

ASKJ010002082020



IN THE COURT OF THE SESSIONS JUDGE, SRIBHUMI

CRIMINAL APPEAL NO. 04(1) of 2020

Arising out of G.R. Case No. 605/2015

Present:- A.S.B. Laskar, A.J.S.

1. Hasan Ahmed,
S/o - Lt. Arping Ali,
Vill - Amdahar, PS - Nilambazar Appellant

VERSUS -

1. The State of Assam,
2. Abdus Sukkur,
S/o - Lt. Basir Ali,
Vill - Amdahar, PS - Nilambazar Respondents
Ld. Counsels Appeared:-

For the appellant:-----Mr. Aszad Ikbal,

For the respondent No.1:-----Learned PP,

For the respondent No.2:-----Mr. B.C. Bhattacharjee.

Date of Argument :-----09.07.2026/23.07.2026

Date of Judgment :-----13.08.2026

Judgment

1. This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 14.02.2020 passed by the learned Additional Chief Judicial Magistrate,



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Sribhumi, in G.R. Case No. 605/2015, whereby the learned trial Court convicted the appellant for the offences punishable under Sections 341, 506 and 325 of the Indian Penal Code. For the offence under Section 341 IPC, the appellant was sentenced to undergo simple imprisonment for one month and to pay a fine of ₹500/-, and in default thereof, to undergo simple imprisonment for 5 (five) days. For the offence under Section 506 IPC, he was sentenced to undergo simple imprisonment for 1 (one) month and to pay a fine of ₹500/-, and in default of payment of fine, to undergo simple imprisonment for 5 (five) days. For the offence under Section 325 IPC, the appellant was sentenced to undergo simple imprisonment for 1 (one) year and to pay a fine of ₹1,000/-, and in default thereof, to undergo simple imprisonment for 10 (ten) days.

2. Upon receipt of the memorandum of appeal, the appeal was duly admitted for hearing, and the trial Court Records were called for. Upon receipt of the records, the appeal was taken up for hearing. Learned counsel appearing for the appellant as well as the learned Public Prosecutor representing the State were heard at length, and the entire trial Court Records were carefully perused and examined.

3. The facts, as revealed from the record of G.R. Case No. 605/2015, in brief, are that on 17.03.2015 at about 9:00 p.m., respondent No. 2, namely, Abdus Sukkur, lodged an ejahar before the Officer-in-Charge of Nilambazar Police Station, alleging, inter alia, that on the same day at about 5:00 p.m., while he was returning home from Patharkandi, the accused/appellant, who was allegedly hiding near the Gulchara graveyard, suddenly attacked him from behind with a crowbar. As a result of the assault, respondent No. 2 fell to the ground, whereupon the accused/appellant allegedly assaulted him repeatedly with the said crowbar, causing fracture injuries to both his hands and legs. It is further alleged that thereafter the accused/appellant



attempted to inflict a blow with a dagger on the chest of respondent No. 2 and also struck him on his right leg. Hearing his cries for help, several persons allegedly started gathering at the place of occurrence, whereupon the accused/appellant fled from the spot. It is also alleged that, before fleeing, the accused/appellant forcibly took away a sum of ₹15,000/- from the pocket of the informant. Thereafter, the accused/appellant allegedly took shelter in the house of one Afas Ali, from where he was subsequently handed over to the police. Following the occurrence, respondent No. 2 was initially taken to the Nilambazar Primary Health Centre for medical treatment. However, considering the nature and seriousness of his injuries, he was referred to Silchar Medical College and Hospital (SMCH) for better treatment. The ejahar further disclosed that about eight months prior to the occurrence in question, the accused/appellant had allegedly assaulted and injured respondent No. 2 while he was returning from Kamail Bazar, in connection with which respondent No. 2 had lodged an FIR against him.

On the basis of the aforesaid ejahar, Nilambazar P.S. Case was registered and, upon completion of investigation, charge-sheet was submitted against the accused/appellant under Sections 341/325/506 IPC. The record of the learned trial Court further reveals that, upon the appearance of the accused/appellant, the prosecution and the defence were heard on the question of charge and upon finding prima facie materials on record, the learned trial Court framed charges under Sections 341, 325 and 506 IPC. The particulars of the charges were read over and explained to the accused/appellant, to which he pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined a total of six witnesses, including the Medical Officer. The defence contested the case and took the plea of total denial. Upon completion of the evidence and after hearing the learned counsel for both sides, the learned trial Court passed the judgment

under challenge, whereby the accused/appellant was convicted for the offences charged and sentenced accordingly.

4. I have carefully considered the evidence adduced by the prosecution, and perused the judgment and order passed by the learned trial Court. I have also given due consideration to the submissions advanced by the learned counsel appearing for the parties. Upon a careful and comprehensive appraisal of the entire evidence and materials available on record, I found that the following point arises for determination in the present appeal:

POINT FOR DETERMINATION

Whether the learned Trial Court committed any error of law or fact in convicting the accused/appellant under Sections 341, 506 and 325 of the Indian Penal Code vide the impugned judgment and order dated 14.02.2020 passed in G.R. Case No. 605/2015, warranting interference by this Court in exercise of its appellate jurisdiction?

DECISION AND REASONS THEREOF

5. I have given my anxious and careful consideration to the entire materials available on record. But before proceeding to examine the individual offences alleged against the accused/appellant, it would be appropriate to reiterate that, in an appeal against conviction, the appellate Court is entitled, and indeed duty-bound, to independently reappraise and scrutinize the evidence on record and to determine whether the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt. At the same time, the appellate Court must remain conscious of the cardinal principle of criminal jurisprudence that suspicion, however grave or strong, cannot take the place of proof. The prosecution is required to establish not only that the alleged occurrence took place, but also that the



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accused was the person responsible for such occurrence and that all the essential ingredients of the offences charged have been proved by legally admissible, cogent and reliable evidence. It is already stated that in G.R. Case No. 605/2015, in order to establish the charges framed against the accused/appellant under Sections 341, 325 and 506 of the IPC, the prosecution examined six witnesses, including the Medical Officer. The defence, on the other hand, did not adduce any evidence in support of its case. However, the absence of defence evidence by itself cannot relieve the prosecution of its fundamental burden to prove the charges beyond reasonable doubt. The prosecution case must, therefore, stand or fall on the strength of the evidence adduced by it. In the above backdrop, let me examine the testimony of each of the prosecution witnesses, as well as the documentary and medical evidence available on record, in the light of the specific ingredients of the offences charged and the findings recorded by the learned Trial Court, so as to determine whether the conviction of the accused/appellant is sustainable in law.

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6. In his evidence the **PW-1, namely, Abdus Shukur**, deposed that on 17.03.2015 at about 5:00 p.m., while he was returning home from Patharkandi and had reached near the Gulcherra graveyard, the accused/appellant, Hasan Ahmed, suddenly appeared from behind and assaulted him with a crowbar, as a result of which he fell to the ground. He further stated that, although he managed to get up and attempted to resist the accused/appellant, the latter repeatedly assaulted him with the crowbar, causing fractures to both his hands and legs. He also stated that the accused/appellant struck him with a dagger on his right leg and threatened to kill him. PW-1 further deposed that the accused/appellant snatched a sum of ₹15,000/- from his pocket. He described that hearing his cries for help, Nurul Hoque, Guta Mia, Suruj Ali, Gias Uddin, Foijur Rahman and Abdul Basit

came to his rescue, whereupon the accused/appellant fled from the place of occurrence and took shelter in the house of one Afas Ali. The villagers, however, apprehended him and subsequently handed him over to the police. PW-1 further stated that he was initially taken to the Nilambazar hospital and, on the same day, was referred to Silchar Medical College and Hospital (SMCH), where he remained under treatment for one month and three days. In his cross-examination, PW-1 stated that the accused/appellant was his neighbour and that the place of occurrence was approximately 1½ miles away from his house. He further admitted that there were cases pending between him and the accused/appellant. He reiterated that, after the occurrence, he was taken to the Nilambazar hospital and was referred to SMCH on the same day. He denied the suggestion put to him by the defence that he had not been referred to SMCH. PW-1 further stated that, after undergoing treatment at SMCH for one month and three days, he returned home, whereafter the police recorded his statement. He denied the defence suggestions that the medical reports had been fabricated and that he had not undergone treatment at SMCH for 33 days.



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7. **PW-2, namely, Gias Uddin**, deposed that in the year 2015, on one day at about 5:00 p.m., while he was proceeding towards the market and had reached near a graveyard in the Gulcherra area, he heard cries for help. On reaching the place, he saw the accused/appellant, Hasan Ahmed, assaulting respondent No. 2, Abdus Sukur, with some object. He further stated that, on seeing him and others approaching, the accused/appellant fled from the place of occurrence. PW-2 further deposed that he found respondent No. 2 sustained bleeding injuries on his hands and legs. He also stated that several other persons, including Nurul Hoque, Abdul Basit, Abdul Matin and Faijur Rahman, were present at the place of occurrence. The injured was thereafter taken to the hospital for treatment. According to PW-2, the

accused/appellant fled from the spot and took shelter in the house of one Afas Ali, from where he was subsequently apprehended by the police. In his cross-examination, PW-2 stated that his residence was approximately one kilometre away from the place of occurrence. He further stated that the houses of Abdul Jalil and Faijur Rahman were situated near the place of occurrence. He admitted that the informant, respondent No. 2, was his uncle and that he used to visit the informant. He further stated that he had heard that respondent No. 2 had instituted a civil suit against the accused/appellant and some other villagers concerning the construction of a road leading towards Fatehpur G.P. PW-2 denied the suggestions put to him by the defence, particularly the suggestion that he had reached the place of occurrence only after hearing the cries and had not witnessed the incident.

8. **PW-3, namely, Nurul Hoque**, deposed that about three years prior to the date of his deposition, on a day at about 5:00 p.m., while he was proceeding towards the market and had reached near a graveyard in the Gulcherra area, he saw respondent No. 2 returning from the market. At that time, the accused/appellant allegedly approached respondent No. 2 from behind and started assaulting him with some object. PW-3 further deposed that, on seeing the occurrence, he and others raised an alarm. In the meantime, Gias Uddin and Faijur Rahman arrived at the place of occurrence, whereupon the accused/appellant fled from the spot. PW-3 stated that he saw respondent No. 2 lying on the ground with injuries on his hands and legs. Thereafter, the injured was shifted to the hospital for treatment, while some villagers followed the accused/appellant. In his cross-examination, PW-3 stated that his residence was situated approximately 22 meters away from the place of occurrence. He further stated that the police recorded his statement about one month after the occurrence. He denied the suggestions put to him by the defence, particularly the suggestion that he had not seen



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the accused/appellant assaulting respondent No. 2 from behind while the latter was returning from the market, that he had not seen the accused/appellant fleeing from the place of occurrence, and that he had not seen respondent No. 2 lying on the ground with injuries to his hands and legs.

9. **PW-4, namely, Faizur Rahman**, deposed that about 1½ to 2 years prior to the date of his deposition, in the evening, while he was at Gulcherra market, he heard an alarm emanating from the house of his cousin, Afas Ali. He narrated that hearing the commotion, he immediately rushed towards the said house and found a large number of people gathered outside. He stated that he came to know from the persons present there that the accused/appellant had entered the house of his cousin and that the members of the gathering were attempting to damage the house. PW-4 stated that he intervened and prevented the gathering from causing any damage to the house. PW-4 further deposed that he heard from some of the persons assembled there that, after committing the alleged offence, the accused/appellant had taken shelter in the house of his cousin, Afas Ali. He further stated that, subsequently, the accused/appellant was taken away by the police. However, during cross-examination, PW-4 categorically stated that he had not witnessed the occurrence in question. He stated that several neighboring persons were present at the spot at the time of occurrence. He also admitted that the accused/appellant was a relative of Afas Ali. PW-4 further stated that the police had not recorded his statement in connection with the case.

10. In his testimony, **PW5 Dr. Sudipan Dey** deposed that on 17.03.2015 one Abdus Sukkur was examined in SMCH on police requisition in connection with Nilambazar PS Case but the case number has not been mentioned. The

doctor narrated that the patient was examined vide Hospital Entry No. 74093 MRD No. 838015 under Unit 1 of Orthopedic Department. He also narrated that the patient was examined with the history of alleged physical assault on 17.03.2015. The doctor described the injuries narrated by him in his report prepared on the basis of medical records on the instruction of HOD of the Orthopedics. The doctor described the following injuries which were found during his examination:

- (i) Swelling and deformity of left forearm, abrasion (5 cm X 2 cm in size), fractured left ulna;
- (ii) Swelling deformity and lacerated wound of size 1 cm X .5 cm X .5 cm over dorsum of left hand from the fractured distant of the phalanx of left first finger;
- (iii) Swelling and deformity of right forearm, fractured shaft of the right radius;
- (iv) Swelling and deformity of right hand;
- (v) Lacerated wound of size 2 cm X 2 cm X 2 cm over left leg, type 2 compound fracture on both bones of left leg; &
- (vi) Lacerated wound of 2 cm X 2 cm X 2 cm on the right leg and fractured neck of right fibula.

The doctor narrated that as per procedure in the hospital, the registrar is to issue medical report on the basis of medico legal record and accordingly he had issued the report. The doctor opined that all the injuries were grievous in nature except the injury no.4 and were caused by blunt object. During his cross examination he admitted that he was in Unit No.2 when the patient

was examined in the Unit No.1. The doctor admitted that time of examination, corresponding PS Case number, the name of the persons who had identified the patient are not mentioned in his report. The doctor further admitted that detailed history of physical assault is not mentioned in his report. The doctor admitted that he did not examine the patient and fracture can also be caused due to fall on a hard substance.



11. **PW-6, namely, Abdur Rahman**, deposed that he knew both the informant/respondent No. 2 and the accused/appellant. However, he stated that he had no knowledge of the occurrence in question. During his cross-examination, PW-6 categorically stated that he had neither witnessed the incident nor had any personal knowledge regarding the same.

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12. I have carefully examined the evidence presented by the witnesses, the exhibit on record, and the arguments advanced by the learned counsels. During his argument the learned counsel for the appellant highlighted the grounds mentioned in the memorandum of appeal and argued that the learned trial court failed to appreciate the evidence on record and committed error both in law and in assessing the facts. The learned counsel submitted that in his FIR the informant alleged assault by dagger and robbing of ₹ 15,000 but during trial there was no evidence in that regard which indicates that the allegation was false. It is argued that the prosecution did not exhibit the FIR, examined the investigating officer and also failed to appreciate the vital contradictions and omissions. The learned counsel submitted that the only document exhibited by the prosecution during trial is that of a medico legal report and it is submitted that the report is incomplete and was vague. Narrating and describing the grounds mentioned in the memorandum of appeal the learned counsel for the accused appellant prayed for setting aside the impugned judgment and for the acquittal of the accused. The learned

public prosecutor representing the state on the other hand vehemently opposed the submission and argued that there was neither any error nor any illegality by the learned trial court and the impugned judgment was reasoned and properly justified which requires no intervention.

13. I have carefully considered the submissions advanced by the learned counsel appearing for both sides and have meticulously scrutinized the entire evidence and materials available on record. At the outset, it would be apposite to briefly recapitulate the prosecution case. The informant alleged that on 17.03.2015, at about 5:00 p.m., while he was returning home, the accused/appellant attacked and assaulted him with a crowbar, causing injuries to both his hands and legs. He further alleged that, during the course of the assault, the accused/appellant also inflicted a blow with a dagger on his leg. In view of these allegations, the first and foremost question that arises for consideration is whether the prosecution has been able to establish, by reliable and convincing evidence, that the informant/respondent No. 2 had in fact sustained the injuries alleged by him in the occurrence. In my quest for answer to this I have carefully perused the evidence of doctor examined by the prosecution as PW5 the Medical Officer, in conjunction with the medical report and the testimony of PW-1. The evidence of PW-5 clearly establishes that the informant/respondent No. 2, Abdus Sukkur, was examined at Silchar Medical College and Hospital (SMCH) on 17.03.2015, i.e., on the very date of the alleged occurrence. The medical records referred to by the doctor disclose that the patient was examined with a history of physical assault and that multiple injuries were found on his person. The injuries included swelling and deformity of the left forearm with fracture of the left ulna, fracture of the shaft of the right radius, injuries to both hands, a compound fracture of both bones of the left leg and fracture



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of the neck of the right fibula. The doctor opined that all the injuries, except injury No. 4, were grievous in nature and had been caused by a blunt object.

13(i). It is true that the medical report does not contain certain particulars such as the corresponding police case number, the exact time of examination, the name of the person who identified the patient and a detailed history of the alleged assault. It is also true that PW-5 admitted during cross-examination that he himself had not examined the patient and that the X-ray report was not enclosed with the medical report. These are undoubtedly deficiencies which require the Court to approach the medical evidence with due caution. However, such deficiencies cannot, by themselves, lead to the wholesale rejection of the medical evidence, particularly when the doctor has explained the circumstances in which the report came to be prepared.

13(ii). PW-5 specifically stated that, in accordance with the procedure followed in the hospital, the Registrar was required to issue the medical report on the basis of the medico-legal records and that he had accordingly prepared and issued the report. He also referred to the relevant hospital entry and MRD number. Thus, although the doctor was not the person who had physically examined the injured, his evidence establishes that the report was prepared on the basis of contemporaneous medical records maintained by the hospital. There is nothing on record to suggest that the hospital record itself was fabricated or that the injuries recorded therein were subsequently introduced to support the prosecution case.

13(iii). The absence of the corresponding police case number or other ancillary particulars in the medical report is, therefore, a circumstance affecting the weight to be attached to the document, but it does not necessarily destroy its evidentiary value. The Court is required to assess the



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medical evidence as a whole and in conjunction with the other evidence on record rather than examine isolated omissions divorced from the surrounding circumstances.

13(iv). Significantly, the medical evidence receives substantial corroboration from the testimony of PW-1, the injured informant. PW-1 stated in his evidence that immediately after the occurrence he was taken to Nilambazar hospital and that, on the same day, he was referred to Silchar Medical College and Hospital for further treatment. He further stated that he remained there as an indoor patient for about one month and three days. During cross-examination, the defence specifically suggested to him that he had not been treated at SMCH for 33 days, which suggestion he categorically denied. Thus, the assertion of PW-1 regarding his treatment at SMCH is consistent with the medical evidence of PW-5 regarding his examination and treatment on 17.03.2015.

13(v). More importantly, there is substantial correspondence between the nature and location of the injuries spoken to by PW-1 and those recorded in the medical evidence. PW-1 alleged that the accused/appellant repeatedly assaulted him with a crowbar, resulting in injuries to both his hands and legs. The medical examination, in turn, revealed fractures and other injuries involving both forearms, both hands and both legs. The medical evidence therefore lends material assurance to the ocular testimony regarding the factum and manner of the assault, at least to the extent that the injured had sustained multiple injuries to the very parts of the body referred to by him.

3(vi). The fact that the doctor admitted that a fracture may also be caused by a fall on a hard substance does not, by itself, create a reasonable doubt regarding the prosecution case. The statement of the doctor in this regard merely indicates a possible alternative mechanism by which a fracture may



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occur; it does not establish that the injuries in the present case were in fact caused by a fall. The cause of the injuries has to be determined by appreciating the entire evidence. Here, the evidence of PW-1 as an injured witness is supported, on material particulars, by PW-2 and PW-3, who also deposed regarding the assault upon him, while the medical evidence independently confirms the existence of multiple fractures and lacerated injuries. The mere existence of a theoretical possibility of a fall cannot outweigh direct and corroborated evidence of assault.

13(vii). It is also significant that the injuries found on the person of PW-1 were not superficial or trivial. The medical evidence discloses fractures of the left ulna, right radius, both bones of the left leg and the neck of the right fibula, apart from other injuries. Under Section 320 IPC, fracture or dislocation of a bone or tooth constitutes grievous hurt. Therefore, the medical evidence conclusively establishes, at least as regards the nature of the injuries, that the informant had sustained grievous hurt.

13(viii). At the same time, it must be borne in mind that medical evidence ordinarily serves a corroborative function and, by itself, does not establish the identity of the assailant unless the circumstances otherwise permit such an inference. In the present case, however, the question of identity does not rest upon the medical evidence alone. PW-1 has directly implicated the accused/appellant as the person who assaulted him, and his testimony receives material corroboration from PW-2 and PW-3. The medical evidence, therefore, assumes significance not as proof of the identity of the assailant, but as independent corroboration of the occurrence, the fact that the informant suffered injuries, the seriousness of those injuries and their broad compatibility with the ocular account.



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13(ix). Upon a cumulative assessment of the evidence, I find that the deficiencies elicited in the cross-examination of PW-5 are insufficient to discredit the medical evidence altogether. The contemporaneous nature of the medical record, the hospital entry and MRD number referred to by the doctor, the evidence of PW-1 regarding his referral to SMCH on the date of occurrence, and the substantial correspondence between the injuries alleged by PW-1 and those medically recorded together provide sufficient assurance regarding the factum and nature of the injuries.

13(x). I am, therefore, satisfied that the prosecution has successfully established that PW-1 sustained multiple injuries on 17.03.2015 and that the injuries, including several fractures, were grievous in nature and were caused by a blunt object.

14. Having first satisfied myself regarding the factum and nature of the injuries sustained by the informant, the next and more vital question that falls for determination is as to **who was responsible for causing those injuries**. In other words, the principal question now requiring consideration is whether the prosecution has succeeded in establishing beyond reasonable doubt the complicity of the accused/appellant in the occurrence.

14(i). In this regard, I have carefully and meticulously scrutinized the entire evidence on record, particularly the testimony of the injured informant/PW-1 and the evidence of PW-2 and PW-3, who have been relied upon by the prosecution as eyewitnesses, as well as the subsequent circumstances spoken to by PW-4. The prosecution case, insofar as the identity of the assailant is concerned, rests primarily upon the ocular testimony of PW-1, PW-2 and PW-3. PW-1 is not merely an informant but also the injured victim of the occurrence. During his examination-in-chief, PW-1 specifically and unequivocally implicated the accused/appellant, Hasan Ahmed, as the person



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who assaulted him. He narrated that while he was returning home and had reached near the Gulcherra graveyard, the accused/appellant suddenly appeared from behind and assaulted him with a crowbar. He further stated that even after he fell down, the appellant continued assaulting him, resulting in injuries to his hands and legs. He also attributed the subsequent threat and other acts to the appellant.

14(ii). On a careful examination of the testimony of PW-1, I find that the core and substratum of his evidence have remained substantially intact. His presence at the place of occurrence is not in serious dispute, and his presence is further established by the fact that he admittedly sustained multiple serious injuries during the relevant period. His testimony regarding the assault is also materially corroborated by the medical evidence, which records injuries and fractures on both the upper and lower limbs. Thus, PW-1 cannot be treated as a witness who was subsequently introduced to support a false case; rather, his presence at the occurrence is independently demonstrated by the injuries suffered by him.

14(iii). It is true that during cross-examination PW-1 admitted that the accused/appellant was his neighbour and that cases were pending between them. This circumstance has to be taken into consideration while assessing his evidence. The existence of previous hostility between the parties undoubtedly warrants a careful and cautious scrutiny of the testimony, since such hostility may, in a given case, provide a motive either for commission of the offence or for false implication. However, previous enmity is essentially a double-edged circumstance. It cannot, by itself, be regarded as a sufficient ground for discarding the testimony of an injured witness. The Court must examine whether the witness's version is otherwise consistent, natural and corroborated by the surrounding circumstances and other evidence on



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record. In the present case, despite the admitted previous dispute, the defence has not been able to bring out any material contradiction or inherent improbability in the central version of PW-1 regarding the assault and the identity of the appellant. Significantly, the defence also failed to discredit the evidence of PW-1 regarding his immediate medical treatment. PW-1 stated that after the occurrence he was taken to Nilambazar Hospital and was referred on the same day to Silchar Medical College and Hospital, where he remained under treatment for about one month and three days. Although the defence suggested that he had not undergone such treatment at SMCH, PW-1 categorically denied the suggestion. His assertion regarding treatment is substantially supported by the evidence of PW-5 and the medical records referred to by that witness. The fact that PW-1 was subjected to prolonged treatment for multiple injuries therefore lends further assurance to his testimony regarding the occurrence.

14(iv). The evidence of PW-1 cannot, however, be considered in isolation. PW-2 Gias Uddin has also specifically implicated the accused/appellant. PW-2 stated that at about 5:00 p.m., while proceeding towards the market and upon reaching near the graveyard at Gulcherra, he heard cries for help. On reaching the place, he stated that he saw the accused/appellant assaulting Abdus Sukur with an object. He further stated that, when he and others approached the place, the appellant fled from the spot. He also found the informant suffering from bleeding injuries on his hands and legs. The defence elicited from PW-2 that the informant was his uncle and that he used to visit him. PW-2 also admitted that he was aware of a civil dispute between the informant and the accused concerning construction of a road. These circumstances have been duly considered. However, the mere fact that PW-2 was related to the informant or was acquainted with him does not, in itself, render his evidence unreliable. The Court has to examine whether his

presence at the place of occurrence was probable and whether his testimony finds corroboration from other evidence. In the present case, the testimony of PW-2 substantially corroborates PW-1 on the most material aspects of the prosecution case, namely, the presence of the accused/appellant at the place of occurrence, the assault upon the informant and the appellant's subsequent flight from the spot. His evidence also corresponds with the medical evidence regarding the injuries sustained by the informant.



14(v). PW-3 Nurul Hoque provides further and significant corroboration to the prosecution case. PW-3 deposed that at about 5:00 p.m. he saw the accused/appellant approaching the informant from behind and assaulting him with an object. He stated that he and others raised an alarm, whereupon the accused/appellant fled from the place of occurrence. He further stated that the informant was lying on the ground with injuries to his hands and legs. The evidence of PW-3 is of particular significance regarding his proximity to the place of occurrence. He stated that his residence was situated approximately 22 meters from the place of occurrence. His presence in the vicinity is, therefore, not inherently improbable. His testimony that he saw the appellant assaulting the informant and thereafter fleeing from the place of occurrence materially corroborates the evidence of PW-1.

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14(vi). It is pertinent to note that PW-2 and PW-3 have not merely stated that they subsequently saw the injured informant. Their evidence specifically attributes the assault to the accused/appellant. Thus, the prosecution case regarding the identity of the assailant is not founded solely upon the testimony of PW-1. There is substantive ocular corroboration from two other witnesses. The fact that PW-2 reached the spot after hearing cries for help does not necessarily make his evidence unreliable. A witness who reaches the scene upon hearing an alarm may still witness the continuing part of the

occurrence. What is relevant is whether the witness actually saw the accused assaulting the victim. PW-2 has specifically stated that he did. The evidence of PW-4 Faizur Rahman stands on a different footing. PW-4 is admittedly not an eyewitness to the assault. He stated that he heard an alarm near the house of his cousin Afas Ali and thereafter reached there, where he found a number of persons gathered. He came to know that the accused/appellant had taken shelter in the house of Afas Ali. During cross-examination, he categorically admitted that he had not witnessed the occurrence. Therefore, I would not place reliance upon PW-4 as a witness to the actual assault. His evidence can, however, be considered for the limited purpose for which it is relevant, namely, the circumstance that the accused/appellant was subsequently found in the house of Afas Ali after the occurrence and was thereafter taken away by the police. This circumstance, by itself, may not be sufficient to establish guilt, but when considered along with the direct evidence of PW-1, PW-2 and PW-3, it lends some corroborative support to the prosecution version concerning the subsequent conduct of the appellant.

14(vii). As regards PW-6 Abdur Rahman, his evidence does not advance the prosecution case. PW-6 stated that he knew both the informant and the accused but had no knowledge of the occurrence. He categorically stated that he had neither witnessed the incident nor had any personal knowledge regarding it. His evidence, therefore, is neutral and cannot be treated as corroborative evidence in favour of the prosecution. At the same time, the fact that one of the witnesses did not support the prosecution case cannot, by itself, result in rejection of the testimony of the other witnesses whose evidence has to be independently assessed on its own merits.

14(viii). On a cumulative appreciation of the evidence of PW-1, PW-2 and PW-3, I find that there is substantial consistency regarding the identity of the



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assailant, the place and approximate time of occurrence, the nature of the assault and the subsequent fleeing of the accused/appellant from the place of occurrence. PW-1, being the injured witness, directly attributes the assault to the appellant. PW-2 states that, on reaching the place upon hearing cries for help, he saw the appellant assaulting the informant. PW-3 also states that he saw the appellant assaulting the informant and thereafter fleeing from the spot. Their respective versions, therefore, converge on the central and material fact that it was the appellant who assaulted the informant. It is true that the witnesses have given somewhat different estimates regarding the distances between their respective houses, the place of occurrence and Gulcherra market. PW-1 stated that the place of occurrence was approximately 1½ miles from his house; PW-2 stated that his house was about one kilometre away from the place of occurrence; whereas PW-3 stated that his house was approximately 22 metres away. There were also variations regarding the distance of Gulcherra market from the place of occurrence. These variations, however, do not, in my considered opinion, constitute material contradictions affecting the substratum of the prosecution case. The witnesses were giving approximate distances in the course of their oral testimony and were not expected to furnish mathematically precise measurements. What is material is whether they consistently identified the general location of the occurrence. On that aspect, their evidence is substantially consistent. All the relevant witnesses placed the occurrence in the vicinity of the Gulcherra graveyard. None of them has been shown to have identified two mutually inconsistent or wholly different places as the place of occurrence. The discrepancy in the estimation of distance is, therefore, a peripheral matter which does not create a reasonable doubt regarding the occurrence itself or the identity of the assailant.



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14(ix). The subsequent conduct of the accused/appellant also assumes some significance, though it cannot be treated as substantive proof of guilt by itself. PW-1 stated that after the occurrence the appellant fled from the place and took shelter in the house of Afas Ali. PW-2 substantially corroborated this aspect, while PW-4 also stated that the appellant had taken shelter in the house of Afas Ali and was subsequently taken away by the police. This circumstance, when viewed in isolation, may admit of an alternative explanation. However, criminal evidence is required to be appreciated cumulatively. When the circumstance is considered along with the direct ocular evidence of the injured witness and the corroborative testimony of PW-2 and PW-3, the subsequent conduct of the appellant lends additional assurance to the prosecution version.



15. I am also conscious of the fact that the prosecution has not examined the Investigating Officer and that the FIR was not formally exhibited. These deficiencies have been specifically pointed out by the learned counsel for the appellant. The effect of such omissions, however, has to be examined in the context of the evidence actually available on record. The non-examination of the Investigating Officer cannot, as an inflexible rule, be treated as fatal to the prosecution. It becomes material particularly where the accused demonstrates that his examination was necessary for proving material contradictions, omissions or other circumstances causing prejudice to the defence. In the present case, despite extensive cross-examination of PW-1, PW-2 and PW-3, the defence has not been able to demonstrate any contradiction of such nature as would demolish their evidence regarding the identity of the appellant as the assailant. The absence of the Investigating Officer is certainly a deficiency in the prosecution case, but in the circumstances of the present case, it does not automatically render the entire prosecution evidence unacceptable.

16. Likewise, the non-exhibition of the FIR cannot by itself render the substantive testimony of the witnesses inadmissible or unreliable. The FIR is primarily relevant for setting the criminal law in motion and, subject to the provisions of the Evidence Act, for corroborating or contradicting its maker. The substantive evidence of PW-1, PW-2 and PW-3 has to be assessed independently.



17. Another circumstance which requires consideration is that the prosecution has not been able to establish every allegation contained in the initial version with equal degree of certainty. In particular, the allegation regarding the snatching of ₹15,000/- has not received independent corroboration, and the allegation regarding the dagger has also not been supported by any recovery of the weapon or by medical evidence specifically identifying a sharp-edged injury. These omissions certainly require the Court to approach the prosecution case with caution. Nevertheless, failure to prove every allegation or every detail of the prosecution version does not necessarily render the entire prosecution case false. The Court is required to separate the proved facts from the unproved or exaggerated portions of the case. In the present case, the allegations concerning the actual physical assault and the resulting grievous injuries stand on a different footing. They are supported by the testimony of the injured witness, corroborated by PW-2 and PW-3, and further supported by the medical evidence.

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18. The defence has not been able to offer any convincing explanation as to why PW-1, an injured person, would falsely attribute such a serious assault to the appellant, particularly when his version regarding the injuries is substantially supported by medical evidence and the identity of the assailant is also corroborated by PW-2 and PW-3.

19. On an overall and cumulative appreciation of the evidence, therefore, I find that the prosecution case does not rest upon the uncorroborated testimony of a solitary interested witness. It is supported by the testimony of an injured witness and by two other witnesses who have specifically implicated the appellant. The medical evidence independently establishes the serious injuries sustained by the informant and substantially corresponds with his ocular account. PW-4 provides limited corroboration regarding the subsequent presence of the appellant in the house of Afas Ali, while PW-6 is a neutral witness who has no knowledge of the occurrence. In the present case, the core of the evidence remains:

- (a) PW-1 was assaulted on 17.03.2015;
- (b) he sustained multiple serious injuries;
- (c) the appellant was present at the scene;
- (d) PW-1 directly attributed the assault to the appellant;
- (e) PW-2 and PW-3 substantially corroborated the presence and assault by the appellant;
- (f) PW-5 established multiple fractures and grievous injuries; and
- (g) the appellant was subsequently found at the house of Afas Ali according to the evidence of PW-1, PW-2 and PW-4.

These circumstances, considered cumulatively, form a coherent evidentiary picture. I am, therefore, convinced that the prosecution has succeeded in establishing the **complicity of the accused/appellant in the occurrence beyond reasonable doubt**. The evidence, when viewed cumulatively rather than in isolated compartments, forms a coherent and consistent chain



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pointing towards the appellant as the perpetrator of the assault. The defence has not been able to elicit any material contradiction, improbability or circumstance of sufficient weight to create a reasonable doubt regarding his involvement.

20. In this case the accused appellant has been convicted and sentenced u/s 341/325/3506 IPC. The position concerning Section 341 IPC requires a separate and somewhat more careful examination. Section 339 IPC defines wrongful restraint as voluntary obstruction of a person so as to prevent that person from proceeding in any direction in which he has a right to proceed. Section 341 provides punishment for wrongful restraint.

Thus, the essential ingredients are:

- (i) obstruction of a person;
- (ii) such obstruction must be voluntary; and
- (iii) the obstruction must prevent the person from proceeding in a direction in which he has a right to proceed.

In the present case, PW-1 stated that he was returning home when the appellant appeared from behind and assaulted him. However, the evidence does not clearly establish that the appellant first obstructed PW-1's movement so as to prevent him from proceeding in a particular direction. There is no specific evidence regarding the direction in which PW-1 intended to proceed, the manner in which the appellant voluntarily obstructed that direction or the period for which such obstruction continued. An assault may, depending upon the facts, be accompanied by wrongful restraint, but the ingredients of Section 341 must nevertheless be independently proved. In the present case, the prosecution evidence is insufficient on this specific



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ingredient. It is therefore unsafe to sustain the conviction under Section 341 IPC merely on the basis of the assault itself. **The appellant is accordingly entitled to the benefit of doubt in respect of Section 341 IPC.**

20(i). Section 325 IPC deals with voluntarily causing grievous hurt.

The prosecution has to establish:

- (a) that hurt was caused to the victim;
- (b) that such hurt falls within the category of grievous hurt under Section 320 IPC; and
- (c) that the accused voluntarily caused such grievous hurt.

The first two requirements are clearly established by the evidence of PW-1 and PW-5. The informant suffered fractures of the left ulna, right radius, both bones of the left leg and right fibula, apart from other injuries. Fracture of a bone squarely falls within Section 320 IPC. The third requirement is also established by the ocular evidence. PW-1 described repeated assaults with a crowbar. PW-2 and PW-3 corroborated the assault by the appellant. The medical evidence confirms injuries caused by a blunt object. I therefore find that the prosecution has established beyond reasonable doubt that the accused/appellant voluntarily caused grievous hurt to PW-1. **I hold that the conviction under Section 325 IPC is consequently sustainable.**

20(ii). The appellant has also been convicted under Section 506 IPC. Section 503 IPC defines criminal intimidation. The essential requirement is not merely the utterance of threatening words but a threat of injury accompanied by the requisite intention to cause alarm or to compel the person threatened to do or omit an act in the manner contemplated by the



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provision. In the present case, PW-1 specifically stated that the appellant threatened to kill him during the assault. The threat to kill is accompanied by conduct which gives the threat a real and immediate context. The question is whether the evidence establishes the requisite intention to cause alarm. A threat to kill made while repeatedly assaulting a person with a crowbar and causing fractures to his limbs is qualitatively different from an angry or casual utterance made during a verbal dispute. The surrounding circumstances are relevant in determining the intention behind the threat. The testimony of PW-1 regarding the threat has not been materially shaken in cross-examination. There is also corroborative evidence regarding the violent assault itself. In these circumstances, I am of the considered view that the prosecution has established the essential ingredients of Section 506 IPC beyond reasonable doubt. **The conviction under Section 506 IPC is therefore sustainable.**



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ORDER

In view of the foregoing discussion and reasons, the appeal is **partly allowed.**

(i) The conviction of the accused/appellant, **Hasan Ahmed**, under **Section 341 IPC** is hereby **set aside**. The appellant is acquitted of the said charge.

(ii) The conviction of the accused/appellant under **Section 325 IPC** is hereby **affirmed**.

(iii) The conviction of the accused/appellant under **Section 506 IPC** is hereby **affirmed**.

(iv) The sentence imposed by the learned trial Court under Sections 325 and 506 IPC is maintained.

The appellant shall be entitled to the benefit of the period of detention, if any, already undergone in connection with the present case, in accordance with law. The appellant shall surrender before the learned trial Court within such period as permissible in law for undergoing the remaining sentence. In default of surrender, the learned trial Court shall take appropriate steps in accordance with law to secure his custody. The judgment and order dated 14.02.2020 passed by the learned Additional Chief Judicial Magistrate, Sribhumi, in G.R. Case No. 605/2015 is accordingly **modified to the extent indicated above.**

Send back the Lower Court Records along with a copy of this judgment for information and necessary compliance. **The Appeal is thus partly allowed.**

Given in my hand and under the seal of this court on this the 13th day of August, 2026.


13/08/2026

Dictated and corrected by me
Sessions Judge, Sribhumi
Sribhumi, Assam


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A.S.B. Laskar
Sessions Judge, Sribhumi
Sribhumi, Assam