

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No.95/2015

U/s.302 IPC

G.R. 10/2015

Dhubri P.S. Case No.74/2005

State of Assam

-Vs-

Atul Sarkar

Committing Magistrate : Sri B. Kshetri, Judicial Magistrate, 1st Class,
Dhubri.

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.
Sri Giasuddin Ahmed, Advocate for the defence.

Date of Evidence : 18-09-2015, 08-10-2015, 27-11-2015, 05-01-2016,
05-03-2016 & 27-04-2016.

Date of Judgment : 19-05-2016

J U D G M E N T

The prosecution case in brief is that one Prodip Kr. Bora on 04-03-2005 had lodged the FIR at Dhubri Police Station to the effect that on 03-03-2005 around 6:30 p.m. he had been informed over phone that a dead body is lying abandoned near Jhagrapar cremation ground. The informant had noticed injury over the right eye of the dead body and suspecting it to be a case of homicide, he decided to get the inquest conducted on the dead body and thereafter the dead body had been sent to Dhubri Civil Hospital for postmortem.

2. The FIR was registered by O.C., Dhubri Police Station on u/s.302 of IPC. The I.O. after due investigation had filed charge sheet against accused Atul Sarkar @ Swapan Roy U/s. 302 of IPC.

3. Accused person appeared before the Court, charge under Section 302 of IPC had been framed against the accused Atul Sarkar @ Swapan Roy and accused pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 11 (eleven) witnesses including the M.O. and I.O. There being no incriminating materials against the accused Atul Sarkar @ Swapan Roy, the necessity to examine the accused u/s.313 of Cr.P.C. was done away with.

5. **Points for determination:**

Whether the accused on 03-03-2005 at around 6:30 p.m. at village Jhagarpar Part-IV under Dhubri Police Station had committed murder by intentionally causing the death of deceased?

DECISIONS AND REASONS THEREON

6. The evidence of P.W-1, Khagendra Ch. Ray reveals that the accused is known to him and he was one of the witnesses in whose presence inquest was conducted by the Magistrate. The PW-1 identified his signature on the inquest report, ext-1 bearing his signature, ext-1 (1).

In his cross-examination he expressed ignorance as to the identity of the person whose dead body had been found abandoned.

7. P.W-2, Anil Roy stated to have noticed the dead body near cremation ground and he was one of the witnesses at the time inquest was conducted on the dead body. Ext-1 is the inquest report bearing his signature ext-1 (2).

8. P.W-3 Uma Kanta Roy was declared hostile.

In his cross-examination by the defence, he denied having given his statement to the I.O. u/s.161 of Cr.P.C. According to PW-3, accused Atul Sarkar lives in Guwahati.

9. PW-4 (Bipin Roy), PW-5 (Habibar Rahman), PW-6 (Mominur Rahman) and PW-8 (Mokbul Hussain) only stated to have seen a dead body left abandoned near the cremation ground. None of these witnesses could throw light with regard to the circumstances leading to the death of deceased. None of them could identify the identity of the abandoned dead body.

10. PW-7, Dr. Shibu Lal Nag, the M.O. had stated that on 04-03-2005 on police requisition he had conducted the postmortem on an unidentified body and had found multiple stab wounds on head as specified below:

1. Right side of the head just behind the right ear.
2. Left side of the forehead just above the eye below
3. On the centre of the frontal bone.
4. On the left side of the chin.

According to the M.O. all wounds were of approximately 1" X 2" in size. All the injuries sustained by the deceased were anti mortem in nature. In his opinion, the death is caused by shock due to profuse bleeding & head injury following multiple stab injuries on the head and face. Ext-2 is the postmortem report bearing his signature ext-2 (1). Ext-2 (2) is the signature of the then Joint Director of Health Services, Dhubri. Ext-3 is the dead body challans bearing his signature ext-3 (1).

In his cross-examination he stated that he did not suggest for taking photograph of the dead body. He had not mentioned the colour of the skin, tongue, lip and nails. He did not record the weight of the dead body. According to PW-7 the dead body was not decomposed.

Above is the threadbare discussion of the evidence on record.

11. In the light of the evidence of the M.O, it is evident that the victim had died of the injuries sustained by him and injuries had been caused through stabbing. Though the nature of weapon had not been specified in the report but then report shows multiple injuries, which indicates that the case is that of homicide and is a case of circumstantial evidence.

12. The evidence shows the victim had been found dead near the cremation ground with multiple stab wounds on his face. The evidence is silent with regard to the fact of the victim being last seen with the accused before he was found dead of stab injuries. Thus, circumstances coming up in the evidence of PWs examined are not consistent with the guilt of the accused considering the case is of circumstantial evidence and the accused is entitled to benefit of doubt.

13. Thus considering the discussion of the prosecution evidence in its entirety, it is evident that the prosecution has failed to establish the charge against the accused beyond all reasonable doubt. The accused is acquitted of charge u/s.302 of IPC on benefit of doubt. However, the wife & children of the deceased, Binod Sahu is recommended for compensation u/s.357 (A) of Cr.P.C. A copy of the judgment be sent to the Secretary, DLSL, Dhubri for making an inquiry with regard to the dependent of Binod Sahu for assessment of quantum of compensation to be paid.

Given under my hand and seal of this court on this the 19th day of May, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

APPENDIX

A. Prosecution Witness.

PW-1	-	Khagendra Ch. Ray
PW-2	-	Anil Roy.
PW-3	-	Uma Kanta Ray
PW-4	-	Bipin Ray
PW-5	-	Habibar Rahman
PW-6	-	Mominur Rahman
PW-7	-	Dr. Shibu Lal Nag.
PW-8	-	Mokbul Hussain
PW-9	-	S.I. (Retd) Lalit Ch. Boro
PW-10	-	S.I. (Retd.) Tirap Ch. Lahkar
PW-11	-	Inspector Prodip Kr. Borah
PW-12	-	Inspector Ganesh Ch. Das.

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1	-	Inquest Report.
Ext-2	-	P.M. Report.
Ext-3	-	Dead body Challan
Ext-4	-	Charge sheet.
Ext-5	-	FIR

D. Defence Exhibit

Nil

Sessions Judge, Dhubri