

**(2012) 02 GAU CK 0068**

**Gauhati High Court**

**Case No:** None

Md.Rahman Ali, Son of Danesh  
Hazi

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** Feb. 14, 2012

**Hon'ble Judges:** P.K.Musahary, J

**Bench:** Single Bench

**Advocate:** For the Appellants : Mr. B. M. Choudhury Advocate For the Respondent : Mr. K. Munir, Public Prosecutor, Assam, Advocates appearing for Parties

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### **Judgement**

1. Heard Mr. B.M. Choudhury, learned counsel for the appellant. Also heard Mr. K. Munir, learned Additional P.P., Assam, appearing for the respondent State.
2. This appeal has been preferred against the judgment and order dated 24.09.2004 passed by the learned Ad hoc Additional Sessions Judge, Kamrup, Guwahati in Sessions Case No. 258(K)/1999 corresponding to G.R. Case No. 2752/1997 convicting the appellants u/s 304 Part II/34 IPC and sentencing each of them to undergo R.I. for five years.
3. The prosecution case, as unfurled from the relevant FIR lodged by Amela Khatun is that on 14.6.1997, a village Bichar was held at Nayapara char in connection with commission of theft of a goat where her husband was brought by some accused persons namely, Falu Sheikh, Sahar Ali, Sayed Ali, Samad Ali, Ali Shiekh, Rahman Ali, Sanjoy Ali and Lal Mia. The said accused persons assaulted her husband Juran Ali inflicting severe injuries and he was taken to the courtyard of accused Sukur Ali where he was confined till next morning. Her husband as a result of assault, died on 15.6.1997. On the basis of an Ejahar, I/C Goroimari O.P. made G.D. Entry and forwarded the same to Chhaygaon P.S. for registering a case u/s 302 IPC. Accordingly, the Chhaygoan P.S. Case No. 99/1997 was registered u/s 147/302 IPC.

4. After completion of the investigation, charge sheet was filed u/s 147/148/149/302 IPC against 12 (twelve) accused persons including the present appellants. On committal, the learned trial court framed charge u/s 302/34 IPC against the accused persons who on being read over and explained, pleaded not guilty and claimed to be tried.

5. During trial the prosecution examined 10 witnesses to prove its case while the defence examined none in their defence. The learned trial court after examination of the accused persons u/s 313 CrPC and on consideration of the materials/evidence on record and upon hearing the learned counsel for the parties, convicted and sentenced the present appellants as stated earlier.

6. Mr. Choudhury, taking the Court through the evidence of prosecution witnesses, particularly PWs 1, 4, 6, 8, 9, 10 and 12, submits that there is no material against the present appellants, inasmuch as, no evidence has been led against them to the effect that the present convict appellants assaulted the deceased. According to him, the so called eye witness PW 8, Lalchand Ali, in his evidence claimed that on 14.6.1997, on the way, he saw Juran Ali being taken by some people to the house of Sukur Ali (one of the accused persons). He also claimed that he saw the present appellants along with others while the said deceased was being taken to the house of Sukur Ali. The said eye witness, PW 8, visited the house of Sukur Ali in the next morning where he found the deceased Juran Ali inside the house of Sukur Ali. This PW 8 remained in the house of Sukur Ali till the police came and took him towards the river bank. He never stated that he saw Juran Ali was being beaten up or assaulted by some people in the house of Sukur Ali in the morning of 15.6.1997.

7. Mr. Choudhury also submits that PW 8, eye witness, is not a reliable witness, inasmuch as he had enmity over some land matters with Rahman Ali, one of the convict appellants. He himself in his evidence stated that he was detained, tied up and assaulted by some members of the public in the house of aforesaid Sukur Ali. According to Mr. Choudhury, the possibility of adducing false evidence against the convict appellants cannot be ruled out due to subsisting rivalry against the appellant Rahman Ali.

8. Mr. Munir, learned Additional P.P, submits that the evidence sufficiently proved that the deceased was taken to the house of Sukur Ali by some members of the public including the present convict appellants. Not only that it is also proved that the deceased Juran Ali was confined in the house of Sukur Ali and the said deceased was found in the house of the accused Sukur Ali from whose house the police recovered the deceased and took towards river bank side for shifting him to hospital by crossing the river by a boat. This evidence, according to Mr. Munir, is sufficient to prove the involvement of the present convict appellants in the alleged incident. According to him, it is not necessary to prove who gave the fatal blow to the deceased for causing his death.

9. I have gone through the evidence of the Medical Officer, PW 12, Dr. B. C. Roy Medhi and also his postmortem report, Ext. 4. As per postmortem report, the deceased sustained multiple injuries on his person. In his opinion the cause of death was due to "comma" as a result of the injuries sustained on the head. The postmortem report clearly suggests/proves that several persons assaulted the deceased by blunt weapon. No sharp weapon was used in inflicting the aforesaid injuries. From the aforesaid evidence there is no doubt that several persons were involved in causing injuries to the deceased.

10. Except PW 8, no other prosecution witness stated that they found the presence of the convict appellants while Juran Ali was taken to the house of Sukur Ali although, they have stated that the deceased Juran Ali was confined in the house of said Sukur Ali. Even the wife of the deceased, informant in this case, in her evidence, stated that her husband was taken from her house by a large number of villagers suspecting that he committed theft of a goat but she did not mention any name. In the Ejahar she mentioned the names of some convicts, namely, Falu Shiekh, Sahar Ali, Rahman Ali and other villagers but from her evidence it is clear that she was not present at her house while her husband was taken by the villagers. She is not an eye witness to the incident of taking her husband by the villagers. In cross examination, she stated that she does not know the scribe of the FIR but it was stated by her that contents of the FIR was read over to her. It appears that the learned trial court passed the impugned judgment and order convicting the present appellants largely relying on the evidence of the PW 8, who, as per his own evidence had enmity with one of the accused person, namely, Rahman Ali. The reliability of the evidence of PW 4 has been questioned due to the subsisting enmity between PW 8 and the convict appellant No. 1.

11. In my considered view, it is needless to deal with the question of reliability of the evidence of PW 8. His evidence is that he saw the present convict appellants along with other villagers while the deceased was being taken to the house of Sukur Ali. He has never stated that the present convict appellants participated in the act of assault. Although PW 8 is a covillager or a person from the same locality, he could name only few of the villagers present, particularly Rahman Ali to whom he had admitted that he had enmity with some relatives of said Rahman Ali. There is nothing on evidence that the convict appellants carried any weapon; blunt or sharp, at the time when he allegedly saw them. He was a witness to the incident of taking the deceased to the house of Sukur Ali on 14.6.1997. He had no knowledge as to what happened to the deceased Juran Ali while he was confined whole night in the house of Sukur Ali. However, he stated that on his revisit in the next morning to the house of Sukur Ali, he found that the deceased was sitting inside the house of Sukur Ali. The eye witness, PW 8, deposed that he saw Juran Ali sustained injury due to assault by the members of the public while he was taken to the house of Sukur Ali. In the next morning also when he visited the house of Sukur Ali, as per his deposition, did not see Juran Ali being assaulted by the members of the public. He

did not deposed that he again saw the convict appellants in the house of Sukur Ali in the next morning i.e. on 15.6.1997. The prosecution led no evidence as to what happened to Juran Ali while he was confined whole night in the house of Sukur Ali. What is evident from the evidence is that at least a section of local people were against Juran Ali as he was suspected to be involved in the case of theft of a goat and, as a result, he was confined in the house of Sukur Ali. From the evidence on record, I find nothing to substantiate that the appellants were really involved in the act of assault on the deceased during the time he was taken to the house of Sukur Ali and his confinement in the house of Sukur Ali. What is established from the evidence is that the convict appellants were seen present while Juran Ali was being taken to the house of Sukur Ali. In my considered view, the aforesaid evidence of PW 8 is not enough to convict the present appellants u/s 304 PtII IPC.

12. In view of the above, conviction of the appellants u/s 304 PtII IPC is not sustainable under the law. Accordingly the impugned conviction and sentence passed by the learned trial court is hereby set aside and quashed aside. However, the appellants are found liable to be convicted u/s 323 IPC and accordingly, they stand convicted u/s 323 IPC.

13. The appellants, namely, Md. Rahman Ali, Md. Jalimuddin, Md. Sahar Ali, Md. Gajibar Rahman, Md. Falu Ali Shiekh, Md. Jalish Ali & Md. Sukur Ali were in custody from 19.4.1999 to 29.4.99 and from 24.9.04 to 15.10.04, from 18.7.97 to 20.10.97 and from 24.09.04 to 15.10.04, from 23.10.97 to 21.1.98 and from 24.9.04 to 15.10.04, from 19.4.99 to 29.4.99 to 24.4.99 and from 24.09.04 to 15.10.04, from 19.4.99 to 29.4.99 and from 24.9.04 to 15.10.04, from 18.7.97 to 20.10.97 and from 24.9.04 to 15.10.04 and from 19.4.99 to 29.4.99 and from 24.9.04 to 15.10.04 respectively.

14. Having regard to the evidence on record that the convict appellants were present at the initial stage of the occurrence without being found involved in the act of assault on the deceased, the end of justice would be met if the convict appellants are sentenced to the period already undergone by them as indicated above.

15. The appeal stands disposed of with the modification in the conviction and sentence as indicated above. The bail bonds stand discharged.

16. Return the LCR forthwith.