

**IN THE COURT OF SESSIONS JUDGE::::BAKSA::::::MUSHALPUR**

Present: Mr. A. Rahman, L.L.M, AJS.

Date of judgment: 27.06.2022

**SESSIONS CASE NO. 72/18**

u/s 302/34 IPC

FIR No. 69/09, Barbari P.S, Baksa

Complainant : **State**  
Represented by : Mr. R. Chetry,  
Learned Public Prosecutor, Baksa.

Accused : **A1- Ganesh Daimary, A2 Bidan Boro, A3 Ripon Boro, A4 Bijoy Boro, A5 Gabbar Boro, A6 Daukha Boro, A7 Sumit Boro, A8 Khongta Boro and A9 Ringkhang Boro.**  
Represented by : Mr. Tridip Sarma,  
Learned Advocate.

Date of offence	24.10.2009.
Date of FIR	24.10.2009.
Date of charge-sheet	30.11.2012
Date of framing charges	14.09.2015
Date of recording evidence	17.03.2016, 27.07.2016, 16.06.2022.
Date of recording S.D.	27.06.2022
Date of argument	27.06.2022
Date of judgment	27.06.2022

**ACCUSED DETAILS**

Rank of accused	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A1	Ganesh Daimary	28.12.2009	31.03.2010	302/34 IPC	Acquitted	Nil	Nil
A2	Bidan Boro	05.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A3	Ripon Boro	04.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A4	Bijoy Boro	04.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A5	Gabbar Boro	05.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A6	Daukha Boro	07.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A7	Sumit Boro	07.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A8	Khongta Boro	07.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days
A9	Ringkhang Boro	07.08.2015	13.11.2015	302/34 IPC	Acquitted	Nil	84 days

**JUDGMENT**

1. Prosecution case, pithily speaking is that one Rabin Deka of village-Roumari, lodged the written ejarah on 24.09.2009 with the Officer-in-charge of Barbari P.S to the effect that on the same day at about 6 am, a dead body of a Bodo woman aged about 50 to 60 years was lying on Bilpar Road of the

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village. Cut injuries on the body, hand and head on the dead body were prominent.

2. Based on the written ejehar, Barbari P.S Case No. 69/09 u/s 302 IPC was registered and criminal investigation was set into motion.

3. During the course of investigation, the dead body was identified to be of one Panchami Boro w/o- Lt. Faila Boro, village- Kalbari of Barama P.S by her nephew Bolen Chandra Boro, village-Kalbari. Thereafter, inquest on the dead body was held and the dead body was sent to SMK Civil Hospital, Nalbari for post mortem examination. During the course of investigation, I/O visited the place of occurrence, drew rough sketch map thereof, recorded the statement of the witnesses and collected the post mortem examination report of the deceased. Finding sufficient materials, I/O laid charge-sheet against the present accused persons showing them as absconders.

4. The case was committed by Smt. J. Das, Ld. Addl. CJM, Nalbari to the court of the Hon'ble Sessions Judge, Nalbari after complying the mandate of Section 207 Cr.PC. Upon receipt of the records of GR Case No. 272/09, Nalbari Sessions Case No. 112/15 was registered.

5. After scrutinizing the materials on case diary and upon hearing both sides, the Hon'ble Sessions Judge, Nalbari framed charge u/s 302/34 IPC against the accused persons. The charge so framed was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

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6. During the part-heard stage, the record of the case was received on transfer after creation of Baksa District Judiciary and the case has been re-numbered as Baksa Sessions Case No. 72/18.

7. To bring home the charges against the accused persons, prosecution examined altogether four witnesses including the Medical Officer and Investigating Police Officer. Besides, prosecution also relied upon the ejehar (FIR), inquest report, charge-sheet, post mortem examination report, etc.

8. Upon closure of the prosecution evidence, the accused persons were examined u/s 313 Cr.PC. The defence plea is of total denial of the prosecution allegation and the accused persons also declined to adduce defence evidence.

9. I have heard argument advanced by Mr. R. Chetry Ld. PP for the State as well as Mr. T. Sarma Ld. Counsel for the defence. Now the point falling for determination is as follows:

**POINT FOR DETERMINATION**

*Whether the accused persons in furtherance of their common intention committed murder of Smt. Panchami Boro w/o- Lt. Faila Boro at Bilpar Road of village-Roumari by intentionally causing her death and thereby committed an offence punishable u/s 302/34 IPC ?*

**DISCUSSION, DECISION AND REASONS THEREOF:**

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10. At the outset, let us scrutinize the evidence of the witnesses recorded during the trial.

11. PW1 Biren Boro deposed that he does not know deceased Panchami Boro but knows the accused persons. He does not know about the occurrence. This witness was declared as hostile by the prosecution.

12. Prosecution cross examined PW1 by putting suggestion that many boys including Daukha Boro of her village entered into the house of Krishna Boro. On the next day, Daukha told him that they assaulted Krishna's mother in law to death. On being asked, Daukha stated that he himself, Khongta Boro, Bidan Boro, Khaneswar Boro, Bakul Boro @ Ganesh were involved in the killing of Krishna's mother in law. He denied the suggestion.

13. During the cross-examination by the defence side, he stated that he himself did not see the occurrence and police never recorded his statement.

14. PW2 Rabin Deka is the Gaonbura of village-Roumari as well as the complainant of this case. He has deposed that about 6/7 years back, a dead body of a Bodo woman aged around 50/60 years was lying on the road of his village and accordingly, he went to Baganpara Police Outpost and informed the occurrence. Police made inquest on his dead body. He has confirmed that Exbt.1 is the ejehar lodged by him and Exbt.1(2) his signature. Exbt.2 is the inquest report and Exbt.2(1) is his signature. His cross-examination was declined.

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15. PW3 Dr. Nripendra Nath Dutta is the Medical Officer who conducted post mortem examination on the deceased Panchami Boro, aged-60 years, w/o- Lt. Faila Boro of village- Kalbari, P.S-Barama. The dead body was identified and escorted by UBC/23 Laba Kumar Swargiary, Balen Ch. Boro and Prakash Boro with reference to Barbari P.S Case No. 69/09 u/s 302 IPC.

On examination he found the followings-

**Injuries-**

- i) An obliquely placed abrasion of dark brown colour is situated over the forehead closed to the hair line on left forehead of size 3 cm x 5 cm.
- ii) Another abrasion is situated over the right eyebrow brown in colour of size 2 cm x 5 mm.
- iii) Another abrasion dark brown in colour obliquely placed is seen over the left maxilla of size 3 cm x 5 mm.
- iv) An ecchymosis is detected over the right maxilla of size 5 cm x 5 cm bluish in colour.
- v) An incised wound of size 3 cm x 5 mm x 1 cm is placed over the posterto lateral aspect of the right forearm on its upper 3<sup>rd</sup>.
- vi) Another incised wound is detected over posterior aspect of the mid arm on left side of size 3 cm x 5 mm x 5 mm.
- vii) Another incised wound is present over the posterolateral aspect of the lower third of the forearm of size 2 cm x 5 mm x 1 cm eyebrow edge.
- viii) Fracture of the left frontal bone with rupture of the muscles, membrane with collection of blood.
- ix) Multiple abrasions of varying size from 1 cm x 5 mm x 2 cm x 5 mm are detected over the back of chest.

There is also laceration over right frontal area with collection of blood

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over front brain.

The injuries are ante mortem in nature and are within 12 to 36 hours of occurrence. Wound No. i) to iv), viii) and ix) are caused by blunt object. Wound No. v) to vii) are caused by sharp weapon.

16. PW3 has opined that the cause of death is due to shock and haemorrhage as a result of injuries to brain and lung. He has confirmed that Exbt.3 is the post mortem report and Exbt. 3(1) is his signature. He has also proved that Exbt.3(2) is the signature of Joint Director of Health Services, Nalbari. He has also confirmed that Exbt.2 is the inquest report and Exbt.2(2) & Exbt.2(3) are his signatures. Cross examination of PW3 was declined by the defence side.

17. PW4 Moser Ali Ahmed is the second I/O of this case. He has testified inter alia that on 20.10.2012 while acting as S.I at Barbari P.S, Shri Kanak Chandra Das, the then Officer-in-charge of Barbari P.S handed over him the case diary of Barbari P.S Case No. 69/09 u/s 302/34 IPC. After going through the case diary, he found that former I/O almost completed the investigation and only post mortem report was left to be collected. He also found that accused persons remained absconding. Though he made several attempts to arrest the accused persons but could not succeed. So, he laid charge-sheet vide Exbt.4 against the accused persons Gabbar Boro, Bijoy Boro, Bidan Boro, Khongta Boro, Ripon Boro, Ringkhang Boro, Sumit Boro, Daukha Boro u/s 302 IPC showing them absconder. He has confirmed that Exbt.4(1) is his signature.

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18. He also testified that Rabin Deka lodged Exbt.1 ejehar on 24.10.2009. He has proved Exbt. 1(2) is the signature of Shri Janardhan Roy, the then Officer-in-charge of Barbari P.S.

19. S.I Janardhan Roy himself took up the investigation of the case and almost completed the investigation and post mortem examination report of the deceased was left to be collected. Exbt.5 is the sketch map prepared by S.I Janardhan Roy which is proved by PW4.

20. Through PW4, the prosecution has confronted that PW1 Biren Boro in his previous statement stated that arriving at his home, he saw many boys of his village including Laodang Boro, Gwmbwr Boro were entering into the house of his brother Krishna Boro.

21. Prosecution has also confirmed that PW4 in his previous statement before police stated that Laodang Boro disclosed to him that they had assaulted mother in law of Krishna and on being inquired, he disclosed Gwmbwr Boro, Khongta Boro, Bidan Boro, Maneswar Boro, Bakul Boro @ Ganesh, Daukha Boro assaulted Krishna's mother in law.

22. In cross-examination by the defence side, PW4 has made it clear that he has no personal knowledge as to what PW1 Biren Boro had stated before former I/O Janardhan Roy. He has denied the suggestion that the charge-sheet was laid against the accused persons without any incriminating evidence.



**APPRECIATION OF EVIDENCE**

23. From the medical evidence of PW3 and Exbt.3 post mortem report, it stands proved that victim Panchami Boro died as a result of shock and haemorrhage following multiple ante mortem injuries on several parts of her body including her head. Therefore, it is proved that the death of the victim was homicidal.

24. The defence side declined to cross examine PW3 and also did not challenge Exbt.3 post mortem report of the deceased. So, the murder of the victim stands proved.

25. ***Now the question remains who had inflicted the aforesaid injuries on the victim which resulted her death?***

26. There is no eye-witness to the occurrence of assault upon victim Panchami Boro. Even if it is assumed that the cross-examination part of PW1 at the instance of the prosecution is true, in that case also, without other corroborating and other cogent evidence, the involvement of the accused persons in the occurrence of assault leading to the death of the victim would not be proved.

27. It is well settled that the golden thread through the web of criminal jurisprudence is that the prosecution in order to hold the accused guilty of the offence, must prove beyond all reasonable doubt that the accused committed the offence and the burden cannot be shifted upon the defence.

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28. It is also well settled that mere suspicion howsoever grave, cannot take the place of proof. In the instant case, we find from the above discussion and analysis of the evidence that the prosecution has miserably failed to prove the involvement of the accused persons in the occurrence leading to the death of victim Panchami Boro. So, the accused persons stand acquitted on benefit of doubt.

29. The bail bonds are hereby extended for another six months in the spirit of Section 437-A Cr.PC.

30. Judgment is declared and delivered in the open court under my hand and seal of this court on this **27<sup>th</sup>** day of **June, 2022**.

Dictated and Corrected by me:

Mr. A. Rahman,  
Sessions Judge,  
Baksa, Mushalpur

Sessions Judge,  
Baksa, Mushalpur

**APPENDIX:**

**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW1	Biren Boro	Reported witness
PW2	Rabin Deka	Informant
PW3	Dr. Nripendra Nath Dutta	Medical witness
PW4	Mosher Ali Ahmed	Police witness

**B. Defence witnesses:**

NIL

**C. Court witnesses:**

NIL

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution Exhibits:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exbt.1	Ejehar
2.	Exbt.2	Inquest report
3.	Exbt.3	Post mortem report
4.	Exbt.4	Charge-sheet

**B. Defence Exhibits:**

NIL

**C. Court Exhibits:**

NIL

**D. Material Objects:**

NIL

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