

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 94 of 2016

Under section 392/414/120B/302/34 IPC

(Arising out of G. R Case No.1631/13)

State of Assam

-Vs-

1. Khairul Ahmed @ Riju
 2. Imtiaz Ahmed@ Papu
 3. Arju Islam
- Accused persons.

**Present : Smti I. Barman, AJS
Sessions Judge,
Sonitpur, Tezpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For accused Khairul
@ Riju : F. Haque, Advocate.

For accused Arju Islam and
Imtiaz Ahmed @ Papu : Smti D. Choudhury, Advocate.

Date of Argument : 01-07-2020 & 15-07-2020

Date of Judgment : 28-07-2020

J U D G M E N T

1. The gist of the prosecution case is that on 04.07.2013 at around 8 AM two unknown persons hiring the Bolero pickup vehicle bearing no. AS 12 E 5658 from Khaliluddin (herein after called as 'the deceased') who used to drive the vehicle registered in the name of Sahar Ali, the father of the informant Mannas Ali proceeded to Golaghat to carry articles saying that after loading the articles, they would return in the evening time but till 07.07.2013 the vehicle did not return and also found the mobile phone of Khaliluddin switched off.

2. On receipt of the ejahar, from Mannas Ali (PW1) on 07.07.2013, the O/C Tezpur PS registered the case being Tezpur P.S. Case No. 844/13 u/s 406/420 of the IPC. During investigation, the Investigating Officer Subhas Chandra Baishya, the I/C of Mahabhairab Out Post visited the place of occurrence, recorded the statement of the witnesses, arrested the accused persons and seized documents of the vehicle from its owner.

3. In course of investigation on 08-07-2013 on receipt of an information about finding a dead body in jungle near Deopani Tea Estate, Borpathar PS GDE No. 146 dated 08.07.2013 was entered. On being entrusted Pradip Goswami the ASI of Borpathar PS to enquire, he visited the place of occurrence and seized one slipper of left foot finding near the dead body. He took steps for post mortem examination of the dead body at Diphu Civil Hospital and sent viscera to FSL. After recovery of the dead body of the deceased Khaliluddin, Section 120(B)/302 IPC was added.

4. Knowing about the recovery of a dead body of unknown person near Deopani T.E., Abdul Jalil the elder brother of Khaliluddin along with others went to Borpathar PS and identified the dead body to be of his brother Khaliluddin at Diphu Civil Hospital. In this respect, he lodged an FIR on 09.07.2013 with O/C, Borpathar PS alleging that accused Arju and Babujan hired the vehicle and killing his brother had taken away the vehicle. Accordingly, a case was registered being Borpathar PS case No. 51/2013 u/s 392/302/34 IPC. Later on the case was transferred to Mahabhairab Out Post as the case falls under the jurisdiction of Tezpur Police station and the same was amalgamated with Tezpur PS Case No. 844/2013.

5. On transfer of earlier Investigating Officer Subhas Chandra Baishya, the I/C Mahabhairab Out Post, Sri Padip Kr. Barua was entrusted to complete the investigation of the case. He obtained the subsidiary case diary from Borpathar PS, collected the FSL report and on completion of investigation laid charge-sheet against the accused persons Khairul Ahmed @ Riju, Imtiaz Ahmed @ Papu and Arju Islam u/s 406/420/120(B)/302/34 of IPC.

6. It may be mentioned here that on recovery of the dead body, Momi Ahmed the wife of the deceased filed another FIR on 10.07.2013 before the

Incharge, Mahabhoirab Out Post alleging involvement of present three accused persons in killing of her husband out of whom Riju Ahmed who was hiding at home, was apprehended by police with the help of local people. The said FIR was not registered as alleged offence relates to the same incident on which Tezpur PS case no. 844/13 u/s 406/420 added Section 120(B)/302 IPC was registered.

7. On appearance of the accused persons, the Learned Judicial Magistrate, 1st Class, Tezpur furnished copies of the documents as required under section 207 Cr.PC and committed the case to the Court of Session being the offence u/s 302 IPC exclusively triable by the court of Session. On committal, the case was transferred to the Court of the learned Addl. Sessions Judge, FTC, Sonitpur, Tezpur. Accordingly after going through the police report and hearing both sides, charge u/s 392/414/120B/302/34 of IPC was framed against the accused persons Khairul Ahmed, Imtiaz Ahmed and Arju Islam and particulars of the charges on being read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

8. To substantiate the case prosecution examined fifteen witnesses. In statement recorded u/s 313 Cr.P.C, the accused persons denied all the allegations leveled against them. They pleaded innocence and elected not to adduce evidence. Later on, the case was withdrawn to this Court on transfer of the Ld. Addl. Sessions Judge, FTC, Sonitpur, Tezpur. I have heard the argument advanced by the learned counsel of both sides and also have gone through the materials on record.

9. The points to be determined in this case are as follows—

(i) Whether the accused persons Khairul Ahmed, Imtiaz Ahmed and Arju Islam on 04.07.2013 at Gotlong under Tezpur PS, in furtherance of common intention, committed robbery of the Bolero Pickup no. AS-12E-5658 and in taking away the said vehicle, caused the death to the driver of the vehicle namely, Md Khaliluddin and thereby committed an offence punishable u/s 392/34 of the IPC ?

(ii) Whether the accused persons Khairul Ahmed, Imtiaz Ahmed and Arju Islam, on 04.07.2013 at Gotlong under Tezpur PS, in furtherance

of common intention, voluntarily assisted in concealing or disposing of the Bolero Pickup no. AS-12E-5658 which the accused persons knew or had reason to believe to be stolen property, and thereby committed an offence punishable u/s 414/34 of the IPC ?

(iii) Whether accused persons Khairul Ahmed, Imtiaz Ahmed and Arju Islam on 04.07.2013 in or around Gotlong under Tezpur PS, conspired with each other to do or caused to be done an illegal act i.e. to commit robbery of the vehicle no. AS-12E-5658 and caused the death of the driver of the said vehicle, Md Khaliluddin in pursuance of the said agreement and thereby committed an offence punishable u/s 120B of IPC ?

(iv) Whether accused persons Khairul Ahmed, Imtiaz Ahmed and Arju Islam on 04.07.2013 or in between 04.07.2013 – 07.07.2013 in furtherance of common intention committed murder, intentionally causing the death Md Khaliluddin and thereby committed an offence punishable u/s 302/34 of IPC ?

10. Mr. M. C. Baruah learned Public Prosecutor appearing for the state submitted that it was the accused persons who hired the vehicle and thereafter killing the deceased, had taken away the vehicle. He submitted that there is consistent and cogent evidence of the prosecution witnesses establishing the complicity of the accused persons in the commission of murder of Khaliluddin the driver of the vehicle. Mr. Baruah further submitted that as PW 2 who was the sole eye witness saw the accused persons with her deceased husband leaving her house together by the vehicle since when the deceased did not return and later on his dead body was found near Deopani T.E., it can be sufficiently presumed that the death of the deceased was caused by none other than the accused persons.

11. Refuting the said argument, learned advocates appearing for the accused persons submitted that the present case wholly rests on circumstantial evidence and prosecution failed to establish the link of the accused persons to the commission of the offence. Drawing attention to the evidence of PW 2 the wife of the deceased, learned counsels vehemently submitted that though PW2 testified that the accused persons on 03.07.2013 came to her house to hire the

vehicle, obtained the cell phone number of her husband from her and on next day at 07.30 AM the three accused persons accompanied with her husband went away by the vehicle but these material facts were not stated in statement u/s 161 Cr.P.C. Learned counsel for the accused persons further pointed out that when the deceased's wife knew well that the accused persons hired the vehicle and on the day of incident, her husband left home with the accused persons by the vehicle, why the informant the son of the owner of the vehicle who was informed by the deceased's wife did not disclose the said facts in the FIR (Ext. 1), rather in the FIR (Ext.1) lodged after three days of missing of the deceased, the informant mentioned that two unknown persons hired the vehicle. The vital witnesses of this case including the deceased's wife gave different version in statement u/s 161 Cr.P.C. and during trial and as such not sustainable. Contending that the testimony of the prosecution witnesses is contradictory and confusing in regard to hiring the vehicle by the accused persons, the learned counsel submitted that the prosecution failed to prove that the deceased was last seen in company of the accused persons at the time of leaving his house, preceding the mysterious death of the deceased.

12. In order to appreciate the rival submissions advanced on behalf of the accused persons as well as the prosecution, I deem it appropriate to take note of the medical evidence on record at first.

13. PW 11 Dr. Sanjib Kr Borthakur, the Sr. M & HO at Diphu Civil Hospital conducted the post mortem examination on the dead body of Khaliluddin Ahmed, aged about 28 years on 08.07.2013 and found the following:

- I) Eyes of the dead body was missing.
- II) Sockets (eye) are visible. Portion of lips are missing.
- III) The muscles and skin are missing under the ligature exposing cervical vertebrae.
- IV) There are maggots all over body.
- V) There is no injury in abdominal organs. Liver, spleen, kidney all are intact.
- VI) A cloth was tightly wrapped around the neck horizontally.

In his opinion the cause of death could not be ascertained properly due to decomposition of the body but it may be due to strangulation and viscera

was preserved to send to FSL for elucidating the cause of death. He proved the post mortem report as Ext. 6. Defence declined to cross examine the Medical Officer.

14. As the Medical Officer opined that from the injuries sustained by the deceased, the cause of death could not be ascertained, hence, viscera was preserved. The viscera was sent to FSL, Guwahati. In this respect Bimal Konwar, Sr. Scientific Officer, Toxicology Division Directorate of Forensic Science, Assam, Kahilipara, Guwahati was examined as PW 13. He deposed that on 27.08.2013 he received the parcel sent by Addl. Superintendent of Police, Karbi Anglong, Diphu in connection with Borpothar police station case no. 51/13 u/s 392/302/34 of IPC containing stomach with its contents, portion of liver and right kidney but on examination it gave negative tests for poison. He proved the report as Ext. 10.

Through the medical findings reveals that cause of death could not be ascertained due to decomposed body and FSL report gave negative test for poison but there is indication of strangulation and a cloth was found wrapped around the neck.

15. Bearing in mind the injuries sustained by the deceased, we may now turn to the evidence of other witnesses which is described herein below:

Informant Mannas Ali deposing as PW 1 stated that the Bolero vehicle bearing No. AS 12E 5658 owned by his father was given on monthly contract to the deceased Khaliluddin. On 04.07.2013 at around 8 AM accused Arju and Papu @ Imtiaz hired his father's said Bolero vehicle from Khaliluddin and proceeded to Golaghat with the vehicle driven by Khaliluddin to bring articles but since then the Bolero pickup did not return. On calling, he found the cell phone of Khaliluddin in switched off mode. Hence, he lodged the FIR (Ext 1). After five days, the dead body of Khaliluddin was recovered at Bokajan Deopani Tea Garden but did not find the vehicle. He further stated that police seized the registration certificate and other documents of the vehicle vide seizure list Ext. 2. He stated that Papu @ Imtiaz and Arju had killed the deceased Khaliluddin.

During cross he stated that as per contract Khaliluddin used to drive his father's vehicle on condition that Khaliluddin would pay the monthly instalments of the vehicle in addition to payment of some money out of the income of the vehicle. He stated that whenever Khaliluddin took the vehicle far

away, he used to inform him. On the day of incident also before leaving for Golaghat, Khaliluddin stopped the vehicle in front of his house and informed him about the hire, at that time two unknown persons were sitting in the Bolero vehicle but Khaliluddin did not tell him whose goods were to be carried from Golaghat. He further stated that he had seen Arju and Imtiaz for the first time when Khaliluddin parked the Bolero in front of his house. But admittedly in the FIR he mentioned that some unknown persons had taken the driver Khaliluddin. Hearing about recovery of the dead body of Khaliluddin, he along with deceased's brother went there and noticed cut injury on the body of Khaliluddin. He further stated that he came to know the name of the accused persons from the wife of Khaliluddin. He denied the suggestion that the fact of hiring the vehicle by Arju and Imtiaz @ Papu was not stated before the Investigating Officer.

16. The wife of the deceased i.e. Momi Ahmed who deposed as PW2 is the prime witness of the prosecution. She stated that on 03.07.2013 the three accused persons came to her house amongst whom Arju entered inside the house and others two were standing outside. Arju told her that they sought for their Bolero vehicle on hire to bring furniture from Golaghat and also asked to share the phone number of her husband. Accordingly, she gave the cell phone number of her husband and thereafter the accused persons left her house. In the evening at around 6.00 PM Arju called her husband. On the next day i.e. on 04.07.2013, all the three accused again came to her house at around 7.30 AM and accompanied with her husband left her home by the vehicle informing her that they hired the vehicle to carry furniture from Golaghat. At around 10.30 AM her husband rang her and told her that he would return at 4 O'Clock. When he did not return in time, she several times tried to contact him over his cell phone but found the phone switched off. Thereafter, she went to the house of accused Arju but did not find him. She sought for the cell phone number of Arju from his mother but his mother did not share the number. Then she searched for Arju but failed. Later on, from her uncle she heard about a telecast in TV that one dead body had been recovered in a tea garden. Then she went to Borpathar PS and on 08.04.2013 saw the dead body of her husband at Diphu Hospital. On the next day villagers caught Riju @ Khairul Ahmed. In this respect she lodged the Ejahar (Ext. 3). She stated that all the accused persons committed murder to her husband.

During cross she stated that when her husband did not return, she informed Mannas Ali the owner of the vehicle and he lodged the FIR after two days. She stated that in Ext. 3 the FIR lodged by herself after recovery of the dead body, she mentioned the name of the three accused persons. She denied the suggestion that the fact of coming the accused persons to her house, asking her the phone number of her husband saying that they wanted to hire the vehicle driven by her husband to bring goods from Golaghat, the fact of calling her husband in the evening at 6.00 PM by Arju and the fact of taking her husband by all the three accused persons on 04.07.2013 at 7.30 AM with the vehicle were not stated before police in statement u/s 161 Cr.P.C.

17. PW 3 Saddam Hussain turned hostile. He heard that Khaliluddin went with the Bolero vehicle and thereafter his dead body was recovered. But, he did not know how Khaliluddin died.

18. PW 4 Saidul Islam also turned hostile. According to him deceased Khaliluddin went with the Bolero vehicle and thereafter he died. During cross by defence he stated that he did not know who hired the vehicle. Another hostile witness PW 5 Upen Bhuyan only stated that he knew nothing about the incident. As such the evidence of PW 3 to PW 5 appears to have no significance in the case.

19. PW 6 Abdul Razak is the elder brother of the deceased. He stated that on 04.07.2013 accused Riju, Papu and Arju hiring the Bolero pickup driven by his deceased brother proceeded towards Karbi Anglong, but since then the deceased did not return and on 08.07.2013 he came to know that a dead body was found lying in Deopani Tea Garden. Receiving the information, immediately he along with Mahiuddin, Sirajuddin and Guljar Hussain went there and identified the dead body in Civil Hospital, Diphu to be of his brother Khaliluddin. At that time accused Riju was absconding but the neighbours of Riju informed that Riju was hiding at his own house. Then on being informed, police apprehended accused Riju with assistance of local people. Thereafter accused Papu and Arju surrendered in the police station. He suspected that all the three accused persons had killed his brother.

During cross he stated that deceased Khaliluddin with his wife resided separately from his other brothers. He had not seen how Khaliluddin died. He came to know from the wife of Khaliluddin that on that day at 07.30 AM Khaliluddin went out from house with the Bolero vehicle and later on when he did not return and found his cell phone switched off, they searched for him. He had not seen who hired the vehicle. He denied the suggestion that the fact of hiring the vehicle by the three accused persons to go to Karbi Anglong to carry articles was not stated before the Investigating Officer.

20. PW 7 Muktul Hussain also deposed in the same line that the accused persons hired the vehicle driven by the deceased Khalil to go to Borpothar. Later on, from TV news he came to know that an unidentified body was found lying near Deopani Tea Estate. After post mortem examination the dead body was handed over to the family of the deceased. He heard from the family members of the deceased that the accused persons had killed the deceased.

In cross examination he stated that he was absent at the time of negotiation to hire the vehicle. He denied the suggestion that before the Investigating Officer he did not state that the accused persons hired the vehicle to go to Borpathar.

21. Turning to the evidence of PW 8 Abdul Jalil one of the elder brother of the deceased, I find that according to him accused Arju and one Babujan hired the vehicle driven by his deceased brother Khaliluddin to go to Borpothar but till three days he did not return. Later on, from TV knowing that an unidentified body was lying near Deopani Tea Estate, he along with Mohiuddin, Guljar Hussain, Basarat Ali, Mannas Ali, Aijul Hoque, Chand Miya and others went to Borpathar Police Station and identified the dead body of his brother at Civil Hospital, Diphu. Thereafter he lodged the FIR (Ext.4).

During cross he stated that after three days of the incident, from the wife of Khaliluddin he came to know that accused Arju and Babujan hired the vehicle from his deceased brother and also admitted that the fact of reporting by wife of the deceased that Arju and Babujan hired the vehicle was not stated before police. He stated that the FIR lodged by him was written by police but the same was not read over to him. He knew Arju prior to the incident.

22. PW 9 Mahiuddin another elder brother of the deceased stated that accused Arju, Riju and Babujan hired the vehicle driven by the deceased Khalil to go to Golaghat and later on, his dead body was recovered near Deopani Tea Estate. During cross he stated that he came to know about the incident from the wife of the deceased. He stated that on the day of incident in the morning Khalil went out with his vehicle and in the evening his wife informed them that she failed to contact Khalil. He came to know from other persons about hiring the vehicle by Arju, Babujan and Riju.

23. PW 10 Arun Paul deposed that on the day of incident at around 6.30/7.00 AM when he went to Deopani Tower to bring labour, the labourers informed him about some bad smell. Then, he along with the said labourers went to the nearby jungle and noticed one unknown dead body. Accordingly, they informed Borpothar Police Station on which police came to the place of occurrence and seized one blue colour hawai chappal lying near the dead body vide seizure list Ext. 5.

24. PW 12 Subhas Chandra Baishya the Investigating Officer deposed that on 07.07.2013 on receipt of an FIR (Ext.1) from PW1, he was entrusted to investigate the case. He recorded the statement of the informant Mannas Ali and other witnesses, visited the place of occurrence i.e. Parowa Gaon and prepared the sketch map of the place of occurrence vide Ext. 7. During investigation he came to know that on 04.07.2013 the Bolero pick up bearing no. AS 12E 5658 owned by Sahar Ali was taken to Golaghat for carrying goods from Golaghat to Tezpur but the vehicle did not return and the cell phone of the driver of the vehicle namely Khaliluddin also found switched off. He arrested accused Khairul Ahmed, Imtiaz Ahmed, Arju Islam and Kafiluddin. Later on, the dead body of the deceased was found on 08.07.2013 under Borpothar PS of District Karbi Anglong. He seized the documents of the vehicle from its owner vide seizure list Ext. 2. He also proved the forwarding report of accused Arju Islam, Kafiluddin and Imtiaz Ahmed as Ext. 8 and for accused Khairul Ahmed @Riju as Ext. 9.

During cross he stated that the accused persons were arrested on suspicion. He stated that the vehicle was hired by a person of Karbi Anglong which was known to the accused persons. He suspected that the accused persons

conspired the crime. He further stated that under the signature of the informant in Ext. 1 the FIR, there is over writing on the date by using whitener without placing any initial. He confirmed that PW1 did not state before him about hiring the vehicle by accused Arju and Papu @ Imtiaz, rather stated that from the deceased's wife came to know that on 02.07.2013 Arju came to her house to negotiate to hire the vehicle. He further stated that PW 2 Momi Ahmed stated before him that on 04.07.2013 some unknown persons had taken the vehicle on hire to carry furniture from Golaghat but she did not state regarding involvement of three accused persons since coming to her house on 03.07.2013 till leaving her house with the deceased by the vehicle on 04.07.2013 morning. He also confirmed that PW 7 Muktul Hussain did not state before him that the accused persons had hired the vehicle.

25. PW 14 Pradip Goswami the then ASI of Borpothar PS deposed that on 08.07.2013 at around 08.35 AM one local resident namely Arun Paul (PW 10) informed at Borpothar police station that he noticed a dead body of a male person in jungle near Deopani Tea Estate on which GD Entry No. 146 dated 08.07.2013 was entered (Ext. 11) and the OC directed him to locate the place where the dead body was found. Accordingly, he went there along with UBC B Talukdar and found a male dead body. He took photo graph of the same. At that place he found a slipper of left foot and seized the same vide seizure list Ext. 5. He proved the seized slipper as Material Ext. 1. He took steps for conducting inquest (Ext. 12) upon the dead body through Executive Magistrate Sri Satish Thakuria. Then he sent the dead body for post-mortem examination. He proved the dead body challan as Ext. 13. Thereafter, on 09.07.2013 Abdul Jalil lodged an FIR (Ext. 4) alleging that on 04.07.2013 Babujan and Arju hiring the Bolero Pick Up driven by his brother Khaliluddin came to Golaghat and they killing Khaliluddin had stolen the vehicle. Then, he recorded the statement of the informant. He further stated that regarding the incident, an FIR was already lodged at Mahabhairab Out Post and four persons namely, Imtiaz Ahmed @ Papu, Arju Islam, Kapilludin and Khairul Ahmed @ Riju were arrested in connection with the case. Hence, the FIR (Ext. 4) filed by Abdul Jalil was transferred to Mahabhairab Out Post as the case falls under jurisdiction of Tezpur Police Station.

During cross he stated that the dead body was recovered from the jungle area and he drew the sketch map of the place from where the dead body was recovered. He stated that as the seized slipper was found near the dead body, hence they suspected that it belonged to the deceased. He stated that in statement recorded by him, Abdul Jalil did not mention from whom he came to know that Arju and Babujan hired the vehicle.

26. PW 15 Sri Pradip Kr Baruah another Investigating Officer deposed that on transfer of earlier IO (PW12), he was entrusted to complete the investigation of the case. During investigation he obtained the subsidiary case diary from Borpothar Police Station, collected the FSL report and finding sufficient materials, submitted charge-sheet against the accused persons u/s 406/420/120B/302/34 IPC vide Ext. 15. He also proved the statement of hostile witness PW 3 Saddam Hussain and PW 4 Saidul Islam made before the Investigating Officer. During cross he stated that the present FIR was registered on missing entry.

27. The prosecution case centres around the death of Khaliluddin, the driver of the Bolero Pickup bearing registration no. AS-12E-5658 and theft of the vehicle. There is no eye witness to the alleged incident of murder of khaliluddin. The entire case rests on circumstantial evidence. It is well settled by a catena of decisions of the Apex Court that where the case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from these circumstances. Circumstantial evidence can be relied on when there is complete chain of events without any missing link and all the circumstances conclusively point only at the accused. In **Namala Subha Rao vs State of Andhra Pradesh** reported in **2007 Cr.L.J. 475**, the Apex Court held that when a case rests upon circumstantial evidence, the following conditions must be established:

“(i) concerned circumstances must (not may) be fully established ;

- (ii) facts as established have to be consistent with the hypothesis of guilt of the accused so much so that such hypothesis would remain unexplainable;
- (iii) circumstances have to be conclusive in nature;
- (iv) those circumstances would be incapable of any hypothesis other than guilt of the accused; and
- (v) in the chain of such circumstances there would be no missing link so as to suggest the probability of innocence of the accused;”

In the light of above principles, let us appreciate the evidence on record on the circumstances laid by the prosecution.

In this case, the prosecution firstly has set up the case on last seen together of the three accused persons and the deceased Khaliluddin. According to PW 2 the wife of the deceased, on 03.07.2013 the three accused persons came to her house. Amongst them, accused Arju entering into her house told her that they sought for the vehicle, when the other two accused persons were standing outside the house. When she asked about the work, Arju told that furniture was to be brought from Golaghat by their vehicle. Then, as sought by accused Arju, she shared her husband's cell phone number. She further stated that on that day in the evening at 6 O'clock accused Arju called her husband Khaliluddin and on next day i.e. on 04.07.2013 all the three accused persons came to her house at around 07.30 AM and took her husband with their vehicle. At the time of leaving home, her husband Khaliluddin informed her that the accused had hired the vehicle to carry furniture from Golaghat. Thereafter at about 10.30 AM Khaliluddin rang her and said that he will return at about 4 O'clock. But, since then he did not return and found his cell phone switched off. On 08.07.2013 the dead body of her husband was recovered near Deopani T.E. Her evidence reflects that on the previous day of the incident i.e. on 03.07.2013 the accused persons came to her house to hire the vehicle and on 04.07.2013 the three accused persons along with Khaliluddin left her house by the Bolero Pickup to go to Golaghat and thereafter he remained untraced. The most material facts that on 03-07-2013 the three accused persons came to her house to hire the vehicle and in the evening accused Arju called her husband and on 04.07.2013 morning the deceased went with the accused persons by the vehicle to Golaghat to carry furniture were not stated by PW 2 before the Investigating Officer in statement u/s 161 Cr.P.C., rather in

statement u/s 161 Cr.P.C., she stated that on 04.07.2013 some unknown persons had taken the vehicle on hire to bring furniture from Golaghat but she cannot say or saw who were the persons who had taken the vehicle which was confirmed by the Investigating Officer (PW 12). If she knew well that the accused persons hired the vehicle and on 04.07.2013 in her presence accused persons in company with the deceased proceeded for Golaghat with the vehicle, since when the deceased was missing and later on, his dead body was recovered, then such vital facts should have been disclosed at the earliest opportunity i.e. in statement u/s 161 Cr.P.C. Moreover, she certainly disclosed such material facts to the owner of the vehicle. But PW 1 Mannas Ali, the son of the registered owner, implicate none in the FIR (Ext.1) lodged after three days, rather mentioned that two unknown persons hiring the vehicle driven by the deceased went to Golaghat. Failure to disclose such fact in the FIR raises serious doubt about the veracity of prosecution story. In deposition PW 1 also stated that on 04-07-2013 in the morning Arju and Papu @ Imtiaz with his father's vehicle went to Golaghat on hire to bring goods but on the same breath in cross examination he stated that before leaving for Golaghat, Khaliluddin stopped the vehicle in front of his house and informed him about the hire when two unknown persons were sitting in the vehicle. His evidence clearly indicates that till filing the FIR on 07-07-2013, they did not know the name of the persons who hired the vehicle.

28. Now coming to the evidence of other witnesses, it reveals that one material witness PW 6 Abdul Razak the elder brother of the deceased though in evidence stated that on 04.07.2013 the three accused persons hired the Bolero pick up vehicle driven by his brother Khaliluddin and proceeded towards Karbi Anglong but this material particular that the accused persons hired the vehicle and along with Khaliluddin left for Karbi Anglong by the vehicle was not stated before the Investigating Officer. His evidence also reveals that knowing about the recovery of a dead body of unknown person near Deopani T.E., he along with others went to Borpathar PS and identified the dead body to be of his brother Khaliluddin at Diphu Civil Hospital. After recovery of the dead body, he lodged an FIR before the O.C. Borpathar PS (Ext. 4) alleging committing murder of his brother by accused Arju and one Babujan. Admittedly police recorded his statement after performing Janaja of his deceased brother. So, when he lodged

the FIR alleging involvement of Arju with Babujan, non-implicating their name in statement u/s 161 Cr.P.C. raises serious doubt. So far the evidence of PW 7 Muktul Hussain is concerned, accused persons hired the vehicle driven by deceased Khaliluddin to go to Borpothar and later on, the dead body of the deceased was recovered on 08.07.2013 and he heard from the family members of the deceased that the accused persons committed murder to the deceased but he also did not mention the fact of hiring the vehicle by the accused persons or committing murder of the deceased by the accused persons in statement u/s 161 Cr.P.C. Another vital witness PW 8 Abdul Jalil the elder brother of the deceased categorically stated that from the wife of the deceased he heard that accused Arju and one Babujan had taken the vehicle of the deceased but admittedly he also did not mention these facts before police. The evidence of PW 1, PW 2 and PW 6 to PW 8 is impeached by defence in cross examination by eliciting material contradictions with their statement under section 161 Cr.P.C., rendering their evidence not believable. They all improved version during trial.

29. In the case, on perusal of the evidence of PW2 the deceased's wife, it also appears that she clearly mentioned the name of Arju and so the accused Arju was well known to the deceased's wife. According to PW 8 the elder brother of the deceased, Arju and Babujan hired the vehicle and he knew accused Arju prior to the incident. So far the evidence of another elder brother PW 6 is concerned, they knew all the three accused persons prior to the incident. In such circumstances if Arju or the three accused persons hired the vehicle and on the day of incident they went out by the vehicle along with her husband, it raises doubt as to why they did not mention the name of the accused before the Investigating Officer or did not inform PW 1 the son of the owner of the vehicle. In deposition PW 1 did not implicate Khairul Ahmed @ Riju. Further according to PW 9 Mahiuddin another elder brother of the deceased, from the deceased's wife he came to know that accused Arju, Riju and Babujan hired the vehicle driven by the deceased to go to Golaghat and after 3/4 days the dead body was recovered, but, in cross-examination he stated that he came to know about hiring the vehicle by Arju, Riju and Babujan from other persons. He did not state who were the persons from whom he heard about hiring the vehicle by the above mentioned persons. Implication of one Babujan by PW 8 and PW 9 in hiring the vehicle and

killing the deceased was not supported by PW 2 who was the best person to know who hired the vehicle.

30. Further in this case, regarding the incident three FIR were lodged. At first Mannas Ali the son of the owner of the Bolero pick up vehicle bearing no. AS 12E 5658 lodged the FIR on 07.07.2013 (Ext. 1) when the deceased did not return along with the vehicle. The said FIR was lodged before recovery of the dead body. After recovery of the dead body, deceased's elder brother Abdul Jalil (PW8) lodged an FIR before OC Borpothar PS which was registered as Borpathar PS Case no. 51/2013 u/s 539/302/34 of IPC (Ext. 4) which was later on transferred to Mahabhairab Out Post having jurisdiction and amalgamated with the case registered on the basis of first FIR. Record also reveals that another FIR was proved by prosecution as Ext. 3 lodged by deceased's wife Momi Ahmed PW 2 with the Incharge, Mahabhoirab Out Post alleging that all the three accused persons hired the Bolero bearing registration No. AS-12-E-5656 to Golaghat and thereafter killed the deceased near Deopani T.E. It is also mentioned in the said FIR that accused Riju Ahmed was hiding in his house at Parua and on being informed the matter, police along with the local people apprehended the accused Riju and handed over to police. However Ext. 3 was not registered as with regard to the incident Tezpur PS Case No. 844/13 was already registered. Ext. 4 which was lodged on 09.07.2013 after recovery of the dead body by elder brother of the deceased implicated accused Arju and one Babujan whereas in Ext. 3 lodged on very next day i.e. on 10.07.2013 by the wife of the deceased implicated accused Arju along with Papu and Riju Ahmed. Both Ext. 3 and Ext. 4 were lodged by the same family i.e. wife and brother of the deceased respectively. But they implicated different persons. On the other hand the evidence of the Investigating Officer (PW12) clearly indicates that he arrested accused persons on suspicion. Moreover, according to the I.O., vehicle was hired by a person from Karbi Anglong which fact was well known to the present accused persons, hence, on suspicion that the accused persons conspired the crime, police arrested them. The Investigating Officer's evidence clearly indicates that not by the present accused persons as alleged by the deceased's wife but someone of Karbi Anglong hired the vehicle. In my opinion, even if it is accepted that the accused persons aware of the fact that the vehicle was hired by one

person from Karbi Anglong, in absence of any iota of evidence regarding involvement of the present accused persons, it cannot be held that the present accused persons conspired in committing the offence.

31. Scrutiny of the evidence of PW 1, PW 2, PW 6 to PW 9 and the Investigating Officer, it transpires that the following facts are established:

(i) That the vehicle bearing No. AS-12-E-5658 belonged to Sahar Ali, the father of PW 1 Mannas Ali.

(ii) The deceased Khaliluddin took the vehicle on contract from the owner that he would pay the monthly instalments of the vehicle in addition to payment of some money out of the income of the vehicle and he was driving the said vehicle on 04-03-2013.

(iii) On 04-07-2013 the vehicle was taken away with the deceased driver by some persons and since then the vehicle along with the driver was missing.

(iv) On 08-07-2013, the dead body of Khaliluddin was found lying near Deopani Tea Estate.

(v) The vehicle not recovered.

32. In this case except the deceased's wife there is no evidence that anyone knew about hiring of the vehicle by anybody. Other witnesses were not present at the time of hiring the vehicle, they heard from the deceased's wife but, she herself did not implicate any of the accused in statement u/s 161 Cr.P.C. recorded after filing the FIR i.e. after three days. Later on, she improved her version. On careful perusal of the evidence of PW2 the most vital witness as discussed above, I am inclined to hold that her evidence is not free from doubt. It is doubtful as to whether on the fateful day the deceased had gone with the accused persons.

33. Regarding hiring the vehicle by the accused persons and last seen together the deceased with the accused persons on 04-03-2013, no consistency is found in the evidence PWs as discussed above. The contradictions of PW1, PW 2, and PW 6 to PW 8 with their statement under section 161 Cr.P.C. being material, their evidence cannot be relied, consequently the identity of the persons, who, in fact hired the Bolero Pick up of PW 1 to carry furniture from Golaghat has become

clouded. In the above back drop, the evidence of PW2, the most vital witness had gone out. This negates the proposition of last seen theory. In such circumstances to hold the accused persons as authors of the crime becomes impossible. Furthermore, though the last seen theory comes into play where the time gap between the point of time when the accused persons and the deceased were last seen alive and the deceased found dead is so small that possibility of any person other than the accused being the perpetrator of the crime became impossible, but in the instant case, the basic fact that the accused persons and the deceased were last seen together, was not proved and I find nothing substantive to hold that the accused persons were involved in the alleged offence. Except the circumstance of last seen, there is no any other circumstance to link any of the accused with the alleged murder of the deceased and robbery of the vehicle. The evidence of the Investigating Officer (PW12) clearly reveals that the accused persons arrested on suspicion only.

34. In view of the attending facts and circumstances and the evidence rendered by the prosecution witnesses, I find that the prosecution failed to adduce the substantive and cogent evidence inspiring confidence of this Court. The circumstances relied by the prosecution in this case are neither established nor consistent with the hypothesis of the guilt of the accused persons in the alleged offences and as such they cannot be held guilty.

35. In view of what has been discussed above, I am inclined to hold that the prosecution failed to prove the case beyond all reasonable doubt. Accordingly, accused persons Khairul Ahmed @ Riju, Imtiaz Ahmed @ Papu and Arju Islam are acquitted from the charge u/s 392/414/120B/302/34 IPC on benefit of doubt and set them at liberty forthwith. Their bail bonds shall extended till next six months in view of section 437 A of Cr.PC.

The seized chappal be destroyed in due course and the seized documents be returned to the registered owner to whom zimma was already given.

36. In the case, the deceased has his wife Momi Ahmed. Case is recommended to District Legal Services Authority, Sonitpur, Tezpur for compensation to the wife of the deceased as per provision of Section 357 A of Cr.P.C.

Send a copy of the judgment to the District Legal Services Authority, Sonitpur, Tezpur. Also send a copy of the Judgment to the District Magistrate, Sonitpur, Tezpur as per provision of section 365 Cr.P.C.

37. Judgment is pronounced and delivered in open court under the Seal and signature of this Court on the **28th day of July, 2020.**

(I. Barman)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me

(I. Barman)
SESSIONS JUDGE,
SONITPUR :: TEZPUR.

APPENDIX

Prosecution Witness

1.	Prosecution Witness No.1	:-	Mannas Ali,
2.	Prosecution Witness No.2	:-	Momi Ahmed,
3.	Prosecution Witness No.3	:-	Saddam Hussain,
4.	Prosecution Witness No.4	:-	Saidul Islam,
5.	Prosecution Witness No.5	:-	Upen Bhuyan,
6.	Prosecution Witness No.6	:-	Abdul Razak,
7.	Prosecution Witness No.7	:-	Muktul Hussain,
8.	Prosecution Witness No.8	:-	Abdul Jalil,
9.	Prosecution Witness No.9	:-	Mahiuddin,
10.	Prosecution Witness No.10	:-	Arun Paul,
11.	Prosecution Witness No.11	:-	Dr. Sanjib Kr. Borthakur(M.O.)
12.	Prosecution Witness No.12	:-	Subhas Chandra Baishya (I.O.)
13.	Prosecution Witness No.13	:-	Bimal Konwar (Scientific Officer)
14.	Prosecution Witness No.14	:-	Pradip Goswami (I.O.)
15.	Prosecution Witness No.15	:-	Pradip Kr Baruah(I.O.)

EXHIBITS

1.	Ext. 1	:-	FIR by Mannas Ali
2.	Ext. 2 and 5	:-	Seizure Lists
3.	Ext. 3	:-	FIR by Momi Ahmed
4.	Ext. 4	:-	FIR by Abdul Jalil
5.	Ext. 6	:-	Post-mortem report
6.	Ext. 7	:-	Sketch Map
7.	Ext. 8 and 9	:-	Forwarding Reports
8.	Ext. 10	:-	FSL report
9.	Ext. 11	:-	GD Entry no. 146 dated 08.07.2013
10.	Ext. 12	:-	Inquest report
11.	Ext. 13	:-	Dead Body Challan
12.	Ext. 14	:-	Prayer to transfer the case from Borpathar PS to Tezpur PS
13.	Ext. 15	:-	Charge-Sheet

Material Exhibit.

1.	M. Ext. 1	:-	Seized slipper.
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(I.Barman)
SESSIONS JUDGE
SONITPUR: TEZPUR