

**CAUSE TITLE****SESSIONS CASE NO.117(NL)2017.**

Informant : Sri Kula Borpatra.

Accused : Sri Bhupen Gohain.  
S/O Lt. Durga Gohain.  
Vill. Tribeni Para Gaon.  
P.S. Ghilamara.  
Dist. Lakhimpur.

**ADVOCATES :**

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

For the Defence : Mr. Uttam Phukan, 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.117(NL)2017  
G.R. Case No.285/2016.

State of Assam

Vs

Sri Bhupen Gohain.

Charge: Under Section 420/ 306 IPC.

Date of evidence on : 27.11.2017, 09.04.2018, 25.06.2018,  
18.07.2018, 03.08.2018, 10.12.2018,  
03.07.2019, 31.07.2019  
and 12.03.2020.

Date of argument : 23.12.2020.

Date of judgment : 23.12.2020.

**JUDGMENT**

1) The prosecution case in a nutshell is that Jogananda Borpatra Gohain ( hereinafter the deceased ) borrowed money from Bhupen Gohain ( hereinafter the accused person), in exchange of the deceased's Pass Book, cheque and ATM card. In this manner,

Contd...

the accused siphoned off the salary of the deceased as payment of his debt along with interests. As a consequence, the deceased had to endure immense difficulties, and in the meantime, his wife passed away. On 12.09.2016, the deceased met his end by drowning because when he went to the accused to ask for his ATM card, blank cheque and Pass book, the accused refused to return the same.

2) An *ejahaar* regarding this incident was lodged by the deceased's younger brother, Sri Kula Patra, which was registered as Ghilamara P.S. Case No.112/2016 under Section 420/ 306 of the Indian Penal Code (IPC for short), and SI Ajit Kumar Bhuyan embarked upon the investigation.

3) The Investigating Officer (I.O. in short) went to the place of occurrence, prepared the sketch map and recorded the statements of the witnesses. Inquest was held after the body was hauled up from the water, and thereafter, the body was forwarded for autopsy. On finding *prima facie* materials against the accused, charge-sheet was laid against the accused person under Section 420/ 306 IPC.

4) On appearance of the accused, copies were furnished and as this case is triable by the Sessions Judge, the case was committed to this Court vide order dtd.31.07.2017 passed by the

Contd...

learned Sub-Divisional Judicial Magistrate (M), Dhakuakhana, in connection with G.R. Case No.285/2016.

5) After hearing both the sides, a formal charge under Section 420/ 306 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

6) To substantiate the stance, the prosecution adduced the evidence of 14 witnesses including the Medical Officer (M.O. in short) and the I.O., and exhibited various documents. The defence cross-examined some of the witnesses, to refute the charges.

7) I have heard the arguments forwarded by the learned counsel for both the sides.

#### **POINTS FOR DETERMINATION**

8) On the back drop of the rival contentions proponent at the bar, the following points are apposite for proper adjudication of this case.

i) Whether on or before 12.09.2016, the accused cheated the victim, Jogananda Borpatra by inducing him to deliver his ATM card, Pass book and blank cheque in lieu of the loan given by the accused to the deceased and thereafter, the accused cheated

Contd...

the deceased by withdrawing the salary received by the deceased during his lifetime?

ii) Whether at the same day, time and place, the accused abetted the victim and induced him to commit suicide by drowning?

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

9) The irony of this case is that the informant failed to incriminate the accused person. Sri Kula Patra testified as PW.1 that he lodged the ejahar, Ext.1, wherein Ext.1(1) is his signature. About a year ago, his elder brother went to take a bath in the nearby 'Sampara' river, but unfortunately he died as a result of drowning. Next day, his brother's body was found in the river. This witness was declared as hostile, and the prosecution was allowed to cross-examine this witness. He has admitted in his cross-examination that he lodged the ejahar, which implicated that the accused used to harass his brother and the accused abetted his brother to commit suicide. However, in his cross-examination by the defence, PW.1 retracted his statement u/s 161 of the Code of Criminal Procedure ( CrPC in short ) and mentioned that the accused did not abet his brother to commit suicide by harassing him.

Contd...

10) Sri Brojen Patra testified as PW.2 that both the parties are known to him, and the deceased was from his village and from the same family. He heard that the deceased passed away after falling into a river. He did not know how the deceased got drowned in the river.

11) Thus, the evidence of PW.1 and PW.2 does not implicate that the accused abetted the victim to commit suicide. There may be a strong suspicion against the accused. The FIR reveals that the accused retained the Pass Book, ATM card and a blank cheque of the deceased and did not return the same to the deceased, but the PW.1 failed to mention about any Pass Book or Cheque book being retained by the accused, or siphoning off money with the help of the ATM card. Similarly, the evidence of PW.3 does not implicate that the accused is complicit.

12) Sri Rajib Kumar Gogoi testified as PW.3 that on 12.09.2016 at about 11 pm, he heard a commotion and he went to the place of occurrence and saw the dead body of Jogananda Borpatra lying on the road. The people assembled there told him that Jogananda Borpatra died as a result of drowning.

13) Sri Dayaram Patra testified as PW.4 that his wife informed him over mobile phone that Jogananda Borpatra died as a result of drowning. At that time, he was admitted in the Nursing Home

Contd...

and when he returned after two days, his wife informed him that Jogananda Borpatra was inebriated and he died as a result of drowning. Thus, the evidence of PW.4 does not incriminate the accused.

14) Similarly, the evidence of Dulal Gogoi, Naba Patra, Hema Patra, Khagen Patra, Ramen Gohain, Rajen Baruah, Bolin Gogoi and Proloy Kumar Bhowmik as PW.6, PW.7, PW.8, PW.9, PW.10, PW.11, PW.12 and PW.13 respectively, does not at all implicate that the accused is complicit. Sri Dulal Gogoi testified as PW.6 that the accused person's house is about 3 kms away from his house. The incident occurred about two years ago. He is a farmer and he was working in Ghana Chutia's house. When he returned home, his wife informed him that his brother-in-law, Jogananda Borpatra died as a result of drowning when he was taking a bath in the river. Then, he along with his wife, Dipali went to the place of occurrence and saw his brother-in-law's body, which was hauled up from the water and laid on the road. The police took the body for autopsy. The body was handed over to the family for funeral rites. No one killed the deceased. He was not aware about any financial transaction between the accused and the deceased.

15) Sri Naba Patra testified as PW.7 that the incident occurred about two years ago. On the evening, when he returned from

Contd...

work, his wife informed him that the accused was inebriated and he died as a result of drowning when he was taking a bath in the river. Then, he went back to his house, and he saw that Jogananda Borpatra's body was already taken away to the North Lakhimpur Civil Hospital for autopsy. On the following day, the body was handed over to the family for funeral rites. He was not aware about any financial transaction between the accused and the deceased. In a similar manner, Sri Hema Patra testified as PW.8 that the incident occurred about two years ago. He learnt from the villagers that Jogananda passed away as a result of drowning in a river. Then, he went to Jogananda's house and saw his body in the courtyard.

16) The evidence of PW.9, Sri Khagen Patra also does not implicate that the accused is complicit. He testified that the incident occurred about six months back. At about 11 / 12 noon, while he was in his shop, his wife, Nirupama Patra informed him that his elder brother died as a result of drowning. Similarly, he went to his brother's house and saw his body lying in the courtyard. The police was already present. The body was taken for autopsy. He denied of any knowledge about the incident.

17) The evidence of PW.10, Sri Ramen Gohain also does not implicate that the accused is complicit. He testified that Jogananda's house is about 4 kms away from his house. After

Contd...

seven days of Jogananda's death, police arrested the accused, and then, he came to know that the accused was arrested in connection with Jogananda's death. PW.10 testified that he did not know how Jogananda died, and he did not know whether the accused was responsible for Jogananda's death.

18) Similarly, PW.11, Sri Rajen Baruah testified that the accused person's house is about 4 kms away from his house, and the informant's house is about 6 kms away from his house. Jogananda Borpatra was LP school teacher ( PW.10 is an Asstt. Teacher ). The incident occurred about three years ago. He came to know from his colleagues at Batomari LP school that Jogananda went to take a bath in the stream near his house and died as a result of drowning.

19) Another Asstt. Teacher, Sri Bolin Gogoi testified as PW.12 that the incident occurred about four years ago. When he returned home from training, he came to know from his family members that Jogananda died as a result of drowning.

20) PW.13, Sri Proloy Kumar Bhowmik is the Branch Manager and he testified that both the accused and the deceased are known to him. The deceased had a bank account in his branch and he used to obtain loans from the bank unscrupulously. The Officer-in-charge of Ghilamara PS came to his bank and asked him

Contd...

regarding Jogananda's bank account. The O.C. also asked about any transaction done by Jogananda's ATM card stating that Jogananda was no more. He was not wary about any transaction through Jogananda's ATM card, and so, he informed the O.C. about this matter.

21) The Medical Officer, Dr. Jayanta Kumar Dutta testified as PW.5 that on 13.09.2016, while serving as Medical & Health Officer-1 at North Lakhimpur Civil Hospital, he performed post mortem examination on the dead body of Bhupen Gohain, age 45 years, at about 3.30 pm, and found the following :-

I. EXTERNAL APPEARANCE:

1. Condition of subject stout, emaciated, decomposed etc. : An average built, adult, male, non-decomposed dead body with distended abdomen, rigor mortis was present in the limbs.
2. Wounds-position and character: Nil.
3. Bruise-position, size and nature: Nil.
4. Mark of ligature on neck dissection etc.: Nil.

II. CRANIUM AND SPINAL CANAL:

1. Scalp, skull and vertebrae: Scalp & skull - Healthy.
2. Membrane: Healthy.
3. Brain and spinal cord: Healthy.

III. THORAX:

1. Walls, ribs and cartilages: Healthy.

Contd...

2. Pleurae: Healthy.

3. Larynx and trachea : Healthy.

4. Right and Left Lung: Both lungs were soften and voluminous and bulged out when sternum was removed. Consistency was emphysematous, retained the shape after removal from the body. On sectioning, crepitation was heard.

5. Pericardium: Healthy.

6. Heart: Healthy.

7. Vessels: Healthy.

#### IV. ABDOMEN:

1. Walls: Healthy.

2. Peritoneum: Healthy.

3. Mouth, pharynx and oesophagus: Healthy.

4. Stomach and its contents: Healthy and was full with fluid.

5. Small intestine and its contents: Healthy and contained fluid and semi-digested food materials.

6. Large intestine and its contents: Healthy and contained digested food materials.

7. Liver: Healthy.

8. Spleen: Healthy.

9. Kidneys: Healthy.

10. Bladder: Healthy.

11. Organs of generation, external and internal: Healthy.

#### V. MUSCLES, BONES AND JOINTS:

1. Injury: Nil.

2. Disease or deformity: Nil.

3. Fracture: Nil.

4. Dislocation: Nil.

Contd...

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE:

An average built, adult, male non-decomposed dead body with distended abdomen, rigor mortis was present in the limbs. Both lungs were softened and voluminous, bulged out when sternum was removed. Consistency was emphysematous, retained the shape after removal from the body. On sectioning, crepitation was heard. Stomach was full with fluid. Drowning is ante mortem in nature.

OPINION:

The cause of death was due to asphyxia as a result of drowning which is ante mortem in nature.

No injuries were detected on the victim. Death was caused by drowning only.”

22) The I.O. is a formal witness. SI Ajit Kumar Bhuyan testified as PW.14 that on 19.09.2016, he was serving as the Officer-in-charge at Ghilamara P.S., and on that day, he received an FIR from Kula Patra and registered Ghilamara PS GDE No.398/2016 and Ghilamara PS Case No.112/2016 under Section 420/ 306 IPC. Earlier, an UD case was registered regarding the same incident being Ghilamara PS UD Case No.13/2016 dtd. 12.09.2016. After registration of this instant case, the I.O. made preparation for inquest, which was held by the Magistrate. Thereafter, the I.O. forwarded the body for Post Mortem examination and recorded

Contd...

the statements of the witnesses. Then, after registration of this case, he (PW.14) went to the place of occurrence and prepared the sketch map and recorded the statements of the complainant and other witnesses. Ext.3 is the sketch map, wherein Ext.3(1) is his signature. He seized the ATM card and other documents handed over to him by the complainant vide Seizure List, Ext.4, wherein Ext.4(1) is his signature. The accused was already granted anticipatory bail by the Hon'ble Gauhati High Court. Ext.5 is the Inquest Report, prepared by SI Jogesh Hazarika and Ext.5(1) is the signature of SI Jogesh Hazarika, with which he is acquainted. On finding prima facie materials, he submitted charge-sheet against the accused u/s 420/ 306 IPC. Ext.6 is the charge-sheet, wherein Ext.6(1) is his signature.

23) In view of my foregoing discussions, it has already been held that the witnesses did not implicate that the accused is complicit. On the basis of the FIR, the accused cannot be saddled with the offence of misappropriation or cheating or abetment to commit suicide. According to the tenets of the criminal jurisprudence, punishment for serious offence which invades the liberty and life of an accused, requires stricter proof. The evidence of PW.1 does not at all implicate that the accused abetted the victim to

Contd...

commit suicide as he forcefully retained the victim's ATM card, blank cheque and Pass book in lieu of the loan he extended to the victim.

24) The prosecution failed to prove this case beyond a reasonable doubt. Therefore, the accused, Sri Bhupen Gohain is acquitted from the charges u/s 420/ 306 IPC on benefit of doubt, and accordingly he is set at liberty forthwith.

25) The bail bond stands discharged.

Judgment is signed, sealed and delivered in the open Court on the 23<sup>rd</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.

**APPENDIX****Sessions Case No.117(NL)2017.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Kula Patra.
2. PW.2 - Sri Brojen Patra.
3. PW.3 - Sri Rajib Kumar Gogoi.
4. PW.4 - Sri Dayaram Patra.
5. PW.5 - Dr. Jayanta Kumar Dutta, M.O.
6. PW.6 - Sri Dulal Gogoi.
7. PW.7 - Sri Naba Patra.
8. PW.8 - Sri Hema Patra.
9. PW.9 - Sri Khagen Patra.
10. PW.10 - Sri Ramen Gohain.
11. PW.11 - Sri Rajen Baruah.
12. PW.12 - Sri Bolin Gogoi.
13. PW.13 - Sri Proloy Kumar Bhowmik.
14. PW.14 - SI Ajit Kumar Bhuyan, I.O.

**LIST OF COURT WITNESS :****LIST OF EXHIBITS FOR PROSECUTION :**

1. Ext.1 - F.I.R.
2. Ext.2 - Post Mortem Examination Report.
3. Ext.3 - Sketch map.
4. Ext.4 - Seizure List.
5. Ext.5 - Inquest Report.
6. Ext.6 - Charge-sheet.

**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 :

Sri Satyabrata Kshattray, Stenographer.