

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No. 131/2015

U/s.326/302/34 IPC

G.R. No.1826/2010

State of Assam

- Vs -

- 1. Molu @ Momirul Islam**
- 2. Moni @ Monirul Islam &**
- 3. Majom Ali @ Magor Ali**

Committing Magistrate : Sri U.K. Das, Judicial Magistrate 1st Class, Dhubri.

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.
Sri Jamsher Talukdar, Advocate for the defence.

Date of Evidence : 06-02-2016, 05-03-2016, 28-03-2016, 31-05-2016, 20-06-2016,
and 19-08-2016.

Argument Heard : 07-11-2016 & 22-11-2016

Date of Judgment : 25-11-2016

J U D G M E N T

The prosecution case in brief is that one Chitiful Khatun had lodged the FIR at Mankachar P.S. on 06-02-2010 to the effect that on the day at around 9:30 a.m. her husband Jahirul Hoque and her son Hazarat Ali were busy ploughing their paddy land that belonged to them. Accused persons namely (1) Molu (2) Moni (3) Moynal Hoque, (4) Atabuddin (5) Ful Miah (6) Golzar Hossain (7) Shulzar (8) Abdul Barik (9) Moynal Hoque S/o. Raham Ali (10) Joynal Hoque (11) Majom Ali and (12) Abdul Salam armed with dangerous weapons illegally entered into their land and had assaulted her husband and her son resulting in severe injuries on their persons. When her brother-in-law, Joynal Abedin and son-in-law Saidur Rahman intervened, they had also been assaulted by accused persons resulting in injuries on their scalp and other parts of the body.

2. Upon the FIR a case was registered by the O.C, Mankachar P.S. vide Mankachar P.S. Case No.37/2010 u/s.147/148/149/447/324/326 of IPC against accused persons namely (1) Molu (2) Moni (3) Moynal Hoque, (4)

Atabuddin (5) Ful Miah (6) Golzar Hossain (7) Shulzar (8) Abdul Barik (9) Moynal Hoque S/o. Raham Ali (10) Joynal Hoque (11) Majom Ali and (12) Abdul Salam. After investigation charge sheet was filed u/s.324/326/302/34 of IPC against accused persons namely Molu @ Momirul Islam, Moni @ Minirul Islam & Majom Ali @ Magor Ali following the death of one of the injured Saidur Rahman due to injuries sustained.

3. Accused persons Molu @ Momirul Islam, Moni @ Minirul Islam & Majom Ali @ Magor Ali appeared before the Court. Charges u/s. 326/302/34 of IPC had been framed against the above accused persons. Charges had been read over, explained and interpreted to accused persons, to which, accused persons pleaded not guilty and claimed to be tried.

4. Prosecution had examined as many as 14 (fourteen) P.Ws including I.Os. & M.Os. Accused persons were generally examined u/s.313 of Cr.PC on the circumstances coming up against them in the evidence of P.Ws. Accused persons pleaded total denial and declined to adduce any evidence in their defence.

Heard learned advocates.

5. **Points for determination:**

1. Whether accused persons on 06-02-2010 at about 9:30 a.m. at village Namargaon under Mankachar Police Station in furtherance of their common intention had voluntarily caused grievous hurt to Zahirul Islam and Hazzrul Ali by means of machete (dagger) etc?

2. Whether accused persons on the same day, time and place in furtherance of their common intention had committed murder intentionally causing the death of Saidur Rahman?

DECISIONS AND REASONS THEREOF

6. PW-1 Chitiful Khatun is the informant in the case. Accused persons and deceased Saidur Rahman had been known to her. According to PW-1 it was around 9:30 a.m. when her husband had gone to plough their land and she was sweeping the courtyard of their house. According to PW-1 Molu, Moni, Majam,

Golzar, Shulzal, Barik, Ful Miah armed with sticks and "falla" started assaulting her husband. Her son Hazarat Ali when intervened he had also been assaulted by accused persons. She had raised alarm but none had come to their rescue. Accused persons thereafter had fled away from the place of occurrence. According to PW-1 accused persons had also assaulted Saidur Rahman when said Saidur Rahman intervened in the clash between her husband and accused persons. Saidur Rahman received a blow on his head. Saidur Rahman had succumbed to his injuries eleven days after the alleged occurrence at Goalpara Civil Hospital on 18-02-2010.

In her cross-examination PW-1 reiterated about the incident taking place at around 9:30 a.m. PW-1 stated about having lodged the FIR on the day of the alleged occurrence at Mankachar P.S. PW-1 had failed to throw light as to the contents of the FIR. According to PW-1 accused persons live around a mile from their house and the deceased was a resident living around 10 k.m. away from their house. On the day of the alleged occurrence accused persons had gone to plough their land and a crowd of around 30 to 40 persons had formed at the place of occurrence. According to PW-1 deceased Saidur had been in the hospital for 11 days and Saidur was in a position to talk. However, the I.O. had never recorded the dying declaration of Saidur in connection with the investigation.

7. PW-2 Musstt. Nurbhan Begum stated about knowing accused persons but denied having known the deceased. PW-2 also denied knowledge about the alleged occurrence.

8. PW-3 Kuddus Ali on hearing hue and cry on the land of accused Molu had gone there and had seen both parties getting into a heated altercation. He had left the place of occurrence and had also seen accused persons leaving the place of occurrence. Pw-3 denied having seen any injured person at the place of occurrence.

In his cross PW-3 had stated having heard about a clash that had taken place between informant's family and accused persons.

9. PW-4 Abu Siddique stated about knowing both accused persons and the complainant. He had heard about Molu and others getting into a heated altercation with the deceased. However, PW-4 denied knowledge as to how Saidur had died.

In his cross he had stated that altercation had taken place on the land of accused persons.

10. PW-5 Abdul Barik stated having given his statement before Magistrate u/s.164 of Cr.PC. Ext-1 being the statement bearing his signature ext-1 (1).

In his cross-examination he expressed ignorance as to the cause of death of Saidur.

11. PW-6 Mokbur Ali had stated about knowing accused persons but he denied having known the deceased and the complainant. He had seen Molu and others engaged in a heated altercation. PW-6 also stated having his statement before the Magistrate. Ext-2 is his statement bearing his signature ext-2 (1).

PW-6 in his cross-examination expressed ignorance regarding the cause of death of Saidur.

12. PW-9 Hazarat Ali one of the injured witnesses again failed to throw light with regard to alleged occurrence. Pw-9 in his evidence had only related having seen father and son quarreling.

In his cross examination he stated about his house being located around ½ k.m. away from the house of accused persons. PW-9 had denied the suggestion that he wanted to marry the niece of Molu and in this connection he had proposed to her and said niece of Molu had turned down his proposal and got married to some other person and the alleged clash had followed thereafter with accused persons.

13. PW-10 Jahirul Islam had stated about being aware of the death of the victim, Saidur. According to PW-10 Molu, Moni, Majom and Atab Uddin had assaulted him when his son Hazarat Ali had come to the place of occurrence, accused persons also assaulted him and his brother Joynal. Later his wife lodged the FIR in the case.

In his cross-examination PW-10 stated about accused persons having their respective houses around 1½ k.m. away from the place of occurrence. He admitted to a case against them, filed by accused persons, pending for trial in this Court. According to PW-10 he had not seized any material from the place of occurrence.

14. PW-12 Abul Hussain had been watching the alleged occurrence from a tea stall nearby. He had noticed a clash between two groups. He later came to know that Molu had been assaulted by some persons in connection with marriage of his niece.

In his cross PW-12 had stated not having seen the incident but he was aware about personal enmity between Hazarat, informant's son and Molu over Hazarat turning down the proposal of marriage from Molu's niece.

15. Now coming to the evidence of M.O. Dr. S. Paul, PW-7 I find that on 19-02-2010 in his capacity as SDMO at Dhubri Civil Hospital, he had conducted Postmortem examination on deceased Saidur Rahman in connection with MKCR 13/2010 and had recorded following injuries. PW-7 had found one stitched wound on the left temporal area with size 2 ½ " X ½ " X ½ " with five stitches. PW-7 had found the left temporal bone fractured, subdural hemorrhage was seen with brain compressed at the side of hematoma. PW-7 had also seen partly stitched wound on the left posterior auxiliary line at the level of nipple with size 2" X ½" X ½". In his opinion the death was due to shock and hemorrhage as a result of injuries sustained by the deceased. Ext-3 is the postmortem report bearing his signature ext-3 (1).

In his cross-examination he had stated not having mentioned the duration of injuries.

16. PW-11 Abu Bakkar Siddique another Medical Officer had examined Jahirul Islam on 06-02-2010 at around 10:15 a.m. at Gazarikandi PHC. He had found cut injury over left forearm of Jahirul Islam, 3 c.m. in length with profuse bleeding. The patient was referred to Goalpara Civil Hospital. He had also examined one Hazarat Ali and on examination he had found a cut injury mark over left leg, 6 c.m. in length with profuse bleeding. His opinion with regard to the nature of injury was reserved. Ext-5 is the medical report bearing his signature ext-5 (1).

In his cross-examination PW-11 had stated about having examined both Hazarat Ali and Jahirul Islam without police requisition. He did not give his opinion with regard to nature of injuries and weapon used.

Now above is the threadbare discussion on evidence on record.

17. Now coming to the evidence of prosecution witnesses, injured in the alleged clash are one PW-9, Hazarat Ali and his father PW-10, Jahirul Islam. But none of these witnesses had been able to throw light as to how the deceased Saidur had died despite their presence at the place of occurrence at the relevant point of time having been established. PW-10 Jahirul Islam had implicated Molu, Moni, Majom & Atab Uddin of having assaulted him, his son and his brother Joynal. PW-11, MO, Dr. Abu Bakkar Siddique on 06-02-2010 stated to have found cut injuries on both PW-9 Hazarat Ali and PW-10 Jahirul Islam over left leg and over left forearm respectively. However, PW-11 had refrained from giving any opinion as to the nature of injuries and weapons used and had referred the injured persons to Goalpara Civil Hospital. There is no evidence on record that follow up treatment had been received by the injured persons, PW-9 and PW-10 at Goalpara Civil Hospital. PW-9 in his evidence did not even relate to any assault upon him by accused persons. Coming to the evidence of PW-10, PW-10 had implicated accused Molu, Moni, Majom and Atab Uddin of having assaulted him but remained silent with regard to alleged assault upon deceased Saidur. Considering the evidence of the MO, PW-11 having been rendered a weak piece of evidence, the opinion with regard to nature of injury and type of weapon used being absent in the report and PW-10 having refrained from mentioning the type of weapon used and PW-9 having not corroborated him, the reliability evidence of PW-10 in the circumstances has to be assessed in the light of the independent witnesses. None of the independent witnesses had corroborated PW-10. PW-1, the informant and wife of PW-10, had implicated all accused persons of being perpetrators of the alleged assault upon deceased Saidur, her son Hajarat and her husband PW-10.

18. PW-1 Chitful Khatun, the informant in the case was sweeping the courtyard of her house at the time of alleged occurrence. According to PW-1 she had seen accused persons striking a blow on the head of deceased Saidur resulting in his death of injuries sustained by him 11 days after the alleged assault on 18-02-2010. But then it is also evident from the evidence of PW-1 that Saidur Rahman had been alive for 11 days before his death and Saidur Rahman was in a position to talk. But Saidur Rahman's dying declaration had not been recorded by the I.O. and there is also no note in the CD by the I.O. regarding the reason for not being able to record the dying declaration of the deceased. Thus considering PW-9 and PW-

10, injured witnesses, having not supported PW-1's presence at the PO and having not supported PW-1 regarding alleged assault on deceased Saidur, the evidence of PW-1 cannot be accepted as wholly reliable in absence of any corroboration from independent witnesses. Though it is evident from the evidence of PW-11, MO that deceased Saidur had received injuries on his temporal area with fracture of left temporal bone and though in the opinion of M.O.PW-11, deceased had died of injuries sustained by him is true but then prosecution has failed to establish that accused persons had been the perpetrators beyond all reasonable doubt.

19. Accused persons, in view of the discussion of evidence above, are thus entitled to benefit of doubt and are acquitted of all charges upon benefit of doubt. However I am inclined to recommend the wife of the deceased Saidur for receipt of compensation U/S 357 of Cr.P.C. A copy of the judgment be sent to Secretary DLSA, Dhubri for determination of the quantum of compensation to be paid.

Given under my hand and seal of this Court on this 25th day of November, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

APPENDIX

A. Prosecution Witnesses.

PW-1	-	Mustt. Chitful Khatun
PW-2	-	Mustt. Nurbhan Begum
PW-3	-	Md. Kuddus Ali
PW-4	-	Md. Abu Siddique
PW-5	-	Md. Abdul Barik
PW-6	-	Md. Mokbur Ali
PW-7	-	Dr. S. Pal
PW-8	-	Md. Fazlur Rahman.
PW-9	-	Md. Hajrat Ali
PW-10	-	Md. Johirul Islam
PW-11	-	Dr. Abu Bakkar Siddique
PW-12	-	Md. Abul Hussain
PW-13	-	S.I. Samir Bhusan Banik
PW-14	-	Inspector Tarun Ch. Das.

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1	-	Statement of Abdul Barik u/s.164 Cr.PC.
Ext-2	-	Statement of Mokbur Ali
Ext-3	-	P.M. report
Ext-4	-	Deal Body Challan
Ext-5	-	Medical Report.
Ext-6	-	Charge Sheet
Ext-7	-	Sketch Map
Ext-8	-	Inquest report.

D. Defence Exhibit

Nil

Sessions Judge, Dhubri