

**(2022) 05 GAU CK 0002**

**In the Gauhati High Court**

**Case No : Criminal Revision Petition No. 228 Of 2012**

Aditya Das

APPELLANT

Vs

State Of Assam

RESPONDENT

**Date of Decision : 05-05-2022**

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 320, 323, 325, 341

**Citation : (2022) 05 GAU CK 0002**

**Hon'ble Judges : Sudhanshu Dhulia, J**

**Bench : Single Bench**

**Advocate : T.H. Hazarika, D. Das**

**Final Decision : Partly Allowed**

## **Judgement**

1. Heard Mr. T.H. Hazarika, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam, appearing for the respondent.

2. This criminal revision petition has been filed by the revisionists challenging the judgment & order dated 28.02.2011 passed by the Additional Sessions Judge (FTC), Sonitpur at Tezpur in Criminal Appeal No.15(S-2)/2007. The revisionist No.1 is the father and the revisionist Nos.2, 3 & 4 are his sons. The incident relates to as far back as 24.07.2005 when an FIR was lodged before the Officer-in-Charge of Rakshasmari Police Out Post stating that on that day, i.e. 24.07.2005, at about 6:00 AM in the morning when the informant's younger brother, namely, Bimal Das, was working in the paddy field, the present revisionists attacked him with sticks and hoe and caused grievous injuries to him. The names of the eye witnesses to the incident have also been mentioned in the FIR, who were Sri Mamani Das, Md. Nizam Ali and Sri Sani Das.

3. Pursuant to lodging of the aforesaid FIR, the revisionists were arrested and after completion of the investigation, police submitted charge-sheet against all the accused persons under Sections 341/325/34 IPC.

4. During trial, prosecution examined as many as seven witnesses. There were

eye witnesses to the incident, who clearly deposed that such an assault occurred in front of them. Consequently, by the judgment & order dated 26.03.2007, the trial Court convicted the revisionist No.1 under Section 325 IPC and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months. The revisionist Nos.2, 3 & 4 were also convicted under Sections 323/34 IPC and were sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month.

5. The matter was taken in appeal. Both the conviction and sentence were upheld by the appellate Court vide judgment & order dated 28.02.2011. Aggrieved by the aforesaid judgment & order of the appellate Court, the revisionists have filed the present revision.

6. As far as the incident is concerned, the veracity of the incident had been duly corroborated by each of the eye witnesses and the fact that such an incident happened is not in doubt. The conviction of revisionists Nos.2, 3 & 4 under Section 323/34 IPC is again based on sound, cogent and clear evidence against them. The only question is whether the revisionist No.1, namely, Shri Aditya Das, who is the father of the remaining revisionists, was also liable to be convicted under Section 325 IPC. In other words whether the injury he inflicted upon the injured, Bimal Das, was grievous in nature.

7. It is true that the doctor, who testified before the Court as PW-6, stated in clear terms that injury No.1, which is a "lacerated cut injury" on the back of the skull is grievous in nature. However, the fact remains that the x-ray report shows that there was no fracture. Moreover, it cannot also be called to be a case of disfigurement as defined under Section 320 IPC. Section 320 IPC defines what is grievous hurt. The injury which is "lacerated cut injury" has been held to be a grievous in nature. This Court, however, defers with this opinion inasmuch as it does not come under any of the illustrations as given under Section 320 IPC. In the opinion of this Court, considering the nature of the injury and the place of the injury, it cannot be considered as a disfigurement of head or face. In any case, there is no evidence on record to show that there was any kind of disfigurement. There is nothing to show that the injury endangered the life of the victim or he had to suffer for more than 20 days in severe bodily pain for the said injury.

8. Consequently, the conviction under Section 325 IPC is converted to that of 323 IPC, i.e. from grievous hurt to that of hurt, in respect of the present revisionist No.1. This Court has been informed that the accused/revisionist No.1 has already remained in jail for fifteen days and is presently on bail. Considering the nature of the case and the fact that the present revisionist No.1 is now 80 years of age, the sentence in respect of the revisionist No.1 is also reduced from six months to the period he has already undergone in custody.

9. The remaining three accused/revisionists, namely, Sri Manu Das, Shri Sashi

Mohan Das and Shri Ratan Das had been convicted under Section 323 IPC read with Section 34 of the IPC and sentenced to undergo simple imprisonment for two months. They had already remained in police custody in connection with the crime for twelve days. Therefore, their sentence is also reduced to the period they have already undergone in custody. All the revisionists are on bail. Their bail bond stands discharged.

10. The revision petition is partly allowed to the extent stated above.