

CAUSE TITLE**SESSIONS CASE NO.196(NL)2017.**

Informant : Lokeswar Gorh.

Accused : Sri Robin Bhumiz.
S/o Lt. Mohon Bhumiz.
R/o Nirmala Bagan Staff Line.
P.S. Gohpur.
Dist. Biswanath.

ADVOCATES :

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

For the Defence : Mrs. M.D.G. Baruah, the learned Advocate.

**IN THE COURT OF SESSIONS 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.196(NL)2017.

GR Case No.1361 of 2017.

State of Assam.

-versus-

Sri Robin Bhumiz.

Charges : Under Section 302 IPC.

Date of evidence. : 03.05.2018, 13.06.2018, 16.08.2018,
13.09.2018, 30.11.2018, 03.01.2019 and
16.03.2019.

Date of argument. : 16.03.2020.

Date of Judgment. : 01.10.2020.

J U D G M E N T

1) The prosecution case in a narrow compass is that on 15.05.2017 at about 3 pm, Sri Robin Bhumiz (here-in-after referred to as accused) had killed his wife, Tule Bhumiz by inflicting blows with the help of a split firewood on different parts of her body. When the local people learnt about the incident, the accused was apprehended and police was informed, and accordingly, police arrived at the place of occurrence and took away the accused and his wife, Tule Bhumiz. An ejahar regarding this incident was lodged by Lokeswar Gorh, and

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Shimaluguri Police Out Post GDE No.231 was registered and the ejahar (F.I.R) was forwarded and registered as Bihpuria P.S. Case No.407/ 2017 under Section 302 of the Indian Penal Code (IPC for short).

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He went to the place of occurrence, prepared the sketch map of the place of occurrence, and recorded the statements of the witnesses. Inquest was also held and thereafter, the body was forwarded for autopsy. On finding prima facie materials against the accused, the I.O. submitted the charge-sheet against him under Section 302 IPC.

3) On appearance of the accused person, copies were furnished and as this case is triable by the Sessions Judge, the case was committed to this court vide order dtd. 04.12.2017 passed by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. After hearing both the sides, a formal charge under Section 302 IPC was framed, read over and explained to the accused person. The accused person abjured his guilt and claimed innocence.

4) To substantiate the stance, the prosecution adduced the evidence of 8 (eight) witnesses and the defence cross-examined the witnesses to refute the charges. Various documents were exhibited by the prosecution. On the inculpatory materials arising against the accused, several questions were asked u/s 313 of the Code of Criminal Procedure (CrPC for short) and he in a blanket manner denied that he is complicit.

5) I have heard the arguments forwarded 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 apposite for proper adjudication of this case :

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i) Whether on 15.05.2017, the accused committed murder of his wife, Tule Bhumiz by intentionally causing her death by inflicting injuries sufficient in the ordinary course of nature to cause her death?

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.

8) Sri Tirtha Borah testified as PW.1 that he was the Secretary of V.D.P. of village Kamalpur gaon under Bihpuria Police Station. About one year ago, the local people of village Kamalpur called him and informed that a person committed murder of a woman in Khagen Hazarika's Tea Garden and requested him to go to the place of occurrence. Then, he went to Khagen Hazarika's Tea Garden along with the local people and found the dead body of a woman lying in a house, which belongs to Khagen Hazarika and he also found a person, who was held captive and tied up to a post. He (PW.1) identified the accused to be the person, who was held captive in Khagen Hazarika's house. The local people informed him that the deceased was the accused person's wife. He learnt from the local people assembled there, that it was the accused, who had committed the murder of his wife. He informed the police of Shimaluguri Police Out Post. Thereafter, the police came and took away the body and the accused person. He saw some fire wood lying in the place of occurrence. The police seized a piece of fire wood from the place of occurrence by preparing seizure list. He proved the seizure list as Ext.1 and Ext.1(1) is his signature. He also proved the seized fire wood as Material Ext.1.

In his cross-examination, he stated that he did not know how the victim of the case passed away.

9) Sri Padmeswar Lahan testified as PW.2 that he did not know the accused person. Lokeswar Gorh is the informant of the case, who was an employee of Sri Khagen Hazarika's Tea Garden situated at Rampur.

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He was a member of Village Defence Party of village Rampur. About 6 months ago, at dusk, the police of Shimaluguri Police Out Post called him over phone to accompany them. Then, he immediately went to the Tea Garden and found a dead body lying in an ambulance. The dead body was covered with polythene paper. He had not seen the face of the dead body. He learnt from police that the deceased was the accused person's wife. He did not know, from which place the dead body was brought to the ambulance. He learnt from the people assembled there that the accused had killed his wife.

In his cross-examination, he stated that he could not say the name of the person from whom he learnt that the accused killed his wife.

10) Sri Khagen Hazarika testified as PW.3 that he is the owner of a small Tea Garden at Shimaluguri Kamalpur, Dhalpur under Bihpuria Police Station. During the last part of the year, 2017, he had engaged the accused in his Tea Garden as a labour. The accused went to his Tea Garden along with his family and started to work there as a labour. When the accused person was working in his Tea Garden, one Lokeswar Gorh was working in the garden as the leader of the labourers of his Tea Garden. After 7 days of his employment, the accused person's wife was found lying dead inside his quarter. Lokeswar Gorh informed him about the incident over phone. Lokeswar Gorh informed him that on the previous night, the accused person's wife consumed excessive alcohol. Lokeswar Gorh also informed him that the accused person had reached home from the market at that time. He (PW.3) asked Lokeswar Gorh to inform the matter to police. Thereafter, the police of Shimaluguri O.P. informed him over phone that the deceased was sent to North Lakhimpur Civil Hospital. The police sought his help in the matter. He went to North Lakhimpur Civil Hospital and saw the deceased, but he did not look at the body. Thereafter, Post Mortem examination was performed, and after Post Mortem examination, the body was taken to his Tea Garden and funeral was followed. After two days, he went to his Tea Garden and then, Lokeswar Gorh's wife told

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him that the accused person's wife died after consuming excessive alcohol on the night of her death. Lokeswar Gorh, who is the informant of the case expired on 06.12.2017.

11) Dr. Dhrubajyoti Borgohain, the M.O. testified as PW.4 that on 16.05.2017 at about 02:00 PM, he performed Post Mortem examination on the body of Tule Bhumiz, female aged about 35 years, wife of Sri Robin Bhumiz of Nirmala Tea Estate, Gohpur on being identified by UBC 643 Sri Pradip Dutta of Simoluguri Police Out Post and the Post Mortem examination report is as follows:-

I. EXTERNAL APPEARANCE:

1. Condition of subject stout emaciated, decomposed etc. : Build-average, rigor mortis- positive, black complexion.
2. Wounds-position and character, Bruise-position, size and nature, Mark of ligature on neck dissection etc.: Multiple abrasion and bruise all over the body. Swelling of upper limbs.

II. CRANIUM AND SPINAL CANAL:

1. Scalp, skull and vertebrae: Scalp haematoma. Tear of scalp in the vertex area of scalp.
2. Membrane: NAD.
3. Brain and spinal cord: Spotted blood in the brain due to cerebral haematoma.

III. THORAX:

1. Walls ribs and cartilages: Multiple ribs fracture on the right and left side of the chest.
2. Right and Left Lung: Blood in the mediastinal vessels and bleeding from mediastinal organs.

IV. ABDOMEN:

1. Peritoneum: NAD.
2. Stomach and its contents, Small intestine and its contents, Large intestine and its contents: NAD.

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3. Liver, Spleen, Kidneys, Bladder, Organs of generation, external and internal: Healthy: NAD.

MORE DETAILED DESCRIPTION OF INJURY OR DISEASE:

Findings:- Multiple abrasion and bruise all over the body. Scalp haematoma. Scalp tear in the vertex. Cerebral haematoma. Multiple ribs fractures on the both right and left side of the chest. Blood in the mediastinal. Tear of mediastinal vessels and bleeding from mediastinal organs.

The M.O. opined that the cause of death was due to irreversible hemorrhagic shock following profused mediastinal bleeding as well as cerebral haematoma (brain death) which is antemortem in nature.

The M.O. proved the Post Mortem Examination Report as Ext.2 and his signature as Ext.2(1).

In the cross-examination, PW.4 stated that if there are forceful repeated falls on hard substance of a person then such injury may cause death.

12) Sri Jiten Mudoj has testified as PW.5 that the accused person is a labourer in Hazarika Small Tea Garden situated about 1 ½ kms away from his house. The occurrence had taken place about one year ago at Hazarika Small Tea Garden. On the date of occurrence, at about 2.30 / 3.00 pm, he heard from the people that the accused under influence of liquor had committed murder of his wife in the Hazarika Small Tea Garden. Then, he went to the Hazarika Tea Garden, but he did not find the body of the deceased as it was taken by the police for post mortem examination. He found many people assembled in the Hazarika Tea Garden. Then, some of the people, who were assembled stated that the accused had committed murder of his wife under influence of alcohol. When he went to Hazarika Tea Garden, he found that the police were assembled. Thereafter, he came back to his house. He did not know anything more regarding the occurrence.

During cross-examination, PW.5 stated that he cannot specifically say the name of the persons from whom, he learnt that the accused had committed murder of his wife under influence of alcohol.

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13) ASI Atul Baruah has testified as PW.6 that on 15.05.2017, he was serving as I/c of Simaluguri Police Out Post. On that day, at about 6.00 pm, he received an information over phone from SIM No. 9854155276 stating that at Kamalpur Tea Garden, which belongs to Sri Khagen Hazarika of Khelmati, Lakhimpur, a labourer killed his wife in the Garden. On receiving the information, he registered Shimaluguri Police Out Post G.D. Entry No.231 dtd. 15.05.2017 and proceeded to the Kamalpur Tea Garden with his staff. He reached Kamalpur Tea Garden and found the accused being confined by the local people and the deceased was found lying on the ground inside the house. He informed the O.C. of Bihpuria Police Station about the incident, and the O.C. endorsed him with the preliminary investigation. Then, he took custody of the accused, who was confined by the villagers. The accused showed him a piece of fire wood, with the help of which he had killed his wife and then, he seized the same vide seizure list. He proved the Seizure List as Ext.1 and Ext.1(2) is his signature. Thereafter, the O.C. of Bihpuria Police Station came and he conducted the inquest of the body of the deceased. He proved the inquest report as Ext.3 and Ext.3(1) is his signature. Thereafter, they took the body of the deceased along with the accused person to Shimaluguri Police Out Post. On the following day, he forwarded the body of the deceased to North Lakhimpur Civil Hospital for post mortem examination and on the same day, he forwarded the accused to the court. After Post Mortem examination, as no relative of the deceased was present, they took the deceased to Kamalpur Tea Garden and buried the body in the tea garden. Then, Sri Lokheswar Gorh on 15.05.2017 lodged an ejahar with Shimaluguri Police Out Post under Bihpuria Police Station regarding the occurrence. As he was I/c of Shimaluguri Police Out Post on that day, he registered Shimaluguri Police Out Post G.D. entry No.231 dated 15.05.2017. Then, he forwarded the ejahar to the O.C. of Bihpuria Police Station for registration of a case and he took charge of the investigation. On receiving the ejahar, the O.C. of Bihpuria Police Station registered Bihpuria Police Station Case No.407/2017 against the

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accused u/s 302 of I.P.C. Thereafter, he recorded the statements of the witnesses u/s 161 Cr.P.C., prepared the sketch map of the place of occurrence. He proved the sketch map as Ext.4 and Ext.4(1) is his signature. Thereafter, he collected the autopsy report. After completion of preliminary investigation, he handed over the Case Diary to S.I. Mahidhar Taye, who was the I/c of Shimaluguri Police Out Post.

During cross-examination, PW.6 testified that the body of the deceased was found lying on the ground inside the accused person's house. He had prepared the sketch map of the place of occurrence, but in the sketch map he had not mentioned about the articles found inside the house.

14) SI Mahidhar Taye testified as PW.7 that on 15.05.2017, he was working as I/c of Shimaluguri Police Out Post under Bihpuria Police Station. On that day, he was on leave and ASI Atul Baruah was in the charge as I/c of Shimaluguri Police Out Post. On that day, an ejahar was lodged by Sri Lokheswar Gorh with Shimaluguri Police Out Post stating interalia that on 15.05.2017 at about 3.00 pm, the accused committed murder of his wife. On receipt of the ejahar, ASI Atul Baruah registered Shimaluguri Police Out Post G.D. Entry No.231 dtd. 15.05.2017 and forwarded the ejahar to the O.C., Bihpuria Police Station and he took the charge of preliminary investigation of the case. Thereafter, on 30.06.2017, he resumed his duty as I/c, Shimaluguri Police Out Post. ASI Atul Baruah, after completing the preliminary investigation of the case handed over the Case Diary. He went through the Case Diary and on perusal of the Case Diary, he found incriminating materials and submitted the charge-sheet against the accused u/s 302 I.P.C. He proved the charge-sheet as Ext.4 and Ext.4(1) is his signature.

During cross-examination, PW.7 denied that he had submitted the charge-sheet in the case against the accused person without going through the Case Diary.

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15) Sri Rudra Sonowal testified as PW.8 that on 15.05.2017, he had issued the extract copy of GD Entry No.228 dtd. 15.05.2017, and from the aforesaid GD entry, he found that after recording the aforesaid GD entry, ASI Atul Baruah went to Khagen Hazarika's Tea Garden situated at Kamalpur for investigation into the death of a woman as an information was received over phone regarding the incident. He proved the extract copy of the GD Entry No.228 dtd. 15.05.2017 and Ext.5(1) is his signature. This witness was not cross-examined.

ANALYSIS OF EVIDENCE

16) This case rests solely on the plank of 'last seen theory'. The accused failed to discharge his burden u/s 106 CrPC, but even then, the accused gets the benefit of doubt. The accused cannot be held liable only on the sole circumstance of 'last seen theory'. It is not clear from the evidence of the witnesses, whether the accused was staying only with his wife in the Garden quarter, or whether the Garden quarter was occupied by the accused and his other family members. The accused used to work in Khagen Hazarika's Tea Garden. Seizure witness, who testified as PW.1 failed to name the person, who informed him that the accused killed his wife. This renders his evidence as hearsay. It is true that the accused was held captive by the local people after the deceased was found in his house. During investigation, the police seized a piece of firewood vide Ext.1, wherein Ext.1(1) is his signature. PW.1 also proved the firewood as Material Ext.1. The seizure has been proved as per proper procedure. This piece of firewood can be considered as the weapon of offence.

17) The evidence of PW.2 depicts that Khagen Hazarika's Tea Garden was situated at Rampur. Like PW.1, the PW.2 was also the member of Village Defence Party at Rampur. PW.2 was summoned by the police to accompany them to the Tea Garden. He went there and saw the dead body inside an Ambulance. The body of the deceased was covered with polythene. He learnt from the police that the deceased was the accused person's wife. The local people informed him that the accused

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killed his wife. This witness also failed to name the local people, who informed him about the accused person's conduct, rendering his evidence as hearsay evidence.

18) The evidence of the accused person's employer, who testified as PW.3 also does not directly implicate the accused. His evidence depicts that he is the owner of a Tea Garden at Kamalpur and the accused was his employee. The accused used to reside in his Tea Garden along with his wife. The informant, Sri Lokeswar Gorh was the leader of the labourers. After 7 days, when the accused was engaged as his employee, his wife was found dead inside his quarter.

19) According to PW.3, Lokeswar Gorh informed him that the accused person's wife consumed excessive alcohol, which resulted in her death, and when the accused returned home from the market, he found her lying dead. The police informed him (PW.3) about the incident inside his Tea Garden, and so, he went to the Civil Hospital, but he did not take a look at the dead body. After the Post Mortem examination, funeral followed. The evidence of this witness also depicts that Lokeswar Gorh's wife also informed him that the accused person's wife died of alcohol poisoning. His evidence also depicts that Lokeswar Gorh passed away on 06.12.2017. It is apparent that PW.3 tried to shield the accused by blaming the victim's death on the victim's conduct.

20) It is apparent from the Medical Officer's evidence that the victim was bludgeoned to death. The Medical Officer testified as PW.4. The Medico Legal Report reveals that cerebral haematoma was detected on the victim's brain with tear of scalp in the vertex area of the scalp. Bruises and multiple abrasions were detected all over the body. with swelling of upper limbs. Multiple rib fractures were detected on the right and left side of the victim's chest. Bleeding from the mediastinal organs were also detected. According to PW.4, the injuries were ante mortem in nature and that was due to irreversible hemorrhagic shock

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following the profused mediastinal bleeding as well as cerebral haematoma (brain death). Thus, the theory flouted by the defence that the victim was responsible for her death cannot be relied upon. Although the M.O. opined that on forceful and repeated falls against hard substance, such injury may cause death, yet it cannot be perceived how a person will fall repeatedly over a hard substance. The time of death was not given by the M.O. The evidence of the witnesses, as discussed above, also does not throw a light on the time of death. The date of death was not clearly described by the witnesses, but the approximate time, when the victim died, can be considered after going through the F.I.R. and after considering the Medical Report. It is clear that the victim died on 15.05.2017. The evidence of PW.5 depicts that the victim may have died around 2.30 / 3.00 pm. His evidence depicts that his house is at a distance of about 1 ½ km away from the accused person's house. He heard a commotion and at that time, he heard from the people assembled at the place of occurrence that the accused killed his wife under influence of liquor. When he went to the place of occurrence, he did not find the victim's body as it was already taken by the police for autopsy. This witness also did not name the person, who informed him that the accused killed his wife under influence of liquor. A major part of the investigation was conducted by ASI Atul Baruah, who testified as PW.6. His evidence depicts that the accused showed him the piece of firewood with the help of which, he killed his wife. Ext.1 is the Seizure List and Ext.1(2) is his signature. He seized the firewood vide Ext.1. He proved the Inquest Report as Ext.3 and Ext.3(1) is his signature. He has meticulously conducted the investigation. It is apparent from his evidence that the body of the deceased was not received by any family member and so, they buried the body inside the Tea Garden. It is possible that the deceased and the accused were the sole residents occupying the quarter in Khagen Hazarika's Tea Garden at Kamalpur. It is also clear from the evidence that the injuries described by the M.O. could have been caused by the firewood, Material Ext.1. There is every possibility that the accused is complicit, but he cannot be held liable solely on the circumstance of 'last seen

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theory'. It is also true that the weapon of offence has been proved, but at the same time, due to lack of reliable incriminating circumstances against the accused, he gets the benefit of doubt. The chain of circumstantial evidence is not complete. This case rests solely on the 'last seen theory', and it will be fallacious to rope in the accused and hold him guilty of the offence of murder. There is not even an iota of doubt that the victim was assaulted in a cruel manner, which resulted in her death. However, based on the circumstance of the 'last seen theory', the accused cannot be held guilty of the offence of murder. The Material Ext.1 is a piece of firewood measuring 2 ft in length. The breadth or the width is not described. It is possible that the injuries caused by such a weapon may result in death. However, on the basis of conjecture and surmises, the accused cannot be held guilty of the offence of eliminating his wife. He ought to be given the benefit of doubt, considering the lack of evidence to bring home the charge against him.

21) It is held that the prosecution failed beyond a reasonable doubt that the accused killed his wife and committed murder by intentionally causing the injuries, which were sufficient to cause death.

22) The accused, Sri Robin Bhumiz is acquitted from the charge under Section 302 IPC on benefit of doubt and is set at liberty forthwith.

23) It appears that there are no victims in this case. So, this case is not referred for compensation.

Judgment is signed, sealed and delivered in the open Court on the 1st day of October, 2020.

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

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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.196(NL)2017.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Tirtha Bora.
2. PW.2 - Sri Padmeswar Lahan.
3. PW.3 - Sri Khagen Hazarika.
4. PW.4 - Dr. Dhrubajyoti Borgohain, M.O. of the case.
5. PW.5 - Sri Jiten Mudoi.
6. PW.6 - ASI Atul Baruah, I.O. of the case.
7. PW.7 - SI Mahidhar Taye, I.O. of the case.
8. PW.8 - Sri Rudra Sonowal.

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Seizure List.
2. Ext.2 - Post Mortem Report.
3. Ext.3 - Inquest Report.
4. Ext.4 - Sketch map.
5. Ext.5 - G.D. Entry.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Mat. Ext.1 - A piece of firewood.

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.