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**IN THE COURT OF THE ADDL. SESSIONS JUDGE FTC,
SONITPUR, TEZPUR. ASSAM**

PRESENT: Smt. MILI HUSSAIN, AJS
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur, Assam.

Thursday, 2nd day of July, 2026.

SESSIONS (T-2) CASE No. 228/2024

[u/s 324(4)/115(2)/109/3(5) BNS
(arising out of Jamuguri PS case No. 94/2024)]

Complainant	:	State of Assam
Represented by	:	Mr. N. K. Misra Learned Addl. PP
Accused Persons	:	1. Md Abu Kalam, S/o Nosor Ali, 2. Md Mustafa Ali, S/o Abu Kalam Both r/o Vill – Lal Tapu PS Jamuguri Dist. Sonitpur, Assam.
Represented by	:	Smti. R Begum, Learned Counsel

Date of Offence	:	21-07-2024
Date of FIR	:	21-07-2024
Date of Charge-sheet	:	31-07-2024
Date of Framing of Charge	:	18-09-2024
Date of Commencement of Evidence	:	01-10-2024, 19-12-2024, 07-03-2025, 21-05-2025, 30-07-2025, 10-09-2025
Date on which judgment was reserved	:	30-06-2026
Date of Judgment	:	02-07-2026

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ACCUSED DETAILS

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during trial for the purpose of Section 468 BNSS
A1	Abu Kalam	22-07-2024	19-09-2024	324(4)/115(2)/109/3(5)	Acquitted	N/A	N/A
A2	Mustafa Ali	22-07-2024	19-09-2024	324(4)/115(2)/109/3(5)	Acquitted	N/A	N/A

J U D G M E N T

- The factual matrix of this case is that, a written *ejahar* was lodged by informant Anjan Kalita against the accused persons, namely, Abul Kalam, Najirul Ali, Mustafa Ali and Sajarul Haque; stating *inter alia*, that he was supervising official work of construction of road of Borbhogia Gosaichuk. On 21-07-2024 at about 12.10 pm, when accused persons above named ignoring 'No Entry Board' entered into riding their motorcycle, they caused damage to road under construction. One of them was intercepted and informant made him to return. After about one hour, said person with his father and 10-12 miscreants armed with dao, lathi, etc. came and accused persons attacked informant's head by lathi. Informant fell down and all three by pressing informant's neck tried to kill him. Hence, Jamuguri PS case No.94/2024 u/s 324(4)/115(2)/109/3(5) BNS.

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2. Police started statutory investigation and after completion of investigation, a Charge Sheet was filed against the accused Md. Abu Kalam and Mustafa Ali u/s 324(4)/115(2)/109/3(5) BNS.
3. The offence being exclusively Sessions triable, after compliance of Section 207/209 CrPC learned magistrate committed the case to the Court of Hon'ble Sessions Judge, Sonitpur, Tezpur vide order dated **30-08-2024** while the accused persons were on custody.
4. Hon'ble Sessions Judge, Sonitpur, Tezpur transferred the case to this Court vide order dated 31-08-2024 in exercise of jurisdiction u/s 408(2) CrPC.
5. Hon'ble Sessions Judge, Sonitpur, Tezpur heard both sides on point of framing charge, on 18-09-2024. On perusal of record and upon hearing both the sides Hon'ble Court framed formal charge u/s 324(4)/115(2)/109/3(5) BNS. Charge explained to the accused persons, to which they pleaded not guilty and claimed trial. Thereafter, accused were enlarged on bail by Hon'ble Court.
6. Prosecution during trial examined as many as six PWs. All were cross-examined by defence side and were discharged. On closure of prosecution evidence, my learned predecessor in Court examined the accused persons u/s 351 BNSS who denied the prosecution case and declined to lead defence evidence.
7. I have heard argument advanced by both the sides. Perused case record. Following point framed for decision.

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POINT FOR DETERMINATION

1. Whether the accused persons Abu Kalam(A1) and Mustafa Ali(A2), on 21-07-2024 at about 12.10 pm at Borbhogia under Jamuguri police station, in furtherance of their common intention, committed mischief by causing damage to the public property worth more than Rs.20,000/-? Whether the accused A1 and A2 are guilty u/s 324(4)/3(5) BNS?
2. Whether the accused persons Abu Kalam(A1) and Mustafa Ali(A2), on the same date, time and place, in furtherance of their common intention, voluntarily caused hurt to the informant/victim Anjan Kalita? Whether the accused A1 and A2 are guilty u/s 115(2)/3(5) BNS?
3. Whether the accused persons Abu Kalam(A1) and Mustafa Ali(A2), on the same date, time and place, in furtherance of their common intention, attempted to kill the informant Anjan Kalita by assaulting him on his head and on other parts of his body, with knowledge that by the said attempt, if death had been caused to him, the accused would had been guilty of murder? Whether the accused A1 and A2 are guilty u/s 109/3(5) BNS?

DISCUSSION, DECISION AND REASONS FOR DECISION:

8. PW1 Sri Anjan Kalita (informant) identified the accused person Abu Kalam and other accused as the son of Abul Kalam. He deposed that the incident took place on 21-07-2024 at about 1.30 to 2 pm at Borbhogia Gosaichuk. At the place of occurrence(hereinafter as 'P.O'), the PWD was constructing road and he being the Ward Commissioner was supervising the work.

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The road was blocked from one side as construction work was going on. At that time, the son of accused Abu Kalam along with 7-8 others wanted to cross the road while they were constructing the same. Accordingly, they were prevented but, the son of accused Abu Kalam along with another crossed the road on his motorbike and thereby damaged the construction work. PW1 also deposed that after about half an hour, accused Abu Kalam along with his son and others came to the PO, armed with lathi. Accused Abu Kalam at once attacked him with the lathi and hit him on the left side of his head. As a result, he fell on the ground due to injury sustained by him on his head. Thereafter, the accused Abul Kalam and his son tried to kill him by strangulating his neck. PW1 also deposed that hue and cry was raised and hearing that, the villagers came to the PO and seeing them, the accused persons left the place. After about 15-20 minutes later, when he became stable, he informed police of Jamugrui PS over phone and on the same day he lodged the *ejahar*. Put to cross-examination by defence, he deposed that he is associated with BJP. The group consisted of 7/8 miscreants, but only three of them attacked him. Police took him to North Jamuguri PHC for treatment at around 3 pm. The incident was witnessed by labourer who were constructing the road. Police seized one No Entry Board used during the road construction. However, he failed to recall whether police seize any lathi or not.

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He deposed that he did not write the *ejahar*, but only put his signature.

9. PW1 denied the suggestion that he did not specifically state before police that accused Abu Kalam hit him with a lathi on his left side of head, when he fell on the ground and that accused Abu Kalam and his son tried to kill him by strangulation. He also denied to suggestion that he did not state before police that when hue and cry raised after the incident, the villagers came to the PO and the accused persons left the place.
10. PW2 Sri Jyotishmoy Saikia identified the accused persons. He deposed that the incident took place on 21-07-2024 at about 12 to 1pm at Borbhogia Gosaichuk on the under constructed PWD road. At that time, he was standing near the PO and the informant (PW1) was supervision the work. The road was blocked from one side as construction work was going on. At that time, the accused Mustafa Ali along with others came in three motorcycles and wanted to cross the road and they were prevented by the informant. But, accused Mustafa Ali crossed the road on his motorcycle and damaged the construction work. Regarding the incident, an altercation took place between the informant and the accused Mustafa Ali and the accused returned with his motorcycle. PW2 also deposed that after about half an hour, accused Mustafa Ali along with his father Abu Kalam and others came to the PO armed with lathi etc and assaulted the informant on the left side of his hand with lathi. The informant

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fell on the ground and hue and cry raised and hearing that the villagers came to the PO. Seeing them, the accused persons left the place. When the informant regained sense, he was taken to hospital by the villagers. Put to cross-examination, he deposed that he came to Court with informant and also deposed that he was at the place of occurrence for about one hour from 11.30 am. However, he denied to suggestion that he did not state before police that accused Mustafa Ali and Abu Kalam assaulted the informant with lathi. He heard that police came to place of occurrence at 3 pm and seized some lathies.

11. PW3 Sri Dhanjyoti Rajgor also identified the accused persons. The incident took place in last monsoon season at Gosaichuk area on road. On that day between 11am to 2pm he was in his cultivation field by the side of road, which was under construction. The informant Anjan Kalita was supervising the construction work. The commuters were restricted from entering in the construction area. But, accused Mustafa along with others in four motorcycles tried to cross the construction area without obeying the restriction and thereby they involved in a verbal conflict with the informant and other construction labours and thereafter accused and his companions left the place. He also deposed that after about one hour later, the accused Mustafa and Abu Kalam along with others came to the spot armed with dao, lathi etc and started to assault the informant and other labourers. As a result, the informant sustained injuries in his

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head, neck and other parts of the body. Hue and cry raised during the incident and hearing that villagers gathered and apprehended by the villagers and handed them over to police. Put to cross-examination, he deposed that apart from the present accused persons many others were involved, but he did not see them in Court. While he was in place occurrence, police arrived. However, he deposed that he cannot recall whether the arms were seized by police or not. At the time of occurrence, the informant was an established leader of BJP. He denied to suggestion that he did not state to police that accused persons namely Abu Kalam and Mustafa Ali along with others assaulted the labourers and also injured the informant on his neck. Again, he also denied to suggestion that he did not state to police that hue and cry raised during the incident and hearing that the villagers gathered in the place of occurrence and that though the accused persons tried to flee from the spot, but they were apprehended by the villagers and sent to police.

12. PW4 Sri Nripen Borah identified both the accused persons. He deposed that the incident took place about one year ago about 11 to 12 pm at Borbhogia Gosaichuk on the under constructed PWD road. At that time, he was farming in his field near the PO and the informant was supervision the work. At that time, six persons came in three motorcycles and wanted to cross the construction site. But as the road was under construction, the informant stopped the persons from crossing the same. But, one

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of the three bikes entered into the construction area without obeying the instruction of the informant. He further deposed that after 10-15 -minutes, the persons returned with a group of 10-12 persons and entered into an altercation with the informant and subsequently assaulted him. Accused Abu Kalam hit the informant on his head with a bamboo stick. After hearing hulla, nearby people went to rescue the informant and prevented the accused persons and others from assaulting the informant any more. After the incident, the accused persons went away and the informant was taken to hospital. Put to cross-examination by defence, he could not identify the accused persons by name. He denied that he deposed false evidence in support of informant. The witness denied stating before police that he did not state to police that hearing hulla, he along with others went in rescue of informant and after the incident, accused persons went away and the informant was taken to hospital. He denied to suggestion that he did not witness the occurrence.

13. PW5 SI Hajir Ali Sarkar deposed that on 21-07-2024 he was serving as OC, Jamuguri PS. On that day, he received one *ejahar* from Anjan Kalilta and accordingly, registered the same as Jamuguri PS Case No. 94/2024 u/s 324(4)/115(20/109/3(5) BNS. He identified the ejahar as **Ext.P.1/PW1** bearing his signature as **Ext.P.1(2)/PW5**. He deposed that he sent the informant/victim Anjan Kalita and Nripen Borah to North Jamuguri PHC for medical examination and on the next day he went to the PO i.e.

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a PWD road at Borbhogia, Jamuguri and also recorded the statements of the informant and other witnesses. He also prepared one sketch map vide **Ext.2/PW5** wherein **Ext.P.2(1)/PW5** is his signature. On completion of investigation, he submitted charge sheet against the accused Abu Kalam and Mustafa Ali u/s 324(4)/115(2)/109/ 3(5) BNS. He identified the charge sheet as **Ext.P.3/PW5** bearing his signature as **Ext.P.3(1)/PW5**. He also identified the printed form of FIR as **Ext.P.4/PW5** wherein **Ext.P.4(1)/PW5** is his signature. Put to cross-examination by defence PW5 deposed that he received the ejahar on 11:39 pm on 21-07-2024. He identified the medical report of the victim as **Ext.D.1/PW1** and collected from Jamuguri SHC without any reference of police case number. He clarified that he sent the victim to hospital prior to registration of the case. He could not seize anything offensive from the place of occurrence. He did not make any GD Entry while sending the victims to hospital.

14. The IO proved that (i) PW1-Anjan Kalita did not state to him that when hue and cry raised after the incident and hearing that, the villagers came and seeing them, the accused persons left the place. PW2 Jyotishman Kalita stated that victim was assaulted by mob of 10-12 persons. (ii) Likewise, the IO affirmed that PW3-Dhananjay Rajgor did not state to him that accused persons attacked the labourers working in the place of occurrence and injured the victim Anjan Kalita in his neck. (ii) PW3 did not state

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to him that when hue and cry was raised after the incident and hearing that the villagers came to the PO and seeing them the accused persons tried to flee from the place of occurrence and but, they were apprehended by the villagers and handed over to police. (iv) Likewise, PW4 Nripen Borah did not state to him that hearing hulla, he along with others went to rescue the informant and after the incident, the accused persons went away and the informant was taken to hospital.

15. PW6 Dr. Jyotish Verma, the medical officer, has deposed that on 21-07-2024, he was serving as attached Medical and Health Officer at North Jamuguri Block PHC. On that day, he examined two patients (victim) namely, Sri Anjan Kalita(PW1) and Sri Nripen Borah(PW4) of Borbhogia, Jamuguri PS on being escorted and identified by the Pabitra Baruah and found the following:

1. Anjan Kalita – on examination he found swelling and tenderness on the left side of parietal region of scalp. Abrasion measuring 1 cm x 3 cm on fracture compartment of left hand.

In his opinion, injuries were simple and grievous caused by blunt weapon.

2. Nripen Borah – on examination, he found pain and tenderness anterior aspect of left hand.

In his opinion – the injury was simple in nature caused by blunt weapon.

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16. Ext.P.5/PW6 is the medical report wherein Ext.P.5(1)/PW6 is his signature. Put to cross-examination by defence, the MO (PW6) deposed that he had not mentioned the age of injury and case reference. However, deposed that such injuries can be caused by after falling on hard substance.
17. In this case, accused persons A1 and A2 are facing trial u/s 324(4)/115(2)/109/3(5) BNS. The relevant oral evidence which surfaced in case record are as follows –
- i) Informant-cum-victim PW1's evidence shows that when Abu Kalam's son Mustafa Ali was prevented to cross the under-construction road, the accused and another crossed and damaged the under-construction road and after half-an-hour, accused Abu Kalam along with his son and others returned armed with lathi and accused Abu Kalam at once attacked him (PW1) causing injuries on his left side of head and when he fell down on the ground, accused Abu Kalam and his son tried to kill him by strangulating his head.
 - ii) PW2's evidence shows that at the time of incident, he was standing near the PO and the informant was supervising the work and the road was blocked from one side as construction work was going on and accused Mustafa Ali along with others came in three motorcycles tried to cross the road and as they were prevented by informant, Mustafa Ali crossed the road

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and damaged the road and after a while, Mustafa Ali and accused Abu Kalam returned armed with lathi and assaulted the informant causing injuries on his left side of head.

- iii) PW3's evidence shows that while the informant was supervising the work of road construction, the informant restricted Mustafa Ali and others from crossing the road, they had a verbal conflict and an hour later, accused persons Mustafa Ali and Abu Kalam returned armed with dao, lathi, etc. and assaulted the informant and labourers causing injuries on informant's head and neck and other parts of his body.
- iv) PW4's evidence shows that on the relevant day, accused Abu Kalam hit the informant on his head with a bamboo stick.
- v) PW5 I/O's evidence shows that he caused arrest of accused persons Abul Kalam and Mustafa Ahmed.
- vi) PW6 M/O's evidence shows that he proved medical report **Exhibit P5**.

16. The essential ingredients of offence u/s 115(2) BNS are as follows:

1. Accused voluntarily caused bodily pain, disease or infirmity to the victim;



2. Accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.
17. So far as charge u/s 115(2) BNS is concerned, weapon of offence is a bamboo stick and the victim Anjan Kalita sustained swelling and tenderness on the left side of parietal region of scalp and abrasion of 1 x 3 cm on fracture compartment of left hand and that victim Nipen Borah sustained pain and tenderness on anterior aspect of left hand, which injuries were simple in nature caused by blunt weapon.
18. *Hurt* means causing of *bodily pain, disease or infirmity* (Section 319 IPC). What constitutes voluntarily causing hurt is defined u/s 115(1) BNS. Having defined *hurt*, the BNS proceeds to define the various forms and modes of causing *hurt*. Thus, depending on the nature of instruments or method, each *hurt* carries a different penal liability. The penal liability of the accused is attracted not because he causes *hurt* but because he intends or knows that such *hurt* will be caused. A reading of Section 115(1) BNS reveals that it is not enough if the prosecution proves that nature of injury sustained by the victim, it is equally necessary for the prosecution to prove that such injury was inflicted with the intent of causing such injury or with the knowledge of likelihood of such injury. *Intention* and *knowledge*, behind the commission of an act, is no doubt inferred from the attending circumstances as it would be difficult to have direct evidence

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on these aspects but then it is a requisite of the law and, therefore, before attaching culpability, for the accusation of *hurt*, the necessary circumstances, with respect to intention and/or knowledge, must be deposed to.

19. From the testimonies of the above prosecution witnesses, it is noticed that PW1 is the star witness, being the primary victim. The evidence of PWs clearly discloses that on the relevant day at about 1:30-2 PM, the accused Abu Kalam hit the victim (PW1) with a lathi on the left side of his head causing injuries. Presence of both the accused persons at P.O. at the relevant time deposed by the PWs. Role of both the accused persons in the commission specifically deposed by PW1 and PW2. PW2, PW3, PW4 have corroborated the testimony of PW1 in material particulars. PW6 M/O has proved the medical report **Exhibit P5**. There is no rebuttal of the testimony of said witnesses except some suggestions, which were outright denied by them. During their cross-examination, PW1, PW2, PW3 and PW4 remained firm regarding the assault on PW1 by the accused persons. The defense could not disprove their testimony.
20. The injury on the person of PW1 Anjan Kalita has been supported by the medical evidence. **Exhibit P5** medical report of Anjan Kalita reveals that the injuries as described, was 'simple' and caused by blunt weapon.

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21. More particularly, I find that the eye-witnesses PW2 to PW4's testimony is quite reliable and trustworthy. In fact, no infirmity or material contradiction is spelt out from their testimony. The evidence of said PWs is, *ipso facto*, sufficient to transfix the culpability of the accused person Abu Kalam only that he attacked Anjan Kalita with intention to hurt him. There is no variance between the ocular evidence and medical evidence.
22. Clearly, the hitting by the accused Abu Kalam has been alleged in the **Exhibit P1** *ejahar* and the same has been substantiated by PW1 to PW4 themselves. It is, thus, found that there is direct evidence that accused Abu Kalam inflicted the injuries on Anjan Kalita. The prosecution has been able to bring home the charge u/s 115(2) BNS against the accused Abu Kalam beyond reasonable doubt.
23. Coming to charge under Section 109 BNS, prosecution is bound to prove accused person's act or omission with intention or knowledge –
 - (a) that the death of human being was attempted.
 - (b) that such death was attempted to be caused by or in consequence of the act of accused; and
 - (c) causing the act with intention of causing death or with the intention of causing such bodily injury which
 - i. accused knew to be likely to be cause death, or
 - ii. was sufficient in ordinary course of nature to cause death, or

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iii. attempted to cause death by doing an act knowing to him to be imminently dangerous that it must in all probability cause death and accused having no excuse for incurring the risk of causing such death or injury [relied on *State of Maharashtra v. Kashi Rao (2003) 10 SCC 434*].

24. The victim PW1's evidence shows that after he fell down on being hit on his head by accused Abu Kalam, both the accused persons tried to kill him by strangulating his neck. But none of the other PWs (PW2 to PW4) corroborated PW1 in this regard. Even the medical report **Exhibit P5** does not find mention of any marks of strangulation on PW1's neck. The prosecution has failed to enkindle the ingredients of attempt to murder against the accused persons. From a reading of the evidence of the victim PW1 and others, there is dearth of intention to commit an attempt for PW1's murder. Section 109 BNS is erstwhile Section 307 IPC. In the case of *State of M.P. vs. Saleem* as reported in **(2005) 5 SCC 554**, Hon'ble Supreme Court of India has held that: -

"16. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is the intention or knowledge, as the case may be, and not the nature of the injury."

25. Nothing is in evidence-on-record to draw a presumption with

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regard to intention or knowledge of the accused to attract *mens rea* for attempt to commit murder. This Court also considered the weapon used and the factual position of the genesis of the occurrence. Prosecution has to prove something more, which is lacking in this case.

26. Thus, this Court is of measured opinion that prosecution has failed to prove the vital aspect on the matter of intention of the accused to commit attempt to murder of the victim. Hence, it cannot be held that the alleged overt act by the accused persons fall within the ambit of S. 109/3(5) BNS.
27. In this case, there is positive evidence (ocular evidence) as to injury sustained by victim on his parietal region of scalp and there was abrasion measuring 1 x 3 cm on fracture compartment on left hand. The injuries are supported by medical report **Exhibit P5** after the victim was examined by PW6 M/O on 21-07-2024 when the victim was brought for medical examination on the date of occurrence itself. However, notable is that nature of injury is only "simple" and the weapon used was blunt.
28. Victim deposed about use of *lathi* as weapon of offence. The I/O, however, did not seize the *lathi*. Learned defense counsel submitted that the prosecution case is doubtful as the I/O did not seize the weapon of offence. This aspect need not detain us much. Non-seizure of the weapon by the Investigating Officer (I/O) is not inherently fatal to the prosecution's case.

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Hon'ble Supreme Court of India consistently holds that the physical recovery of a crime weapon is not a *sine qua non* (an absolute requirement) to secure a conviction [relied on *Ghanashyam Mandal and others Vrs State of Bihar(now Jharkhand) Crl Appeal No. 3105/2025*]. Based on the law laid down by Hon'ble Apex Court, the case of the prosecution has to be judged de hors the failure on part of prosecution to show recovery of the weapon of offence.

29. The prosecution examined as many as six witnesses in support of the case of the prosecution, out of which, there are four eye witnesses PW1 to PW4. All of them have supported the case of the prosecution as they are consistent in their statements in as much as that they saw both the accused persons at the spot and the accused Abu Kalam hitting PW1 with *lathi* causing injuries and both the accused persons pressing neck of PW1. I see no reason to doubt the testimony of the witnesses examined on behalf of the prosecution more particularly, PW1 (injured eye-witness).
30. As held by Hon'ble Supreme Court in the case of *State of M.P. vs. Mansingh, (2003) 10 SCC 414* at para 9, the evidence of an injured eye-witness has great evidentiary value and unless compelling reasons exist, his statement is not to be discarded lightly.
31. No explanation has been set forth by the accused Abu Kalam in his examination u/s 313 CrPC rather he denied all the

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incriminating evidence. It is not the case of the accused that the offence occurred out of a sudden quarrel but the accused persons returning to the PO after a while armed with lathi and attacked PW1, all shows pre-mediated plan or common intention. Considered the depositions of PW1 and PW4, the role of accused persons, the nature of injuries as described above, a blunt weapon (lathi) and that the injuries are found to be simple in nature.

32. PW1 lodging *ejahar* **Exhibit P1** promptly is a piece of evidence relevant u/s 8 Evidence Act. From the evidence-on-record, it appears that there is no dispute to the fact that the injured PW1 sustained injuries as mentioned above. The said injuries were duly proved by P.W.6, the M/O, who has examined the victim/injured on 21-07-24. From the evidence of PWs (PW1, to PW4), it appears that they have seen the incident. From the medical report **Exhibit P5** as well as from the evidence of injured (P.W.1), it is clear that he sustained the injuries and the nature of injuries were simple.
33. As far as the accusation u/s 324(4)/3(5) BNS is concerned, it appears from the evidence-on-record that the PWs have not disclosed as to factum of wrongful loss caused due to damage of under-construction road. Additionally, there is no credible evidence worth to hold the accused persons guilty of committing mischief causing wrongful loss to the road and hence, the accusation u/s 324(4)/3(5) would fail.

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34. To sum up the discussion, I hold that prosecution has been able to prove the ingredients of offences u/s 115(2)/3(5) BNS against the accused Abu Kalam and Mustafa Ali beyond reasonable doubt. As such, accused Abu Kalam and Mustafa Ali are found guilty and accordingly, convicted for the offences punishable u/s 115(2)/3(5) BNS only.
35. Heard the accused persons both on the point of sentence, a priori recorded on separate sheet and kept tagged to case record.
36. Convicts have prayed for leniency in sentence. Also heard learned advocate for both the sides on the point of sentence. Learned defense counsel has prayed for leniency in sentence and submitted that the accused is a first-time offender and the accused is repentant for his conduct.
37. Coming to the point of desirability of extending the benefit of Probation Act to the accused in Sitaram Paswan and Anr v. State of Bihar, **AIR 2005 SC 3534**, Hon'ble Supreme Court held as under:-

"For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having

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regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India."

38. It appears that the arena for application of beneficial provision of Probation of Offender's Act is huge. Considered the background of the genesis of the occurrence. Considering the nature and gravity of offence, the fact that the accused Abu Kalam is 42 years old and that co-accused Mustafa is of 24 years and that no previous conviction has been proved against the accused persons, vis a vis nature of offence, the guilty accused Abu Kalam and Mustafa Ali are conferred with the beneficial provisions of Probation of Offenders Act (hereinafter the Act). If the accused persons so convicted for the offence committed in such circumstances are bestowed with beneficial provision, I suppose, it will save the offenders from the evil effects of institutional incarceration and afford them an opportunity of reformation within the community.

ORDER

39. Considering all these aspects, having regard to the circumstances of the case and the nature of offence, the

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accused Abu Kalam and Mustafa Ali are released on admonition(u/s 3 of Probation of Offender's Act,1958).

40. Accused Abu Kalam and Mustafa Ali are further directed, u/s 5 of the Probation of Offenders Act, to pay compensation of Rs.5,000/-(Rupees five thousand) only by each, to the victim Anjan Kalita, within one month from today.
41. Accused Md. Mustafa Ali and Md Abu Kalam are acquitted of charges u/s 324(4)/109/3(5) BNS.
42. Considering the nature of the injuries sustained by the victim, the matter is referred to DLSA, Sonitpur for considering grant of compensation u/s 357A of CrPC to the victim Anjan Kalita from the Assam Victim Compensation Scheme (as amended). Let a copy of this judgment be sent to the Secretary, DLSA, Sonitpur for doing the needful.
43. Send a copy of judgment to the District Magistrate, Sonitpur, Tezpur u/s 365 CrPC.
44. Also furnish a copy, free of costs, to the convicts forthwith.
45. Send back the case-record GR Case No. 858/24 along with a copy of this judgment to the learned Court below.

This judgment is pronounced in the open Court, which is given under my hand and seal of the Court, on this 2nd day of July, 2026.

(Mili Hussain)
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur.

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APPENDIX

LIST OF PROSECUTION/DEFENSE/COURT WITNESSES

A. Prosecution

Rank	Name	Nature of Evidence
PW1	Sri Anjan Kalita	Informant
PW2	Sri Jyotishmoy Saikia	Other Witness
PW3	Sri Dhanjyoti Rajgor	Other Witness
PW4	Sri Nripen Borah	Other Witness
PW5	Sri Hajir Ali Sarkar	Police Witness (IO)
PW6	Dr Jyotish Verma	Medical Witness

B. Defense Witness, if any

Rank	Name	Nature of Evidence
		NONE

C. Court Witness, if any

Rank	Name	Nature of Evidence
		NONE

LIST OF PROSECUTION/DEFENSE/COURT EXHIBITS

Prosecution

Sl. No.	Exhibit No.	Description
1	Exhibit P1	Ejahaar
2	Exhibit P2	Sketch map
3	Exhibit P3	Charge sheet
4	Exhibit P4	FIR Form

Defence

Sl. No.	Exhibit No.	Description
		NONE

Court Exhibit

Sl. No.	Exhibit No.	Description
		NONE

Material Objects

Sl. No.	Exhibit No.	Description
		None

(Mili Hussain)
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur.