

**FORMA**

IN THE COURT OF SESSIONS JUDGE, SONITPUR,  
TEZPUR

Present: **SRI CHATRA BHUKHAN GOGOI, AJS,  
SESSIONS JUDGE.**

[Date of the Judgment]  
**03-09-2022**

**[Sessions Case No 386 /2017]**

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM  OR  Minara Begum.
REPRESENTED BY	Learned Public Prosecutor Mr. Munin Chandra Baruah.
ACCUSED PERSONS	1. Md. Rajib Ali, S/O- Lt Kajimuddin, Vill- No. 1 Chatai Chapori, 2. Md. Samar Ali @ Ashmat Ali S/O- Md. Abdul Mazid Vill- Jahajduba, Both are P.S. Tezpur, Dist- Sonitpur.
REPRESENTED BY	1) Sri S.E. Alam, Senior Advocate.

## **FORM B**

Date of Offence	11-10-2017
Date of FIR.	12-10-2017
Date of Charge-sheet	29-11-2017
Date of Framing of Charges	23-02-2018
Date of commencement of evidence	13-08-2018
Date on which judgment is reserved	22-08-2022
Date of the Judgment	22-08-2022
Date of the Sentencing Order, if any	NIL

### **Accused Details**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
Labour	Rajib Ali	14-10-2017	03-01-2018	Section 302/34 IPC.	Acquitted	NIL	2 months 21 days.
Labour	Samar Ali @ Ashmat Ali	15-10-2017	15-12-2017	Section 302/34 IPC.	Acquitted	NIL	2 months 1 day.

### Form C

#### A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Haidar Ali	Seizure Witness.
PW2	Md. Minarul Haque	Other Witness.
PW3	Md. Abdul Rashid	Other Witness.
PW4	Md. Hasen Ali	Other Witness.
PW5	Md. Saidul Islam	Other Witness.
PW6	Sri Mahendra Debnath	Other Witness.
PW7	Md. Hannan Ali	Seizure Witness.
PW8	Dr. Ranjan Kr. Mahanta	Medical Witness.
PW9	Firoj Ansari	Seizure Witness.
PW10	SI Malindra Kumar Borah	Police Witness (I/O).

#### B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**C. Court Witnesses, if any :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution:**

Sr. No	Exhibit Number	Description
1	Ext -1/ PW1	Inquest Report.
2	Ext-2/ PW1	Statement of Minarul u/s 164 Cr.P.C.
3	Ext-3 & 4/ PW1	Seizure Lists.
4	Ext-5/ PW7	Sketch Map.
5	Ext-5/ PW8	Post Mortem Report.
6	Ext- P-5(A)/ PW10	FIR.
7	Ext- P-6/ PW10	Sketch Map.
8	Ext- P-7/ PW10	Seizure List.
9	Ext- P-8/ PW10	Charge-Sheet.
10	Ext- P-9/ PW10	Extract copy of GDE No. 205/2017.
11	Ext- P-10/ PW10	Extract copy of GDE No. 210/2017.

**B. Defence:**

Sr. No	Exhibit Number	Description
NIL	NIL	Nil

**C. Court Exhibits**

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

**D. Material Objects:**

Sr. No	Material Object Number	Description
1	Material Ext. P-A	Dao.
2	Material Ext. P-B	Dao & Iron Rod.
3	Material Ext. P-C	Lava Mobile Handset.
4	Material Ext. P-D	Another Lava Mobile Handset
5	Material Ext. P-E	Nokia Mobile Handset.

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

**SESSION CASE NO. 386 of 2017**

Under Sections 302/34 of I.P.C  
(Arising out of G. R Case No. 3967 of 2017)

**State of Assam**

**-Vs-**

1. Rajib Ali
2. Samar Ali @ Ashmat Ali.

... Accused Persons.

**Present:** **Sri Chatra Bhukhan Gogoi,  
Sessions Judge,  
Sonitpur :Sonitpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For accused persons : Mr. S.E. Alam, Advocate.

Date of Argument : **10-08-2022.**

Date of Judgment : **03-09-2022.**

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

**1.** The facts of the prosecution case, in brief, is that on 12-10-2017 one Minara Begum lodged an FIR at Mahabhairab Out Post stating inter alia that on the previous day i.e. on 11-10-2017 at about 11 PM her husband Samsher Ali after taking meal went to his duty but when he did not return and after drastic search, dead body of her husband was

found lying on the side of National Highway-37A having severe cut injuries. Hence, the case.

**2.** Following the information, I/C of Mahabhairab Out Post made a GDE No. 205/2017 and forwarded the case to O/C of Tezpur PS and accordingly, O/C of Tezpur PS registered the case being Tezpur P.S. Case No. 2092/2017 under Section 302 IPC and entrusted SI Malindra Kumar Borah to investigate the case.

**3.** During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses under Section 161 Cr.P.C., drew sketch map vide Ext.-6, sent the dead body of deceased for post mortem examination, collected the post mortem report (Ext. 5) and finally on conclusion of investigation laid the charge sheet vide Ext.8 against accused Rajib Ali, Samar Ali @ Ashmat Ali & Musstt. Minara Begum under Section 302/34 IPC.

**4.** In the course of time, when accused persons entered their appearance in court, the learned JMFC, Sonitpur, Tezpur vide order dated 18-12-2017 committed the case record to the Court of Sessions after due compliance of Section 207 Cr.P.C.

**5.** Having received the case record on committal, my learned predecessor registered the case being Sessions Case No. 386/2017. Subsequently, hearing the learned lawyers appearing for both sides and perusing the materials available on record having found a prima facie case learned Additional Sessions Judge, Sonitpur, Tezpur vide order dated 23-02-2018, framed charge under Section 302/34 IPC against the accused persons. The particulars of offence on being read over and explained, accused pleaded not guilty and claimed trial. However, vide order dated 22-02-2021 the then Sessions Judge, Sonitpur, Tezpur abetted the case against accused Musstt. Minara Begum on the ground that she was expired on 15-03-2020 and police also submitted death certificate to that effect with the report.

6. During course of trial, prosecution examined as many as 10 (ten) witnesses including the Medical Officer and Investigating Officer. Concluding the prosecution evidence accused persons were examined under Section 313 Cr.P.C. however, accused persons denied the prosecution evidence as false and misleading one. The plea of accused persons is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

7. **POINTS FOR DETERMINATION :**

*i) "Whether on 11-10-2017, at about 11 pm, at village Dolabari under Tezpur PS, accused persons in furtherance of their common intention, committed murder intentionally causing death of Samser Ali and thereby committed an offence punishable u/s 302/34 IPC ?"*

**DISCUSSION, DECISION AND REASONS THEREOF:**

8. I have heard vociferous arguments of the learned lawyers appearing for the State as well as for the accused person and carefully examined the entire evidence and documents available on record for coming to a fair conclusion.

9. Learned counsel appearing for State Sri Munin Chandra Baruah vociferously contended that in this case prosecution examined 10 (ten) witnesses including the informant, the son of the deceased as well as Medical Officer & Investigating Officer and the evidence of the son of deceased PW2 Minarul Haque has been fully corroborated by the evidence of other witnesses in material particulars. PW2 Minarul Haque though minor, his evidence is credible and trustworthy and his version in court is also corroborates his statement made before Magistrate u/s 164 Cr.P.C. Moreover, the version of PW2 has been corroborated by evidence of M.O. PW8 Dr Ranjan Kumar Mahanta and the I.O. PW10.



Therefore, according to learned PP it is a fit case to record judgment of conviction as the accused have committed a heinous crime of murder.

**10.** On the other hand, learned Senior counsel S.E. Alam appearing for accused persons assiduously contended that in the present case, the prosecution even though examined as many as 10 (ten) witnesses including the son of the deceased, M.O. & I.O. but failed to establish the case against the accused persons for sustaining conviction as there is no eye witness to the alleged incident. Admittedly, the incident of alleged murder took place at night and public recovered the dead body of deceased on the next day morning lying on the road side with cut injuries on his body. The police failed to collect any such direct evidence to link the accused persons with the alleged offence of murder. Since the dead body has been found on the side of the public road, it is highly doubtful who had committed the ghastly crime of murder of deceased who used to work in a soap company at night. As per version of PW2 on the fateful night accused Rajib Ali visited his house, brought chicken & took meal in their house and thereafter, went along with his father (deceased) alone is not sufficient to held accused Rajib Ali responsible for commission of murder as none had seen Rajib Ali committing the offence of murder of Samser Ali. Moreover, the version of PW2 has not been corroborated by any of the prosecution witnesses that on the fateful night others have seen accused Rajib Ali going with his father. None of the prosecution witnesses have deposed that accused Rajib Ali & Samar Ali in furtherance of their common intention committed murder.

**11.** According to learned Senior counsel, deceased Samser Ali has been admittedly working as chowkidar in a soap company and engaged in night duty. So, he always went to his duty at night. Therefore, when he went for his duty at night it is not known who killed Samser Ali because deceased may have enmity with somebody else or he might have quarrelled with somebody else on the fateful night. So, all these

facts remain under the cloud of doubt and the commission of murder of deceased by whom has not come to light. Therefore, there is every likelihood of other assailants having been involved in the crime. According to learned Senior counsel, the last seen theory of accused Rajib Ali with deceased is not credible one as none of the witnesses have deposed that accused Rajib Ali & Samar Ali committed the crime.

**12.** Moreover, the wife of deceased Minara Begum was the informant of the case but police finally shown her as one of the accused and faced trial and in the meantime, she expired. However, in the course of evidence none of the prosecution witnesses have stated anything that informant Minara Begum having criminal conspiracy with accused Rajib & Samar Ali who killed her husband. Even though, the I.O. deposed in his evidence that he seized the dagger with handle length about 2ft 3 inch and one iron piece length 1ft 4inch but there is nothing in the evidence of I.O. to show that he recovered the offending instruments at the instance of accused persons and he recorded the "disclosure statement" of accused persons. In the absence of any such statement of accused persons recorded by I.O. and in the absence of any corroboration to this affect it is absolutely under cloud of doubt by whom crime was committed and with which instrument. Therefore, it is totally unsafe to record judgment of conviction u/s 302/34 IPC against the accused persons.

**13.** To substantiate his contention, learned counsel for accused persons referred a judgment of our Hon'ble High Court passed in 2011 (2) GLT 435 (Alifuddin Vs. State of Assam) in CrI. Apl. No. 194 of 2005 passed on 17-03-2011 where Hon'ble Gauhati High Court in para 26 held as under:

*"26. The question as to whether a statement, which, in legal parlance is commonly referred to as "disclosure statement", need to be reduced into writing or not in order to make such a statement admissible in evidence under Section 27 of the Evidence Act, 1872, was considered by a Full Bench of*

*this court in the case of Rajiv Phukan & Anr –Vs- State of Assam, reported in 2009 (2) GLT 414. This court, on consideration of the authorities and relying on the provisions contained in the Evidence Act, 1872 and the Code of Criminal Procedure, 1973, pointed out as follows :*

*"Because of what have been discussed and pointed out above, we conclude that a „disclosure statement“, to be admissible under Section 27 of the Evidence Act, is not statutorily required to be reduced into writing, though prudence demands that such an information should be reduced into writing in order to enable the Court to know exactly as to what the accused is allegedly to have stated and the extent to which the information given by him is admissible. The reference shall stand answered accordingly."*

**14.** Having heard the learned lawyers appearing for both sides and on careful examination of the evidence of prosecution witnesses from PW1 to PW10, it transpires that admittedly there is no eye witness to the ghastly murder of deceased Samsher Ali. The heinous crime of murder in question took place at night on the side of the National Highway near Dulabari of Tezpur Town. Since the crime has been committed at night, no direct evidence could be produced by the prosecution as to the death of deceased Samsher Ali.

**15.** The only positive evidence emerged in the course of prosecution evidence is the evidence of PW2 Minarul Haque the minor son of deceased Samsher Ali. According to PW2, on the day of occurrence of the incident, accused Rajib Ali visited their house and along with his father accused Rajib Ali consumed ganja and thereafter, his father went out with accused for night duty as chowkidar in a soap factory. In his cross-examination he stated that accused Rajib Ali brought broiler chicken to their house and took meal together with his father and also confirmed the fact that both Rajib and his father consumed ganja in their house before proceeding to duty and his father while going to duty took along with him arms as he had gone for night duty though Rajib asked his father not to carry any arm.

**16.** From the evidence of PW2 and his statement recorded by Police u/s 161 Cr.P.C. discloses that accused Rajib Ali was last seen together with his deceased father when he went to his night duty as chowkidar in soap factory. In his statement recorded by Magistrate u/s 164 Cr.P.C. (Ext. 2) also reveals that accused Rajib Ali at 11 PM came to their house with broiler chicken and his father (deceased) along with accused Rajib Ali consumed ganja at the backside of the house. When PW2 Minarul Haque went to attend nature's call, he saw accused Rajib Ali took his father and then his father did not return in that night. His father used to go out at night and return at 3/4 AM. His father was working in a soap factory as night chowkidar. But, on the fateful night, his father did not return home and on the next day morning at 7 AM when his father did not return, his mother went outside in search of him and she got to know that somebody murdered a person and threw the dead body near the road.

**17.** Evidence of PW8 Dr Ranjan Kumar Mahanta shows that cause of death of deceased was due to shock and haemorrhage as a result of cut injuries sustained which were ante-mortem in nature but there is no finding or opinion of doctor in Ext. 5 Post mortem report as to the time of death of deceased. Therefore, it cannot be gather about the exact time of death of the deceased as to whether murder was committed immediately after leaving the house of deceased or subsequent thereto. As such, the chain of circumstances in the present case appears clearly missing in view of the fact that from the evidence of PW8 Dr. Ranjan Kumar Mahanta time of death is uncertain or has not come to light so as to create a unbreakable chain between the time of last seen together and the time of committing the crime.

**18.** Therefore, there is sufficient intervening period from the time of leaving the house of deceased Samsheer Ali along with accused Rajib Ali till the dead body was recovered by public on the side of the road at Dolabari. In between much water has flown under the bridge. In the

meantime, there is likelihood of deceased meeting another person or committing the murder by unknown assailants other than the accused Rajib Ali and Samar Ali because in the course of investigation, as it transpires from the evidence of PW10, no such credible evidence have emerged to show that accused Rajib Ali was consistently stayed with deceased Samsher Ali on that fateful night and the crime was committed by none other than accused Rajib Ali with Samar Ali.

**19.** Though, I.O. submitted charge-sheet against Minara Begum the wife of deceased who was also the informant but no evidence have emerged in the mouth of any of the prosecution witnesses to establish the fact that she had conspired with accused Rajib Ali & Samar Ali and committed murder of his husband with common intention. Neither the PW2 son of deceased nor the other prosecution witnesses have stated that Minara Begum was anyway involved in the commission of murder of her husband Samsher Ali along with Rajib Ali & Samar Ali.

**20.** In his evidence the I.O. PW10 stated that during investigation, it was learnt that Rajib Ali took Samsher Ali after taking dinner at his house on the night of the incident and he seized Nokia Mobile of Rajib Ali vide Ext. 7 and Lava Mobile Handset of accused Samar Ali vide Ext. 4 but I.O. failed to collect any evidence that on the fateful night or prior thereto accused Rajib Ali & Samar Ali had conspired to kill Samsher Ali and there was meeting of minds and to that effect they talked to each other. I.O. also deposed that during investigation, he seized the dao with which accused committed the crime vide Mat. Ext. P-A and one piece of iron rod vide Mat. Ext. P-B, Lava Mobile vide Ext. P-C, Nokia Mobile Handset vide Mat. Ext. P-E but I.O. did not record the statement of accused persons leading to discovery of the offending instruments/ weapon. There is no disclosure statements of accused recorded by I.O.

**21.** No prayer has been made by I.O. in the course of investigation for recording confessional statement of accused persons u/s 164 Cr.P.C.

based on the admission of accused Rajib Ali & Samar Ali in their statement u/s 161 Cr.P.C. made before police.

**22.** The evidence of PW1 Haidar Ali, PW3 Abdul Rashid, PW4 Hasen Ali, PW5 Saidul Islam & PW6 Mahendra Debnath are all hearsay and unworthy of credence. The evidence of PW7 Hannan Ali who is one of the son of deceased Samsheer Ali also unworthy of credit because his evidence is also hearsay in nature as on that fateful night he was at Arunachal Pradesh and having got the information about the incident he came home and came to know about the fact that police arrested accused Rajib Ali for murder of his father. It is not the evidence of any of the prosecution witnesses that accused Rajib Ali & Samar Ali in furtherance of their common intention committed the offence of murder of Samsheer Ali. To this affect, there is no evidence worthy of credence.

**23.** In the context of last seen together, this court beg to refer the recent judgment delivered by Hon'ble Chhattisgarh High Court in 2022 0 Supreme(Chh) 151 (Santosh Nishad Vs. State of Chhattisgarh) wherein Hon'ble Chhattisgarh High Court in para Nos. 20, 21 & 22 held as under:

*"20. The Supreme Court, in the matter of Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116, has clearly laid down the factors to be taken into account in adjudication of cases of circumstantial evidence, which states as under:*

*"(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;*

*(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*

*(3) the circumstances should be of a conclusive nature and tendency;*

*(4) they should exclude every possible hypothesis except the one to be proved; and*

*(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence*

*of the accused and must show that in all human probability the act must have been done by the accused."*

**21.** *In the matter of Arjun Marik v. State of Bihar, 1994 Supp (2) SCC 372, it has been held by their Lordships of the Supreme Court held that conviction cannot be made solely on the basis of theory of last seen together and observed in Para-31 as under:*

*"31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to though a number of witnesses have been examined be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."*

**22.** *Likewise in the matter of State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 the Supreme Court has held that the circumstance of last seen together would be a relevant circumstance in a case where there was no possibility of any other persons meeting or approaching the deceased at the place of incident or before the commission of crime in the intervening period. It was observed in Para-34 as under:*

*"34. From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood*

*of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."*

**24.** In the context of last seen together, this court also beg to refer judgement of our Hon'ble High Court delivered in 2013 2 GauLD 486; 2014 1 GauLR 821 (Ruman Baruah Vs. State of Assam) Crl. Appeal No. 125 of 2007 wherein Hon'ble High Court held as under:

*"65. Ordinarily, the circumstance of last seen together would be relevant, when it is established by the evidence on record that the time gap between the point of time, when the accused and the deceased were seen together alive, and when the deceased was found dead, is so small that possibility of any other person being with the deceased can be completely ruled out. Thus, the time, gap between the accused person having been seen in the company of the deceased and the death of the deceased would be a material consideration for appreciation of evidence in such matters. What is, however, of paramount importance to note is that it cannot be always stated that the evidence of last seen together must be rejected merely because the time gap between the point of time, when the accused persons were seen in the company of the deceased, and the coming into light of the offence committed is of a considerable long duration. There is no fixed or straight-jacket formula in respect of duration of time gap. Obviously, it would depend on the facts of a given case if the circumstance of the last seen together is so material that it can lead the Court to conclude that none, but the accused was last seen in the company of the deceased and was, therefore, the one, who had caused death of the deceased. Reference, in this regard, may be made to the cases of Bodhraj Vs. State of J & K, reported in [\(2002\) 8 SCC 45](#), State of U.P. Vs. Satish, reported in [\(2005\) 3 SCC 114](#), Ramreddy Rajesh Khanna Reddy Vs.*



*State of A.P., reported in (2006) 10 SCC 172 and Jaswant Gir Vs. State of Punjab, reported in (2005) 12 SCC 438. The Supreme Court has summarized the theory of last seen together, in State of Goa Vs. Sanjay Thakran & Anr., reported in (2007) 3 SCC 755, at Para 34, as follows:*

*From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case."*

**25.** Coming back to the fact of the case at hand, it is abundantly clear that the chain of circumstances in the present case has not been established. There was enough time gap between the last seen together of deceased with accused Rajib Ali and the crime committed. More so,

the incident in question took place at night which ruled out the possibility of any person having seen the incident of murder.

**26.** After dispassionate examination of the prosecution evidence available on record, this court has come to unerring conclusion that prosecution has miserably failed to establish the case against the accused persons for sustaining conviction u/s 302/34 IPC. As such, accused Rajib Ali & Samar Ali are acquitted from the charge u/s 302/34 IPC on the ground of insufficient evidence.

**27.** Their bail bonds are however, extended till next six months in view of section 437(A) of Cr.P.C.

**28.** Let a copy of the judgment be forwarded to the learned District Magistrate, Sonitpur as provided in section 365 Cr.P.C.

**29.** Send back the GR case to the learned committal court.

**30.** Judgment is pronounced and delivered in open court under the hand and signature of this Court on this **03<sup>rd</sup> day of September, 2022.**

**(C.B.Gogoi)**  
Sessions Judge,  
Sonitpur, Tezpur.

Dictated and Corrected by me

**(C.B. Gogoi)**  
Sessions Judge  
Sonipur, Tezpur