

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
GOHPUR, BISWANATH (ASSAM)

Present: SMT. SADHANA K. MANDAL, A.J.S.

JUDICIAL MAGISTRATE FIRST CLASS,
GOHPUR, BISWANATH, ASSAM

CNR NO. ASSN090005882022

P.R.C. NO. 324/2022

Under Section 447/326 IPC

(Gohpur P.S. Case No. 08/2022 U/S 447/326/34 IPC)

Date of Judgment: 17.06.2026

COMPLAINANT/INFORMANT	State of Assam
REPRESENTED BY	Smt. Bornali Chetia Learned A.P.P
ACCUSED PERSON	Sri Khagen Saikia (A1)
REPRESENTED BY	Smt. Swapna Sikha Baruah Learned Counsel for the Defence

Date of offence	09.01.2022
Date of filing of the F.I.R.	11.01.2022
Date of filing of Charge-sheet	02.07.2022
Date of Framing of Charge	08.08.2023
Date of commencement of evidence	11.09.2023
Date on which judgment is reserved	11.06.2026
Date of judgment	17.06.2026
Date of sentencing order, if any	N/A

Accused Person's Details:

Rank of the accused person	Name of the accused person	Date of arrest	Date of release on Bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428 Cr.P.C.
A1	Sri Khagen Saikia Son of Lt. Dayaram Saikia Village – Ghimorujan P.S. – Gohpur District –Biswanath, Assam	N/A	17.07.2023	Section 447/326 of Indian Penal Code	Acquitted	N/A	N/A

JUDGMENT

Prosecution's Case

- 1.** The prosecution case arises out of an Ejahar lodged by the informant namely Smt. Patoli Saikia against Sri Khagen Saikia (A1) and Smt. Kiron Saikia.
- 2.** Pursuant to filing of the ejahar, the case was received at Gohpur P.S. for registering the same. It was registered by the Officer-in-charge of Gohpur P.S. as Gohpur P.S. case no 08/2022 under section 447/326/34 IPC. The Investigating Officer (I.O.) investigated the case and on completion of the investigation, upon finding materials only against the accused A1 submitted the charge-sheet against him under Sections 447/326 of the Indian Penal Code.

Framing of Charge and Recording of Evidence:

- 3.** Upon submission of chargesheet, cognizance of the offence under section 447/326 was taken against the accused person. A1 appeared before the Court on 17.07.2023 and was allowed to go on bail. On being physically present before the Court, copies of the relevant documents were furnished to the accused person in accordance with Section 207 of CrPC. The court on finding sufficient materials against the accused under 447/326 of IPC, framed charge under the aforementioned sections of law, read over and explained the same to A1 to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined eight (8) witnesses to prove the guilt of A1.

Statement of Defence u/s 313 CRPC

5. The statement of Defence of the accused under Section 313 of CRPC was recorded which was of total denial. The Defence declined to adduce evidence.

Arguments

6. Arguments were forwarded by both the sides which was heard.

Points for Determination:

7. After hearing the argument of both sides and going through the evidence available on record, I have framed the following points to be determined:-
 - A. Whether the accused A1 on 09.01.2022 at around 7.00 pm at committed criminal trespass by entering into the property of the Informant i.e. the courtyard of the Informant with the intent to commit an offence and thereby committed an offence punishable under section 447 of the Indian Penal Code?
 - B. Whether the accused A1 on the same date, time and place committed caused grievous hurt to Sri Reba Kanta Saikia, the son of the Informant by means of posa (iron spear like object used for fishing) and thereby committed an offence punishable under section 326 of the Indian Penal Code?

Discussion of Evidence

8.PW1 in her evidence in chief deposed that she is the informant and has filed this case against accused A1. On 09.01.2022 at around 7:00 p.m. when her son Sri Rebakanta Saikia came back to the house from his duty and was getting down from his cycle in the courtyard the accused threw an iron rod (jathi posa) towards her son as a result of which the rod got inserted in the right hand of her son. Immediately, her son was taken for the medical. That she had seen the accused throwing the iron rod (jathi posa) towards her son. That Smt. Kapeswari Bhuyan, the aunt of the victim, Smt. Nirodha Saikia, the aunt of the victim and his brother Sri Nipen Saikia, VDP Secretary Bablu Saikia took the victim to the hospital. As the victim was referred from Gohpur to Catla so he was taken to Catla and there the rod was taken out from his body. That as it was already late so the ejahar was filed on the next day and that her son was hospitalised in the Catla hospital for 3 days. PW1 exhibited Exhibit P1/PW1 is the ejahar lodged by her.

9. In her cross examination, PW1 deposed that she cannot read or write and that she cannot say what was written in the ejahar. That the ejahar was written by a person in the police station and was read over to her. That she cannot say what date was mentioned in the ejahar as the date of incident. That the wife of her son Sri Rebakanta Saikia has also lodged a case against her son. That her son was working as a home guard but due to one case he was discharged from his duty. That her son was mentally broken as his wife had left him. That she has lodged this case against the accused A1. That towards the west of our house is the house of Ranjan Bordoloi and Deoti

Baruah also lives near her house. That at the time of the incident she was inside the house and came out only after hearing some commotion. That after hearing the commotion many other people including Deoti Baruah had also came out. That the accused is her brother in law. She denied the suggestion that at the time of the incident the accused was in Punjab. That her son used to create commotion in the house after consuming alcohol. That the police had interrogated her about the incident. She denied the suggestion that she did not mention before the police that the accused had thrown an iron rod (Jathi posa) towards her son while he was getting down from his cycle in her Courtyard and that she has lodged a false complaint.

10. PW2 during his evidence in chief mentioned that The informant is his aunt (Borma) and the accused is his uncle (khura). That one day at around 6 6:30 p.m. in the year 2022 a rod used for fishing had got inserted in the hands of Reba Kanta Saikia and this was informed to him as he was the VDP Secretary. He immediately came to the house of the victim and saw the rod inserted in the hand of the victim. There after he along with Akon Saikia brought the victim to Catla Hospital and there the doctor removed the rod from the hand of the victim. He stated that he cannot say who had hit the victim with the rod and that he had not even heard about it.

11. During his cross examination, PW2 deposed that he reached the place of occurrence about half an hour later if receiving information about the incident. That when he reached the place of occurrence, he saw Seon Bhuyan, Akon Saikia and

10-15 other people at the place of occurrence. That the victim was not in the condition to talk at that time. That both the sides shared a bitter relationship even before the happening of the incident. That Reba, the victim keeps quarrelling with everyone after consuming alcohol. He stated that he cannot say how the rod pierced the hand of the victim.

12. PW3 in her evidence in chief deposed that she does not know either the informant or the accused. That nearly 1 year prior to that day SI Karimuddin Ali of Gohpur P.S. had seized a rod and brought it to the Gohpur P.S. and there she had signed on the seizure list. That exhibit P2 / PW3 is a seizure list when exhibit P2 / PW3(1) is her signature. That while she was signing the same she was posted at the Gohpur Police Station.

13. In her cross examination, PW3 deposed that she cannot say in relation to what case or on what date the rod was seized. That she cannot say from whom the rod was seized and that she does not know the contents of the seizure list.

14. PW4 during his evidence in chief mentioned that he neither knows the informant nor the accused. That approximately 2 years prior to that date in the year 2022 while he was posted as homeguard in the Gohpur police station, the S.I. Karimuddin Ali had brought one rod with him to the police station. That he cannot say in relation to what case the rod was seized. Exhibit P2/ PW4(1) is his signature on the seizure list.

15. The cross examination of PW4 was declined.

16. PW5 during his evidence in chief mentioned that knows the informant as well as the accused. That the incident happened in the year 2022 when at around 7:00 p.m. the

informant called him and said that the accused had assaulted her son Reba Kanta Saikia on his hand with the rod. That he knows only this much.

17. During his cross examination, PW5 mentioned that he has not seen the incident and had not seen the victim at the place of occurrence when he went to the place of occurrence. That the police did not interrogate him about the incident. That the victim keeps on quarrelling with the people after consuming alcohol. That both the sides are family members. He denied the suggestion that the informant had not informed him over the phone that the accused had assaulted her son with a rod and that he has falsely stated that.

18. PW6 during his evidence in chief mentioned that on 09.01.2022 he was discharging his duty in the emergency department at Civil Hospital, Gohpur. That on the said date at around 9.30 p.m. one patient namely Sri Reba Kanta Saikia was brought to the Hospital by a police escort S.I. Kamaruddin Ali of Gohpur P.S. Then he examined the patient and on examination he found penetrating injury of size 2x2x4 centimetre with a foreign body i.e. a sharp iron rod over left forearm. That the nature of the injury was grievous. That Ext. P-3/P.W.6 is the injury certificate and Ext. P-3/P.W.6 (1) is his signature.

19. During his cross examination, PW6 mentioned that no police case number and age of injury was mentioned in the injury certificate. The age of the patient was also not mentioned in the injury certificate. The date of giving report is not mentioned in the injury certificate.

20. PW7 during his evidence in chief mentioned that on 11.01.2022 the informant lodged the ejahar in the Gohpur police station. At the time he was working as the Traffic in Charge under the Gohpur P.S. That the charge to investigate the case was handed over to him. That on 12.01.2022 he went to the place of occurrence, prepared a sketch map and recorded the statement of the witnesses. Thereafter he made a search at the house of the accused but the accused was not found. On 15.02.2022, 26.05.2022 and 30.03.2022 he again went in search of the accused. On 26.05.2022 the son of the accused Bhairav Saikia informed him that the accused had fled to Punjab after the incident. That after a discussion with the Officer in Charge of Gohpur he submitted chargesheet. On 26.05.2022 he collected the medical report of the victim. He exhibited Ext. P4/PW7 as the sketch map when Ext. P4 / PW7(1) is his signature. He exhibited Ext. P5/PW7 as the chargesheet wherein Ext. P5 / PW7(1) is his signature. He identified Ext. P2/PW7(1) as the signature of S.I. Kamaruddin Ali which he knows.

21. During his cross examination, PW7 mentioned that the ejahar was lodged against two persons and it was not written in ejahar specifically as to which accused had thrown the rod (posa). That he had recorded the statement of three witnesses and the victim. That S.I. Kamaruddin Ali had recorded the statement of the seizure witnesses. That Dr. Dipankar Pator had removed the rod from the hand of the victim and that his statement was recorded. That in the chargesheet the name of the victim is not mentioned as a witness. He confirmed the PW1

did not mention in her statement under section 161 CrPC that the accused had assaulted her son with a rod as he was getting down from the cycle. He denied the suggestion that Bhairav Saikia did not state that the accused had gone to Punjab. That he had recorded the statement of Bhairav Saikia. That the statement of independence witnesses have been taken. He denied the suggestion that he did not conduct proper investigation in the case.

22. CW1 during his evidence in chief mentioned that he does not remember the date of the incident but it happened nearly two years ago. He stated that he and the accused entered into a small argument as a result of which he lodged this case against him out of misunderstanding.

23. During his cross examination, CW1 mentioned that he has no issues if the accused is acquitted in the case.

Decisions and reasons thereof

A. Whether the accused A1 on 09.01.2022 at around 7.00 pm at committed criminal trespass by entering into the property of the Informant i.e. the courtyard of the Informant with the intent to commit an offence and thereby committed an offence punishable under section 447 of the Indian Penal Code?

24. To establish an offence under Section 447 IPC, the prosecution is required to prove beyond reasonable doubt that the accused entered into or remained upon the property in possession of another with intent to commit an offence or

to intimidate, insult or annoy the person in possession of such property. PW1, the informant, deposed that on the date of occurrence her son was getting down from his bicycle in the courtyard of their house when the accused threw a jathi posa towards him. However, in her examination-in-chief she did not specifically state that the accused had entered into the courtyard or house premises of the informant before the alleged occurrence. More importantly, during cross-examination she admitted that at the time of occurrence she was inside the house and came out only after hearing commotion. This admission creates a serious contradiction with her earlier claim that she had witnessed the accused throwing the rod at her son. Consequently, her evidence does not inspire confidence regarding the exact place of occurrence or the presence of the accused in the courtyard. PW2 is admittedly not an eyewitness. He arrived at the place of occurrence about half an hour after receiving information and found the victim injured. He specifically stated that he could not say who caused the injury and did not know how the rod pierced the hand of the victim. His evidence does not establish that the accused had entered the courtyard of the informant.

- 25.** PW3 and PW4 are merely seizure witnesses. Their evidence is confined to proving their signatures on the seizure list. Neither witness has any knowledge regarding the occurrence or the alleged trespass by the accused. PW5 deposed that the informant informed him over telephone that the accused had assaulted her son. However, he

admittedly did not witness the incident. His testimony is purely hearsay in nature and does not prove that the accused had entered into the property of the informant. PW6 is the Medical Officer who examined the victim. His evidence only proves the nature of injury sustained by the victim. It has no bearing on the allegation of criminal trespass. PW7, the Investigating Officer, admitted in cross-examination that the ejahar did not specifically mention which accused had thrown the rod. He further confirmed that PW1 had not stated before him during investigation that she saw the accused assaulting the victim while he was getting down from his bicycle. The sketch map prepared by the Investigating Officer also does not independently establish that the accused had entered the courtyard of the informant.

- 26.** CW1, namely the victim himself, did not support the prosecution case. He categorically stated that due to a misunderstanding arising out of a minor argument with the accused he lodged the case and he had no objection if the accused was acquitted. His evidence completely demolishes the prosecution case. Thus, there is no reliable and cogent evidence to show that the accused had entered into the courtyard of the informant. The sole witness claiming knowledge of the incident, namely PW1, made contradictory statements regarding her presence at the time of occurrence. The victim himself has not supported the prosecution. The remaining witnesses are either hearsay witnesses or formal witnesses. In criminal jurisprudence, suspicion, however strong, cannot take the place of proof.

The prosecution has failed to establish beyond reasonable doubt the essential ingredients of criminal trespass under Section 447 IPC.

27. Therefore, POINT NO. A is decided in negative and in favour of the accused person.

B. Whether the accused A1 on the same date, time and place committed caused grievous hurt to Sri Reba Kanta Saikia, the son of the Informant by means of posa (iron spear like object used for fishing) and thereby committed an offence punishable under section 326 of the Indian Penal Code?

28. To bring home a charge under Section 326 IPC, the prosecution must prove beyond reasonable doubt that the grievous hurt was voluntarily caused by the accused by means of a dangerous weapon or instrument. PW1 stated that she had seen the accused throwing the jathi posa towards her son and that the same pierced the hand of her son. However, as already discussed, during cross-examination she admitted that she was inside the house and came out only after hearing commotion. This admission materially affects her credibility as an eyewitness. Further, the Investigating Officer (PW7) confirmed that PW1 had not stated before him during investigation that she saw the accused throwing the rod towards the victim while he was getting down from the bicycle. This amounts to a significant omission affecting the reliability of her testimony. PW2 arrived at the place of occurrence after the incident. Although he saw the victim with a rod inserted in his hand

and helped shift him to the hospital, he clearly stated that he did not know who caused the injury and could not say how the injury occurred. Therefore, his testimony does not connect the accused with the commission of the offence.

- 29.** PW3 and PW4 are formal witnesses to the seizure list. Neither witness could state from whom the rod was seized, in relation to which case it was seized, or under what circumstances it was seized. Consequently, the seizure of the alleged weapon has not been satisfactorily proved. PW5 also did not witness the occurrence. His evidence is based solely upon what was allegedly told to him by the informant over telephone. Being hearsay evidence, it cannot be treated as substantive evidence to establish the guilt of the accused. PW6, the Medical Officer, proved that the victim sustained a penetrating injury measuring 2 x 2 x 4 centimetres with a sharp iron rod embedded in the forearm and opined that the injury was grievous in nature. His testimony establishes the factum of grievous injury. However, medical evidence by itself cannot establish the identity of the assailant. It can only corroborate direct evidence if otherwise reliable.
- 30.** Most importantly, CW1, who is the victim and the best witness to the occurrence, did not support the prosecution case. He stated that the case arose due to a misunderstanding following a minor altercation with the accused and further stated that he had no objection if the accused was acquitted. The victim thus completely resiled from the prosecution story and failed to identify the accused as the person responsible for causing the injury. The

medical evidence undoubtedly proves that the victim sustained a grievous injury caused by a sharp iron object. However, the prosecution is required not only to prove the injury but also to prove that it was the accused who caused such injury. On this crucial aspect, the prosecution evidence suffers from material contradictions, omissions and lack of corroboration. The testimony of PW1 is not wholly reliable, while the victim himself has not supported the prosecution case. In view of the evidence on record, this Court is of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that the accused voluntarily caused grievous hurt to the victim by means of a posa or any other weapon.

31. *Therefore, POINT NO. B is decided in negative and in favour of the accused person.*

O-R-D-E-R

- 32.** On the strength of the discussions made above, I am of the considered opinion that Prosecution has failed to establish its case against the accused person. Accordingly, A1 is found not guilty of the offence punishable under section 447/326 of the Indian Penal Code, 1860.
- 33.** Hence, A1 is acquitted from the charge section 447/326 of the Indian Penal Code, 1860, labelled against him and is set at liberty forthwith in the instant case.
- 34.** The bail bond of A1 is extended up to six (6) months with effect from today.

- 35.** The operative part of this judgment is read out in the open court in presence of the accused person.
- 36.** Seized articles, if any, shall be disposed of as per law.
- 37.** The instant case is accordingly disposed of on contest.

This judgment is given under my hand and seal of this court on this 17th day of June, 2026.

(Smt. Sadhana K. Mandal)
Judicial Magistrate First Class
Gohpur, Biswanath, Assam

Typed & corrected by me –

(Smt. Sadhana K. Mandal)
Judicial Magistrate First Class
Gohpur, Biswanath, Assam

APPENDIX

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
PW-1	Sri Patoli Saikia	Informant
PW-2	Sri Bablu Saikia	Others
PW-3	WPC 49 Alpana Kardong	Seizure
PW-4	HG Pradip Borah	Seizure
PW-5	Sri Harendra Dutta	Others
PW-6	Dr. Dipankar Pator	M.O.
PW-7	ASI Gunadhar Singh	I.O.
CW-1	Sri Reba Saikia	Victim

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS OR MATERIAL OBJECTS

A. Prosecution Exhibits, if any:

Sr. No.	Description	Exhibit Number
1.	Ejahaar	P-1/PW1

2.	Seizure list	P-2/PW3
3.	Signature of PW2	P-2/PW3(1)
4.	Signature of PW3	P-2/PW4(1)
5.	Injury Certificate	P-3/PW6
6.	Signature of PW6	P-3/PW6(1)
7.	Sketch Map	P-4/PW7
8.	Signature of PW7	P-4/PW7(1)
9.	Chargesheet	P-5/PW7
10.	Signature of PW7	P-5/PW7(1)
11.	Signature of SI Kamaruddin ALi	P-2/PW7(1)

B. Defence Exhibits, if any:

Sr. No.	Description	Exhibit Number
NIL	NIL	NIL

C. Court Exhibits, if any:

Sr. No.	Description	Exhibit Number
NIL	NIL	NIL

D. Material Objects, if any:

Sr. No.	Description	Exhibit Number
NIL	NIL	NIL

(Smt. Sadhana K. Mandal)
Judicial Magistrate First Class
Gohpur, Biswanath (Assam)