

**IN THE COURT OF THE ADDL. SESSIONS JUDGE :::::::::::**  
**DHUBRI**

**Present :- Shri Sutham Das,  
Addl. Sessions Judge  
Dhubri.**

**JUDGMENT IN SESSIONS CASE NO. 265 OF 2013**

**U/s. 302 I.P.C.**

**(Arising out of G.R. Case No. 405 of 2010)**

**State of Assam**

**Versus**

**Sabed Ali**

**A P P E A R A N C E**

For the State :- Sri Uttam Kumar Sakar  
Addl. Public Prosecutor  
District- Dhubri.

For the Accused :- Mr. Giasuddin Ahmed, Ld. Advocate.

Dates of Evidence :- 15.11.14, 04.03.15, 23.07.15, 15.12.15, 27.04.16,  
15.06.16, 21.07.16, 12.08.16, 05.10.16.

Date of Argument :- 02.05.2017.

Date of Judgment :- 09.05.2017.

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

1. **Brief facts of the Case:-**

The prosecution case in brief is that one Md. Abdul Hakim Fakir lodged an ejahar with Agomoni Police out-post under Golakganj P.S. alleging inter alia that on 20.07.2010 at about 6 a.m. while his cousin brother Sultan Mahmud

was going to Kaldoba Bazar for doing business, the accused persons namely Sabed Ali, Mohir Uddin Ahmed, Saban Ali, Sattar Ali, Ainul Ali, Ajit Ali, Mofizur Rahman, Hassen Ali and Jabed Ali suddenly attacked him from behind and inflicted blows with spade and rod causing grievous injury on his head and different parts of body. Sultan Mahmud died on the spot. The accused persons also took away Rs.1,50,000/- from the deceased.

2. On receipt of the complaint, the I/c of Agomoni O.P forwarded the ejahar to O/C of Golakganj P.S for registration. The Golakganj P.S registered the case vide Golakganj P.S. Case No. 405/2010. Police started investigation and on completion of investigation submitted charge sheet against Sabed Ali to stand trial U/s. 341/302 IPC.
3. The corresponding G.R. Case No. 405/2010 came up before Ld. Addl. C.J.M, Dhubri who furnished necessary copies to the accused person and committed the case to the court of Hon'ble Sessions Judge and then the case was transferred to this court for trial.
4. On receipt of the case record and on appearance of the accused, this court considered the materials on record and upon hearing both the sides framed charges against accused Sabed Ali U/s. 302 IPC and read over and explained to the accused to which he pleaded not guilty.
5. Prosecution in order to bring home the charges against the accused, examined 13 (thirteen) witnesses in all.
6. On conclusion of prosecution evidence, the accused was examined U/s. 313 Cr.P.C. The circumstances appearing in the evidence against the accused was put to him and necessary questions were also put to him. The accused totally denied prosecution allegation. However, the defence adduced no evidence whatsoever.
7. **POINTS FOR DETERMINATION**
  - (i) That, on 20.07.2010 at about 6 a.m. at village Jhaskhal Part-I under Golakganj Police Station committed murder intentionally or knowingly causing the death of Sultan Mahmud, cousin brother of informant-Abdul Hakim Fakir, and thereby committed an offence punishable U/s. 302 of the Indian Penal

Code which is within the cognizance of the court of Sessions.

8. I have gone through the evidences on record and heard argument of both sides.

**DECISION, DISCUSSION AND REASONS THEREOF**

9. Prosecution examined thirteen (13) witnesses. They are:-

PW-1 :- Aktar Ali  
 PW-2 :- Majeda Bibi  
 PW-3 :- Hussain Ali  
 PW-4 :- Akbor Ali  
 PW-5 :- Abdul Hakim Fakir  
 PW-6 :- Samsul Hoque  
 PW-7 :- Khaibar Ali  
 PW-8 :- Nashira Bibi  
 PW-9 :- Taiyab Ali Ahmed  
 PW-10:- Aminur Rahman  
 PW-11:- Alauddin Sarkar  
 PW-12:- Dr. Jitu Moni Bezbarua  
 PW-13:- S.I Mintu Boro (I.O)

Prosecution produced the following exhibits in support of its case:-

Ext-1 :- Ejahar.  
 Ext-2 :- Inquest Report .  
 Ext-3 :- Post Mortem Report.  
 Ext-4 :- Seizure list.  
 Ext-5 :- Sketch map.  
 Ext-6 :- Charge sheet.

10. PW-1, Aktar Ali in his evidence stated that he knows the complainant and accused Sabed Ali. He also knows the deceased Sultan Mahmud @ Ali. The occurrence took place about two years ago. On the day of occurrence in the early morning while he along with others were coming from Mosque after Fazar Namaz, he heard hullah in front of his house and he went to the place of occurrence. He heard about the dead body of Sultan Mahmud lying on the ground. The dead body was taken to hospital.
11. PW-2, Majeda Bibi in her evidence stated that she knows the complainant and the accused. She also knows the deceased Sultan

Mahmud @ Ali. On the date of the occurrence while she was preparing for Fazar Namaz at that time she was informed about the death of Sultan Mahmud and on hearing she rushed to the spot. But, she didn't find the dead body as the dead body was taken to hospital.

12. PW-3, Hussain Ali in his evidence stated that he knows the complainant and the accused. He also knows the deceased Sultan Mahmud. The occurrence took place about 4/5 years ago. He heard that Sultan Mahmud was murdered about half furlong away to his house. But, he didn't visit the place of occurrence and also didn't see the dead body.
13. PW-4, Akbor Ali in his evidence stated that he knows the complainant and the accused being his co-villager. Deceased Sultan Ali is the cousin brother of the complainant. The occurrence took place about 4/5 years ago. On that date, he was coming from fishing at that time he heard about death of Sultan Ali but he didn't visit the place of occurrence.
14. PW-5, Abdul Hakim Fakir deposed that he knows the accused person. Deceased Sultan Mahmud is his cousin brother. The incident took place on 20.07.2010 at about 6 a.m. On the day of incident while his cousin-brother was going to Kaldoba Bazar for doing business, in front of Sabed Ali's house his cousin-brother cried. On hearing cries he went to the place of occurrence and saw accused Sabed Ali, Mohir Uddin Ahmed, Saban Ali, Aktar Ali, Ainul Ali, Sajid Ali, Mofizur Rahman, Hassen Ali and Jobed Ali assaulting Sultan Mahmud with iron rod and spade causing injury on his head. He also saw Jyotsna Bibi and Sultan's wife Mofida Bibi at the P.O. On seeing the incident he raised hue and cry and accused persons fled away. Accused Sabed Ali also left the spade there at the P.O. Sultan Mahmud died on the spot. The accused persons also took away Rs. 150000/- from his brother. He immediately lodged ejahar in Agomoni police outpost. Ext.-1 is the ejahar. Ext.-1(1) is his signature. Police came and arrested Mohir Uddin, Soban Ali and Sattar Ali. Police also conducted inquest of the dead body. Ext.-2 is the inquest report. Ext.-2(1) is his signature.
15. PW-6, Samsul Hoque in his evidence stated that he knows the

complainant but, he does not know the accused. He also knows the deceased who is from their village. The alleged incident occurred about 6 years ago which took place at day time. A few years ago, he heard that one Sultan Mahmud of their village died. He was busy in his business at that time. He only heard from others that Sultan Mahmud died. Apart from this, he does not know anything about the incident. At this stage, this witness is declared hostile by the prosecution.

16. PW-7, Khaibar Ali in his evidence stated that he knows the complainant as well as the accused person. The complainant is his distant relative. He knows the deceased who is also his distant relative. The alleged incident occurred about 5/6 years ago. On that date of the occurrence at about 6 a.m., he heard hue and cry near his house. He went to the place and heard from the gathering that one Sultan Ali was lying dead on the road. He did not go to see the dead body.
17. PW-8, Nashira Bibi in her evidence stated that she knows the complainant and the accused. She knows the deceased who was from their village. The alleged incident occurred about 5/6 years ago which took place early in the morning. She heard hue and cry at a little distance. She came out from her house and she heard that sultan Ali was assaulted by the accused. Later on, Sultan Ali died as a result of assault.
18. PW-9, Taiyab Ali Ahmed in his evidence stated that he knows the complainant and the accused. He also knows the deceased who is the brother of complainant. The alleged incident occurred about 6 years ago which took place early in the morning. On the date of the occurrence, early in the morning, he heard hue and cry at a little distance from his house. He went to hospital and came to know from village people that one Sultan Ali was lying on the road. He also heard that he was taken to hospital for treatment. Later on, he heard that said Sultan Ali died in the hospital.
19. PW-10, Aminur Rahman in his evidence stated that he knows the complainant and the accused person. Both of them reside in their village. The alleged incident occurred about 4 years ago. He also stated that he

knows the deceased. On the date of the occurrence of incident at about 7/8 a.m., he heard hue and cry from their neighbouring people who were running to somewhere else. At that time, there was heavy raining. He also followed those persons to that place where many people gathered. After arriving at the P.O, he found a huge gathering of people and there was hue and cry at that place. In that gathering, he came to know that one Sultan (deceased) died.

20. PW-11, Alauddin Sarkar in his evidence stated that he knows both the complainant and the accused. He also knows the deceased who is from their village. The alleged incident took place a few years ago. On the date of the occurrence, there was heavy raining. He only came to know that one Sultan of our village died but, he does not know as to how he died. He did not go to the P.O to see the dead body of the deceased.
21. PW-12, Dr. Jitu Moni Bezbarua in his evidence stated that on 20.07.2010 he was posted as M & HO at Dhubri Civil Hospital. On that day, he conducted Post Mortem examination of one person namely Sultan Ali, 35 years old, male, Muslim. The deceased was brought and identified by UBC/360 Bhaben Boro. The Post Mortem examination was conducted on 20.07.2010. The dead body was average built. Eyes and mouth were closed. The rigor mortis were present. The lacerated injury was present over right mastoid area measuring 4 cm X 3 cm with fracture of the right mastoid bone and laceration of the right temporal bone of the brain with haematoma measuring 3 cm X 3 cm were found on the right temporal lobe. The lacerated injury was found in the vertex with fracture of both right and left parietal bones with blowing out of brain matter measuring 6 cm X 3 cm. The stomach and intestines were found intact. The injuries described are ante mortem in nature. In his opinion, the cause of death is due to shock and haemorrhage as a result of head injury by the deceased. Ext.-3 is the Post Mortem examination report. Ext.-3(1) is his signature. He conducted the Post Mortem examination in reference to Agomoni Police out-post GD Entry No. 460 dtd 20.07.10. The Post Mortem examination was counter signed by the then Joint Director of Health Services, Dhubri.

22. PW-13, S.I Mintu Boro in his evidence stated that on 20.07.2010 he was posted at Agomoni Police out-post as I/c. On that day, informant Abdul Hakim Fakir lodged an ejahar before their police station which was registered as GDE No. 460 dtd. 20.07.2010. He forwarded the case for registration of the case and registered the case as Golakganj P.S. Case No. 405/2010 U/s. 143/147/148/302 I.P.C. He was endorsed with the case for investigation. He went to the P.O. The complainant stated in his ejahar that his cousin brother was murdered. He went to the P.O and drew the sketch map of the P.O. He found the dead body of the deceased at Satrasal PHC. He saw head injury on the deceased. The inquest was conducted by an Executive Magistrate. He arranged the inquest. The blood was oozing out from the back side of the head of the deceased. Thereafter, the dead body was sent for post mortem examination. He collected the PM Report later on. He recorded the statement of complainant and other witnesses. He seized one BSA cycle and a spade in the P.O. Ext.-4 is the seizure list. Ext.-4(1) is his signature. Ext.-5 is the sketch map. Ext.-5(1) is his signature. He arrested the accused person Sabed Ali. He found sufficient materials against accused. He finally submitted charge sheet against the accused Sabed Ali U/s. 341/302 I.P.C. Ext.-6 is the charge sheet. Ext.-6(1) is his signature.

#### **APPRECIATION OF EVIDENCE**

23. In this case out of thirteen witnesses PW-1, PW-2, PW-3, PW-6, PW-7, PW-9, PW-10 are the witnesses from the locality where the incident of murder took place. All these witnesses have stated in their examination in chief that they heard hulla at a little distance from their houses and came to know about the death of Sultan Mahmud. They have also stated that the dead body of sultan Mahmud was lying on the ground and he was taken to the hospital.

24. Now, I come to the evidence of complainant PW-5 and one independent witness PW-8. PW-5 is the cousin-brother of the deceased. According to him, on the relevant date and time, his brother had gone to Kaldoba Bazar for doing business. In front of Sabed Ali's house his cousin-brother cried. On hearing cries he went to the place of occurrence. He

went to the place of occurrence and saw accused Sabed Ali, Mohir Uddin Ahmed, Saban Ali, Aktar Ali, Ainul Ali, Sajid Ali, Mofizur Rahman, Hassen Ali and Jobed Ali assaulting Sultan Mahmud with iron rod and spade causing injury on his head. He also saw Jyotsna Bibi and Sultan's wife Mofida Bibi at the P.O. On seeing the incident he raised hue and cry and accused persons fled away. Accused Sabed Ali also left the spade there at the P.O. Sultan Mahmud died on the spot. The accused persons also took away Rs. 150000/- from his brother. He immediately lodged ejahar in Agomoni police outpost. Ext.-1 is the ejahar. Ext.-1(1) is his signature. Police came and arrested Mohir Uddin, Soban Ali and Sattar Ali. Police also conducted inquest of the dead body. Ext.-2 is the inquest report. Ext.-2(1) is his signature.

25. PW-8, Nashira Bibi in her evidence stated that she heard hue and cry at a little distance. She came out from her house and she heard that sultan Ali was assaulted by the accused. Later on, Sultan Ali died as a result of assault.
26. Now let me look at the evidence of PW-5 in his cross examination part. In cross PW-5 stated that on hearing cries he rushed towards the place of occurrence. He stated that in his ejahar he did not state that he saw the occurrence. He denied defence suggestion that he did not state before police that he did not see the occurrence. He stated that he did not mention in the ejahar that he heard cries. He also stated that he did not mention the names of Jyotsna and Mofida Bibi in the ejahar. He denied defence suggestion that he did not state before police that accused Sabed did not assault Sultan Mahmud with a spade. He denied defence suggestion that he did not state before police that accused Sabed left the spade and fled away. He denied defence suggestion that his house is at a distance of 2 kms from the P.O. He denied defence suggestion that Mofida and Jyotsna were not present at the P.O.
27. From the evidence of PW-13, I.O it appears that he seized one B.S.A cycle and a spade from the P.O and arrested accused Sabed Ali. He stated that **the complainant neither stated in the ejahar nor stated before him that he saw the incident. He also stated that the complainant did not state before him that coming to the P.O he found any of the accused persons. He also stated**

**that he did not find any eye-witness during his investigation.**

28. I have very carefully scrutinized the evidence on record. It transpires from the evidence of PW-5 that though he claims to have seen the occurrence he has not categorically stated in his evidence that he went to the P.O and saw accused Sabed assaulting the deceased. PW-5 stated that he saw accused Sabed, Mohir Uddin, Soban, Aktar, Aynal, Sajid, Mofizur, Hassen Ali, Jabed Ali assaulting the deceased. He also stated that Sabed Ali left the spade and ran away. However, looking at the cross examination of PW-13, I.O it is found that none of the witnesses including PW-5 stated before I.O that they saw the occurrence or they saw the accused persons including accused Sabed assaulting the deceased. The I.O has categorically stated in his cross that there was no eye-witness to the occurrence. PW-8 though stated that he heard that Sabed Ali assaulted the deceased did not state that from whom he heard about the involvement of accused Sabed Ali.
29. The Ld. Counsel for accused during argument contended that there is no eye-witness to the occurrence and the evidence of PW-5 cannot be relied upon as because he did not state before police that he saw accused Sabed Ali or others assaulting the deceased. The Ld. Counsel for the accused also submitted that this is not a case where even the circumstances point to the guilt of the accused persons.
30. I have given my anxious thought to the entire fact-materials. I find that PW-5 spoke that one Jyotsna and Mofida were present at the P.O but the I.O has not examined those two persons as witness. The I.O examined witnesses from the locality but none of them mentioned that they saw accused Sabed in and around the P.O on the date of occurrence. It is true that the deceased died as a result of injuries sustained as per medical report submitted by PW-12.
31. From what has been discussed above and under the facts and circumstances, I find it difficult to hold that PW-5 saw accused Sabed assaulting deceased. PW-5 is the cousin-brother of the deceased and it is quite likely and it is also apparent from materials on record that PW-5 has improved and made exaggeration in his evidence. I am conscious of the fact that the

deceased had been killed with deadly weapons and he died on the spot. But, in the absence of cogent and convincing evidence on record, I am constrained to hold that the prosecution witness is not sufficient to rope the accused person with the commission of the alleged offence of murder.

32. It is the cardinal principle of criminal jurisprudence that graver the offence stronger should be the evidence to bring home the charge against the accused.
33. In view of what has been discussed above, I find that prosecution has failed to prove the charge U/s. 302 I.P.C against accused Sabed Ali beyond all reasonable doubt.
34. In view of the above, I find the accused Sabed Ali not guilty. Accordingly, he is acquitted from the charges U/s. 302 I.P.C on benefit of doubt. Set him at liberty forthwith. Judgment is pronounced in open Court, the 9<sup>th</sup> day of May, 2017.
35. Given under my hand and seal of this court on this 9<sup>th</sup> day of May, 2017.

Dictated & Corrected by me

Addl. Sessions Judge,  
Dhubri

(S. Das)  
Addl. Sessions Judge  
Dhubri

**A P P E N D I X**

Prosecution examined thirteen (13) witnesses. They are:-

- PW-1 :- Aktar Ali
- PW-2 :- Majeda Bibi
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