

**IN THE COURT OF SESSIONS JUDGE::AT GOALPARA**

**Session Case No. 34/18**

State of Assam.

-Versus-

Bhushi Marak .... Accused.

Present :- Shri T.K. Bhattacharjee, AJS.  
Sessions Judge, Goalpara

**Appearance :**

Mr. B.K. Das, learned Public Prosecutor for the State.

Mr. J. Das, learned State Defence Counsel for the accused.

Dates of evidence : 10.05.18, 27.9.18, 11.10.18,  
20.11.18, 04.12.18, 05.03.19,  
19.03.19, 02.05.19, 13.06.19,  
11.07.19, 22.08.19.

Date of Argument : 24.02.2020.

Date of Judgment : 07.03.2020.

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

1. The brief facts of the prosecution case is that on 22.8.2017, at about 4-30pm, the accused Bhushi Marak suddenly attacked the father of the informant in his own house with a sharp weapon and killed him and hence, this case was filed.

2. On receipt of information to that effect, Mornoi PS Case No.91/17 was registered u/s 447/302 of the IPC and the investigations were taken up after completion of which a charge sheet was submitted against the accused u/s 447/302 of the IPC sending him up for the purpose of trial.

3. Thereafter, on production of the accused before this court, after the committal formalities were completed, this court was pleased to frame charges u/s 447/302 of the IPC against the accused person on 12.4.2018 and the contents of the said charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried and accordingly, the trial of this case commenced.

4. In the course of trial, thirteen witnesses were examined in support of the prosecution case which included the informant, the Medical Officer and also the Investigating Officer of this case and after the prosecution evidence concluded, the examination of the accused u/s 313 of the Cr.P.C. was conducted and his statements were recorded during which he declined to adduce any evidence in his defence.

5. Thereafter, the arguments of the respective learned counsels of both the sides were heard and the entire evidence in the case record was carefully perused in order to determine the matter in hand.

**6. Points for determination :**

(i) Whether on or about the 22.8.2017, at about 4-30pm, at village Dubapara (Alokjhar), under Mornoi Police Station, the accused criminally trespassed into the house compound of the informant's father with intent to attack him as alleged ?

(ii) Whether on the same date, place and time, the accused committed murder by intentionally causing the death of Bhaben Sangma, the father of the informant, as alleged ?

**DISCUSSION, DECISION AND REASONS :-**

7. The PW-1 was the informant Hemen Sangma who had filed the ejahar, the Ext.-10, vide which the police were informed about the alleged occurrence and from his deposition it is found that he was not present at the place of occurrence during the occurrence. According to him, he was in the bazar at that time when he came to know that the accused had murdered his father in their house and thereafter, he went home and found the dead body of his father lying dead on the doorstep. This witness had seen injuries on the chest of his father and he also deposed that police came and apprehended the accused and took away the dead body to the thana. His cross examination shows that there are 20/22 houses near his house. This witness also stated that he does not know who had written the ejahar for him and nor he knows the contents of the ejahar and his testimony shows that he is an illiterate person.

8. The PW-2 was Benji Marak and from her testimony it is found that she is the wife of the deceased. According to this witness, she came home from somewhere and she saw 'marpit'(fighting) between her husband and the accused and she interfered. She also claimed that she had seen the accused stabbing her husband and according to her, her husband had died due to the injuries sustained by him. Her testimony also shows that her statement was recorded in the court before a Magistrate which was brought on record as the Ext.-12. Her cross examination shows that all her three sons were absent

in the house at that time and that the dead body of her husband was lying on the doorstep of their house and some of the neighbours had come after the occurrence. Her cross-examination also shows that the house of the accused is situated about one kilometer away from their house. This witness also deposed that the accused had taken heavy alcohol at that time and according to her, her husband was only wearing a half pant at that time which half pant was taken away by the police. This witness denied during the cross-examination that during the occurrence, her husband was under the influence of liquor and he died due to falling. The Ext.-12 shows that she had stated in her statement u/s 164 Cr.P.C. also that she had gone to her son's house at that time and when she returned home, she found the accused attacked her husband with a knife on his stomach and chest.

9. The PW-3 was one Frijina Marak who had gone to the house of the victim after the occurrence and found the deceased Bhaben Sangma lying in an injured condition and according to her, he died after about one and half-hour.

10. The PW-4 had heard from the public that the accused had assaulted the victim and caused his death and he had seen the victim Bhaben Sangma lying in a pool of blood.

11. The PW-5 was Lipton Momin who had also heard that the accused had killed Bhaben Sangma and he went to the place of occurrence and saw the dead body of Bhaben Sangma lying on the ground. His testimony also shows that the police seized the half pant of Bhaben Sangma with blood stains vide Ext.1 and police also seized some blood stained earth vide Ext.2 and one bamboo stick vide Ext.3. On perusal of the Ext.1, it is found that one blood stained half pant was seized in connection with this case which was worn by

the deceased.

12. The PW-6 was Slep Marak and during his deposition before the court, he stated that the accused killed Bhaben Sangma which he heard from the villagers. This witness also went to the place of occurrence and saw the dead body of Bhaben Sangma lying in the courtyard of his house. His cross examination shows that the deceased was wearing a half pant and a ganjee at that time.

13. The PW-7 was Nakul Ch. Rabha who had come to know from one Babul Das that the accused assaulted Bhaben Sangma and killed him. This witness also went to the house of Bhaben Sangma and found the dead body lying at the doorstep.

14. The PW-8 was Mani Kanta Barman who came to know about the occurrence from Babul Das who told him that the accused Bhushi Marak beat up Bhaben Sangma and killed him.

15. The PW-9 was Rondon N. Marak who came to know that the accused Bhushi had killed Bhaben Sangma and he went to the house of the deceased and found the deceased lying dead in the veranda. His testimony also shows that a lathi was seized by the police.

16. The PW-10 was Malik R. Marak who is the son of the deceased and from his testimony it is found that the accused is his uncle. His testimony, however, shows that he did not see the occurrence and came to know about it from the informant Hemen Marak. His testimony further shows that police had seized some clothes in his presence and that his father was wearing a half pant and a shirt at that time.

17. The PW-11 was the Medical Officer who conducted the post mortem examination on the dead body of the deceased Bhaben Sangma on 23.8.2017, at about 2-05pm and found rigor mortis present all over the body, numerous penetrating wounds, numerous cut injuries etc. and in his opinion, the cause of death was due to shock and hemorrhage as a result of ante mortem injuries which were homicidal in nature. His post mortem report was brought on record as the Ext.5 and from the cross examination of this witness it is found that the injury No.1 & 2 as mentioned in the Ext.5 were caused by a sharp pointed weapon. This witness, however, stated that he did not find any blood stain in the pant of the deceased which fact was not mentioned in his post mortem report, the Ext.5.

18. The PW-12 was the police official who took up the preliminary investigations of this case and he had gone to the place of occurrence where he found the dead body of Bhaben Sangma with injuries. This witness also found the wife of the deceased at the place of occurrence and from his testimony it is found that he apprehended the accused from the nearby jungle after some time. His testimony also shows that he seized a blood stained half pant, blood stained earth and blood stains from the dead body, one lathi etc. in connection with this case. His cross examination shows that the DSP had accompanied him during the investigation and that he collected the blood stains from the body of the deceased and kept it in a small container which was, however, not seal-packed. His cross examination also shows that as per the inquest, only one injury was found in the chest of the deceased. His testimony further shows that as per the Ext.4, a knife was seized on being led and shown by the accused from the roof of an abandoned house.

19. The PW-13 was another police official who took part in the

investigations of this case and he had seized one knife from near the place of occurrence vide Ext.4. His testimony also shows that the inquest was conducted by SI Jahanuddin Sheikh (PW-12) and thereafter, the dead body was sent for post mortem examination. This witness also sent the seized articles for expert opinion and he had collected the reports and also examined the witnesses and submitted a charge-sheet against the accused vide Ext.9. His cross examination shows that he found blood stains on the knife which was found abandoned in a house near the market which was about 100 meters away from the actual place of occurrence. The said knife was, however, not sent for finger print examination. This witness could not give any opinion regarding the ownership of the blood found in the seized articles. This witness also did not ascertain the mental condition of the accused when he was apprehended.

20. The prosecution side did not examine any other witness except the above and from the entire materials available in the case record, it is found that during the examination of the accused u/s 313 of the Cr.P.C, the accused did not state anything worthwhile except the fact that he was innocent.

21. On the other hand, the PW-1, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8, PW-9 and PW-10 had not seen the assault upon the deceased but the PW-1 found his father dead with injuries in the chest and the PW-3 & PW-4 had gone to the place of occurrence and seen the deceased lying injured and the PW-5, PW-6, PW-7 & PW-9 had gone to the place of occurrence and found the dead body of Bhaben Sangma lying on the ground. The PW-10 had also seen the dead body of his father lying in the doorstep as stated by the PW-1. However, the PW-2, the wife of the deceased, had come home during the occurrence and she found that a fighting was going on

between her husband and the accused and she testified that the accused stabbed her husband and due to the stab injuries her husband had died. Her cross examination reveals that the accused is the son of her elder brother and that she had seen three injury marks on the dead body of her husband including the chest injury. The testimony of the PW-11, the Medical Officer, who conducted the post mortem examination on the dead body of the deceased as well as the Ext.5, the post mortem report, shows that the deceased was found with numerous injuries including injuries on his chest and the Ext.13, the inquest report, also reveals that during inquest, the deceased was found with injury marks on his chest.

22. In the course of arguments, the learned PP submitted that the prosecution case is supported by the testimony of an eye witness and clearly indicates the guilt of the accused and as such, the accused should be punished in accordance with law.

23. On the other hand, the learned State Defence Counsel submitted that the prosecution case suffers from various infirmities and discrepancies and no independent witnesses have supported the prosecution case and as such, the accused person deserves to be acquitted.

24. Upon a careful analysis of the evidence on record, it is found that a number of witnesses had come to the place of occurrence soon after the occurrence and found the deceased lying with injuries on his person and the PW-2 who had just come home at that time and found that there was a fighting between her husband and the accused and according to her, the accused stabbed her husband as a result of which he died. It may be mentioned in this context that the law is well settled that even the testimony of a single witness is



sufficient provided that the same inspires the confidence of the court and from the Ext.5, the post mortem report, it transpires that the victim died due to shock and hemorrhage as a result of ante mortem injuries which were homicidal in nature.

25. Further, the testimony of the PW-11 (Medical Officer) who conducted the post mortem examination on the dead body of the deceased shows that the injuries No.1 & 2 as mentioned in the post mortem examination (Ext.4) were caused by a sharp pointed weapon. Moreover, the said medical officer also testified that such type of injuries may have been caused by one person or more than one person. Apart from that, the testimony of the PW-12 shows that the accused was apprehended from the nearby jungle after some time of the occurrence and subsequently, a knife was seized vide Ext.4. The Ext.4 reveals that the knife was recovered on being shown by the accused in presence of the witnesses which fact was not challenged in any manner whatsoever. Moreover, the PW-7 also admitted his signature in the Ext.4 though he stated in his cross examination that he does not know the contents of the Ext.4. On the other hand, the Ext.7 shows that soon after the occurrence, a GD Entry vide GDE No.246 dated 22.08.2017 was made at the Dubapara PP to the effect that a telephonic information was received stating that Bhushi Marak had murdered Bhaben Sangma with a knife. Further, the blood stained half pant which the deceased was wearing during the occurrence was also seized vide the Ext.1 and a number of witnesses have corroborated the fact that the deceased was wearing a half pant at that time. Even though the blood stained knife was not sent for expert opinion to ascertain who had actually used the knife but from the testimony of the PW-2, the wife of the deceased, it is apparent that she had seen the accused stabbing her deceased husband with a knife in their house and moreover, there is

nothing in the evidence on record to indicate that she could have falsely implicated the accused and taking into consideration the entire facts and circumstances of this case and also the cumulative effect of the entire evidence before me, I am of the opinion that the testimony of the PW-2 is worthy of credit and cannot be brushed aside under the above facts and circumstances and therefore, I am inclined to come to the conclusion that the prosecution has successfully established the guilt of the accused u/s 447/302 of the IPC beyond reasonable doubt.

26. In the result, the accused Bhushi Marak is found guilty u/s 447 /302 of the IPC beyond reasonable doubt and as such, he is now required to be dealt with in accordance with law.

27. I have heard the accused on the point of sentence and he has stated that he has nothing to say with respect to the sentence.

28. The statement of the accused is recorded in a separate sheet and attached with the case record.

29. Now, therefore, after taking into account all the facts and circumstances of this case and also the statement of the accused, the said accused is hereby convicted u/s 447/302 of the IPC and accordingly, the accused is sentenced to suffer simple imprisonment for one month u/s 447 of the IPC and he is also sentenced to suffer imprisonment for life and to pay a fine of Rs. 6,000/- (Rupees Six Thousand) only in default of payment of fine, to suffer imprisonment for six months u/s 302 of the IPC. The fine amount of Rs. 6,000/- (Rupees Six Thousand), if realized from the convict, shall be deposited in the appropriate head. The sentences of imprisonment shall run concurrently. The period of detention already undergone by

the accused in judicial custody shall be set off.

30. The seized materials shall be destroyed in due course of law after the appeal period is over.

31. A free copy of the judgment shall be furnished to the convict forthwith.

32. A copy of the judgment shall be forwarded to the learned District Magistrate, Goalpara and also to the Secretary, District Legal Services Authority, Goalpara for the purpose of determination and payment of any compensation that may be payable to the next kin of the deceased along with all the relevant particulars.

Given under my hand and seal of this court on this 07<sup>th</sup> day of March, 2020.

(T.K Bhattacharjee)  
Sessions Judge,  
Goalpara

Dictated & corrected by me:

Sessions Judge, Goalpara

**Contd ..... appendix**

**Appendix:**

**Prosecution Witnesses:**

PW1:- Hemen Sangma,

PW2:- Benji Marak,

PW3:- Frijina Marak,

PW4:- Babul Das,

PW5:- Lipton Momin,

PW6:-Slep Marak,

PW7:- Nakul Ch. Rabha,

PW8:- Mani Kanta Barman,

PW9:- Rondon N. Marak,

PW10:- Molip Marak,

PW11:- Dr. B.K. Bordoloi(MO),

PW12:- Jahanuddin Sheikh(IO) &

PW13:- Samir Konwar (IO).

**Court witnesses:-Nil.**

**Prosecution Exhibit:**

Ext.1:- Seizure list,

Ext.2:- Seizure list,

Ext.3:- Seizure list,

Ext.4:- Seizure list,

Ext.5:- Post mortem report,

Ext.6:- Sketch map,

Ext.7:- Copy of GD Entry,

Ext.8:- Seizure list,

Ext.9:- Charge-sheet &

Ext.10:- Ejahar.

**Defence Witness:** Nil.

***Sessions Judge  
Goalpara***