

**IN THE COURT OF THE SESSIONS JUDGE, SONITPUR
AT TEZPUR**

PRESENT : **Sri A. Borthakur**
Sessions Judge, Sonitpur
Tezpur

JUDGMENT IN SESSIONS CASE NO. 26 OF 2006

Under Section 120 B / 302/ 34 of the Indian Penal Code
(Arising out of G. R. Case No. 799 of 2004)

State of Assam

–Versus–

- 1. Sri Deep Borah**
Son of Sri Homeswar Borah
Resident of Dhanua Nagar
Police Station – Tezpur
District – Sonitpur, Assam

- 2. Smt. Junti Borah**
Wife of Late Mohah Borah
Resident of Deurigaon
Police Station – Tezpur
District – Sonitpur, Assam

[Committed by Sri A. C. Sarma, Sub-Divisional Judicial Magistrate, (Sadar),
Tezpur, Sonitpur]

A P P E A R A N C E

For the State	:	Sri D. C. Borah Public Prosecutor Sonitpur District
For the Accused	:	Sri S. E. Alam Senior Advocate Smt. D. Sinha Advocate Sri A. Bhuyan, Advocate
Date of framing charge	:	16-03-2006
Date of prosecution evidence	:	05-05-2006, 01-07-2006, 28-07-2006, 18-08-2006 15-09-2006, 03-02-2007 20-02-2007, 03-09-2008 25-02-2009, 07-04-2009 16-06-2009, 08-12-2009 23-02-2010, 08-09-2010 25-11-2011, 23-05-2012 &

13-07-2012

Date of Argument : 04- 08-2012**Date of Judgment : 17- 08-2012****J U D G M E N T**

In the instant case, the accused persons, one of whom was the wife of the deceased, have been charged with criminal conspiracy to cause death of the deceased, in furtherance of common intention. Out of the twenty prosecution witnesses, eight material witnesses, including the informant, turned hostile. The totality of evidence shows that in all probability, the cause of death of the deceased was a road traffic accident.

PROSECUTION CASE :

The prosecution case, in brief, is that one Smt. Umeswari Borah, wife of Late Madhu Ram Borah, resident of Deurigaon, under Tezpur Police Station, had lodged an FIR on 05-06-2004, before the in-charge of Kacharigaon Police Out Post alleging that on the night of 04-06-2004, her daughter- in-law, the accused Smt. Junti Borah (wife of deceased Mohan Bora) in connivance with the accused Sri Deep Borah, killed her son Mohan Borah and left his dead body along with his motor cycle, bearing registration No. AS-12 B – 4291, on the road side, behind Sahid Bakori, Ketekibari.

INVESTIGATION :

Based on the above FIR, Kacharigaon Police Out Post, GD Entry No. 77, dated 05-06-2004, was made at about 9-30 a.m., and on being forwarded, registered as Tezpur Police Station Case No. 346/2004, dated 05-06-2004, u/s 120 B / 302/34 of IPC, vide GD Entry No. 223, dated 05-06-2004. Inspector Sri Bipin Rajbongshi

entrusted the investigation into the case on the then SI Pradip Kr. Das, in-charge Kacharigaon Police Out Post.

In course of investigation, the Investigating Officer, Inspector Pradip Kr. Das, visited the place of occurrence, i.e., Sahid Bakori, Mazgaon. However, before reaching the place of occurrence, he found ASI Pradip Das of Tezpur Traffic Branch had already performed the inquest on the dead body of Mohan Borah and removed the same from the place of occurrence for Post Mortem examination and further, seized the motor bike, bearing No. AS-12 B – 4291 and other items found with the dead body. Then, Inspector Pradip Kr. Das drew up a rough sketch map of the place of occurrence, examined witnesses and arrested the accused. Thereafter, the IO, conducted search in the residence of deceased Mohan Borah and seized some documents. Then, on 09-06-2004, he accompanied the Executive Magistrate, Sri Dibyajyoti Borkatoky along with the arrested accused Deep Borah to the place of occurrence, in connection with an enquiry, ordered by the Deputy Commissioner, Sonitpur. Thereafter, the IO, collected the Post Mortem Examination report and then, meanwhile as he was transferred, based on the case diary he prepared, his successor –in-office of Kacharigaon Police Out Post, SI Sisir Bhatta submitted the charge-sheet u/s 120 B / 302/ 34 IPC against the accused persons.

TRIAL :

Since the charge-sheeted offences, u/s 120 B / 302/34 IPC, are exclusively triable by the Court of Sessions, the then Learned Sub-Divisional Judicial Magistrate, (Sadar), Tezpur, Sonitpur, vide order, dated 20-01-2006, passed, in GR Case No.799/2004, after observing necessary formalities required under 209 CrPC, committed the case to this Court of Sessions for trial.

Upon perusal of the materials on record and hearing the learned counsel for both the sides, formal charges u/s 120 B / 302/34 of IPC, were framed, vide order, dated 16-03-2006. The particulars of

charges, aforementioned, were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

In order to prove the above charges, the prosecution has examined as many as twenty witnesses, including the autopsy surgeon and the Investigating Officer, while the defence cross-examined sixteen witnesses.

On closing the case for the prosecution side, the statements of the accused persons were recorded u/s 313 CrPC, vide order, dated, 25-07-2012. The accused persons pleaded not guilty and declined to examine any witness in defence.

I have heard the argument advanced by Sri D.C. Borah, the learned Public Prosecutor, and Mr. S. E. Alam, the learned Senior Counsel and further, Smt. D. Sinha, the learned counsel, appearing on behalf of the accused persons. I have gone through the entire evidence proffered by the prosecution and also the statements of the accused persons, recorded u/s 313 CrPC.

POINTS FOR DETERMINATION :

(1) Whether the accused persons, namely, Deep Borah and Smt. Junti Borah, on 04-06-2004, and prior to that, at Deurigaon, Ketekibari, under Tezpur Police Station, agreed, to cause death of Mohan Borah, the husband of accused Smt. Junti Borah, aforementioned ?

(2) Whether the accused persons, namely, Deep Borah and Smt. Junti Borah, on the night of 04-06-2004, in furtherance of common intention, committed murder by causing the death of Mohan Borah, on the road side, behind Sahid Bakori, Ketekibari ?

THE DECISION AND THE REASONS THEREOF**CRIMINAL CONSPIRACY - Concept of :**

(Sections 120 B and 34 of the IPC)

The criminal conspiracy contemplated under Section 120 B of the IPC, postulates an agreement between two or more persons to do, or cause to be done, an illegal act or legal act by illegal means. Therefore, under Section 120 B of IPC mere agreement is an offence, even if no step is taken to carry out the agreement. It is well settled that the substantive offence of criminal conspiracy is wider in amplitude than abetment by conspiracy as contemplated by Section 107 IPC. To prove conspiracy there must either be direct or circumstantial evidence to show that there was meeting of minds between two or more persons to commit an offence. On the other hand, Section 34 IPC lays down that when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner, as if it were done by him alone. What is essential is participation in action. The element of common intention prescribes the condition under which one is criminally liable for acts of other actors.

CULPABLE HOMICIDE – Concept of :

(Sections 299 and 300 IPC)

The offence of ‘murder’ has been defined in Section 300 of the IPC. The basic difference between the ‘culpable homicide’, defined in Section 299 IPC, and ‘murder’, defined in Section 300 IPC lies in the degree of the gravity of the offence. In order to bring home the offence within the parameter of Section 300 IPC, the prosecution must establish that the assailant had the definite intention to cause death of the deceased or that the offender had the knowledge that the wounds which he was inflicting would be sufficient to cause the death

or that the same will be dangerous, to human life. Therefore, the essential ingredients of the offence have to be deduced and inferred from a series of facts, like weapon used in the crime, nature of the wound, situs of the wound and other attending circumstances. The burden lies on the prosecution to establish that the act alleged to constitute the offence of 'murder' was really the act of a person other than the deceased and at the same time, the onus of proving exceptions to Section 300 IPC so as to reduce the offence of murder to one of 'culpable homicide' not amounting to murder is on the accused.

ANALYSIS OF EVIDENCE, ON RECORD :

(i) WHETHER CULPABLE HOMICIDE :

It is the case of the prosecution that Mohan Borah, the husband of the accused Junti Borah, met with homicidal death due to sustaining of grievous head injury. PW-1 Sri Nipen Borah, PW-7 Sri Bichitra Thakuria, PW-15 Sri Latu Borah, the independent witnesses, have deposed that the police prepared the inquest report, Ext.1. PW-20 Inspector Pradip Kr. Das, the IO, has, inter-alia, deposed that ASI Pradip Das of Tezpur Traffic Branch, had prepared the inquest report on the corpse of the deceased Mohan Bora, before he launched the investigation on the basis of the entrustment made by the then Inspector Officer-in-Charge of Tezpur PS Bipin Rajbongshi to investigate into the allegations made in the ejahar, Ext.9. The prosecution has not examined the said ASI Pradip Das nor exhibited the Inquest Report through PW-20 Inspector Pradip Kr. Das, the IO. However, on perusal of the Ext.1, the Inquest Report, it transpires that the deceased Mohan Borah sustained injuries above the right eye, lacerated injury on the left cheek, lacerated injury on the great toe of the right leg and blood shade face. It may pertinently be mentioned here that the object of the proceedings u/s 174 CrPC is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what may be the apparent cause of the

death in the circumstances the police officer, who is not an expert in medical jurisprudence, has observed on the corpse at the spot. Therefore, the question as to under what circumstances he was assaulted is foreign to the ambit and scope of the proceeding, aforementioned. However, turning to the evidence of PW-14 Dr. Hiranjan Saikia, the autopsy surgeon, who performed the Post Mortem examination on the corpse of Mohan Borah, on 05-06-2004, at Kanaklata Civil Hospital, Tezpur, in his Post Mortem Examination report, Ext.5, recorded five injuries, namely, one bruise, three lacerated with subdural haematoma and opined that the cause of death was due to subdural haematoma and head injury as a result of ante mortem blunt transverse to head. In cross-examination, he has deposed that such kind of injury may be caused by falling from a motor cycle or a scooter. Thus, the doctor's (PW-14) evidence does not reveal, whether the death of Mohan Borah was the direct and proximate homicidal cause and if so, the nature of weapon used for the purpose. It may be mentioned here that the evidence of doctor is merely an opinion who lends corroboration to the direct evidence in the case.

Turning to the evidence of other witnesses, namely, PW-1 Sri Nipen Bora, PW-2 Smt. Umeswari Borah, PW-3 Sri Upen Borah, PW-4 Sri Mohan Borah, PW-5 Smt. Anima Borah, PW-6 Sri Guna Borah, PW-7 Sri Bichitra Thakuria, PW-8 Sri Lochan Borah, PW-9 Smt. Anjana Das, PW-11 Sri Utpal Borah, PW-12 Sri Purna Borah, PW-13 Sri Padum Borah, PW-15 Sri Latu Borah, PW-16 Sri Md. Abdul Matleb, PW-17 Smt. Chandra Prabha Bora, it is found that none of them could state the circumstances, in which Mohan Borah died, as none of them witnessed the actual occurrence when taken place nor could introduce circumstantial evidence in support of prosecution contention of homicidal death of Mohan Borah. The prosecution has declared PWs 1, 2, 3, 4, 5, 6 and 8 as hostile witnesses and PW-20 Inspector Pradip Kr. Das, the IO, has contradicted the

denial parts of their statements recorded by him u/s 161 CrPC. On close scrutiny of the evidence of PWs 7, 11, 12 and 13, it transpires that there is only consistency with prosecution case that the corpse of Mohan Borah was found on road side with his motor cycle lying in its close proximity and the evidence of PWs 11, 12 and 13, reveal that the motor cycle belonging to the deceased, aforementioned, was seized by police by Ext.4, the seizure memo. According to PW-20 Inspector Pradip Kr. Das, the IO, the seizure of the motor bike, bearing registration No. AS 12 B -4291, found with the dead body of Mohan Borah, was seized by ASI Pradip Das of Tezpur Traffic Branch, whom the prosecution has not examined in this case. However, placing reliance on the evidence of the PWs, aforementioned, as a whole, I find that the dead body of Mohan Borah was found with the motor cycle, seized by Ext.4, the seizure memo, aforementioned, at the place of occurrence, that is, on the side of public road, behind Sahid Bakori at Ketekibari, specifically shown in Ext.10, the rough sketch map of the place of occurrence, drawn by PW-20 Inspector Pradip Kr. Das, the IO, on obtaining assistance of ASI Pradip Das of Tezpur Traffic Branch who had already removed the corpse from the place. It has, therefore, difficult to place reliance on the accuracy of the contents of Ext.10, the rough sketch map purportedly of the place of occurrence, which was prepared later on after removal of the dead body of Mohan Borah from the place. Therefore, the probability of death of the deceased, occasioned by a road traffic accident, as he was certainly riding a motor cycle, at the relevant time, on the public road, cannot be ruled out, as the doctor (PW-14) has stated in cross-examination, beyond doubt. This piece of consistent evidence, on record, can be linked to the doctor's (PW-14) opinion in cross-examination to the effect that "such kind of injury may be caused by falling from a motor cycle or a scooter". Thus, the evidence, oral and documentary, suggests the probable circumstance of death of Mohan Borah in road traffic accident. To speak it differently, the cause of

death of the deceased, in all probability, was not a homicidal one, falling within the meaning of 'culpable homicide' defined in Section 299 IPC , beyond reasonable doubt.

(ii) MURDER : a fallible question :

In the foregoing point, it has been held that the prosecution has miserably failed to establish that the cause of death of Mohan Borah was an act of deliberate human act and in the result, as it emerged from the circumstances, discussed therein, in all probability was the result of road traffic accident not falling within the definition of 'culpable homicide', beyond reasonable doubt. Therefore, it cannot conclusively be said that the death of Mohan Borah was the direct and proximate cause of an act of human being, done with the intention of causing his death by means of causing such bodily injury, as post death eye witnesses observed at the place of occurrence and the doctor (PW-14) found on his dead body during post mortem examination, as was likely to cause his death or with the intention that the act was likely to cause his death. So, the contention of the prosecution that the death of Mohan Borah was a murderous act, defined in Section 300 IPC, is not proved, beyond all reasonable doubt.

(iii) WITNESSES TURNED HOSTILE :

PW-1 Sri Nipen Bora, a neighbour, PW-2 Smt. Umeswari Borah, the informant and mother of the deceased Mohan Borah, PW-3 Sri Upen Borah, PW-4 Sri Mohan Borah, PW-6 Sri Guna Borah, PW-8 Sri Lochan Borah, witnesses from the locality, PW-5 Smt. Anima Borah, the sister-in-law of the deceased Mohan Borah, and PW-9 Smt. Anjana Das, domestic help of the family of deceased Mohan Borah, have been declared hostile by the prosecution and

therefore, their attention have been drawn to their previous statements made, u/s 161 CrPC, before PW-20 Inspector Pradip Kr. Das, the IO, during investigation and their previous statements have been proved by the IO (PW-20) and as such, no reliance can be placed on their previous statements made before the IO, u/s 161 CrPC. Hence, applying the proposition of law laid down by the **Hon'ble Apex Court**, in “ **Mohammed Ankoos & Ors –Vs- PP, AP High Court [(2010) SCC (Cri) 460]** and by the **Hon'ble Gauhati High Court in Madan Malakar, Appellant –Vs- State of Tripura, Respondent, [2011 (3) GLT 167]**, no reliance can be placed on the denial parts of the statements of the witnesses, aforementioned, recorded u/s 161 CrPC, to record conviction of the accused persons under the charges levelled against them, in absence of other reliable corroborative testimony to support the prosecution contention on material aspects to bring home the aforesaid charges.

(iv) PW-9 RESILED FROM STATEMENT U/S 164 CrPC :

PW-9 Smt. Anjana Das, the domestic help in the house of the accused, Smt. Junti Borah, who has been declared hostile by the prosecution, in her cross-examination by the prosecution has stated that she gave a statement, Ext.3, before the Judicial Magistrate. In cross-examination by defence, she has stated that she gave the statement, Ext.3, as tutored by the police. Thus, PW-9 has resiled from her earlier statement made u/s 164 CrPC.

It may pertinently be mentioned here that a statement recorded u/s 164 CrPC is not a substantive evidence and cannot be made use of except to corroborate the witness u/s 157 of the Evidence Act or contradict the witness. On perusal of the contents of the said statement of PW-9, it transpires that the same does not have any direct connection to the cause of death of Mohan Borah, the husband of

accused Smt. Junti Borah, but indicates only maintaining of a intimate relation between the accused Deep Borah and Smt. Junti Borah. On the other hand, according to the witness, the statement, aforementioned, was given as tutored by the police and further, the evidence shows no other incriminating circumstance has been laid and proved beyond doubt against the accused persons. As such, no reliance is placed on the statement u/s 164 CrPC given by PW-9 and as such, no criminal proceeding is contemplated against PW-9.

COMPLICITY OF THE ACCUSED TO THE INCIDENT :

The evidence, as delineated through the prosecution witnesses is based on circumstantial evidence as there were no eye witnesses. The following are those circumstances :

(i) the accused Deep Bora had frequent visiting terms with the house of the deceased Mohan Bora, the husband of co-accused Smt. Junti Borah and often allegedly stayed there ;

(ii) PW-20, Inspector Pradip Kr. Das, the IO, seized some alleged incriminating documents by Ext.2, the seizure memo, dated 08-06-2004, from the house of deceased Mohan Borah, that is, the matrimonial home of accused Junti Borah and PW-SI Tapash Kr. Chakraborty seized some other alleged incriminating documents out of the house of accused Deep Borah, by Ext.6, the seizure memo, dated 02-08-2004, while PW-19 Inspector Sisir Bhatta, who submitted the charge-sheet, Ext.8, in the case, collected the Forensic Science Laboratory (for short, 'FSL') Report, vide Ext.7 thereon ;

(iii) According to PW-20, Inspector Pradip Kr. Das, the IO, on 09-06-2004, at about 12 noon, in connection with an enquiry, ordered by the Deputy Commissioner, Sonitpur, he accompanied Sri

Dibyajyoti Borkotoky (PW-10), the Executive Magistrate, to the place of occurrence along with the accused Sri Deep Borah, who allegedly led them to show the place of occurrence (under objection of the defence since the matter did not relate to the police investigation)

In **Sahidul Khan –versus- State of Assam [(2012) 3 GLR 747]**, the **Hon’ble Gauhati High Court** has held, in regard to circumstantial evidence, as follows :

“ It is well-settled that in a case dependent wholly on circumstantially evidence, the court before recording a conviction on the basis therefor must be firmly satisfied :

- (a) **that the circumstances from which the inference of guilt is to be drawn have been fully established by unimpeachable evidence beyond a shadow of doubt ;**
- (b) **that the circumstances are a determinative tendency unerringly pointing towards the guilt of the accused ; and**
- (c) **that the circumstances, taken collectively, are incapable of any reasonable hypothesis save that the guilt sought to be proved against him.”**

Now, in the light of the above principles laid down by the Hon’ble Gauhati High Court relating to appreciation of circumstantial evidence, let us analyse the relevant evidence in regard to each circumstance mentioned above.

(i) Visiting Terms :

According to PW-1 Sri Nipen Borah, a resident opposite to the house of the deceased Mohan Borah, accused Junti enquired

him on a day, at about 10-30 p.m., in the month of June, 2004 while returning from a function, whether he came across her husband to which he replied that he might have been in the function and thereupon, she replied that her husband Mohan might have gone to Bihaguri. He has further deposed that the accused Deep Bora is a niece of the deceased Mohan Borah and he visited his house off and on. PW-2 Smt. Umeswari Borah the mother of the deceased Mohan Borah has, inter-alia, deposed that her son Mohan was killed by accused Deep Borah, who sometimes stayed at their house and that the incident was the consequence of his revenge with accused Deep. In cross-examination, she has inter-alia, deposed that accused Deep frequently visited their house, but she does not know what they used to talk about. She has further deposed that since in the relevant night Mohan did not return home, her daughter-in-law Junti informed her about it, she advised her (Junti) to wait till the morning because he might have gone to Bihaguri for the night.

Upon careful scrutiny of the above evidence of PW-1, Sri Nipen Borah, who is a neighbour, and PW-2 Smt. Umeswari Borah, the mother-in-law of accused Junti and informant, it transpires that in the relevant night of the occurrence, accused Junti, the wife of the deceased Mohan, was at her matrimonial home and she was anxious about the whereabouts of her husband as he did not return home till late night and further, that accused Deep Borah had frequent visiting terms with the family of PW-2, that is, the matrimonial house of accused Junti. There is no direct or circumstantial criminal intention conveyed through their evidence or otherwise behind accused Deep's such frequent visits to the house of the deceased Mohan, because PW-2, the mother of the deceased, could not give any clue to the usual talkings that had been undergoing at her home and with whom he was closed to such talkings. There is no evidence to show that at any point of time, there was objection to his (accused Deep) visits to the house

of PW-2 and her daughter-in-law accused Junti and his alleged stay with their family. Therefore, the motive behind such frequent visits of accused Deep to the house of the deceased Mohan, who was related to him, being not known, it cannot certainly be an incriminating circumstance unerringly pointing to the conspiratorial guilt of both the accused persons which can be connected to the cause of death of Mohan, beyond reasonable doubt.

(ii) Seizure of documents :

PW-20, Inspector Pradip Kr. Das, the IO, has, inter-alia, deposed that he seized some allegedly incriminating documents by Ext.2, the seizure memo, dated 08-06-2004, from the house of deceased Mohan Borah, that is, the matrimonial home of accused Junti Borah and PW- 18 SI Tapash Kr. Chakraborty seized some other alleged incriminating documents out of the house of accused Deep Borah, by Ext.6, the seizure memo, dated 02-08-2004, while PW-19 Inspector Sisir Bhatta, who submitted the charge-sheet, Ext.8, in the case, collected the Forensic Science Laboratory (for short, 'FSL') Report thereon, vide Ext.7. PW-20, aforementioned, has recognized Mat.Exts. 1 to 7, purportedly the love letters by Ext.2, the seizure memo, and Mat.Ext.8, the seized affidavit and further, Mat. Ext.9, the note book, seized by Ext.2, the seizure memo. The prosecution has, however, not exhibited the documents seized by Ext.6, the seizure memo and as such, the alleged recovery and seizure of any incriminating document out of the house and premises of accused Deep Borah by the said seizure memo, Ext.6, has not been proved. On the other hand, the prosecution has not exhibited the letter whereby the disputed seized documents were forwarded to the FSL for opinion of handwriting expert, whereupon, Ext.7, the FSL report, was received. Therefore, it cannot conclusively be said which seized

documents were examined by the handwriting expert of FSL. Ext.7, the FSL report, aforementioned, reads as follows :

“ OPINION

No. FSL/QDS : 161/04

Dated 21.08.04

The documents in connection with a Tezpur PS Case No. 346/04, u/s 120 (B)/302/34 IPC have been carefully and thoroughly examined.

The person who wrote the blue enclosed writings and signatures stamped and marked S1, S2 and A1 to A7 wrote the red enclosed writings and signatures similarly stamped and marked Q1 to Q 20, Q 20/1 and Q 21 to Q 39.

Sd/-

**(Dr. (Ms) Tilaka Das, M.Sc, Ph D)
Scientific Officer,
Questions Documents Division,
Forensic Science Laboratory
Assam, Kahilipara, Guwahati-19”**

The prosecution has not examined any responsible officer of the FSL, who was conversant with the facts and the scientific reasons leading to formation of the opinion, as above, on the question documents. However, in view of the special provision contained in Section 293 CrPC relating to reports of Government scientific experts, the FSL report, Ext. 7, is accepted as evidence in the instant case, though the prosecution has failed to prove that the documents were duly forwarded for examination by the FSL.

On scrutiny of the evidence of PW-3 Sri Upen Borah, PW-4 Sri Mohan Borah, PW-5 Smt. Anima Borah and PW-6 Sri Guna

Borah, who have deposed that some documents were seized out of the house of the deceased Mohan Borah, by Ext.2, the seizure memo, but the prosecution has not exhibited those seized documents to them, during trial, for identification and confirmation without explaining any reason for the lapse. The accused persons Junti Borah and Deep Borah, in their statements, recorded u/s 313 CrPC, have denied knowledge of any seizure of documents made by PW-18 SI Tapash Kr. Chakraborty, the IO, by Ext. 6, the seizure memo, and also, the documents seized by PW-20 Inspector Pradip Kr. Das, the IO, by Ext.2, the seizure memo and further, the FSL report, Ext.7 collected by PW-19 Inspector Sisir Bhatta, the IO. None of the prosecution witnesses has stated anything about the contents of those seized documents. I have gone through the exhibited documents, aforementioned, and I do find the indication of element of existence of love and affection between both the accused persons reaching to the climax and then such relation was subsequently discarded. However, mere proof of the handwriting of the seized documents, Mat. Ext.1 to 9, would not tantamount to proof of all the contents or the facts stated therein having any remote relevancy to the cause of death of Mohan Bora. Therefore, in my considered opinion, by mere seizure of the documents and proof of handwriting of the accused thereon and further, thereby presuming that there was meeting of minds between both the accused persons and in the result, in furtherance of their common intention, causing death of Mohan Borah is a totally misconceived circumstance, beyond any shadow of doubt.

(iii) Magisterial Enquiry :

According to PW-20, Inspector Pradip Kr. Das, the IO, on 09-06-2004, at about 12 noon, in connection with an enquiry, ordered by the Deputy Commissioner, Sonitpur, he accompanied Sri Dibyajyoti Borkotoky (PW-10), the Executive Magistrate, to the place

of occurrence along with the accused Sri Deep Borah, who allegedly led them to show the place of occurrence (under objection of the defence since the matter did not relate to the police investigation). However, PW-10 Sri Dibyajyoti Borkotoky, the Revenue Circle Officer, has deposed that on 09-06-2004, as per direction of the District Magistrate, Sonitpur, he went to the place of occurrence accompanied by a Videography team, police and accused. But, the relevant order of the District Magistrate, Sonitpur has not been exhibited nor the name of the accused, who accompanied him to the place of occurrence, has been disclosed. The identity of the place of occurrence which he visited, is also not deducible from his evidence. Therefore, it cannot be believed beyond doubt as PW-20 has deposed that the accused Deep Borah led PWs 10 and 20, aforementioned, to the place of occurrence of this case and a such, it cannot further be accepted that the said Magisterial enquiry, if any, had been held in connection with the police investigation into the instant case. Therefore, this piece of circumstantial evidence cannot be said to be incriminating against the accused Deep Borah.

Situated thus, I am of the humble opinion that the above circumstantial evidence delineated through the prosecution witnesses do not carry any determinative tendency unerringly pointing towards the guilt of the accused persons and even if the said circumstances are taken collectively, do not establish the complicity of the accused persons to the cause of death of Mohan Borah.

FINDING

For the reasons, set forth above, I am constrained to hold that the prosecution has failed to prove the charges levelled against the accused persons, namely, Deep Borah and Smt. Junti Borah, beyond all reasonable doubt.

It may pertinently be mentioned that moral conviction and conjectures regarding the involvement of the accused in the commission of the alleged crime, aforementioned, cannot be a substitute for legal evidence of facts and law.

Accordingly, the accused persons, namely, Deep Borah and Smt. Junti Borah are acquitted of the charges u/s 120B/302/34 IPC and set at liberty forthwith.

The judgment and order, as above, is pronounced in the open Court, in presence of the accused persons and the learned counsel for both the sides, on this the 17th day of August, 2012, under the Hand and Seal of this Court.

Accordingly, the case is disposed of.

**(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR**

Dictated and corrected by me :

**(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR**

Typed by me,
on dictation :

(J.K. Muru, Steno)

* * * * *

SESSIONS CASE NO.26 OF 2006**ANNEXURE****LIST OF PROSECUTION WITNESSES**

PW-1	:	Sri Nipen Bora
PW-2	:	Smt. Umeswari Borah, Informant
PW-3	:	Sri Upen Borah
PW-4	:	Sri Mohan Borah
PW-5	:	Mrs. Anima Borah
PW-6	:	Sri Guna Borah
PW-7	:	Sri Bichitra Thakuria
PW-8	:	Sri Lochan Bora
PW-9	:	Smt. Anjana Das
PW-10	:	Sri Dibyajyoti Borkotoki, Executive Magistrate
PW-11	:	Sri Utpal Borah
PW-12	:	Sri Purna Bora
PW-13	:	Sri Padum Bora
PW-14	:	Dr. Hiranjan Saikia, Medical Officer
PW-15	:	Sri Latu Bora
PW-16	:	Md. Abdul Matleb
PW-17	:	Smt. Chandra Prava Borah
PW-18	:	Sri Tapas Kr. Chakraborty, IO
PW-19	:	Sri Sisir Bhatta, IO
PW-20	:	Sri Pradip Kumar Das, IO

LIST OF DEFENCE WITNESSES

N I L

LIST OF DOCUMENTS EXHIBITED BY PROSECUTION

Exhibit -1	:	Inquest Report
Exhibit -2	:	Seizure Memo
Exhibit -3	:	Statement u/s 164 CrPC
Exhibit -4	:	Seizure Memo
Exhibit -5	:	Post Mortem Report
Exhibit -6	:	Seizure Memo
Exhibit -7	:	FSL Report
Exhibit -8	:	Charge-sheet
Exhibit -9	:	Ejahaar
Exhibit -10	:	Rough Sketch Map
Exhibit -11	:	Dead Body Challan

MATERIAL EXHIBIT

Mat. Exhibits -1 to 7	:	Letters
Mat. Exhibit -8	:	Affidavit
Mat. Exhibit -9	:	Note-Book

DEFENCE EXHIBIT

N I L

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR