

IN THE COURT OF THE ADDL. SESSIONS JUDGE-2(FTC), TINSUKIA

Sessions case No. 168(T) 2016

U/S 307 of the IPC

Present : **Sri B. Sutradhar, AJS,**
Addl. Sessions Judge-2 (FTC),
Tinsukia.

The State of Assam

-Vs-

(1) **Sri Deo Narayan Choudhury** -----Accused

Appearance:

For the State : Sri R.C Das, Ld. A.P.P,

For the accused: Sri M.K Singh, Adv.

Date of evidence : 19.04.17, 05.09.2017, 27.11.17,
28.03.2018, 29.11.18, 29.04.19.

Date of argument : 20.03.2021 & 08.04.2021.

Date of judgment : 08.04.2021.

J U D G M E N T

1. The Prosecution story, is in brief that Sri Purosottum Agarwal had lodged an FIR alleging that on 12.10.15 at 6:00 PM his brother -in -law Sri Manoj Agarwal went to the house of one Sri Deo Narayan Choudhury situated at over bridge backside of Aman Tower for collecting his outstanding money from the said Sri Deo Narayan Choudhury. Sri Deo Narayan Choudhury neglected to give the outstanding money, rather he beaten -his-brother in law brutally as a result of which his brother-in-law sustained grievous injuries on his body and he somehow informed his mother over mobile phone. When they rushed to the place of occurrence they found Sri Manoj Agarwal lying on a bench with blood injury oozing out from his ear and mouth. Then they took him to Dr. Madhab Mishra clinic, but he was referred to Dibrugarh for urgent medical treatment. Sri Manoj Agarwal was serious and got internal injuries and fighting for his life in Aditya Hospital at Dibrugarh. The injured told them that he was beaten by iron rod by the accused and the accused strangled his neck to kill him. Hence, this case.

2. Receiving the FIR, Tinsukia P.S. registered a case and investigated the case. On completion of the investigation, charge sheet was filed against the accused Deo Narayan Choudhury and forwarded him to face the trial.

3. On appearance before the court by the accused person, copy was furnished to him u/s 207 Cr.P.C. Thereafter, the GR case no. 2359/15 was committed to the Court of Sessions by the Chief Judicial Magistrate, Tinsukia. The GR case no. 2359/15 was registered as session's case no. 168(T)/16 and transferred to this court for trial.

4. On appearance of the accused and upon hearing both sides and considering the materials, Charge was framed u/s 307 IPC, particulars of which on being read over and explained the accused, had pleaded not guilty and claimed to be tried.

5. During trial, prosecution examined eight(8) witnesses to prove the case. Defence side examined two witnesses. The accused was examined u/s 313 Cr.P.C and his pleas were total denial. I have heard argument put forward by the Id. Counsels from both sides as well as gone through the entire evidence available on record to adjudicate the case.

6. **Point for determination :-**

- (i) Whether the accused on 12.10.15 at about 6 P.M when the brother in law of the informant, Sri Manoj Agarwal went to the house of the accused situated at over bridge back side of Aman Tower for collecting his outstanding money, the accused had attempted to murder him by inflicting him grievous injuries on his body with such intention or knowledge and under such circumstances that if by the act caused death to Sri Manoj Agarwal, the accused would have been guilty of murder and thereby committed an offence punishable u/s. **307** of the IPC?

DISCUSSION, DECISION AND REASONS THEREOF:

7. P.W.1, Sri Suraj Sharma has deposed that he knows the accused. He also knows Purusuttam Agarwalla. He also knows the victim Manoj Agarwalla. The incident took place two years back before Durga Puja at about 5:30-6 P.M. At that time he was in his shop. At that time Manoj Agarwalla came to his shop and lie down in his bed of his shop. He saw blood oozing out of his right ear. He also noticed injury on his forehead. On being asked, Manoj Agarwalla told that accused, Deo Narayan Choudhury caused injuries to him. Then he informed about the matter to his mother. Later, the mother of the injured alongwith his younger brother came to his shop and he was taken in a Maruti car and brought him to doctor's chamber at Rangagarah road. Later, he was referred to Dibrugarh for

better treatment. Police examined him and recorded his statement.

8. In Cross-examination he has stated that he knows the injured Manoj Agarwalla since last 4-5 years and he is also his regular customer. At the time of incident in his shop he alongwith his wife, Archana Sharma and other two customers were available there. He did not see who assaulted the injured. He has also no personal knowledge about the incident. Police interrogated him after one or two days of the incident. Manoj Agarwalla lie down in his shop for about 10-15 minutes. On the day of incident Manoj Agarwalla reached at his shop by riding his own motor cycle. The distance between his shop and the house of the accused is more away as no one recognize it. He cannot say whether the injured sustained injury by falling down from bike or rolling down from Over bridge. There was no enmity between the accused and the injured. Manoj Agarwalla used to consume alcohol, he knows it.

9. He denies the suggestion that as the injured is his regular customer, he deposed in his favour today. At the time of taking the injured to the chamber of Dr. Madhav Mishra he was standing outside. He cannot say what the Doctor advised to the injured. He has not visited the place of occurrence. On the day of incident no family member of Manoj Agarwalla, who arrived in his shop visited the place of occurrence.

10. PW.2, Sri Purusattam Agarwal has deposed that he knows the accused. The incident took place in the year 2016 in the month of October. On the day of incident at around 6-6;30 P.M he received a phone call from his wife, Nirmala Agarwal that blood was oozing out from the nose and ear of his brother-in-law. On asking about the oozing of blood his wife told that his brother in law went to the house of one Deo Narayan Choudhury for collecting business money. He was asked by his wife to go to the Doctor as his brother-in-law was taken to the doctor. At that time he was at Thermal, Tinsukia. Then he immediately rushed to the doctor but he cannot say the name of the doctor. Later, his brother-in-law was referred

to AMCH, Dibrugarh. He did not visit Dibrugarh. Other family members helped the patient. On the next morning he went to Dibrugarh AMCH and enquired about the health of his brother-in-law. He found his brother-in-law in ICU at the time of his visit. His brother in law sustained injuries on his chest and liver and there was bleeding. On the next day he met his brother-in-law. Thereafter he lodged the ejahar. Ext. 1 is the ejahar, Ext. 1(1) is his signature. Police recorded his statement.

11. In Cross-examination he states that on the third date of incident he talked with the victim and on that third day in the morning hours he informed him about the incident. The FIR had been written in the P.S on the 2nd day of incident. As per the information given by his mother in law, Smt. Gayatri Devi and the Medical doctor of Aditya Hospital he has lodged this FIR before the Tinsukia police station. He did not mention in his FIR or in his statement U/s. 161 Cr.P.C that as per the information given by his mother in law, and the concerned doctors of Aditya Hospital he had lodged this FIR. That the contents of the FIR has been written by police which was not read over and explained to him in his vernacular. As such, he does not know the contents of the FIR. The FIR had been drafted by the Investigating Officer who had recorded his statement. He does not know personally about the incident. He had never visited the place of incident. Manoj Agarwalla is his brother in law. After the incident the victim Mr. Manoj Agarwalla was never treated in the AMCH, Dibrugarh. On the day of incident he did not lodge any FIR regarding the incident and it is falsely mentioned in the FIR. He had never visited the clinic of Dr. Madhav Mishra. As per his knowledge on the day of incident after the quarrel Manoj Agarwalla left the place of incident and thereafter informed his mother. He did not state before the police that on the day of incident after the quarrel Manoj Agarwalla left the place of incident and thereafter informed his mother. The house of the accused is situated beside the Over bridge. As per his knowledge he used to drink alcohol.

12. He denies the suggestion that on the day of incident Mr. Manoj

Agarwalla rolled down from the Over bridge in drunken condition and sustained injuries on his person. He did not state before the police that Mr. Manoj Agarwalla was assaulted with iron rod by the accused. He does not know who were present at the time of incident. He does not know whether any FIR was lodged against Mr. Manoj Agarwalla by the accused or not.

13. P.W.3, Sri Manoj Agarwal has deposed that he knows the informant of this case who is his brother-in-law. He also know the accused. The incident took place on the day of Mahalaya in the year 2015. On that day in the evening at about 5 P.M, he went to the cow shed of the accused, Deo Narayan Choudhury to bring his money from him. The money he had to received on account of supply of cow fodder. While he demanded the money from the accused, then the accused refused to pay the money. Then he told him that if he cannot pay money, he need not come to him to take fodder. On hearing his words, the accused came from behind and squeezed his neck and pushed down on the earth and began to assault him with fist. He also assaulted with iron like object on his stomach. After that, he somehow released himself from his clutches and took his bike and went to a nearby Hotel of Suraj Sharma. He got down from the bike and lied down on a bed of the Hotel. He got injury on his stomach. While he reached he found the owner of hotel, Suraj Sharma and his wife, Archana Sharma. Then he told them that accused had assaulted him. On hearing about the incident from Suraj Sharma his mother, his cousin came and took him to the chamber of Dr. Madhav Mishra. Thereafter the Doctor checked him and asked to take him to the hospital. Then he was taken to the Aditya Hospital, Dibrugarh. There he was admitted and received treatment for eleven days as Indoor patient. Thereafter he was advised to take bed rest.

14. In Cross-examination he stated that he has a grocery shop. He used to maintain the debt accounts of selling items to the creditors. The accused, Deo Narayan Choudhury had taken "Chapor" from his grocery shop on credit basis and he has maintained the same in the Credit Book. When

police arrived at his home for recording his statement, he did not hand over the Credit Book where the name of Deo Narayan Choudhury and the balance credit amount was mentioned. He cannot say the date and time of incident. He did not lodge any FIR about the incident. At the time of incident there were three four persons were present but he cannot say their names. His shop is located at Napukhuri Raja Ali Road and the house of the accused is located near the Over bridge. He went to the house of accused in his motorcycle.

15. He denies the suggestion that he did not state before the police that he went to the P.O in his motorcycle. He has a mobile phone being no. 9401512383. On the day of incident he left his mobile phone in his shop. After the alleged incident hurriedly he took his motorcycle from the P.O and left the place of incident and took a stay in the hotel of Suraj Sharma. In the hotel of Suraj Sharma, Gayatri Agarwal - mother, Naresh Agarwal- cousin, Rahta Sharma assembled there on being called by Suraj Sharma. He used to consume alcohol. He denies the suggestion that on the day of incident he was consuming alcohol. Today he have not seen any weapon as stated by him in the Court. He does not know who took the police to the place of occurrence. There is a case pending against him in the Court of Ld. C.J.M which was lodged by the accused. He denies the suggestion that the accused did not assault him but he received injury by falling from the bike himself. He denies the suggestion that the accused had lodged a case upon him and to get rid of that case he has lodged this case.

16. P.W.4, Smt. Gayatri Devi has deposed that she knows the informant of this case. She also knows the accused. The incident took place on the day of Mahalaya in the evening in the year 2015. He does not remember the date. On that day in the evening time Suraj Sharma and Archana Sharma had informed her that her son was assaulted by accused, Deo Narayan Choudhury. She then rushed to the hotel of Suraj Sharma and saw her son was lying on a bed. They then took her son to the chamber of Dr.

Madhav Mishra. The Doctor advised her to take her son to Dibrugarh Aditya. They then took him to Aditya Nursing Home. Her son was treated for about 10-15 days there. Her son told her that accused, Deo Narayan Choudhury assaulted him for which he got injuries on his person.

17. In Cross-examination she states that Purusuttam Agarwal is her son-in-law and victim is her own son. She was informed by Suraj Sharma about the incident. She knows the accused, Deo Narayan Choudhury. Suraj Sharma knows her. Suraj Sharma informed her by visiting her shop about the incident. When she arrived at the hotel of Sharaj Sharma, she met one Mr. Chintu Agarwal, Suraj Sharma, Archana Sharma and three four other persons. They arranged a vehicle for taking her son to hospital.

18. She did not know who brought the motorcycle of her son to their home. Her son never consume alcohol and he was a healthy person. It is true that a case lodged by the accused Deo Nayaran Choudhury is pending against her son. She did not go to the place of occurrence where her son was assaulted. She denies the suggestion that the accused did not assault her son, rather, her son himself fell down from his bike and received injury in his person.

19. P.W.5, Smt. Archana Sharma has deposed that she knows the informant as well as the accused. The incident took place on the day of Mahalaya in the year 2015 at about 5 P.M. He knows the injured, Manoj Agarwal. On the day of the incident, he came to her hotel and fell down. She asked him about what had happened, but he could not reply properly. Blood was oozing near his ear. Later he told her that accused, Deo Narayan Choudhury assaulted him and asked her to report about the incident at his home. Accordingly, her husband, Suraj Sharma informed about the incident at his house. Thereafter his mother came and took him to Doctor's chamber. Police asked her about the incident.

20. In Cross-examination she stated that their hotel was situated at Na-

pukhuri Overbridge, under the name & style Daju Hotel. She denies the suggestion that they had no hotel under the name & style Daju Hotel. He knows the victim, Monoj Agarwal since last 8-9 years. He did not see who assaulted the victim. The victim came to their hotel in his bike. On calling by her husband the mother and brother of the victim came to their hotel. On the body of Monoj Agarwal there was a sign of rolling down in the earth. She never visited the place of occurrence.

21. P.W.6. Sri Rohtas Sarma @ Munibji has deposed that he does not know the informant Purosuttam Agarwal. He saw the accused but he does not know him personally. Incident took place about 2-3 years back at day time. On the date of incident when he came to have lunch at Daju Hotel, situated near Over bridge, Tinsukia, then he saw Manoj Kumar Agarwal was suffering from pain. On asking he told that one Choudhury (Gowala) had assaulted him. On asking he told that he went to the home of Choudhury to collect his money for supplying "Chapor"(food of cow) to him. Then Choudhury assaulted him. He told that he was suffering from abdomen pain. Then the owner of the Daju Hotel informed the relatives of the injured and later the injured was taken to hospital. After two three days Police came to Daju Hotel while he was taking lunch and asked him about the incident and accordingly he told about the incident to police.

22. In Cross-examination he has stated that he knows the victim of this case, Sri Manoj Agarwal since last three years. He maintain good relation with the victim, Sri Manoj Agarwal as he is a grocery shop owner and he is a regular customer of his shop. The Daju Hotel, which he stated before the police is not in existence at present time. He reached Daju Hotel at about 11-11:30 am and he saw Sri Manoj Agarwal already lying on his bed inside the hotel. Sri Manoj Agarwal also did not inform him when the incident of assault took place with him. He stayed in the hotel for his lunch for about one hour but till then no family member of the injured arrived there.

23. The victim, Sri Manoj Agarwal did not inform him about the place of incident. He denies the suggestion that he has good relation with Sri Manoj Agarwal, that is why he is deposing in his favour.

24. P.W.7, Sri Nityananda Phukan(Retd. SI) has deposed that on 13.10.15 he was discharging his duty as Attached Officer in Tinsukia P.S. On that day the then OC, Sri Makhan Borah handed over the charge of investigation to him. Ext. 1 is the ejahar, Ext. 1(2) is the signature of the then OC, Sri Makhan Borah. He examined complainant at the P.S and recorded his statement. He visited the P.O on the next day, prepared a sketch map at the P.O. Ext. 2 is the sketch map, Ext. 2(1) is his signature on the sketch map. On the next day he recorded the statements of witnesses namely, Naresh Agarwalla, Suraj Sharma, Archana Devi and Rohitas Sarma. On 25.10.15 injured Manoj Agarwalla was examined. He collected the medical report of the injured from Aditya Hospital, Dibrugarh. On 18.10.15 accused was found in his house. He was examined and his statement was recorded and later he was arrested and produced before the Ld. Court. He also recorded the statements of witness Gayatri Devi. On completion of investigation he submitted the charge-sheet against accused Deo Narayan Choudhury U/s. 307 IPC. Ext. 3 is the charge-sheet, Ext. 3(1) is his signature.

25. In Cross-examination he has stated that as per his Case Diary the incident took place on 12.10.15 at about 6 P.M. It is fact that the FIR was submitted on the same day of incident. He visited the P.O on 14.10.15 at 10:30 AM. He found Naresh Agarwalla, Suraj Sarmah, Archana Devi, Rohitas Sarmah. The house of Naresh Agarwalla is located near the P.O. The house of Suraj Sarmah, Archana Devi and Rohitas Sarmah are located at Jyoti Nagar, Tinsukia. Near the P.O there is a small hotel and all Suraj Sarmah, Archana Devi and Rohitas Sarmah were present there. He has not shown the hotel where these three persons namely, Suraj Sarmah, Archana Devi and Rohitas Sarmah were present in his sketch map. He has also not mentioned in his sketch map the house of Naresh Agarwalla is located near the P.O. He denies the suggestion that none of the

witnesses were present at the place of incident at the time of his visiting as such, he has not shown the same in his sketch map. The place of incident is cowshed of accused. During investigation he has not collected any evidence regarding the ownership of the cowshed. He has not prepared any inventory list of the cowshed, i.e the P.O. he has not shown the house of the accused in his sketch map. As per the FIR the place of incident is the house of the accused. In the FIR, in the 161 Cr.P.C statement of the complainant and other witnesses, nowhere mentioned that the alleged incident took place in the cowshed of the accused. He has not recorded the statements of any of the witnesses or enquired from them regarding alleged incident as shown in the sketch map.

26. At the time recording the statement of the complainant, he never stated before him that the victim was admitted at AMCH, Dibrugarh and on the next morning he went to Dibrugarh AMCH and enquired about the health condition of the victim. During the course of his investigation he did not find any evidence regarding the admission of victim in Dibrugarh AMCH. The complainant, never stated before him that at the time of her visit at AMCH, Dibrugarh to see the victim, the victim was admitted in ICU. In the medical report which was collected by him there is no any case no. or any G.D entry no. As per his investigation the victim was admitted at Aditya Nursing Home Hospital by his family members namely, Naresh Agarwalla, Suraj Sharma, Mr. Daju. As per the Medical report, the victim was admitted by Smt. Gayatri Agarwal. As per the history of the injury given by the patient to the concerned doctor, the victim was assaulted by someone at Na-pukhuri. But during course of investigation he did not find that the victim was assaulted by someone at Na-pukhuri. In the medical report, there is no mention of colour of injury, size of injury, age of injury, weapon of assault and opinion regarding the injury. He has submitted charge-sheet U/s. 307 IPC only upon the basis of statements given by the witnesses of this case. Except the statements of the witnesses he has not found any other evidences to hold this case U/s. 307 IPC.

27. The victim, Manoj Agarwalla did not produce any evidence regarding the monetary transaction or "Chapor" (cow food) transaction before him. He has also not investigated in this regard. At the time of recording the statement the victim did not state before him that whether any person were available or not at the P.O. He recorded the statement of victim on 25.10.15 at his home. He has never visited the hospital where the victim was admitted for treatment to record his statement. The victim never shown him the place of incident. There is no any detail of motorcycle was available in his case diary and in the 161 Cr.P.C statement of the victim. The victim also did not state before him that already another case is going in between them. During investigation he has not seized any weapon of assault. Since the day of lodging the FIR he did not meet the victim of this case.

28. He denies the suggestion that he has submitted charge-sheet without collecting prima facie material against the accused U/s. 307 IPC. He also denies the suggestion that no such incident happened ever with the accused.

29. P.W.8, Sri Kamal Bora has deposed that on 12.10.15 he was working as Manager at Aditya Hospital, Dibrugarh. On that day Dr. Promod Kurmi was working as resident doctor. He knows him personally. He knows his signature also. Now he has left their hospital about one year ago. Now where he is working he does not know. Ext. 4 is the Medical certificate issued by Dr. Promod Kurmi. Ext. 4(1) is his signature. In the Ext. 4 it is written that on 12.10.15 at 10:30 A.M, he examined one Manoj Agarwal of Manab Kalyan Road, Tinsukia who was accompanied by mother, Smt. Gayatri Agarwal.

History and alleged cause of injury:- Physical assault at around 5:30 PM on 12.10.15 near Na-pukhuri, Tinsukia hit by a customer. Tenderness over right side of abdomen.

Bruise discolourization of skin over right side of abdomen.

CT abdomen - MESSAGESIC TEAR WITH HAEMOPERITONEDM

Summary of treatment - conservative.

Date of Admission - 12.10.15.

IP no. 98525/15. Date of discharge : 22.10.15.

30. In Cross-examination he has stated that there is no police requisition no. in the Ext. 4. There is no mention about the case no. in Ext. 4 for which the Ext. 4 was issued. There is no mention in the Ext. 4 about the nature of injury, age of the injury, dimension of injury and colour of injury of the victim. There is no mention in the Ext. 4 that the documents of the clinical examination was handed over to the police. He denies the suggestion that the medical report which is tagged with the case record not belongs to this case.

31. D.W – 1, Sri Munna Kumar Singh, Advocate, Tinsukia Bar Asson. has deposed that he knows the accused person since his childhood. The accused person resides in front of his house. The distance between his house and the house of the accused person is about 30 meters which is a road of a Over bridge backside of Amon Tower. The accused deals into the business of Dairy Firm. The said Dairy Firm is situated in the house of the accused person. The occurrence took place on the day "Mahalaya" in the year 2015 at about 5:30-6 P.M. My office is situated in one of the room of his house. At that time he was in his office alongwith one Sri Dipak Verma, Advocate, Sakil Ansali and Sri Vinoy Kumar Sah. At that time, the accused, Deo Narayan Choudhury was on his door to deliver milk in his house.

32. Suddenly, they heard unusual sound of some vehicle outside his office, they immediately rushed outside his office and saw that a person alongwith his motorcycle has collapsed down from the Over Bridge road and rolled out towards his house. All of them including the accused immediately went near to the said injured person and smell heavy alcoholic intoxication and saw that the said persons had received several injuries in different parts of his body and the accused identified the said person as Sri

Monoj Agarwal of Na-Pukhuri, Tinsukia. After that he brought some water from his house and gave the same to Sri Monoj Agarwal and thereafter they all helped him with his motorcycle to be on the road. Upon inquiry from him about the contacts of his family members, the said Sri Monoj Agarwal refused to give the same and told that he could easily manage by himself to reach his destination and accordingly, he started his motorcycle by self start system and went away towards Na-Pukhuri from the place of occurrence.

33. After about 2-3 days police had visited his house cum office and had recorded his statement and also had enquired him about the residence of the accused person. He had stated before the police the statement which he made today before the Hon'ble Court. After about few days when the police had arrested the accused person and taken to Tinsukia police station, he personally had went to the police station and once again stated before the police the actual facts of the occurrence and he also informed the police that the case given by the complainant is a false case, since he alongwith the other persons present at the P.O were the eye witnesses of the incident.

34. In Cross-examination by Prosecution the DW.1 has stated that he cannot say whether he was made Prosecution witness by the Police or not.

35. He denies the suggestion that police did not record his statement. He denies the suggestion that he has deposed falsely in favour of the accused. He denies the suggestion that he has no knowledge about the occurrence.

36. D.W – 2, Md. Sakil Ansari has deposed that he knows the accused person. The accused person is his neighbourer. The incident is of someday in the month of October, 2015 at about 5:30 to 6 P.M. The incident occurred almost infront of the house cum chamber of Advocate Munna Singh. At that time he had went to the office of Advocate Munna Singh for preparation of Affidavit. There were three to four other persons were also

present inside as well as outside the office of Advocate Munna Singh. After hearing some sound and noise outside we immediately rushed towards the roadside and found that one person had fallen down alongwith his motorcycle from the road of Over Bridge and received injuries. After getting nearer to the said injured person he had smelled heavy liquor intoxication. He alongwith others helped the said person to get up and one of them had also given some water to him. They intended to extend him help for reaching his destination or also to inform his family members but he told them that he could manage by himself to go away and accordingly, he went away towards Na-Pukhuri by riding on his motorcycle. The accused Deo Narayan Choudhury who had went to deliver milk in the house of Advocate Munna Singh was also present with them and he had identified the said injured person as Sri Monoj Agarwal of Na-Pukhuri, Tinsukia. After about 2-3 days police had visited the P.O and finding his house nearby had enquired him about some assault caused to Sri Monoj Agarwal to which he had stated before the police that no such incident of assault had occurred thereat , rather, he stated the actual facts to the police same as like what he stated today before the court.

37. In Cross-examination by Prosecution the DW.2 has denied the suggestion that police did not record his statement. He knows both the informant and accused since long time. He denies the suggestion that today he has deposed falsely in favour of the accused. He denies the suggestion that he has no knowledge about the occurrence.

38. Now on going through the above evidence on record, it appears that the alleged victim of the case is PW.3, Sri Manoj Agarwal. The said witness in his evidence stated that on the day of occurrence he went to the cow shed of the accused, Deo Narayan Choudhury to bring his money from him and while he demanded money, the accused refused to pay the money. The accused came behind and squeezed his neck and pushed down on the earth and began to assault him with fist. The accused also assaulted with iron like object on his stomach. Somehow he released

himself from the clutches of the accused, took his bike and went to a nearby Hotel of Suraj Sharma. He sustained injury on stomach. He told Suraj Sharma and his wife, Archana Sharma that the accused assaulted him. In cross-examination he clearly stated that there is a case pending in the Court of Ld. C.J.M which was lodged by the accused.

39. PW.1 is the said Suraj Sharma who also stated that Manoj Agarwalla went to his shop and lie down in his bed and he noticed blood oozing out of his ear and forehead. Manoj Agarwalla told him that accused, Deo Narayan Choudhury caused injuries. The said witness in his cross-examination clearly stated that he has not seen who assaulted the injured person. It is clear that PW.1 has not seen the alleged incident.

40. PW.2 in his evidence stated that he received phone call that blood was oozing out from the nose of his brother-in-law. His wife told that his brother-in-law went to the house of accused for collecting business money. Thereafter he went to Doctor. Victim was referred to AMCH etc. In cross-examination said witness stated that he did not know who were present at the place of incident. His evidence also speaks that he has not seen the occurrence and he is totally silent that victim told him regarding his assault to him.

41. PW.4 stated that Suraj Sharma and Archana Sharma informed her that her son was assaulted by accused, Deo Narayan Choudhury. Her son also told her that accused assaulted him. She did not visit the place of occurrence. Said PW.4 has also found who did not see the incident.

42. PW.5 Smt. Archana Sharma who stated that on the day of occurrence Manoj Agarwala went to their hotel and fell down who had blood oozing from ears and told her that accused Deo Narayan Choudhury assaulted him. The said witness clearly stated that she has not seen who assaulted the victim. PW.6, another independent witness is a person who was inside the hotel who saw Manoj Agarwalla was suffering from pain. This witness has also not stated who assaulted the

victim Manoj Agarwalla. Manoj Agarwalla did not stated him how the accused assaulted him.

43. PW.7 is the Investigating Officer who stated that he submitted charge-sheet on the statements given by the witnesses. PW.8 is the Manager of Aditya Hospital, who exhibited the Medical report.

44. On careful scrutiny of evidence of all the witnesses, it is crystal clear that except, the victim, PW.3, no witnesses have seen the alleged occurrence.

45. The accused side adduced evidence of two witnesses as DW.1 and DW.2. DW.1 in his evidence stated that suddenly he heard sound of some vehicle and rushed out from his office. He saw a person alongwith motorcycle has collapsed down from the Over bridge and rolled out towards his house. The said injured person had heavy smell of alcohol and the injured person received several injuries. He brought some water and given to Manoj Agarwal. According to evidence of DW.1, the injured sustained injury by falling down from motorcycle. The DW.2 also stated the incident occurred in front of the house cum chamber of Advocate , Munna Singh and at that time he went to his office. On hearing sound they went out and found that one person had fell down from motorcycle from the road of Over Bridge and received injuries. It appears from the record that the incident took place at about 5/6 PM but there is no evidence who had seen that the accused has assaulted the injured person. As per evidence of PW.2, accused used to drink alcohol. The victim himself as PW.3 admitted that he used to consume alcohol and the evidence of DW.1 speaks that he got alcoholic smell when he went to the place of occurrence and found the person lying on road.

46. The entire evidence of record has failed to depict a clear picture that the accused has assaulted the injured who caused alleged injuries and in that situation this court have no hesitation to hold that the prosecution has failed to prove the case.

47. In view of above discussion, I find that the prosecution has failed to prove the case under section 307 IPC against the accused person. Accordingly, the accused person is acquitted from the charge under section 307 IPC and set him at liberty forthwith.

48. The bail bond of the accused person is extended to six months as per Section 437 A Cr.P.C.

49. Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.

50. The case is disposed of on contest.

Given under my hand and seal of this court on this the 08th day of April, 2021.

Dictated & corrected by me:

(B. Sutradhar)
Addl. Sessions Judge-2(FTC)
Tinsukia

(B. Sutradhar)
Addl. Sessions Judge-2(FTC)
Tinsukia

A N N E X U R E

PROSECUTION WITNESSES:

PW.1, Sri Suraj Sharma,
PW.2, Sri Purusattam Agarwal,
PW.3 Sri Manoj Agarwal,
P.W.4, Smt. Gayatri Devi,
P.W.5, Smt. Archana Sharma,
P.W.6, Sri Rohtas Sarma @ Munibji,
P.W.7, Sri Nityananda Phukan,
P.W.8, Sri Kamal Bora.

DEFENCE WITNESSES:

D.W – 1, Sri Munna Kumar Singh,
D.W – 2, Md. Sakil Ansari

PROSECUTION DOCUMENTS :

Ext. 1, the Ejahar,
Ext. 2, Sketch map,
Ext. 3, charge-sheet.
Ext. 4, Medical Certificate.

(B. Sutradhar)
Addl. Sessions Judge-2(FTC),
Tinsukia