



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

Present : Shri C. Das,  
Sessions Judge,  
Baksa, Mushalpur

( Committed on 25.8.09 by learned CJM,  
Nalbari in GR. Case No.239/2008 )

**JUDGEMENT IN SESSIONS CASE NO.245/2018**

u/s. 302 of IPC.

State

-versus-

Md. Sadulla Ali

..... Accused

Appearance : for the State : Mr. R. Chetry, PP, Baksa  
: for the accused : Mr. T.U. Ahmed, Advocate

Date of recording evidence : 6/9/10, 18/11/10, 31/10/11, 8/6/12, 19/5/14, 29/1/15,  
16/12/16, 10/3/17

Date of argument : 21/6/18, 5/7/18

Date of judgment : 17/7/18

**JUDGMENT**

1. The case of the prosecution briefly, can be stated thus that on 24/7/08, the informant Ms. Dolimon Begum lodged the FIR before the In-charge of Nagrijuli police outpost, alleging inter-alia that on 22/7/08, at about 3 pm., while her father Khadem Ali was working at his paddy field, the accused entered into verbal quarrel with him in connection with the boundary. The accused was also, working nearby paddy field. Suddenly, the accused inflicted a blow on the head of her father by means of a spade. As a result, her father fell down on the ground due to injury. The injured was immediately, shifted to Naukata hospital wherefrom he was sent to Guwahati for medical treatment. Subsequently, the injured succumbed to his injury.

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2. After receipt of the said FIR, the police registered the Tamulpur PS. Case No.125/08 and took up the process of the investigation. During the investigation, the I/O examined the informant along with other witnesses and visited the place of occurrence. On 26/7/08, the injured died at Gauhati Medical College & Hospital. The post-mortem examination of the dead body of the victim was conducted. At the end of the investigation, the I/O having found a prima-facie case well established, submitted the charge-sheet against the accused to stand trial in the court.

3. When the accused appeared in the court in response to issue of process, the relevant copy of the case as required u/s 207 CrPC., was furnished to him immediately. Since the offence being triable by the court of sessions, learned Chief Judicial Magistrate, Nalbari committed the case to the Sessions Court for its trial. Accordingly, a separate sessions case was registered and trial was initiated against the accused.

4. After hearing of the parties and on perusal of the material on record, the charge u/s 302 IPC was framed against the accused. The charge so framed, was readover and explained to the accused who pleaded not guilty and claimed to be tried.

5. The prosecution during the course of trial, examined as many as, 7(seven) witnesses including the I/O and M/O to support its case. The accused in his statement recorded u/s 313 CrPC., denied all accusations appeared against him in the evidence. The accused however, declined to adduce any evidence in defence. The argument of both sides was heard at length.

**POINT FOR DETERMINATION :**

6. Whether on 22/7/08 at about 3 pm., at No.2 Dongargaon, the accused committed murder by causing death of Khadem Ali with hitting by a spade ;

**DECISION AND REASON THEREFORE :**

7. It appears that death of the victim is not disputed by the defence. Further, the presence of the accused at the place of occurrence at the relevant time, is not disputed also.

8. Initiating the argument for the prosecution, learned Public

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Prosecutor strenuously submitted that in the incident of this case, one human life was lost. He submitted the evidence of prosecution witnesses mainly PW1, 2, 3 and 4 in support of medical evidence, clearly proved the fact that it was none other than the accused who committed the offence of murder by hitting the victim with a spade while working at the paddy field. His further submission was that there was boundary dispute existed between the accused and the victim but the accused could have not taken such extreme steps to eliminate the victim. There were several eye-witnesses present at the place of occurrence who proved the facts of the case and the detail account of the evidence of eye-witnesses, would say the occurrence was true and the accused is involved in the murder of the victim person. He submitted that it is not quantity but quality of evidence which is essential for proof of a fact and in the instant case, the quality of eye-witness is sufficient to believe that the victim was murdered by the accused. Hence there cannot be any hesitation to hold the accused guilty of offence of murder and as such, he is liable to be convicted according to law.

9. Learned Public Prosecutor relied the decision reported in **Namdeo vs. State of Maharashtra, Appeal (Crl.) No.914/2006 (SC)** dated 13/3/07 wherein Hon'ble Supreme Court held that having heard the learned counsel for the parties, in our opinion, no interference is called for in exercise of power under Article 136 of the Constitution. It is no doubt true that there is only one eye-witness who is also, a close relative of the deceased viz. his son. But it is well-settled that it is quality of evidence and not quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis is always on quality of evidence. So far as legal position is concerned, it is found in the statutory provision in Section 134 of the Evidence Act, 1872 which reads ;  
*134. Number of witness.- No number of witness shall in any case be required for the proof of any fact.*

10. Per contra, countering the above submission, learned counsel for the accused submitted that it is undoubtedly shown that the place of occurrence was a paddy field. He submitted that the occurrence took place on 22/7/08 but the FIR was filed only on 24/7/08 with much delay. There was no proper explanation for reason of delay in filing the FIR and as such, there is doubt in the case of the prosecution. He submitted that admittedly, there was boundary dispute existed between the accused and the victim which led to a scuffle between them and then, the victim fell down on his spade to suffer injury. He submitted that there was

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