

**CAUSE TITLE****Sessions Case No.197(NL)2013.**

Informant : Sri Druneswar Das.

Accused : 1) Sri Babul Das.  
S/O Lt. Kanpai Das.  
Vill. Kachua Majgaon.  
P.S - Bihpuria.  
Dist. Lakhimpur.

2) Sri Nilanjan Das.  
S/O Sri Babul Das.  
Vill. Kachua Majgaon.  
P.S - Bihpuria.  
Dist. Lakhimpur.

**ADVOCATES :**

For the State : Mr. Jagneswar Saikia, the learned Public Prosecutor.

For the Defence : Mrs. Piju Borah, Advocate.

**IN THE COURT OF THE SESSIONS JUDGE, LAKHIMPUR,  
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),  
Sessions Judge,  
Lakhimpur, North Lakhimpur.

Sessions Case No.197(NL)2013  
G.R. Case No.1291/2013

State of Assam

Vs

Sri Babul Das & Sri Nilanjan Das.

Charge: Under Section 302/34 IPC.

Date of evidence on : 17.11.2014, 20.01.2015, 10.03.2015,  
28.04.2015, 14.12.2015, 03.02.2016,  
20.06.2016, 22.11.2016, 02.01.2017,  
27.03.2017, 09.04.2018, 30.07.2018,  
07.02.2019, 19.09.2019.

Date of argument : 03.12.2020.

Date of Judgment : 17.12.2020.

**J U D G M E N T**

1) An excerpt of the prosecution case is that, on the day of 19.08.2013, Mohan Das was in the 'Sabzi' bazaar when he asked Babul Das to return him Rs.10,000/- which was due to him (Mohan Das). Mohan was called by Babul Das to his house in the

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evening to pay the debt. Mohan then went to Babul Das' house from the market. He called his father Sri Druneswar Das at about 8 PM from Babul's house and informed him that he was still in Babul's house. At night Babul Das and Tun Das killed Mohan Das in their house and they took his body and hanged Mohan's body with a rope under the 'Kachua Khat' bridge. An ejahar regarding this incident was lodged by Druneswar Das (here-in-after the informant) and a G.D. Entry No.173 dated 20.08.2013 was registered and the ejahar was forwarded to Bihpuria P.S. and was registered as Bihpuria P.S. Case No.195/2013 u/s 203/201/34 of the Indian Penal Code, 1860 (IPC for short).

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He made preparations for inquest and forwarded the body for autopsy. He recorded the statements of the witnesses and prepared the Sketch Map. On finding prima facie materials, he submitted Charge-sheet against Sri Babul Das and Sri Nilanjan Das (hereinafter the accused persons) u/s 306/34 IPC.

3) On appearance of the accused persons, copies were furnished and after hearing both the sides, a formal charge u/s 302/34 IPC was framed, read over and explained to the accused persons. The accused persons abjured their guilt and claimed innocence.

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4) To substantiate its stance, the prosecution adduced the evidence of 16 witnesses and exhibited various documents. The defence cross-examined the witnesses to refute the charges.

**CONTENTION OF PARTIES.**

5) The learned P.P., Mr. Jagneswar Saikia laid stress in his argument that the evidence of PW.1 and the F.I.R. clearly reveals that Babul Das called Mohan Das to his house. Mohan was therefore last seen in the company of Babul Das and his family members. As the body was discovered on the very next day, the circumstances lead us to believe that accused persons Babul Das and Nilanjan Das are complicit. On the contrary, the learned defence counsel laid stress in his argument that this case is based on surmises. The F.I.R. was written by police with speculation. The deceased committed suicide and so his body was found underneath the bridge. The remaining part of the argument will be discussed at the appropriate stage.

**POINTS FOR DETERMINATION :**

6) The following points are taken up for proper adjudication of this case :

i) Whether the accused persons Babul Das and Nilanjan Das committed the murder of Mohan Das by intentionally causing the injuries which were,

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ii) Sufficient in the ordinary course of nature to cause death of a person.

**DECISION THEREON AND THE REASONS FOR THE DECISION :**

7) To decide this case in its proper perspective, it is necessary to delve into the evidence. Sri Druneswar Das is the informant and he testified as PW.1 that the incident occurred about 3 months ago, at about 8 PM. During the day time at about 2 PM, he went to the weekly market to his son's shop. His son Mohan Das (hereinafter the deceased) asked him to sit in his shop and the deceased went out for tea leaving him (PW.1) in his shop. After his son returned, he purchased vegetables and returned home at about 3 PM. Mohan did not return home till 8 PM and so he called Mohan who informed him that he was in Babul Das's house. Again at about 9 PM, he called his son, but found his phone switched off. At about 11 PM, he (PW.1) retired to bed. At about 4/4:30 AM, his daughter-in-law, Smt Runjun Das woke him up and informed him that Mohan has not returned home till then. Then he advised her to wait till dawn.

8) The evidence of PW.1 further proceeds that after sometime, he went to Babul's house, who was sleeping. He called Babul several times, but Babul responded with a hissing sound "iss" and dozed

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of. He then waited in Babul's house for sometime. Babul then came out and told him "where will you go in search of Mohan?". Thereafter, Tun Das came out and asked him as to where he was supposed to find Mohan at that time.

9) The evidence of PW.1 further proceeds that he returned home and after about 3 minutes, he learnt from the villagers that the body of a person was hanging under the bridge, which is situated at a distance of 1 furlong from his house. Then he went to the spot and found Mohan's body hanging by a thin plastic rope under the bridge. He was not wary, who informed the police, who came and seized his son's bicycle along with a pair of 'chappal' and a blood stained vest (ganji). Later on, he lodged an ejahar which was written according to his narrative. He further testified that he strongly suspects that the accused person Babul Das was responsible for his son's death because his son informed him over phone that he was in Babul's house in the previous night. The evidence of PW.1 further proceeds that Babul borrowed Rs.10,000/- from his son and Mohan demanded back the same from the accused, when the accused threatened him, just 3 days before the incident. Then his son lodged a case against Babul Das and Nilanjan Das. On the day of incident, Babul's wife verbally abused him (Mohan) because of the criminal case against her husband. Nilanjan also threatened him regarding the

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criminal case against them. On the day of incident, his son Mohan went to the accused person's house to take back the money loaned to the accused person. Ext.1 is the F.I.R. and Ext.1(1) is his signature. Ext.2 is the Seizure List and Ext.2(1) is his signature. Ext.3 is his statement recorded by the Magistrate and Ext.3(1) and Ext.3(2) are his signatures. The evidence of PW.1 is consistent to his testimony u/s 164 CrPC.

10) The father may be privy to his son's financial transaction. The PW.1 may have known about borrowing of money by the accused persons from his son. His evidence supports the last seen theory because Mohan informed him over phone that he was with the accused persons, Babul Das and Tun Das. PW.1 had not seen his son in the accused persons' house. No call records were traced. The police took no pains to obtain the call records between the accused and the deceased. The cross-examination of the I.O., Sri Sarbeswar Nath as PW.15, however, depicts that the deceased, Mohan's wife, Smt Runjun Das has stated u/s 161 CrPC that Babul's wife, Smt Sarandhi Das came to her house and told her that the accused, Babul borrowed Rs.10,000/- from Mohan, and a case has been lodged against Babul by her husband, Mohan Das.

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11) The bad blood between both the parties is evident. The cross-examination of the I.O. which depicts that Babul Das borrowed Rs.10,000/- from Mohan Das, can be a reason why Babul Das and Tun Das killed Mohan Das.

12) At this juncture, I would like to advert the evidence of PW.2, Smt Runjun Das. She testified that the incident occurred on 19.08.2013. At about 5.30 am, her husband went to Dhalpur Weekly market, where he used to sell vegetables. At about 1 pm, Babul's wife, Sarandi Das came to their house and informed her that Babul borrowed Rs.10,000/- from Mohan Das to contest in Panchayat election, but did not return the amount and her husband Mohan lodged a case against Babul Das, tarnishing their reputation.

13) The evidence of PW.2 further proceeds that Sarandhi Das also told her that they would not return the amount to Mohan Das and she left with threats that such conduct will not be tolerated by them in the future. After collating the evidence of PW.1 and PW.2, it can be deciphered that there may be bad blood between the parties, and not only the accused persons, but also Babul's wife went to the extent of threatening Mohan's family.

14) There are circumstantial evidences against the accused persons regarding *mens rea* and the last seen theory, which

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depicts that the accused persons may have been complicit, but are these circumstances complete to a form of chain to saddle the accused persons with this case?

15) The evidence of PW.2 further proceeds that on the day of the incident, her husband, Mohan called her father-in-law at about 2.30 pm over phone, to the market to bring vegetables. So, PW.1 went to the market and took vegetables and returned home. On the same day at about 3.30 pm, Babul Das went to their house and threatened them in presence of her father-in-law stating that he is a member of Panchayat. On the same night at about 8 pm, her father-in-law called her husband over phone, and then her husband replied that he was in Babul's house as Babul called him to his house to receive money. Again at 9 pm, her father-in-law tried to call her husband, but his phone was found switched off. She was waiting for her husband the entire night to return, but her husband did not return. At about 3 / 4 am, she woke up her father-in-law, whose house is just adjacent to her house. Her father-in-law asked her to wait till dawn. A few moments later, she went to Babul's house, which is situated about 1 1/2 km away from her house. Her father-in-law followed her. Initially, they went to Gunin Das' house, who is Babul's brother-in-law, and woke him up and informed her about her missing husband and thereafter, she went to Babul's house and woke him up. Babul

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came out from his house and again, he went back to sleep. Then, Nilanjan Das came out of the house and sat on a chair and told them that they would not find Mohan Das. Nilanjan Das also asked them if she was suspicious about them. When her father-in-law saw them behaving in such a suspicious manner, her father-in-law developed strong suspicion against the accused persons and they started searching for Mohan Das. When they reached home, they found many people assembled in her house and her mother-in-law was crying. She then became unconscious and regained consciousness at about 3 pm and then, she learnt that Babul Das killed her husband. Her father-in-law lodged the ejarah and his statement was recorded by the police. The police recorded her statement after three days. The Magistrate recorded her statement, Ext.4, wherein Ext.4(1), 4(2) and 4(3) are her signatures.

16) I have perused the statement of PW.2 u/s 164 CrPC. The statement of PW.1 and PW.2 u/s 164 CrPC are consistent to their testimonies in the court except for a few deviations. The evidence of PW.1 and PW.2 clearly depicts that there was bad blood between the parties due to financial dealings between both the parties and the accused person's wife went to the extent of threatening PW.3. However, PW.2 did not testify about the accused person's wife going up to their house and threatening

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them, although, the evidence in chief of PW.1 depicts that she was present at that time when she went to their house. The evidence of PW.1 and PW.2 also depicts that the deceased was last seen or last heard when he was with the accused persons.

17) The M.O. has not given a conclusive opinion regarding the death of the victim, whether the death was ante mortem or post mortem in nature. Dr. Bijoy Doley testified as PW.6 that on 20.08.2013, he performed Post Mortem examination on the body of Mohan Das, and found the following :

“ I. EXTERNAL APPEARANCE :

1. Condition of subject stout emaciated, decomposed etc. : The dead body was stout, rigor mortise appearing on whole limbs.
2. Wounds-position and character: No external would seen except the ligature mark of the neck.
3. Bruise-position, size and nature: Not seen.
4. Mark of ligature on neck dissection etc.: Ligature mark seen around the neck joint above the thyroid cartilage with its apex in front of right auricular region anterior to the ear lobule. On dissection - parchmet intra hand loose.

II. CRANIUM AND SPINAL CANAL:

1. Scalp, skull and vertebrae: Scalp - no injury detected, Skull - no injury detected, vertebrae - dislocation of atlanta-axial joint.
2. Membrane: No injury detected.
3. Brain and spinal cord: Congested with petechiae hemorrhage. Spinal cord - detached at the level of atlanta-axial joint.

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### III. THORAX:

1. Walls, ribs and cartilages: Walls - intact, ribs - intact, cartilage - intact.
2. Pleurae: Congested.
3. Larynx and tracheae: Edematous and congested and pulled forward.
4. Right and Left Lung: Congested.
5. Pericardium: No abnormalities.
6. Heart: Chambers contains altered blood.
7. Vessels: Great vessels intact contains altered blood.

### IV. ABDOMEN:

1. Walls: Swollen, no injury mark seen.
2. Peritoneum: No injury mark detected.
3. Mouth, pharynx and esophagus: Mouth - Tongue protruded, Pharynx - congested and edematous, Frontline from angle of mouth.
4. Stomach and its contents: Distended filled with gas and half digested food particles.
5. Small intestine and its contents: Distended filled with gas and half digested food materials.
6. Large intestine and its contents: Distended filled with gas and faecal matter.
7. Liver: No injury seen.
8. Spleen: No injury seen.
9. Kidneys: No injury seen.
10. Bladder: Empty
11. Organs of generation, external and internal: External genitalia swollen with secretion on the tip. Internal - intact.

### V. MUSCLES, BONES AND JOINTS:

1. Injury: Neck muscles injury due to ligature mark.

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2. Disease or deformity: Nil.
3. Fracture: Nil.
4. Dislocation: Dislocation of atlanta-axial joint.

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE.

The deceased suffered injury on the neck from the ligature. The larynx became oedematous pulled forward and upward thereby blocking the airway. Due to hanging on its weight on the ligature there is dislocation of atlanta-axial joint along with the spinal cord. No other external or internal injury mark seen.”

The M.O. opined that the person suffered sudden asphyxia and cardio-respiratory arrest due to the ligature causing death of the person. He proved the Post Mortem Examination Report as Ext.8, wherein Ext.8(1) is his signature and Ext.8(2) is the signature of Jt. Director of Health Services, Lakhimpur.

18) It is clear from the M.O.'s evidence that no wounds except the ligature mark was visible on Post mortem examination of the body. It is not clear from the Medico legal report, whether the ligature mark was continuous or the mark was discontinued at the place, where the knot was tied. As no other external injury was detected, it can be held that the deceased may have

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committed suicide. I have already discussed the cross-examination of PW.2. The remaining part of her cross-examination is not noteworthy. The evidence of other witnesses has not substantiated the evidence of PW.1 and PW.2.

19) Sri Bhrihu Das testified as PW.3 that Mohan Das is his nephew. The incident occurred about 1 1/2 years back. He was in the market at the time of the incident. He went to the Police Station and saw the dead body of Mohan Das. The police prepared a document, where he affixed his signature as Ext.5(1).

20) In a similar manner, Sri Lachit Bora testified as PW.4 that the accused persons, Babul Das and Tun Das are father and son. Tun Das is also known as Nilanjan Das. When Mohan Das died, the police held inquest, and he affixed his signature, Ext.5(2).

21) Sri Mahendra Das also testified as PW.5 that he affixed his signature on the Inquest Report, Ext.5 as Ext.5(3).

22) The evidence of PW.3, PW.4 and PW.5 clearly depicts that they did not know how Mohan Das died. They affixed their signatures on the Inquest Report. They did not even mention under what condition, the body of Mohan Das was found.

23) Sri Umesh Das testified as PW.6 that he heard that Mohan Das committed suicide. He saw Mohan's body hanging under the bridge.

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24) Sri Mrinal Saikia testified as PW.7 that the incident occurred in the year, 2013. He received a phone call in the morning from Pabitra Baruah that the body of a person was found hanging under the bridge. Then, he informed the police and reached the place of occurrence. The police already reached the place of occurrence and he saw the body hanging by a rope. Subsequently, he learnt that the name of the deceased was Mohan Das. Similarly, PW.8 also did not incriminate the accused persons in any manner.

25) Sri Lenin Baruah testified as PW.8 that the incident occurred about 3 1/2 years back. At the time of occurrence, he was proceeding towards his house from Kokheswar's house and he saw Mohan Das proceeding towards Jamuguri. On the next morning, he heard that Mohan Das was found dead and he was found hanging by a concrete bridge.

26) The evidence of PW.9, PW.10 and PW.11 does not implicate that the accused persons are complicit.

27) Sri Pabitra Baruah testified as PW.9 that the incident occurred about three years back. When he heard a commotion, he went to the place of occurrence and saw the body of the deceased hanging under the bridge. After the arrival of SDC, the body was lowered down.

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28) Sri Hemen Das testified as PW.10 that he had no knowledge about the incident. Mohan Das was his cousin.

29) Sri Chandra Baruah testified as PW.11 that he had no knowledge about the incident.

30) The evidence of PW.12, PW.13 and PW.14 also does not implicate that the accused persons are complicit.

31) Sri Jiban Neog testified as PW.12 that he did not know how Mohan Das died. He and Mohan Das had a joint business.

32) Sri Hara Kanta Das testified as PW.13 that Mohan's, Babul's and Nilanjan's houses are situated at Kachua Majgaon. His house is about 4 kms away from Mohan's house. The incident occurred about five years ago. On the day of the incident, he heard that Mohan's body was found hanging under the bridge at Kachuwa. He did not know who killed Mohan Das.

33) Similarly, Sri Mohan Baruah testified as PW.14 that the accused persons are from Kachua Gaon. Mohan Das is not known to him. The incident occurred about 4 / 5 years back. On that day at about 7 / 8 am, he was ploughing his paddy field at Badoikuchi. His paddy field is near the PWD road at Dhalpur Jamuguri. There is a bridge connecting the road. While ploughing the field, he went to answer nature's call and when he went towards the bridge, he saw a man hanging under the bridge and

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when he raised alarm, then the people came to the spot could not recognise the person, who was found hanging under the bridge.

34) In view of my foregoing discussions, it can be held that although the evidence of PW.1 and PW.2 depicts that Mohan Das was in the accused persons' house till late at night, yet the accused persons cannot be held guilty on these circumstances alone. There may have been a *mens rea* on the part of the accused persons to do away with Mohan Das to avenge the dispute regarding money, which Babul borrowed from Mohan and failed to return. Babul Das and Tun Das may have been infuriated by the criminal case lodged against him. But, the statement of PW.2 u/s 164 CrPC depicts that Mohan Das already told Babul Das not to worry about the case. Thus, Babul Das may not have any strong motive to kill Mohan Das. The time when Mohan Das was last present with Babul Das and Tun Das vis-a-vis the time when the body was found hanging is too wide. Moreover, the doctor failed to opine whether death was ante mortem or post mortem in nature.

35) The circumstances discussed does not form a complete chain. The circumstances are vague in nature and does not form a complete chain to hold the accused persons guilty of offence as serious as murder. It is held that the prosecution has failed to

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prove beyond reasonable doubt that the accused persons killed Mohan Das and then hung him under the bridge.

36) It is thereby held that the prosecution has failed to prove beyond reasonable doubt that the accused persons committed murder of Mohan Das by intentionally causing the fracture of the thyroid by tightening the noose around the deceased's neck, and thereafter by hanging him under the bridge, which is far away from the accused persons' house. No injury was also detected apart from the ligature mark.

37) The accused persons are not held guilty of offence u/s 302/ 34 IPC. There is no evidence of abetment to commit suicide.

38) The accused persons, Sri Babul Das and Sri Tun Das are acquitted from the charges u/s 302/ 34 IPC and set them at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 17<sup>th</sup> day of December, 2020.

( S.P. Khaund )  
Sessions Judge,  
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

( S.P. Khaund )  
Sessions Judge,  
Lakhimpur, North Lakhimpur.

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**APPENDIX****Sessions Case No.197(NL)2013.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Druneswar Das.
2. PW.2 - Smt Runjun Das.
3. PW.3 - Sri Bhrigu Das.
4. PW.4 - Sri Lachit Das.
5. PW.5 - Sri Mahendra Das.
6. PW.6 - Sri Umesh Das.
7. PW.7 - Sri Mrinal Saikia.
8. PW.8 - Sri Lenin Baruah.
9. PW.9 - Sri Pabitra Baruah.
10. PW.10 - Sri Hemen Das.
11. PW.11 - Sri Chandra Baruah.
12. PW.12 - Sri Jiban Neog.
13. PW.13 - Sri Hara Kanta Hazarika.
14. PW.14 - Sri Moina Baruah.
15. PW.15 - Sri Sarbeswar Nath, I.O.
16. PW.16 - Dr. Bijoy Doley, M.O.

**LIST OF COURT WITNESS :**

Nil.

**LIST OF EXHIBITS FOR PROSECUTION :**

1. Ext.1 - F.I.R.
2. Ext.2 - Seizure List.
3. Ext.3 - Statement u/s 164 CrPC.
4. Ext.4 - Statement u/s 164 CrPC.
5. Ext.5 - Inquest Report.

**LIST OF MATERIAL EXHIBITS FOR PROSECUTION :**

Nil.

**LIST OF WITNESSES FOR DEFENCE :**

Nil.

**LIST OF EXHIBITS FOR DEFENCE :**

Nil.

( S.P. Khaund )  
Sessions Judge,  
Lakhimpur, North Lakhimpur.

Transcribed and typed by :  
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