

GAHC010127672017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./150/2017

SRI SAJU SATNAMI and 3. ORS
S/O LATE PALTU SATNAMI

2: SMTI SUN KI SATNAMI
W/O LATE PALTU SATNAMI

3: SMTI DEBESWARI SATNAMI
W/O SRI RAJU SATNAMI

4: SMTI BINA SATNAMI
W/O SRI SAJU SATNAMI
ALL ARE R/O BORBAN TEA ESTATE
P.O. AMGURI
P.S. AMGURI
DIST. SIVASAGAR
ASSAM

VERSUS

THE STATE OF ASSAM and ANR

2:SARUMAN MEHRA

S/O SR SAMU MEHRA
R/O BORBAN TEA ESTATE
P.O. AMGURI
P.S. AMGURI
DIST. SIVASAGAR
ASSAM
PIN 78560

Advocate for the Petitioner : MR.B BURAGOHAIN

Advocate for the Respondent :

Linked Case : CrI.A./158/2017

SRI RAJU SATNAMI
S/O LATE PALTU SATNAMI
R/O BORBAM TEA ESTATE
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Advocate for : MR.B BURAGOHAIN

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM and ANR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

Date : 22-12-2023

JUDGMENT AND ORDER
(CAV)

(K.R. Surana, J)

The appellants in both the appeals have been convicted by a common judgment and order of conviction.

1. The sole appellant in Crl. Appeal No. 158/2017 is (1) Raju Satnami. The appellants in Crl. Appeal No. 150/2017 are (2) Sri Saju Satnami, (3) Smt. Sunki Satnami, (4) Smt. Debeswari Satnami @ Gauri Satnami, and (5) Smt. Bina Satnami. The appellants in these two appeals were respectively arrayed as accused nos. 1, 2, 4, 5 and 3 in the trial of Sessions Case No. 286 (S-S) 2013. In this judgment and order, the appellants are referred as per their seriatim as accused in the trial.

2. In Crl. Appeal No. 150/2017, the four appellants (accused nos. 2, 4, 5 and 3) have assailed the judgment and sentence dated 27.02.2017, passed by the learned Addl. Addl. Sessions Judge, Sivsagar in Sessions Case No. 286(S-S)/2013, by which they were convicted of committing offence under Sections 323/34 IPC and sentenced to undergo rigorous imprisonment for 1 (one) years and to a pay fine of Rs.1,000/- (Rupees one thousand only) each with default stipulation.

3. In Crl. Appeal No. 158/2017, the sole appellant (accused no.1) has assailed the said judgment and sentence dated 27.02.2017, passed by the learned Addl. Addl. Sessions Judge, Sivsagar in Sessions Case No. 286(S-S)/2013, by which he was held guilty of committing offence under section 302 IPC and sentenced with life imprisonment and ordered to pay a fine of Rs.30,000/- (Rupees thirty thousand only) with default stipulation. The said appellant (accused no.1) was also convicted for committing offence under section 323/34 IPC and sentenced to suffer rigorous imprisonment for 1 (one)

year and pay fine of Rs.1,000/- (Rupees one thousand only) with default stipulation.

4. The prosecution case was set rolling when Sri Sarumon Mehera (respondent no. 2) had lodged an FIR dated 05.09.2013 before the Officer-in-Charge, Amguri P.S., informing that at on that day at about 6.30 AM., his neighbours (i.e. the accused) had quarreled with his mother, Smti. Anima Mehera near the water tap in front of their house at Factory line and his elder sister was also assaulted and in the meantime the accused no. 2, Saju Satnami gave a blow on her head, as a result of which she had sustained injury and that she was admitted to hospital of Borbam Tea Estate. Later on, at about 7.30 AM., the accused no. 1, Raju Satnami had hacked his mother with a *dao* in front of nurse and doctor while his mother was undergoing treatment and thus, killed her on the spot. Accordingly, Amguri P.S. Case No. 141/2013 under sections 147/148/149/325/302 IPC was registered. Upon investigation, charge sheet was submitted in the case. The case was thereafter committed to the Court of Sessions for trial. The case was registered as Sessions Case No. 286(S-S)/2013, and was transferred for trial before the Court of the learned Additional Sessions Judge, Sivsagar. By order dated 17.01.2014, charges were framed against the accused nos. 2, 4, 5 and 3 under sections 147/148/149/326 IPC and that the charges were framed against the accused no.1 under section 302 IPC.

5. In the trial, the prosecution's side had examined 10 witnesses viz:- Sri Harimohan Mehera (PW-1), Smti. Anita Mehrra (PW-2), Sri Samu Mehera (PW-3), Doctor of the Borbam Garden Hospital (name withheld) (PW-4), Sri Hiren Tanti (PW-5), Doctor who had conducted post mortem report (name withheld) (PW-6), Sri Dipak Kr. Hazarika (PW-7), the Dresser of the Borbam

Garden Hospital (name withheld) (PW-8), the Circle Officer (name withheld) (PW -9), and Sri Nandeswar Dutta (PW-10).

6. The following documents were exhibited by the PWs, viz., *ejahar* (Ext.1), inquest report (Ext.2), post-mortem report (Ext.3), sketch map (Ext.4), and charge sheet (Ext.5).

7. On conclusion of the evidence of the prosecution, the accused persons (i.e. the appellants) were examined under section 313 CrPC, wherein the incriminating materials found is the evidence of the witnesses was put to them. The accused no.3, Smti. Bina Satnami had stated that the informant's side had started quarrel and the appellants had taken a plea of denial and declined to give defence evidence.

8. Upon hearing the arguments of both sides, the learned Addl. Sessions Judge, Sivsagar vide judgment and order of conviction dated 27.02.2017, passed in Sessions Case No. 286(S-S)/2013 convicted the appellants as already referred to herein before.

Submissions of the learned counsel for the sole appellant in Crl. Appeal No. 158/2017:

9. It was submitted that the prosecution had not examined any independent eye-witnesses, who had seen the accused nos. 2 to 5 to have started the fight and caused any injury to the informant's side. It was submitted that the alleged assault on the deceased by the accused nos. 2 to 5 was made in broad daylight and therefore, it was not believable that no person was on the road. Hence, it was submitted that the conviction of the accused nos. 2 to 5 is based on hearsay evidence, which is not sustainable.

10. It was submitted that both sides had received minor injuries in the scuffle, which started from drawing of water by the deceased from a water-tap laid in front of the house of the accused persons. However, the nature of injuries for which the deceased or accused were respectively admitted in hospital was not proved. In the said context, it was submitted that even if it is assumed that there was a fight between the accused nos. 2 to 5, they did not have any common intention to cause grievous injury to the deceased. Hence, it was submitted that the conviction of the said accused nos. 2 to 5 under Section 323 of the IPC was not sustainable on facts and in law.

11. Moreover, it was submitted that the evidence of the prosecution witnesses were full of contradictions, which rendered their evidence unbelievable and therefore, reliance on their evidence had rendered the conviction of the accused nos. 2 to 5 liable to be interfered with.

Submissions of the learned counsel for the sole appellant in Crl. Appeal No. 158/2017:

12. In respect of the accused no. 1, who is the sole appellant in Crl. Appeal No. 158/2017, it was submitted that the case of the prosecution was that at the relevant time the deceased was lying admitted in the Borbam Garden Hospital in an injured condition. Yet no independent witness was examined to prove that the deceased was admitted in the hospital and no document to that effect was proved. It was submitted that it was unbelievable that no independent eye-witnesses was present in the hospital.

13. It was further submitted that the prosecution had totally failed to prove the offence of murder alleged to have been committed by Raju Satnami (accused no.1) in the Garden hospital because the prosecution had not

examined any person who had seen the accused no.1 either entering the hospital or going out of the hospital, and that it cannot be believed that there was no independent person in the hospital.

14. It was submitted that PW-1, in his examination-in-chief had stated that he had received a phone call from one Shyam Paik, *chowkidar*, who told him that Raju Satnami (accused no.1) had cut his mother with a *dao* in the hospital itself. However, in the FIR there is no reference about the murder of his mother. It was also submitted that the prosecution had failed to examine the said Shyam Paik to unearth the truth of the incident.

15. It was also submitted that the evidence-in-chief of PW-8 was not believable that he saw Raju Satnami (accused no.1) going outside the hospital with a *dao*. He had also stated that the evidence of the doctor (PW-4) had to be discarded because although he claims that he saw Raju Satnami (accused no.1) coming out of the hospital room with a blood stained *dao*, he had not raised any hue and cry.

16. It was submitted that the prosecution had not examined any eye-witness to the alleged assault made by the accused no.1. In the said context, it was submitted that the conviction of the accused no. 1 was based only on circumstantial evidence, which was not complete and therefore, the accused no. 1 was also liable to be acquitted.

17. It was submitted that the Medical Officer (PW-4) had stated that he had seen the accused no. 1 coming out of the room where the deceased was kept for observation. The dresser of the hospital (PW-8) had stated that he saw the accused no.1 going out of the hospital. However, both the said witnesses had not seen the assault and therefore, the conviction of the accused no. 1 for

committing offence punishable under Section 302 of the IPC was based on surmises and presumption alone.

18. It was submitted that the evidence of the prosecution witnesses were full of contradictions, which rendered their evidence unbelievable and therefore, reliance on their evidence had rendered the conviction of the accused no. 1 liable to be interfered with.

19. Be it mentioned that the learned counsel for the appellant had meticulously referred to the evidence available on record.

20. In support of his submissions, the learned counsel for the appellant had referred to the following cases, viz., (i) *jose @ Pappachan v. Sub-Inspector of Police, Koyilandy & Anr.*, (2016) 10 SCC 519; (ii) *Brijesh Mavi v. State (NCT of Delhi)*, (2012) 7 SCC 45; (iii) *Govindaraju @ Govinda v. State, by Srirampuram Police Station & Anr.*, (2012) 4 SCC 722; (iv) *Amit v. State of Uttar Pradesh* (2012) 4 SCC 107; (v) *Shanmughan v. State of Kerala*, (2012) 2 SCC 788; (vi) *Madhu v. State of Kerala*, (2012) 2 SCC 399; (vii) *Haresh Mohan Rajput v. State of Maharashtra*, (2011) 12 SCC 56; (viii) *Pannayar v. State of Tamil Nadu*, (2009) 9 SCC 152; and (ix) *Ramsingh Rajput v. State of Assam*, (2011 (4) GLT 123.

21. The case of *Ramsingh Rajput (supra)* was cited to support his submission that the conviction of the appellants cannot be sustained because the alleged weapon of assault was not recovered and without conducting its serological examination, it could not be established that the *dao* was the weapon of offence. The case of *Pannayar (supra)* was cited on the point that when by direct evidence, murder and assault could not be proved, or motive of the assailants could not be established, the prosecution cannot build up a case

only on the strength of cross-examination. The case of *Shanmughan (supra)* was on the point that when there is no direct evidence and the entire case is based on the circumstantial evidence, in such circumstances, the prosecution can only succeed in proving the guilt by the appellant by showing that there is no gap in the chain of circumstances proved by it. The case of *Govindaraju (supra)* was cited on the point that as the testimony of the PWs in the present case was not reliable, the conviction cannot be sustained. The rest of the cases were cited on the point of circumstantial evidence.

Submissions of the learned Addl. P.P.:

22. The learned Addl. P.P. had submitted that the chain of incriminating circumstances against all the accused persons was complete. In the said regard, it was submitted that the medical evidence and evidence of the prosecution witnesses conclusively pointed towards the guilt of all the accused persons and thus, the accused no. 1 was held guilty of murdering the deceased, the accused nos. 2 to 5 were jointly and severally liable for offence of causing grievous hurt to the deceased by assaulting her while collecting water from community tap, located in front of the house of the accused persons, and that when the deceased was kept for observation in the hospital of Borbam Tea Estate, he was murdered by the accused no. 1 by severing her head with a *dao* and that the accused no. 1 was seen by PW-4 and PW-8 while going out of the hospital and the PW-8 had also seen him going out of hospital with the *dao*, which was the weapon of assault. Hence, the learned Addl. P.P. had supported the conviction and sentence awarded to the accused persons.

Analysis of evidence and decision:

23. One Sarumon Mehera was examined by the prosecution as PW-1.

On a perusal of the LCR, it appears that his name was incorrectly recorded in the form of deposition by the learned Trial Court as "Horimohan Mehra", which is evident from the signature of PW-1 contained in the LCR. The said PW-1 had on 05.09.2013 at about 6:30 AM, the accused persons had a fight with his mother over water and she had returned home bleeding and on being asked, she had informed the PW-1 that Saju Satnami and other accused had also hit her and then he took her to the Garden Hospital and came back home. He had stated that his father was then at their *basti* house and his elder sister had gone to call him and when his father arrived, he was told what had happened and then both went to the VDP, who told them to lodge an FIR. Then they went to the Police Station and filed the FIR written by one Prabhat Neog, which was read over to him. Then he received phone call from Shyam Paik, *Chowkidar*, who told them that the accused no. 1 had cut his mother with a *dao* in the hospital, and the PW-1 then wrote it in the FIR. His father went with 108 Ambulance and he went later. He had stated that he was not allowed to see his mother first but later when he saw the body, her neck had been severed. The police then conducted the inquest and questioned him. He had exhibited the FIR as Ext.1 and his signature thereon. In his cross-examination, the PW-1 had stated that the incident in medical had occurred at about 7:30 AM and that he had also stated that he had not seen the accused no. 1 killing his mother as he was not there in the hospital. He had denied the suggestion that the accused are not connected and that they did not assault his mother in the morning and that she got hurt on her own. He had admitted the suggestion that it was a fact that he had suspected the accused no. 1 had killed his mother due to fight in the morning. However, he had denied that some other person had killed her and that he had lied in the Court.

24. Anita Mehera, who was examined as PW-2, had stated that the accused persons are her neighbours and they had a fight with her mother over supply. She heard a hue and cry and when she came out she saw Gauri Satnami, Bina Satnami (accused no.3) and Chumki Satnani (*sic.* ought to have been Sunki Satnami, accused no.4) hitting her mother. She had stated that she rushed there and they bit her in her hand. After fighting broke, she went to inform her father as he was staying in village house. For the rest of her statement, she is a hearsay witness. She had also stated that she went to the hospital and saw her mother lying in the floor, bleeding and she fainted and on regaining consciousness, she was informed by the doctor (PW-4) that Raju Satnami (accused no.1) had killed her mother with a *dao*. The police had questioned her. In her cross-examination, she had admitted that she had not seen her mother being hit by the accused no.2 with a bucket or killing of her mother by the accused no.1. She had stated that she had seen Chumki (*sic.* ought to have been Sunki, accused no.4) and Debeswar Satnami (accused no. 5) had hit her mother. She had denied the suggestion that someone else had killed her mother due to personal grudge and she had denied that she had deposed falsely.

25. Samu Mehera, who was examined as PW-3, was a hearsay witness as regards assault on his wife on 04.09.2013, her hospitalization and death in the Garden Hospital on the next day. In his cross-examination, he had denied that Saju (accused no.2) had hit his wife and she had injured herself due to fall and he had also denied that someone else had killed her and they had falsely given their names due to personal enmity.

26. The Senior Medical & Health Officer of Borbam Tea Garden

Hospital (name withheld), who was examined as PW-4 had deposed in his examination-in-chief that on 05.09.2013, he was on duty in the hospital and there was a fight between the parties and both parties had simple cut injuries and he treated them and Anima, who had cut injuries in her head, was kept in observation room in front of his room. It was about 7:00 AM. After about 20 minutes, he had heard a shout and he came out of his room and saw Raju Satnami (accused no.1) coming out of the room with a blood stained *dao* and he went to the room and saw Anima lying in the floor and bleeding, having two cut injuries in her neck. The Manager then informed the police, who questioned him, inquest was conducted and he signed the inquest report and the body was taken for post mortem. He had exhibited the inquest report (Ext,2) and his signature thereon. In his cross-examination, the PW-3 had stated that his duty time was 7:00 AM till 10:00 AM. The Ward boy Sukra Orang was there. He had stated other patients were there like Debeswari Satnami (accused no. 5) and Saju Satnami (accused no.2) in the female and male ward. He had stated that he knew Raju Satnami (accused no.1) from 2006 as he is a worked in the Garden and he denied that he got to know the name of the said accused from some other person. He had stated that he did not see the accused cutting. He had also stated that the Police did not take him for TIP. He had denied that he had deposed falsely and only on suspicion. He had denied that he did not see Raju Satnami (accused no.1) and stated that he had seen him from front side only.

27. Hiren Tanti, who was examined as PW-5, had stated in his examination-in- chief that the accused persons had a fight with Samu Mehera over water, so he had come to him and he asked him to file a case and he left and after 1 (one) hour, he heard a hue and cry and he came out and heard that

someone was cut in the hospital. He went there and police had also arrived and he came to know that Anima had been cut by Raju Satnami (accused no.1) inside the hospital. He saw the dead body. There was lot of blood. The doctor was there and police carried out the inquest and he signed it. He had exhibited the inquest report (Ext.2) and his signature thereon. He had not seen the injury. In his cross-examination, he had stated that he had not seen Raju cutting Anima and heard it from people and that was the first time fighting between the parties was reported and he had denied that he had deposed falsely at the behest of the informant.

28. The doctor (name withheld) who had conducted the post mortem examination, was examined as PW-6. In his examination- in- chief, he had stated that rigor mortis was present and found clotted blood around the neck region. He had also described the injuries on the dead body, being cut injury mark below the chin 6 inch and depth of about $\frac{1}{2}$ inch and blood was still present in the injury; and there was also cut injury in the neck below the Adam's apple 5 inches length and 3 inches depth and the muscles and vessels are dissected is *ante partem* in nature. The duration of injury was about 10-12 hours and she had expired due to severe hemorrhage shock leading to cardio-pulmonary failure. In his opinion she had expired due to severe hemorrhage at the site of injury and the injuries are *ante partem* in nature and expired due to hemorrhage shock. He had exhibited the post-mortem report (Ext.3) and his signature thereon. His cross-examination was declined.

29. Dipak Kumar Hazarika, who was examined as PW-7 was otherwise a hearsay witness. However, he had stated in his examination in chief that he had informed the police after seeing the dead body and after coming

from hospital. In his cross-examination, he had stated that he was the Welfare Officer in that garden and that the fight was regarding water. And both parties were in hospital. He had not seen who had cut Anima and that the police did not question him and he denied that he had deposed falsely.

30. The dresser (name withheld) in the Barbam Garden Hospital, who was examined as PW-8, had stated in his examination-in-chief that the incident happened in the year 2013. He was the dresser in the said hospital and he had stated that his duty started from 6:30 AM. He had named the doctor present. He had stated that he was attending patients and had gone to the pharmacy and saw Raju Satnami (accused no.1) going outside with a *dao*. He had not noticed if there was blood in the *dao*. He and the doctor went and saw Anima lying on the floor and there was bleeding in the room and when the doctor checked her, she had died. She had injuries in her neck. He had also stated that there was a fight between Raju (accused no.1) and Anima (deceased) family in the morning due to water. In his cross-examination, he had stated that he did not remember the time of the incident and had not seen the fight between the families. He had also stated that members of both families were the patients in the hospital on that day. He had denied that he had deposed falsely and denied that the incident had happened in the night and he could not recognize who had cut her. He had admitted that he had not seen him cut the victim.

31. The Circle Officer, Jorhat West Circle (name withheld) was examined as PW-9. In his examination-in-chief, he had stated that he had performed inquest over the dead body of Anima Mehera in reference to Amguri GDE No. 594 dated 05.09.2013 and the dead body was identified by Samu Meher (*sic.*) (PW-3) and Kalyan Mehera. The dead body was lying on the floor of

the hospital with face covered by blood stains, with deep cut mark on the neck of the body caused by sharp weapon and death was due to severe bleeding and that he had forwarded the dead body for *post mortem*. He had exhibited the inquest report (Ext.2) and his signature thereon. In his cross-examination, he had stated that there was blood in the neck.

32. Nandeswar Dutta, the Law Instructor at Police Training College, Dergaon, was examined as PW-10. In his examination-in- chief, he had stated that on 05.09.2013, he was serving as Officer-in-Charge of Amguri P.S. On that day at about 7:35 AM, the PW-7 had informed him about the incident over phone and he then made GD Entry No. 104 dated 05.09.2013 and he rushed to the place of occurrence to start investigation. He found the dead body of the deceased lying on the floor of one of the rooms of the hospital. The Executive Magistrate was called and PW-9 came to the hospital for the inquest over the dead body, he had drawn the sketch map, recorded statement of witness. He had stated that on the same date FIR was lodged by Sarumon Mehera and the same was registered by him as Amguri P.S. Case No. 141 of 2013 under Sections 147/148/149/325/302 IPC and took up the investigation, sent the injured for medical and arrested Raju Satnami (accused no.1) on 06.09.2013 and the rest of the accused persons were arrested on 20.10.2013 and produced before the Court. The charge-sheet against the accused persons was filed on 23.10.2013, under sections 147/148/149/325/302 IPC. He had stated that he did not make any seizure as the accused no.1 had thrown the *dao* in the river. He had taken two photographs of the dead body. He had exhibited the FIR (Ext.1), sketch map (Ext.4) and charge-sheet (Ext.5) and his signature thereon. In his cross-examination, he had stated that he had done the complete investigation, recorded the statement of 12 witnesses at the place of occurrence

itself and he had recorded statement of other witnesses who are not related to the deceased at the place of occurrence itself. He had denied that the statement of witnesses were recorded in the police station and he had denied that he had not gone to the place of occurrence and he had also denied that he had filled a false charge-sheet against the accused.

33. Thus, on a perusal of the cross-examination of PW-4, it is seen that the defence has not been able to demolish his evidence as an eye-witness who had seen the appellant no.1 from the front, coming out of the observation room where the deceased was kept, with a blood stained *dao* in his hand. The PW-8 is also an eye witnesses, whose evidence could not be demolished that he had seen the appellant no.1 coming out of hospital with *dao* in his hand. Moreover, the Court is unable to accept the submissions made by the learned counsel for the appellants that the said PW nos. 4 and 8 were not independent persons examined by the prosecution.

34. The evidence of the PWs makes leaves no room for any doubt that the accused nos. 2 to 5 had assaulted the deceased while collecting water from a tap located in front of the house of the accused persons. In the fight between two sides persons from both sides had received some injuries. During their cross-examination, the PW nos. 4 had stated that the ward-boy Cukra Orang (PW-8) was there. He had also stated that other patients like Debeswari Satnami (accused no.5) and Saju Satnami (accused no.2) were there. Moreover, the PW-8, in his cross-examination had also stated that members of both families were the patients in the hospital on that day. Therefore, it is seen that the defence had established that persons from both sides, including the deceased were the only patients in the Borbam Garden Hospital. The defence

could not show from cross-examination of witnesses that any other persons were present in the hospital precincts. Hence, the PW-4 and PW-8 had clearly established that although there were no eye-witness, but the circumstantial circumstances leads to an only conclusion that Raju Satnami (accused no.1) was the perpetrator of crime of murdering the deceased, namely, Anima Mehera, because just before PW-4 had seen the accused no. 1 coming out from the Garden Hospital, he heard a shout and when PW-4 rushed out from his room he saw the accused no.1 coming out of the observation room where the deceased was kept with blood stained *dao* in his hand and when the PW nos. 4 and 8 had went inside the said room, both of them found the deceased profusely bleeding on the hospital floor with injuries on her neck. The said injuries are confirmed from the evidence of the PW-6 and from the *post mortem* report. The PW-4 and PW-8 are independent witnesses, who were working in Barbam Garden Hospital and the appellants- accused had not been able to demonstrate that they had any enmity with Raju Satnami (accused no.1). The proximity of time between Raju Satnami (accused no.1) being seen with blood stained *dao* in his hand and seeing the dead body in observation room of the hospital was almost instantaneous, thus there was no intervening gap to perceive that a third person could have entered the observation room where the deceased was kept. Moreover, the identity of the accused no. 1 was not in dispute because the PW-4 had stated in his cross-examination that he knew the said accused no.1 since 2006, as a Garden worker.

35. Therefore, in our considered opinion, we do not find any infirmity with the finding recorded by the learned Trial Court. Not only the prosecution has been able to prove the identities of the accused persons i.e. the appellants, but also had successfully connected Raju Satnami (accused no.1) for inflicting

fatal injuries to the deceased. Moreover, from the evidence of PW-4 and PW-8, the prosecution has been able to establish that the victim had died instantaneously after being the neck of the deceased was fatally cut by the accused no.1, which had exposed her muscles and dissected the blood vessels.

36. PW nos. 1 and 2 were eye witnesses to assault by the accused nos. 2 to 5 i.e. appellants in Crl. A. No.150/2017 in 6:00 AM in the morning of 05.09.2013, which caused injuries to the deceased. PW-9 had proved the inquest report, which also describes the injuries. The PW-10 has been able to give a cogent and plausible explanation that the weapon of assault i.e. *dao* could not be seized as Raju Satnami (accused no.1) had thrown it in the river.

37. The PW nos. 1, 2 and 3 had successfully been able to identify the accused nos. 2 to 5 and they have also proved that they had assaulted the deceased and in the scuffle, the deceased as well as Debeswari Satnami (accused no. 5) and Saju Satnami (accused no.2) were admitted in the female and male ward of the hospital having suffered injuries. The injuries suffered by the deceased was proved vide inquest report (Ext.2) and post-mortem report (Ext.3).

38. The learned counsel for the appellants had questioned the impugned judgment on the ground that Shyam Paik, who had allegedly called the informant, was not examined. The Court does find it to be fatal because it is not the case of either the prosecution or the defence that the said person was an eye-witness to the murder of the victim.

39. The learned counsel for the appellants had also assailed the impugned judgment on the ground that the I.O. had not examined any independent witnesses and in the said connection, it was submitted that daily

life in Tea Garden commenced early morning from about 5:00 AM and thus, it was unbelievable that there were no independent visitors or patients in the Barbam Garden Hospital. The Court does not consider this to be of any consequence because as per the statement of the PW-8 in his cross-examination, he had clearly stated that the members of the two sides were the only patients in the Barbam Garden Hospital on the day of the incident, which could not be disproved by the appellants. There are no materials on record from which it can be safely presumed by the Court that the said hospital, which is presumed to be a small hospital to cater to the requirement of tea garden employees and their family, was full of patients, attendants and members of the public on 05.09.2013 at 7:00- 7:30 AM.

40. On the totality of the evidence, as discussed herein before, discloses existence of a complete chain that in the morning of 05.09.2013, the accused nos. 2 to 5 i.e. appellants in CrI. A. 150/2017 had assaulted the deceased while she was collecting water from a tap near the house of the accused persons. The assault and the ensuing fight led to the deceased as well as Debeswari Satnami (accused no. 5) and Saju Satnami (accused no.2) to go to the Barbam Garden Hospital prosecution with injuries. The unimpeached evidence discloses that the deceased was kept in the observation room opposite to the room of the doctor, who heard a shout and when he came out of his room, he saw Raju Satnami (accused no. 1) coming out of the room where the deceased was kept with blood stained *dao*. The PW-4 and PW-8 went inside the said room and found that the deceased was lying in a pool of blood with neck injury and had instantaneously died. Thus, Raju Satnami (accused no.1) had a premeditated motive to kill the deceased as he had come to the hospital with a *dao*. The motive to kill is apparent because there can be no other motive of

cutting the neck of the deceased with a *dao* other than to kill her. The PW-8 had seen the said accused no.1 going out of the hospital immediately after the murder. The PW-1, who was already in the police station came to know about the murder of his mother and it was immediately reported to the police without any delay whatsoever. The accused nos. 2 to 5, in support of their defence, has not been able to show that they were not the ones who had collectively assaulted the deceased while collecting water from the tap. The I.O. who was examined as one of the prosecution witnesses has given an explanation why the *dao*, which was the weapon of offence could not be found because it was thrown away by Raju Satnami (accused no.1) in a river, for which it could not be retrieved and sent for forensic examination. However, when PW-4 and PW-8 had been able to establish that the said accused no. 1 was the person coming out of the room and immediately thereafter, the dead body of the deceased was found on the floor with profuse bleeding, and the evidence of the PW-4 remains unimpeached that he saw Raju Satnami (accused no. 1) from the front with blood stained *dao* in his hand and that he knew the said accused. Hence, the Court is of the considered opinion that the chain of circumstances has remained unbroken with no loose ends. Therefore, we do not consider that the non-recovery of the weapon of assault would be fatal in this case.

41. Thus, having carefully considered the cases cited by the learned counsel for the appellants, the Court is of the considered opinion that the said cases would not help the appellants in this case. Therefore, this judgment is not burdened with discussions thereon.

42. Thus, in light of the discussions above, the Court is of the considered opinion that the prosecution has been able to show beyond

reasonable doubt that the circumstantial evidence available in this case, as narrated herein before, leads to the only conclusion Raju Satnami (accused no. 1) alone and no other person had committed the homicidal death of Anima Mehera, the deceased, by inflicting cut injuries on her neck by a *dao*. Thus, the offence is punishable under Section 302 IPC. Therefore, this appeal fails in so far as Raju Satnami (accused no. 1) i.e. appellant in Crl. Appeal No. 158/2017 is concerned. The Court affirms the finding returned by the learned Trial Court as well as the life sentence awarded to Raju Satnami, the appellant in Crl. A. 158/2017.

43. From the discussion of the evidence of the witnesses examined by the prosecution, the Court is constrained to hold that there is no sufficient evidence to connect Raju Satnami, appellant in Crl. Appeal No. 158/2017 for committing offence punishable under section 323 IPC of assaulting the deceased in the morning over dispute on drawing of water. There is no evidence to sustain the conviction of the accused no.1 under section 34 IPC. Therefore, the conviction of the appellant in Crl. Appeal No. 158/2017 for committing offence under section 323/34 is set aside. Nonetheless, the said appellant shall continue to be incarcerated for life for committing offence punishable under section 302 of the IPC.

44. In this case, the nature of injuries with which the deceased was admitted in Barbam Garden Hospital has not been proved. Nonetheless, it has been established that the deceased was kept in the hospital for observation, which is indicative of some injury suffered by the deceased. Therefore, we are of the considered opinion that the deceased had only suffered simple injuries and therefore, the conviction of the appellants in Crl. App. No.150/2017, for

offence committed under section 323/34 of the IPC is affirmed. The sentence of fine would meet the ends of justice. Accordingly, the sentence of Sri Saju Satnami (accused no.2), Smt. Sunki Satnami (accused no.4), Smt. Debeswari Satnami @ Gauri Satnami (accused no.5), and Smt. Bina Satnami (accused no.3) who are appellants in Crl. App. No.150/2017, is modified to payment of fine only as imposed by the learned trial Court, which can be recovered from them, if not already realized.

45. Thus, the Crl. Appeal No. 150/2017 stands partly allowed. The Crl. Appeal No. 158/2017 stands dismissed by affirming the conviction and sentence awarded by the learned Trial Court.

46. Let the LCR be returned.

47. Let a free copy of this order be supplied to the appellants in both these appeals.

JUDGE

JUDGE

Comparing Assistant