IN THE COURT OF THE SESSIONS JUDGE : : TINSUKIA

District: Tinsukia

Present: **Sri C. Das**,
Sessions Judge,
Tinsukia

(Criminal appeal is filed against the judgment and order dated 17.10.2019 passed in G.R. Case No.82/2018 by learned Additional Chief Judicial Magistrate, Tinsukia)

Criminal Appeal No.40 (4) of 2019

Sri Sunil Das @ Thumla,
S/o Sri Mungilal Das,
R/o Machuapatty (Balughat), P.S. Doomdooma,
District: Tinsukia (Assam) .....Appellant

- Versus –

1. The State of Assam.
2. Sri Janardan Prasad (Complainant),
   S/o Late Satnarayan Prasad,
   R/o Doomdooma Pathar Gaon, P.S. Doomdooma,
   Dist: Tinsukia (Assam)
3. Sri Murari Prasad (Victim)
   S/o Late Satnarayan Prasad,
   R/o Doomdooma Pathar Gaon, P.S. Doomdooma,
   Dist: Tinsukia (Assam) .....Respondents

Appearance:

Sri M. K. Singh,
Advocate.....For the Appellant
Sri A.K. Choubey,
Public Prosecutor.....For the Respondents

Date of Argument : 05.11.2020

Date of Judgment : 19.11.2020

J U D G M E N T

1. This criminal appeal is filed u/s. 374/382/383/386/389 of Code of Criminal Procedure (shortly; the CrPC), which is directed against the judgment and order dated 17.10.2019, passed by learned Additional Chief Judicial Magistrate, Tinsukia in G.R. Case No.82/2018, whereby learned Chief Judicial Magistrate, Tinsukia convicted and sentenced the accused/appellant to undergo simple imprisonment for one month for the offence u/s.341 I.P.C. and rigorous imprisonment for two years with fine of Rs.500/-, in default, simple imprisonment of ten days, for the offence u/s.324 I.P.C.

2. The brief fact of the case, is that the complainant Sri Janardan Prasad lodged an ejahar before the Officer-in-charge of Doomdooma Police Station, stating inter-alias that on 16.1.2018 at about 8 P.M., when his brother Murari Prasad was coming from Doomdooma town towards the home, the accused/appellant assaulted his said brother with a dao (machete) on the left hand, in front of the house of one Raj Kumar Sahani after restraining him. As a result, his brother sustained injuries. It is further stated in the ejahar that somehow, the brother of the informant managed to escape from the place of occurrence and saved himself from the accused/appellant.

3. On receipt of the said ejahar, a case was registered vide Doomdooma P.S. Case No.20/2018 u/s.341/326/34 I.P.C. and after completion of investigation, the charge-sheet was submitted against the accused/appellant under aforesaid sections of law. The accused thereafter, entered into his appearance before the court. After hearing, learned trial court framed the charges u/s.341/326/34 I.P.C., which were read over and explained to the accused/appellant, to which he pleaded not guilty and claimed to be tried.

4. During trial in G.R. Case No.82/2018, the prosecution examined five witnesses, including the I.O. and M.O. while the defence examined none.

Two witnesses were also, examined as court witnesses. After hearing learned counsels of both sides, learned trial court convicted the accused/appellant, as aforesaid by passing the impugned judgment and order.

5. Being highly aggrieved by and dissatisfied with the order of conviction and sentence, the accused/appellant preferred this appeal on the following grounds:

(i) For that the learned trial court has not appreciated the evidence on record in its true perspective.

(ii) For that the learned trial court had committed error of law as well as, on fact to hold the accused/appellant guilty, but the evidence is not available in the case to prove the ingredients under the said sections of law.

(iii) For that the learned trial court passed the impugned judgment only on the basis of presumption available in favour of the complainant and failed to discuss the rebuttal evidence and without coming to a logical finding, passed the impugned judgment and as such, same is liable to be set aside and quashed.

(iv) For that the findings arrived at by the learned trial court are not based on materials on record and as such, same cannot be treated as judicial finding and hence, it is liable to be set aside and quashed.

(v) For that it is well established principle of criminal jurisprudence that the prosecution case has to stand on its own leg and to prove the case beyond reasonable doubt and moreover, suspicion howsoever, strong, the same cannot take the place of proof. In the instant case, the prosecution failed to bring home the charges levelled against the accused/appellant in accordance with the law. Therefore, it can be safely held that the learned trial court passed the impugned judgment erroneously and as such, it is liable to be set aside and quashed.

6. I have gone through the impugned judgment delivered by learned trial court. I have also, thoroughly perused the record of G.R. Case

No.82/2018 including the evidence of the witnesses recorded by learned trial Court. I have heard the argument advanced by learned counsel for the appellant as well as, learned Public Prosecutor and perused the written argument submitted by learned counsel for the appellant.

7. Learned counsel for the appellant has submitted that as per FIR, the date of incident was on 16.1.2018 but the deposition of PW1 and 2 disclosed that the incident was on 18.1.2018 which casts doubt upon truth of the complainant and the victim. It is submitted that PW1 was not an eyewitness of the incident and he came to know about the incident from Mukesh Prasad, Dasrath Prasad but they were not examined by the prosecution. Moreover, nearby people of the place of occurrence namely; Rajkumar Sahani, Munnilal Sah, Deolal Sharma and Dasrath Prasad were not examined by the prosecution in the case and hence, it also, brings doubt over the alleged incident as narrated in the FIR. According to him, as per cross-examination, PW2 has not stated to anyone about the incident except the police, and incident happened near the house of Rajkumar Sahani but even though the other witnesses of the case comes to know about the incident from the complainant or the victim of the case. Further, it is submitted that there was no medical document of Dibrugarh's any hospital which indicates that the victim ever treated there for the injuries sustained in the alleged offence as stated by PW1 and 2 in their depositions in the court. Again, it is submitted that as per version of PW4, it appears that he had not written any identification mark of the patient in the medical report and no police requisition number or case number and age of injury in the medical report and hence, the medical report is completely doubtful document and not belongs to this case. However, the medical report does not show any opinion of the doctor whether the injuries sustained by the victim, were simple or grievous in nature and there is no any reflection about the age and colour of injuries and as such, the prosecution completely failed to establish the fact that the injuries sustained by the victim, was old or fresh as well as whether the injuries are caused by a dao as because there is no history of alleged incident in the medical report narrated by anyone.

8. It is submitted by learned counsel for the appellant that the FIR was written by one Arijit Deb, but he was not examined in the case. The I.O. did not find any material and any blood stains at the place of occurrence. It is not mentioned that who had shown the place of occurrence to the informant. At the time of visiting the place of occurrence, I.O. found the house of Rajkumar Sahani, Awdesh Sharma, Munnilal Prasad and Bikram Prasad but their statements were not recorded by the I.O. The witnesses namely; Dinesh Prasad and Murari Prasad were brought before I.O. by the informant and as such, they were interested witnesses of the case. Further, I.O. failed to investigate whether there was previous enmity exists between the informant and the accused and as such, failed to prove any motive and intention for the alleged offence. Again, I.O. did not find any weapon of assault at the place of occurrence. I.O. was not aware of the fact during the investigation that the victim was ever treated at Shankar Dev hospital, Dibrugarh. There was major contradictions on the deposition of PW1 and CW1 and 2 over their previous statement before I.O. As per version of I.O, the place of occurrence was thickly populated area even though he did not find any independent witness in the case. I.O. admitted that he conducted the investigation as per the versions of informant and the victim and type of seized dao is available in the open market while no blood stains found upon the dao. I.O. even did not collect finger print of the accused to match with the finger print available on the seized dao. No witnesses of the prosecution deposed that the injuries to PW2 was caused by the seized dao on the day of incident by the accused Sunil Das @ Thumla. There was no previous enmity exists between them. There was no evidence that the seized dao was found from the possession of the accused Sunil Das. Only in the statement recorded u/s. 313 CrPC, the accused Sunil Das stated that he handed over the dao to the police, which cannot be held as his admission. It is submitted that learned trial court held that the evidence of other witnesses that Murari Prasad sustained cut injuries by dao, is corroborative with injury report but the injury report does not disclose about dao or dao injury. Learned trial court held that there is no specific evidence against the accused Dilip Das to show that Dilip Das caused

injury to Murari Prasad or that he was not involved with Sunil Das even though learned trial court did not appreciate the legal maxim "*Falsus in omnibus"* (false in one thing, false in everything). Even though PW4 stated that nature of injury could not ascertain as no x-ray report was furnished but learned trial court itself presumed and assumed by wearing the cloth of doctor that the injuries were simple in nature and not grievous one. Further, learned trial court itself assumed that both the accused persons wrongfully restrained the victim on his way, but on the other side, acquitted the co-accused from all charges; even there was no evidence at all from the witnesses that the victim was wrongfully restrained by the accused Sunil Das @ Thumla on the way of the victim, learned counsel for appellant submitted. Therefore, he urged that the impugned judgment so recorded by learned trial court is perverse in the eye of law and it is liable to be set aside and quashed.

9. Contrarily, learned Public Prosecutor submitted that the evidence of the prosecution witnesses including the victim is clearly implicated the accused/appellant in the occurrence and as such, finding of facts recorded by learned trial court is based on evidence, which is clear, cogent and convincing. Hence, there is no error of the learned trial court in passing the impugned judgment and order and as such, it may be upheld.

10. Let me scrutinize the evidence of the witnesses, recorded by learned trial court during trial of the case, to arrive at a decision. It appears that the occurrence was taken place on 16.1.2018 and the FIR was lodged before the police by the complainant Sri Janardan Prasad on the same day without any delay to set the law in motion. But the complainant was the eye witness of the occurrence. The prosecution examined the complainant as PW1.

11. PW1 Sri Janardhan Prasad, who is the informant of the case, deposed inter-alias that on 18.1.2018 at about 8 P.M., when his brother Murari Prasad was coming from Doomdooma weekly market with dry fish, the accused stabbed Murari Prasad with a dao, near the house of Raj Kumar Sahani. As a

result, his brother sustained injuries on his left hand. On hearing hue and cry, he came out and saw his brother lying on the road. His brother was taken by his nephew to the police station and then, to the hospital. His brother stated that the accused person had stabbed him. Thereafter, he filed this case against the accused. Ext.1 is the FIR lodged by him and Ext.1(1) is his signature. PW1 proved the Ext.1.

12. In his cross-examination, PW1 stated that he had not seen the accused stabbing his brother. He came to know from one Mukesh Prasad, Dasrath Prasad and many others that the accused had stabbed his brother. In the said incident, his brother fell down on the road and Mukesh Prasad and Dasrath Prasad had taken him to the police station and then to the hospital. He further stated that he does not know the contents of the FIR. He does not know how to read and write Assamese. He had not seen any weapon. His brother was discharged from Doomdooma hospital on the same day at night. Thereafter, his nephew had taken his brother to Dibrugarh. Thus, as it stated earlier that PW1 is not a direct witness to the occurrence and as such, the evidence of other prosecution witnesses needs to further scan.

13. PW2 is the victim Murari Prasad. His evidence is important since PW1 is found being not an eyewitness of the occurrence. He stated that on the fateful day, at about 8 P.M., when he was coming from Doomdooma weekly market with dry fish, the accused Thumla @ Sunil had stabbed him on his left hand with a dao, near his house. As a result, he fell down. Hearing hue and cry, his nephew Dasarath Prasad came and he was taken to the police station and then to Doomdooma hospital. For better treatment, he was referred to Assam Medical College Hospital, Dibrugarh. He took medical treatment for about one and half month, but was not recovered completely till now. Thereafter, his brother filed this case against the accused. The Police recorded his statement.

14. In his cross-examination, PW2 replied that he knew the accused since his childhood. He had not seen the weapon of assault. He was coming to his

house at about 7.00 to 7.30 P.M. At that time, the accused was standing near his house. At that time, he had not seen any weapon in his hand. The police had not seized his blood stained clothes. He took medical treatment at Sankar Dev Hospital, Dibrugarh. He further stated that he had not stated about the incident to any other person, except the police. At the time of incident, he cannot say, how many people were gathered there. The incident took place in front of the house of Raj Kumar Sahani. Thus, the evidence of PW2, who was the sole victim of the alleged occurrence, implicated the appellant.

15. PW3 is Dinesh Prasad. He stated that the incident took place on 16.1.2018 at about 8 P.M. The accused stabbed the left hand of the injured (PW2) at Machuwapatty. Thereafter, the injured came through the road and fell down in front of his house. He took him to the police station and then to Doomdooma FRU. On the next day, they took the injured to Dibrugarh for doing sonography.

16. In his cross-examination, PW3 replied that he has not seen the incident. He cannot say the name of persons, who were present at the place of occurrence and who told him about the incident. The injured was also treated at Sankar Dev hospital, Dibrugarh. Since the evidence of PW3 is found that he was not an eyewitness of the occurrence, his evidence cannot come to assist the prosecution case.

17. PW4 is Dr. Sudhin Sharma, who examined the injured Murari Prasad (PW2) at Doomdooma FRU. He deposed that on 16.1.2018, he was working as M & HO - 1 at Doomdooma FRU. On that day at about 8.45 P.M., he examined Sri Murari Prasad, on being sent by the police and escorted by SPO Ajay Narah of Doomdooma police station. On examination, he found the following:

> *1. Cut in left palm, dorsal surface and cut in left elbow lateral aspect of size 6cm x 2cm x 1cm above last two digits of left hand.*

2. Cut injury at 2 inches above the left elbow (lateral aspect) of size 6cm x 2 cm x 1 cm.

The weapon was dao.

18. PW4 Stated further that X-ray of left hand and left elbow, both AP and lateral view was advised, but the report was not furnished. As the X-ray report was not furnished, and hence, nature of injury could not be ascertained. Ext.2 is the medical report and Ext.2(1) is the signature of PW4. Accordingly, M.O. proved the medical report.

19. In his cross-examination, PW4 replied that he has not written any identification mark of the patient in Ext.2. No police requisition number or case number was mentioned in Ext.2. After examination, the patient was released within 15 minutes on the same day. He did not mention the colour and age of the injury in Ext.2. He also did not give any opinion as to nature of injury in Ext.2. Apparently, PW4 could not form opinion as to the nature of injuries of PW2 on the ground of non-availability of certain medical documents. However, his evidence makes it clear that PW2 did suffer cut injuries on his hand, which was caused by a machete.

20. PW5 is Sri Bijay Narayan Dubey, Investigating Officer of the case. The I.O. stated inter-alias that on the fateful day, while he was posted at Doomdooma police station, at about 10.30 pm., PW1 lodged an FIR vide Ext.1 and accordingly, the O.C. of police station, registered the case being No.20/2018 u/s. 341/326/34 IPC and he was entrusted with the duty to investigate the case. Hence, he examined the complainant (PW1) and forwarded the injured to local hospital for medical examination. On the same day, he visited the place of occurrence and drew a sketch map thereof vide Ext.3 with his signature. He also, recorded statement of informant and Dinesh Prasad at the place of occurrence. On next day, the accused/ appellant Sunil and accused Dilip Das appeared at the police station and he after their interrogation, caused their arrest. He seized a dao, which was used by the accused for assaulting the injured, from the possession of appellant Sunil Das

vide Ext.4 with his signature. MR Ext.1 is the said dao, which he seized on production by accused persons in presence of witnesses. In his examination-in-chief, the I.O. also disclosed inter-alias that he saw the seized dao vide MR Ext.1 in the court. He collected the medical report vide Ext.2 on 16.1.2018. He completed the investigation on 24.1.2018 and submitted charge-sheet against the appellant and Dilip Das vide Ext.5 u/s. 341/326/34 IPC.

21. In his cross-examination, the I.O. stated that the distance between the place of occurrence and police station was one and half kilometer. As per FIR the incident took place on 16.1.2018. One Arijeet Deb wrote the FIR but he did not record the statement of Arijeet Deb. There is no police requisition available in the case diary to show that when the victim was sent for medical examination. At the night hours, at about 11 p.m., he visited the place of occurrence. He did not find any material at the place of occurrence. He also, did not find any blood stains at the place of occurrence. The informant had shown him the place of occurrence. At the time of occurrence, the informant was not present with the victim. The case diary did not disclose who showed him the place of occurrence. During the course of investigation, no one of his superior officer, had supervised the investigation. At the time of investigation, he was an ASI of police. He denied the suggestion that being ASI of police, he had no power to investigate the case u/s. 326 IPC and to submit the charge-sheet without supervision of superior officer. He maintained general diary entry for sending the victim for medical treatment and also, maintained general diary entry for collecting the medical documents of the victim. He cannot say in which case, he collected Ext.2. At the time of visiting the place of occurrence, he found the house of Raj Kumar Sahani, Awdesh Sharma, Munnilal Prasad, Bikram Sharma but he did not record statements of those persons in this case. The witnesses namely; Dinesh Prasad and Murari Prasad brought before him by the informant of the case. Except those two witnesses, he did not find any other independent witness of the incident of the case. During the investigation, he did not investigate whether any previous enmity existed between the informant and the accused. He did not find any weapon

of assault at the place of occurrence. He did not show the assault weapon to the victim to confirm whether it was used for his assault.

22. It was confirmed by I.O. in the course of cross-examination that PW1 did not state before him that on 18.1.2018 at about 8 p.m., when his brother was coming from Doomdooma weekly market with dry fish, the accused had stabbed his brother with a dao near the house of Rajkumar Sahani. PW2 did not state to him that on 18.1.2018 at about 8 p.m., when he was coming from Doomdooma weekly market with dry fish, the accused Thumla had stabbed him on his left hand with a dao near his house. PW3 did not state to him earlier that the accused stabbed the left hand of the injured at Machowapatty and thereafter, the injured came by the road and fell down in front of his house. I.O. stated that he did not examine Arjun Sahani and did not record the statement of the injured at the hospital. The injured did not give the history of incident to the doctor. CW1 did not state to him that he heard that the accused Sunil Das @ Thumla inflicted cut injury on the hand of the victim. CW2 did not state to him that he heard that the victim sustained cut injury on his hand.

23. It is the evidence of I.O. that at the time of reporting the incident, the informant was not accompanied by Murari Prasad. As per investigation, the place of occurrence was Doomdooma Pathar goan, which is thickly populated area. Even though, he did not find any independent witness in the case. As per version of the informant and the victim, he conducted the investigation of the case. He did not find any blood stains upon the dao. He did not collect any finger print of the accused/ appellant to compare it with the finger print available on the dao. In Ext.4, he formed an opinion that the seized dao is used for cutting fish. He did not prepare the disclosure report of the accused/ appellant in the presence of available witnesses.

24. Further, the prosecution examined CW1 Sri Moti Sahani and CW2 Sri Kishore Keot in order to get support. CW1 stated that on the fateful day at about 7/8 p.m., the incident took place near a shop at Machowapatty. He

heard an altercation took place between the injured(PW2) and the appellant Sunil Das. He went to the shop. As a result of scuffle, the injured Murari fell down into a ditch. People gathered there and pulled out the injured. Thereafter, the accused/ appellant and the injured went to their respective home. Police recorded his statement. Later on, he heard that the accused/ appellant Sunil Das @ Thumla inflicted cut injury on the hand of the injured. After 2/3 days of the incident, police called him to the police station and told him about the incident and also, had shown him a dao and took his signature in a paper, which was Ext.4.

25. CW1 in his cross-examination, stated that he cannot say the name of person, who informed him that the accused Sunil Das @ Thumla inflicted cut injury on the hand of the injured. The dao, which was shown to him by the police at the police station, is not the dao which he saw today in the court. Ext.4 was not read over to him by the police. He cannot say the contents of Ext.4. On being instructed by police, he put his signature in Ext.4. It appears that CW1 is neither an eyewitness nor could identify the seized dao or could prove Ext.4.

26. Similarly, CW2 stated inter-alias that the incident took place in between 7-9 p.m. near a shop at Machowapatty on the fateful day. He heard an altercation that took place between the injured and the accused/ appellant Sunil Das. He went to the shop. As a result of scuffle, the injured Murari fell down into a ditch. People gathered there and pulled out the injured out of the ditch. Thereafter, the accused/ appellant and the injured went to their respective home. The police recorded his statement. Later on, he heard that the injured sustained cut injury on his hand. After 2/3 days of the incident, police called him to the police station and told him about the incident and also, had shown him a dao and took his signature on a paper. Ext.4 was the said paper where he put his signature.

27. In the cross-examination, CW2 stated that he forgot whether the dao which was shown to him by police at the police station, is the same dao

which he saw today in the court. Ext.4 was not read over to him by police. He cannot say the contents of Ext.4. On being instructed by police, he put his signature in Ext.4. Apparently, CW2 like CW1, is found neither an eyewitness of the occurrence nor he could prove Ext.4.

28. After recording the evidence of witnesses for the prosecution, the accused/appellant was examined u/s 313 of Cr.P.C. and in his statement, the appellant denied all the allegations, levelled against him. But, the accused declined to adduce any defence evidence. He admitted that Bijay Narayan Dubey seized the dao used by him for assaulting Murari Prasad from his possession in presence of witnesses, on being produced by him.

29. Having gone through the evidence on record, it appears that the accused/appellant and the victim were known to each other prior to the occurrence and as such, there was no difficulty of PW2(victim) to identify the appellant along with another even though the incident took place at night on the public road. The place of occurrence was on the public road and admittedly, the locality was populated area. Hence, the defence was insisted upon absence of an independent witness to support the case of the prosecution when the occurrence took place allegedly, near the house of Raj Kumar Sahani as stated by PW1. But PW2 stated that the occurrence took place near his house. PW3 stated that the occurrence took place in front of his house. CW1 and 2 stated it to be near a shop. So different versions came from the mouth of witnesses of prosecution as regards to correct place of spot, where the incident took place. Since PW1 and 3 as well as, CW1 and 2 were not eyewitnesses of the occurrence, reliance only can be placed on the version of PW2. The evidence of PW2 makes it clear that the occurrence took place near his house. Since other above witnesses of prosecution were not present at the spot at the relevant time of incident, reliance only can be placed on the version of PW2. May there be a shop near the place of occurrence, it only can be held that the incident took place near the house of PW2, relying on his version as because PW2 is the only person, who gave correct place of occurrence. In view of above, placing reliance and searching

for support of at least of an independent witness is not important and relevant to the prosecution case in above regard.

30. Admittedly, the occurrence took place at night. The evidence of PW1 shows that he has not seen the occurrence. He only lodged the FIR as he was the brother of the victim; PW2. But he could set the law in motion. He also, corroborated the version of the prosecution. His FIR supported the prosecution case generally. Similarly, the evidence of PW3 along with CW1 and 2 are not the eyewitness of the occurrence. Perhaps, the reason that they were not present at the spot at the relevant time. The defence side brought some contradiction of the versions of PW1, 3 as well as, CW1 and 2. but as they are not eyewitness of occurrence and their versions are not direct, their evidence is not able to prove the facts of the prosecution case in view of bar imposed u/s. 60 of Evidence Act. Thus, the contradictions so raised by defence, on the versions of above witnesses u/s. 161/162 CrPC does not come for serious consideration and assistance in the case. Therefore, as per above view, the only witness for proving the case of the prosecution is the evidence of PW2, who is the sole victim of occurrence. Now it is to analysis the evidence of PW2 to find if his evidence is reliable to believe and act upon.

31. It is correct to say that no particular number of witnesses shall in any case be required for proof of any fact in view of mandate u/s. 134 of Evidence Act. In **Raja vs. State (1997) 2 Crimes 175 (Del)** it was held that *it is well known principle of law that reliance can be based on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The courts are concerned with the merit of the statement of a particular witness. They are not concerned with the number of witnesses examined by the prosecution.*

32. Further, in the case reported in **Lallu Manjhi vs. State of Jharkhand AIR 2003 SC 854**; it was held that *the law of Evidence*

does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony of a single witness, into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness.

33. In the light of above settle law laid down in case of appreciation of testimony of single witness who is also, the sole victim, it is necessary to scan the evidence of PW2 in the above manner. As it is already said that the evidence of PW1, 2 as well as, CW1 and 2 are not important for consideration due to nature of their evidence, it is however, observed and found that they lend support to the prosecution case and the claim of PW2. So far as the evidence of PW2 is concerned, it appears that while he was going home on the fateful day by road, the accused/ appellant attacked him and caused cut injuries on his hand by a machete. As a result, he fell down. CW1 and 2 also, lend support to above fact that PW2 fell down into a ditch after the quarrel with the appellant and local public pulled out PW2 therefrom. The evidence of PW2 shows that he never stated that the occurrence was seen by Rajkumar Sahani, Munnilal Sah, Deolal Sharma, Awdesh Sharma and Bikram Sharma. Hence, I.O. did not examine them rightly. Thus, absence of evidence of above persons does not create any doubt over version of PW2 since the occurrence took place at night when people normally keep themselves into their houses in such area. PW2 along with PW1 made the aberration about the date of occurrence which was taken place on 16.1.2018. If the contents of FIR is carefully perused, it appears that the occurrence took place on 16.1.2018 which makes it more clear that when the occurrence took place. Hence, such mistake is minor in nature and cannot cast doubt over the prosecution story.

34. It appears that learned trial court held that there is confusion over the nature of injury of PW2 as no opinion is given by M.O. as whether the injury sustained by PW2 Murari Prasad, was simple or grievous in nature and M.O. stated that as x-ray report was not furnished, the nature of injury could not be ascertained and thus, it is not proved that the hurt was a grievous one. In this regard, law is very clear as provided u/s 320 IPC where the grievous hurt is clearly defined and designated. The nature of injuries so sustained by PW2 as per medical report issued by PW4, does not fall within the purview of u/s. 320 IPC and as such, there is no option but to accept that the nature of injuries sustained by PW2 are designated as simple injury. Hence, there is wrong committed by learned trial court in the above regard. Further, the evidence of PW4 shows that there was no requisition of police for medical examination of PW2. But the evidence of PW1 and 2 discloses that PW2 was taken to police station and for medical examination by their nephew Dasrath Prased. The said nephew was not examined by I.O. Apparently, the nephew Dasrath Prasad was not an eyewitness of the occurrence and he simply took the victim to police and for medical examination only. Hence, Dasrath Prasad is not important witness of occurrence. So far absence of police requisition is concerned as stated by PW4, it is nothing but lapse of I.O. for which benefit in any manner cannot be given to the appellant.

35. Apparently, the evidence of PW2 is corroborated by medical evidence which is important. The offending weapon which is a machete, was seized from the possession of the appellant as handed over to police by appellant. Accordingly, I.O. seized the machete vide Ext.4. No doubt, I.O. is not supported by CW1 and 2 in regard to seizure of machete from the appellant. But his statement u/s. 313 CrPC lends support to the claim of I.O. and removes all doubt over seizure. Thus, it can be held that seizure of offending weapon vide Ext.4 is proved by the prosecution without any shadow of doubt. The defence tends to bring contradiction over the previous statement of PW2 that he never stated that on 18.1.2018, at about 8 pm when he was coming from Doomdooma weekly market with dry fish, the accused/ appellant had

stabbed him on his left hand with a dao near his hand. On perusal of record, it is clearly found that there is no inconsistency exists between the version of PW2 with his statement before I.O. In fact, his statement before I.O. makes it clear that the occurrence took place on 16.1.2018. There are some lapses on the part of I.O. in the investigation as appears from his evidence and from medical evidence but it appears that said lapses are minor in nature and so, no benefit can be given to the appellant. Thus, such attempt of defence fails to generate any doubt over the evidence of PW2.

36. Nowhere in the evidence on record, it appears that PW2 tendered evidence under falsehood out of previous grudge against the appellant. As far as the co-accused Dilip Das is concerned, his involvement in the occurrence appears to be negligible. PW2 never stated anything significant aspect in the occurrence to implicate him in the case. Moreover, the matter of co-accused Dilip Das is not agitated in the appeal nor nothing has been placed to challenge on point of decision of learned court in favour of co-accused Dilip Das and as such, his matter ought to be considered in this appeal. Admittedly, the appeal is only challenged by the appellant against his fate, recorded by learned trial court.

37. Thus, after considering entire aspects of the facts and circumstances of the case, it appears that the clear and cogent testimony of PW2 shows that on the fateful day, at about 8 pm., while he was coming by road from the market, it was none other than the appellant, who obstructed him wrongfully on the road and inflicted cut injuries on his hand by means of a machete. As no motive behind such act of felony of appellant is detected in the evidence on record, the intention of the appellant was to cause hurt to PW2 by wrongfully restrained him on his way is found in the evidence on record as he carried the dao with him to the spot to commit the offence of hurt to PW2, which is voluntary without any provocation. After going through the evidence of PW2, it appears that his evidence is wholly reliable as it is supported by medical evidence. Therefore, learned trial court rightly held the appellant guilty u/s.341/324 IPC.

38. In regard to sentence part against the appellant, it appears that learned trial court inflicted one month simple imprisonment u/s. 341 IPC and rigorous imprisonment for two years with fine of Rs.500/- u/s 324 IPC. So far facts and circumstances of case is concerned, it appears that the appellant and the victim (PW2) were known to each other as they were from same locality. No previous conviction was found recorded against the appellant. A quarrel took place prior to the occurrence between the appellant and PW2, as surfaced from evidence on record, the reason of which was concealed by both parties. Perhaps for that reason the appellant lost his temper and out of rage, inflicted such injuries to PW2 out of such quarrel. Hence, even though the appellant carried the offending weapon to the spot, it may suggest that the appellant carried it for his safety. He was in jail for considerable period during investigation time. The sentence so inflicted by learned trial court against the appellant, appears to be disproportionate to his act of felony. In view of above discussion, this court finds it fit to modify the sentence part of the impugned judgment and order of learned trial court. Accordingly, the sentence part of the impugned judgment of learned trial court is modified to simple fine instead of corporal punishment to meet the ends of justice. Therefore, the appellant is sentenced to pay fine of Rs.500/- u/s. 341 IPC, in default, simple imprisonment for 10 days and to pay fine of Rs.3,000/- u/s. 324 IPC, in default, simple imprisonment for two months.

39. In the result, the appeal is partly allowed. The impugned judgment and order so recorded by learned trial court, is affirmed with above modification. Send back the record to learned trial court immediately. The appellant since already on bail, he is allowed to remain on previous bail u/s. 437-A CrPC. It will be appropriate for this court to recommend for payment of monetary compensation u/s. 357 CrPC to the victim Murari Prasad, s/o Late Satnarayan Prasad, r/o Pathar gaon under Doomdooma police station under Assam Victim Compensation Scheme by DLSA, Tinsukia. Accordingly, inform the Secretary, DLSA, Tinsukia for doing the needful.

40. Given under my hand and seal of this court on this 19th day of November, 2020.

Dictated & corrected by me.

(C. Das)

Sessions Judge
Tinsukia

Sessions Judge
Tinsukia