

CAUSE TITLE**SESSIONS CASE NO.62(NL)2017.**

Informant : Sri Monohar Tanti.

Accused : Sri Arun Tanti.

ADVOCATES :

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

For the Defence: Mr. Ananda Dutta, Advocate.

**IN THE COURT OF SPECIAL JUDGE : LAKHIMPUR :
AT NORTH LAKHIMPUR.**

P R E S E N T - S.P. Khaund, (MA Economics, LLB),
Sessions Judge,
Lakhimpur, North Lakhimpur.

SESSIONS CASE NO.62(NL)2017.

GR Case No.133/2017.

State of Assam.

-versus-

Sri Arun Tanti.

Charge : Under Section 302 IPC.

Date of evidence. : 14.11.2017, 25.04.2018, 05.06.2018, 07.12.2018
21.11.2019.

Date of argument. : 27.02.2020.

Date of Judgment. : 12.03.2020.

Date of sentence. : 16.03.2020.

J U D G M E N T

1) The prosecution case in a narrow compass is that Sri Arun Tanti (here-in-after referred to the accused person) exercises cruelty on his wife. In a similar manner, on the night of 13.01.2017, the accused relentlessly assaulted his wife and killed her. An F.I.R regarding this incident was lodged with the police at Lilabari Out Post and GD Entry No.200 dtd. 14.01.2017 was registered. The F.I.R was forwarded to North Lakhimpur Police Station (North Lakhimpur P.S. for short) and a case being NLPS Case No.50/2017 u/s 302 of the Indian Penal Code (IPC for short) was registered.

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2) The Investigating Officer (I.O. in short) embarked upon the investigation. He went to the place of occurrence, took steps for inquest and forwarded the body for autopsy. He prepared the sketch map, seized one wooden 'lathi' and recorded the statements of the witnesses. On finding prima facie materials against the accused, the I.O. submitted charge-sheet against the accused under Section 302 IPC.

3) 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. 23.05.2017 passed by the learned Chief Judicial Magistrate, Lakhimpur, in GR Case No.133/2017. After hearing both the sides, a formal charge under Section 302 IPC was framed, read over and explained to the accused. The accused abjured his guilt and claimed innocence.

4) To substantiate the stance, the prosecution adduced the evidence of 6 (six) witnesses including the I.O. Smti Sumoti Tanti was summoned as Court Witness No.1. Various documents were exhibited by the prosecution. The defence cross-examined the witnesses in extenso.

5) I have heard the arguments submitted by the learned counsel for both the sides.

Points for determination :

6) On the backdrop of the rival contentions urged at the bar, the following points are taken up for proper adjudication of this case :

i) Whether on the night of 13.01.2017, the accused committed murder of his wife, Sumoti Tanti by intentionally causing fatal injuries which were sufficient in the ordinary course of nature to cause her death?

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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. The accused person's younger brother, Sri Monohar Tanti has testified as PW.1 that on the previous day of 'Magh-Bihu', Arun Tanti came and informed that Sumoti Tanti passed away. Then, he along with other villagers instantly rushed to Arun Tanti's house and found Sumoti Tanti lying on the ground in a pool of blood. One wooden 'lathi' was beside the body. The accused was inebriated and he could not speak. Then, he informed the police at Lilabari Out Post about the incident and lodged the F.I.R. Ext.1, wherein Ext.1(1). The police came to the place of occurrence. As there was no one in the house, his elder brother may have killed his wife.

8) On his re-examination by the prosecution, PW.1 further testified that he noticed injuries on the entire body of the deceased, Sumoti Tanti. One blood stained 'lathi' was lying beside the body. He also noticed injuries on the face and blood was oozing out from her injuries. At the time of incident, he was staying in a separate house with his family, which is about 1 km away from Arun Tanti's house. At the time of incident, Arun Tanti was staying with his wife and one daughter in the house. His elder daughter was married and she was staying with her husband. Arun Tanti was with his wife and daughter, Smti Roma Tanti at the time of incident. Arun Tanti has a son, but he was staying as 'Ghar - Jowai' in his in-law's house.

9) In his cross-examination, PW.1 admitted his omission to state u/s 161 CrPC that blood was oozing out from the injuries of the deceased, Sumoti Tanti.

10) Sri Jadav Tanti testified as PW.2 that the informant is his father and the accused person is his uncle. On the previous day of 'Magh-Bihu', Arun Tanti came to their house and informed that Sumoti Tanti passed away. After learning about the incident, his father and some other villagers rushed to Arun Tanti's house and saw the dead body of Sumoti

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Tanti lying in the room. He did not know who killed Sumoti Tanti. At the time of incident, he was staying with his father, whose house is about 1 km away from the accused person's house. On learning about the incident, he too went to his uncle, Arun Tanti's house in the morning and saw Sumoti Tanti's dead body lying in the room in the house and he noticed injuries on face and nose, and blood was oozing out from the injuries. He did not look at the other injuries. At the time of the incident, Arun Tanti was staying only with his wife because his minor daughter was in her grandmother's house, which was about ½ a kilometer away from their house. Arun Tanti has two daughters and one son, who are married and resides separately. Arun Tanti's son stays in his in-law's house as 'Ghar -Jowai'. He admitted in his cross-examination that he did not mention before the police that he noticed injuries on the face and hand of the deceased.

11) Sri Rajesh Telenga testified as PW.3 that Arun Tanti's house is about ½ a kilometer away from his house. Sumoti Tanti was Arun Tanti's wife. Arun Tanti was an alcoholic. The incident occurred about a year ago at about 10 / 11 pm, during 'Magh-Bihu'. At the time of the incident, he heard a commotion emanating from the accused person's house. On the next morning, the accused person's neighbour, Sri Nabin Horo informed him over phone that some mishap occurred in the accused person's house and he asked him to go to the accused person's house with some other people. Then, he along with 15 /20 persons went to Arun Tanti's house and saw Sumoti Tanti's dead body lying in the house. Arun Tanti was also in the house. The police at Lilabari Out Post was informed about the incident. Then, the police came and took the body in an ambulance and arrested the accused and took him along with them. He did not know who committed the murder of Sumoti Tanti.

12) In his re-examination, PW.3 testified that when he reached the accused person's house, he noticed that Sumoti Tanti's body was lying inside the house . He did not enter into the house to take a look at the injuries sustained by Sumoti Tanti, because he felt squeamish. The accused has five children, two sons and three daughters. His elder son

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is married and he is staying with his wife at Shilonibari. The other son was not staying with Arun Tanti, but was staying with Nibash Hemram. Two of his daughters are married. His minor daughter was staying with her elder sister at the time of incident. PW.3 testified in his cross-examination that the police did not record his statement.

13) Sri Nabin Horo testified as PW.4 that the accused person's house is near his house at No.2 Baliyan village. Sumoti Tanti was the accused person's wife. The incident occurred one night about a year ago. On the following morning, Arun Tanti came to his house and called his wife, Ister Horo, and then, he went to accused person's house, who informed him that his wife passed away. He saw Sumoti Tanti's body lying on the bed in his house. He noticed injuries on the neck and legs. Thereafter, he returned to his house. From his house, he noticed that the police took away the body and the accused person along with them. He did not know who killed Sumoti Tanti. In his re-examination by the prosecution, PW.4 testified that when he went into accused person's house, he noticed Sumoti Tanti lying dead on the ground near the bed. He noticed bleeding injuries on her legs and abdomen. He saw a 'lathi', smeared with blood, beside the bed. His house is near the accused person's house. On the night of incident, both Arun Tanti and his wife, Sumoti Tanti were only present in their own house.

14) In his cross-examination, PW.4 testified that both the accused person and his wife, Sumoti Tanti were alcoholics. He did not mention before the police that he saw a 'lathi' near the dead body and he saw injuries on the neck and legs of the deceased, Sumoti Tanti.

15) Smti Roma Tanti testified as CW.1 that her mother died about two years back. The incident occurred at night. On the night of incident, her mother and father were present in the house. She was staying with her grandfather, Sri Ramesh Tanti, which is about 1 km away from her father's house. On the following morning, she learnt that her mother passed away. Then, she came back to her house and saw her mother's body lying on the ground. She noticed bleeding injuries on her head,

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face and left hand. She noticed a 'lathi' beside her mother's body. The 'lathi' was smeared with blood. Her father was not at home when she reached home. Thereafter, her father returned. She did not know who killed her mother.

16) In her cross-examination, CW.1 testified that she met police in her house, but the police did not record her statement. Her mother used to consume alcohol frequently. Her parents used to quarrel under influence of alcohol. It is possible that her father may have been involved in the incident in an intoxicated state.

17) The Medical Officer, Dr. Ram Prasad Pawe testified as PW.5 that on 14.01.2017, he was serving as Medical & Health Officer-1 at North Lakhimpur Civil Hospital. On that day at about 10 pm, he performed Post Mortem examination on the dead body of Sumoti Tanti, aged 40 year, in connection with this case and found the following :

EXTERNAL APPEARANCE :

1. Condition of subject stout emaciated, decomposed etc. :
Built - An average built non-decomposed dead body with rigor mortis present in limbs.
2. Wounds position and character : Lacerated wound in right molar region 5 x 4 x 3 cm. Lacerated wound in forehead left side 8 x 5 x 4 cm.
3. Bruise position, size & nature : Nil.
4. Mark of ligature on neck dissection etc. : Nil.

II. CRANIUM AND SPINAL CANAL :

1. Scalp, skull and vertebra : Fractured skull left forehead.
2. Membrane : Ruptured.
3. Brain and spinal cord : Brain ruptured.

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III. THORAX :

1. Walls ribs and cartilages : Present interior wall of thorax at mid portion.
2. Plurae : Ruptured.
3. Larynx and trachea : Healthy.
4. Right lung, Left lung : Ruptured.
5. Pericardium : Healthy.
6. Heart: Healthy.
7. Vessels : Healthy.

IV. ABDOMEN :

1. Walls : Healthy.
2. Peritonum : Healthy.
3. Mouth, pharynx, oesophagus : Healthy.
4. Stomach and its contents : Healthy with undigested food materials.
5. Small intestine and its contents : Healthy with semi-digested food materials.
6. Large intestine and its contents : Healthy with 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 : Fractured left wrist joint, fractured right tibia and fibula mid 3rd and fractured femur left side upper 3rd.
4. Dislocation : Fractured sternum upper 3rd , fractured right side rib 3rd, 4th, 5th, 6th and 7th rib and fractured left side rib 3rd, 4th and 5th.

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MORE DETAILED DESCRIPTION OF INJURY OR DISEASE :

An average built, female, non-decomposed dead body with rigor mortis present in limbs. Lacerated wound in right molar region and forehead as described. Fractured left wrist joint, fractured right tibia and fibula mid 3rd , fractured left femur upper 3rd , fractured sternum upper 3rd , fractured right side rib 3rd, 4th, 5th, 6th and 7th rib and fractured left side rib 3rd , 4th and 5th rib. Fractured skull at forehead left side with ruptured meninges and brain.

18) The M.O. opined that the cause of death is due to cardio respiratory failure, due to head and chest injury, due to trauma which was homicidal in nature.

19) The I.O., Inspector Lintu Borah testified as PW.6 that on 14.01.2017, he was serving as the In-charge at Lilabari Out Post under North Lakhimpur P.S. On that day, Sri Monohar Tanti lodged an ejahar with the police at Lilabari Out Post and GD entry No.200 dtd. 14.01.2017 was registered and the F.I.R was forwarded to North Lakhimpur P.S. Then, he was endorsed with the investigation. He went to the place of occurrence and prepared sketch map. He found the dead body lying on the ground in the house of Arun Tanti. He noticed bleeding injuries from the head of the victim. When he reached the place of occurrence, no one was present in the house, but thereafter, Roma Tanti, Monohar Tanti, Jadav Tanti and Rajesh Telenga arrived. Arun Tanti was not in his house, but after sometime, he returned. He found a stick like branch of a tree (lathi) in the house near the bed of the accused person, and he seized the 'lathi' vide Ex.3, seizure list, wherein, Ext.3(1) is his signature. He conducted inquest on the dead body of Sumoti Tanti. Ext.4 is the Inquest Report, wherein Ext.4(1) is his signature. He recorded the statements of the witnesses u/s 161 CrPC. He arrested the accused person and forwarded the body for autopsy. He returned to the Lilabari Out Post along with the accused. He handed over the body to the family members for funeral. He collected the Post

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Mortem Report. On closure of investigation, he submitted charge-sheet u/s 302 IPC against the accused. Ext. 5 is the charge-sheet and Ext.5(1) is his signature. Ext.6 is the sketch map and Ext.6(1) is his signature.

CIRCUMSTANTIAL EVIDENCE

20) This case rests solely on the plank of circumstantial evidence. The evidence of PW.2, PW.3, PW.4 and CW.1 clearly depicts that the accused was alone at home at the time of incident. It is amply clear that the incident occurred on the night of 13.01.2017. The evidence of PW.5 clearly depicts that he performed Post Mortem examination on the victim's body on 14.01.2017. During examination, rigor mortis was detected by PW.5. Thus, it is clear that the time since death is not very wide. PW.3 came to know about the incident at about 10 /11 pm, however, he went to the accused person's house on the following morning along with 15 /20 people and discovered the victim's body lying in a pool of blood. **The accused offered no explanation u/s 106 of the Indian Evidence Act, 1872 (Evidence Act)**. It was the duty of the accused to discharge his liability u/s 106 of the Evidence Act. The answers of the accused person u/s 313 (1)(b) CrPC appears to be evasive. He stated that he is innocent and he was not present in the house on the day of 'Magh-Bihu'. He is not responsible for his wife's death. Merely stating that he was not in the house on the night of incident will not suffice. His minor daughter is a witness and she clearly testified that her father and mother were in the house at the time of incident. No alibi was produced by the accused in support of his denial of his presence in his house. No convincing explanation could be given by the accused why his wife was found dead in the house. If he was not at home on the fateful night, then where was he ? There is clinching evidence that the accused was alone in the house at the time of the incident. The evidence of PW.2, PW.3, PW.4 and CW.1 clearly depicts that the accused person's minor daughter, who resides with him was with her grandmother at the time of incident. Why was the 'lathi' found beside the accused person's bed ?

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21) The witnesses tried to shield the accused from punishment. PW.1 is the accused person's elder brother and he is the informant. His evidence clearly depicts that during 'Magh-bihu', the accused went to his house and he informed him that his wife, Sumoti Tanti died and thereafter, he along with some villagers rushed to his house and saw the dead body and blood was oozing out from her body. They also saw a wooden 'lathi' lying beside the bed. The accused was inebriated. Thereafter, the police came. The evidence of PW.1 is supported by the evidence of his 18 year old son, who testified that on the previous day of 'Magh-Bihu' (which happens to be 13th January) Arun Tanti went to their house and stated that his wife passed away, and then, his father and some other villagers rushed to Arun Tanti's house and found the dead body of Sumoti Tanti inside the room. Thus, it is amply clear that Arun Tanti was present and he was last seen with his wife qua the news of her death reaching PW.1, PW.2, PW.3 and PW.4. PW.3 heard a commotion on the night of 13.01.2017. On the next morning, he went to Arun Tanti's house and found him in his house. The evidence of PW.4 also depicts that on the following morning of the incident, Arun Tanti came to his house and informed that his wife, Sumoti Tanti passed away. Thus, it is clear that Arun Tanti was last seen with his wife until the news of her death reached to the other people in the village as well as the police. However, at the time when the police reached the place of occurrence, no one was found inside the house. Arun Tanti returned to his house. It is also held that no contradiction could be elicited through the cross-examination of the witnesses, PW.1 to PW.6 and CW.1. It has to be borne in mind that CW.1 is a child of only 12 years. She would definitely not implicate her father if he is innocent. Her evidence affirms that while she was staying with her grandfather, her parents were alone at home. I would like to rely on the decision of the Hon'ble High Court of Judicature at Bombay in *Harish Ramesh Pulekar vs State of Maharashtra reported in Crl. Appeal No.1035 of 2008* decided on 06.05.2015, wherein it has been held that

"34. Thus, the doctrine of 'last seen together' shifts the burden of proof on the accused, requiring him to explain how the incident had

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occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him."

(emphais supplied)

11. *In another decision of the Supreme Court in th case of Ravirala Laxmaiah v. State of A.P. It has been observed thus :-*

"20. It is a settled legal proposition that in a case based on circumstantial evidence, where no eye witness account is available, the principle is that :

"6. ... when an incriminating circumstance is put to the accused and the said accused either offers no explanation (for the same), or offers an explanation which is found to be untrue, then same becomes an additional link in the chain of circumstances to make it complete."

22) Reverting back to this case, it is held that the explanation offered by the accused was found to be untrue and this has become additional link in the chain of circumstances. The other circumstance against the accused is that the evidence of all the witnesses clearly depicts that he was with his wife at the time of the incident. The PW.1 testified that the accused was inebriated when he went and informed him that his wife passed away. PW.1's evidence is similar to his F.I.R, Ext.1. The cross-examination of PW.4 also clearly depicts that the accused and his wife are both alcoholics. This explains the innumerable injuries detected on the victim's body. The injuries detected by PW.5 on the victim's body clearly depicts that she was thrashed by a person who appears to have been possessed by rage.

23) I would also like to rely on the decision of Hon'ble the Supreme Court in State of Goa -vs- Sanjay Thakran [(2007)3 SCC, 755], wherein it has been held that -

"34. From the principle laid down by the court, the circumstance of last seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when

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the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused, but, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after (sic of) a considerable long duration. There can be no fixed or straitjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.”

24) In the instant case, there was no possibility of any other person getting access to the accused person's house. The victim was found dead inside her house. There is clinching evidence that the victim resides in the house with her husband. It is held that the accused was

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last seen with the victim. Thus, it can be safely held that the accused and only the accused committed the murder of his wife, by causing the injuries on her head, brain and chest area which are sufficient to cause death. The accused was aware that such injuries were sufficient to cause his wife's death. This case is deferred up to 16.03.2020 for sentence hearing for the offence of murder. The chain of circumstances leads us to believe that the accused is guilty of offence u/s 302 IPC. The circumstances form a complete chain.

25) The accused is remanded back to custody till 16.03.2020 for sentence hearing.

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

ORDER ON SENTENCE ON 16.03.2020.

26) The accused, Sri Arun Tanti is produced from the jail.

27) I have heard the accused on the point of sentence. He has denied that he killed his wife.

28) No evidence was adduced by both sides.

29) I have heard both the sides.

30) The learned defence counsel, Sri Ananda Dutta has submitted that the accused does not deserve capital punishment.

31) I have considered his submissions.

32) It is true that the victim was killed in a brutal manner. Once again, I would like to reiterate that in my foregoing discussions, it has been held that the prosecution could bring home the charges levelled against the accused beyond a reasonable doubt. But, in this case, the question is -

- i) Whether the accused deserves death sentence?
- ii) Will the accused to be a menace to the society?
- iii) Is there any scope of reformation or rehabilitation?

33) It is true that the accused has no criminal history or antecedent. The Hon'ble Supreme Court has laid down in ***Bachan Singh vs. State of Punjab, 1980 (2) SCC 884*** that death sentence should be awarded only when the option of awarding the sentence of life imprisonment is questionably foreclosed. After considering such questions, the accused was given a day's time to submit his answers on mitigation. He was heard on the point of sentence. His answers were not convincing. In

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view of the decision of Hon'ble the Supreme Court in ***Sukhlal vs State of Madhya Pradesh in Criminal Appeal Nos. 1563/ 1564 of 2018 decided on 20.11.2018***, it was held that :

"Time and again, this court has categorically held that life imprisonment is the rule and death penalty is the exception and even when the crime is heinous or brutal, it may not still fall under the category of "Rarest of rare case". The decision to impose the highest punishment of death sentence in this case does not fulfill the test of "rarest of rare case" where the alternative option is unquestionably foreclosed."

34) Reverting back to this case, it is held that this case is based on circumstantial evidence. The accused is not a history sheeter. Speculating repentance and reformation on the part of the accused, death sentence is not imposed. It is held that this case does not fall within the category of "rarest of rare cases". Considering the ameliorating and mitigating circumstances, I deem it proper to impose life imprisonment to the accused for the offence under Section 302 IPC.

SENTENCE :

35) The accused, Sri Arun Tanti is convicted under Section 302 IPC and he is sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- (Rupees One Thousand) and in default of payment of fine, to undergo rigorous imprisonment for 2 (two) months.

36) The seized article be destroyed as per Law.

37) Furnish free copies of Judgment to the accused and to the District Magistrate.

38) The aggrieved in this case as described u/s 2 (wa) of CrPC, are the legal heirs of the victim. This case is recommended for compensation

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to the aggrieved under the Assam Victim's Compensation scheme, 2012.

39) Send a copy of this Judgment & Order to the Secretary, District Legal Services Authority, Lakhimpur, North Lakhimpur, for assessment of compensation to the aggrieved.

Judgment is signed, sealed and delivered in the open Court on the 16th day of March, 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.62(NL)2017.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Monohar Tanti.
2. PW.2 - Sri Jadav Tanti.
3. PW.3 - Sri Rajesh Telenga.
4. PW.4 - Sri Nabin Horo.
5. PW.5 - Dr. Ram Prasad Pawe, M.O. of the case.
6. PW.6 - Inspector Lintu Borah, the I.O. of the case.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

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

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 Kshattri, Stenographer.