

HEADING OF JUDGMENT IN SESSION CASE

IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Additional Session Judge, Bilasipara

Session Case No- 132 of 2011

u/s 326/307/507 of IPC

STATE

Versus

Bhadu Nath

Accused person.

(Committed by Shri N.S. Deori, then learned SDJM (M), Bilasipara in GR
(Bilasipara) case No- 225/04 u/s 341/326/307/506 IPC)

Advocate appeared:-

For the state:-Mr. T. Kr Bhattacharya, Addl. PP

For the accused:- Mr. A. K. Nath, advocate.

Date of institution of the case :- 17-11-04

Date of commitment :- 25-05-11

Date of Framing charge :- 15-07-11

Date of prosecution evidence :- 13-09-11, 13-12-12, 08-08-13, 26-05-14,
28-11-14, 23-03-15, 14-10-15, 06-01-16

Statement of accused recorded on:- 07-07-17

Date of Argument :- 12-09-17, 14-09-17

Judgment delivered :- 25-09-17

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 16-11-04 at about 7.00 pm when Karendra Nath husband of informant Kanika Devi coming to his house from Takimari village, Bhadu Nath, Pilen Nath and Jadav Nath attacked Karendra Nath behind his back and brutally assaulted him causing serious injury. Hearing hue and cry informant Kanika Devi went to the place of occurrence with her daughter and seeing her arrival, accused persons left the place of occurrence giving her threatening that they will finish life of her children.

Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from informant Kanika Devi registered a police case vide No Bilasipara police case No. 225/04 under Section 341/326/307/506/34 IPC and S.I. Jayanta Basumatary was entrusted to conduct the investigation of the case. On the date of incident police was informed and police sent injured to hospital. In course of investigation I/O visited place of occurrence, drawn sketch map of place of occurrence, recorded statement of complainant, victim and other witnesses, sent victim for medical examination, seized one dagger from the possession of the accused and collected the injury report of the victim and after completion of investigation submitted charge sheet against the accused person named herein above u/s 341/326/307/506 IPC.

Committal

3. On receipt of the charge sheet, Learned SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused persons committed the case before the Learned. Sessions Judge, Dhubri for trial and Learned Session Judge, Dhubri made over the case to the court of Ld. Assistant Session Judge for trial. Finally this is made over to this court for trial.

Charge

4. Then Ld. Asstt Session Judge after hearing Ld. counsels for both sides and perusal of material on record framed charge u/s 326/307/507 IPC against the accused person Bhadu Nath and when charges read over and explained to the accused person he pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 11 number of witnesses including one court witness and exhibited 5 no of documents. PW- 1 Kanika Devi, PW-2 Biren Ch. Nath, PW- 3 Monoranjan Nath, PW-4 Dinesh Nath, PW-5 Lalita Devi, PW-6 Soneka Bala Devi, PW-7 Atiullah Sk, PW-8 Dr. K. Ahmed, PW-9 SI Jayanta Basumatary, PW-10 Haji Habibar Rahman and CW-1 injured Karendra (Karen) Nath . Ext.1 Ejahar, Ext. 2 Seizure list, Ext. 3 Medical report, Ext. 4 Sketch map and Ext. 5 Charge sheet. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is denial, however declined to adduced evidence in support of the plea of denial.

6. **POINTS FOR DETERMINATION:-**

i) Whether accused Bhadu Nath on 16-11-04 at about 07.00 pm at Takimari under Bilasipara PS voluntarily caused grievous hurt to Karendra Nath by sharp pointed cutting dangerous weapons?

- ii) Whether accused Bhadu Nath on 16-11-04 at about 07.00 pm at Takimari under Bilasipara PS did an act of voluntarily causing grievous hurt by means of dangerous sharp pointed cutting weapon with intention to kill Karendra Nath?
- iii) Whether accused Bhadu Nath on 16-11-04 at about 07.00 pm at Takimari under Bilasipara PS committed criminal intimidation by an anonymous communication threatening Karendra Nath with injury to the person?

ARGUMENT

7. It has been argued by the Ld. Addl. P.P that informant reach place of occurrence immediately after the incident hearing hue and cry and found accused at the place of occurrence and victim lying in injured condition and she stated that accused caused serious injury on the person of victim and his stomach was cut and intestine was out. Other PWs also supported that victim injured sustained severe injury, his stomach was cut and intestine was out and medical evidence also corroborated the same and medical officer stated the injury sustained by injured Karendra Nath is grievous in nature, which is dangerous caused by sharp weapon. He submitted that victim could not identified the culprit as culprit hit him behind his back but this does not caused any hindrance to the prosecution case and all other circumstantial evidence, presence of accused, seizure of weapon of offence from the possession of accused proved guilty of the accused and prosecution charge against the accused proved beyond all reasonable doubt.

8. It has been argued by the Ld. defence counsel that the statement of the PW1 informant is contradictory. She stated that place of occurrence was dark and she identified the accused from a distance of 10 cubit in the darkness is not believable beyond all reasonable doubt and her evidence is not corroborated by other PWs. Other PW when reached place of occurrence did not found accused. Victim injured could not identified the culprit and therefore the identification of the accused by the informant is a contradictory statement and not corroborated by the injured. He submitted evidence of other PWs are hearsay evidence and same are not relevant and seizure of weapons does not established prosecution case and seizure witnesses did not supported the prosecution case and seizure was not

made at the place of occurrence and circumstantial evidence not connected a complete chain and therefore prosecution case against the accused not established beyond all reasonable doubt. In support of his submission he placed on reliance decision of " DAVID VANLALTANCHHUAHA VS STATE OF MIZORAM in criminal appeal no. 2(J) of 2013 reported in (2016 (1) GLJ 355"; "JITENDRA MALAKAR VS STATE OF TRIPURA in criminal revision petition no. 11 of 2003, reported in 2011 (2) GLJ 590" and Naren Deka Vs State of Assam,2012 (6) GLJ (NOC) 260.

DISCUSSION, DECISION & REASON THEREOFF:-

9. Charge against the accused is u/s 326/307/506 I.P.C i.e to say whether accused Bhadu Nath voluntarily caused grievous hurt on Karendra Nath @ Karen Nath with a deadly sharp cutting weapon with intent to kill him and given threatened to his life and to end the life of his wife and children.

10. To arrive at just and judicious decision of charge u/s 326/307 I.P.C levelled against the accused person by prosecution, I would first like to discuss medical evidence. PW-8 is MO. His evidence is that on 16.11.2004 he examined & treated Mr. Karendra Ch. Nath, 40 years, male of village – Takimari, P.S. Bilasipara in connection with Bilasipara P.S. Case No. 225/04 and observed the following: There is history of assault on 16.11.04 and this patient was treated as an indoor patient from 16.11.04 and the following were the findings:

- (1) Stab injury with prolapse of intestines through the wound over Rt. Rental angle. Size of the punctured wound is 3 inches x 2 inches x 4 inches with bleeding.
- (2) 2 perforations of jejunum (2 inches x ½ inch x ½ inch) & (1 ½ inches x ½ inch x ½ inch) present with hemoperitoneum. All the injuries were treated by operation as an emergency case on 17.11.04 after resuscitation and the patient was discharged accordingly.

In his opinion, the above mentioned injuries are dangerous to life, less than 24 hours in duration and caused by sharp pointed weapon. In cross he deposed that the injury which he found after examining the patient cannot be caused by simply falling on sharp weapon. He denied that fact that injury was not dangerous for life.

11. Now, let me find out whether the injury that were found by the PW-8 on CW-1 Karendra Nath were caused by the accused Bhadu Nath or not. As per the ejahar incident took place on PWD road when injured was coming home. Ejahar which is exhibited as Ex-1 pointed that informant hearing hue and cry reached place of occurrence and found her husband in unconscious state with severe injury his intestine was come out from the stomach and also seen the accused and accused given her threatening that he will finish her and her children life and left the place of occurrence. In the ejahar informant given name of three persons however IO after investigation submitted charge sheet against the accused Bhadu Nath. As per Ext 1 ejahar this accused Bhadu Nath was present at place of occurrence and he was seen by informant and he left the place given threatening to the informant and her daughter.

12. Now let me see whether the statement made by the informant in the ejahar was substantiate by the informant or not.

13. Informant is examined as PW-1. Her evidence is that she knows the accused and incident took place at about 7.00 to 7.30 pm. At that time she was at home and her husband was returning home. Hearing hullah she with her elder daughter came out to road and saw her husband was lying with severe injury on stomach, there was severe bleeding, intestine was coming out from the stomach, she saw accused and accused threatened her to finish her family and then fled away. Thereafter, people came and her husband was taken to the hospital. She came to the Bilasipara police station lodged ejahar, injured was admitted for 16/17 days at hospital and again he had to visit hospital for the further treatment. She stated police seized one dagger. Her further evidence is that victim told that accused had assaulted him with dagger. **In cross** she stated place of occurrence is about ½ km distance from her house and near the place of occurrence house of accused and one Monoranjan is present. Later on Monoranjan, Nandeswari, Amulya, Pradip and other people came. Amulya, Pradip and other lifted the victim and brought him to the Bilasipara hospital then to Dhubri civil hospital. There is no electricity in the village. She denied that she did not see accused at the place of occurrence and running from the place of occurrence. She stated she did not talk with the accused as he fled away. She saw accused from 10 cubit away running

towards the field. She denied that accused did not assault the victim. She also denied that accused had not flew away from the place of occurrence.

14. On Scrutiny of Pw-1 evidence, it is seen that she had substantiated her statement made in the Ext 1 ejahar. In her chief and cross she stated she had seen accused running away from the place of occurrence and injured sustained injury on his stomach and intestine was out, other people came to place of occurrence. It is her evidence that accused assaulted her husband. Close to the place of occurrence house of accused is present along with house of Manaranjan and others. It is the evidence of PW-1 that at place of occurrence she had seen arrival of Monoranjan and other persons. She denied that accused had not run away from the place and she did not see the same. I/O also stated that it was not the statement of complainant before him that prior to her reaching place of occurrence accused had left the place.

15. Now let me see what other witnesses stated and whether they supported the testimonies of informant. PW-3 is the Monoranjan Nath. His evidence is that he knows both the accused and injured. He deposed on reaching home he came to know that accused Bhadu Nath assaulted Karendra. In cross he stated at the time of incident he was one and ½ km away and came to know about the incident after reaching home. Evidence of PW-3 does not pointed that he went to place of occurrence and found and seen informant and injured at place of occurrence. He deposed he did not saw injured and heard that accused Bhadu assaulted Karendra. Statement of PW-3 pointed his evidence is total hearsay evidence and he did not supported statement of informant that he went to place of occurrence and seen informant and injured. Thus, shown that this part of the testimonies of PW-1 is not corroborated by the PW-3.

16. I/O exhibited sketch map of the place of occurrence as Ext 4. I have perused the same. It is seen that the house of Monoranjan is near to the place of occurrence. Accused house is in front of the place of occurrence. House of accused and Manaranjan is near to each other. It is seen from the Ext 4 that at the little distance of Manaranjan house, house of informant present. Monoranjan is the neighbour of both accused and informant. Thus, PW-3 can be term as cunning witness and because he being neighbour of both did not say anything in favour of

prosecution nor against the accused. He simply stated that he came to know that accused assaulted Karendra the injured of this case. His evidence shown that he neither want to displease the informant nor want to displease the accused. Therefore his evidence no way benefited either prosecution or defence.

17. PW-2 Biren Ch. Nath stated hearing occurrence of the incident he came to place of occurrence and show victim lying injured with stomach injury and intestine was out and on asking victim said that accused has assaulted him. **In cross** he denied that he did not state before the IO that victim told him that accused had assaulted victim. At place of occurrence he found victim lying injured, complainant and her daughter and later on many gathered at place of occurrence, at home his wife just told him gist of the incident.

18. Evidence of PW-2 is that he seen victim lying injured and his intestine was out and came to know from the victim that accused Bhadu Nath had assaulted him and also found complainant and her daughter. Complainant in her deposition stated that hearing hue and cry she went to the place of occurrence with her daughter, found her husband lying injured condition and his intestine was out. This witness and also the evidence of PW-1, informant corroborated that Karendra sustained injury on his stomach, his intestine was out and informant with her daughter reached at place of occurrence. His evidence pointed other people came to place of occurrence after him.

19. Evidence of PW-4 Dinesh Nath is that he knows both informant and accused. Both hails from his village and on the day of incident when he was present at his house someone called him as there was hue and cry took place. He came to the place of occurrence which is a road, in front of accused house. He seen the villager at the place of occurrence but did not found accused persons and heard that accused Bhadu Nath assaulted Karendra and stab him with a knife but did not found injured at place of incident. He deposed he seen stitch mark on lower abdomen of injured when injured returned home. **In cross** he stated his house is about 200 m distance from the house of accused and by the time he reached place of occurrence it was dark and at place of occurrence he met about 50 persons and he reach place of occurrence after 30/40 minutes of incident. Injured is his village

brother. This witness evidence is that he heard from other co villagers that injured Karen sustained injury and said injury was caused by accused Bhadu.

20. Evidence of PW-5 Lalita Devi is that complainant is her mother. Victim is her father. She knows the accused person who is present before the court and incident was occurred about 10 years ago and at that time as she was 10 years old she cannot recollect the incident.

21. PW-6 Sonika Bala Devi stated she heard hue and cry in the house of complainant and visit there and came to know that complainant husband was assaulted by some persons but did not heard who had assaulted.

22. Evidence of PW-7 is that he has no knowledge about the incident but Ext 2 is the seizure list and Ext 2(1) is his signature and he cannot say why police took his signature on seizure list. PW-10 is another seizure witness. His evidence is that Ext. 2(2) is his signature on seizure list Ext. 2.

23. PW-9 is the IO. His evidence is that he had investigated the case and in course of investigation he went to the place of occurrence, drawn sketch map of the place of occurrence, recorded the statement of the witnesses, complainant and also the victim who is the husband of the complainant and on the same day on 17-11-04 he seized one dagger from the possession of the accused in connection with this case by which the accused committed the crime and after collecting injury report submitted chargesheet against the accused Bhadu Nath u/s 341/326/307/506 I.P.C . Ext 5 is the chargesheet. **In cross** he stated incident was took place at about 7.00 pm on 16-11-04 and victim was sent for medical examination by Bilasipara police station to Bilasipara Hospital and on 17-11-04 he visited place of occurrence. He denied that victim did not state before him that victim could not identify the accused at the time of commission of offence. He also denied that he did not recorded the statement of the victim. He denied that he did not seized dagger from the possession of accused. He stated complainant did not state before him that when complainant came accused had already left the place. he stated that the victim was only the eye witness of this case.

24. Victim Karendra Nath @ Karen was examined as CW-1. His evidence is that complainant is his wife, incident took place 10 years ago, and on the day of incident while he was coming towards his home from Takimari village he was hit on his

back by a dagger from behind by a person. Immediately he fell down he was badly injured. His back side was cut by the dagger and after felling the person also hit on his waist and as the person hit him behind his back he could not identify him. His further evidence is that is that he shouted, neighboring people came and asked him about the incident. He was first taken to the Bilasipara hospital thereafter taken to Dhubri Civil hospital and was treated there for 19 days. Doctor stitched his cut portion, police recorded his statement and his wife lodged the case. In cross he stated prior to the incident he did not have any enmity with the accused. He suspected accused Bhadu Nath had committed the offence. And incident occurred in the evening at 7.00 and he was attacked from behind therefore he could not identify the person who actually attacked him.

25. Ld. defence counsel made submission that seizure witness did not supported the prosecution case and therefore that seized goods is seized from the possession of accused not established.

26. I have scrutinized the record, Ext 2 seizure list and also perused the evidence of seizure witnesses. Both the witnesses admitted their signature on Ext 2 seizure list but shown total ignorance about the incident and what was seized by the police. The thumb impression of accused Bhadu Nath is present on the seizure list. PW-9 I/O stated that he seized one iron knife dagger with wooden handle from the possession of accused Bhadu Nath of village Takimari PS Bilasipara. Ext-2 shown seizure was made at police station. He stated in cross that he did not sent the seized iron knife (dagger) to FSL as same was touched by several person and no blood stain found in the dagger. Thus, taking into account all the facts it is not coming beyond all reasonable doubt that seized dagger was used for the commission of the offence by the accused and IO did not made any attempt to unfurl the same during investigation.

27. I/O in his evidence stated that on the day of incident they send victim to Bilasipara hospital for treatment. On scrutiny of the C.D. It is seen that information as regard to the taking place of the incident was intimidated to the police on the day of incident and police sent injured to the Bilasipara hospital but police did not visit the place of occurrence though one cognizable offence was took place and police received information about the occurrence of cognizable offence and found

serious injury on injured. Thus shown lack of proper investigation of the case by the police.

28. I have scrutinized the evidence on record. According to IO only victim is the eye witness of this case. Except victim there was no other eye witness. The victim of this case is examined as CW-1 and his evidence reveal that at the place of occurrence at the time of incident there was no other person present except him. Evidence of other witnesses also reveal that they came to place of occurrence after the incident. PW-4 reached place of occurrence after 30-40- minutes of the incident. PW-6 also went to the house of complainant after the incident. That means she also did not seen the incident. PW-7 and PW-10 are the seizure witness and they did not visited place of occurrence. PW-2 reached place of occurrence after incident and before him, wife and daughter of the injured reached place of occurrence. And by the time he reached place of occurrence other people also came there. The same is with the PW-3. He too came to place of occurrence after the incident. PW-5 is the daughter of the victim. She did not whisper any fact with regard to the incident. And she is totally silent and reason of her muteness not unfurled by the prosecution. Though PW-5 is daughter of the victim Karendra, she even did not state that her father sustained any kind of injury on the date of incident. Her evidence is that she cannot recollect the incident as she was 10 years old at the time of incident. From her evidence it is also not coming that she went to the place of occurrence with her mother or she saw any injury on the body of her father. PW-1 is the wife and informant of this case who only supported the prosecution case. But her evidence reveal she was also not present at the place of occurrence at the time incident and she came to the place of occurrence after hearing hue and cry and on reaching place of occurrence she found her husband lying on the road with severe injury on stomach, intestine was out and severe bleeding. She stated she saw accused but in cross she stated she saw accused about 10 cubit distance and he fled towards field and night was dark.

29. On careful scanning of the evidence of PW1- it is reveal that in cross she stated that at the time of incident there was total darkness at the place of occurrence and there is no electricity in their village at the time of incident. In chief she stated that victim told him that accused had assaulted him. CW-1 is the

victim of this case. In his evidence he did not whisper that he narrated incident either to his wife or to any other person. He did not stated he disclosed name of accused as offender. His further evidence is that he could not identified the assailants.

30. Now under such circumstances, let me scrutinized the evidence of victim whether his evidence corroborated the evidence of PW1 and her evidence is acceptable beyond all reasonable doubt. CW-1 is the victim Karendra Nath. His evidence is that while he was returning home he was hit by a person behind his back on his back side, immediately he felt down and said person than again cut his waist by dagger but he could not identified the said person and on being shouted neighboring people came and asked him about the incident. And he was initially taken to Bilasipara hospital and from there taken to the Dhubri civil hospital and there he was treated for 19 days. Doctor stitched his cut portion. His wife lodged the ejahar. In his evidence he did not stated that he disclosed incident to his wife or to other persons and told name of accused. His only evidence is that when he shouted neighboring people came asked him about the incident but whether he narrated the incident or told the name of accused is not disclosed by him and injured is totally silent on this point. Thus, the statement of PW1 that her husband told her that accused had attacked her husband with a dagger and statement of Pw-2 that he heard name of accused from injured is not corroborated by the testimonies of injured and their piece of evidence caste a shadow and not acceptable beyond all reasonable doubt.

31. On the scanning of evidence of CW-1 injured it is further reveal that when the attacker hit him on his back by a dagger. He could not identified the person as said person attacked him from behind his back and when he fell down said person again attacked him on his waist but victim could not identified him on the second time also. According to medical report injured sustained injury on stomach and his intestine was out. That means he sustained injury on his front side too. CW-1 stated when the attacker attack him on his waist he could not identified the person who hit and his cross is that he suspect that accused Bhadu Nath committed the offence but there was no enmity with the accused prior to the incident. This again pointed that injured could not identified the attacker when attacked from front and

mere suspicion cannot establish that it was accused Bhadu who attack him when he failed to identify attacker. Under such circumstances PW-1 identified the accused from 10 cubit distance under darkness is not believable beyond all reasonable doubt and that when injured could not identified the attacker he told his wife and Pw-2 that accused Bhadu Nath committed the offence is not believable beyond all reasonable doubt. Evidence of injured does not bring any direct evidence against the accused. Other Pws stated place of occurrence was under darkness at the time of incident. Pw-2 to PW-4 did not found and seen accused in an around the place of occurrence when they reached place of occurrence. PW-6 has no knowledge about the identity of the culprit though she visit house of informant. Thus, from the evidence on record it is clear that there is no direct evidence available against the accused to prove him guilty

32. Now let me see whether there is any circumstantial evidence that prosecution is able to bring home and prosecution able to connect all circumstantial evidence only to prove the guilty of the accused Bhadu Nath and there is no inference left out to draw innocence of the accused. Hon'ble Apex court in a catena of decision hold that a person can be hold guilty based on the circumstantial evidence only if the circumstantial evidence that is brought before and against the accused only prove the guilty of the accused and forms a whole complete chain of evidence that goes against the accused and prove his only guilty and no inference of his innocence is drawn.

"Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact which proves only guilty of the accused and circumstantial evidence must be a complete chain of circumstances". In respect of circumstantial evidence, prosecution must prove every link of the chain of circumstance.

In Krishnan Vs State (2008) 15 SCC 430 and again In Yogesh Narain Saxena case (2009) 16 SCC 547, Hon'ble Apex Court held:- "this court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following test:-

(i) The circumstances from which an inference of guilty is sought to be drawn must be cogently and firmly established;

- (ii) Those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and none else; and
- (iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilty of the accused and such evidence should not only be consistent with the guilty of the accused but should be inconsistent with his innocence.

33. That is to say settled law in respect of the circumstantial evidence is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. In other words all the circumstances should form a complete chain and there should not be left any gap in the chain of evidence. Further, the proved circumstances must be consistent only one with the hypothesis of the guilt of the accused totally inconsistent with his innocence.

34. Hon'ble Apex Court in *Bhagal Ram Vs State of Punjab*, AIR 1954 SC 621 " it was laid down that where the cases depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt".

35. The circumstantial evidence in order to sustain conviction must be complete chain and in capable of explanation of any other hypothesis than that of the guilty of the accused and such evidence should not only be consistent with the guilty of the accused but should be inconsistent with his innocence.

36. Now in view of the aforesaid principle settled by the highest court, let me find out whether all those principle of circumstantial evidence were appearing against the accused persons to prove his only guilty. In this case only two circumstances appeared are i- PW-1 stated she saw accused go away from the

place of occurrence through field and ii) police seized one dagger from the possession from accused.

37. PW-1 stated she saw accused from 10 cubit distance. Her further evidence is that place of occurrence was dark, there was no electricity connection in their villages. Other PWs did not find accused at place of occurrence. According to the sketch map and evidence of PW-1 the house of accused is present in front of the place of occurrence opposite the house of Monoranjan on the other side of the village road. All the other PWs whose house near to the place of occurrence reached place of occurrence hearing hue and cry at the place of occurrence but none have seen the accused. Monoranjan stated he did not see accused in and around place of occurrence. PW-1 too reached the place of occurrence hearing hue and cry at the place of occurrence. When PW-1 and PW-2 reached place of occurrence they found injured Karendra lying on the PWD road in the injured condition. His intestine was out with severe bleeding. They did not found any weapon of offence at the place of occurrence. PW-1 did not state that she had seen any weapon in the hand of accused. In chief she stated accused threatened her and her family but during cross she contradict her statement saying that it was not accused Bhadu but his brother. In chief she stated she found accused at place of occurrence but during cross she contradict her own statement by saying that she had seen accused going from the place of occurrence. Injured deposed he did not identified the assailants. PW-2 deposed he found PW-1 with her daughter at place of occurrence. He did not state that he seen accused while he was coming to place of occurrence. Thus, evidence of PW-1 alone thus not connect any link of incident with accused because presence of accused not established beyond all reasonable doubt. IO stated he seized one dagger from the possession of the accused at the police station in connection with this case and according to him accused has committed the crime as alleged. Ext-2 is the seizure list. In cross he stated the dagger was touched by several person and at the time of seized no blood stain was found in the dagger. I/O evidence shown that before seizure of the Ext 2 it was passed through several persons and no blood stain was seen. He did not stated that blood stain were removed and washed by the accused to remove and disappear the evidence of offence. His evidence also not disclosed

who were those person touched the dagger before being it was seized by him. Evidence of PWs does not pointed that accused by using the seized dagger committed the offence. Injured did not identified the accused Bhadu Nath as assailants. Therefore, the only seizure of the dagger from the accused at police station does not connect the link and chain of all the circumstances against the accused to prove his guilty beyond all reasonable doubt.

38. Coupled with the above settled position of law on circumstantial evidence and upon discussion made by me on the analysis of evidence on record, I come to my considerate judicious finding that prosecution has been failed to established its case against the accused beyond all reasonable doubt u/s 326/307/507 I.P.C and accused entitled benefit of doubt. Accordingly accused Bhadu Nath is acquitted u/s 326/307/507 I.P.C and is set at liberty. Jail super to released him forthwith if not connected with any other case. Seized goods be destroyed in due course of time in accordance with law.

39. Send back the GR case record with case diary to the learned committal Court with a copy of the judgment.

40. Given under hand and seal of this Court on this 25th day of September 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr.III

APPENDIX

PROSECUTION WITNESS:-

PW- 1 Kanika Devi,
PW-2 Biren Ch. Nath,
PW- 3 Monoranjan Nath,
PW-4 Dinesh Nath,
PW-5 Lalita Devi
PW-6 Soneka Bala Devi
PW-7 Atiullah Sk,
PW-8 Dr. K. Ahmed
PW-9 SI Jayanta Basumatary
PW-10 Haji Habibar Rahman

PROSECUTION EXHIBIT:-

Ext.1 Ejahar,
Ext. 2 Seizure list,
Ext. 3 Medical report,
Ext. 4 Sketch map and
Ext. 5 Charge sheet.

DEFENCE WITNESS :- NIL
DEFENCE EXHIBITES :- NIL
COURT EXHIBITES :- NIL
COURT WITNESS :- CW-1 Karendra Nath

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara