

DISTRICT : GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. :- **Sessions Case No. 108/2012.**

G.R. Case No. 4/2008.

U/S. 302/34 of IPC.

The State of Assam Prosecution.

Vs.

Sri Gandhi Koya. Accused.

Date of charge 17.07.2012.

Dates of evidence 03.01.2013, 07.05.2013,
03.06.2013, 17.06.2013,
01.07.2013, 06.09.2013.

Date of argument 21.11.2013.

Date of judgment 22.11.2013.

APPEARANCES :-

For the prosecution Mr. N.P. Acharjee,
Public Prosecutor, Golaghat

AND

For the accused person Mr. T. Ali,
Legal Aid Counsel, Golaghat.

P R E S E N T :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT AND ORDER :

1. The prosecution case, as unfolded in the record, in brief, is that on 1.1.2008, Sri Francis Kindu was going to Kempur village under Uriamghat police station along with Joseph Tapna at around 1.30 A.M. When they were enjoying 'Jhumur' dance in the said village, accused Sri Jeferius Kujur, Sri Jorge Kujur and present accused Sri Gandhi Koya assaulted them and causing grievous injuries to them. Injured Joseph Tapna, however, managed to escape leaving behind the injured Francis Kindu there. Injured Francis Kindu succumbed to the injury at Dibrugarh Medical College.

2. The O/C of Uriamghat police station on receipt of the written ejahar from the informant Sri Bijoy Kindu on 4.1.2008, prepared the GDE No. 42, dated 4.1.08 and forwarded the said ejahar to the O/C of Sarupathar police station for registration of the case. Accordingly, the O/C of Sarupathar police station registered the case vide Sarupathar P.S. Case No. 4/08 u/s 326/302/34 of IPC and investigated into the case. After completion of investigation, the police submitted the charge sheet against the accused Jeferius Kujur, Jorge Kujur and Gandhi Koya u/s 302/34 of IPC.

3. As the case is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class (M), Dhansiri, Sarupathar committed the case to the Court of Sessions for trial against accused Gandhi Koya only. The remaining two accused persons have not been committed to the Court of Sessions. The case against them has been kept in file by the learned trial Court.

4. The accused person is an UTP in this case. Hence, the learned counsel Mr. T. Ali from the penal of Legal Aid Counsel, Golaghat has been appointed to conduct the case of the accused person on the defence side at the cost of DLSA, Golaghat.

5. After hearing from both the sides and on perusal of the case record, the prima facie material for the offence u/s 302/34 of IPC was found against the accused Gandhi Koya to proceed with. Accordingly, the accused Gandhi Koya was charged u/s 302 /34 of IPC and the contents of the charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined as many as 10 witnesses including the I.O. to prove the case. The accused person has been examined u/s 313 of Cr.P.C. He declined to adduce defence evidence.

7. Heard argument of both the sides.

8. The point for determination in this case is :-

“ Whether both of the accused person during the intervening night between the date of 1.1.2008 and 2.1.2008, in furtherance of common intention, committed the murder by causing the death of Francis Kindu ?”

DISCUSSIONS, DECISION AND REASONS

THEREOF :

9. Let me discuss the evidence on record to see as to whether the prosecution is able to prove the above point.

10. P.W.1 Sri Bijoy Kindu is the informant and younger brother of the deceased Francis Kindu. According to his evidence, Francis Kindu died on 3.1.2008. At that time, Francis Kindu and Joseph Tapna went to Kempur village for enjoying 'Jhumur' dance. On the next day, he was informed by Joseph Tapna that his brother was beaten by the accused Gandhi Koya and two others. Joseph Tapna was managed to escape. Joseph Tapna was also beaten by the accused persons with piece of wood and stick. Having got the said news, he (P.W.1) rushed to the place of incident and found his injured brother Francis Kindu in the cattle shed belonging to Tafal Kujur of Kempur village. The injured was taken to Sarupathar Civil Hospital and from there to Golaghat Civil Hospital. Thereafter, the injured was taken to Dibrugarh Medical College & Hospital and he succumbed to the injury on 3.2.2008. Then he lodged the ejahar. Ext-1 is the ejahar, upon which Ext-1(1) is his signature.

In cross examination, P.W.1 has stated that without giving any information to the police station, he brought the injured to Dibrugarh for medical treatment. On the instruction of the police, the village Head man lodged the ejahar. But the said ejahar is not found in the record. P.W.1 has further stated that he did not go to Dibrugarh with the injured person.

11. P.W.2 Sri Ajoy Kindu has deposed in evidence that the deceased was his cousin. The occurrence took place on the 1st day of January at Kempur village. At that time, there was entertainment o 'Jhumur' dance. He(P.W.2) was in his house. He came across a patient bring from Kempur village to Sarupathar

hospital for treatment. At that time, Bijoy Kindu was escorted the said patient. The name of patient was Francis Kindu. He was told by them that a mar-pit took place in the same village. P.W.2 has further deposed that at first, he approached to Uriamghat police Out Post and thereafter, he went to Sarupathar civil hospital. As the patient was serious, therefore, he was taken to Golaghat civil hospital and after one night, the patient was taken to Dibrugarh and got him admitted at Sanjibani Nursing Home. After one night, the said patient was succumbed to the injury. The police performed the inquest over the dead body of the deceased. Ext-2 is the inquest report, upon which Ext-2(1) is his signature. P.W.2 has further stated that he could not say how the incident took place.

12. P.W.3 Sri Basil Tirki has stated in evidence that he came to know about the incident from Joseph Tapna in the morning of 2nd January, 2008. He was told by Joseph Tapna that while he and Francis Kindu were enjoying 'Jhumur' dance on the last night, Francis Kindu was beaten and kept him binding and Joseph Tapna ,however, managed to escape from there. P.W.3 has further stated that he could not say how Francis Kindu sustained injury.

13. P.W.4 Sri Robin Kujur has deposed in evidence that on 1.1.08, at night of about 1'30 A.M., the occurrence took place. The villagers of Kempur village after having feast, were performing 'Jhumur' dance. At that time, two boys from another village arrived there. The deceased Francis Kindu was coming from Rajapukhuri village. They introduced before the villagers that they belonged to ALNA Organisation. P.W.4 at that time was the Secretary of Village Youths.. The villagers requested them to sit. But they did not comply it. They took him (P.W.4) to the side of the house and questioned him under whose instruction, they performed 'Jhumur' dance. Then he replied them that on the eve of New Years festival, they were enjoying the 'Jhumur' dance. At that time, the deceased Francis Kujur covered his face with a cloth and gave two fisting blows to P.W.4. The deceased Francis Kindu also threatened them that he would fire them if creates commotion and they were searching the owner of the house into whose court-yard, the said 'Jhumur' dance was performed. Then Francis Kindu dragged the owner of the said house to a distant place and assaulted him. Thereafter, Francis Kindu called the wife of the accused to come out and when she came out, Francis Kindu touched her and pushed her. Then the villagers caught hold the deceased Francis Kindu and accused persons assaulted him with a piece of wood. Then Francis Kindu fell down. He (P.W.4) lifted Francis Kindu

from there and made him seated on the side. The brother of Francis on getting the informant, came there and took Francis Kindu from there.

In cross examination, P.W.4 has stated that many people were present there at the time of occurrence. He could not say who had actually assaulted Francis Kindu.

14. P.W.5 Sri Christopher Kujur has deposed in evidence that the occurrence took place in the Court-yard of accused Gandhi Koya on the night of 1.1.2008. At that time, the deceased Francis Kindu entered into his house and drunk water and enquired him as to whether the girl from No.1 Bilgaon has been arriving in his house or not. Then he (P.W.5) replied negative. At that time, the deceased Francis Kindu was accompanied with one of his associate. At the relevant time of occurrence, the 'Jhumur' dance was performing in the Court-yard of accused Gandhi Koya. Both the deceased and his associate were covered their faces with clothes and introduced themselves as members of ALNA to the villagers and then they stated them that they stopped 'Jhumur' dance in different villages and questioned them why they were performing the 'Jhumur' dance there and they called P.W.4 Rabin Kujur who was then the Secretary of Village youths. They gave two fisting blows on him after questioning him as to why he did not stop the 'Jhumur' dance. Thereafter, the deceased Francis Kindu assaulted the accused Gandhi Koya with a lathi and asked him to send his wife to him. Thereafter, the deceased gave fisting blows to the wife of accused person. Then the accused gave blow to Francis Kindu with a piece of wood. Later on, Francis Kindu succumbed to the injury at Dibrugarh Medical College & Hospital.

P.W.5 denied the suggestions that he did not state before the I.O. that the accused had gave blows to the deceased with a piece of wood.

15. P.W.6 Sri Mantu Soren is the writer of the ejahar, Ext-1 is the said ejahar, upon which Ext-1(2) is his signature.

16. P.W.7 Smti. Arati Kujur has deposed in evidence that about 6 years ago, on the 1st January, she after having dinner party was performing 'Jhumur' dance. Then the deceased Francis Kindu questioned her as to why they performed 'Jhumur' dance. Then she replied that on the eve of festival, they were performing the 'Jhumur' dance. Then the deceased Francis Kindu called P.W.4 Robin Kujur, the Secretary of the village youths. Thereafter, the deceased Francis Kindu indulging scuffling with the wife of the accused. Then the villagers caught Francis Kindu and accused gave blow with a piece of wood on

Francis Kindu.

In cross examination, P.W.7 has stated that Francis Kindu has been beaten by the villagers after binding him. She tried to separate while the deceased was scuffling with the wife of accused person.

17. Smti. Rupali Koya has deposed in evidence that accused Gandhi Koya is her husband. The deceased Francis Kindu was not known to her. At the time of occurrence, a function was held among the people of Christian religion at Kempur village. Two persons from Rajapukhuri village, namely – Francis Kindu and Jorge Kujur were indulging quarrel with them. Then one person fled away and another succumbed to the injury. She is the eye witness to the occurrence. She saw while Jorge Kujur and Jepherius Kujur assaulted Francis Kindu and as a result, he succumbed to the injury. At that time, her husband was sleeping inside the house. P.W.8 has been declared as hostile witness by the prosecution.

18. P.W.9 Sri Joseph Toppo has deposed in the same line as deposed by P.W.8. He saw the incident, but he could not say who had beaten Francis Kindu. P.W.9 was also beaten by somebody on his head and both P.W.9 and the victim were kept binding separately. Two village women unfastening them. Thereafter, P.W.9 returned home. P.W.9 could not say when Francis Kindu succumbed to the injury.

19. P.W.10 S.I. of police Sri Anil Charingia is the Investigating Officer in this case. After completion of investigation, he submitted the charge sheet u/s 302/34 of IPC against the accused persons.

20. From the aforesaid evidence on record, it is found that on the day of incident, a 'Jhumur' dance was performed at Kempur village by the villagers on the eve of New Year festival. Then the deceased along with other went there and questioned them about holding of the 'Jhumur' dance. At that time, they covered their faces with clothes. The deceased Francis Kindu misbehaved with the wife of accused person. Further, they assaulted some of the co-villagers. The quarrel ensued between the injured persons and the co-villagers. One of the injured managed to escape from there. Smti. Rupali Koya (P.W.8) the wife of the accused has stated that Jepherius Kujur and Jorge Kujur were involved in the mar-pit and some of the witnesses have stated that accused Gandhi Koya gave blow on the head of injured person. Therefore, the evidence of the witnesses are not corroborated on the material particulars regarding the actual culprit who had assaulted the deceased Francis Kindu.

21. Considering the aforesaid evidence on record, I find and hold that

the prosecution has failed to prove the case against the accused Gandhi Koya u/s 302 /34 of IPC beyond all reasonable doubt and in the result, I acquit him of the charges and set him at liberty.

22. The Superintendent of District Jail, Golaghat is directed to release the accused Gandhi Koya from this case, if he is not wanted in any other case.

23. The judgment and order is pronounced in my open Court today in presence of accused persons , as well as, learned counsels of both the sides.

24 Send back the case record of G.R. Case No. 4/2008 to the learned original Court along with a copy of the judgment and order.

Given under my hand and seal of the Court on this the 22nd day of November, 2013.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

APPENDIX :

WITNESSES FOR THE PROSECUTION :

1. P.W.1 - Sri Bijoy Kindu.
2. P.W.2 - Sri Sri Ajoy Kindu.
3. P.W.3 - Sri Basil Tirki.
4. P.W.4 - Sri Robin Kujur.
5. P.W.5 - Sri Christopher Kujur.
6. P.W.6 - Sri Mantu Soren.
7. P.W.7 - Smti. Arati Kujur.
8. P.W.8 - Smti. Rupali Koya
9. P.W.9 - Sri Joseph Toppo.
10. P.W.10 - Sri Anil Charingia, I.O.

EXHIBITS FOR THE PROSECUTION :

1. Ext-1 - Ejaha.
2. Ext-2 - Inquest report.
3. Ext-3 - Charge sheet.

WITNESSES FOR THE DEFENCE :- NIL.

EXHIBITS FOR THE DEFENCE :- NIL.

Dictated & Corrected
by me.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictation taken & transcribed
by me:-S. Borpatra, Steno.