

**IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM**

**Sessions Case No.7/2016**  
**(U/S :302/34 IPC)**

**State**  
**Versus**  
**1. Safikul Islam,**  
**S/o- Md. Mannash Ali,**  
**2. Hasmat Ali,**  
**S/o- Late Maham Ali,**  
**Both are resident of**  
**Vill- No.2 Saprabari,**  
**P.S.- Mazbat, Dist-Udalguri.**

**PRESENT: Sri P.Saikia,A.J.S.,**  
**Sessions Judge,**  
**Udalguri.**

**APPERANCE:**

**For the Prosecution : Sri A. Basumatary, P.P.,Udalguri**

**A N D**

**For the accused : Mr. T.C. Boro, Advocate.**

**Evidence recorded on :24.2.16, 14.3.16, 22.4.16, 2.5.16,**  
**12.6.17, 11.7.17, 18.8.17, 15.2.18.**

**Argument heard on : 28.8.2019.**

**Judgment delivered on: 31.8.2019.**

**J U D G M E N T**

1. The factual matrix of the prosecution case, in a nutshell, is that on 12.7.2013 the informant Hasmat Ali lodged an FIR with the Officer-In-Charge of Dalgaon PS alleging, inter-alia, that on 6.7.2013 at about 4.30 AM he found his nephew Jiarul Hoque was found lying dead by the side of his tubewell within his compound. Some unknown assailants killed his nephew Jiarul Hoque.

2. Pursuant to the FIR Dalgaon P.S. registered a case vide Dalgaon P.S case No. 374/13 U/S 302 I.P.C. and entrusted the case for investigation to SI S. Das to investigate into the case. During the investigation, I.O. of the

Dalgaon P.S. found that the case false under the jurisdiction of Rowta PS. Accordingly transferred the case to Rowta P.S. On receipt of the case record, the O/C, Rowta PS registered a case being Rowta PS case No. 121/13 U/S 302 IPC and entrusted the case for investigation to SI A.J. Baishya. On completion of the investigation police submitted the charge-sheet U/S 302/34 IPC against the accused persons Safikul Islam and Hasmata Ali to face trial.

3. The offence U/S 302 IPC being exclusively triable by the court of Sessions, the learned Chief Judicial Magistrate, Udalguri vide order dated 6.1.2016 committed the case to this court of Sessions.

4. On commitment the prima-facie case has been made out U/S 302/34 IPC against the accused persons namely, Safikul Islam and Hasmata Ali. My learned predecessor in office accordingly framed formal charge according to law and the same on being read over and explained to the accused persons to which they pleaded not guilty and claimed to stand trial.

5. In order to prove its case the prosecution has examined as many as fourteen witnesses and also relied on some documents marked as exhibits.

6. On closure of the prosecution evidence the accused persons in their statements recorded U/S 313 Cr.P.C. denied the allegations levelled against them and pleaded that they are innocent. No defence evidence has been adduced.

7. In the context of the above facts and circumstances of the case, the points for determination in the case is set forth as follows:

- (i) Whether the death caused to the deceased Jiarul Hoque was homicidal in nature?
- (ii) Whether the accused persons committed murder with intention to cause the death of the deceased?
- (iii) Whether the accused persons committed the offence in furtherance of common intention?

8. I have heard argument canvassed by the learned counsel of both the sides and also minutely scrutinised the evidence on record in its entirety to arrive at a just decision in the case.

**DISCUSSION, DECISION AND REASONS THEREFOR:**

9. PW1, Hasmat Ali is the first informant of the case. He has exhibited the FIR as Ext.1, wherein, Ext.1(1) is his signature. According to his version, the incident occurred in the year 2013 and the accused persons are known to him. At the time of occurrence he was at his home. At around 10.30 PM accused Safikul came to his house and asked his nephew deceased Jiarul Hoque to accompany with. Accordingly deceased Jiarul accompanied accused Safikul. At about 2.30 AM he heard a sound of falling a thing near their tubewell. But he did not come out of the house. In the early in the morning his wife Nilima Khatoon came to the tubewell to fetch water when she found three persons present there. She could identify one of the persons namely Safikul Islam to be present there but she could not identify other two persons. She also found the deceased lying near the tubewell and she found blood oozing out from his head. She raised hue and cry. On hearing hue and cry they came out of the house and found the deceased lying dead near the tubewell. They also made discussion to take the deceased to hospital. At that time accused Hasmat came there and reading his pulse he observed that deceased Jiarul Hoque already expired. Accused Safikul had love affairs with Rasida, the daughter of accused Hasmat. Subsequently, when Jiarul come out successful in the matriculation examination, love affairs developed between Jiarul and said Rasida. Love affairs being developed between Rasida and Jiarul, the accused persons committed murder of Jiarul. He suspect, for the above reason accused persons eliminated the deceased.

10. In cross-examination, he has stated that he lodged the FIR before the police 6/7 days after the occurrence without mentioning the reason of delay in lodging the FIR, as because; he was in a great sorrow. He did not mention the name of any of the accused persons in the FIR. He has denied that he did not state to police that accused Safikul came to their house and he asked the

deceased Jiarul to accompanying him and, accordingly, Jiarul accompanied accused Safikul. He has further denied that he did not state to police that accused Hasmal came to the place of occurrence and read the pulse of the deceased and observed the deceased to have died. He has also denied that he did not state to police that accused Safikul had affairs with Rasida and that subsequently after deceased coming of successful in the matriculation examination Rasida started affairs with deceased. He has denied the defence suggestion that deceased being his nephew he has deposed falsely implicating the accused persons. Prior to the occurrence he has dispute with accused Hasmal Ali over landed property.

11. PW2, Musst. Nilima Khatoon has stated that informant is her husband. The incident occurred in the year 2013. On the day of occurrence at dawn she came out of her room to answer her call of nature when she saw three persons nearby their tubewell in their house premises. She found deceased Jiarul lying by the side of their tubewell. She could identify one of the persons i.e. accused Safikul. On seeing Jiarul lying dead she raised hue and cry whereupon the other family members of their house came out. While they were deliberating upon taking Jiarul to hospital at that time accused Hasmal came and told them that it was not necessary to take Jiarul to the doctor because he had already dead. Initially, Rasida, the daughter of accused Hasmal, used to love accused Safikul but subsequently when deceased Jiarul passed matriculation examination she started love affairs with Jiarul and for that accused persons killed Jiarul.

12. In cross-examination, she has disclosed that police recorded her statement about 7 days after the occurrence. She denied that she did not state to police that she could identify accused Safikul at the place of occurrence at the time of occurrence. It is also denied by her that she did not state to police that accused Hasmal came to the place of occurrence and read the pulse of Jiarul. She has also denied that she did not state to police that accused Hasmal asked them not to take Jiarul to doctor. Prior to the occurrence there was dispute over landed property between father of deceased Jiarul and accused

Hasmat. She has denied the defence suggestion that she has deposed falsely and the accused persons are falsely implicated.

13. PW3, Giasuddin is the elder brother of the informant Hasmat Ali. He has deposed that deceased Jiarul was his son and the accused persons are known to him. The occurrence took place about three years ago in the year 2013. On the day of occurrence he was at his home. On that day at around 10/10-30 PM accused Safikul came to their house and asked his son, Jiarul to accompany him for a walk. On being requested by accused Safikul, Jiarul accompanied with him. In the early morning Nilima Khatoon, the wife of informant, raised hue and cry stating that Jiarul is lying dead near by their tubewell. He alongwith other family members came out of the house and took Jiarul to their courtyard. At that time accused Hasmat came there. When they were conducted to take Jiarul to doctor to ascertain whether he is alive or not but accused Hasmat already observed that Jiarul was already no more. It was bewildering to them as to how Hasmat could know that Jiarul had already expired. Nilima Khatoon revealed before them that she saw three persons nearby the tubewell. She could not identify two persons out of them but she could identify one of them i.e. Safikul. He saw a rope and a chair nearby a betel-nut tree at a distance of about 8 cubits away from the tubewell. The chair belongs to them and the rope belongs to Hasmat. He is confident that the accused persons killed his son Jiarul.

14. In cross-examination, he has stated that he does not remember now whether he stated to police that Nilima told them that she could identify accused Safikul Islam. He has denied that he did not state to police that accused Hasmat came to the place of occurrence and he opined that Jiarul already expired and that he need not be taken to the doctor. He also denied that he did not state to police that he saw a chair and a rope nearby the betel-nut tree. When hue and cry being raised by Nilima the neighbouring people namely, Jinnat, Idrish Ali and many other people came to the place of occurrence.

15. PW4, Sahidul Islam has stated in his evidence that the informant is his elder brother and deceased is his nephew. He also knows the accused persons. Initially Rasida used to love accused Safikul. But when deceased Jiarul passed matriculation examination then Rasida, daughter of accused Hasmat, abandoned her love affairs with her earlier love affairs with Safikul and started love affairs with Jiarul. Over love affairs there was some dispute between accused Safikul and deceased Jiarul. On the day of occurrence, in the evening at about 6.30-7 PM accused Safikul came to their house and asked his sister-in-law Nilima Khatoon as to whether informant Hasmat was available in the house. Nilima then replied in negative whereupon Safikul came inside the room and raising the mosquito net saw Jiarul inside it. Thereafter, accused Safikul went to the house of accused Hasmat. At about 10.30 PM accused Safikul came to their house and asked Jiarul for a walk and accordingly Jiarul accompanied Safikul to outside. In the early morning his sister-in-law Nilima came out of the house and saw 2/3 persons nearby the tubewell. They were about to leave the place. Nilima could identify one of the persons who is accused Safikul. He saw a plastic chair and a plastic rope used for tying cow near a betel-nut tree. A part of the said rope was found tied in the betel-nut tree and the rope and the plastic chair belonged to accused Hasmat Ali. They came to the place of occurrence on hearing hue and cry of Nilima Khatoon. After few moments accused Hasmat came to the place of occurrence and opined that Jiarul had already expired. They were thinking to take Jiarul to the doctor to ascertain whether he is alive or dead but accused Hasmat asked them not to take him to hospital observing that Jiarul had already died.

16. In cross-examination, he has stated that on the very day of occurrence police came to the place of occurrence and asked him about the incident. Police again came to the place of occurrence after 6/7 days and recorded his statement. He has denied that he did not state to police that Nilima told him that she saw three persons at the place of occurrence at the material time and that she could identify accused Safikul to be one of them. He has also denied that he did not state to police that accused Safikul came to their house at about 6.30/7 PM and enquired his sister-in-law Nilima about informant Hasmat Ali and that Nilima replied the negative and that Safikul came inside the room

and raised the mosquito net and found Jiarul inside it. He has further denied that he did not state to police that thereafter accused Safikul went to the house of accused Hasmat and that at around 10.30 PM accused Safikul came to their house and asked Jiarul for a walk and at the request of accused Safikul Jiarul came out for walk with him and that he saw a plastic chair and a plastic rope at the place of occurrence. On hearing hue and cry raised by Nilima Khatoon about 15/20 persons came to the place of occurrence immediately thereafter and amongst them were Idrish Ali, Sudarsan Chouhan, Shyamsundar Chouhan, Ram Dulal, Baleswar Chouhan, Prabhulal Chouhan, Narayan Chouhand and others. He has further denied that he did not state to police that there was a dispute between accused Safikul and deceased Jiarul over affairs with Rasida. He has denied the defence suggestion that deceased being his nephew he has deposed falsely and falsely implicated the accused persons.

17. PW5, Mohar Ali has deposed that his house is situated nearby the house of deceased Jiarul Hoque and the accused persons are known to him. At the material time about three years ago he was at his residence. At about 10/10-30 PM he came out to the rear side of his residence to answer call of nature. Then he saw accused Safikul and deceased Jiarul proceeding somewhere. He enquired then as to where they were proceeding. They replied that they were going for a walk. Thereafter, he came inside his room. At dawn he heard some hulla coming out from the house of Jiarul. Then he went to the house of the deceased where he saw Jiarul lying dead in their house premises. He alongwith family members of the deceased lifted the deceased to their house. At that time accused Hasmat came to the place of occurrence and when family members of the deceased were contemplating to take the deceased to the doctor but accused Hasmat opined that the deceased had already expired and need not be taken to the doctor. The wearing cloths of the deceased were wet and he saw piercing injury on the head of the deceased.

18. In cross-examination, he has revealed that deceased was his own nephew. He denied that he did not state to police that at about 10/10.30 PM he came out of his house to answer call of nature and that he saw accused

Safikul and the deceased were proceeding somewhere and that on being enquired they replied that they were going for a walk. His house is situated nearby the house of deceased Jiarul intervene by five houses. After his arrival at the place of occurrence the other people came there. No land dispute exists between the family of deceased and accused Hasmata.

19. PW6 is Jinnat Ali. According to his evidence his house is situated nearby the house of deceased intervene by one house. The occurrence took place on 6.7.2013. He knows the informant and the accused persons who are co-villagers. In the morning at about 5 AM, the grandmother of deceased Jiarul came to their house and asked him to go to their house to see the condition of deceased Jiarul. He then come to the house of the deceased and saw Jiarul lying dead in their courtyard. On getting information police came to the place of occurrence and took the dead body to Mangaldai Civil Hospital. Accused Safikul Isalam is his younger brother.

20. In cross-examination, he has stated that in between their house and the house of the deceased Jiarul there is only one house and that house belongs to one Bihari person.

21. PW7 is Musstt. Rasida Begum. She has disclosed in her evidence that the incident took place on 6.7.2013 in the house of deceased Jiarul. At the time of occurrence she was unmarried and was staying with his father accused Hasmata Ali. There is common boundary in between the house of deceased and the house of her father. At the material time at about 4 AM she heard hulla in the house of the deceased. Then she came out from her residence and went to the house of the deceased. She saw informant Hasmata carrying the deceased on his shoulder. At that time said Hasmata told them that Jiarul Islam had already died. Police was informed about the incident and came to the place of occurrence and took the dead body to hospital for post-mortem examination. She does not know how Jiarul Islam died. Her cross-examination is declined by the defence.



22. PW8, Sangsher Ali has stated in his evidence that he knows both the accused persons. Hafija Khatoon, the daughter of accused Hasmat was married to his son Jamir Hussain. They have visiting terms. On the night of the occurrence he was in the house of accused Hasmat Ali. On hearing hulla in the house of Giasuddin he rushed to his house and found the dead body of Jiarul Hoque lying in the courtyard. He did not make any enquiry as to the cause of death of said Jiarul Hoque.

23. In cross-examination, he has revealed that he was sleeping with accused Hasmat Ali in the same bed at the material time.

24. PW9 is Nurul Islam. His evidence is to the effect that he knows the informant Hasmat Ali and both the accused persons. On getting information from some person he came to the place of occurrence and found deceased Jiyarul Hoque lying dead in his courtyard. He knows nothing about the occurrence. His cross is declined by defence.

25. PW10.Dhaneswar Deka is one of the investigating officers of the case. He has stated to the effect that on 6.6.14, he was posed at Borobazar Police Out-post under Rowta PS as in-charge. On that day, O/C, Rowta PS entrusted him to investigate the case. He has received the case diary of Rowta PS case No.121/13 u/s 302 IPC. He then visited the place of occurrence on the strength of earlier FIR. Informant sent another FIR with Borobazar O.P. On receipt of FIR he made GD entry being GDE No.86/14 dated 6.6.14. After making GD entry he visited the place of occurrence and recorded the statement of the witnesses. Till the completion of investigation he could not arrest the accused persons. On completion of investigation having found material u/s 302/34 IPC against accused Hasmat Ali and Safikul Islam filed charge-sheet showing them absconder. Ext.2 is the charge-sheet and Ext.2(1) is his signature.

26. In cross-examination, he has stated that the first case was registered at Dalgaon PS under Darrang district. The said ejahar was shown in the Mangaldai court. During investigation it was found that place of occurrence falls under Udalguri district. Therefore, after taking prior permission of the

court case was returned to Rowta PS for investigation. Case diary was sent to their police station alongwith all relevant documents from Dalgaon PS. Though he investigated in the instant case on the basis of the second FIR but the said FIR did not sent to CJM court. O/C, Dalgaon PS investigated the case, recorded statement of witnesses on the strength of first FIR which was lodged at Dalgaon PS. Investigating officer of Dalgaon PS recorded the statement of Mahar Ali, Safikul Islam, Rasida Begum and complainant Hasmat Ali immediately after the occurrence. He again recorded the statement of witness Hasmat Ali. The second FIR was lodged after one year of the occurrence. Delay was explained in the FIR on the ground that the informant was busy to the funeral ritual of the deceased. He recorded the statement of witnesses after one year of the occurrence. He has not mentioned in the case diary why he recorded the statement of Hasmat Ali second time. He did not take prior permission from the court. He did not record the statement of witness of nearby the place of occurrence except the relative of informant. There are houses of another persons nearby the place of occurrence but he did not record their statement. After the incident the family members of deceased raised hue and cry and on hearing hue and cry some people came to the place of occurrence. But he did not record their statement. In the first FIR, the informant did not mention name of any person.

He has confirmed that the witness Hasmat Ali (PW1) did not state before him that Nilima Khatoon identify accused Safikul Islam at the place of occurrence. Witness Hasmat Ali (PW1) did not state before him that accused Hasmat came to the place of occurrence and observed the pulse of the deceased and declared death.

Witness Nilima Khatoon (PW2) did not state before him that she identify the accused Safikul Islam at the place of occurrence. She also did not state before him that on the day of occurrence at dawn she came out of her room to urinate when she saw three persons nearby their tubewell in their house premises. She found deceased Jiarul lying by the side of their tubewell. She could identify one of the persons i.e. accused Safikul. On seeing Jiarul lying dead she raised hue and cry whereupon the other family members of their house came out. They were thinking about taking Jiarul to hospital. At

that time accused Hasmat came and told them that is not necessary to take Jiarul to the doctor because he is already dead.

Witness Giasuddin (PW3) did not state before him that Nilima identify accused Safikul Islam at the place of occurrence. This witness did not state before him that he saw a rope and a plastic chair near a betel-nut tree.

Witness Mahar Ali (PW5) did not state before him that while he came out from his house to urinate he saw accused Safikul and the deceased proceeding somewhere. This witness did not state before him that on being enquired they explained that they were going for a walk.

He has denied the defence suggestion that that the accused persons are not involved in the case and without proper investigation he filed the charge-sheet.

27. PW11, Dr. Phanindra Choudhury. He is the doctor who conducted post-mortem examination on the dead body of Jiarul Hoque on 06.07.2013 while he was working at Mangaldoi Civil Hospital as Senior M&HO in connection with Dalgaon P.S. GDE No.153/13 dated 6.7.13 and found the following:-

EXTRANAL APPEARANCE:-

A male dead body aged 18 years, eyes and moth closed. Rigormortis present. Forth seen from both nostrils. Lacerated injury seen on occipital area of scalp. Ligature mark seen around upper end of neck.

CRANIUM AND SPINAL CANAL:-

Scalp- Lacerated injury seen on occipital area of scalp. Skull- Intact. Membrane, Brain, Liver, Kidneys, Bladder, Organs of generation- all are intact.

THORAX:-

Walls ribs and cartilages- Intact. Pleurae, Laryax and trachea, lungs, Vessels- all are Intact. Heart- Intact.

ABDOMEN:-

Walls, Peritoneum, Mouth, pharynx, oesophagus, Stomach and its contents, Small intestine and its contents, Large intestine and its contents- all are intact.

The doctor opined that the caused of death is due to asphyxia, as a result of strangulation. Exhibit 3 is the post-mortem report wherein Exhibit 3 (1) is his

signature and Exhibit 3 (2) is the signature of the then Superintendent of Mangaldoi Civil Hospital Dr. D. N Borah. He knows his signature.

28. In cross-examination he stated that the injury which was found in the occipital area may occur due to fall on against hurt object. He has not mentioned as to whether the ligature found on the dead body is horizontal or oblique. He has not mentioned the colour of skin on the neck. He did not find the injury on the neck except ligature mark. Ligature mark is the result of strangulation. He has not mentioned the injury found on the head and neck is anti-mortem or not.

29. PW12, Lalit Ch. Boro is another investigating officer of the case. According to his evidence on 10.9.2013 he was posted at Borobazar outpost under Rowta police station as I/C. That day due to transfer of SI Arupjyoti Baishya, the O/C, Rowta police station had handed over him the case diary to complete the remaining part of investigation of the case. He visited the place of occurrence at Khajuabil and recorded the statement of three witnesses namely, Md. Jinnat Ali, Md. Samser Ali and Md. Hasmat Ali. Due to his retirement, he handed over the case diary to the OC, Rowta Police station.

30. In cross-examination, he has stated that one ejahar was lodged at Dalgaon police station on 12.7.2013. The other ejahar was received by the Rowta police station on 6.6.2014. The name of father of witness Hasmat Ali is Late Maham Ali. He did not explain the delay for recording the statement of these three witnesses in the case diary.

31. PW13, Arupjyoti Baishya is another investigating officer of the case. He has deposed to the effect that on 17.8.2013 he was posted at Rowta police station as Sub-Inspector. On that day the O/C, Rowta police station received an FIR from Dalgaon police station and entrusted him to investigate the case. On the next day he visited the place of occurrence at No. 2 Koupati village. He met the informant Hasmat Ali and recorded his statement. He also recorded the statement of witnesses Giyasuddin, Sahidul, Nilima Begum, Sulekha

Khatoon and Rashida Begum. Thereafter, due to his transfer, he handed over the case diary to the O/C, Rowta Police station.

32. In cross-examination, he has disclosed that the occurrence took place on 6.7.2013. They received the FIR from the Dalgaon police station on 17.8.2013. He recorded the statement of witnesses on the next day. Preliminary investigation of the case was conducted by Dalgaon police. Though he recorded the statement of informant Hasmat Ali, S/o Late Abed Ali but the Dalgaon police had already recorded the statement of the informant. The evidence of other witness Rashida Begum had also already been recorded by Dalgaon PS. There was no prayer as to why they had again recorded the statement of the witnesses U/S 161 Cr.P.C. He recorded the statement of witnesses after one month of the occurrence. The FIR which was filed at Dalgaon PS did not disclose the name of any person as accused.

He has confirmed that witness Hasmat Ali (PW1) did not state before him that his wife Nilima Begum could identify one of the person namely Safiqul Islam to be present there. Hasmat Ali (PW1) also did not state before him that at around 10.30 PM accused Safiqul came to his house and asked the deceased Jiyarul Hoque to accompany with him and accordingly the deceased Jiyarul Hoque accompanied accused Safiqul Islam. Hasmat Ali did not state before him that the accused Hasmat came and reading his pulse and observed that deceased Jiyarul Hoque had already expired. PW 1 Hasmat Ali did not state before him that the accused Safiqul had love affair with Rashida, the daughter of accused Hasmat Ali.

Nilima Khatoon (PW 2) did not state before him that she saw accused Safiqul at the place of occurrence, accused Hasmat came to the place of occurrence, read the pulse of deceased Jiyarul Hoque and asked them not to take him to doctor.

Witness Giyasuddin (PW3) did not state before him that accused Hasmat came and opined that deceased Jiyarul Hoque had already expired and that he need not be taken to doctor. PW3 did not state before him that he saw the chair and rope nearby the beetle nut tree.

Witness Sahidul Islam (PW4) did not state before him that he saw three persons at the place of occurrence and identified Safiqul, he did not state

before him that he came to the house of the deceased Jiyarul Hoque at about 6-30/7-00 PM and enquired his sister-in-law Nilima about the informant Hasmat Ali and raised the mosquito net and found Jeherul inside there. This witness did not state before him that accused Safiqul came to the house of Hasmat. This witness did not state before him that at about 10-30 PM accused Safiqul came to their house and asked the deceased Jiyarul for a walk and at the request of accused Safiqul, Jiyarul(deceased) came out for a walk with him.

He did not record the statement of neighboring witnesses Idrish Ali, Sudarshan Chakraborty, Shyam Sundar, Ram Dulal, Narayan Chandra etc. He has not mentioned the reason for not examining the neighboring witnesses in the case diary.

33. PW14, Sankar Das is one of the investigating officers of the case. His evidence displays that on 6.7.2013 he was posted as attached officer at Dalgaon PS. On that day O/C, Dayaram Saikia received a telephonic information that one boy was found dead in the house of one Giyasuddin resident of village 2 No. Kopati Gaon. On the basis of that information received by the inspector Dayaram Saikia recorded the GD entry No. 153 dated 6.7.13 and asked him to accompany him to visit the place of occurrence. Accordingly, they proceeded to the house of Giyasuddin Ahmed and found a dead body of a male person lying in his courtyard. Then inspector Dayaram Saikia instructed him to hold inquest on the dead body of Jiyaul Hoque aged about 18 years and accordingly, he held inquest in presence of witnesses at the spot. He examined 3 witnesses who were found available at the place of occurrence. He seized one plastic rope found at the place of occurrence in presence of the witnesses. He drew one site plan of the place of occurrence. In course of the preliminary investigation he came to know that the place of occurrence falls under the jurisdiction of Rowta PS and, as such, the miscellaneous case diary along with the case diary, seized articles along with seizure lists, the PM report etc. were handed over to O/C, Rowta PS. Ext. 4 is the extract copy of GD entry No. 153 dated 6.7.13. Ext. 4(1) is the signature of inspector Dayaram Saikia which he knows. Ext. 5 is the seizure list of one plastic rope. Ext. 5(1) is his signature.

Ext. 6 is the site plane of the place of occurrence. Ext. 6(1) is his signature. Ext. 7 is the inquest report. Ext. 7(1) is his signature.

34. In cross-examination, he has divulged that the rope which was seized vide Ext. 5 was found lying near the dead body in the courtyard.

35. On close evaluation of the evidence on record as discussed herein before it transpires from the evidence of the Medical Officer (PW11) as well as the post-mortem report marked as Ext.3 that the cause of death was due to asphyxia as a result of strangulation. However, in cross-examination he has also stated that the injury which was found in the occipital area may occur due to fall on hard object. Ligature mark is result of strangulation and he did not find the injury on the neck except ligature mark. Thus, it is from the evidence of the Medical Officer (PW11) as well as from his medical report Ext.3 that though he has opined that the accused died due to asphyxia as a result of strangulation but he did not find the injury on the neck except ligature mark. However, there is no dispute as to the cause of death of deceased Jiarul Hoque due to ligature mark as a result of strangulation.

36. Now the crux of the matter is as to who caused the homicidal death of the deceased.

37. In the case in hand, what also transpires that there is no eye witness to the occurrence except the statement of PW2, Musstt. Nilima Khatoon that on the day of occurrence at dawn came out from her room to answer her call of nature when she saw three persons nearby their tubewell in their house premises. She found deceased Jiarul lying near the tubewell and she could identify one of the persons as the accused Safikul. Except this statement of PW2 while all other witnesses are not an occurrence witnesses in the facts and circumstances of the case. It is amply evident that the case squarely hinges on circumstantial evidence and last seen theory. The liability on circumstantial evidence has already been settled. The standard of proof required to convict a person on circumstantial evidence is fully established by various decisions of the Hon'ble Supreme Court. According to that standard the circumstances

relied upon in support of the conviction must be fully established and the chain of evidence by those circumstances must be so complete as not to leave any reasonable ground for consistent with the innocence of the accused, and further it must be such as to show that in all human probabilities the act must have been done by the accused person.

38. A reference may be made to a decision in **Sharad Birdhichand Sarda Vs. State of Maharastra (1984) SCC 116**, wherein three-Judge Bench has laid down five golden principles which constitute the "Panchsheel" in respect of a case based on circumstantial evidence. The Court laid down the following tests to be satisfied in a case based on circumstantial evidence:

- (1) The Circumstances from which the conclusion of guilt is to be drawn should be fully established.**
- (2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.**
- (3) The circumstances should be of a conclusive nature and tendency.**
- (4) They should exclude every possible hypothesis except the one to be proved, and**
- (5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.**

39. **In Ram Singh V. Sonia, AIR 2007 SC 1218** the Hon'ble Apex Court has clearly sounded a note of caution that **in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof, for some times unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by**



**this Court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.**

40. In the backdrop of standard of proof required to convict a person by circumstantial evidence as expounded by the Hon'ble Apex Court while we turn to the evidence on record what would transpire from the evidence on record that none of the witnesses could adduce an iota of implicating circumstances must less chain of circumstances to prove the case by circumstantial evidence.

41. It is on this background if we take up the evidence of PW2, who appears to have seen accused Safikul near the deceased Jiarul lying by the side of their tubewell in their house premises it would appear on the other hand that she has been thoroughly contradicted with her previous statement U/S 161 Cr.P.C. Though she has been stated that she saw the accused Safikul Islam near the deceased Jiarul Hoque lying by the side of their tubewell but she did not make such vital statement before the police being confirmed by the PW10 (I.O.) and hence, her evidence is bristles with suspicion. Had she seen accused Safikul Islam by the side of the dead body of the deceased who died as a result of strangulation as opined by the doctor (PW11) she would have stated before the police in her statement U/S 161 Cr.P.C. In spite of this being material piece of evidence but she did not disclose such statement before the police has raised a doubt as to her veracity seeing accused Safikul Islam by the side of deceased Jiarul to infer reasonable conclusion as to presence of accused Safikul with deceased Jiarul before his death. More surprisingly the FIR (Ext.1), which was lodged by the uncle of the deceased, would have depicted this fact in the FIR (Ext.1). But no such fact has been stated in the FIR for the reason best known to the informant (PW1). What is also equally important to note that the first informant (PW1) lodged the FIR after 6 days of the incident. Yet the accused persons were not named therein as perpetrators of the crime. Furthermore, the testimony of the informant (PW1) has suffered from glaring contradictions with respect to his previous statement before the police through this witness has stated that on the day of occurrence about 2.30 AM he heard a sound of falling a thing near their tubewell. But he did not come out of the house and in the early morning his wife Nilima Khatoon came to the

tubewell to fetch water when she found three persons present there and she could identify one of the persons namely Safikul Islam has been contradicted with his previous statement as when the I.O. was confronted with such statement made before the court the I.O. has confirmed that no such statement was made before him by the informant (PW1). Due to such material contradiction on the vital aspect of the substratum of the prosecution case the testimony of PW1 has been vitiated. PW1 being the first informant ought to have incorporated this aspect of the prosecution case, but in spite of lodging the FIR after 6 days of the incident the informant (PW1) has failed to disclose such fact in the FIR as Ext.1 and, therefore, the evidence of PW1 is found to be not credible regarding presence of the accused Safikul Islam, as deposed by PW2, near the dead body.

42. Similar is the testimony of PW4 and PW5 who are also related to the deceased Jiarul Hoque. Like PW1 and PW2 they have also narrated the same fact that on the day of occurrence in the morning PW2 Nilima Khatton had seen the accused Safikul Islam with two other unidentified persons by the side of the tubewell in their house premises. But this statement has also been contradicted by confirming through the I.O. (PW10) who has stated that these witnesses also had not made such statement before him U/S 161 Cr.P.C. Moreover, so far as the coming of the other accused Hasmata Ali at the place of occurrence where deceased Jiarul was lying and his opinion after reading the pulse of the deceased that Jiarul had already been died and asking the informant not to take him to doctor is not a circumstance to establish complicity of this accused in causing death of Jiarul. Furthermore, though the informant PW1, PW2, PW3, PW4 and PW5 who are the related witnesses of the deceased did not make this statement before the I.O. (PW10). Due to the contradiction in the testimony of PW1, PW2, PW3, PW4 and PW5 with their previous statements on this point, the presence of Hasmata Ali after the expiry of Jiarul at the place of occurrence has become doubtful.

43. Furthermore, another glaring contradiction in the testimony of PW1, PW3, PW4 and PW5 in order to press the last seen theory as one of the circumstances is that they did not state before the I.O. (PW10) that accused

Safikul on the previous day of the incident at around 10.30 PM came to their house and asked the deceased Jiarul Hoque to accompany with and accordingly deceased Jiarul accompanied accused Safikul and on the next morning his dead body was found lying near the tubewell within their house premises cannot be acted upon as it has been confirmed from I.O. (PW10) that no such statement was made either by PW1 and PW2 before him. It is also evident from the evidence on record that the dead body of the deceased Jiarul was found lying near the tubewell in the back side of their house premises. If the deceased Jiarul had been taken out by the accused how can Jiarul was lying near the tubewell in the backside of their own house premises.

44. It is also all the more need to be re-emphasised that the last seen theory also does not come in aid in support of the prosecution case on the basis of the evidence of PW2 that on the day of occurrence at dawn when she came out from her room to answer her call of nature when she saw three persons nearby their tubewell in their house premises and found deceased Jiarul lying by the side of their tubewell and she could identify one of the persons as accused Safikul in view of the fact that this important circumstance was not stated by this witness before the I.O. (PW1), as on being confirmed the I.O. (PW10) has stated that no such statement was made by PW2, Musstt. Nilima Khatun. Had she seen the accused Sofikul she would have stated this material fact in her statement before the police.

45. The Hon'ble Apex Court in **Criminal Appeal No.560/2014** reported in **2017 SCC on Line SC 622** in the decision reported in **Ranjan Kumar Sarmah Vs. State of Assam** has held that "**last seen theory cannot be the only ground for holding accused guilty, a connectivity must be established, the circumstance of 'last seen theory' does not by itself and necessarily lead to the inference that it was the accused who committed the crime**".

46. In the absence of any other positive evidence it would be wrong to conclude that the accused Safikul Islam and the deceased were last seen together. In other words, it would be hazardous to come to a conclusion of the guilt of the accused persons on the basis of last seen theory as the evidence of

PW1, PW3, PW4 and PW5 are found to be contradictory, incoherent and inconsistent in the facts and circumstances of the case.

47. Again revisiting the evidence of the related witnesses of the deceased PW1 to PW5, it appears that they have stated that prior to the incident accused Safikul Islam had love affair with the daughter of accused Hasmat Ali and when deceased Jiarul came out successfully in matriculation examination the daughter of accused Hasmat shifted her love affair towards deceased Jiarul Hoque and as a result of which accused Safikul alongwith other accused Hasmat committed murder of Jiarul is far fetched one as such surmise and conjecture cannot take place of legal prove in absence of any cogent chain of circumstances to bring the guilt of the accused persons.

48. It is settled position of law that suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that `may be` proved and `will be proved`. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between `may be` and `must be` is quite large and divides vague conjectures from sure conclusions.

49. In **Raj Kumar Singh V State of Rajasthan (2013) 5 SCC 722** the Hon'ble Apex Court has held that –

**"In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between `may be` true and `must be` true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be` true and `must be` true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a**

**case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense."**

50. Now, while adverting to the testimony of other witnesses PW6, PW7, PW8 and PW9, it is seen that they are hearsay witnesses and their evidence does not disclose any incriminating circumstances against the accused persons to establish their complicity in commission of the offence.

51. Having scrupulous analyzing the deposition of all the PWs in the light of the facts and circumstances of the case, I am of the considered view that the evidence of the witnesses does not make out a chain of evidence so complete as to indicate that in all human probabilities the act might have been done by the accused persons is of conclusive nature and tendency and, therefore, I have no hesitation to accord benefit of doubt to the accused persons.

52. In view of what has been stated, observed and discussed above, I am of the opinion that the accused Safikul Islam and Hasmat Ali are not guilty U/S 302/34 IPC and, therefore, they are acquitted thereunder and set them at liberty forthwith.

53. Bail bond executed by the accused persons and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 31<sup>st</sup> day of August, 2019.

Dictated and corrected by me and each page bears my signatures.

Sessions Judge,  
Udalguri.

(P.Saikia)  
Sessions Judge,  
Udalguri.

**APPENDIX:****A) Prosecution witnesses:**

|           |                         |
|-----------|-------------------------|
| i) PW1    | Hasmat Ali              |
| ii)PW2    | Musstt. Nilima Khatoon  |
| iii)PW3   | Giasuddin               |
| iv)PW4    | Sahidul Islam           |
| v)PW5     | Mohar Ali               |
| vi)PW6    | Jinnat Ali              |
| vii)PW7   | Rasida Begum            |
| viii) PW8 | Sangsher Ali            |
| ix) PW9   | Nurul Islam             |
| x) PW10   | Dhaneswar Deka          |
| xi) PW11  | Dr. Phanindra Choudhury |
| xii)PW12  | Lalit Ch. Boro          |
| xiii)PW13 | Arupjyoti Baishya       |
| xiv)PW14  | Sankar Das              |

**B) Defence witness: Nil.****C) Exhibits:**

|            |                          |
|------------|--------------------------|
| i) Ext.1   | FIR                      |
| ii) Ext.2  | Charge-sheet             |
| iii) Ext.3 | Post-mortem report       |
| iv) Ext.4  | Extract copy of GD entry |
| v) Ext.5   | Seizure list.            |
| vi) Ext.6  | Sketch map               |
| vii) Ext.7 | Inquest report.          |

Dictated and corrected by me.

Sessions Judge,  
Udalquri.

