

**(2001) 05 GAU CK 0012****Gauhati High Court****Case No:** Criminal Revision No. 544 of 1993

Nabin Chandra Saika @ Jiban  
Bania and Another

**APPELLANT****Vs**

State of Assam

**RESPONDENT****Date of Decision:** May 24, 2001**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 116, 161, 164
- Penal Code, 1860 (IPC) - Section 320, 324, 326, 34

**Citation:** (2001) CriLJ 3824 : (2001) 2 GLT 217**Hon'ble Judges:** P.G. Agarwal, J**Bench:** Single Bench**Advocate:** A.C. Bora, B.D. Das and H.K. Sharma, for the Appellant; P.P. Assam, for the Respondent**Final Decision:** Dismissed

### **Judgement**

1. Heard the learned counsel for both sides.
2. On 10.2.1988, the informant Shri Ghanashyam Das filed an FIR before Nagaon Police Station stating inter alia that on that day when he alongwith Tularam Das went to Saikia Jewellers, an altercation took place between them on one side and the accused on the other side and when the complainant tried to intervene and settle the matter, accused Jiban Bania and his son threw some acid on their body causing injury on the person. The injured were removed to hospital and they were treated by the doctor. Police after usual investigation submitted charge sheet and GR Case No. 202/88 was registered. Charge was framed against both the accused person and on conclusion of the trial, learned Addl. Chief Judicial Magistrate, Nagaon convicted the two accused persons u/s 326/34, IPC and sentenced them to suffer imprisonment for four years and to pay a fine of Rs. 2,000 each i/d to undergo further imprisonment for three months. Feeling aggrieved, the accused petitioners

preferred criminal Appeal No. 9(N-2)93 and vide the impugned order learned Addl. Sessions Judge, Nagaon affirmed the conviction u/s 324/34, IPC and sentence was modified to imprisonment for one year each and to pay a fine of Rs. 1,000 each in default further imprisonment for two months each. Hence the present petition.

3. PW-2 and PW-3 are the two injured persons in this case and they have deposed as to how the incident took place and they categorically named the two accused persons. Learned counsel for the petitioners submits that there is discrepancy in the statement of PW-2 and PW-3. Though there are some minor discrepancies which are bound to occur, the testimony of both the witnesses remained intact. Both the courts below relied on the evidence of the two injured persons and this is a concurrent finding of fact based on evidence on record and I find no material to reappreciate the evidence.

4. The next submission of the learned counsel for the petitioner is that this being a case of throwing of acid (chemical) the prosecution should have sent the sample for chemical analysis. The charge against the accused was of causing hurt as defined u/s 320, IPC and as such the chemical analysis of the acid was not required to be done. More so when the doctor has categorically stated that PW-2 and PW-3 sustained chemical burn injuries which are of grievous nature. The evidence of the doctor (PW-4) clearly establishes that the two injured persons sustained burn injuries as a result of the throwing of the acid which came into contact with the body. Medical evidence on record has not been disputed.

5. It is further contended that the name of all the accused does not appear in the FIR and as such the accused is entitled to acquittal. In the case of Nallamsetty Yanadaiah and others Vs. State of Andhra Pradesh, the Apex Court held that non-mentioning of the name of an accused person in the FIR is not fatal. In another case reported in State of U.P. Vs. Ashok Kumar Srivastava, it was held that non-mentioning of the name in the FIR does not affect the evidence of the direct witness. In the present case I find that the FIR was lodged by the Injured and the name of one of the accused Sri Jiban Bania has been mentioned and thereafter it is stated that his son and one employee are also involved. During investigation the other accused Kishore Kumar Saikia surrendered before the court and may be because of that the investigating authorities did not pray for holding any test identification parade. Further, I find that the name of Kishore was stated by PW-3 during investigation u/s 161, CrPC and this is not a case where the name of Kishore has been brought on record during trial only. Thus, for non-mentioning of the name of accused Kishore Saikia in a specific manner but referring him as son of Jiban Bania in FIR is not fatal and no interference is called for.

6. Learned counsel for the petitioner has submitted that accused Nabin Chandra Salkia is an old man and as such he may be treated leniently. On perusal of the statement recorded u/s 164, CrPC accused Nabin Chandra Saikia was aged 65 years in the year 1993. Medical evidence shows that the victim Tola Ram Das sustained

60% burn injuries on his body including both the eyes. Thus, although the learned Addl. Sessions Judge, Nagaon has converted the conviction to Section 324/34, IPC, so far the sentence is concerned, no interference is called for.

7. In the result, the revision petition is dismissed. The petitioners are directed to surrender before the Chief Judicial Magistrate, Nagaon forthwith to serve out the sentence. Send down the record. Learned Chief Judicial Magistrate, Nagaon shall take up the follow-up action.