

FORMA

IN THE COURT OF SESSIONS JUDGE, SONITPUR,
TEZPUR

Present: **Sri Chatra Bhukhan Gogoi, AJS, Sessions
Judge.**

[Date of the Judgment]
01-09-2022

[Sessions Case No 222 /2017]

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM OR Musstt. Rahima Khatun.
REPRESENTED BY	Learned Public Prosecutor Mr. Munin Chandra Baruah.
ACCUSED PERSONS	1. Md. Kochumuddin Ali, 2. Md. Akbor Ali, 3. Md. Taleb Ali All of them are S/O- Lt. Keyamot Ali. 4. Md. Lal Miah @ Gara, S/o- Lt. Mokkal Ali. All are resident of Vill- Bochasimolu No. 1, P.S. Dhekiajuli, Dist- Sonitpur.
REPRESENTED BY	1) Sri S.E. Alam, Advocate.

FORM B

Date of Offence	22-03-2014
Date of FIR.	18-04-2014
Date of Charge-sheet	30-10-2014
Date of Framing of Charges	13-02-2018
Date of commencement of evidence	12-06-2019
Date on which judgment is reserved	18-08-2022
Date of the Judgment	01-09-2022
Date of the Sentencing Order, if any	

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
Business	Md. Taleb Ali	18-05-2014	19-08-2014	Section 302/201/34 IPC.	Acquitted	NIL	94 Days.
Cultivator	Md. Akbor Ali	18-05-2014	19-08-2014	Section 302/201/34 IPC.	Acquitted	NIL	94 Days.
Labourer	Md. Kochumuddin Ali @Achimuddin	18-05-2014	19-08-2014	Section 302/201/34 IPC.	Acquitted	NIL	94 Days.
Labourer	Lal Miah @ Gara	18-05-2014	19-08-2014	Section 302/201/34 IPC.	Acquitted	NIL	94 Days.

Form C

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Md. Abdul Hasen	Other Witness.
PW2	Musstt. Rahima Khatun	Other Witness (Informant).
PW3	Sri Babulal Das	Other Witness.
PW4	Sri Subhash Das	Other Witness.
PW5	Sri Bale Swargiary	Other Witness.
PW6	Sri Dimeswar Boro	Other Witness.
PW7	Sri Dharmeswar Boro	Seizure Witness.
PW8	Noor Hussain	Other Witness.
PW9	Omar Faruk	Police Witness (I.O.).

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Ext -1/ PW-6	Statement u/s 164 Cr.P.C. of Dimbeswar Boro.
2	Ext-2/ PW-7	Seizure Memo.
3	Ext-3/ PW-7	Another Seizure Memo.
4	Ext-4/ PW-9	Sketch-Map.
5	Ext-5/ PW-9	Charge-Sheet.

B. Defence:

Sr. No	Exhibit Number	Description
NIL	NIL	Nil

C. Court Exhibits

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects:

Sr. No	Material Object Number	Description
NIL	NIL	NIL

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 222 of 2017

Under Sections 302/201/34 of I.P.C
(Arising out of G. R Case No. 891 of 2014)

State of Assam

-Vs-

1. Taleb Ali
2. Akbar Ali
3. Kochumuddin @ Washinmuddin and
4. Lal Miah @ Gada

... Accused Persons.

Present: **Sri Chatra Bhukhan Gogoi,
Sessions Judge,
Sonitpur :Sonitpur.**

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

For the accused persons : Sri S.E. Alam, Advocate.

Date of Argument : **18-08-2022.**

Date of Judgment : **01-09-2022.**

JUDGMENT

1. The brief fact of the prosecution case is that on 17-04-2014 one Rahima Khatun lodged an FIR before Superintendent of Police, Tezpur alleging inter alia that on 19-03-2014 her son Jeherul Islam went for fishing and on 22-03-2014 while he was fishing accused persons named in the FIR all of a sudden attacked her son and after committing murder

kept his dead body hiding. The eye witnesses Babul Das & Suvash Das informed the villagers about the same but they could not trace out the dead body. Regarding the matter, information was given to Borsola Out Post and Thelamara PS but having got no response, the present information has been lodged for taking action in accordance with law.

2. Following the information, O/C Dhekiajuli Police station registered a case being Dhekiajuli PS case No. 221/2014 u/s 143/302/201 IPC and took up the investigation.

3. Accordingly, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses u/s 161 Cr.P.C., seized two pieces of rope made of jute size, 140 ft & 130 ft length & diameter 50 mm from the place of occurrence vide Seizure List Ext. 2 and also seized one net approximate 180 ft long and breadth approximate 20 ft, also seized fishing net approximate 500 ft long and breadth approximate 40 ft vide Seizure List Ext. 3, drew the sketch map (Ext. 4), but police could not trace out the dead body. However, police arrested the accused persons and accordingly, on conclusion of investigation, having found prima-facie case, finally laid the charge-sheet (Ext. 5) against accused persons namely, Lal Miah, Kochumuddin, Akbor Ali & Taleb Ali u/s 302/201/34 IPC.

4. During the course of trial, when accused persons appeared in Court, the learned Addl. Chief Judicial Magistrate, Sonitpur, Tezpur, vide order dated 07-07-2017 committed the case record against accused persons to the Court of Sessions for trial after due compliance of Section 207 Cr.P.C.

5. Receiving the case record on committal, my learned predecessor registered a case being Sessions Case No. 222 of 2017 and transferred the case to the court of Addl. Sessions Judge, Sonitpur, Tezpur and thereafter, the then learned Addl. Sessions Judge, Sonitpur, Tezpur having heard the learned lawyers appearing for both sides and on

perusal the materials available on record, having found prima-facie case, framed charges against accused persons namely, Lal Miah, Kochumuddin, Akbor Ali & Taleb Ali u/s 302/201/34 IPC. The particulars of the offences on being read over and explained accused pleaded not guilty and claimed trial. In the meanwhile, prosecution was directed to summon the witnesses.

6. In the course of trial, the prosecution examined as many as 9 (nine) witnesses including informant and I.O. in order to substantiate the case against the accused persons.

7. Concluding prosecution evidence, accused were examined u/s 313 Cr.P.C. in which accused person denied the prosecution evidence as false and misleading. However, on being asked, accused person declined to adduce defence evidence.

8. **POINTS FOR DETERMINATION :**

i) "Whether on 22-03-2014 at village Teligaon under Thelamara PS, in furtherance of their common intention, accused persons committed murder intentionally causing the death of Johirul Islam and thereby committed offence punishable u/s 302/34 IPC as alleged ?"

ii) "Whether on same date and time accused persons in furtherance of their common intention, knowingly or having reason to believe that the offence of murder punishable with death and life has been committed, caused certain evidence connected with the said offence of murder to disappear or knowingly gave false information with intent to screen the offender from legal

punishment and thereby committed offence punishable u/s 201/34 IPC as alleged ?”

DISCUSSION, DECISION AND REASONS THEREOF:

9. I have heard the arduous argument of the learned lawyers appearing for both sides.

10. Contention of the learned counsel appearing for the State is that it is a case of heinous crime of committing murder of a young boy and his body could not be traced out. The crime has been committed by the accused persons in a most pre-planned manner so that the dead body could not be traced out in order to screen the punishment. Therefore, the nature of offence committed by the accused persons needs to be dealt with sternly to send a strong message to society and according to learned PP prosecution has been able to establish the case against the accused persons with credible and trustworthy evidence.

11. However, learned counsel appearing for the accused persons highly disputed the submission of learned PP contending inter alia that this is a case of no evidence at all. In the present case, the prosecution has miserably failed to bring home the guilt of the accused persons by way of adducing credible and trustworthy evidence. Prosecution even failed to collect any sort of scientific evidence in relation to the crime so as to punish the accused persons for the offences committed. None of the prosecution has been able to spell out the name of the accused persons who have committed the crime. The Investigating Officer even failed to trace out the dead body of deceased. The prosecution case as a whole remain under a cloud of doubt as the offence in question took place at night on the bank of river Brahmaputra and none had seen who had committed the alleged offence of murder. Therefore, learned counsel for accused persons assiduously contends that it is a fit case

where accused persons are entitled to the benefit of doubt and deserve to be acquitted forthwith.

12. Having heard the contention of the learned lawyers appearing for both sides and on careful consideration of the evidence of all the nine witnesses examined by the prosecution, it transpires that the contention advanced by the learned counsel appearing for the accused persons bears strength on the ground that none of the witnesses examined by prosecution have been able to spell out who the assailants were and under what circumstances the crime was committed and where the body of the deceased were thrown out. Admittedly, the crime in question took place at night on the bank of river Brahmaputra and after the alleged crime, the Investigating Officer in the course of investigation even failed to trace out the dead body of deceased.

13. PW1 Abdul Hasen, PW3 Babulal Das & PW4 Suvash Das have deposed in court that they do not know the accused persons present in court.

14. The evidence of PW2 Rahima Khatun who is the informant and mother of deceased reveals that about 5 (five) years back her son went to Brahmaputra River at Teliagaon for fishing and on the next day morning one Boluram visited her house and told her that her son had been picked up by Kochumuddin, Akbor Ali, Taleb Ali, Geda & 3/4 others and taken by boat and having got this information he along with one Nur Hussain, Ismail Ali, Joynal Abedin went to Teliagaon in search of the son of informant but having failed to trace out the dead body she lodged the FIR.

15. In her cross-examination, she stated that she did not state before police that "in the morning one Boluram visited her house and told her that her son had been picked up by Kochumuddin, Akbor Ali, Taleb Ali, Geda & 3/4 others and taken by boat".

16. PW3 Babulal Das stated that on the day of alleged incident while he along with others were fishing in the river Brahmaputra with net he heard noise and informed the village people and also went to the place from where noise were coming but found none there and came back and in that night he stayed in the house of one Bale and Bale had informed the mother of deceased. In his cross-examination, he stated that he did not know who raised the noise or alarm. It was a dark night. Suvash and he were fishing at that time but out of fear they ran away and informed the villagers that he heard a noise but could not identify who raised the said noise.

17. On close reading of the evidence of all the prosecution witnesses from PW1 to PW9, it transpires that there is absolutely no direct evidence against any of the accused persons showing their complicity with the alleged offence of murder. The alleged murder in question took place at night at the bank of river Brahmaputra. The persons who have been fishing in the river Brahmaputra at the relevant time have also failed to identify the name/names of the persons who had committed the heinous crime of murder. During the course of investigation, the I.O. has miserably failed to collect any piece of direct credible as well as any scientific evidence. Nothing have been recovered/ seized in connection with the offence except two fishing net & one rope vide Ext. 2 & Ext. 3 but it is also not established whose ropes & nets it were.

18. The whole case of the prosecution is based on surmises and assumptions. The prosecution failed to exhibit the FIR. The original FIR could not be found with the case record. Merely because accused have been arrested by police after the incident, in the absence of any credible and trustworthy evidence adduced by prosecution against any of the accused, no conviction can be sustained on the basis of mere surmises and conjectures.

19. The more heinous the crime the more credible and trustworthy evidence is required for sustaining conviction but, in the present case, very unfortunately the prosecution could not collect any direct or any circumstantial evidence so as to hold the accused persons guilty for the offence of murder with their common intention. The very presence of the accused persons on the place of occurrence and the manner in which the crime was committed and exact time etc. as well as the instruments used in the crime are all remain under the cloud of doubt as no evidence to this effect has been adduced by the prosecution. The evidence of I.O. shows that the investigation was absolutely casual and perfunctory. No sincere and honest effort has been made to collect any scientific evidence not to speak of tracing out the dead body of the deceased.

20. Moreover, there is absolutely no evidence to show that it were the accused persons who caused disappearance of the evidence of the crime of murder by doing this and that act with the intention to screen them from legal punishment. In the absence of any such evidence emerged in the mouth of prosecution witnesses, no conviction can be sustained u/s 201/34 IPC as well.

21. Therefore, after dispassionate examination of the evidence on record, this court has no option but to hold the view that the prosecution, in the present case, has miserably failed to bring home the guilt of the accused persons for sustaining conviction for the offences u/s 302/201/34 IPC.

22. In the result, the accused persons namely, Lal Miah, Kochumuddin, Akbor Ali & Taleb Ali are acquitted from the offences u/s 302/201/34 IPC on the ground of total lack of evidence and set them at liberty forthwith.

23. Their bail bonds are however, extended till next six months in view of section 437(A) of Cr.P.C.

- 24.** Send back the GR case to the learned committal court.
- 25.** Let a copy of the judgment be forwarded to the learned District Magistrate, Sonitpur as provided in section 365 Cr.P.C.
- 26.** Judgement is pronounced and delivered in open court under the Hand and Seal of this Court on this **01st day of September, 2022.**

(C.B.Gogoi)
Sessions Judge,
Sonitpur, Tezpur.

Dictated and Corrected by me

(C.B. Gogoi)
Sessions Judge
Sonipur, Tezpur