

CAUSE TITLE**Sessions Case No.125(NL)2017.**

Informant : Smt Rumi Gohain.

Accused : Sri Manik Chutia.

ADVOCATES :

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

For the Defence : Mr. Nabajyoti Chetia, 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.125(NL)2017.

GR Case No.94/ 2017.

State of Assam.

-versus-

Sri Manik Chutia.

Charges : Under Sections 341/ 307/ 324 IPC.

Dates of evidence. : 18.04.2018, 07.08.2018,
14.09.2018, 09.01.2019,
22.05.2019, 21.10.2019, and
21.12.2020.

Date of argument. : 15.03.2021.

Date of Judgment. : 20.07.2021.

J U D G M E N T

1) An excerpt of the prosecution case is that on 02.04.2017 at about 7.30 pm, Sri Bijoy Gohain was returning home from Ghilamara weekly market when Manik Chutia (hereinafter referred to as the accused) pursuant to an old dispute restrained him

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and assaulted him with 'dao' (a machete like weapon). Bijoy Gohain (hereinafter the victim) was immediately taken to Ghilamara Hospital and thereafter, he was forwarded to the North Lakhimpur Civil Hospital for treatment. An F.I.R. regarding this incident was lodged by the victim's wife, Smt Rumi Gohain, which was registered as Ghilamara PS Case No.331/2017 u/s 341/ 307/ 326 IPC and ASI Bhogendra Pagag was endorsed with the preliminary investigation.

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He went to the place of occurrence, prepared the sketch map and recorded the statements of the witnesses. On finding prima facie materials against the accused, he submitted charge-sheet against him u/s 341/ 307/ 324 IPC.

3) On appearance of the accused, copies were furnished and as this case was u/s 307 IPC, this case was committed for trial vide order dtd. 17.08.2017 passed by the Sub Divisional Judicial Magistrate (M), Dhakuakhana, in connection with GR Case No.94/2017.

4) After hearing both the sides, a formal charge u/s 341/ 307/ 324 IPC was framed and read over to

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the accused person. The accused abjured his guilt and claimed innocence.

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. The defence cross-examined several witnesses to refute the charges.

POINTS FOR DETERMINATION :

1. Whether on 02.04.2017 at about 7.30 pm, the accused wrongfully restrained Sri Bijoy Gohain?
2. Whether at the same time and place, the accused attempted to commit murder of Sri Bijoy Gohain by intentionally causing injuries with a 'dao' on his forehead?
3. Whether at the same time and place, the accused voluntarily caused hurt to the victim, Bijoy Gohain by means of a 'dao'?

Decision thereon and the reasons for the decision :

6) To decide this case in its proper perspective, it is necessary to delve into the evidence.

7) Sri Bijoy Gohain testified as PW.8 that the accused person's house is about 1.5 kms away from his house at Ghilamara. On 02.04.2017 at about

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7.30 pm / 8 pm, he went to the accused person's wine shop to purchase wine. His wine shop was closed and he met the accused in front of his shop. The accused, then asked him to proceed to the 1st floor of his shop to purchase wine and when he went to the 1st floor, the accused handed him one Officers' choice Blue whiskey. The capacity of the bottle was 3.7 mg and the accused person demanded Rs.550/-. As the imprinted price of the whiskey was Rs.150/-, he (PW.8) confronted the accused. The accused insisted that he had to pay Rs.550/-, as no other wine shop was open. He (PW.8) denied to pay the inflated amount. The accused hurled abuses at him and uttered obscene words and switched off the light of the 1st floor and went down to the ground floor. He, somehow, managed to stumble out of the darkness and while he was going down the stairs, the accused dealt a blow with his 'dao' and the blow landed on the left side of his forehead between the left ear and left eye. He sustained cut injuries. He, somehow, managed to get down to the ground floor, and then he raised alarm. Thereafter, he went to Ghilamara PS, which was about 100 metres away from the place of occurrence (P.O. in short). Then, the police took him to Ghilamara PHC in a vehicle. On the same night, he was taken to North Lakhimpur Civil Hospital from Ghilamara PHC. He underwent treatment as Indoor patient. An Eye specialist

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provided treatment. He also underwent private treatment at Dhemaji and Dibrugarh. He underwent CT scan on 02.04.2017 at Bailley's Clinic. Ext.2 is the CT scan report.

8) This witness was cross-examined in extenso. He is the injured person and he has identified his assailant. No contradiction could be elicited through the vigorous cross-examination of PW.8 and PW.10 (I.O.). It proves that the previous statement of PW.8 u/s 161 CrPC is consistent to his testimony in the court.

9) The M.O. Dr. Dhiren Kumar Saikia testified as PW.9 that on 02.04.2017, he was working as Sub Divisional Medical Officer. On that day at about 8 pm, he examined Bijoy Gohain (PW.8) and found the following :

“One cut injury on the left temporal region just lateral to the eye, and size is 2 x 1 x 1/2 cm. The injury is simple in nature. Duration - 2 / 3 hours. Weapon - not dangerous.”

Ext.3 is the Medico legal report and Ext.3(1) is his signature. He has admitted in his cross-examination that he has not mentioned the criminal case number, on the basis of which the victim was examined.

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10) There is cogent and coherent evidence that the incident occurred on 02.04.2017 as stated by the victim and he sustained a cut injury on the left side of his forehead between his left ear and left eye. This injury has been perfectly described by the M.O. (PW.9). The age of the injury has also been mentioned by the M.O., who examined the victim at 8 pm.

11) The evidence of PW.9 clearly reveals that the incident occurred at about 7.30 pm / 8 pm. As the slash on the victim's forehead was a simple cut injury, the M.O. opined that the weapon used was not dangerous. The M.O. did not mention whether the injury was caused by sharp weapon or a blunt weapon. If the injury was caused by a blunt weapon, then the weapon used, must have been a heavy metal based weapon and if the injury was caused by sharp weapon, then the weapon had to be a dangerous weapon like a knife or 'dao'. It could not be justified why the M.O. opined that the weapon used was not a dangerous weapon. Moreover, he did not mention the case number on the Medico legal report i.e., Ext.3. However, the CT scan report clearly depicts that on the CT scan of the victim's brain, a fracture was noticed on the left zygomatic bone with soft tissue swelling in infratemporal and periorbital regions. The victim identified the weapon as a 'dao', which is a

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dangerous weapon. The accused attacked the victim with the 'dao', but unfortunately, the M.O. described the injury as a simple injury caused by a weapon, which is not dangerous in nature. I would like to reiterate that no contradiction as per Section 145 of the Indian Evidence Act, 1872 (Evidence Act for short) could be culled out through the cross-examination of PW.8, PW.9 and PW.10 i.e., through the cross-examination of the victim, the M.O. and the I.O., respectively.

12) The learned defence counsel laid stress in his argument that PW.8 has admitted in his cross-examination that he submitted the CT scan in connection with the alleged injury sustained on the relevant day. It is submitted by the defence counsel that the victim's wife did not substantiate the evidence of the victim. The victim testified in his cross-examination that he narrated the incident to his wife, three days after the incident.

13) The victim's wife, Rumi Gohain testified as PW.1 that the incident occurred in the month of April. At about 8 pm, Luku Dutta, who has a pharmacy near Ghilarama PHC, went to her house and informed her that the accused assaulted her husband with a sharp weapon and her husband was lying in Ghilamara hospital. Then, she rushed to the hospital and found her husband lying on the bed

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with cut injuries on his forehead. Her husband informed her that the accused assaulted him. The doctor referred her husband to the North Lakhimpur Civil Hospital, and she took her husband to the North Lakhimpur Civil Hospital. On the following day i.e., on 03.04.2017, she lodged the ejahar (FIR). Her husband underwent treatment for five days at North Lakhimpur Civil Hospital. Her husband underwent treatment at AMCH, Dibrugarh. Ext.1 is the FIR and Ext.1(1) is her signature.

13) The argument of the defence counsel that the victim's testimony is not substantiated by his wife's evidence holds no water. It is true that the victim testified in his cross-examination that he informed his wife about the incident after three days. It has to be borne in mind that the victim underwent treatment and he sustained head injury with a fracture on his cheek bone. According to his wife (PW.1), he informed about the injury while he was lying on the hospital bed immediately after the incident. The victim was still under shock of his head injury and there is every possibility that he may not remember each and every detail of the incident, immediately after the injury. The victim's wife lodged the FIR on the very next day and the accused has been named in the FIR. Due to the tumultuous situation, there is also every possibility

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that PW.1 may have forgotten who informed about her husband's assailant, in the melee. PW.1 was also cross-examined in extenso.

14) The I.O., Bhogendra Pagag, testified as PW.10 that PW.1 has not mentioned u/s 161 CrPC that Luku Dutta came to her house and informed her that the accused assaulted her husband. But, she received an information over phone and came to the hospital. PW.1 also did not mention u/s 161 CrPC that the accused assaulted her husband. It is clear that although, PW.1 has not mentioned u/s 161 CrPC that the accused assaulted her husband, yet her FIR clearly reveals that the accused assaulted her husband. The FIR was lodged on 03.04.2017 and the I.O. also embarked upon the investigation from 03.04.2017. The omission of the victim's wife to mention that the accused assaulted her husband cannot be considered as a contradiction at all considering the situation immediately after the assault. The victim had to be shifted to three different hospitals for his treatment and he sustained a head injury. The remaining part of the PW.1's cross-examination cannot be considered as noteworthy.

15) Sri Dhruvajyoti Chetia testified as PW.2 that Bijoy Gohain's house is about 1 /2 a kilometer away from his house. He did not witness the incident,

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which occurred a year back. At the time of the incident, he was in his house at Chowkhamghat village. At about 7.30 pm, his friend, Sushil Gohain called him over phone and informed him that Manik Chutia assaulted Bijoy Gohain causing bleeding injuries on his forehead in his (Manik Chutia's) wine shop, which is at the backside of Ghilamara centre and Bijoy Gohain was taken to Ghillamara PHC. He (PW.2) immediately went to Ghilamara PHC and found Bijoy Gohain lying on a bed. He noticed a stitched injury on the left side of Bijoy Gohain's forehead. Bijoy Gohain then informed him that he had a quarrel with the accused and thereafter, the accused assaulted him causing cut injury on the left side of his (PW.8's) forehead. The doctor of Ghilamara PHC referred Bijoy Gohain to North Lakhimpur Civil Hospital. He took Bijoy Gohain to North Lakhimpur Civil Hospital in his car.

16) After perusal of the cross-examination of PW.2 and PW.10, it is held that no contradiction could be elicited through the cross-examination of PW.2 and PW.10. The evidence of PW.2 is consistent to his statement u/s 161 CrPC. It is thereby held that PW.8's evidence is supported and corroborated by the evidence of PW.1 and PW.2.

17) Manoj Gohain testified as PW.3 that Bijoy Gohain's house is about a kilometer away from his

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house. The incident occurred about a year back. Accused, Manik Chutia has a wine shop at Ghilamara centre. At that time, the accused called him over phone to his wine shop and he went there. Then, the accused took a bottle of wine from his shop and then, he along with the accused went down to the 1st floor of his shop. The victim, Bijoy Gohain was also present. All of them came down to the 1st floor of the wine shop. Then, Bijoy Gohain shared alcohol with him and Manik Chutia. A quarrel erupted between the accused and Bijoy Gohain. After a while, Manik Chutia came down from his wine shop, but Bijoy Gohain stayed back. When Manik came to the 1st floor of his wine shop, Bijoy Gohain stated that, "Manik bhai, tumi muk marilaa" (Manik bhai, you assaulted me). Thereafter, the accused went away to his shop. He (PW.3) noticed bleeding injuries on the left side of Bijoy Gohain's forehead. Then, he asked Bijoy Gohain to go with him to Ghilamara hospital, but Bijoy went to Ghilamara Police Station. Thereafter, the police took Bijoy Gohain to the Ghilamara PHC. At that time, he was standing in front of Ghilamara PHC. When the doctor saw the victim, the doctor referred him to North Lakhimpur Civil Hospital and Bijoy Gohain was taken to North Lakhimpur Civil Hospital. On the following day, he was released from North Lakhimpur Civil Hospital.

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18) This witness was cross-examined in extenso, but no contradiction could be culled out through the cross-examination of this witness. Although this witness did not notice the duel between the accused and the victim, yet his evidence clearly depicts that Manik Chutia assaulted Bijoy Gohain. This witness helped the victim and took him to the hospital. The substantive evidence of PW.8 is substantiated by the circumstantial evidence adduced by PW.3. Three of them were present in the wine shop. It has been proved beyond a reasonable doubt that Manik Chutia was the aggressor who assaulted Bijoy Gohain, who sustained serious bleeding injuries on the left side of his forehead.

19) The evidence of PW.4 supports the fact that Bijoy Gohain sustained injuries on the day of the incident. Sri Tapan Kumar Dutta testified as PW.4 that he is the owner of a pharmacy at Ghilamara Tiniali by name "Dutta Medicos". He could not recollect the date of the incident, which took place about a year back at about 8 / 9 pm. Manoj Gohain (PW.3) asked him over phone to come to the Ghilamara PHC and then, he went to Ghilamara PHC and found that the victim (PW.8) was in Ghilamara PHC and he noticed injuries on Bijoy Gohain's head. Blood was oozing out from his injuries. The doctor gave him a prescription and he collected medicine

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from the pharmacy. Then, the doctor referred the victim to North Lakhimpur Civil Hospital. He took Bijoy Gohain to North Lakhimpur Civil Hospital with the help of some local boys. Bijoy Gohain (PW.8) underwent treatment at North Lakhimpur Civil Hospital. Bijoy Gohain told him that Manik Chutia assaulted him and caused injuries on his head.

20) After careful assessment of the evidence of PW.4, it can be safely held that the evidence of PW.1, PW.2, PW.3 and PW.8 is corroborated and supported by the evidence of PW.4. He may not have witnessed the incident, but the victim himself told him that the accused assaulted him.

21) The evidence of PW.1, PW.2, PW.3, PW.4, PW.8, PW.9 and PW.10 is also bolstered by the evidence of Raju Gogoi, who testified as PW.5 that the incident occurred about 4 / 5 months back. In the evening of the incident, he was with Tapan Kumar Dutta in his cousin's house. Then, Tapan Kumar Dutta received a call and after the call ended, Tapan Kumar Dutta stated that Bijoy Gohain was in Ghilamara PHC as he sustained injuries. Then, he along with Tapan Kumar Dutta went to Ghilamara PHC and noticed injuries on Bijoy Gohain's body. He noticed blood stains over his chest, but he did not know where Bijoy Gohain sustained injuries. Bijoy Gohain informed him that the accused, Manik Chutia

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assaulted him and caused the injuries sustained by him. Thereafter, he returned to his house.

22) No contradiction could be elicited as per Section 145 of the Evidence Act.

23) Sri Chandra Shekhar Das testified as PW.6 that about 2 /3 years back, he heard that a quarrel erupted between the accused, Manik Chutia and Bijoy Gohain. However, he did not know if the accused assaulted Bijoy Gohain. He did not go to meet Bijoy Gohain after the incident.

24) Md. Rijman Ali testified as PW.7 that he has been staying in Ghilamara for the last 17 years. He was a tenant of accused, Manik Chutia. The incident occurred about a year ago. At about 8.30 pm, he was in his rented room. At that time, he heard a commotion in the 1st floor of his rented room. He went out of the room and saw the accused, Manik Chutia coming down from the 1st floor. He also learnt that one person fell down. Then, he entered into his room. After 2 / 3 days, police came to their building and recorded his statement.

25) This witness tried to shield the accused because he was a tenant. He denied about any knowledge of any assault. However, truth prevails. He (PW.7) tried to screen the accused from punishment by

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stating that the person, who sustained injuries fell down. He tried to imply that the person who sustained injuries was not assaulted but he sustained the injuries as a result of his fall. Unfortunately, this witness failed to shield the accused because of the overwhelming evidence against the accused.

26) Recapitulating the entire evidence, it is held that the incident occurred at night. PW.8 went to purchase wine from the accused person's wine shop. A fight erupted between the accused and the victim. The victim clearly identified the accused as his assailant. The evidence of the witnesses supports the evidence of the victim. The reluctant eye witness was also present at the time of the incident. The substantive evidence of PW.8 is also substantiated by the evidence of the eye witness, PW.3. PW.3 was present while the victim joined them for a drink and he was present when the victim sustained injuries, but he kept mum about his presence during the assault. However, he noticed bleeding injuries and he is the one, who took the victim to the Ghilamara PHC.

27) I would like to reiterate that no contradictions could be elicited through the cross-examination of the witnesses. There is not even an iota of doubt that the accused assaulted the victim and caused

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an injury on his forehead. The irony is that although the CT scan depicts a fracture on the zygomatic bone, yet the medical officer opined the injury to be a simple injury. It is clear that the accused attacked Bijoy Gohain with a 'dao'. The uncontroverted and steadfast evidence proves beyond reasonable doubt that the accused attacked Bijoy Gohain with a 'dao'. It is clear from the evidence that a sudden fight erupted between the accused and Bijoy Gohain when the victim tried to bargain with the price of the bottle of alcohol. The accused flew into a fit of rage and he hit Bijoy Gohain with a 'dao' causing a simple injury. Although the injury was on a vital part, yet it is not discernible that the accused intended to kill and do away with the victim. The incident occurred at the spur of the moment and it is not a premeditated attack with an attempt to commit murder. In an attempt to commit murder, an injury caused by a 'dao' on the victim's head will not be a simple injury. The person, who intends to kill a person will attack his opponent aggressively. A 'dao' blow with intent to kill, will not land softly on the vital part of the skull amounting to simple injury.

28) The accused is, thereby, acquitted from the charge u/s 307 IPC on benefit of doubt. There is no evidence that the accused wrongfully restrained Bijoy Gohain because it is clear from the evidence

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that Bijoy Gohain went to purchase alcohol from the accused person's shop. It is also clear from the evidence of PW.3 and PW.8 that the accused left Bijoy Gohain in his shop and then, he went down the stairs. Thus, there is no evidence of wrongful restraint and the accused is acquitted from the charge u/s 341 IPC on benefit of doubt.

29) The I.O. is a formal witness and he testified as PW.10 that on 03.04.2017, he received an F.I.R. from Smt Rumi Gohain and registered GR Case No.33/2017 u/s 341/ 326/ 307 IPC and embarked upon the investigation. He prepared the sketch map, Ext.4, wherein Ext.4(1) is his signature. After completion of the preliminary investigation, he handed over the Case Diary to the O.C., Sri Ajit Bhuyan, who laid the charge-sheet against the accused. Ext.5 is the charge-sheet and Ext.5(1) is his signature.

30) It has already been held in my foregoing discussions that there is substantive as well as circumstantial evidence against the accused u/s 324 IPC. So, the accused is held guilty of offence under Section 324 IPC. The ocular evidence is consistent to the medical evidence.

31) I have heard the accused on the point of sentence. The accused replied that he had nothing to say on the point of sentence.

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32) I have considered the facts and circumstances of this case. Considering the facts and circumstances of the case and nature of injuries sustained by the victim, I believe, a punishment to imprisonment for two years will meet the ends of justice.

SENTENCE

33) The accused, Sri Manik Chutia is convicted u/s 324 IPC and he is sentenced to undergo Rigorous imprisonment for 2 (two) years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand) only, and in default of payment of fine, he is to undergo Rigorous imprisonment for 3 (three) months.

34) The fine deposited is to be paid to the victim, as compensation.

35) The period of detention of the accused during investigation or trial is set off with his custodial sentence.

36) As compensation is already recommended, this case is not sent for compensation to the District Legal Services Authority.

37) Furnish a free copy of Judgment to the accused.

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Judgment is signed, sealed and delivered in the open Court on the 20th day of July, 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.

APPENDIX**Sessions Case No.125(NL)2017.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Smt Rumi Gohain.
2. PW.2 - Sri Dhruvajyoti Chetia.
3. PW.3 - Sri Manoj Gohain.
4. PW.4 - Sri Tapan Kumar Dutta.
5. PW.5 - Sri Raju Gogoi.
6. PW.6 - Sri Chandra Shekhar Das.
7. PW.7 - Md. Rijman Ali.
8. PW.8 - Sri Bijoy Gohain.
9. PW.9 - Dr. Dhiren Kumar Saikia, M.O.
10. PW.10- ASI Bhogendra Pagag, I.O.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - F.I.R.
2. Ext.2 - C.T. Scan report.
3. Ext.3 - Medico Legal Report.
4. Ext.4 - Sketch map.
5. Ext.5 - Charge-sheet.
6. Ext.6 - Abstract copy of the G.D. Entry.

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.