

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 24 of 2017

Under section 448/302 of I.P.C.
(Arising out of G. R Case No. 3306/16)

State of Assam

-Vs-

1. Sri Bidheswar Hazarika Accused person.

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 : 19-02-2021

Date of Judgment : 20-02-2021.

J U D G M E N T

1. The prosecution, case in brief, is that on 01-10-2016, at around 4.20 PM while the informant Nirmali Hazarika (PW3) was grinding rice in "Dheki" at the backside of her house, accused Bidheswar Hazarika entered into her house silently and had assaulted her mother-in-law Phunu Hazarika (herein after called as 'the deceased') with a lathi and a piece of brick, as a result of which, Phunu Hazarika sustained grievous injuries and became senseless. After committing the offence when the accused came out from her house and reached her court-yard, she had seen him armed with a lathi. She

also found her mother-in-law in serious condition. The injured was taken to Dholabil hospital wherein she succumbed to the injuries.

2. On receipt of an FIR from the informant (PW 3), a case was registered being Sootea P.S. Case No. 161/16 u/s 448/302 of the IPC and launched investigation of the case. During investigation, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses, seized one blood stained bamboo lathi, arrested the accused Bidheswar Hazarika and on completion of investigation laid chargesheet against the accused Bidheswar Hazarika u/s 448/302 of the IPC.

3. On appearance of the accused, having furnished necessary copies as required under section 207 Cr.P.C. the learned Judicial Magistrate, 1st class, Tezpur committed the case to the Court of Session, the offence u/s 302 IPC being exclusively triable by the court of Session. The case being committed, the accused entered his appearance. After going through the police report and hearing both sides, charge u/s 448/302 of the IPC was framed against the accused Bidheswar Hazarika and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and demanded to stand for trial.

4. To substantiate the case, prosecution examined as many as 9 (nine) witnesses. In the statements recorded u/s 313 Cr.P.C, the accused denied all the allegations made against him and pleaded innocence. He declined to adduce evidence.

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

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

1. Whether the accused Bidheswar Hazarika on 01-10-2016, at around 4.20 PM. at Bohuwakuri, under Sootea PS, committed criminal trespass by entering into the house of the informant Nirmali Hazarika with intent to kill her mother-in-law Phunu Hazarika and thereby committed an offence punishable u/s 448 of the IPC?

2. Whether the accused Bidheswar Hazarika on 01-10-2016, at around 4.20 PM. at Bohuwakuri, under Sootea PS, committed murder by intentionally or knowingly causing the death of mother-in-law of the informant, namely, Phunu Hazarika and thereby committed an offence punishable u/s 302 of the IPC?

7. Mr. Baruah, the learned Public Prosecutor, referring to the evidence on record, submitted that the unimpeachable evidence of the eye witness (PW 5), leaves no room for any doubt that the accused caused the death of the deceased and as such, the prosecution has successfully proved the case.

8. Refuting the said argument, Smti Sinha, the learned counsel appearing for the accused, has submitted that the evidence of PW 5 is not at all reliable who claimed to be the eye witness to the occurrence. Learned defence counsel also vehemently submitted that no cogent evidence is forthcoming regarding involvement of the accused person in committing murder of the deceased and as such he is entitled to benefit of doubt.

9. In order to appreciate the counter arguments, put forward by the learned counsels appearing for the parties, I feel it necessary to, briefly scan the evidence on record.

10. The Medical Officer (PW 1), Dr Mridurupam Gogoi performed the post mortem on the dead body of Phunu Hazarika on 02-10-2016, at around 1.30 p.m. in reference to Sootea PS GDE NO. 17/16 dated 01-10-2016 and found the following injuries:

External appearance:

One chop wound (10 x 3 x 4) cm over forehead with irregular margin horizontally in position with fracture scalp bone with laceration and exposure of brain matter, one cut wound over right mandible area (5 x 1 x 4) cm with fracture of the mandible with laceration and distortion of the right face and bruise and swelling present over right hand. One cut wound over right maxilla area (3 x 1 x 2) cm, lacerated over frontal brain and brain matter exposed and lacerated over frontal brain.

The doctor opined that the death occurred due to brain injury with excessive bleeding caused by heavy blunt object like axe and the injuries are sufficient to cause the death of a person in ordinary course of nature. The doctor proved the Post-mortem report as Ext. 2.

During cross, it was brought on record that fracture of mandible and skull sustained by the deceased may be caused by sudden falling on hard substance and the cut injuries sustained by the deceased may be caused by dashing or falling against any sharp object with great force.

11. The evidence of the doctor clearly disclosed that the wounds on the body of the deceased which was caused by heavy blunt object. Hence, taking note upon the evidence led by the Medical Officer, let us examine the evidence of other witnesses.

12. PW 2 Dhan Somua only stated that on the day of incident, the deceased was taken to hospital by the 108 Ambulance.

13. PW 3 Nirmali Hazarika, informant as well as the daughter-in-law of the deceased, turned hostile. She stated that on 01-10-2016, at around 4.30 PM while she was grinding rice in the back side of her house, her mother-in-law was not at home. After grinding the rice when she proceeded to feed cattle, she saw her mother-in-law Phunu Hazarika lying in front of her gate in injured condition. Seeing her she raised alarm and thereafter her husband and sister-in-law Bun Hazarika took the injured to hospital wherein she died during treatment. Lateron, she lodged the FIR but she did not remember who wrote the FIR, Ext.2. She only put her signature on it. She clearly stated that she did not mention in the FIR as to who and how had beaten her deceased mother-in-law.

During cross by defence she stated that after the death of the deceased, police interrogated herself and her husband in the police station where she stated the same version. She further stated that the FIR was prepared by her sister-in-law with two others but she did not know the contents of the FIR. Her testimony also disclosed that her deceased

mother-in-law used to reside separately. She stated that Bun Hazarika, her sister-in-law was not present at her mother's house at the time of incident. According to her, during life time as the deceased often picked up quarrel with others, hence, she was boycotted by the villagers.

13. PW 4 Jayanta Saikia also turned hostile. He only stated that on being asked by O/C, he put his signature on a paper. During cross by defence he stated that no any piece of bamboo was seized on being shown by the accused. He proved his signature in the seizure list Ext. 3.

14. PW 5 Smti Bun Hazarika Devi, the married daughter of the deceased, stated that her deceased mother filed a maintenance case against her elder brother Sun Hazarika and brother Bichitra Hazarika in which case the accused Bidheswar Hazarika stood as bailor of her said two brothers. On 01-10-2016, at around 4 PM, when she proceeded to bring a scissors, she had seen the accused coming out from her mother's house armed with a lathi and a mit dao. She and the villagers also noticed blood stains upon the body of the accused. But due to quarrel between her mother and two brothers, none entered into the room. However, she entered into her parental home and found her mother in injured condition lying in the verandah. Thereafter she along with her elder brother Sun Hazarika took her mother to Dholabil hospital wherein her mother died.

During cross, she stated that her brother Bichitra Hazarika used to reside in his father-in-law's house and her elder brother Sun Hazarika resided in his parental property. The residence of Girish Borah, Bobi BabyHazarika, Robi Borah and Mohan Saikia are situated near the house of her mother. She further stated that due to dispute between her mother and brothers, the villagers boycotted her mother. She informed the incident to her elder sister over phone. She admitted that she had not seen the incident.

15. PW 6 Sri Bichitra Hazarika, son of the deceased, also turned hostile. He only proved his signature in the inquest report Ext.4. He stated that he did not know how his mother died.

During cross by defence he stated that due to quarrelsome nature of his mother, she has enmity with the villagers and hence he leaving the company of his mother, used to stay at Jamuguri.

16. PW 7 Sri Raju Hazarika also turned hostile. His evidence disclosed that hearing about the murder of his mother, he rushed to the place of occurrence. He proved his signature in the inquest report, Ext. 4.

Another hostile witness PW 8 Smti Noni Hazarika, the son-in-law of the accused only heard that Phunu Hazarika was murdered. He did not know who killed Phunu Hazarika. He also stated that Phunu Hazarika had no relation with other villagers and since long she was boycotted by the villagers.

17. PW 9 SI Alimuddin Ali, the then Officer-in-Charge of Sootea police Station, stated that on 01-10-2016 one Malaya Hazarika coming to the police station verbally informed that somebody by assaulting her mother, made her fell in front of her gate causing serious injuries to her and she was taken to Dhekiajuli PHC, on the basis of which he made the GDE NO. 17 dated 01-10-2016 (Ext.11). He conducted inquest on the dead body of the deceased in hospital in presence of witnesses, vide Ext. 4 and sent the dead body for post mortem examination. On 02-10-2016 he received an FIR from Nirmali Hazarika. Accordingly, he registered the case being Sootea PS Case No. 161/16 u/s 448/302 IPC and launched investigation of the case. He visited the place of occurrence, prepared the sketch map of the place of occurrence (Ext.5), recorded the statement of other witnesses and seized a blood stained lathi vide seizure list Ext. 3 which was used as a weapon in the offence.

He confirmed the statement of hostile witness PW 2 Nirmali Hazarika, PW 4 Jayanta Saikia, PW 6 Bichitra Hazarika, PW 7 Raju Hazarika and PW 8 Noni Hazarika vide Ext. 6,7,8,9 and 10 respectively. PW 9 clearly stated that Malaya Hazarika informed him verbally that one unknown person assaulted Phunu Hazarika. He admitted that he had not sent the seized lathi to FSL. The lathi was seized from the back side of the house of the accused as led by the accused but he did not record the statement of the accused Bidheswar Hazarika regarding the fact of leading the seized lathi. He admitted that he did not record the statement of Malaya Hazarika who first verbally informed about the incident.

18. In this case, PW 3 is the daughter-in-law of the deceased, PW 5 is the daughter and PW 6 is the son of the deceased, out of whom PW 3 and PW 6 turned hostile. It is in the evidence of PWs that the deceased Phunu Hazarika

filed a maintenance case against her two sons Bichitra Hazarika (PW 6) and Sun Hazarika. PW 3 Nirmali Hazarika is the wife of Sun Hazarika. Evidence of PWs also disclosed that the villagers boycotted the deceased for her quarrelsome nature and hence she used to reside separately. Here, the informant (PW 3) who turned hostile stated that she found the deceased in injured condition lying in front of her gate. The testimony of PW 5 Bun Hazarika Devi, the daughter of the deceased reveals that on 01-10-2016, at around 4 PM, when she proceeded to bring a scissors, she had seen the accused coming out from her mother's house armed with a lathi and a mit dao and she and the villagers also noticed blood stains on the body of the deceased. The claim of this witness that she had seen the accused coming out from her mother's house with a dao and lathi and noticed blood stains upon the body of the accused was not stated in her statement recorded u/s 161 Cr.P.C. which was confirmed by the I.O. (PW 9). She improved her version in deposition. So there is material omission with regard to the incident in this case. Non disclosure of material fact by PW 5 in the statement recorded immediately after the occurrence is fatal to the prosecution and as such her evidence cannot be relied, consequently witnessing the accused armed with dao and lathi coming out from the house of the deceased with blood stain in his (accused) body has become clouded. In the above back drop, the evidence of PW 5, the most vital witness has gone out. Further Malaya Hazarika, the sister of PW 5 informed verbally at the police station that some unknown person had assaulted her mother. If PW 5 witnessed the accused armed with lathi and a mit dao coming out from the house of the deceased, she certainly narrated it to her sister Malaya Hazarika and in that case, she would inform it to the police at the time of verbal information but she did not mention any name of the offender who committed the offence. On the other hand, in cross examination PW 5 also admitted that she had not seen the incident. Other witnesses who are villagers and the family members of the deceased did not support the prosecution case. The Investigating Officer also did not examine Malaya Hazarika who first informed police about the incident.

19. Further, as per the sketch map (Ext.5) the house of PW 3 is in the back side of the house of the deceased. Taking the evidence of PW 3, it is

found that when she was grinding rice in the back side of her house, the deceased was not at home and thereafter when she proceeded to feed cattle had seen the deceased lying in front of the gate. If the deceased was not available at home, how PW 5 had witnessed the accused coming out from the deceased's house with a dao and lathi and immediately saw the deceased in the verandah. There is also no cogent and clinching evidence as to whether the deceased was found in verandah or in front of her gate.

20. In the instant case, with regard to the incident, a blood stain bamboo lathi was seized allegedly used as a weapon in the offence. Regarding seizure, PW 9, the Investigating Officer stated that he seized a lathi used in the offence from the back side of the house as leaded by the accused. But no chemical examination was done in order to ascertain as to whether the said seized dao contained human blood.

21. 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.”

22. 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 chemical examination in respect of the dao was done to show that the same was used by the accused in committing the alleged crime. Moreover, the only seizure witness PW 4 denied the fact of seizing lathi on being shown by the accused. Other seizure witness could not be examined as he already died. 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 and I am of the considered opinion that this circumstance laid by the prosecution was not proved against the accused.

23. In the present case, as noted above apart from the evidence of PW 3, PW 4, PW 6, PW 7 and PW 8 who have been declared as hostile witnesses, there is no other evidence on record to prove any circumstance against the accused. As the evidence of the hostile witnesses can be taken into consideration for the purpose of corroboration of other evidence adduced by the prosecution, in the absence of any other material evidence on record, there is no question of corroboration of the prosecution version by the said hostile witnesses.

24. In the instant case, all the material witnesses except PW 5 are declared as hostile. The prosecution though could prove their statements u/s 161 Cr.P.C., such statement being not substantive evidence, accused cannot be held guilty on their testimony, there being no other evidence produced by the prosecution to support the charge levelled against the accused.

25. In view of the attending facts and circumstances and the evidence rendered by the prosecution witnesses, to hold the accused as author of the crime becomes impossible. The circumstances relied by the prosecution in this case is neither established nor consistent with the hypothesis of the guilt of the accused in the alleged offence. In the light of the above discussions, I am inclined to hold that the prosecution failed to prove the involvement of the accused beyond all reasonable doubt to the commission of offence of murder of deceased Phunu Hazarika.

26. Accordingly, accused Bidheswar Hazarika is acquitted of the charge u/s 448/302 of the IPC on benefit of doubt and set at liberty forthwith. His bail bond shall remain in force till next six months.

27. The seized lathi be destroyed in due course.

28. Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **20th day of February, 2021.**

(I. Barman)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me.

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

APPENDIX

Prosecution Witness

PW No. 1	:-	Dr. Mridurupam Gogoi, M.O.
PW No. 2	:-	Sri Dhan Somua,
PW No. 3	:-	Smti Nirmali Hazarika, informant
PW No. 4	:-	Sri Jayanta Saikia,
PW No. 5	:-	Smti Bun Hazarika,
PW No. 6	:-	Sri Bichitra Hazarika,
PW No. 7	:-	Sri Raju Hazarika,
PW No. 8	:-	Smti Noni Hazarika,
PW No. 9	:-	SI Alimuddin Ahmed, I.O.

Documents proved by prosecution.

1.	Exhibit No.1	:-	Post mortem report
2.	Exhibit No.2	:-	FIR
3.	Exhibit No.3	:-	Seizure list
4.	Exhibit No.4	:-	Inquest report.
5.	Exhibit No. 5	:-	Sketch map.
6.	Exhibit No. 6	:-	Relevant statement of Nirmali Hazarika
7.	Exhibit No. 7	:-	Relevant statement of Jayanta Saikia
8.	Exhibit No. 8	:-	Relevant statement of PW Bichitra Hazarika
9.	Exhibit No. 9	:-	Relevant statement of PW Raju Hazarika
10.	Exhibit No. 10	:-	Relevant statement of PW Noni Hazarika.

(I.Barman)
SESSIONS JUDGE
SONITPUR: TEZPUR