

CAUSE TITLE

Sessions Case No.31(NL)2016.

Informant : Smt Moni Rekha Phukan.

Accused :
1) Sri Arun Phukan.
2) Sri Sanjib Lahan.
3) Sri Khirod Phukan.

ADVOCATES :

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

For the Defence : Mrs. M.D.G. Baruah, 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.31(NL)2016.

GR Case No.24/ 2015.

State of Assam.

-versus-

- 1) Sri Arun Phukan.
- 2) Sri Sanjib Lahan.
- 3) Sri Khirod Phukan.

Charges : Under Sections 325/ 302 IPC.

Dates of evidence. : 03.10.2016, 05.12.2016,
06.12.2016, 17.05.2017,
19.02.2018, 10.08.2018, and
20.02.2020.

Date of argument. : 03.03.2021.

Date of Judgment. : 16.06.2021.

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J U D G M E N T

1) An excerpt of the prosecution case is that on 31.12.2014, Sri Arun Phukan, Sri Kutula @ Gutula Sahu, Sri Sanjib Lahan and Sri Khirod Phukan accompanied by 6 /7 miscreants armed with dangerous weapons barged into the premises of Sitaram Phukan and assaulted him and stabbed him causing grievous injuries on his person. The police extended help to shift the victim, Sitaram Phukan to the hospital. On 01.01.2015 at about 1 am mid night, Sitaram Phukan succumbed to his injuries. An ejahar (F.I.R) regarding this incident was lodged by the deceased's wife, Smt Moni Rekha Phukan, which was registered as Bihpuria PS Case No.9/2015 u/s 147/ 148/ 149/ 447/ 325/ 326/ 302 IPC.

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He made preparations for inquest and autopsy. He went to the place of occurrence, prepared the sketch map and recorded the statements of the witnesses. He seized some articles in connection with this case. On finding sufficient materials, the I.O. submitted charge-sheet against the accused, Arun Phukan, Sanjib Lahan and Khirod Phukan u/s 326/ 302/ 325/ 506/ 34 IPC.

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3) On appearance of the accused persons, copies were furnished and as this case is triable by the Sessions Judge, this case was committed to this court vide order dtd. 15.02.2016 passed by the learned Addl. Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. This case was transferred to the court of the Addl. Sessions Judge (FTC), Lakhimpur, for disposal.

4) After hearing both the sides, a formal charge u/s 325/ 302/ 34 IPC was framed, read over and explained to the accused persons. The accused persons abjured their guilt and claimed to be tried.

5) To substantiate its stance, the prosecution adduced the evidence of 10 (ten) witnesses including the Medical Officer (M.O. in short) and the I.O.

6) I have heard the arguments forwarded by the learned counsel for both the parties.

POINTS FOR DETERMINATION :

1. Whether the accused persons, on or before 31.12.2014 at about 8 pm, and in furtherance of their common intention, voluntarily caused grievous hurt to the informant, Smt Moni Rekha Phukan by

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assaulting her with 'lathi' by entering into her compound ?

2. Whether the accused persons in furtherance of their common intention committed murder by intentionally or knowingly causing the death of the informant's husband Sitaram Phukan by assaulting him with 'lathi' , 'dao' and other dangerous weapons ?

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) Smt Rumi Phukan testified as PW.1 that the informant, Smt Moni Rekha Phukan is her husband's second wife, who resides near her house. Deceased was her husband. At the time of occurrence, she was in Arunachal Pradesh. Her daughter, Jayshree informed her over phone that her (PW.1's) husband was hacked to death. On the following day, she came home and found her husband undergoing treatment in the hospital. She also noticed a pool of blood in her courtyard. At that time, no one was present in the house. She went to Bihpuria hospital and learnt that her husband was shifted to North Lakhimpur Civil Hospital. Thereafter, she went to

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North Lakhimpur Civil Hospital and saw her husband who was unable to speak. On 2nd January, her husband succumbed to his injuries in the hospital.

9) Sri Muhi Kanta Chetia testified as PW.2 that the accused persons hail from his village and the deceased, Sitaram was his wife's elder brother. Informant, Moni Rekha is his sister-in-law (his elder brother's wife). The incident occurred on 31.12.2014 at about 8 pm in the deceased's house. As called by the O.C. of Bihpuria PS, he went to the deceased's house and found the deceased lying in the courtyard facing downward. Immediately, he then called one 108 Ambulance and took the victim to Bihpuria PHC and thereafter, he was shifted to North Lakhimpur Civil Hospital. The deceased was asking for water uttering "*panee panee*". Later, he learnt that on 2nd January, Sitaram succumbed to his injuries. Police conducted inquest and he put his signature on the Inquest Report, Ext.1 as Ext.1(1). Police seized two 'lathies' one each from accused, Sanjib and Khirod's house vide Seizure Lists, Ext.2 and 3, and he proved his signatures as Ext.2(1) and 3(1). In his cross-examination, he testified that he did not know what is written in the Seizure Lists as the Seizure Lists were blank when he put his signatures.

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10) Sri Simanta Phukan testified as PW.3 that he knows the accused persons and the informant, Moni Rekha, who is the second wife of deceased, Sitaram. He learnt that about two years ago, a quarrel broke between the accused persons and the deceased in the deceased's courtyard. The deceased's house is adjacent to the accused persons' houses. He learnt that Sitaram passed away.

11) Sri Tulan Bhuyan testified as PW.4 that he knows the accused persons and the deceased. He has no knowledge about the incident.

12) Sri Ajit Phukan testified as PW.5 that he knows the accused persons. Deceased, Sitaram was his cousin. He learnt that quarrel took place between the accused persons and the deceased. He also learnt that Sitaram has expired. The police seized one bamboo 'lathi' from the place of occurrence vide Seizure List, Ext.3, wherein Ext.3(1) is his signature.

13) The M.O., Dr. Bhupen Saikia testified as PW.6 that on 02.01.2015, he was serving at North Lakhimpur Civil Hospital as Senior Medical & Health Officer, and on that day at about 3.30 pm, he conducted P.M. examination on the body of Sitaram Phukan and found the following :

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“Sharp cut wound which was already stitched over left eyebrow 4 cm below left eye 3 cm, left side of forehead 6 cm, right parietal region of scalp 6 cm, left parietal region of scalp 6 cm over vertex of head, two numbers, 6 cm each. Fracture of left femur at upper 1 /3 rd. Fracture of frontal bone of skull, in brain matter - haemorrhage seen.”

The M.O. opined that the cause of death was head injury as a result of the injuries sustained. Ext.4 is the P.M. Report, wherein Ext.4(1) is his signature.

14) ASI Dimbeswar Das testified as PW.7 that on 31.12.2014, when he was on patrolling duty with the O.C. of Bihpuria PS, the informant informed them that some persons from their village assaulted her husband with sharp weapons and caused grievous injuries on his person. Thereafter, they rushed to the place of occurrence and sent the victim to Bihpuria hospital by a 108 Ambulance, and thereafter to North Lakhimpur Civil Hospital. On 02.01.2015, the Lat Gaonburah of Santapur Gaon informed the police that the victim, Sitaram passed away. He was entrusted with the autopsy of the deceased. Inquest was held in his presence by Magistrate, M. Kutum. Ext.1 is the Inquest Report, wherein Ext.1(2) is the signature of the Magistrate, M. Kutum, with which he is acquainted.

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15) SI Dharanidhar Deka testified as PW.8 that on 03.01.2015, he was serving as the O.C. of Bihpuria PS, and on that day at about 11.30 am, the informant lodged an FIR alleging that on 31.12.2014 at about 8 pm, the accused persons, Kutula Sahu, Sanjib Lahan and Khirod Phukan along with other 6/7 persons armed with sharp and blunt weapons entered into her homestead and assaulted Sitaram Phukan. Sitaram was taken to the hospital and he succumbed to his injuries on 01.01.2015. On receipt of the ejahar, a case being numbered as Bihpuria PS Case No.9/ 2015 u/s 147/ 148/ 149/ 447/ 326/ 325/ 302 IPC was registered and he was entrusted to investigate the case. Accordingly, he went to the place of occurrence, prepared the sketch map, recorded the statements of the witnesses and seized two bamboo sticks. During investigation, he arrested the accused persons. Preliminary investigation was conducted by ASI Dimbeswar Das. On 28.02.2015, he handed over the Case Diary to the O.C. of Bihpuria PS, as he had retired from service on superannuation. Ext.5 is the ejahar (FIR) wherein Ext.5(1) is the informant, Monirekha Phukan's signature. Ext.6 is the sketch map, wherein Ext.6(1) is his signature.

16) SI Monimoy Tamuli testified as PW.9 that on 29.03.2015, he was serving as SI of police at Bihpuria PS. On that day, he was entrusted to

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complete the remaining part of the investigation. He collected the Post Mortem report of the deceased and Injury report of the victim, Monirekha Phukan, and on finding sufficient incriminating materials , he submitted the charge-sheet against the accused persons u/s 326/ 302/ 325/ 506/ 34 IPC. Ext.7 is the charge-sheet, wherein Ext.7(1) is his signature.

17) Sri Haren Phukan testified as PW.10 that he knows the accused persons and the informant. He learnt from the informant that the accused persons killed his father, Sitaram Phukan. The informant is his step mother. At the time of the incident, he was in Arunachal Pradesh. After he returned from Arunachal Pradesh, his father passed away. There were multiple injuries on his father's body and head and he was unable to speak. At present, his step mother does not reside with them, she resides in Sivasagar.

18) Recapitulating the entire evidence, it is thereby held that PW.1, who is the first wife of the deceased was not present in the house at the time of the incident. According to her, when she met her injured husband in the hospital, he was unable to speak. She learnt about the incident from her daughter, Jayshree, but in this case, Jayshree was

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not examined by the prosecution. Thus, the evidence of PW.1 can be held to be hearsay evidence which is not acceptable.

19) PW.2 after getting information about the incident rushed to the place of occurrence and found the deceased lying in his courtyard, face downwards. His evidence does not reveal who the assailants were. PW.4 had no knowledge about the incident. PW.3 and PW.5 learnt that a quarrel broke out between the accused persons and the deceased, but they did not mention the name of the person, from whom they learnt about the quarrel. So, this evidence is also hearsay evidence. Similarly, PW.10's evidence depicts that he learnt from the informant (his step mother), that the accused persons killed his father. But, in this case, the informant, Moni Rekha Phukan was not examined by the prosecution as the prosecution failed to trace out her present whereabouts despite sincere endeavours made by the prosecution. PW.10 is the sole witness, who has implicated the accused persons, but his evidence cannot be accepted as his evidence is also hearsay evidence. PW.7, PW.8 and PW.9 are the I.Os of this case, who had investigated the case.

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20) Thereby, it is held that the prosecution failed to prove beyond a reasonable doubt that the accused persons committed murder of Sitaram Phukan and voluntarily caused grievous hurt to the informant, Moni Rekha Phukan. The informant appears to be unwilling to come forward to substantiate her FIR. A case of this nature cannot be proved by hearsay evidence.

21) Accordingly, the accused persons, Arun Phukan, Sanjib Lahan and Khirod Phukan are acquitted from the charges u/s 325 / 302/ 34 IPC on benefit of doubt, and are set at liberty forthwith.

22) This case is disposed of on contest.

Judgment is signed, sealed and delivered on the 16th day of June, 2021.

(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.31(NL)2016.

LIST OF WITNESSES FOR PROSECUTION :

1. PW.1 - Smt Rumi Phukan.
2. PW.2 - Sri Muhi Kanta Chetia.
3. PW.3 - Sri Simanta Phukan.
4. PW.4 - Sri Tulan Bhuyan.
5. PW.5 - Sri Ajit Phukan.
6. PW.6 - Dr. Bhupen Saikia.
7. PW.7 - ASI Dimbeswar Das.
8. PW.8 - SI Dharanidhar Deka.
9. PW.9 - SI Monimoy Tamuli.
10. PW.10- Sri Haren Phukan.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

- Ext.1 - Inquest Report.
- Ext.2 - Seizure List.
- Ext.3 - Seizure List.
- Ext.4 - Post Mortem Report.
- Ext.5 - Ejahar (FIR).
- Ext.6 - Sketch map.
- Ext.7 - 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.