

GAHC010236142019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CrI.A./397/2019**

HAFIZUR RAHMAN AND 2 ORS.  
S/O- LATE DALILUR RAHMAN, R/O- VILL. NO. 1 KAKI, NO. 6 GAON,  
JARONI BLOCK, P.O. AND P.S. KAKI, DIST.- HOJAI, ASSAM, PIN- 782446.

2: SOIDUR RAHMAN  
S/O- LATE DALILUR RAHMAN  
R/O- VILL. NO. 1 KAKI  
NO. 6 GAON  
JARONI BLOCK  
P.O. AND P.S. KAKI  
DIST.- HOJAI  
ASSAM  
PIN- 782446.

3: SAHIDUR RAHMAN  
S/O- LATE DALILUR RAHMAN  
R/O- VILL. NO. 1 KAKI  
NO. 6 GAON  
JARONI BLOCK  
P.O. AND P.S. KAKI  
DIST.- HOJAI  
ASSAM  
PIN- 782446

VERSUS

THE STATE OF ASSAM AND ANR  
TO BE REP. BY THE LEARNED PUBLIC PROSECUTOR, ASSAM, GAUHATI  
HIGH COURT.

2:LUTFUR RAHMAN  
S/O- LATE HABIBUR RAHMAN  
R/O- VILL. NO. 1  
NO. 6 GAON

JARONI BLOCK  
P.O. AND P.S. KAKI  
DIST.- HOJAI  
ASSAM  
PIN- 782446

**Advocate for the Appellants** : ALHAJJ INAM UDDIN

**Advocate for the Respondent** : MR. M PHUKAN, ADDL. PP, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**  
**HONOURABLE MR. JUSTICE MIR ALFAZ ALI**

**JUDGMENT & ORDER (CAV)**

**Date : 09-04-2021**

(M.A. Ali, J)

Learned Counsel, Mr. A.I. Uddin appearing for the appellants and learned Addl. Public Prosecutor, Mr. M. Phukan for the State were heard.

2. This appeal is directed against the judgment and order passed by the learned Sessions Judge, Hojai, Sankardev Nagar, in Sessions Case No. 514(N)/2013, whereby, the appellants were convicted u/s 302 IPC and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/- each with default stipulation.

3. The prosecution case in a nutshell was that on 19-06-2009, at about 3.30 PM, nine accused persons named in the FIR entered into the land possessed by Habibur Rahman (deceased) and started cutting bamboos and accused Mukutar (since deceased) pelted stone at the house of the informant. When the informant Lutfur came out of the house, the accused Sahidur Rahman, Hasibur and Rafique Ali, all armed with "dao", chased Lutfur Rahman and he ran away out of fear. Thereafter, the accused Sahidur Rahman, Hasibur Rahman, Rafique Ali, Hafizur Rahman and Saidur Rahman assaulted Habibur Rahman (deceased), Motibur Rahman and Dhan by "dao", "lathi", spear etc. and also demolished the dwelling house of Habibur Rahman. Habibur Rahman succumbed to the injuries at the spot. Lutfur Rahman(PW-1) lodged the FIR(Ext.-1), on the basis of which, police registered Kaki PS Case No. 32/2009

u/s 147/148/149/447/302/326/336/302/427 IPC and upon completion of investigation submitted charge-sheet against nine accused persons including the present appellants.

4. Based on the charge-sheet and the materials produced therewith, learned Sessions Judge framed charges against all the charge-sheeted accused persons u/s 447/34 and u/s 147/148 IPC. Further, the learned Sessions Judge framed charges u/s 302/336 read with Section 34 IPC against Mukutar Rahman, Sahidur Rahman, Hafijur Rahman, Rafique Ali and Hasibur Rahman. All the accused persons including the present appellants denied the charges and claimed to be tried. Prosecution examined 10 witnesses to substantiate the charges against the appellants. Upon completion of the prosecution evidence the accused persons were examined u/s 313 CrPC, wherein, all of them took the plea of innocence and examined one witness in their defence.

5. Lutfur Rahman, the informant was examined as PW-1. He deposed that on 19-06-2009 at about 4.30 PM, the accused Mukutar, Sahidur, Hafizur, Saidur, Hasibur, Jahidur, Rafique, Adilur and Kasem entered into the residential campus of the deceased and started cutting bamboos and they also pelted stone at the house of PW-1. He also stated that the accused Sahidur, Hasibur and Rafique chased him and he had fled the scene out of fear. According to him, when he came back after about an hour, he had found his father lying dead in the house of Mukut, and by that time all the accused persons had left the place of occurrence.

6. The PW-2, Azizur Rahman deposed that on 19-06-2009, at about 2.30 PM, accused Mukutar Rahman (since deceased) asked for demarcation of the land. He further stated that accused Sahidur, Hafizur, Saidur, Adilur, Jehidur, Hasibur, Sarif, Rafique and Abdur @ Kasem entered into their campus and started cutting bamboos and Mukutar pelted stone at their house. When his elder brother Lutfur was fleeing from the house out of fear, accused Sahidur and Hasibur chased him and Mukutar stabbed into the abdomen of his brother Motibur with a spear. He also stated that Hafijur, Sahidur and Mukutar inflicted fracture injury on the leg of his father (deceased) by means of a crowbar and axe and also plucked his right eye. He further stated that when he tried to flee the scene, having been chased by the accused persons, Hafizur intercepted him and fell him into a pond. He also stated that the accused persons tied the deceased with a mango tree. However, during cross-examination he stated that his father and brother were lying on the ground and the accused persons did not tie

them.

7. PW-3, Motibur Rahman was also an injured witness. He deposed that at about 2 /2.30 PM, accused Mukutar asked him to come out of the house and rest of the accused persons, viz., Hafizur, Saidur, Kasem, Sarif Jahirul, Adilur and Hasibur started cutting bamboos. He also stated that the accused persons entered his house, Mukutar hit on his stomach with a pointed object like spear and Hafizur dragged him from the house. He further stated that Mukutar stabbed his father (deceased) with a "shul" and Hafijur inflicted a fracture injury on his leg with a crowbar. During cross-examination, he admitted that he did not see PW-2 being assaulted, nor had he seen the incident of assault, which took place inside the house of the deceased.

8. PW-4, Marzina Begum is the wife of the deceased Habibur Rahman. She deposed that on the day of occurrence at about 3 PM, when they were taking meal, accused Mukutar (since deceased) came and asked them to demarcate the land and started pelting stone to their house. She further stated that the accused persons entered into their land and started cutting bamboos. According to her, accused Mukutar stabbed Motibur with a spear and dragged him to his courtyard. Thereafter rest of the accused persons came and assaulted her husband (deceased). She also stated that when Dhan tried to run away, Hafijur caught and fell him into a pond, Sarifur Rahman dealt a blow on the head of Dhan by means of a "lathi" and Mukutar inflicted a cut injury on the left arm of Dhan with a "dao".

9. The PW-7, Nazmina Begum, daughter-in-law of the deceased Habibur Rahman, deposed that the accused persons entered into their residential campus and started cutting bamboos and accused Mukutar demanded him to handover possession of the land. She further stated that accused persons having entered into their house, inflicted injury to her father-in-law (deceased) by means of a "shul" and dragged him to the courtyard of Mukutar. She also deposed that the accused persons stabbed in the eye of her father-in-law by means of a crowbar and inflicted fracture injury on his legs by means of a rod. She also stated that when her husband Dhan tried to run away from the house, Hafijur caught and fell him into a pond, Sarif dealt a blow on his (Dhan) head and accused Mukutar inflicted cut injury on his arm.

10. PW-8 is the daughter of the deceased. According to her, she was not an eye witness to the occurrence. She came later having come to know about the occurrence and had seen Motibur and his father in injured state and immediately after his arrival, her father expired. She also stated to have seen a pierced injury in one of the eyes of her father.

11. PW-5 was a witness to the seizure list. He came to the house of the deceased at about 4 O'clock and had seen Habibur Rahman lying dead in the courtyard. According to him, inquest on the body was held in his presence and he put his signature in the inquest report (Ext.-4).

12. PW-6 was Dr. Basudev Malakar, who examined the injured Azizur Rahman @ Dhan (PW-2) and Motibur Rahman (PW-3). PW-6 deposed that on examination of Azizur Rahman, he found "fresh cut injury over the forearm with crushed of muscles, blood vessels and forearm bones, fresh lacerated injury over left side of scalp". PW-6 also stated that on examination of Motibur, he found "fresh penetrative injury over left iliac forearm".

13. Dr. Sushil Das, who conducted the post mortem examination on the body of the deceased has been examined as PW-9. According to the autopsy doctor, following injuries were found on the body of the deceased :-

- “1. Achymosis injury over left side of neck. Size 1/2" x 1/4" x 1/4" .
2. Achymosed scalp on both parietal region.
3. Congested epidural and subdural blood cut seen at both parietal region.
4. Multiple intra cerebral blood clot seen.
5. Fracture of shaft of right tibia and fibula above ankle joint.
6. Fracture of tibia and fibula at shaft of left side.
7. Clotted blood firmly adherent to the injury sites and all are ante-mortem in nature.”

14. In the opinion of the doctor, cause of death was shock and haemorrhage as a result of the injuries sustained. During cross-examination of the PW-9, it was elicited that there was no incised wound on the body of the deceased. The doctor further stated in his cross-examination that he did not ascertain the weapon used for causing the injuries.

15. PW-10 was the investigating officer, who deposed that on 19-06-2009, at about 4.50 PM, Anjuma Begum (wife of PW-3) came to the police station and informed verbally that a fight had taken place between her husband and father-in-law and the brothers of her father-in-law. She also informed that her husband as well as her father-in-law and brother-in-law sustained grievous injuries. On the basis of the said information, he made GD Entry No. 317 dated 19-06-2009 and proceeded to the place of occurrence. He also proved the GD Entry No. 317 dated 19-06-2009 as Ext.-7. According to him, upon arrival at the place occurrence, he drew a sketch map of the place of occurrence, held inquest on the body of the deceased and examined the witnesses, who were found available at the place of occurrence. He also stated to have found accused Mukutar Rahman, Sahidur Rahman and Abdur Rahman in injured state and sent them to hospital for treatment. Thereafter a written Ejahar was filed by Lutfur Rahman on 20-05-2009, on the basis of which, he registered the case. He also stated to have seized some incriminating articles, viz., one stick, made of bamboo, two broken pieces of bricks and five pieces of stones in presence of the witnesses. In the meantime, he was transferred and therefore handed over the case diary to his successor. He has stated during cross-examination that on 19-06-2009, one Sahina Begum also lodged an Ejahar in connection with the same incident and a cross case was registered vide Kaki PS Case No. 35/2009 u/s 447/325/34 IPC. He also proved the previous statement of PW-7 and PW-8 recorded u/s 161 CrPC.

16. The appellant also examined one Nasir Uddin (DW-1) as defence witness. He deposed that there was long standing dispute between both the parties and a village meeting was held on the day of occurrence at about 12 O'Clock. However, the dispute could not be resolved in the village meeting as the elder brother of the deceased Habibur Rahman was reluctant to abide by the decision of the village meeting. According to him, he had no knowledge as to what had happened after the village meeting.

17. Appreciating the above evidence brought on record, the learned trial court convicted the appellants u/s 302 IPC. However, the learned trial court acquitted all the accused persons of the charges u/s 147/148/447/326 IPC.

18. Assailing the impugned judgment, learned counsel for the appellant Mr. A.I. Uddin submitted that no charge u/s 302 IPC was framed against the appellant Saidur Rahman, and

as such, conviction of the appellant Saidur Rahman u/s 302 IPC was illegal and improper. Mr. Uddin further contended that though, charge was framed u/s 302 with the aid of section 34 IPC against five accused persons including the appellants, learned trial court convicted the three appellants u/s 302 simplicitor. As such, conviction and sentence against the appellants was illegal and improper.

19. Learned Addl. Public Prosecutor, Mr. Phukan submitted that when charge is framed u/s 302 with the aid of Section 34 IPC, the conviction u/s 302 simplicitor is permissible, in the event of failure of the prosecution to establish the common intention, if the evidence on record establishes the substantive offence.

20. We have considered the submission made by the learned counsel and also perused the evidence and materials brought on record.

21. As already indicated above, charges were framed against all the accused persons including the present appellants under various penal provision. However, all the accused persons including the appellants were exonerated from all other accusation, of which charges were framed, except for the charge u/s 302 IPC, for which, a separate charge u/s 302 read with section 34 IPC was framed against five of the accused persons, viz., Hafijur Rahman, Sahidur Rahman, Hasibur Rahman, Rafique Ali and Mukutar Rahman. But no charge was framed u/s 302 IPC against the appellant Saidur. Accused Mukutar Rahman died during trial and the learned trial court convicted the present appellants u/s 302 IPC despite the fact, that no charge u/s 302 IPC was framed against the appellant Saidur Rahman. Therefore, the contention of the learned counsel for the appellants is that conviction of the appellant Saidur Rahman u/s 302 IPC was vitiated for not framing charge. As such, his conviction is liable to be set aside on this count alone, inasmuch as, he could not have been convicted u/s 302 IPC without framing a charge, submits Mr. Uddin.

22. The law with regard to the consequence of defect in framing of charge or omission to frame charge is no longer res integra. It is the settled position that non-framing of charge or mere defect in framing of charge, per se, does not vitiate the trial in view of the provision contained in Section 215, 221 and 222 of the CRPC, which take care of the situation arising out of omission or defect in framing of charge.

23. In Rafique Ahmed Vs. State of U.P., AIR 2011 (SC) 3114, the Supreme Court observed that non-framing of charge, per se, will not vitiate the trial itself. The same will have to be examined in the facts and circumstances of the case. Thus, in a case where charge was framed for the offence of dacoity with murder under Section 396 IPC, the accused can be convicted under Section 302 IPC, without being specifically charged because the offence of murder will have to be read in to the provision of Section 396 IPC, qua the doctrine of "legislation by incorporation."

24. In K. Prema S. Rao & Anr. - Vs. Yadla Srinivasa Rao & Ors., (2003) 1 SCC 217 the Supreme Court observed that mere omission or defect in framing the charge does not disable the court from convicting the accused for the offence which is found to have been proved on the evidence on record. The provision of Section 221 CrPC take care of such situation and safeguard the power of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence.

25. The Apex Court in Jaswantrai Manilal Akhaney Vs. State of Bombay, AIR 1956 (SC) 575, observed that unless the irregularity or omission has mislead or cause prejudice to the accused and occasioned a failure or justice, it will not vitiate the trial.

26. With regard to the second submission made by the learned counsel for the appellant, that in view of framing charge u/s 302 IPC read with 34 IPC, conviction could not have been recorded u/s 302 IPC simplicitor against the present appellants, suffice it to say that Section 34 IPC is only a rule of evidence and does not create a substantive offence. As such, conviction under any substantive provision of penal law does not get vitiated, even if charge is initially framed with the aid of section 34 IPC, provided there are evidence and materials to establish the charge against the accused, who are convicted and the accused is not prejudiced thereby. Reference may be made to the constitution Bench judgment of the Supreme Court in Willie (Withan) Slaney- Vs.- State of U.P., AIR 1956 (SC) 116 : 1956 CrL. L. J. 291. In the said case two brothers were put up for trial on the charge under section 302 IPC read with section 34 IPC. Upon appreciation of evidence, learned trial court found that only one of them struck the fatal blow and accordingly, he was convicted u/s 302 IPC and the other was acquitted. High Court upheld the conviction and the matter landed in Supreme

Court. The question before the Supreme Court was whether the omission to frame an alternative charge under section 302 IPC simplicitor was illegal that vitiated the trial. The Supreme Court having considered the conflicting decision on the matter, held that omission to frame an alternative charge u/s 302 IPC simplicitor in the facts and circumstances of the case was not an illegality that vitiate the trial, but was a curable irregularity as it had not occasioned any prejudice to appellants and accordingly conviction and sentence of the appellants u/s 302 IPC simplicitor was not interfered.

27. The pertinent question therefore, is, whether the defect in framing of charge or omission to frame charge has caused prejudice to the accused. It goes without saying that the basic object and purpose of framing charge is to enable the accused to know the accusation against him and to prepare his defence. Therefore, charge is basically a notice of the specific accusation against an accused, which he is required to meet. As such, the principle of natural justice and the right of fair trial demands that the accused should know the accusation and charge brought against him. Unless the accused has the knowledge of the charge, he is required to meet, he may not be able to prepare his defence properly and in that event the accused may be prejudiced for being deprived of preparing his defence. It must also be borne in mind that prejudice is a question of fact, which is required to be proved like any other facts. Therefore, whether an accused has been prejudiced for any defect in framing of charge, or for non-framing of charge would depend on the facts of a particular case.

28. In the instant case, the appellant Saidur was exonerated from all the accusation of which charges were framed. However, he was convicted only u/s 302 IPC of which no charge was framed against him. As such, necessarily he did not have any notice or knowledge, that he was also being tried for an offence of murder. There may be a case where a distinctly separate offence is included in the charge of another offence, for example section 396 IPC, which provides punishment for dacoity with murder. In case of an offence u/s 396 IPC, which combined two offences i.e. dacoity and murder, when charge is framed u/s 396 IPC, a person may be convicted under Section 302 IPC, if evidence brought on record establishes the charge u/s 302 IPC, even in absence of separate charge u/s 302 IPC, reason being that in such case accused has the notice or knowledge that he was being tried both for dacoity and

murder as section 396 IPC combines both the offence (vide Rafique Ahmed –Vs- State of U.P.). There may be another situation, where same set of act may constitute different offence and the acts may be of such nature, that it is doubtful as to what offence has been committed. In such a situation if charge is framed for one of the offence, conviction can be recorded for another offence, for which also charge could have been framed on the same set of facts. All these situations are taken care of by the provision of section 221 of the CrPC. Therefore, what is important is that the accused must have the notice, in whatever, manner, of the accusation, and he cannot be taken by surprise to be convicted for an offence without notice. The appellant Saidur was convicted u/s 302 IPC without any notice that he was being tried for the offence u/s 302 IPC. A serious offence like murder which may entail even a capital punishment, in our considered opinion, cannot be tried without framing a proper and specific charge and without giving adequate notice thereof to the accused, so as to enable him to prepare his defence. Recording conviction of the appellant Saidur u/s 302 IPC without framing charge, in our considered view, deprived him of preparing his defence, which in the facts and circumstances of the case, certainly caused prejudice to him. As such, we find force in the submission of the learned counsel for the appellants to the effect that the conviction of the appellant Saidur Rahman u/s 302 IPC without framing charge in the facts and circumstances of the case was bad in law.

29. What we take note of from the evidence on record is that the accused persons and the informant party both were siblings of the common ancestor and there was dispute between them regarding a plot of land. The PW-2 deposed that Mukutar came and asked for demarcation of the land and thereafter other accused persons came and started cutting bamboos on the disputed land. According to PW-3 Mukutar asked him to come out of the house and other accused persons were cutting bamboos. The PW-4 also deposed that initially accused person started cutting bamboos and Mukutar asked them to demarcate the boundary. According to PW-7, the accused Mukutar asked for handing over possession of the land and others were cutting bamboos. The DW-1 also deposed that there was a village meeting to resolve the long standing property dispute between the parties, but the dispute could not be resolved as complainant party was reluctant to obey the decision of the village meeting. From the above oral testimony of all the eye witnesses of the prosecution as well as

of DW-1, it is revealed that when the accused persons were cutting bamboos from the disputed land, which was claimed by both the parties and accused Mukutar demanded demarcation of the boundary of the land, the quarrel started. It is also in the evidence of the investigating officer that three of the accused persons also sustained injuries, who were sent for treatment by the I/O. The I/O has also deposed that a cross FIR was also filed from the side of the appellants, on the basis of which, Kaki PS Case No. 35/2009 u/s 447/325/34 IPC was registered. The evidence of the I.O. as well as the Ext. 16, the extract copy of GD Entry No. 317 dated 19-06-2009 shows, that the wife of the injured witness Motibur verbally informed the police immediately after the occurrence stating, that a fight had taken place between both the parties and three persons including the deceased and her husband sustained injuries. From the above evidence on record, it has been clearly established that there was a mutual fight between both the parties due to dispute over the land.

30. Evidently the accused person were cutting bamboos and as such, they had sharp weapons like "dao" etc. used for cutting bamboo. The medical evidence shows that the deceased did not sustain any incised injury, meaning thereby, none of the accused used any sharp weapon to assault the victim, though, they were armed with sharp weapons. What is clearly discernible from the above evidence on record is that a sudden fight took place between the parties, when the accused Mukutar demanded demarcation of the land and both sides assaulted each other causing injuries to three persons on each side and unfortunately one of them i.e. Habibur died. In the above facts and circumstances, it can by no stretch of imagination be held that the appellants shared any common intention to cause death of the deceased Habibur.

31. True it is, common intention may develop at the spur of the moment even during the course of the occurrence, which can be inferred from facts situation of a particular case. In the case in hand even if it is assumed for the sake of argument that some common intention developed in course of the occurrence, having regard to the genesis of the occurrence and more particularly the nature of injury and weapon used, the same can hardly be traced beyond causing hurt or injury. Therefore, question of constructive liability for causing death of deceased Habibur Rahman does not arise in the facts and circumstances of the case. As per medical evidence the death of the victim Habibur Rahman was caused due to the injury

sustained on the head. However, there is no evidence to show that injury sustained by the victim on his head, which became fatal was inflicted by any of the appellants. In the absence of any evidence to the effect that appellants shared a common intention to cause death of Habibur or to show that the fatal blow was given by the appellants, they could not have been convicted u/s 302 IPC for committing murder. Having said so, we may once again turn to the evidence on record to assess the liability of the appellants, if any.

32. PW-2 deposed that Mukutar (since deceased) stabbed in the ear of Habibur Rahman(deceased) with a "shul" and accused Hafijur, Sahidur, Saidur and Mukutar inflicted fracture injury on the leg of Habibur Rahman by means of a crowbar and axe and they also plucked his (deceased) right eye by means of crowbar. Though the testimony of this witness with regard to plucking of an eye of the deceased seems to be exaggerated embellishment for not being supported by other evidence including inquest report as well as the medical evidence, his testimony to the effect, that the appellants inflicted injury on the leg of the deceased causing fracture of tibia and fibula remained unimpeached. PW-3 also stated that Mukutar stabbed his father with a "shul" and also inflicted fracture injury on the leg of this father (deceased) by means of a crowbar. PW-4 deposed that the accused persons assaulted her husband and dragged him to the courtyard of Mukutar. Though, PW-4 did not mention the name of the appellants specifically, she also stated that all the accused persons assaulted her husband. PW-7, another eye witness to the occurrence also deposed that the accused persons inflicted injury and caused fracture on the leg of the deceased with a rod.

33. From the above evidence it is abundantly clear that the accused/appellants Hafijur, Sahidur and Saidur inflicted injury on the leg of the deceased and the testimony of the ocular witnesses also finds support from the medical evidence, which shows that the deceased sustained "fracture of shaft of right tibia and fibula above ankle joint and fracture of tibia and fibula at shaft of left side". We also take note of, that none of the ocular witness deposed that the fatal injury on the head, which ultimately caused the death of the deceased, was inflicted by the present appellants.

34. Though PW-2, has stated that the injury on the leg was inflicted by axe and crowbar and PW-7 deposed that the injury on the leg of the deceased was caused by rod, neither any rod nor any axe was seized by police. It is in the evidence of the investigating officer that

immediately after the occurrence, wife of the PW-3 informed him verbally about the occurrence and pursuant to such information, he arrived at the place of occurrence and seized one stick made of "Jati bah" (bamboo of a particular variety), a pointed stick of bamboo, two pieces of broken bricks and five number of stones. Therefore, although prosecution witnesses have deposed that the injuries on the leg of the deceased was caused by axe, rod, crowbar and stick etc. in absence of specific evidence as to which of the weapon was used and in the face of clear medical evidence that no incised wound was found on the body of the deceased, coupled with the facts that except stick made of bamboo as well as stones and broken bricks, no other weapon was seized by the police , who arrived the scene immediately after the occurrence, it cannot be said for certain that injury on the leg of the deceased was caused by any dangerous weapon of offence. It is however, abundantly clear from the medical evidence that the injury was inflicted by a blunt object. Therefore, in the facts and circumstances of the case, we are of the considered view that the appellants would be liable only u/s 325 IPC for causing grievous hurt to the deceased Habibur Rahman.

35. In the teeth of the above discussions, we set aside the conviction of the appellants u/s 302 IPC, instead, convict them u/s 325 IPC and sentence them to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 1,000/- each, in default, they will undergo simple imprisonment for 15 days.

36. With the modification and alteration to the extent indicated above, the appeal stands partly allowed.

37. Send back the LCR.

**JUDGE**

**JUDGE**

**Comparing Assistant**