

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**SESSION CASE NO. 231 of 2017**

Under section 302/34 of I.P.C.

(Arising out of G. R Case No. 2244/17)

**State of Assam**

**-Vs-**

1. Sri Ramu Hazowary
  2. Sri Lila Hazowary
- ..... Accused persons.

**Present :** **Smti I. Barman, AJS**  
**Sessions Judge,**  
**Sonitpur, Tezpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor  
For the accused : Smti Dulumoni Sinha, Advocate.

Date of Argument : 15-02-2021  
Date of Judgment : 22-02-2021.

**J U D G M E N T**

**1.** Shorn of the details of the factual matrix of the case are as follows:

On 16-06-2017, at noon when the informant's husband Ajit Hazowary along with his servant were cleaning his boundary drain, accused Ramu Hazowary in drunken state altercated with her husband Ajit Hazowary and scuffled each other. At that time accused Lila Hazowary with a wooden stick gave blow over the head of Ajit Hazowary, as a result of which, Ajit Hazowary being senseless fell down upon the ground. After the incident, though immediately the injured was taken to hospital but doctor declared him dead.

**2.** On receipt of the FIR from the wife of the deceased, the In-charge of Salonibari Police Out Post made a G.D. Entry No. 363 dated 16-06-2017 and forwarded the FIR to the Officer-in-Charge of Tezpur Police Station and launched investigation of the case. In course of investigation, the Investigating

Officer visited the place of occurrence, recorded the statement of the witnesses, seized a branch of tree and on completion of investigation submitted charge sheet against the accused persons namely, Lila Hazowary and Ramu Hazowary u/s 302/34 of IPC.

3. On production of the accused persons from jail, the learned Chief Judicial Magistrate, Sonitpur, Tezpur took cognizance against the accused persons Lila Hazowary and Ramu Hazowary u/s 302/34 of IPC, furnished necessary copies as required under section 207 Cr.P.C and committed the case to the Court of Session being the offence u/s 302 IPC exclusively triable by the court of Session. On committal, after going through the police report and hearing both sides, charge u/s 302/34 of the IPC was framed against the accused persons Lila Hazowary and Ramu Hazowary and particulars of the charge on being read over and explained to the accused persons, they pleaded not guilty and demanded to stand for trial.

4. During trial, in order to bring home the charge leveled against the accused persons, prosecution examined 9 (nine) witnesses. In the statements recorded u/s 313 Cr.P.C, the accused persons denied all the allegations leveled against them. Defence taking the plea of total denial submitted that due to boundary dispute between the parties, they were falsely implicated in the case. Defence declined to adduce evidence.

5. I have heard the argument of learned counsel of both sides and also have gone through the evidence on record.

6. **The point to be determined in this case is as follows–**

*1. Whether the accused Lila Hazowary and Ramu Hazowary, in furtherance of common intention, on 16-06-2017, at about 12.00 noon, at No.1 Botabari Ulubari under Tezpur PS, committed murder intentionally by causing the death of Ajit Hazowari and thereby committed an offence punishable u/s 302/34 of the IPC?*

7. Mr. M. Baruah, the learned Public Prosecutor for the state during argument has submitted that the evidence of the prosecution witnesses coupled

with the testimony tendered by Medical Officer indisputably shows that on the day of question accused Lila Hazowary inflicted blows to the deceased with a lathi over his head followed by a quarrel with accused Ramu Hazowary as a result of which he succumbed to the injuries on the way to hospital. Learned Public Prosecutor also submitted that the evidence rendered by the PWs clearly indicates that the accused persons are the perpetrators of the crime.

**8.** Controverting the said argument advanced by the learned Public Prosecutor, Mrs. D. Sinha, appearing for the accused persons has contended that the evidence rendered by the prosecution witnesses is found to be contradictory on material points and it does not inspire confidence.

**9.** Taking notes upon the argument advanced by the learned counsel for the parties, I find it necessary to have an brief revision of the evidence on record and for this purpose, evidence of the Medical Officer who conducted the post mortem examination on the dead body is first taken up for consideration.

**10. PW 7** Dr. Ankur Bikash Borah, the Medical Officer conducted autopsy on the dead body of Ajit Hazowary on 16-06-2017 in reference to Salonibari OP GDE NO. 363 dated 16-06-2017 and found the following :

**External appearance:**

Fracture on the frontal bone of fore-head of size 0.5 x 3 cm, subdural haemorrhage and subarchnoid haemorrhage in both the cerebral hemisphere of brain.

The doctor opined that the cause of death was due to coma, as a result of injuries sustained over head which was caused by blunt force impact. The doctor proved the Post-mortem report as Ext. 4. During cross he stated that such type of injuries may be caused by falling or dashing against any hard substance with force.

**11.** The evidence of the Medical Officer clearly disclosed that the wounds on the body of the deceased was caused by blunt weapon and death was due to the said injures. Hence, taking notes upon the evidence led by the Medical officer, let us examine the evidence of other witnesses.

**12. PW 1** Smti Chandra Hazowary, the informant as well as the wife of the deceased, stated that on 16-06-2017, at around 12.30 PM while her husband and Bhattu @ Baona @ Paltu (PW 2) were cleaning their drain, accused Ramu Hazowary came there and picked up quarrel with them. At that time, accused Lila Hazowary coming there with a lathi, gave blow over the head of her husband, as a result her husband fell down upon the ground. After the incident, they took her husband to Tezpur but he succumbed to injuries on the way. Regarding the incident, she lodged the FIR (Ext.1).

During cross by defence, she stated that the accused persons are their next door neighbour and there was a Mandir of the accused persons upon their own land near the drain. The house of the accused persons was about 10/15 feet away from the place of occurrence i.e. the drain. She stated that at the time of cleaning the drain, her husband was holding a dao. At that time no any other person was present there. She denied the suggestion that when her husband tried to encroach the land of accused Ramu and Lila by cleaning the drain, accused Ramu requested her husband not to do so and then her husband tried to kill Ramu by the dao and when Ramu tried to save himself from the attack of her husband, then in the scuffle, her husband fell down on the pucca wall of the Mandir and sustained injuries over his head. She further stated that on the day of incident, her husband did not go to his office.

**13.** The most vital witness PW 2 Paltu Herenz who was present with the deceased at the time of alleged incident turned hostile. He testified that on 16-06-2017 at around 12 noon when he along with the deceased were cleaning the drain situated in between the house of the deceased and the accused persons, accused Ramu Hazowary and Ajit Hazowary had entered into a scuffle. In the scuffle Ajit Hazowary fell on the Namghar. Then he and Munia Hazowary, son of the accused brought the injured to his (injured) house. Thereafter, wife and son of the deceased took him to hospital. Lateron he came to know that Ajit Hazowary died.

During cross by prosecution, this hostile witness confirmed that before police he stated that on the day of incident he was working in the house of Ajit Hazowary and after Ajit Hazowary returned from duty, he also joined him to clear the jungle with a dao and at that time accused Ramu came there and

started altercation with Ajit and thereafter though accused Lila came there but he left. He further stated that before police he told that thereafter Ramu caught the dao of Ajit and both scuffled each other and at that time Lila inflicted one lathi blow on the head of Ajit. He confirmed that before police he did not state that Ajit died by falling upon the wall of Namghar of the accused persons and that after the incident he brought Ajit to his house from the place of occurrence. He again stated that Ramu Hazowary had assaulted Ajit Hazowary.

During cross by defence he stated that his name is Paltu not Bhattu. He clearly stated that Ajit fell upon the wall of the Namghar.

**14. PW 3** Puja Hazowary, the daughter-in-law of the deceased, deposed that on 16-06-2017 at around 12 noon while her deceased father-in-law was cleaning the drain with Paltu i. e. PW 2, accused Ramu Hazowary entered into an altercation with the deceased and then the other accused Lila came there. She further stated that accused Ramu caught her father-in-law and Lila had assaulted her father-in-law with a lathi (branch of Pakori tree) over his head. In the incident the deceased became senseless and immediately he was taken to hospital but he was declared dead. She proved the seizure list Ext. 2 by which the lathi (Material Ext.1) was seized. She further stated that accused Lila Hazowary showing the lathi to police admitted that he had assaulted Ajit Hazowary with the lathi.

**15. PW 4** Smti Nirmali Hazowary, the elder sister of the deceased, categorically stated that on the day of incident at about 12 noon while Ajit Hazowary after returning home was cleaning the drain with Paltu (PW 2), Ramu Hazowary entered into an altercation with her deceased brother, Thereafter, other accused Lila Hazowary came there and then accused Ramu caught the deceased and Lila had assaulted him with a lathi and in the incident her brother died. She proved her signature in the seizurelist as Ext. 2(2).

During cross she stated that she resides adjacent to the house of Ajit separately with her daughter-in-law Minati. She stated that there is a pucca 'Namghar' near the drain. She denied possessing a dao in the hand of Ajit Hazowary at the time of occurrence.

**16. PW 5,** Sri Anjit Mahanta testified that on 16-06-2017 at around 12.30 PM when he came to the house of Ajit Hazowary, had seen him cleaning the drain. At that time Ramu Hazowary caught hold of the deceased and accused Lila Hazowary assaulted him by means of a branch of tree over his head. After the incident Ajit Hazowary was taken to hospital but he succumbed to injuries on his way. He proved the inquest report as Ext.3. In cross examination he stated that after he reached the place of occurrence, the family members came out. This witness denied existence of any Namghar near the drain.

**17. PW 6,** Sri Abinash Hazowary, the son of the deceased, testified that on 16-06-2017 at around 1.30 PM when he was working in the brick-bats, his sister-in-law Puja informed him over telephone that Ramu Hazowary and Lila Hazowary had assaulted his father Ajit Hazowary. Immediately he came home and found his father lying on the ground near their boundary drain. Immediately, he took his father to Goroimari hospital and thereafter as per advice of the doctor of the said hospital, when they were proceeding to Mission Hospital, his father died on the way.

**18. PW 8,** Sri Diganta Nath, ASI of police, stated on 16-06-2017 when he was on duty at KCH, Tezpur in connection with an UD case, a man was brought to doctor and the doctor declared him dead. Then he informed the matter to I/C Salonibari Police Out Post over phone. Thereafter, as per instruction of the I/C, he conducted inquest and arranged for post mortem examination on the dead body of Ajit Hazowari. He proved the inquest report as Ext. 3 and dead body challan as Ext. 5.

**19. PW 9,** Inspector Naren Sonowal, the Investigating Officer deposed that on receipt of verbal information over phone from ASI Diganta Nath about the death of Diganta Nath, he made GDE No. 362 dated 16-06-2017 vide Ext. 9 and thereafter on receipt of the FIR (Ext.1) he also made the GDE No. 363 dated 16-06-2016 vide Ext. 10 and forwarded the same to Tezpur PS for registering a case and O/C of Tezpur PS entrusted him to investigate the case. Immediately, he visited the place of occurrence, prepared the sketch map of the place of occurrence vide Ext. 7, seized a piece of wooden stick (Material Ext. 1) vide seizure list Ext. 2 which was recovered from the house of the accused persons as led by them, recorded the statement of witnesses, and on

completion of investigation laid charge sheet against the accused persons vide Ext. 8.

During cross, he stated that after arrest when the accused person was produced before Magistrate and at later part also, the seizure list Ext. 2 was not produced before the learned Chief Judicial Magistrate. Admittedly he did not record the statement of the accused person with regard to the fact of leading to discovery of the wooden stick. The seized lathi was also not sent for chemical examination. He confirmed that PW 3 Puja Hazowary did not state before him that she saw the accused Lila Hazowary assaulting Ajit Hazowary by means of a lathi. He further confirmed that PW 3 Puja Hazowary and PW 4 Nirmali Hazowary did not state before him that accused Ramu Hazowary caught Ajit and other accused Lila Hazowary assaulted him with a lathi. He also confirmed that PW 6 Abinash Hazowary did not state him that Puja informed him over phone that Ramu Hazowary and Lila Hazowary had assaulted his father Ajit Hazowary.

**20.** The prosecution case, on evidence from the record, it reveals that the alleged incident was occurred when the deceased Ajit Hazowary and his labour (PW 2) was cleaning the drain of Ajit Hazowary. The house of the deceased and accused Ramu Hazowary are adjacent. It is also in the evidence that there is boundary dispute in between the parties. Regarding the fateful incident PW 1 the wife of the deceased testified that on the day of incident at around 12.30 PM while her husband and labour Bhattu were cleaning their drain, accused Ramu Hazowary picked up a quarrel with them. At that time, accused Lila Hazowary armed with a lathi coming there gave blow over the head of her deceased husband, as a result, her husband fell upon the ground and succumbed to the injures on the way to hospital. The labour Bhattu who was examined as PW2 did not support the prosecution case and turned hostile. According to PW2 when he along with the deceased were cleaning the drain situated between the land of the accused and the deceased, accused Ramu Hazowary and deceased Ajit Hazowary had entered into a scuffle. In the scuffle, Ajit Hazowary fell on the "Namghar" as a result of which he sustained injury and later

on died. Though this witness declared hostile for non supporting the prosecution version, but, again during cross by prosecution he stated that before police he gave statement that on the day of incident while he was working in the house of Ajit Hazowary and after returning from duty Ajit Hazowary also joined him to clear the jungle with a dao, at that time accused Ramu Hazowary came there and picked up quarrel with the deceased, thereafter, although accused Lila Hazowary came there, but, again he left the place. He further stated that before police he stated that Ramu Hazowary caught the dao of the deceased and entered into a scuffle, at that time, he saw Lila Hazowary inflicting lathi blow on the head of Ajit Hazowary. He also stated that before police he did not state that Ajit died by falling over the wall of the "Namghar" of the accused persons. After a careful scrutiny of this material witness, it reveals that in deposition also he made contradictory statements. Once he stated that accused Lila Hazowary left the place during altercation of accused Ramu Hazowary and the deceased and again stated that before police he stated that Lila Hazowary inflicted one lathi blow on the head of Ajit. Though PW 2 confirmed his statement made u/s 161 Cr.P.C. during cross by prosecution, but statement u/s 161 Cr.P.C. is not a substantive piece of evidence. Moreover, PW 2 again stated that Ramu Hazowary had assaulted the deceased. He made different version in deposition. Due to contradictory statement of this eye witness, his evidence is not at all trustworthy.

**21.** The other witnesses PW 3 to PW 6 being family members of the deceased are interested witnesses. PW 3 in deposition though claimed that she saw the incident but Investigating Officer (PW 9) confirmed that in statement u/s 161 Cr.P.C., she did not state that she saw the accused Lila assaulting Ajit by a lathi. She made different version at different time. The evidence of PW 3 to PW 5 regarding the fact of holding the deceased by the accused Ramu Hazowary while other accused Lila Hazowary had assaulted him was not stated before the Investigating Officer recorded u/s 161 Cr.P.C. which

was confirmed by the Investigating Officer. Non disclosure of material fact immediately after the occurrence is fatal to the prosecution and is not believable one.

**22.** In this case, the evidence of PW 1 reveals that on the day of incident, her deceased husband, an employee of Air Force did not go for duty whereas, PW 2 the most vital witness stated that the incident occurred after return of the deceased from his duty. Though PW 3 and PW 4 claimed to be the eye witnesses to the incident, but, according to the deceased's wife (PW1) at the time of incident none was present except PW 2 whereas PW 4 disclosed that he along with Jugita Hazowary, Sanjib Mahanta and Paltu (PW2) were present at the time of occurrence. On the other hand according to PW 5 after he reached the place of occurrence, PW 6, the son of the deceased and his family members came there. So, the claim of PW 1 and PW 4 that they saw the incident is not believable. Evidence of PW 6 that after he reached the place of occurrence, PW 6 and his family members came there, is not supported by PW 6 himself. He claimed to be reported witness.

**23.** Further, PW 1 the deceased's wife admitted that there is a pucca 'Namghar' of the accused persons in their land near the drain. This part of her evidence corroborates the version of PW2, the hostile witness who testified that in the scuffle between the deceased and Ramu Hazowary, the deceased fell on the 'Namghar' and sustained injury. On the other hand, Existence of 'Namghar' near the drain is denied by PW 5, the nephew of the deceased. PW 1 and PW 5 made contradictory statements on material particular.

**24.** It is also in the evidence that at the time of altercation between the accused Ramu Hazowary and the deceased, Ramu was having a dao in his hand and they scuffled each other. Medical evidence also reveals that the injury sustained by the deceased may cause by falling or dashing against any hard substance with force. This supports the version of PW 2, the labour who was present at the time of incident. In scuffle between the accused Ramu Hazowary and the deceased possibility of felling upon the pucca wall of the 'Namghar' causing injuries upon his head cannot be ruled out.

**25.** That apart, in this case a branch of a tree was seized vide seizure list Ext. 2. The Investigating Officer (PW 9) testified that he seized a wooden stick from the house of the accused as led by the accused person. But PW 3 the seizure witness stated that the lathi was lying near the drain and Lila showed the lathi (Material Ext.1). Lathi and wooden stick are not same. Moreover, admittedly neither the seized lathi nor the seizure list was produced before the Investigating Officer. Statement of the accused is also not recorded by the Investigating Officer with regard to the fact of leading to discovery of the seized lathi. Moreover, the seized lathi was also not sent for examination by the I.O.

**26.** In the case of **S.K. Yusuf Vs. State of West Bengal reported in (2011) 11 SCC 745 at para 34**, the Apex Court has observed that –

**“the nature of the admissibility of the facts discovered pursuant to the statement of the accused under Section 27 of the Evidence Act, 1872 is very limited. If an accused deposes to the police officer the fact as a result of which the weapon with which the crime is committed is discovered, and as a result of such disclosure, recovery of the weapon is made, no interference can be drawn against the accused, if there is no evidence connecting the weapon with the crime alleged to have been committed by the accused.”**

**27.** In the present case, even if we accept the version of the Investigating Officer regarding leading to the discovery of the seized lathi, the seizure of the lathi itself cannot be treated as substantive evidence to implicate the accused, in as much as no examination in respect of the lathi was done to show that the same was used by the accused in committing the alleged crime. In absence of any corroborating evidence, the alleged seizure of weapon at the instance of the accused person cannot lead to the conclusive findings that the same was used in committing the alleged crime. In the back drop of above evidence regarding seizure, it is

impossible to hold with certainty that the seized lathi was used by the accused as incriminating weapon.

**28.** Another interested witness PW 5 also demolished the evidence of PW 1 to PW 4 as this witness did not state about the presence of PW 2 with the deceased at the time of incident. The evidence of PW 1 to PW 5 is found contradictory on material particular. The discrepancies as discussed above regarding the alleged incident indicate lack of corroboration in their evidence, raising doubt about the prosecution version.

**29.** It is well settled that in criminal law, the prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one point to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted.

**30.** After considering the evidence discussed above, with discrepancies and inconsistent version of the PWs, I have no hesitation in holding that the prosecution failed to prove the case against the accused persons beyond all reasonable doubt.

**31.** Accordingly, accused Ramu Hazowary and Lila Hazowary are acquitted of the charge u/s 302/34 of the IPC on benefit of doubt and set them at liberty forthwith.

Their bail bonds shall remain in force till next six months.

**32.** The seized lathi be destroyed in due course.

Send a copy of the Judgment to the District Magistrate, Sonitpur, Tezpur as per provision of section 365 Cr.P.C.

**33.** The deceased left his wife at the time of death. The case is recommended to the District Legal Services Authority, Sonitpur, Tezpur to pay compensation to the wife of the deceased, u/s 357 A of Cr.P.C.

**34.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **22nd day of February, 2021.**

**( I. Barman )**  
**SESSIONS JUDGE**  
**SONITPUR : TEZPUR**

Dictated and corrected by me.

**(I. Barman)**  
**SESSIONS JUDGE,**  
**SONITPUR :: TEZPUR.**

## **APPENDIX**

### **Prosecution Witness**

- |    |                          |    |                                 |
|----|--------------------------|----|---------------------------------|
| 1. | Prosecution Witness No.1 | :- | Smti Chanda Hazowary, informant |
| 2. | Prosecution Witness No.2 | :- | Sri Paltu Herenz                |
| 3. | Prosecution Witness No.3 | :- | Puja Hazowary,                  |
| 4. | Prosecution Witness No.4 | :- | Smti Nirmali Hazowary           |
| 5. | Prosecution Witness No.5 | :- | Sri Anjit Mahanta               |
| 6. | Prosecution Witness No.6 | :- | Sri Abinash Hazowary            |
| 7. | Prosecution Witness No.7 | :- | Dr. Ankur Bikash Borah, M.O.    |
| 8. | Prosecution Witness No.8 | :- | Sri Diganta Nath, I.O.          |
| 9. | Prosecution Witness No.9 | :- | Sri Naren Sonowal, I.O.         |

### **EXHIBITS**

- |    |                |    |   |
|----|----------------|----|---|
| 1. | Exhibit No.1   | :- | FIR   |
| 2. | Exhibit No.2   | :- | Seizurelist.                                      |
| 3. | Exhibit No.3   | :- | Inquest   |
| 4. | Exhibit No.4   | :- | Post mortem report.                               |
| 5. | Exhibit No. 5  | :- | Dead body challan.                                |
| 6. | Exhibit No. 7  | :- | Sketch map  |
| 7. | Exhibit No. 8  | :- | Charge sheet.                                     |
| 8. | Exhibit No. 9  | :- | Extract copy of the GDE No.362 dated 16-06-2017.  |
| 9. | Exhibit No. 10 | :- | Extract copy of the GDE No. 363 dated 16-06-2017. |

**(I.Barman)**  
**SESSIONS JUDGE**  
**SONITPUR: TEZPUR**