

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE (S) AT  
MORIGAON**

**G.R. Case No.1929/15**

**Under section- 324 of the Indian Penal Code**

**State of Assam**

Versus

**Md. Almas Ali**

S/O- Late Ibrahim Ali

Village: Morimusalmangaon, 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. N. U. Ahmed and Ms. S. Shah, Advocates

Evidence recorded on: 2.8.2017, 3.11.2017, 7.2.2018, 16.3.2018, 26.12.2018,  
12.7.2019 and 17.8.2019

Argument heard on: 19.10.2019

Judgment delivered on: 7.11.2019

**JUDGMENT**

1. The informant Musstt. Rabina Begum lodged an ejahar before the Officer-in-charge of Morigaon Police Station on 16.8.2015 stating inter alia that on 16.8.2015 at around 9 pm while her minor nephew, Md. Raja Ali was waiting on the road of Morimusalman Gaon the accused armed with sharp knife cum dagger caused grievous injury on Raja Ali's back due to which Raja Ali became senseless on the spot. The blood of Raja Ali spread all over the place of occurrence. Because of extreme injury of the victim, though he was brought to the Morigaon civil immediately but from there Raja was referred to GMCH. The victim is in

serious condition and may expire at any time. Hence the informant had filed this case.

2. The ejahar was received and registered by the officer-in-charge of Morigaon police station as Morigaon police station case No. 237/15 under section 326 of the 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 324 of the Indian Penal Code against the accused.**
4. Accused appeared on being summoned and entered trial. The copies of the relevant documents were furnished to 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 324 of the Indian Penal Code** was framed against the accused person and the particulars of the offence are read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
6. The prosecution has examined as many as nine witnesses including the informant and victim. The examination of the accused person under section 313 Criminal Procedure Code was recorded. The plea of the accused person is in total denial and he declined to adduce evidence in his defence.
7. I have heard arguments from the learned APP and the learned defence counsel and perused the records of the case in a meticulous manner. The point of determination in the case is:
  - i) Whether the accused on 16.8.2015 at about 9 pm voluntarily caused hurt to Md. Raja Ali by means of a "dagger" which is an instrument of cutting and thereby committed offence under section 324 of Indian Penal Code?

#### **DISCUSSION, DECISION AND REASONS THEREOF:**

8. PW-1, Rabina Begum who is the informant deposed that the accused is known to her. Around 3 years prior to her deposition at around 8 pm while PW1 was watching TV heard some noise and then the villagers told her that Almas stabbed

her nephew. PW1 went to the Morigaon hospital from where he was referred to Guwahati. As Raja was taken to Guwahati by his parents and there was no one left in Raja's house hence PW1 had to file this case. PW1 saw Raja having blood stains all over his body in the hospital. On the same day Raja was taken to the Morigaon Hospital at around 3 am. With what weapon Raja was stabbed PW1 did not know. Ext-1 is the ejahar and Ext-1(1) is her signature.

9. During cross-examination PW1 stated that she had not witnessed the incident. It was a dark night at the time of incident. Raja Ali is also known as Nasibur. It was not a fact that she was deposing falsely to favour her nephew.
10. PW-2, Md. Nasibur Rahman who is the victim deposed that both the informant and the accused are known to him. The incident took place on 16<sup>th</sup> August but he forgot in which year. Around 1/2 years prior to his deposition at around 8/8.30 the accused without any rhyme or reasons stabbed on PW2's right shoulder with a knife. At that time PW2 came out of the Mosque after reading Namaz. Iyanur Ali, Akhtar Ali and Mahidur Rahman were accompanying PW2 at the time of incident when the accused also tried to stab them but they escaped. PW2 then entered into a nearby house when one namely Akhtar Ali took him to the Morigaon Civil Hospital.
11. During cross-examination PW2 stated that it was a dark night at time of incident and the mosque is about 500 meters away from the place of occurrence. At the time of incident no vehicle was on road passing by. Though the place of occurrence was a pacca road but the sides were broken. It was not a fact that the accused did not inflicted injury upon him with a dagger and Akhter did not took him to Morigaon Civil. It was not a fact that he sustained injury while he was coming running from the masjid. It was not a fact that the accused was an old person and dependent on others.
12. PW-3 Md. Aftabuddin @ Aftab Hussain who deposed that Raja Ali was his friend since his childhood. The incident was occurred at around 9 pm near his house around 2 years ago. He along with Raja Ali and some others returned from namaz and he entered into his house. After some time, Raja went to his house and told him that Almas hit him with a knife and he requested him to close the door of the house. He closed the door and caught hold of Raja. He heard voice of Almas Ali outside the house. Later on as many people gathered there he opened the door but Almas was not there at that time. Raja was then taken to Morigaon

Civil Hospital. Raja Ali was bleeding and he tried to stop the blood with the help of his kurta. Police seized Kurta and vest of the victim which were blood-stained. He signed the seizure list.

13. During cross examination he deposed that the age of Almas Ali was around 50-60 years who often used to pull thela. He along with Raja, Iyanul and Mohidul were coming namaz. He did not see the incident himself. He went to Morigaon Civil. It was not a fact that he did not tell police but deposed falsely that "After some time, Raja went to his house and told him that Almas hit him with a knife and he requested him to close the door of the house. He closed the door and caught hold of Raja. He heard voice of Almas Ali outside the house. Later on as many people gathered there he opened the door". He signed one blank paper and one police diary.
14. PW-4, Md. Ratul Ali deposed that informant was known to him and he heard the name of the accused. The incident was occurred around 2.5 years ago. He came to know of the incident in the TV news. His niece informed him that Raja was hit by dagger and was taken to hospital. He went to Morigaon civil but was informed that the victim was referred to Guwahati. He heard that the accused had had inflicted injury to Raja with a knife. Police seized the blood-stained clothes. He signed exhibit 2.
15. During cross examination he deposed that it was not a fact that Raja was not treated at Guwahati. It was not a fact that he did not see in the news that Almas hit Raja with a knife.
16. PW-5, Md. Musabbir Hussain deposed that the informant was not known to him. The accused was known to him. Around two years ago while he along with Iyanul, Anarul and Wasimul were coming from namaz the accused hit Wasimul with a knife from his backside. He was also chased by the accused and so he went to his house. Hearing hue and cry people gathered and Wasimul was taken to Morigaon Civil Hospital. He identified the Material exhibit A consisting of one shirt and vest of Wasimul and one Panjabi kurta of Akhtar Hussain. He signed exhibit 2.
17. During cross examination he deposed that it was not a fact that he did not tell the police that he was chased by the accused. It was not a fact that he deposed falsely that the accused attacked Wasimul with a knife from backside and he was also chased by the accused. It was not a fact that all the people went to namaz

were went away before 8.30 pm and Wasimul sustained injury by falling on the road. Accused was an old person of age around 70-75 years. He signed the exhibit 2 in the police station and he put his signature for being a witness.

18. PW-6 Dr. Abdul Jalil who is the medical officer deposed that on 16.8.2015 he examined Md. Nasibur Rahman aged 17 years s/o- Md. Jamal Ali in connection with Morigaon PS case no.237/15 under section 326 of the Indian Penal Code who was escorted by ASI Munindra Deka. On examination of Md. Nasibur Rahman he found the following findings: A deep stab injury with active bleeding over the left supra scapular region measuring 1" length ½"wide & about 3" depths. Edge of which sharp & clean cut. Type of weapon was sharp cutting weapon. Nature of injury of Md. Nasibur Rahman was simple injury. Ext-3 is the Medical report and Ext-3(1) is his signature. He opined as simple injury caused by sharp cutting weapon.
19. In cross-examination PW6 stated that he has not seen the police requisition that was submitted during the examination of Md. Nasibur Rahman in the case record today. He has not mentioned the history of injury in the Ext-3 as there was no column for such particular in the form. It was not mentioned in the Ext-3 whether Nasibur was examined as indoor or outdoor patient. Such type of injuries may be sustained by falling on sharp or pointed objects. At the time of submitting the police requisition there was no GDE number provided but later when he submitted the medical report he had mentioned the reference case number as provided by the police.
20. PW-7, Md. Jamal Ali deposed that the informant was the wife of his brother. The accused was known to him. The incident was occurred around 4 years ago near his house on the road at Morimusalman Village at around 9 pm. While he was in his house, he was informed that someone had hit Raja Ali. He went to the place of occurrence but did not find any one and he was informed that Raja was taken to hospital. He went to civil Hospital and saw Raja injured. Raja Ali informed him that while he was talking with Iyanul and Mussabbir, the accused hit him with a dagger from his back side. Raja Ali`s another name was Nasibur who was his son. Rabina Begum filed ejahar on his advice.
21. During cross examination he deposed that he did not see the incident. It was not a fact that it was dark at the place of occurrence. He reached the hospital after 7 minutes of the incident. He did not go to the place of occurrence. It was not a

fact that due to enmity with the accused he deposed falsely that the accused hit Raja with a dagger. It was not a fact that the accused did not attack his son with any knife. It was not a fact that he deposed falsely that Raja Ali informed him that while he was talking with Iyanul and Mussabbir, the accused hit him with a dagger from his back side. The accused was an 80 years old person. It was not a fact that his son sustained injury on his back while coming running from namaz by falling on the road.

22. PW-8 Md. Yamukh Ali @ Iyamul Hussain deposed that the informant and the accused were known to him. The incident was occurred around 4-5 years ago at around 9 pm while they were on the road in front of the house of Akhtar Ali. He along with Mussabbir and Raja while coming from namaz and waited on the place of occurrence, then Almas came from behind and hit Raja with a knife on his back. Raja was taken to Morigaon Civil Hospital but he was referred to Guwahati. Raja was bleeding.
23. During cross examination he deposed that he along with Musabbir, Iyanul and Akhtar took Raja to hospital on their bike. It was not a fact that while he along with Musabbir and Raja were coming from namaz, they indulged in pulling and thrashing and as a result, Raja fell down on the pucca road and sustained injury. It was not a fact that they accused Almas Ali to save themselves. Almas Ali was an 80 years old person.
24. PW-9 SI Musfic Ali who is the investigating officer deposed that on 16.8.2015 he was working as Sub-Inspector at Morigaon Police Station. On that day, Musstt. Rabina Begum filed an ejahar which was received and registered by the then Officer-in-Charge under Morigaon Police Station Case No.237/15 under section 326 of Indian Penal Code and he was entrusted with the investigation of the case. PW9 visited the place of occurrence on the same day, prepared the sketch map and recorded the statements of witnesses. The victim Nasibur Rahman was sent to Morigaon Hospital for Medical Examination. He seized one shirt, vest and a kurta with blood stains as shown by the informant. He also collected the medical report of the victim. Accused Almas Ali was arrested and forwarded to the Court. He has submitted charge sheet against the accused Almas Ali under section 324 of the Indian Penal Code. Ext-2 is the seizure list and Ext-2(3) is his signature. Ext-4 is the sketch map and Ext- 4(1) is his signature. Ext-5 is the charge sheet and Ext-5(1) is his signature.

25. During cross-examination PW9 stated that he met the victim Nasibur Rahman at the police station on the same day at around 8.30 am. The ejahar was lodged on 16.8.2015 at about 10.30 pm. He carried out the investigation on the basis of the ejahar. No GDE was done prior to the ejahar. He collected the medical report from Morigaon Civil Hospital. He did not collect any medical report of the victim from any other hospitals. He did not record the statements of Sahan Ali, Jintu Ali and Ashab Ali who were shown in the sketch map. He did not send the seized blood stained clothes to the FSL to determine whether the blood was of the victim. He has not seen the seized clothes in the Court today. He did not seize the sharp weapon as mentioned in the ejahar. It is not a fact that the victim was not sent to the Medical by police. It is not a fact that the investigation was perfunctory and casual.
26. Let me first produce here the provision of section 324 of the Indian Penal Code which provides that **"Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for term which may extend to three years, or with fine, or with both."**
27. In the present case, the informant alleged in the ejahar that on 16.8.2015 at around 9 pm while her minor nephew, Md. Raja Ali was waiting on the road of Morimusalman Gaon the accused armed with sharp knife cum dagger caused grievous injury on Raja Ali's back due to which Raja Ali became senseless on the spot. The informant during deposition as PW1 reiterated her statement in the ejahar and added that PW1 saw Raja having blood stains all over his body in the hospital. PW2, Nasibur Rahman is the eye witness as well as the victim. PW2 has confirmed the statement made by the informant and categorically stated that around 1/2 years prior to his deposition at around 8/8.30 the accused without any rhyme or reasons stabbed on PW2's right shoulder with a knife. At that time

PW2 came out of the Mosque after reading Namaz. Iyanur Ali, Akhtar Ali and Mahidur Rahman were accompanying PW2 at the time of incident when the accused also tried to stab them but they escaped. PW2 then entered into a nearby house when one namely Akhtar Ali took him to the Morigaon Civil Hospital. During cross-examination the informant and the victim both maintained their stand and nothing could be elicited nullifying the alleged assault by dagger on the victim by the accused during his cross-examination. The medical report, exhibit 3 suggested that the victim sustained stabbed injury on his shoulder. The medical officer Dr. Abdul Jalil while deposing as PW5 stated that On examination of Md. Nasibur Rahman he found the following findings: A deep stab injury with active bleeding over the left supra scapular region measuring 1" length ½"wide & about 3" depths. Edge of which sharp & clean cut. Type of weapon was sharp cutting weapon. Nature of injury of Md. Nasibur Rahman was simple injury. Ext-3 is the Medical report and Ext-3(1) is his signature. He opined as simple injury caused by sharp cutting weapon. Thus, the allegation by the informant and the victim was duly corroborated by the medical report of the victim. There is no reason to disbelieve the testimony of the informant and the victim. PW3 Akhtar @ Aftab Hussain deposed that Raja went to his house and told him that Almas hit him with a knife and he requested him to close the door of the house. He closed the door and caught hold of Raja. He heard voice of Almas Ali outside the house. Raja was then taken to Morigaon Civil Hospital. Raja Ali was bleeding and he tried to stop the blood with the help of his kurta. Police seized Kurta and vest of the victim which were blood-stained. He signed the seizure list. PW9, the investigating officer has also confirmed the seizure of the blood stained clothes of the victim vide exhibit 2. The seizure witness PW4, Ratul Ali also confirmed the seizure of the said articles by the police in reference to this case. PW5, Mussabbir Hussain also confirmed the seizure of the said articles and he also identified the articles as Material exhibit A in the court to be that of the victim. Thus, it is proved beyond reasonable doubt that the victim sustained injury on his shoulder and as a result his clothes stained with blood which were seized by the police. Further PW5 Mussabir Hussain is the eye witness of the incident who stated that around two years ago while him along with Iyanul, Anarul and Wasimul were coming from namaz the accused hit Wasimul with a knife from his backside. PW7, Jamal Ali also stated that he went to the civil Hospital and saw Raja

injured. Raja Ali informed him that while he was talking with Iyanul and Mussabbir, the accused hit him with a dagger from his back side. Thus PW5 and PW7 also corroborated the testimony of the informant and the victim in material particular. PW8, Md. Yamukh Ali @ Iyamul Hussain was also an eye witness and he was present with the victim at the time of the incident and he deposed that the incident was occurred around 4-5 years ago at around 9 pm while they were on the road in front of the house of Akhtar Ali. He along with Mussabbir and Raja while coming from namaz and waited on the place of occurrence, then Almas came from behind and hit Raja with a knife on his back. Raja was taken to Morigaon Civil Hospital but he was referred to Guwahati. Raja was bleeding. Thus, the fact that the accused Almas Ali had attacked the victim from backside and stabbed on his shoulder with a knife causing bleeding and injury. Though the weapon of offence i.e., the dagger has not been seized by I.O., but PW2 has categorically stated that he was hit by a dagger and medical evidence has wholly supported this fact. The defence had taken the plea during cross examination of the witnesses that while coming from reading namaz the victim fell down on the road and sustained the injury which was denied by all the witnesses. The defence did not adduce any witness to prove its case. The defence could not confronted the witnesses nor could any material contradiction be extracted so as to assail the credit of the witnesses. Although there are some minor contradictions in their statement but those contradiction are not material contradictions. **In case of S. Govindaraju vs. State of Karnataka, (2013) 15 SCC 315 the Hon'ble Supreme Court held "23. *It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradiction/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments and improvements in relation to trivial matters, which do not affect the core of the case of the prosecution, must not be made a ground for rejection of evidence in entirety.*"** Minor discrepancies and contradictions are not fatal to prosecution case when the victim has categorically stated that he was hit by the accused by a dagger on his back and medical evidence has also supported this fact." Further there is no enmity between the parties and there is no other reason to disbelieve the evidence adduced by the prosecution. Hence prosecution has successfully proved

that the accused had voluntarily caused hurt to the victim with sharp cutting weapon and as such all the ingredients of the offence under section 324 of the Indian Penal Code are established and proved against the accused person beyond reasonable doubt.

28. Decision: in view of the above discussion the accused Almas Ali is convicted under section 324 of the Indian Penal Code.
29. **Hearing on sentence:** Being convicted under section 324 of the Indian Penal Code, the accused is heard on point of sentence which can be imposed upon him. The accused has stated that he is an age old person of around 75 years and had faced trial for around 4/5 years and as such he pleaded for leniency. Considering the fact and circumstances of the case and contentions of the convict and nature of offence, I am not going to extend the benefit of the Probation of offenders Act to the accused person. Although in view of the old age of the convict, I deem it proper to sentence leniently.

**Order:**

30. Considering the nature of the offences and the other attending facts and circumstances of this case, **it is held that the accused is sentenced to undergo rigorous imprisonment for 3 months and pay fine of Rs.2,000/- (Rupees two thousand) only under section 324 of the Indian Penal Code and to undergo simple imprisonment for another two month in default of the payment of the fine amount. Period of detention already undergone if any is to be set off. The fine amount be given to the victim as compensation.**
31. Furnish free copy of the judgment to the accused person immediately.
32. Bail bond furnished by the accused is hereby extended for a period of 6 (six) months.
33. The case is disposed of on contest.

Given under the hand and seal of this Court on this the 7<sup>th</sup> day of November, 2019, at Morigaon.

Lohit Kumar Sarmah  
SDJM(S), Morigaon, Assam

**APPENDIX**

**Prosecution witnesses:**

- PW-1 Rabina Begum (Informant)
- PW-2 Md. Nasibur Rahman (Victim)
- PW-3 Md. Aftabuddin @ Aftab Hussain
- PW-4 Md. Ratul Ali
- PW-5 Md. Musabbir Hussain
- PW-6 Dr. Abdul Jalil (Medical Officer)
- PW-7 Md. Jamal Ali
- PW-8 Md. Yamukh Ali @ Iyamul Hussain
- PW-9 SI Musfic Ali (Investigating Officer)

**Exhibits for the prosecution:**

- Ext-1: Ejahar
- Ext-2: Seizure list
- Ext-3: Medical report
- Ext-4: Sketch map
- Ext-5: Charge sheet

**Defence witness:**

Nil

**Exhibits for defense:**

Nil

Lohit Kumar Sarmah  
SDJM(S), Morigaon.