

::::: IN THE COURT OF THE PRINCIPAL MAGISTRATE :::::
JUVENILE JUSTICE BOARD::::: BONGAIGAON.

JJB CASE No. 02/2013.

U/S.302/34 IPC.

State of Assam

-Vs-

1. Sri Dipak Barman.

2. Sri Bishnu Ch.

Barman.

3. Sri Biswajit Barman.

**4. Sri Basudeb Barman
@ Dhano Barman.**

Present: **Smt. N. Talukdar, AJS**
Principal Magistrate,
Juvenile Justice Board,
Bongaigaon.

Advocates appeared:

For the Prosecution: **Mr. T. K. Bhowmick, Assistant PP.**

For the Defence: **Sri S. N. Basumatary.**

Argument heard on: **18.07.2014.**

Judgment Pronounced & Delivered on: **31.07.2014.**

J U D G M E N T

1. The prosecution case is that on 03.06.2006 at about 10:00 PM, juvenile Dipak Barman, Bishnu Ch. Barman, Biswajit Barman, Basudev Barman and Madhab Barman severely beaten informant Pabitra Barman's brother Sri Nakul Barman. Belatedly, the informant came to know about the incident and sent Nakul Barman to the house of their brother situated at Beltola, Guwahati. During his treatment at Guwahati

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on 20.06.2006 Nakul barman was declared dead by the doctor. Hence, the informant lodged the FIR before the police. On the basis of FIR, Dhaligaon PS case No.56/2006 U/S. 302/34 IPC was registered and investigation was set into motion. On completion of investigation, police submitted charge-sheet against the juveniles and Madhab Barman U/S. 302/34 IPVC. After committal of the case, Hon'ble Sessions Judge, Bongaigaon vide order dated 20/12/2012 declared Dipak Barman, Bishnu Ch. Barman, Biswajit Barman and Basudev Barman as juveniles in conflict with law and sent them to the Juvenile Justice Board, Bongaigaon for their trial.

2. After filing of charge-sheet, trial against the juveniles in conflict with law has been started. Copy was furnished to themm. The particulars of the offence U/Ss.302/34 IPC were explained to the aforesaid juveniles in conflict with law to which they pleaded not guilty and claimed to be tried.

3. During trial, the prosecution has examined as many as 9 (nine) prosecution witnesses. The juveniles have been examined U/S.313 CrPC. Defence has examined none. Plea of defence is of total denial.

4. : **POINTS FOR DETERMINATION** :

(a) Whether the juveniles in conflict with law in furtherance of common intention on 20.06.2016 committed murder intentionally or knowingly causing the death of deceased Nakul Barman and thereby committed an offence punishable U/S.302/34 IPC ?

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: DECISION AND REASONS THEREOF :

5. The prosecution to prove the case has examined 9(nine) witnesses. PW1 is the informant Sri Pabitra barman. In his evidence, PW1 has deposed that about 6/7 years back the incident happened. On the date of occurrence, there was a wedding party in the house of Kanteswar Barman. Deceased Nakul Barman, who was the brother of PW1, went to the house of Kanteswar Barman at about 8:00 PM to attend the wedding party. Then, in the house of Kanteswar Barman the juveniles assaulted Nakul Barman. Next day in the afternoon PW1 learnt about the incident from the villagers. He wanted to ask his brother Nakul Barman about the incident but after four days of the incident Nakul went to their brother's house situated at Guwahati. After 9/10 days, Nakul expired at Guwahati. Thereafter, PW1 lodged the FIR before the police.

In cross-examination, PW1 has revealed that he had not seen the incident. He could not recollect the date of incident. After 18 days of the incident, he lodged the FIR on 21.06.2006. As the deceased did not inform PW1 or any member of their family about the receiving of injury, therefore no step was taken for his treatment. PW1 had not seen any injuries on the body of the deceased. The post-mortem of deceased was done.

6. PW2 is Sri Jagannath Barman, younger brother of the informant. In his evidence, PW2 has deposed that on 18.06.2006, his deceased brother Nakul came to his house situated at Guwahati. PW2

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has deposed that 2/3 days prior to arrival of the deceased in his house his family members informed him over telephone that in a wedding reception in the village, the deceased was beaten up and therefore PW2 was asked to take step for his treatment. On 20.06.2006 the deceased informed PW2 that in the wedding reception the juveniles and some others assaulted him. PW2 had seen the injuries sustained by the deceased on his chest, neck and shoulder. On that day, PW2 took the deceased to the GMCH for his treatment and after a while the deceased passed away in the hospital. Thereafter, the body of the deceased was brought to his own house.

In cross-examination, PW2 has revealed that his mother told him over telephone to take step for treatment of the deceased. PW2 has denied the suggestion that he stated before the police that as the deceased did not tell him about the incident and he behaved like an able-bodied person, therefore, he did not pay any importance or that the deceased was treated by the doctor.

7. PW3 is the MO Malankar Phukan. In his evidence, PW3 has deposed that on 21.06.2006 at 2:30 PM, he conducted the

post-mortem of deceased Nakul Barman and found the following :-
Average build dead body. Rigor Martis absent. There is no sign of wounds, no injury, no mark of ligature seen. Abdomen, Cranium and Spinal Canal are healthy. Muscles, Bones and Joints are intact. An area of about ½" x ½" x 1" above the apex of heart in the left ventricles which was dark coloured

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due to infarction is seen. Congenial, infarct dark coloured area seen in the Endocardium of the left ventricle having size of ½" x ½" x 1" just above apex of the heart. As per opinion of PW3, the death of the deceased Nakul Barman is due to acute cardiac arrest due to Ishchemia (infarction) which leads to acute cardo-Respiratory failure.

In cross-examination, PW3 has revealed that he found no ligature mark on the neck. He also revealed that he found no injury in the fest part of the body of the deceased. PW3 has also deposed that death of the deceased might have taken place due to taking of excessive alcohol.

8. PW4 is Sri Nishi Barman who is the elder brother of the deceased. In his evidence, PW4 has deposed that next day of the incident one Anup and Sushil informed him that on the date of occurrence in the night the juveniles and others severely beaten up the deceased in a wedding party. After 3/4 days of the incident, the

deceased went to his elder brothers' house at Guwahati and after 4/5 days he passed away

In cross-examination, PW4 has revealed that he had not seen the incident. Deceased did not tell him about the incident. After the incident he did not meet the deceased. PW4 has heard from the public that the deceased used to consume alcohol.

9. PW5 is Sri Manikanchan Barman. In his evidence, PW5 has deposed that on the date of occurrence at about 7:30 PM, he was

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returning from the market to his home. On the road, he had seen that the juveniles and Madhab Barman was assaulting the deceased. PW5 has also seen that the chest of the deceased was trampled by Madhab Barman.

In cross-examination, PW5 has revealed that he did not attend the wedding party in the house of Kanteswar Barman. The deceased was his good friend. He used to take alcohol with the deceased.

10. PW6 is Sri Anup Barman. In his evidence, PW6 has deposed that on the day of the occurrence at about 8/9:00 PM he was present in the wedding reception in the house of Kanteswar barman.

PW6 had seen the deceased talking with juvenile Biswajit Barman. During conversation, the juveniles Biswajit Barman, Bishnu Barman and Basudev Barman inflicted slaps on the face of the deceased. Thereafter, PW6 seen that all of them came out to the road from the party. PW6 has also followed them to the road. After coming out to road, Madhab Barman kicked the deceased as a result the deceased fall down in a gorge. Thereafter, PW5 left the place of occurrence.

In cross-examination, PW6 has deposed that on the date of occurrence there was a wedding reception in the house of Kanteswar Barman. The deceased also came to the house of Kanteswar to attend the party. At first the juvenile Biswajit inflicted a slap to the deceased. The deceased was a friend of PW6. PW6 has denied the

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suggestion that the deceased consuming alcohol created a commotion in the marriage party and thereafter other people thrown out the deceased from the party. He has denied the suggestion that the deceased was not assaulted in the marriage party.

- 11.** PW7 is Sri Kanteswar Barman. In his evidence, PW7 has deposed that he had not seen the deceased. He could not recollect when the incident happened. He has also deposed that there was no incident took place in the marriage reception in his house.

Cross-examination of PW7 has been declined by the defence

- 12.** PW8 is IO S.I Manjit Sarma. In his evidence, PW8 has deposed that he has submitted charge-sheet in this case against the juveniles U/S. 302/34 IPC. Ext-1 is the photocopy of charge-sheet (under objection).

In cross-examination, PW8 has been declined by the defence.

- 13.** PW9 is IO ASI Upendra Nath Brahma. In his evidence, PW9 has deposed that on 21.06.2006 he was working as ASI in the Dhaligaon Police Station. On that day, the informant Pabitra Barman lodged a written FIR in the police station. PW9 registered a case. On the basis of the FIR, he took the charge of investigation. He went to the place

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of occurrence with his staff and prepares Inquest report of the deceased. Ext-1 is the photocopy of the Inquest report. The deceased was sent to the Kokrajhar Hospital for post-mortem. PW9 also visited the place of occurrence and recorded statement of the witnesses. He has also collected the post-mortem report and after completion of investigation, he handed over the case diary to the O/C, Dhaligaon PS.

In cross-examination, PW9 has deposed that there is no injury mark on the body of the deceased. He has also deposed that PW2 Jagannath Barman stated before him that as the deceased did not tell him about the incident openly and he behaved like an able-bodied person, therefore, he did not give any importance or the deceased was not treated by the doctor. PW9 has also deposed that the incident happened on 03.06.2006 and the FIR was lodged on 21.06.2006.

- 14.** On appraisal of the evidences on record, it appears that, after the incident of alleged assault the deceased has neither informed his brother PW 1, who was present in the village at that time, about the incident nor the deceased took any treatment of doctor. As per FIR the incident happened on 03.06.2006. PW 2, another brother of the deceased, has stated in his evidence that on 18.06.2006, the deceased came to his house at Guwahati and on 20.06.2006, the deceased informed him about the alleged incident of assault and on that day he was taken to the hospital wherein he died. Thus, it appears that immediately after the incident the deceased did not took any treatment. Though, PW 2

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has deposed that he had injuries of the deceased on his chest, neck and shoulder but the post-mortem report of the deceased revealed no sign of

wound, injury or ligature mark on the body of the deceased. PW 5 and 6, who claimed to be the eye witness of the alleged incident of assault, deposed that they saw the juveniles and one Madhab Barman assaulting the deceased. PW 6 specifically deposed that in the wedding reception in the house of Kanteswar Barman juvenile Biswajit Barman, Bishnu Barman and Basudeb inflicted one or two slaps on the face of the deceased. Madhab Barman kicked the deceased and as a result he fell down into a gorge. Both PW 5 and 6 have not deposed about any injury sustained by the deceased.

15. In the decision reported in **2012(1)GLD469 (Gau)/[MANU/GH/0725/2011](#) Abdul Hakim Quadri vs State of Assam**, the Honourable Gauhati High Court observed that to bring home the offence within the mischief of Section [300](#), the prosecution has to establish that the offender had committed the act of culpable homicide with definite intention or that the offender had the intention to cause such bodily injury which was likely to cause the death of the person or knowing that the injuries, he was inflicting, would be eminently dangerous to the life. It is difficult to get direct evidence about the intention and knowledge of the assailant. These ingredients of law have to be inferred from certain circumstances, like the weapon used in the crime, circumstances under which the crime was committed, number of wounds inflicted upon the deceased, situs of the wound etc.

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16. In this case the deceased sustained no injury on his body as per medical evidence. There is no evidence of eye witnesses that the deceased sustained injury at the time of incident. The nature of assault inflicted by juveniles did not indicate that the juveniles had the intention to cause such bodily injury to the deceased which is sufficient to cause death of the deceased. Section 300 of IPC is read as follows;

300. Murder.- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

2ndly.- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

3rdly, -- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

4thly – If the person committing the act knows that it is so imminent dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

17. In the present case, PW 6 has deposed that on the date of occurrence, the juveniles Biswajit Barman, Bishnu Barman and Basudev slapped the deceased on his face. Medical evidence revealed that, the death of the deceased Nakul Barman is due to acute cardiac arrest due to Ishchemia (infarction) which leads to acute cardio-Respiratory failure. Thus, cause of death of the deceased is not the

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result of alleged assault upon him by the juveniles. Therefore, it appears that none of the ingredients of section 300 IPC is attracted in the present case.

18. In the result, we find that the prosecution has failed to prove its case against the juveniles beyond all reasonable doubt. Hence, the juveniles Dipak Barman, Bishnu Ch. Barman, Biswajit Barman and Basudev Barman are found not guilty U/S.302/34 IPC and hereby acquitted from the charge under said sections and set them at liberty forthwith. The bail bonds of the juveniles stand cancelled and the bailor is discharged from the bail bond liabilities.
19. The Judgment is given under my hand and seal of the Board on this **31st day of July, 2014.**

Sd/-
(Smt. N. Talukdar)
Principal Magistrate
J.J.B, Bongaigaon.

Sd/-
(Sri Dulal Chandra Basak)
Member
J.J.B, Bongaigaon.

Sd/-
(Smt. Ranu Choudhury)
Member
J.J.B, Bongaigaon.

Dictated and Corrected by me.....

Sd/-
(Smt. Nirmali Talukdar)
Principal Magistrate
J.J.B, BONGAIGAON.

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