

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

Present:- Sri I. Ali, AJS.

Sessions Judge, Goalpara

Sessions Case No.31/17

State of Assam.

-Versus-

- 1) Lakhi Kanta Nath,
- 2) Uttam Das,
- 3) Mithun Das and
- 4) Bijoy Das ... Accused.

Appearance :

For the prosecution: Mr. B.K. Das, Public Prosecutor.

For the defence: Mr. S. Rahman, Advocate and
Mr. B. Hussain, Advocate.

Date of evidence: 03.08.17, 15.09.17, 04.08.18,
05.10.18, 14.11.18, 07.01.19,
10.05.19 & 26.03.21

Date of Argument: 06.10.2021.

Date of Judgment: **20.12.2021.**

-JUDGMENT-

1. The brief facts of the prosecution case is that on 30.06.2016, at about 9:00pm, the accused persons, armed with lethal weapons, had entered into the house of informant Puran Das and searched for his brother and threatened to kill his brother. Since then, the brother of the informant became untraceable. The informant and his family members though searched for the brother of the informant but could not trace him out. In the next morning, i.e. on 01.07.2016, at about 8:00 AM, the informant got the information that the police of Goalpara Police Station recovered the dead body of his brother Churan Das from the railway track at Bhalukdubi and brought the dead body to the Goalpara Civil Hospital. Therefore, the informant suspected that the accused persons kidnapped his deceased brother from the road while he was coming home from Goalpara Town, killed him and dropped the dead body on the railway track at Bhalukdubi.

2. On receipt of the information to that effect, Goalpara P.S. Case No.334/2016 was registered u/s 302 of the IPC and investigation was set in motion and after completion of the investigation, a charge-sheet was submitted against all the above named four accused persons u/s 302 of the

IPC.

3. Thereafter, on appearance of the said accused persons before the learned committal court, the relevant copies were furnished to them and the case was committed to this court as the offence is exclusively triable by the Court of Sessions and thereafter, on 06.03.2017, one of my learned predecessors was pleased to frame a charge u/s 302/34 of the IPC against the accused persons and the contents of the said charge were read over and explained to the accused persons to which they pleaded not guilty. Accordingly, the trial of this case commenced.

4. In the course of trial, eight 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 persons u/s 313 of the Cr.P.C was conducted and their statements were recorded during which the accused persons declined to adduce any evidence and claimed to be innocent as they have been falsely implicated.

5. Thereafter, I heard arguments advanced by learned Public Prosecutor as well as the learned counsel for the accused persons and I have also perused the entire evidence in the case record.

6. Point for determination:-

Whether the accused persons, on or about 01.07.2016, in the early morning hours, at Bhalukdubi railway track, in furtherance of their common intention, committed murder by intentionally causing the death of Churan Das, brother of the informant as alleged ?

DISCUSSION, DECISION AND REASONS:-

7. In order to prove the prosecution case, altogether 8 numbers of witnesses examined as already stated above. Out of the said 8 numbers of witnesses, PW1 Puran Das is the informant of the instant case and PW2, Niranjan Das is the father of the deceased. PW3, Anjana Das, is the aunt of the informant. PW4, Santona Das, who knew the informant and the accused persons. PW5, Sukuru Das, is a co-villager of the informant. PW6, Dr. B.K. Bordoloi, is the senior Medical and Health Officer who conducted post mortem examination over the dead body of the deceased. PW7, Niranjan Das, is the police officer who inquired the matter when information was received with regard to the death of a person at Bhalukdubi railway track. PW8, is the investigating Officer, who submitted the charge-sheet against the accused-persons

PW1 Puran Das identifying himself to be the informant and the elder brother of deceased Churan Das deposed that the occurrence took place on 1st July. At that

time, his brother Churan Das used to stay in the house of his sister Mamoni Das at Bilashipara. One day, his sister informed him that his brother Churan Das had come to Goalpara but on that day, his brother Churan Das did not reach home. He went in search of his brother but could not find his brother and so, he returned back to his home. On that day, at night, at about 9:00pm, the accused Lakhi Das came to his house and reported that he would get the dead body of his brother Churan Das on railway track as he had engaged some persons. In the next morning, he came to know that police brought the dead body of his brother to the Civil Hospital after recovering the same from the railway track. On receiving the information, he went to Civil Hospital and saw the dead body of his brother Churan Das. After post mortem examination, the dead body of his brother was handed over to him and accordingly, his last rites were performed. PW1 proved the ejaher as Ext.1.

8. In his cross examination, PW1 stated that he did not see the occurrence. He denied the suggestion that he did not state before police that accused Lakhi Das had come to his house and told him that he would find the dead body of his brother Churan Das on railway track as he engaged some persons. However, he admitted that he did not inform police about arriving of accused Lakhi Das at his house and told him that he would find the dead body

of his brother Churan Das on railway track as he engaged some persons.

9. PW2 Niranjan Das is the father of the informant. All the accused persons are known to him. On that night, while he was sleeping in his house, accused Lakhi called him by his name. He got up and went near the accused and the accused asked him about whereabouts of Churan Das. He told that Churan Das was not at home. Then the accused Lakhi Das told him that the accused sent Mithun, Uttam and Bijoy and he would get the dead body of Churan Das in pieces on the railway track at Bhalukdubi and thereafter, the accused went away. In the next morning, his neighbour Jaro Das informed him that the dead body of Churan Das had been lying in pieces on the railway track at Bhalukdubi. Then, his elder son went there. Police took away the dead body and after post mortem, the dead body was handed over to them.

10. In his cross examination, the PW2 denied the suggestion that he did not state to the police that accused Lakhi Das came and told him about sending of Uttam, Bijoy and Mithun and he would get the dead body of Churan in the morning. This PW admitted that he has no knowledge as to how Churan Das had died.

11. PW3 is Smti. Anjana Das. She deposed that the

informant Puran Das is his nephew and she knows the accused persons. Deceased Churan Das is her nephew being the brother of the informant Puran Das. On an evening, while she was sitting in the house of the informant along with mother of the informant, at that time, Churan Das informed her over mobile phone about taking away of Bhabani Das @ Buri, the wife of accused Laksi Das, and Bhabani Das also informed her that they would do away with their lives. Later on, in the next morning, the dead body of Churan Das was brought to the house of the complainant. There was cut injuries on the dead body of Churan Das. The defence declined to cross-examine this witness.

12. PW4 is Smt. Santona Das. She deposed that on the date of occurrence, at about 7-00pm, Bhabani Bala Das keeping her three children in the house of the PW4 went away saying that she would come back within a short time; but she did not return. Thereafter, PW4 was informed that Bhabani Bala Das and Churan Das were found near the railway track in injured conditions and Churan Das had died. But, subsequently, after Shraddha ceremony of Suran Das, said Bhabani Bala Das also died. PW4 saw the dead body of Suran Das. This PW also not cross-examined by the defence.

13. PW5 Sukuru Das only heard that deceased Suran

Das had died in a train accident. The defence declined to cross-examine this witness.

14. PW6 Dr. B.K. Bordoloi is the Medical Officer. He deposed that on 01.07.2016, while he was working as Sr. M & HO at Goalpara Civil Hospital, on that day, he performed post-mortem examination on the dead body of Suran Das, 23 years of age, S/o Niranjan Das of No.1 Baladmari Char, P.S. & Dist. Goalpara, brought and identified by UBC 224 Raushad Ali and Sanju Das in connection with Goalpara P.S. U.D. Case No.12/16 and he found the following injures:

- 1) Crush injury of head causing expulsion of brain matter through fracture of occipital region;
- 2) Loss of left upper limb at mid arm;
- 3) Separation of right leg just below the knee; and
- 4) Fracture left femur at soft.

PW6 opined that instantaneous death was a result of ante mortem head injury as described consistent with railway incident. He proved the post mortem report as Ext.2.

15. PW7 Niranjan Das is one of the Investigating Officers. He deposed that on 01.07.2016, while he was posted as ASI at Goalpara Police Station, on that day, the OC received a phone call regarding the death of a person at Bhalukdubi Railway Track and he was asked to enquire into the matter and accordingly, he went to the place of

occurrence and found a badly battered and cut dead body and he collected the different scattered pieces of the dead body and he also found a badly injured woman nearby in the jungle on the side of the railway track who could not speak properly but stated her name as Bhabani and he sent her to Goalpara Civil Hospital and the dead body was also sent there for post-mortem examination. He examined the victim and interrogated her in the hospital. Thereafter, on being transferred, he submitted the case diary to the OC, Goalpara P.S. The PW7 in his cross examination stated that from the statement of victim Bhabani, it appeared to him that the deceased Churan Das had committed suicide.

16. PW8 is Baresh Baruah, a retired SI of Police and he deposed that on 30.12.2016, he was posted at Goalpara Police Station and on that day, he received the case diary from the OC, Goalpara Police Station and he was directed to investigate the case. Prior to that, SI Nripendra Narayan Das investigated the case. During his part of the investigation, he arrested accused Bijoy Das and Mithun Das, collected the post mortem report and thereafter, he submitted the charge-sheet marked Ext.-5. His predecessor Nripendra Narayan Das examined the witnesses and prior to that, ASI Niranjan Das did the preliminary examination who prepared the sketch map and did inquest over the dead body. PW7 proved the inquest

report as Ext.4 and the charge-sheet as Ext.5. The defence declined to cross-examine this witness.

17. The above in the evidence as a whole adduced by the prosecution side. Learned PP for the State submitted that the oral testimony of PW1 and PW2 are sufficient evidence against the accused persons having regard to circumstantial evidence to establish the charge against the accused persons. On the other hand the learned Counsel for the accused submitted that the testimony of PW1 and PW2 are totally unreliable because of material contradiction between their evidence in the court and the previous statement recorded u/s 161 Cr.P.C and as such, no reliance can be placed on their evidence. On consideration of the evidence and evidence brought on record it is seen that as per version of the prosecution, prior to the time of the incident the deceased Churan Das was at his sister's house situated at Bilashipara. One day his sister Mamoni Das, informed PW1 over phone that the deceased had gone to Goalpara but, the deceased did not reached home. On the same day, the accused Lakhi Das went to his home and told him that they will get his brother's dead body as the accused Lakhi Das has engaged some persons to kill the deceased. PW2 who is the father of the deceased stated that on the day of the occurrence he was sleeping at home, the accused Lakhi went to their home and threatened to kill his son, the deceased with the help of Mithun, Uttam and Bijoy. The

PW1 and PW2 who happen to be brother and father respectively of the deceased. However, they did not inform the police that the accused Lakhi and others entered into their home premises and threatened to kill the deceased. The PW1 and PW2 also admitted that they did not see the occurrence and they did not know how the deceased had died. These two PWs are relatives of the deceased and they have projected themselves as having knowledge of the occurrence. They have made an attempt to implicate the accused Lakhi who had come to their premises and threatened that the deceased would be found dead in the railway track as some persons were engaged. But, admittedly PW1 did not inform about the arrival of the accused Lakhi Das in his house and threaten him to the deceased. Similarly PW2 also tried to implicate the accused Lakhi Das who had come to their residence and told him that he would get the dead body into pieces on railway track. Such evidence would hardly connect the accused persons in commission of the alleged offence since there are no eye witnesses of the occurrence. On the other hand, the PW7 IO has stated differently to the effect that, he found another victim namely Bhabani Bala Das at the place of occurrence from whom he learnt that the deceased had committed suicide. In a similar way PW5 also stated that, she heard about the death of the deceased in a train accident. The doctor who had conducted the Postmortem opined that the death of the deceased was

due to ante-mortem head injury which was consistent railway incident. In such circumstance, the evidence of PW1 and 2 were belied by these 3 witnesses namely PW5 ,PW6 and PW7. The PW3 is relative of the deceased and she stated that on the day of the incident while she was sitting at the house of the informant, the deceased victim Suran Das informed her over phone that he along with Bhabani Das @Buri, the wife of the accused Lakhi Das is going to commit suicide. The evidence of this PW is also is just contrary of the evidence given by PW1 and PW2.

18. The above discussed evidence leads to the conclusion that there was no question of any link found connecting the accused-persons in committing the offence as alleged by the accused-persons. In this case, there is no eye witness. The prosecution made attempt to rely upon the circumstantial evidence to the effect that the dead body of deceased was lying railway track and prior to that the accused Lakhi Das had threatened to kill the deceased. However, there is no evidence to show that the accused persons and the deceased were last seen together prior to the incident. On the basis of the above evidence, no inference can be drawn that the accused persons are involved in commission of the murder of the deceased. Thus, on the basis of the evidence it is seen that there is no material to establish by cogent evidence that it was the accused-persons who were responsible for the murder. No doubt on the basis of the evidence of PW1 and PW2, a

suspicion exists against the accused-persons but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case. There is no other circumstances whatsoever which connects the accused to the crime. Having regard to the state of affairs of available in evidence, the benefit must be given to the accused-persons.

19. In the light of above discussion, this court held that the prosecution has miserably failed to prove the guilt of accused-persons beyond reasonable doubt. In the result, the accused-persons, named above, are not found guilty u/s 302/34 of the IPC and as such, they are acquitted of the said charge levelled against them and set at liberty forthwith. Their bail bonds stand discharged.

20. A copy of the judgment shall be forwarded to the learned District Magistrate, Goalpara and also to the Superintendent of Police Goalpara for information and necessary action.

Given under my hand & seal of the court on 20th day of December, 2021.

Dictated & Corrected by me:

Sessions Judge,
Goalpara.

Sessions Judge, Goalpara.

Appendix:

Prosecution Witnesses:

PW1:- Puran Das

PW2:- Niranjan Das

PW3:- Anjana Das

PW4:- Smt. Santana Das

Pw5:- Sukuru Das

PW6:- Dr. B.K. Bordoloi (MO)

PW7:- Niranjan Das (IO)

PW8:- Daresh Baruah (IO)

Prosecution Exhibits:

Ext.1 :- Ejahar

Ext.2:- Post Mortem report

Ext.3:- Sketch Map

Ext.4:- Inquest report

Ext.5:- Charge-sheet

Court witnesses:-Nil. Defence Witness: Nil.

**Sessions Judge,
Goalpara.**