

GAHC010045202023



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

Case No. : CrI.A./85/2023

KAMAL DIHINGIA
S/O LATE BISWADHAR DIHINGIA, RESIDENT OF NOHAJAR,
KONWARGAON, PS BORBORUAH, DIST DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR. A C BURAGOHAIN

Advocate for the Respondent : MS. B, BHUYAN(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT AND ORDER(CAV)

Date: 13.12.2023

(Malasri Nandi, J)

This appeal has been preferred against the Judgment and Order, dated 07.02.2023 passed by the learned Additional Sessions Judge (FTC), Dibrugarh in connection with Sessions case No. 158/ 2017, whereby the appellant was convicted

under Section 302 /448 of the IPC and sentenced to undergo rigorous imprisonment for life with fine of Rs.1000/-, in default of payment of fine R.I. for one month, for the offence under Section 302 IPC. The appellant was also sentenced to undergo rigorous imprisonment for two months for the offence under Section 448 of the IPC. Both the sentences were directed to run concurrently.

2. The wife of the deceased (PW-1) lodged an FIR before the Officer-in-Charge of Borburah Police Station on 16.10.2017, stating inter-alia that on 15.10.2017 at round 10 pm, the appellant along with his son Bipul Dihingia and son in law Bikash Dhadumia came to the house of the informant and inflicted injuries with iron hammer on the head of her husband Prashanta Chetia, as a result of which he sustained grievous injuries in his head. Though he was admitted to Aditya Nursing Home at Diburagrah but his condition was critical. It is also alleged in the FIR that they also assaulted her nephews Simanta Saikia, Rahul Saikia and Arpit Konwar who had come to their house on the date of incident, to take her ailing husband to the hospital.

3. On receipt of the complaint, a case was registered vide Borburuah P.s. Case No. 235/2017 under Section 448/326/325/307/34 of the IPC. Subsequently, the injured succumbed to his injuries on 18.10.2017. Then the investigation officer made a prayer before the jurisdictional magistrate to add Section 302 IPC and accordingly Section 302 IPC was added. Thereafter the investigation was initiated. During investigation the statements of the witnesses were recorded. The inquest was conducted on the dead body of the deceased and subsequently the dead body of the deceased was sent for post-mortem examination. In the course of investigation, one hammer was seized which was used at the time of commission of the crime. After completion of the investigation, having found sufficient incriminating materials against the appellant for causing death of the deceased, charge sheet was submitted against him under section 448/302 IPC. However,

against other accused persons, i.e. Bipul Dihingia and Bikash Dadhumia, charge sheet was laid under Section 448/352/294/323/34 IPC before the Court of SDJM, Dibrugarh. As the offence under Section 302 of the IPC is exclusively triable by the court of Sessions, the case was committed accordingly.

4. During trial, charge was framed under Section 448/302 IPC against the appellant and two other accused Bipul Dihingia and Bikash Dadhumia, to which they pleaded not guilty and claimed to be tried. During trial, eight witnesses were examined by the prosecution to prove the guilt of the appellant and his associates. On the other hand, the appellant did not choose to adduce any evidence in support of his case. After completion of trial, the statement of the appellant and other accused were recorded under Section 313 of the CrPC, wherein incriminating materials available in the evidence of the witnesses were put to them, to which they denied the same by stating that they had been falsely implicated in this case. The appellant had specifically stated that no hammer was recovered or seized from his possession. The appellant also stated in his statement under Section 313 CrPC that he had not done anything. The dispute is regarding land. Kamal Chetia (S.I.) is the brother of the complainant and they had framed him in this case.

5. After hearing the argument advanced by the learned counsels for the parties, the trial court had convicted the appellant under section 302/448 IPC and other accused persons (not appellant) under Section 448 IPC and they were released under the Probation of Offenders' Act. Instead of meting out to any punishment, the accused Bipul Dihingia and Bikash Dadhumia were released after admonition. Hence, this appeal has been preferred by Kamal Dihingia against the conviction under Section 302/448 IPC.

6. It was urged by the learned counsel for the appellant that there are lots of contradictions in the evidence of the witnesses. Though PW-3, PW-5 and PW-6

were projected to be the eye witnesses to the incident, but they were infact not present when the alleged incident occurred. In fact a land dispute is prevailing between the parties, as a result of which this case has been initiated. According to the learned counsel for the appellant, the deceased was suffering from various ailments and he died accordingly. No such incident occurred as alleged by the informant in her FIR and subsequently, to her evidence before the trial court. The learned counsel for the appellant has further submitted that without sifting the evidence and without making an effort to scrutinize the entire materials on record, with a superficial approach, the trial court proceeded to convict the appellant which appears to be perverse finding. As such, the impugned judgment is liable to be interfered with.

7. It is also the submission of learned counsel for the appellant that the trial court, in its judgment, clearly mentioned that the evidence of PW-1 (informant) cannot be relied upon for the purpose of determining the points involved in the present case. The trial judge discarded the FIR as a piece of evidence. As such, whatever averment made in the FIR by the informant cannot be taken into account in convicting the appellant.

8. It was pointed out by learned counsel for the appellant that the alleged incident took place on 15.10.2017, the FIR was lodged on 16.10.2017, but the seizure was made on 17.10.2017, when the appellant was already been in police custody since 15.10.2017. Hence, how was it possible to recover the murder weapon from the appellant on 17.10.2017 i.e. two days after the alleged incident.

9. The learned counsel for the appellant also contended that the seizure list fails to mention that the hammer had any blood stains or any other marks that could have been identified it to be in the exclusive possession of the appellant . Neither the seized hammer was ever sent for serological examination nor any

verification was made, in order to investigate whether the seized hammer was the said weapon of offence, by which the appellant had committed the fatal injury to the deceased .

10. In support of his submission, learned counsel has placed reliance on the following case law:

(2019) 6 AD (Delhi) 45, (Saddak Hussain v-s State (NCT of Delhi)

11. In response, learned Additional Public Prosecutor has argued that the appellant was convicted on the basis of the corroborative evidence of the witnesses, as well as the documents including the seized hammer, i.e. the weapon of offence available in the record. There are four eye witnesses including the informant to the incident. They have fully supported the case of the prosecution that the appellant is the perpetrator of the crime, who had killed the deceased by inflicting injury on his head by the said hammer. The learned trial court has rightly convicted the appellant under Section 302/448 IPC which needs no interference by this Court. However, learned Addl.P.P. also contended that it appears from the evidence of the witnesses that prior to the incident, there was a quarrel between the parties as such, there is a scope to convert the conviction from Section 302 IPC to 304 part-I IPC

12. In support of her submission, learned Additional Public Prosecutor has cited one case law criminal appeal No. 2043/2023 (Anbazhagan –vs- the State represented by the Inspector of Police, arising out of S.L.P. (Criminal) No. 9289 of 2019.

13. In the case in hand, admittedly the incident occurred in the house of the deceased. According to PW-1, the occurrence took place on 15.10.2017 at about 10 pm. At that time, she along with her husband and her nephews after taking dinner were about to sleep. At the moment the accused persons in intoxicated

state entered into their boundary by braking it. Accused Bipul Dihingia assaulted her husband with hands. Then wife and sister of Bipul Dihingia arrived there and took Bipul Dihingia from their house. After some time, the accused again came to their house and assaulted his nephews Simanta Saikia, Rahul Saikia and Arpit Konwar. Subsequently, Bikash Dadhumia came to their house and assaulted her, her husband and her nephews with iron rod and bamboo stick as a result of which they sustained injuries. Her husband received injuries on his head by the assault of Bipul Dihingia and Bikash.

14. P.W.1 also stated that the wife of Bipul and Bikash had informed Kamal Dihingia about the occurrence and called him at the place of occurrence. On receipt of the information, Kamal Dihingia i.e. the appellant arrived at the place of occurrence with a 'matul' and assaulted her husband causing injury on his head. Her husband took shelter in the house of their neighbour Prafulla Hazarika. Her husband was taken for medical treatment by Profuula Hazarika and her husband was not in a position to talk. From AMCH, Dibrugarh her husband was shifted to Aditya Nursing Home. On 18.10.2017, her husband succumbed to his injuries. She lodged the FIR on the next day of the incident i.e. 16.10.2017 vide Exhibit-1.

15. P.W.2 is the adjacent neighbour of the informant. From the evidence of PW-2, it reveals that on the date of incident at night, he heard the deceased shouting "Kakaideo" "marilu" "marilu" (brother, I am dying) and came to their house. At that time blood was oozing out from his head and thus he put gamosa to cover up the wound. He accompanied the deceased to Borboruah P.S and police accompanied them to Borburah Primary Hospital. After that he returned back from the hospital. Next day, he came to know that the deceased was shifted to AMCH, Dibrugarh and was under treatment there. After three four days, he heard that Prasantha Chetia expired during treatment at AMCH, Dibrugarh. In his cross-examination, PW-2 replied that he did not see the incident and police did not

interrogate him about the incident.

16. PW-3 is the nephew of the informant. According to him, on the date of incident, he was at the house of the complainant. The occurrence took place at 10 pm at the house of the informant. There was a shop attached to the house of the complainant. At that time, the deceased was standing in the verandah of his shop. He along with the complainant and his cousin brother Rahul saikia were standing nearby. At that time, the appellant Kamal Dihingia came near the standing deceased. The appellant brought one hammer and inflicted injury on the back of the head of the deceased. The deceased ran towards the roadside. The complainant also followed the deceased. Immediately, family members, of the appellant came to the house of the complaint and tried to break the main door of the house. The wife of Bipul Dihingia informed police . Later on, he came to know from Prafullah Hazarika that the deceased with his head injury, rushed to his house and then he was taken to Borboruah Hospital from his house and after taking preliminary treatment, the victim was moved to AMCH, Dibrugarh. Thereafter, victim was again shifted to Aditya Hospital where he succumbed to his injuries.

17. In his cross-examination, PW-3 replied that he came to the house of the informant, as he has informed that the husband of the complainant was suffering from fever. At the time of incident, they were standing on the verandah on the ground floor of the house of the complainant. He heard that there was a dispute prevailing between the deceased and Bipul Dihingia over land.

18. Though PW-3 stated in his examination in chief that the appellant assaulted the deceased with a hammer causing injuries on his head, but in his cross-examination PW-3 clearly stated that he had not seen the occurrence of the incident and the deceased was not hit with a hammer by the appellant.

19. PW-4 is the brother of the informant. From the deposition of PW-4, it

discloses that he was not present when the incident occurred. According to him, on the date of incident, at about 10.30 pm, he received a phone call from his sister i.e. the informant that the appellant assaulted her husband with a hammer on his head and also informed that the family members of the appellant carried lathi and surrounded their house, as a result of which his son i.e. PW-3 Rahul Saikia who is their relative and Bicky could not come out from the house of his sister. On receipt of the information, his wife, his brother and another person namely Tatang went to Borburah P.S. and informed the police about the incident and with the help of police of Borburah, his son and other relatives were recovered from the house of the informant . PW-4 further stated that on 16.10.2017, when he went to Borboruah P.S, the investigating officer had shown him a hammer by which the deceased was assaulted and the said hammer was seized by preparing seizure list vide Exhibit-2 wherein he put his signature.

20. In his cross-examination, PW-4 stated that he had not seen the occurrence. He did not remember if he had stated before the police that his son Simanta had informed him about the alleged incident. The hammer which was seized by police was handed over by the daughter –in-law of the appellant to the police.

21. PW-5 is the cousin of the informant. He deposed in his evidence that the incident took place on 15.10.2017 at about 10 pm in the house of the deceased. On that day, he along with his brother Simanta Saikia, Rahul Saikia and the deceased were present in the house of the deceased. At that time, he and Raul Saikia were standing on the roof top of the house and Simanta and his uncle were on the ground floor. The accused Bipul, Dihingia came there and had challenged them that who would pay him Rs.5000/-. Subsequently, Bipul Dihingia with the help of iron rod had destroyed the bamboo fencing of the house of the informant. After that Bipul Dihingia came there and assaulted Simanta Saikia. When the informant had opened the iron gate, they came down the stairs. Then the accused

persons came along with their family members and attempted to assault them. The wife of Bipul Dihingia called the appellant over phone to the place of occurrence. Accordingly, he arrived on the spot and brought a hammer. At that time, the deceased was sitting in front of his shop. Suddenly, the appellant attacked the deceased with the said hammer, causing injury on the back of his head. On receiving the injury, the deceased ran away to the house of his neighbour. The informant also followed him. After two days, the husband of the informant succumbed to his injuries while taking treatment in Aditya Hospital, Dibrugarh.

22. In his cross-examination, PW-5 replied that he knew that the deceased and the accused were relatives, but he did not know if any land dispute was prevailing between them. They were at the roof of the first floor in the house of the informant. At that time, they were five members in the house. The shop of his uncle was open. Police recorded his statement but he did not state before police that on that day in the evening hour, they were on the roof of the house of the deceased and they were betting as to who should pay how much money if someone jumped from the roof.

23. PW-6 is the nephew of the deceased. According to him, on the date of incident, he was in the house of the deceased along with his friends Simanta Saikia and Arpit Konwar. At that time, his uncle was bed-ridden for which his aunt called him to their house. On the date of incident, at about 9.30 pm, after having dinner, they were on the terrace but his aunt being oblivious to this, closed the grill of the terrace. When they could not open the grill, Simanta Saikia mocked them that saying that if they could jump from the terrace, he would pay Rs.500/-. On hearing this, the accused Bipul Dihingia broke open the bamboo fencing of his uncle's house and entered into the campus with a big bamboo. At that time, the deceased and Simanta Saikia were sitting on the stair case. Then the accused Bipul came and assaulted Simanta Saikia. When his uncle intervened, the accused started

quarrelling with his uncle, due to which his uncle fell down. Subsequently, the wife of Bipul, Bikash, Bobby and his son came to the spot and started to assault him and Simanta. However, Arpit Konwar fled away. Accused Bikash had assaulted him with a wooden lathi causing injury on his left hand. Simanta was beaten by the wife of Bipul and his son and hurled a chair at him. After the scuffle ended, his uncle sat on the stair case and was discussing the incident. Then the appellant out of nowhere came from the back with iron hammer and hit the back of the head of his uncle thrice. After receiving injury, his uncle ran towards the house of neighbouring people. His aunt also followed him. He immediately informed the matter to his parents. The police along with his parents came and rescued him. He later came to know that his uncle was taken to the hospital. After two days, his uncle succumbed to his injuries.

24. In his cross-examination, PW-6 stated that during the incident, initially Bipul Dihingia was on the spot for 20/25 minutes. During that period, no other person appeared at the scene. After the incident ended, Bipul and his family members went away from the place of occurrence. The appellant came to the spot 10 minutes after Bipul and his party went away. He did not know if there was a dispute over any land between the appellant and his deceased uncle.

25. PW-7 is the medical officer who conducted autopsy on the dead body of the deceased. He deposed in his evidence that he performed the post-mortem examination of the deceased on police requisition and on examination, he found the following injuries:

1. Stitch wound of length 4 cm with six stitches present over the left parietal prominence horizontally placed. On removal of stitches underlying area of scalp contused and margins irregular with underlying depressed fracture ; of size 4 x 4 cm and a linear fracture of length 10.5 cm extending from the depressed fracture anteriorly involving temporo parietal bone with underlying extra dural haemorrhage of

size 4x3x1 cm and diffuse bilateral subdural haemorrhage.

2. Abrasion would with redish brown scab of size 1 x1 cm present over dorsum of left forearm medial aspect 9 cm above wrist.

3. Abrasion would; with reddish brown scab present over dorsum of right hand 5 cm below wrist.

Scalp, Skull and Vertebra as described. Vertebra health. Memrane as described. Brain congested, edematos. Spinal cord not examined.

Thorax; Walis, ribs and cartilages- healthy. Pleurae congested. Larynx and Trachea congested. Right lung and Left Lung congested. Pericardium congested. Heard congested, chambers empty. Vessels health.

Abdodmen:Walls healthy . Peritoneum cavity contains about one litre of straw coloured liquid. Mouth Mucosa congested, Oesophagus congested. Stomach and its content congested, empty. Small intestine and its contents congested, contains fluid material and gases. Large intestine and its contents congested, contains fecus and gases. Liver contracted, multiple nodules of sizes 1 to 3 mm seen over the surface of liver on cut gritty sensation felt wt. 1000gm. Spleen soft, palpy, triable. Kidney congested. Bladder empty. Organs of generation external and internal. Externally healthy and internally congested.

26. The doctor opined that death was caused due to coma, as a result of injury which was ante-mortem and caused by blunt force impact, which was homicidal in nature. In his cross-examination PW-7 pointed out that injury on No. 1 cannot be caused by falling, as it was on the skull cap. Prior to the death of the deceased, stitches were done on the head of the deceased which he was not aware. Injury nos. 2 and 3 were about two and three days old as they were reddish brown in colour.

27. PW-8 is the investigating officer. He deposed in his evidence that on 16.10.2017, he was serving as attached officer at Borboruah Police Station. On that

day, the informant lodged an FIR before the O/c of the Borboruah P.S. alleging that on 15.10.2017 at about 10 pm, the appellant along with two other accused attacked her husband with an iron hammer causing injury to his head. He was taken to the hospital for treatment. They also attacked her nephews Simanta, Rahul Saikia and Arpit Konwar. After receiving a ejahar, a case was registered vide Borburah PS case No. 235/2017 under Section 448/326/325 /307 /34 IPC and he had been endorsed to investigate the case.

28. After taking charge of investigation, he recorded the statement of the informant on the same day at the police station and came to know that her husband was being treated at Borburuah Hospital and immediately he went to the said hospital and interrogated the victim. On being asked, the victim stated that while he was sitting at the step of verandah of his house at night, the appellant came there and hit him with an iron hammer on his head.

29. After recording his statement, he proceeded to the place of occurrence which is the house of the victim. He drew sketch map of the place of occurrence and also recorded the statement of some other witnesses. He also seized an iron hammer from the appellant. After that the appellant along with two other accused appeared before the police station. The appellant was forwarded to the Court. However, the other two accused persons were released, as the alleged offence against them was bailable in nature. On the night of 18.10.2017, the complainant informed him that her husband had passed away. On 21.10.2017, a prayer was made before the concerned jurisdictional magistrate for adding Section 302 IPC. After completion of investigation and finding sufficient incriminating materials, he submitted charge sheet against accused Bipul Dinhingia and Bikash Dadhumia under Section 448/352/294/323 /34 IPC and the present appellant under Section 448 / 302 IPC vide Exhibit-9.

30. In his cross-examination, PW-8 replied that he did not know if there was any cross-case with respect to the alleged incident. He met the victim for the first time in the Borboruah hospital. He had recorded the statement of the victim/injured in summary manner at that time. When he recorded the statement of the victim, no doctor was present. He had not taken consent from any doctor before recording the statement of the victim/ injured . It was suggested that the victim was not in his sense when P.W.8 recorded his statement in Borboruah hospital.

31. In the case in hand, the learned counsel for the appellant as well as learned Addl.P.P. pointed out that on account of the fault of the prosecution for not examining PW-1 properly, certain documents were not proved in accordance with law and therefore re-examination of PW-1 is required for proper adjudication of the case.

32. Before proceeding further, it would be apposite to refer to the provisions of Section 386 CrPC and Section 391 CrPC, the same are reproduced herein below:

“386. Power of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re- tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement: Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

“391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

33. The question under what circumstances retrial can be considered came up for consideration before the Hon'ble Supreme court in the case of *Ukha Kolhe –vs- State of Maharashtra*, reported in 1963 AIR (Supreme Court 1531) which reads as follows:

“1. An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate Court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate Court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re-trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons.”

34. On a bare look at the provision of Section 391 CrPC, it reveals that Section 391 empowers the appellate court to take additional evidence. However, it is also settled law that additional evidence cannot be taken to fill up the lacunae in

prosecution case. Where the court comes to a conclusion that the additional evidence is necessary and if additional evidence is not taken there would be failure of justice then the appellate court is empowered to take additional evidence. However, it is settled law that the power has to be exercised sparingly and only in suitable cases. In the instant case, we have noticed that the learned trial judge recorded the evidence of the witnesses very casually.

35. PW-1 was examined on 20.04.2018. In the order sheet it is reflected that cross-examination of PW-1 was done partly, but the last sentence in cross-examination of PW-1 was not complete. In the next page, what appears to be the cross examination of PW-1 does not tally with the statement given by PW-1 in examination-in-chief. But interestingly it is noted that the informant put her signature in the said evidence, which apparently appears to be similar as the examination –in-chief of PW-2.

36. Learned Additional Sessions Judge also put his signature after apparently finding the same as correct. Subsequently, on 06.06.2018, PW-1 was further cross-examined. Though it appears from the order sheet that on 20.4.2018 PW-1 was partly cross examined and discharged, nowhere in the record is it reflected that further cross examination of PW. 1 was reserved on 20.4.2018. In the present case, undoubtedly the trial before the court of learned Additional Sessions Judge, Dibrugarh suffered from irregularities which we have already set out. The evidence as was led as PW-1 and PW-2 was deficient in important aspects. There is no doubt that for the ends of justice, the appellate court should exercise its power under the above provision of law.

37. In view of the above reasons, we are of the opinion that re-examination of PW-1 and PW-2 is necessary for proper adjudication of the case. The judgment and order, dated 07.02.2023 passed by the learned Additional Sessions Judge (FTC),

Dibrugarh in connection with Sessions case No. 158/ 2017 is hereby set aside. The learned Sessions Judge, Dibrugarh after recording the evidence of PW-1 and PW-2 will dispose of the case in accordance with law in the light of the observation made above. The parties through their counsel are directed to appear in the court of Sessions Judge, Dibrugarh on **18.01.2024**, to take instructions from the concerned court. As the matter appears to be an old one, the learned Sessions Judge will see that the case is disposed of at an early date. The Sessions Judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial i.e. PW-1 and PW-2.

38. With the above observation, the case is remitted back to the court of Sessions Judge, Dibrugarh.

39. Accordingly, the criminal appeal is disposed of.

40. LCR be returned back.

JUDGE

JUDGE

Comparing Assistant