

BEFORE THE JUVENILE JUSTICE BOARD, BONGAIGAON

PRESENT: S. HANDIQUE, PRINCIPAL MAGISTRATE

Sri. D.C. Basak, Member, JJB

Smti. R. Choudhury, Member, JJB

**JJB Case no. 29/13
(U/S 448/302/34 IPC)**

State

v.

Bijoy Mardi

For prosecution: Mr. T. Bhowmik

For defence : Mr. N. Sarkar

Evidence recorded on: 11-7-14, 25-9-14

Accused examined u/s 313 Cr. P.C on: 13-11-14

Arguments heard on: 13-11-14

Judgment delivered on: 18-11-14

JUDGMENT

1. The prosecution was set into motion in this case with the recovery of two lifeless bodies of Sabin Tudu and his wife Pramila Hembrom in their own house in Athiabari village on 3-8-13 in the evening. The FIR was lodged by Jetha Tudu who is the own brother of deceased Sabin Tudu. The informant stated that he and Son Tudu had gone to the house of the deceased to bring cows at 6 A.M. and found them lying dead in their bed with injuries over their bodies. It was alleged that someone might have murdered them by giving spear blows. Thereafter, they informed the matter to the villagers. The FIR was lodged in the Garubhasa outpost and the same was forwarded to the Sidli P.S for registering a case. The FIR was registered as Sidli P.S. Case no. 48/13 u/s 448/302 IPC. The juvenile Bijoy Mardi was apprehended along with the other two accused in connection with this case and he was produced before the Juvenile Justice Board, Bongaigaon. He was remanded to the Observation Home, Boko and in due course of time he was released on bail.

2. After investigation the police filed charge sheet against Samel Tudu, Sukla Mardi and a separate charge sheet was filed against juvenile Bijoy Mardi u/s 448/302/34 IPC and the split up case record was forwarded to the Juvenile Justice Board, Bongaigaon.
3. The juvenile in conflict with law Bijoy Mardi was summoned and in due course of time he appeared and received the necessary copies. The particulars of offence u/s 448/302/34 IPC were explained to him to which he pleaded not guilty and claimed trial.
4. During enquiry seven witnesses were examined including the investigating officer. The juvenile was examined u/s 313 Cr. P.C which is of total denial. He declined to adduce defence evidence. Heard arguments from both the sides. The following points for determination are framed in this case:

POINTS FOR DETERMINATION:

1. *Whether the juvenile in furtherance of common intention with other two accused trespassed into the house of deceased Sabin Tudu on the intervening night of 2-8-13 and 3-8-13 and thereby committed an offence punishable u/s 448/34 IPC?*
2. *Whether the juvenile in furtherance of common intention with other two accused caused double murder of Sabin Tudu and his wife Pramila Hembrom on the intervening night of 2-8-13 and 3-8-13 and thereby committed an offence punishable u/s 302/34 IPC?*

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

5. Both the points are taken up together for discussion. The fact of twin murder of the victim couple and recovery of their bodies from their own house is not disputed. The FIR did not contain the names of the assailants. As it appears from the evidence of non formal witnesses, the villagers came to know about the alleged murder only in the morning of 3-8-13. The alleged murder took place at night. There is no eye witness in this case. The prosecution case therefore heavily rests on circumstantial evidence. Let us examine the depositions of the witnesses.
6. **PW1 Som Merdi** is a co-villager known to both the complainant and the juvenile. He deposed that he had gone to get a cow from the house of the deceased on that relevant date at about 6 A.M and found them in murdered condition. According to him, he saw stab injuries on the bodies. He stated that a village meeting was held 12 days after the alleged incident in which Samel Tudu confessed to the crime and also disclosed the name of the juvenile as an accomplice. He stated that the police came and took the culprits to custody. During cross examination he deposed that he does not know who murdered the deceased and he does not even suspect Bijoy Merdi as a murderer.
7. **PW2 Mangal Murmu** is also a co-villager. He deposed that he heard about the murder and on arriving at the place of occurrence he saw the dead bodies. He deposed that Samel Tudu confessed to the crime and the police arrived. According to him, Samel Tudu disclosed before the police that the juvenile was also involved in the crime. He testified

- during cross examination that the juvenile is a good guy and he is no way involved in the crime.
8. **PW3 Sumai Tudu** also deposed in the same line. He also stated that he does not suspect the juvenile as the culprit. **PW4 Jetha Tudu** is the complainant. He is the brother of deceased Sabin Tudu. He deposed that he came to know about the alleged murder in the morning but does not know who killed them. He does not know as to why the police apprehended the juvenile. He exhibited the FIR as Ext. 1. He too testified that he does not suspect the juvenile.
 9. **PW5 Largha Merdi** and **PW6 Sunil Chown** too do not know much about the case. They are only reported witness.
 10. **PW7 Aditya Prakash Deuri** is the investigating officer. He deposed that after receiving the FIR, he registered the case and took charge of the investigation. He stated that he visited the place of occurrence, prepared a sketch map, prepared inquest of the dead bodies and sent the bodies for post mortem. According to him, there was no clue about the murder for several days and he had engaged some villagers as spy to keep a watch on the probable suspects. One day he was informed that one Samel Tudu who is the son of the informant is the alleged suspect and he has confessed his crime to the villagers. Thereafter, he went to the said village and found some 50 people including Samel Tudu in the house of the VDP Secretary. According to the I/O, accused Samel Tudu confessed before him and the villagers that the deceased were killed on suspicion of practising witchcraft and Bijoy Merdi and Sukla Merdi were also involved in the crime. He further testified that he recovered one dao from the ceiling of Samel Tudu on being led by him and also discovered one dagger from a jungle nearby the house of Bijoy Merdi. He exhibited the certified copies of the seizure lists as Ext. 3 and 4. He stated that after due investigation he filed charge sheet (Ext. 5) against Samel Tudu, Sukla Merdi and juvenile Bijoy Merdi. He stated that he found no blood stains on the dagger. He stated that Bijoy Merdi was apprehended on the basis of the confession made by Samel Tudu and identity of the dagger.
 11. From the above evidence, it is but apparent that apart from the I/O none of the witnesses implicated the juvenile with the alleged murder. The I/O has testified that he apprehended the juvenile on the basis of the confession of a co-accused and from his dagger. If any confession has been made by Samel Tudu then it is made before the police and as such not admissible in evidence. In fact the said confession, if any has not been placed before this Board. Further, one of the weapons of offence (dagger) is stated to have been recovered from a jungle nearby the house of the juvenile. The seizure list (Ext. 4) discloses that the dagger was recovered from the jungle which is situated near a road which is accessible to the public at large. It is not stated that the said dagger was discovered on being led by the juvenile. The prosecution has not been able to link the said dagger with the crime, nor the seized weapons are produced before the Board.
 12. The mere testimony of the I/O that one of the co accused disclosed the name of the juvenile before him and villagers is not enough to rope in the juvenile with the alleged murder. It is sad that two innocent people lost their lives in the hands of unknown assailants. But prosecution cannot stand on mere surmises or probabilities. The

evidence in record is insufficient to hold the juvenile guilty u/s 448/302/34 IPC. Both the points are decided in the negative.

ORDER

13. In view of the above discussions we have no other option but to acquit the juvenile in this case. He is set at liberty forthwith. Bailbond stands discharged. Given under the hand and seal of the Board on 18-11-14.

S. Handique,

Principal Magistrate, JJB, Bongaigaon

Sri. D.C. Basak, Member, JJB, Bongaigaon

Smti. R. Choudhury, Member, JJB, Bongaigaon