

**IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI**  
**Session Case No.124/2002**

U/s. 302 I.P.C.

G.R. Case No. (SSM) 119/1999

**State of Assam**

**- Vs -**

**Md. Basid Sk.**

Committing Magistrate : Sri S. Hazarika, Judicial Magistrate, 1<sup>st</sup> Class, Dhubri

Present : Sri A. Bhattacharyya, AJS  
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor for the State.  
Sri Noor Mahammad, Advocate for defence.

Date of Evidence : 25-07-2013 & 08-08-2013

Date of Argument : 20-09-2013 & 30-09-2013

Date of Judgment : 10-10-2013

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

The accused Basid Sk. faced the trial of the Sessions Case No.124/2002. The said Sessions Case was disposed off vide the judgment and order of conviction dated 30-04-2008 whereby the accused was convicted U/s.302 I.P.C. and sentenced to suffer imprisonment for life and to pay fine of Rs.5000/-.

2. The aforesaid judgment was challenged before the Hon'ble High Court and Criminal Appeal (J) No. 97 of 2008 was started. The same was disposed off vide judgment dated 09-04-2013 whereby the Hon'ble High Court was pleased to record the following observations:

*"In the backdrop of the facts as indicated above, it was incumbent, on the part of the prosecution, to produce the relevant materials to show as to when the police was first informed about the occurrence and as to when the name of the accused-appellant surfaced as the assailant of Nur Mohammad. That these material aspects were required to be brought on record appears to have escaped completely the attention of the learned trial Court and in the absence of these materials having been made available on record, no decision ought to have been given by the learned trial Court. If the prosecution had failed to bring on record all the relevant materials, it was the duty of the learned trial Court, in the light of the provisions of Section 311 Cr.P.C. read with Section 165 of the Evidence Act, to bring on record all such materials, which were relevant for arriving at an effective decision of the case. This having not been done, the conviction of the accused-appellant and the sentence, passed against him, cannot be sustained and have to be interfered with.*

*Because of what have been discussed and pointed out above, this appeal partly succeeds. The conviction of the accused-appellant and the sentence, which has been passed against him, are hereby set aside and the case is remanded to the learned trial Court for bringing on record all relevant materials in the light of the observations made by us in the preceeding paragraphs of this judgment and then, decide the case in accordance with law”*

3. In view of the above, evidence of 2 (two) C.Ws were recorded whereby C.W-1 exhibited the First Information Report vide Ext-X and C.W-2 exhibited G.D. Entry No.121 dated 12-05-1999 under Ext-Y. Thereafter, statement of the accused were recorded and reasonable opportunities to advance arguments were furnished to the learned defence counsel as well as the learned Public Prosecutor. Accordingly they have advanced their arguments.

4. Now, the prosecution story as it appears from the records is as follows:

*That on 12-05-1999 Dr. A.C. Mondal was performing his duty in the Dhubri Civil Hospital in the capacity of Medical and Health Officer-1. On that day the patient namely Noor Mohammad, who was taking treatment at Dhubri Civil Hospital in the male surgical wards in the extra bed died. The patient was taking treatment due to the sustainment of the stab injuries. Accordingly he informed the matter to the i/c Police Booth, Dhubri Civil Hospital vide Ext-X wherein Ext- X (1) is his signature.*

5. After receipt of the said report, Dhubri Police Booth got it entered into the General Diary vide G.D. Entry No. 121 dated 12-05-1999 and forwarded to Officer-in-charge, Dhubri Police Station for favour of registering a U.D. case. The aforesaid G.D. Entry is exhibited under Ext-Y .The Dhubri Police Station received the aforesaid information of Dr. A.C. Mondal and registered Dhubri, P.S. U.D. Case No.29/1999 dated 13-05-1999.

6. The report prepared in the aforesaid U.D. Case by Sri J. Ahmed of Dhubri Police Booth of Civil Hospital vide Ext-3 shows that during investigation of the aforesaid U.D. Case, he came to know that the deceased Noor Mohammad sustained stab injuries inflicted by his step brother Md. Basid Sk. Thereafter, he was shifted to Dhubri Civil Hospital and during the continuance of the treatment; the injured succumbed to the injuries. Thus the final report was laid in the said U.D. Case.

7. Subsequently, South Salmara Police Station Case being No.119/1999 was registered. The same was investigated into and charge-sheet under Section 302 I.P.C. was laid against the accused.

8. After commitment and on the appearance of the accused, the charge under Section 302 I.P.C. was framed against the accused. The charge so framed was read over and explained to the accused, to which the accused pleaded not guilty.

9. During trial as many as 11 (eleven) P.Ws were examined on behalf of the prosecution side. The accused also examined 2 (two) D.Ws. The statement of the accused was recorded and my learned Predecessor heard the arguments of the case from both the parties and thereafter, delivered the judgment as indicated above, which came up in the Criminal Appeal as indicated above.

10. Now, the point for determination in this case will be as to whether the accused can be held guilty of the offence under Section 302 I.P.C. on the basis of evidences of 11 (eleven) P.Ws, 2 (two) C.Ws and 2 (two) D.Ws in the light of the documentary evidences available with the case record?

### DECISIONS AND REASONS THEREON

11. Here in this case the allegation levelled against the accused is that being the step brother of the deceased, he had inflicted stab injuries to the deceased Noor Mohammad for which he had to take treatment in the Civil Hospital, Dhubri and during continuance of the treatment, the deceased had to succumb to the injuries. Thereafter, dead body of the deceased was inquested vide Ext-1 and thereafter, autopsy was conducted on the dead body vide Ext-7.

12. The opinion recorded in the post-mortem report under Ext-7 was that the cause of death was due to haemorrhage and shock due to the injuries sustained by the deceased.

13. So, it is to be ascertained as to whether the accused can be made responsible to cause the aforesaid injuries to the person of the deceased?

14. To address the aforesaid controversy obviously perusal of the entire evidences are necessary.

15. The P.W-1 Tahiron Bewa is the wife of the deceased. According to her the accused is the step brother of her deceased husband. They were in the joint family. On the date of incident a quarrel took place between the wife of the accused and her mother-in-law. Deceased Noor Mohammad came in the evening, the accused gave dagger blow on his abdomen and on the right side. Her husband was brought to Dhubri Civil Hospital and succumbed to the injuries after 6/7 days of the incident in the hospital.

16. P.W-2 Nurun Nessa during trial supported the version of P.W-1 and deposed in the same tune as that of P.W-1 and also narrated that a quarrel took place earlier and when her father (deceased) came and got information, he made certain comments and that infuriated the accused and stabbed Noor Mohammad. The deceased subsequently succumbed to his injuries.

17. P.W-3 Nilima Khatun supported the story as stated by P.W-1 and P.W-2. She further narrated the incident in the following manner:

That on the date of incident and at the relevant point of time her father started prayer in his own house in the meantime, accused Bashid had come and her father advised him not to quarrel in connection with Duly. Thereafter, accused Basid had assaulted her father with dagger in the stomach of her father and on the backside. After assaulting, accused run away from the place of occurrence leaving the dagger in her house. Immediately after the incident, her father was taken to the Doctor at Hatsingimari for treatment. Thereafter, her father brought back to home after giving treatment and subsequently after 3 (three) days, he was brought to Dhubri Civil Hospital for treatment and at Dhubri Civil Hospital her father succumbed to the injuries. Material Ext-1 is the dagger used by the accused for the purpose of assaulting of her father.

18. P.W-4 Monowar Hussain is the neighbour, who came on hearing the cries and found Noor Mohammad (since deceased) was lying on the ground with bleeding injuries. Women present in the spot reported that the accused Basid stabbed Noor Mohammad and fled away.

19. P.W-5 Jahar Ali is also neighbour. According to him he heard shout in the evening and found Noor Mohammad was lying on the ground with injury on the front side. Injury was also found on the backside of Noor Mohammad. Noor Mohammad and other children present there told that injuries were inflicted by means of dagger and the person who inflicted injuries fled away. Many people collected thereat. The injured was dressed and taken to singimari for medical treatment. He was taken back to his house from Singimari and stayed at his house for (3) three days. Thereafter he was taken to Dhubri Civil Hospital and subsequently he died.

20. P.W-6 Ahar Uddin could not state anything during trial in support of the prosecution story.

21. P.W-7 Jiauddin is the I.O. of the case, who stated that on 12-05-1999 he was i/c, of Police Booth, Dhubri Civil Hospital. On that day Doctor on duty informed that Noor Mohammad died. He accordingly made G.D. Entry and on 13-05-1999 inquest was prepared and dead body was sent for post-mortem examination. Ext-1 is the inquest report and Ext-1 (1) is his signature. Ext-2 is the requisition given by the Doctor. Ext-3 is the report prepared by him and Ext-3 (1) is his signature.

22. P.W-8 Sunil Kr. Nath is the another I.O., who examined the complainant and arrested the accused.

23. P.W-9 Sri Kamal Ch. Rajbongshi was the in-charge of Sukchar Out Post under South Salmara Police Station. At the relevant point of time he was entrusted with the investigation as the same falls under South Salmara Police Station. He, however, recorded the evidence of witnesses and seized the dagger from the house on being produced by the wife of the deceased. He exhibited the F.I.R. under Ext-5 laid by one Paritosh Chakraborty, the then Officer-in-charge of South Salmara Police Station and Ext-5 (1) is his signature. Ext-6 is the seizure list whereby he seized the dagger and Ext-6 (1) is his signature. Ext-7 is the sketch map.

24. P.W-10 Abdul Waris states during trial that on 13-05-1999 he was serving as Deputy Superintendent of Dhubri Civil Hospital. Dr. D.K. Hazarika was also serving at that time as Sr. Medical and Health Officer. Sri A.K. Bordoloi was the Joint Director of Health Services, he knew both of them and was also acquainted with their signatures and handwritings. As per the post-mortem report he has found the followings :

*“One Para-umbilical wound sutured present (6” belly). Two wounds on the flank (right) with drainage seen.*

*One perforating wound seen over the ascending colon with swelling of slough in the peritoneal cavity.*

*According to him the injuries were ante-mortem in nature and in his opinion, the cause of death was due to haemorrhage and shock due to the injuries sustained by the deceased. Ext-7 is the P.M report. Ext-7 (1) is the signature of Dr. D.K. Hazarika”*

25. P.W-11 Deba Kanta Hazarika states during trial that on 13-05-1999 he was working at Civil Hospital, Dhubri as Sub-Divisional Medical & Health Officer. On that day he performed autopsy as per the police requisition vide G.D. Entry No.121 dated 12-05-1999. His testimonies recorded during trial are reproduced herein below:

*Thin pale adult male. Rigor mortis present. Eyes and mouth closed.*

*One para umbilical incised wound sutured present over 6" in length. Two other wounds on the flanks of right side with drainage.*

*Large intestine and its contents.*

*One perforating wound seen over the ascending colon with soiling of slough in the peritoneal cavity. The para umbilical wound is an incised wound and the upper wound is made for drainage. Both the wounds are sutured with drainage into the peritoneal cavity. The injuries are ante-mortem in nature.*

*In his opinion, cause of death was due to haemorrhage and shock due to the injury sustained by the deceased. Ext-7 is the P.M report. Ext-7 (1) is his signature. Ext-7 (2) is the signature of the then Joint Director of Health Services, Sri A.K. Bordoloi.*

So these are all about the evidences of P.Ws.

26. The accused was examined under Section 313 Cr.P.C. and he denied the allegation and pleaded that he was away from home and he could come to know about the incident on his way to home. In support of the aforesaid defence story, the accused examined himself as D.W-1 and also adduced the evidence of one co-villager, Md. Abul Hamid as D.W-2. The D.W-2 stated during trial that on being asked the wife of the deceased told that her husband was stabbed but could not tell who stabbed her husband. P.W-2 then told Nur Mohammad (since deceased) who stated that he could not recognize the person.

27. 2 (two) C.Ws were also examined. C.W-1 Dr. A.C. Mondal stated during trial that on 12-05-1999 he was at Dhubri Civil Hospital in the capacity of Medical and Health Officer-1. On that day the patient namely Nur Mahammad has been taking treatment at Dhubri Civil Hospital in the Male Surgical Ward in the extra bed. During continuance of the treatment on the aforesaid date the aforesaid patient died. The patient was taking treatment due to the sustainment of stab injuries. Accordingly, he informed the matter to the I/c Police Booth, Dhubri Civil Hospital. Ext-X is the said information wherein Ext-X (1) is his signature.

28. The C.W-2 Sri Manik Ch. Kalita states during trial that he was working as the Officer-in-charge of Dhubri Police Station. On being summoned by this Court, he has brought the General Diary of Police Booth, Dhubri Civil Hospital for the year 1999. Ext-Y is the G.D. Entry No.121 dated 12-05-1999 of Police Booth, Dhubri Civil Hospital, which is a certified copy and proved in original wherein Ext-Y (1) is his signature as the certifying official.

So these are all about the evidences on record.

29. During arguments, learned Public Prosecutor has submitted that herein this case, the evidence on record would clearly shows that it is the accused, who stabbed his step brother by dagger and the said factum has been corroborated by the wife and daughters of the deceased. Moreover, the neighbour, who arrived immediately after the occurrence had also confirmed the injuries and the Medical Officers who found the injuries on the person of the deceased had also corroborated the ocular testimonies of the other P.W. Therefore, according to him the accused cannot escape from the liability of the offence under Section 302 I.P.C.

30. On the other hand, learned defence counsel submits during argument that the investigation of this case has suffered a number of serious lapses. According to him Investigating Agency had got the ample opportunities to record the dying declaration of the deceased. But same was neither done by the Investigating Agency nor by the Doctor on duty. The alleged incident had taken place on 07-05-1999 and the death of the deceased was recorded on 12-05-1999. Learned defence counsel further states during argument that the wife and the children had got ample opportunities to inform the police station immediately after the incident but in this case the F.I.R. was lodged by the Investigating Agency after making an inordinate delay. Therefore, the aforesaid unexplained inordinate delay has cast serious suspicion over the prosecution story.

31. In support of the aforesaid submissions learned defence counsel has placed the reliance on **(i) (2013) 4 GLR 594 and (ii) (2013) 4 GLR 664**

32. Finally, learned defence counsel submits that here in this case material witnesses had neither supported the story of the F.I.R. nor implicated the accused with the alleged offence. Further, the prosecution side omitted to examine the vital witness namely Dr. Sirajul Hoque, who 1<sup>st</sup> examined the injured. It is also argued by the learned defence counsel that 2 (two) D.Ws were examined in support of the defence story, who spoke about the truth in regard to the incident and the deceased survived for a period of 6 (six) days and during that period the deceased did not tell the name of the accused. Under the aforesaid circumstances, according to learned defence counsel, accused cannot be held guilty of the offence alleged of. As such, he is liable to be acquitted.

33. Now, on a careful perusal of the entire evidences on record, it is found that accused is the step brother of the deceased. Both of them were residing in the same compound. On the date of

incident as a result of domestic quarrel, it is alleged that the accused stabbed the deceased by a dagger on the abdomen. The wounds were treated at the very outset at Singimari Hospital and thereafter at Dhubri Civil Hospital. But during the continuance of the treatment the deceased succumbed to the injuries.

34 So far the allegation of infliction of stab injury is concerned, evidences of P.W-1, P.W-2 and P.W-3 are pertinent. It is seen that aforesaid P.Ws have corroborated each other and despite getting ample opportunity the defence side had failed either to demolish the aforesaid story of the prosecution during cross-examination or to bring cogent materials enabling the Court to disbelieve the said P.Ws. It is true that the incident at the very outset was not informed either by the P.W-1 or by the P.W-2 or by the P.W-3, who are the close relatives of the deceased. And it was first informed to the police by C.W-1, who is on duty at the Dhubri Civil Hospital. The police Booth, Dhubri Civil Hospital received the first information under Ext-X and got it entered into the General Diary vide Ext-Y and thereafter, forwarded it to Dhubri Police Station for registering a U.D. Case. Accordingly, U.D. Case No.29/1999 was registered and was investigated into and during investigation of the said case, the name of the accused had first surfaced as has been evident vide Ext-3. It is also evident that the report of dead body inquested was also prepared vide Ext-1 and Post-mortem examination was also conducted on the dead body vide Ext-7.

35. This apart, the weapon used in the commission of the crime i.e. dagger was also seized during investigation vide Ext-6 and it was produced by Musstt. Tahiran Bewa. The said weapon is also exhibited during trial as Material Ext-1. The P.W-4 and P.W-5 are the independent witnesses and they stated that they heard cries and arrived at the house of the deceased. P.W-4 clearly stated that he arrived at the scene first and saw Noor Mohammad lying with bleeding injuries. From his evidence, it has not been revealed that either D.W-1 i.e. the accused or D.W-2 arrived at the scene and met Noor Mohammad. There are no evidences on record to show that the deceased talked to anyone.

36. The defence plea is of the plea of alibi. Considering the testimonies of the D.Ws, defence plea does not appear to be probable. On the other hand, on a meticulous scanning of the evidences of P.Ws, it is found that the ocular evidence of P.W-1, P.W-2 and P.W-3 are corroborated by the medical evidences as has been revealed by P.W-7, who prepared inquest so also by the evidence of Medical Officer (P.W-11), who conducted autopsy of the deceased.

37. Thus finally it can be concluded that it is the accused, who was the author of the crime and assaulted his step brother and inflicted wounds on the abdomen of deceased with the dagger intentionally for causing his death. Thus the prosecution side has recorded success to establish the story beyond all reasonable doubt against the accused & under the peculiar facts and circumstances of the instant case, judicial authority as referred to by the defence side and as indicated herein above will not rescue the accused.

38. Situated thus, the accused cannot evade the liability of the Section 302 I.P.C. and accordingly, he is found guilty under Section 302 I.P.C. and as such convicted thereunder.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

Heard accused on sentence. The accused pleaded that he has family consisting of wife and children and he is the only bread earner of his family and under this circumstances, if he is sent to jail the family of the accused has to starve.

Considering the entire facts and circumstances as revealed during trial, I feel that the Rigorous Imprisonment for life and a fine of Rs.10,000/- in default to suffer S.I. for 6 (six) month will serve the end of justice. Accordingly, the sentences are awarded as indicated above. The period of sentence already undergone by the accused in connection with the case shall be set off. The seized properties if any shall be destroyed in due course of law.

The fine if realized shall be paid to the victim of this case and further adequate compensation for the rehabilitation of the family of the deceased has also been recommended.

Let a free copy of the judgment be furnished to the accused. Let another copy of the judgment be furnished to the District Magistrate, Dhubri and also a copy of the judgment be forwarded to the Chairman, District Legal Services Authority, Dhubri for doing needful. The judgment is delivered in the open Court.

Given under hand and seal of the this Court on 10<sup>th</sup> October, day of May, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.