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**Date:** 21/10/2025

# Liakot Ali Laskar, Alom Uddin Laskar, Md. Haviji Ahmed Laskar and Musstt. Latuful Nessa Vs State of Assam

## Criminal Appeal No. 150 of 2005

**Court:** Gauhati High Court

**Date of Decision:** Oct. 5, 2013

**Hon'ble Judges:** Indira Shah, J

**Bench:** Single Bench

**Advocate:** H.R.A. Choudhury, for the Appellant; B.J. Dutta, Assistant Public Prosecutor, for the Respondent

## Judgement

Indira Shah, J.
The appellants stood convicted u/s. 448/436 read with Section 34 IPC and sentenced to undergo rigorous imprisonment

for six months for the offence u/s. 448/34 IPC and further rigorous imprisonment for five years with a fine of Rs. 1,000/- each, in default R.I. for

three months each for the offence u/s. 436 read with Section 34 IPC by the judgment and order passed by learned Sessions Judge, Hailakandi in

Case No. S.C. 20/2004. Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. I.A. Hazarika learned counsel for the appellants.

Also heard Mr. B.J. Dutta, learned Addl. P.P., Assam for the State respondent.

2. The FIR was lodged by Md. Hilal Uddin Laskar on 29.3.2002 wherein he alleged that there was family dispute and the accused appellants in

the night of 28.3.2002 armed with lathi etc wrongfully entered his house and assaulted him and his sister-in-law. On receipt of the FIR Lala P.S.

case No. 54/2002 u/s. 448/323/436/34 IPC was registered. The victim Hilal Uddin Laskar and his sister-in-laws Mustt. Jahida Begum were sent

for medical examination. On completion of investigation, police submitted charge sheet u/s. 448/323/436/34 IPC. During the trial the learned trial

court framed charges u/s. 448/436 read with Section 34 IPC. The accused persons pleaded not guilty to the charges and claimed to be tried.

3. All together four witnesses were examined by the prosecution. The accused persons in their statement recorded u/s. 313 Cr.P.C. denied the

allegations levelled against them and pleaded that they were innocent. The victim Hilal Uddin expired before his evidence could be recorded. It

was alleged in the FIR that Mustt. Jahida Begum was also assaulted by the accused persons but she was not examined by the prosecution. The

learned trial Court has convicted the accused persons on the basis of the evidence adduced by PW 1 and PW 2.

4. PW 1 Joyna Begum is neighbour of the victim Hilal Uddin. She deposed that at about 8 PM while she was in her house, she heard hue and cry

from the house of Hilal Uddin. She came out of her house and saw the accused Liyakat, Latifur, Alom and Habiz Uddin assaulting Hilal Uddin.

Thereafter, she went back inside her own house and closed the door of her house. After half an hour when she was came out from her house she

saw the dwelling house of Hilal Uddin has been gutted by fire. She also stated that co-villagers came to the house of Hilal Uddin. In cross-

examination she admitted that her brother-in-law Rahimuddin had lodged criminal case against the accused persons.

5. PW 2 Fakkar Uddin Laskar is the husband of PW 1. He deposed that when he was in his shop, his neighbour Moktar Ali informed that there

was mutual fight amongst the victim and accused persons. Thereafter he came to his own house and saw the accused persons coming out of the

house of Hilal Uddin and the victim Hilal Uddin lying unconscious. He also stated that the dwelling house of Hilal Uddin was gutted in fire.

According to him several other people were gathered at the place of occurrence. He also admitted in his cross-examination that he lodged criminal

case against the accused Liakat Ali and he also admitted that accused Liakat lodged a criminal case against him and Rahimuddin lodged a cross

case against Liakot Ali.

6. Thus, it appears from the evidence of the aforesaid witnesses that the relationship with the accused persons was inimical. PW 1 and 2 both

stated that there was gathering of several people immediately after the occurrence but none of the independent witnesses who immediately arrived

at the place of occurrence were examined. That apart Muktar who reported the incident to PW 2 was also not examined. The victim Jahida

Begum who might have witnessed the entire incident since she was also assaulted by the accused persons as per the FIR but did not turn up to

adduce evidence in favour of the prosecution. PW 2 in his cross-examination admitted that the brothers of Hilal Uddin are still alive but none of the

family member of Hilal Uddin came forward to support the prosecution case.

7. For non-production of material witnesses the prosecution did not give any explanation. Admittedly, in this case there is no eyewitness to the fact

that the accused persons set on fire in the house of the informant. According to PW 2, the victim Hilal Uddin was lying unconscious in his house

which was gutted in fire. He has not stated where the victim was lying.

8. PW 3, the doctor found simple injury on the person of Hilal Uddin caused by blunt weapon. He also examined Mustt Jahida Begum but did not

find any injury on her person. He admitted in his cross-examination the injury sustained by Hilal Uddin may be caused by falling on the ground.

9. When the house of the victim was gutted in fire, several people of the village arrived immediately after the incident, but for none examination of

material witness and conviction on the basis of witness who were inimical to the accused appellants cannot be sustained.

10. In view of the above, the judgment convicting the appellants is hereby set aside. The accused persons are acquitted and set on liberty. Return

the LCR alongwith a copy of this judgment and order.