 of the Indian Penal Code is a minor offence of the offence under section 326 of the Indian Penal Code and as such without framing of charge afresh the accused person can be convicted under section 324 of the Indian Penal Code instead of the offence under section 326 of the Indian Penal Code. Thus prosecution is successful in proving the ingredients of the offence under section 324 of the Indian Penal Code beyond reasonable doubt against the accused.

25. **Decision:** The prosecution is failed to prove the offence under section 326 of the Indian Penal Code against the accused Minaram Saikia beyond reasonable doubt.

But the prosecution has successfully proved the offence under section 324 of the Indian Penal Code against the accused Minaram Saikia beyond reasonable doubt. Accordingly the accused Minaram Saikia is found guilty and is convicted under section 324 of the Indian Penal Code.

**26. Hearing on sentence:**

The convicted person is heard on point of sentence that can be imposed upon him under section 324 of the Indian Penal Code. The convict stated that he is the first offender and is poor person having three children who are dependent on him and pleaded for leniency. In view of the facts and circumstances of the case and upon hearing the convict and the nature of the offence committed, I deem it not proper to extend the benefit of probation to the convicted person but the convict may be treated leniently

**27. Order:** In view of the above, it is held that the prosecution is failed to prove the offence under section 326 of the Indian Penal Code against the accused Minaram Saikia beyond reasonable doubt.

But the prosecution has successfully proved the offence under section 324 of the Indian Penal Code against the accused Minaram Saikia beyond reasonable doubt. Accordingly the accused Minaram Saikia is found guilty and is convicted under section 324 of the Indian Penal Code. The convict is sentenced to undergo imprisonment for a period of 9 months and to pay a fine of Rs. 2000/- in default of payment of fine, rigorous imprisonment for a period of 2 months. The period for which the convict has already undergone judicial custody shall be set off. The fine amount if realised shall be given to the victim, Lohit Saikia.

**28.** Bail bonds and affidavits submitted by the bailor are extended for a period of six months as per amended Cr.P.C.

**29.** Let a copy of the judgement be given to the accused free of cost.

**30.** The case is disposed of on contest.

Given under the hand and seal of this court on the 5<sup>th</sup> day of November, 2019, at Morigaon.

**( Lohit Kumar Sarmah )**  
**Sub Divisional Judicial Magistrate(S),**  
**Morigaon**

**APPENDIX**

**Prosecution witnesses:**

PW1- Sri Tileswar Saikia (Informant)

PW2- Sri Lohit Saikia (Victim)

PW3- Smti. Keteki Saikia

PW4- Sri Romen Pathak

PW5- Dr. Ajit Kr. Phukan (M.O.)

PW6- ASI Tarun Ch. Deka (I.O.)

**Exhibits for the prosecution:**

Ext:1 – Ejahar

Ext:2 – Medical report

Ext:3 – Sketch map

Ext:4 – Charge sheet

**Defence witness :**

Nil

**Exhibits for defence:**

Nil

Lohit Kumar Sarmah  
SDJM(S), Morigaon.