

**IN THE COURT OF SESSIONS JUDGE :::::::::::::::::::: BAKSA, MUSHALPUR**

Present : Shri C. Das, AJS.  
Sessions Judge,  
Baksa, Mushalpur

( Committed on 10/4/15 by learned CJM,  
Nalbari in GR Case No.411/2014 )

**JUDGMENT IN SESSIONS CASE NO.165/18**

u/s 302/201/34 IPC.

State

versus-

1. Mohan Karmakar
2. Albish Bando

.... Accused

Appearance : For the State : Mr. R. Chetry, PP. Baksa,  
: For the accused : Mr.G. C. Nath, Advocate

Date of recording evidence : 10/8/15, 30/6/16, 29/7/16, 31/10/16, 26/4/17,  
30/6/17, 11/4/18, 22/5/18

Date of argument : 9/7/18

Date of judgment : 23/7/18

**JUDGMENT**

1. The case of the prosecution briefly, is that on 14/10/14 the complainant Smti. Renu Munda lodged an ejahar before the Officer-in-charge of Barbari police station, alleging inter-alias that on 10/10/14 at night, her son Soma Munda had gone to enjoy Lakshmi puja at Nayabasti. But some unknown culprits killed her son by chopping off his head while returning from the festival and took away his head and threw his body into Pagladia river.

  
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2. The police accordingly, registered the Barbari PS. Case No.44/14 and started the investigation of the crime. During the investigation, the I/O visited the place of occurrence, drew up a rough map of place of occurrence and examined the witnesses including the complainant. The inquest on the dead body was conducted by Executive Magistrate and after that, it was sent to SMK Civil Hospital, Nalbari for post-mortem examination. The I/O arrested the accused persons. The I/O also, collected the post-mortem examination report of the deceased and also, recreated the scene of crime in presence of leading local persons and recorded their statement. At the end of the investigation, the I/O having found a prima-facie case well established, filed the charge-sheet against the accused persons to stand trial in the court.

3. The accused persons when produced and produced, were furnished with the relevant copy of the case as required u/s 207 CrPC. Learned Chief Judicial Magistrate, Nalbari, having found the offence is triable by the court of sessions, committed the case to the Sessions Court for its trial. Accordingly, a separate sessions case was registered and took the process of trial of the case.

4. After hearing of the parties and on perusal of the materials on record, the charge u/s 201/302/34 IPC framed against the accused persons. The charge so framed, was read over and explained to the accused persons who pleaded not guilty and claimed to be tried.

5. The prosecution during the course of trial, examined as many as, 9(nine) witnesses including the I/O and M/O to support its case. In the statement recorded u/s 313 CrPC., the accused persons denied all accusations so appeared in the evidence on record against them. However, the accused persons denied to adduce any evidence in their defence. The argument of the parties was heard at length.

**POINTS FOR DETERMINATION :**

6. Whether on 10/10/14, in furtherance of common intention, the accused persons committed murder intentionally causing death of Soma Munda ;

7. Whether on the same day in furtherance of common intention, the accused persons caused disappearance of the evidence of aforesaid murder of Soma Munda;

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**DECISION AND REASON THEREFORE :**

8. At the outset of argument, learned Public Prosecutor submitted that the death of the victim as well as, recovery of his headless dead body in the river, in this case is not in dispute. He submitted that the circumstances so projected by the witnesses of the prosecution particularly, PW1 cannot be brushed aside on the ground that she was not corroborated by other circumstances of the case even if there was no eye-witness of the alleged occurrence. Further he relied the circumstances so appeared in the evidence on record and submitted that the circumstances clearly indicated that it was the accused persons who killed the victim on the night of fateful day and concealed the evidence by throwing the dead body of the victim into river water to screen themselves from the eye of law. Therefore, he urged to punish the accused persons under appropriate provisions of law.

9. Per contra, learned counsel for the accused persons, on the other hand, strenuously submitted that it is true that the case of the prosecution is based on circumstances as there was no eye-witness of the occurrence and the occurrence stated to be happened at night. He submitted that the prosecution evidence placed reliance on two circumstances such as firstly, that the accused persons came to the house of the victim and made a search for him to take the victim for fishing at night. But no witness of the prosecution ever could say that the victim was seen with the accused persons on the night of fateful day. Further, he submitted as regards to second circumstance was that the accused persons led to the recovery of the dead body of the victim from river side which was not confirmed by the I/O. Hence, there was no link of chain of circumstances to hold that it was the accused persons who committed murder of the victim of the case of the prosecution and in order to conceal the evidence, threw the dead body of the victim into the local river. He submitted that the name of the accused persons ought to have mentioned in the FIR itself but it was surprisingly, missing thereof and thus, it thus created doubt if the accused persons came in search of the victim in his house on the fateful night. The GD Entry was also, not placed on record by the prosecution. Since no hypothesis can be drawn against the accused persons on the basis of two circumstantial evidence, placed by the prosecution side, the accused persons cannot be held guilty of murder of the victim and therefore, he prayed to acquit the accused persons from the case.

10. After hearing the above submissions of learned counsels for the