

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,

SONITPUR, ASSAM

**Sessions Case No. 156/2017**

**u/s 302 IPC**

(Arising out of GR Case No. 74/2017)

State of Assam

-vs-

Sri Ashim Baruah

..... Accused person

Present: Sri Dipankar Bora, MA, LL.M., AJS,  
Additional Sessions Judge, FTC,  
Biswanath Chariali, Sonitpur.

Committed by:  
Learned Judicial Magistrate, First Class, Biswanath Chariali

Advocates Appeared:-

For the prosecution: Ms. J. Kalita, learned Addl. P.P

For the defence : Mr. P.P. Borah, learned Legal Aid Counsel

Dates of recording Evidence: 13.11.2017, 27.02.2018, 13.03.2018, 24.04.2018,  
08.05.2018, 22.05.2018, 19.06.2018, 03.07.2018,  
17.07.2018, 31.07.2018, 26.03.2019.

Date of Argument : 23.04.2019.

Date of Judgment : 07.05.2019.

### **JUDGMENT**

1. The prosecution case in brief is that on 17.02.2017 the informant namely, Sri Naren Baruah lodged an FIR with the O/C Gingia PS stating inter alia that on the previous day at about 11.15 a.m., his sister-in-law, Smti Lakhi Baruah was struck by the accused with an axe on her head on the road in front of her house which resulted grievous injury on her person. However, the victim succumbed to her injuries on the way to the Biswanath Civil Hospital.
2. Receiving the same, the police registered a case and investigated the matter. After investigation the police finally submitted chargesheet against the accused Ashim Baruah u/s 302 IPC. The accused in due course on being produced from jail custody before the

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learned Judicial Magistrate, First Class, Biswanath Chariali, was furnished with copies of the relevant documents. As the offence charged u/s 302 IPC is an offence exclusively triable by the Court of Sessions, the case was committed, which was thereafter made over to this Court for disposal.

3. After production the accused before this court, as the accused expressed his inability to engage a counsel of his choice to defend him, the learned legal aid counsel was appointed to defend the accused at the expense of the State. Upon hearing both the sides on the point of charge, taking note of the materials furnished u/s 173 CrPC, as my learned predecessor found grounds for presuming that the accused had committed an offence punishable u/s 302 IPC, the charge was accordingly framed against him, which on being read over and explained, he pleaded not guilty.
4. During trial, the prosecution examined twenty-one witnesses in all including two Investigating Officers as PW19 and PW20 and the Medical Officer as PW 21. The accused was thereafter examined u/s 313 CrPC. His plea was of total denial. He examined himself in his defence u/s 315 CrPC as DW1. The case was thereafter argued by both the sides.

5. **Points for determination**

Whether the accused on the day of the alleged occurrence committed murder of Smti Lakhi Baruah by knowingly or intentionally causing her death?

**Discussion, Decision and Reasons thereof**

6. PW 1 is the informant, Naren Baruah. He testified that on 16.02.2017 his wife (he didn't name her throughout in his evidence) informed him that the accused had assaulted the victim, Lakhi Baruah with an axe as a result of which she sustained grievous injury and his wife took her to Civil Hospital where from she was referred to Tezpur Hospital and on the way to Tezpur, she died. He along with his wife then brought the dead body to the police station and he thereafter lodged the FIR, which he proved as Ext.1. In his cross he stated that he had lodged the FIR on the next day of occurrence. He stated that he did not witness the occurrence.
7. It appears from the evidence of the informant that he was reported about the incident by his wife though he did not name his wife throughout his evidence. Nothing crept up from his cross, which may make us believe that he was deposing falsely.
8. PW2 Taramai Baruah is the wife of the PW1 as it can be known from her evidence. Hearing hullah she came outside her house on that day to witness the incident of the accused assaulting Lakhi Baruah with an axe. She saw the victim falling down on the ground. She brought the victim inside her house and thereafter took her along with her

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daughter (again not named) to the Civil Hospital on an 'auto'. She testified that as she was taking away the victim inside her house, the accused threatened her stating that he will kill her and her family members. From the Civil Hospital, the victim was referred to Tezpur Hospital but she died on the way. They then brought the dead body to police station. Thereafter her husband lodged the FIR. She stated that the accused had handed over the axe to the police, who then seized it.

9. In her cross, she stated that the accused had given two blows with the axe on the head of the victim. Kalpana (PW10), Jonaki (PW9) and others were present at the place of occurrence. There in her cross, we do not find anything wherefrom it can be presumed that PW2 has deposed falsely or that she did not witness the occurrence.
10. PW3 Barasha Baruah is the daughter of the victim, Lakhi Baruah. She stated that her mother on that day at about 11 a.m. went to the house of one Ram Bhuyan of their locality. She was in the courtyard of their house at the time of her mother returning from Ram Bhuyan's house. When her mother arrived in front of the gate of PW5 Dhrubajyoti Baruah, the accused suddenly struck her mother on her head with an axe thrice. Witnessing the incident, she became nervous. She went to her mother and carried her to their courtyard. At that time, a tempo was proceeding by that way. She along with her aunt- PW2 and her uncle PW1 took the injured on the Tempo to the Biswanath Chariali Civil Hospital. There they refused to attend the injured and in turn sent her to Tezpur but the victim died on the way at Balipara. Both PW1 and PW2 accompanied the victim to Tezpur. After she returned to her house, the police took her signature on the seizure list- Ext.2 vide which the axe was seized by police from the accused. She testified that she could recognize the axe- Material Exhibit-1, which was used by the accused while assaulting her mother. The dead body was sent for post-mortem examination.
11. In her cross, she stated that the house of Dhrubajyoti is situated in front of their house. The houses of PW5 Dhrubajyoti, Ram Bhuyan and her aunt Taramai- PW2 are situated near their house. The houses of Dhanti Borah and the accused too stand near their house. A policeman was going by that way at that relevant time and he was informed by them about the incident who in turn called other policemen from the Gingia P.S. Police arrived after her mother was brought to their courtyard. She was only present in their house at that relevant time as her father was away to garden. Hearing the noise raised by her, people from nearby, namely, Joanki Baruah (as named by PW2), Bulbuli and Dehamai Borah (PW17) and others appeared. This has been corroborated by PW2. Again upon scrutiny of the evidence of PW3, we do not find anything that suggests that this witness has falsely implicated the accused with the alleged offence.
12. PW4 Nagen Baruah is the husband of the victim. He admitted that he was not present in

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his house at that relevant time. He could learn from one Munu Daimary over phone that the accused had killed his wife by assaulting her with an axe. He came to his house to learn that his wife died on the way to Tezpur and the accused was arrested by police along with the axe. His cross-examination does not reveal anything to doubt the veracity of his evidence or that the accused was not responsible for the death of his wife.

13. PW5 Dhrubajyoti Bhagawati testified that his wife on that day at about 11 a.m. phoned him while he was in his school and asked him to come back to his house. He came back accordingly and saw blood stain on the road in front of his house. He could learn that the accused had cut Lakhi Baruah with an axe which resulted in her death. He arranged in getting the victim go on an 'auto' which was passing by to the hospital. Later the victim died on her way to the hospital. Police took his signature on the Ext.2 at the police station. He in his cross stated that he did not witness the occurrence. His evidence supports the evidence of other prosecution witnesses as seen above with regard to the incident of the accused assaulting the victim with an axe.
14. PW6 Anjali Bhagawati found the victim lying at the place of occurrence when she arrived there after hearing noise. She saw the accused standing there with an axe in his hand. They took steps to send the victim to hospital by tying her head with a cloth. She saw cut injury on the left side of the head of the victim. Though she had put her signature on the seizure list- Ext.2, she did not know as to whether the police seize the axe used by the accused. She however identified the Material Exhibit-1- Axe used by the accused in the incident. In her cross she stated that the accused was mentally sound at that relevant time. There is nothing in her cross that makes her unreliable with regard to her testimony that she saw the victim lying injured and the accused standing nearby with an axe when she arrived at the place of occurrence. Her evidence therefore clearly supports the prosecution case. Her evidence does not reveal anything that suggests that the accused was not responsible for the alleged offence.
15. PW7 Nabajyoti Borah arrived at the place of occurrence after hearing the news. He too testified that the victim died due to assault made by the accused on her. Police took his signature on the Ext.2 at the police station.
16. PW8 Anjan Borah arrived at the place of occurrence after hearing noise. According to him, the incident occurred in front of the house of the victim on the PWD road at Jarabarigaon. He had seen the accused standing on the road with an axe and the victim lying trembling on the ground. He saw injury on the head of the victim. The neighbours brought the victim to the Civil Hospital but she died on being taken to Tezpur. He was present while the body of the victim was taken for post-mortem.
17. In his cross, he corroborated PW2 & PW3 and stated that he found Kalpana Borah (PW10), Jonaki Bhuyan (PW9), Nabajyoti Borah, PW5 Dhrubajyoti Bhagawati and others

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at the place of occurrence. There is nothing in his cross that dents his incriminating evidence against the accused.

18. PW9 Jonaki Bhuyan admits of her presence at the place of occurrence at that relevant time. She stated that the deceased Lakhi Baruah was talking with her in her house. At about 10.55 a.m, the victim went out for her house in order to prepare the day's meal. She thereafter heard noise from outside. Coming out she noticed that the accused was standing by holding an axe while the victim was lying near on the ground. As the accused was intimidating to cut anyone, she out of fear did not go near the place of the incident. She saw PW2 Taramai Baruah carrying away the victim, which corroborates the evidence of PW2. The victim was taken to the hospital from her courtyard. Later she heard that the victim had died. She in her cross stated that she arrived at the place of occurrence after the incident. Her evidence like the other witnesses as discussed above are in conformity with the prosecution case. She too is found to have seen the accused holding an axe at the place of occurrence on that day while the victim was lying with injuries on the ground.
19. PW10 Kalpana Borah like the PW9 saw the accused with an axe and the victim lying on the ground. She arrived there after hearing noise. She did not go to the exact place of occurrence out of fear as the accused was holding an axe. Nothing contradictory emanated from her cross to make her unbelievable. PW11 Momi Bhagawati too saw the accused holding an axe and the victim lying on the road. The place over the road was stained with blood and as she cannot witness blood, she did not go near. She in her cross corroborated the other witnesses and stated that the incident occurred in front of the house of PW5 Dhrubajyoti Bhagawati. PW12 Dipti Borah also arrived at the place of occurrence after hearing noise to find the accused standing with an axe in his hand and the victim lying over the road. She saw blood oozing out from the head of the victim. The victim was sent to hospital on a 'tempo'. Later the victim died when she was being taken to Tezpur. Her cross too does not elicit anything that makes her unreliable.
20. PW13 Buli Borah, PW14 Jeena Borah, PW15 Mira Bhagawati and PW18 Buli Bhuyan testified in support of the other witnesses and stated that they too after hearing noise came out to find the victim lying with injuries on her head while the accused was standing near her with an axe. Later the victim died on her way to Tezpur. Nothing emanated in their cross-examinations to disbelieve their testimony.
21. PW16 Koushik Baruah had seen the accused striking the victim with an axe. He testified that on the said day of occurrence at that relevant time, when he was returning from one of his friends' house, he saw the victim coming out of the house of Ram Bhuyan. The victim was coming ahead of him. He stated that he saw the accused hitting the victim with an axe on her head in front of the house of PW5 Dhrubajyoti Bhagawati. He

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was in front of the house of Ram Bhuyan then. He out of fear then ran inside the house of Ram Bhuyan. Later the victim died. There is nothing in his cross except a suggestion put to him that the accused did not kill the victim, to which he had of course denied. The evidence of this eye witness is therefore found to have remained un-assailed in his cross and as such has remained intact.

22. PW3 had claimed in her evidence that PW17 Deha Borah was present at the place of occurrence at that relevant time. She stated that she had arrived at the place of occurrence after hearing noise to find the victim lying on the ground and the accused standing nearby with an axe. Her evidence in-chief too has remained intact in her cross though she was not an eye witness to the incident of assault.
23. PW20 Birendra Nath Das is the Investigating Officer who was working as an In-charge of Gingia P.S. on the day of the occurrence. According to him, on that day a police constable of their police station namely, Constable no. 54, Biju Pokhrel came to Jarabari village for the purpose of serving process. He informed about the incident over phone at the police station. This evidence of PW20 is found in consonance with the evidence of the PW3 Barasha Baruah, as noted above, who mentioned in her evidence about a policeman going by that way at that relevant time and he was informed by them about the incident who in turn called other policemen from the Gingia P.S. PW20 stated that he arrived at the place of occurrence to find the accused standing with an axe shouting and intimidating to assault others. This piece of evidence is found reconciled with the evidence of PW9. He thereafter seized the axe from the accused and took him in his custody. The GD Entry no. 272 dated 16.02.17 was lodged and inquest was conducted. He proved the extract copy of the GD Entry as Ext.3. He could not prepare the sketch map of the place of occurrence due to the rowdy crowd, which therefore was prepared by the succeeding Investigating Officer (PW19). He proved the axe- Material Exhibit 1, which he identified to be the one he had seized from the accused. He proved the seizure list as Ext.2. The evidence in his cross is not repugnant to what he has stated in his chief or to the testimony of other witnesses. Further we find nothing inconsistent therein to disbelieve his testimony.
24. PW19 Investigating Officer Rahul Kumar Das supported PW20. He registered the FIR after receiving the same and conducted the remaining part of the investigation. He proved the sketch map prepared by him as Ext.4 and chargesheet submitted by him against the accused as Ext.5. He also proved the Material Exhibit-1 as the seized axe.
25. In his cross, he stated that he did not send the axe for forensic examination for conducting blood test. Nothing more worth for consideration is found in his cross. It can be observed herein that only for the fact that the axe was not sent for forensic examination for testing blood on it would not make the prosecution case unreliable if

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the consolidated evidence otherwise makes the prosecution case well established, more so when we find the PW20 testifying in his cross that he did not make any entry in the seizure list that he had found marks of blood on the seized axe.

26. Thus from the evidence as discussed above, we find that each of the prosecution witnesses have deposed in support of the prosecution case and against the accused. Each of them have implicated the accused and stated that they had seen the accused standing with the axe soon after the incident near the victim who was lying with cut injuries on her head on the road. The evidence of PW2 Taramai Baruah and PW16 Koushik Baruah that they had seen the accused striking the victim with an axe in front of the house of PW5 Dhrubajyoti Bhagawati is supported by the evidence of other witnesses, as discussed above, who arrived at the place of occurrence soon after hearing noise to find the victim lying down on the road with blood on her head and the accused standing nearby with an axe, intimidating others.
27. PW21 Dr. Dipak Kumar Biswasi- the Medical Officer testified that upon examining the dead body of the victim, Lakhi Baruah on 16.02.2017, he found:
- i) Bleeding from nostrils and right ear, dislocated right mandibular joint, rigor mortis found sluggish, one I-V catheter found over left costal vein.
  - ii) Lacerated wound of size 2 x 1 cm over right maxilla with fracture of that maxilla,
  - iii) lacerated wound of size 2 x 3 cm over both collateral aspect of the frontal bone above the eyeballs. All wound found were stitched.
  - iv) Brain found hemorrhaging stomach contained blood, stomach contained blood.
- All the injuries were ante-mortem in nature. The head injuries caused hemorrhage within brain-matter, bleeding through nostrils and ears, oesophagus caused hypovolemic shock. Time since death was within 24 hours. Opinion- The death was due to cerebro-vascular accident, as a result of the injuries sustained, i.e. head injuries.
28. Thus PW21 opined that all the injuries were ante mortem in nature. According to him, the time since death was within 24 hours. He opined that the death was due to cerebral vascular accident as a result of the injuries sustained, i.e., head injuries. He proved the post-mortem report as Ext.6. In his cross, he stated that the injuries were caused by heavy blunt weapon.
29. The evidence of PW21 emboldens the evidence of other witnesses including the evidence of the eye witnesses - PW2 & PW16. The back of an axe if used as weapon of assault is a heavy blunt object and each of the prosecution witnesses has testified that the accused had assaulted the victim with an axe. The PW3, PW6, PW19 and PW20

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have identified the seized axe and proved it as Material Exhibit 1. All these establish beyond reasonable doubt that it was the accused who had voluntarily assaulted the victim with the axe- Material Exhibit-1, causing injuries on her head which led to her death.

30. The accused has examined himself in his defence as DW1 u/s 315 CrPC. He stated that he had a good relationship with his aunt- the victim Lakhi Baruah. But the relationship sored after the death of her son, Bijay Baruah, which was caused in an accident when he hit him by a motor cycle. The victim since then started to rebuke him. According to him, that incident took place 14/15 days prior to the instant occurrence. He deposed that on that day he was cutting woods near the road with an axe. At that moment, the victim came and grabbed him from behind. The axe as a result had touched her neck and she fell down. The people gathered thereafter, who after seeing him with the axe construed that it was he who had killed her. He testified that he did not kill the victim intentionally. In his cross he contradicted himself and stated that he did not hit the son of the victim with the bike and he stated that the deceased instead was riding a pillion in his bike. He denied that the victim had sustained injury on her head.

31. As we examine the evidence as adduced by the prosecution witnesses, including the evidence of the Medical Officer- PW21, we find cohesive evidence that the victim sustained head injury and according to the PW21, her death was caused due to the injury sustained by her on her head. Therefore, the evidence of DW1 that the victim sustained injury on her neck appears to be baseless. Moreover, in his examination u/s 313 CrPC, the accused is found to have simply denied to every incriminating evidence that was brought to his notice. He there did not reveal that the victim on that day grabbed him from his back while he was cutting woods with an axe and the axe suddenly touched her neck which ultimately resulted in her death. The evidence as adduced by the accused as DW1, though he testifies that he had no intention of causing death of the victim, is therefore found to be unreliable.

32. We need to refer here the provisions of Section 106 of the Evidence Act:-

33. "106. Burden of proving fact especially within knowledge.-- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

34. As we go by the illustration (a), we notice that the character and circumstances of the

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act of the accused hitting the victim with the axe as revealed by the evidence of prosecution witnesses suggest that he had the intention of causing such hurt on the head of the victim with the axe that would result in the death of the victim, because any prudent man having rational understanding knows that if a person is struck by a heavy instrument of an axe on his head, that would most certainly result in his death. Here when the accused testifies that he did not hit her with an intention to kill her and did the act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him, which in the instant case, he has miserably failed.

35. In Shambu Nath Mehra vs. State of Ajmer, AIR 1956 SC 404, Hon'ble Supreme Court observed as under:-

"9. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre- eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are Attygalle v. Emperor A.I.R. 1936 P.C. 169 and Seneviratne v. R. [1936] 3 All E.R. 36, 49....".

36. In Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681, the Hon'ble Supreme Court again has observed as hereunder:

"14. ....The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him".

37. Under such circumstances, I arrive at the conclusion that on the day of the said occurrence, the accused Sri Ashim Baruah had caused fatal injuries on the victim, Smti

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Lakhi Baruah on her head with the Material Exhibit-1- the axe which resulted in her death. The credible, consistent and inspiring evidence available on record leave no doubt in my mind to finally hold the accused guilty of the offence charged against him beyond all reasonable doubt. In the result, the prosecution has held to have succeeded in establishing the charge against the accused on the sole point for determination and the same is therefore, answered in the positive. The accused Ashim Baruah, in consequence, is convicted u/s 302 IPC.

38. I have heard the convict on the question of sentence to be passed against him, which is recorded in a separate sheet. He stated that he has 50 year-old-mother and his elder brother in his home. He and his elder brother used to earn by driving their own tractor. According to him, they have 12 bighas of land, which have been given on 'adhi'. He further stated that his long detention in prison has caused great hardship to his family. He has prayed for leniency.
39. Considering the nature of the offence and the mode of its commission, it cannot be graded as one of the 'rarest of the rare' cases and the minimum punishment provided for the offence u/s 302 IPC is imprisonment for life with fine.
40. I have heard the learned Addl. P.P. appearing for the State on the matter, if there is any record of previous conviction of the convict. But the learned counsel did not come forward with any such submission. Moreover, the case record does not reveal of his any previous conviction.

#### SENTENCE

41. Upon considering the materials on record and hearing the convict on the question of sentence and also taking note of the punishment provided u/302 IPC, I am left with no option but to award a sentence of Rigorous Imprisonment for life to the convict Ashim Baruah for having intentionally caused death of Lakhi Baruah. Further he is sentenced to pay fine of Rs. 5,000/- (Rupees Five thousand), in default, to undergo further Rigorous Imprisonment for 2 (Two) months.

#### ORDER

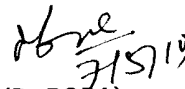
42. i) The convict Ashim Baruah on being convicted u/s 302 IPC is sentenced to Rigorous Imprisonment for life and to pay fine of Rs. 5,000/- (Rupees Five thousand), in default, to undergo further Rigorous Imprisonment for 2 (Two) months.
- ii) The convict be sent back to the District Jail for serving out the sentence.
- iii) The seizure be preserved until expiry of the appeal period.
- iv) A free copy of the judgment be furnished to the convict forthwith.
- v) A copy of the judgment be forwarded to the District Magistrate, Sonitpur in

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compliance with the sec. 365 Cr.P.C. The case is disposed of.

vi) Inform the Jail authorities.

43. Given under my hand and seal of this court on this the 7<sup>th</sup> day of May, 2019.

  
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(D. BORA)

Additional Sessions Judge, FTC,  
Biswanath Chariali, Sonitpur, Assam.

**ANNEXURE**

**Witnesses examined by the Prosecution:**

- PW1- Sri Naren Baruah  
PW2- Smti Taramai Baruah  
PW3- Smti Barasha Baruah  
PW4- Sri Nagen Baruah  
PW5- Sri Dhruvajyoti Bhagawati  
PW6- Smti Anjali Bhagawati  
PW7- Sri Nabajyoti Borah  
PW8- Sri Sri Anjan Borah  
PW9- Smti Jonaki Bhuyan  
PW10- Smti Kalpana Borah  
PW11-Smti Momi Bhagawati  
PW12- Smti Dipti Borah  
PW13- Smti Buli Borah  
PW14- Smti Jeena Borah  
PW15- Smti Mira Bhagawati  
Pw16- Sri Koushik Baruah  
PW17- Smti Deha Borah  
PW18- Smti Buli Bhuyan  
PW19- Sri Rahul Kumar Das (I.O.)  
PW20- Sri Birendra Nath Saikia (I.O.)  
PW21- Dr. Dipak Kumar Biswasi (M.O.)

**Exhibits proved by the prosecution witnesses:**

- Exhibit-1: FIR  
Exhibit- 2: Seizure List  
Exhibit- 2: (inadvertently marked): Inquest Report  
Exhibit-3: Extract copy of GD Entry  
Exhibit-4: Sketch map  
Exhibit-5: Chargesheet  
Exhibit-6: Post-mortem Report

**Material Exhibit -1: Axe.**

**Witnesses examined by the Defence:**

- DW1- Sri Ashim Baruah

**Documents exhibited by the Defence:**

None.

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