

GAHC010161612018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./285/2018

MD NUR HOQUE ALI
S/O LATE MUKADESH ALI, R/O VILL. KALIKHULA, P.S. DIMAKUCHI, DIST.
UDALGURI (BTAD), ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2:MD. SULTAN ALI
S/O OMAR ALI
VILL. UTTAR KALIKHULA
P.S. PANERI
DIST. UDALGURI
(BTAD)
ASSAM
PIN 78112

Advocate for the Petitioner : MR. R DE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 16-10-2023

(KR Surana, J)

This appeal is preferred under section 374 read with section 382 Cr.P.C. against the judgment and order of conviction dated 30.08.2017 passed by the learned Sessions Judge, Udalguri in Sessions case no.159(DU) of 2014 thereby sentencing the appellant to undergo rigorous imprisonment for life and fine of Rs.5,000/- with default stipulation for committing offence under section 302 IPC.

2. The case of the prosecution, in brief is that on 05.10.2014, at about 09:30 a.m., the victim was proceeding towards Dimakuchi Market with his minor daughter on his motorcycle, at that time the appellant had restrained the victim in front of the tea stall of one Dinesh Rajbangshi at Kalikhola and assaulted him with a sharp weapon causing grievous injury to him. He was shifted to Mangaldoi Civil Hospital but he succumbed to his injuries on his way. The trial commenced after the committal proceedings.

3. The learned Sessions Judge relied on the oral and testimony of PW-2, PW-7, PW-12 and PW-13, who were eye witnesses and had seen the assault as well as the oral testimony of PW-8, to whom the deceased had told before dying that the appellant had cut him. The prosecution had examined 20 PWs, viz., A. Prosecution witness: Rustam Ali (PW-1), Miss Sabina Yasmin (PW-2), Sohrab Ali (PW-3), Jamir Ali (PW-4), Sultan Ali (PW-5), Abdur Rasid (PW-6), Musstt. Hamedda Begum (PW-7), Khabir Ali (PW-8), Bhim Chetry (PW-9), Sumu Rajbangshi (PW-10), Dinesh Rajbangshi (PW-11), Ratul Deka (PW-12), Chandan Chouhan (PW-13), Musstt. Momena Begum (PW-14), Mustt. Hazara Begum (PW-15), Krishna Das Chouhan (PW16), Sadhan Dey (PW-17), Nayan Kr. Pathak

(PW-18), Dr. Manideep Ray Deka (M.O.) (PW-19) and Sri Khagendra Hazarika (I.O.) (PW-20), B. Defense witness: Nil, C. Court witness: Nil, D. Prosecution Exhibit: Inquest Report (Ext.1), Ejahar (Ext.2), Seizure list (Ext.3), Post-mortem report (Ext.4), Sketch Map (Ext.4), Seizure list (Ext.4), Extract copy of GD entry (Ext.5), Charge-sheet (Ext.6). It appears that three exhibits were marked as Ext.4. The defence did not examine any witness and there were no defence exhibits.

4. PW-2 namely, Ms. Sabina Yasmin, who was aged about 13 years when she had deposed as witness had stated that around 9:30 a.m. on 05.10.2014, she along with her father had gone to Dimakuchi Bazar on motorcycle for shopping on the occasion of Eid. Her father was driving the motorcycle and she was riding as a pillion and they came across the appellant at Kalikhola Tiniali and the appellant came from a tea stall on a bicycle and way-laid them. Then her father stopped the motorcycle and upon asking the appellant as to what had happened, the appellant had stabbed her father in his belly and chest with a sharp knife and resultantly, they both fell from the motorcycle and the appellant again stabbed her father with a sharp knife on his belly. She had stated that she had raised alarm but nobody came forward although many people were there and thereafter, the appellant left towards the north riding in his bicycle and the father somehow crawled to the nearby tea stall and kept lying there. Thereafter she took out the mobile from the pocket of her father and called her paternal uncle, namely, Rustom Ali and informed him about the incident. Her uncle took her father to the Mangaldoi Civil Hospital where the doctor declared him dead. Her evidence to the effect that the appellant had stabbed her father in the abdomen and chest could not be dislodged during the cross-examination and

moreover, the presence of PW-2 at the place of occurrence could not also be dislodged during her cross-examination.

5. Hamedda Begum, PW-7 has stated in her examination-in-chief that she had seen the assault, and that on being asked, the injured had informed her that the appellant had cut him. Her evidence also could not be dislodged during her cross-examination. However, in her cross-examination she had confirmed her said statement by stating that it is not a fact that she did not state to the police that on being asked Samsul (deceased) had told her that the accused had cut him and she denied the suggestion that she had not gone to the place of occurrence.

6. Ratul Deka who was examined as PW-12 has stated that he was in the shop of Chandan at the time of the incident and around 9.00 a.m., the victim came on his motorcycle and the appellant waylaid him on the road and caused injuries to him by giving dagger blows. He had also stated that the daughter of the victim was also with him and that the girl raised an alarm after which many people had gathered around and took the victim to the hospital who later on succumbed to his injuries. He had stated that he had witnessed the incident. His evidence could not be dislodged during the cross-examination.

7. Statement similar to PW-12 was also given by Chandan Chouhan who was examined as PW-13, who stated that at 9:30 a.m. on 05.10.2014, he was at the pan-shop near the place of occurrence and saw that the appellant had way-laid Samsul on the road when he was coming on his bike and stabbed him on his belly and fled away. However, in his cross-examination he has stated that

nobody was along with him at that time. Except for the said contradiction to the statement of PW-12 in his evidence, the fact that he had seen the assault could not be dislodged.

8. PW-8, namely, Md. Khabir Ali was not an eye-witness to the incident. However, he arrived at the place of occurrence later on and saw some women holding the victim and on being asked the victim told him that the appellant had cut him and thereafter he called-up the police station and before arrival of the police, the victim was already taken to the hospital and later on he came to know that the victim had expired. In his cross-examination he denied the suggestion that he did not state to the police about the victim telling him that the appellant had cut him. Therefore, the statement of the dying declaration made by the victim/ deceased could not be dislodged.

9. Out of the other witnesses examined by the prosecution, PW nos.1, 3, 4, 5, 6, 9, 10, 11, 14, 15, 16 and 17 are all hearsay witnesses who did not see the occurrence. However, the PW nos.4, 5, 6, 9, 10, 11, 14 and 15 had gone to the place of occurrence and saw that water was being poured on the injured victim.

10. As per the examination-in-chief of Krishna Das Chouhan, who was examined as PW-16, he had stated that the appellant had kept his bicycle in his house and thereafter did not come back and later on he heard that the appellant had killed the victim/ deceased. Thereafter the police came and seized the bicycle and he had exhibited the seizure list (Ext.4) and his signature thereon. However, in his cross-examination he could not say the date when the

appellant had kept his bicycle in his house. PW-17 is also a seizure witness who had put his signature on Ext.4. However, in his cross-examination, PW-17 had stated that he did not see the appellant keeping his bicycle in the house of PW-16. Nayan Kumar Pathak, who was examined as PW-18 had stated in his cross-examination in chief that on 05.10.2014, he was serving as Circle Officer-cum-Executive Magistrate at Mangaldoi and on the said date he had conducted inquest of the dead body of the deceased at 1:45 p.m., which was held at Mangaldoi Civil Hospital and he had exhibited the inquest report (Ext.1) and his signature thereon. He had stated that the inquest was held in connection with GD entry no.140 dated 05.10.2014.

11. Dr. Manideep Ray Deka was examined as PW-19. In his examination-in-chief he had stated that on 05.10.2014, he was serving as a senior Medical and Health Officer at Mangaldoi Civil Hospital and he had conducted post-mortem examination over the dead body of Shamsul Hoque on that date in connection with Mangaldoi PS GD entry no.140 dated 05.10.2014. In respect to the external appearance and the injury found on the dead body, he had stated as follows:

EXTERNAL APPEARANCE:-

A male dead body, average build, dark brown complexion, eye closed, mouth closed. Dried blood present all over the chest and abdomen. Rigor-mortis present all over the body. Post-mortem hypothesis present over the dependent parts of the body and it is fixed. Rigor-mortis present over the dependent parts of the body and it is fixed. Anus and penis healthy.

INJURY:-

(1) One penetrating injury size 1 cm x 6.5 cm x 6 cm is present in lower part of the neck on left side just above the clavicle and lateral to the midline.

(2) One penetrating injury size 1 cm x 0.5 cm x 5 cm is present in the right side of the

abdomen 4 cm above the iliac crest through which loop of intestine comes out.

(3) One penetrating injury size 1 cm x 0.5 cm x 10 cm is present in the left side of the chest 3 cm away from the nipple.

(4) One penetrating injury size 1 cm x 0.5 cm x 8 cm is present 4 cm below the injury No.3.

No mark of ligature is detected around the neck.

Scalp, Skull, Vertebrae- all are healthy.

Membrane- pale.

Brain-pale. Spinal cord not examined.

Liver, Spleen, Kidneys- pale.

Bladder- mucosa pale and empty.

Organs of generation:- external- as described, internal- healthy.

Walls- as described.

Peritoneum cavity contains approximately 3 liters of blood.

Mouth, pharynx, oesophagus- pale.

Stomach and its contents- mucosa pale.

Small intestine and its contents- pale and contains digested food materials.

Large intestine and its contents- mucosa pale and contain gas and focal matter.

The doctor opined that death was due to hemorrhage and shock as a result of sustained injury. All the injuries were ante-mortem and caused by sharp pointed object and homicidal in nature. Ext.4 is post-mortem report and Ext.4 (1) is his signature thereon.

12. In his cross-examination PW-19 has stated that the dead body was identified by C/360 Atuar Rahman and that he had not mentioned about the wearing garments of the deceased and that he had not preserved the kidney, liver and stomach of the deceased.

13. The IO of the case namely, Khagendra Hazarika was examined as PW-20. He had stated in his examination-in-chief that the then Officer-in-Charge of

Dimakuchi PS had received telephonic information from Md. Khabir Ali (PW-8), who was the VDP Secretary that the appellant had inflicted knife blow on the deceased at Kalikhowa Chowk, causing grievous injury and that on the basis of GD entry no.106 dated 05.10.2014 he was entrusted with the investigation of the case. On reaching the place of occurrence he found 200/300 persons had gathered at the place of occurrence and he had recorded the statement of PW-9, namely, Bhim Bahadur Chetry, PW-7, namely, Hameda Begum, PW-10, namely, Sumu Rajbongshi, Sukur Khan, PW-15, namely, Hazera Begum, Mamina Khatoon and had seized the motorcycle of the deceased. He had stated that before he reached the place of occurrence the injured was already been taken to the hospital for treatment and later on the victim died in the said hospital. He also exhibited the sketch map (Ext.4) and his signature thereon. He had also exhibited the FIR lodged by Sultan Ali, brother of the victim on 05.10.2014, which was exhibited as Ext.2. He also exhibited the signature of Durgakingkar Sarma, SI.

14. He had also stated that the statement of the minor daughter of the deceased was recorded under section 164 Cr.P.C. by the Magistrate and that the Executive Magistrate had held the inquest of the dead body and that the post-mortem of the deceased was conducted in Mangaldoi Civil Hospital and he had collected the post-mortem report. He had exhibited the extract copy of the Dimakuchi PS GD entry no.106 dated 05.10.2014 as Ext.5 as well as the seizure list in respect of bicycle (Ext.4) and his signature thereon. He had also stated that after the occurrence, the appellant was absconding and he surrendered before the District Magistrate, Udalguri on 07.10.2014 who in turn informed the matter to the Superintendent of Police, Udalguri and forwarded the petition

submitted by the appellant, expressing his willingness to surrender before the police and accordingly, he took the appellant to Dimakuchi PS and he was arrested. He had further stated that the appellant had confessed before him that he had inflicted knife injury on the deceased. He had also led the police party to the place where he threw the knife after committing the crime but the knife could not be traced out and that the bicycle was seized on being shown by the appellant. In his cross-examination he had stated that PW-7 did not state before him that the victim had told her that the appellant had inflicted injury upon him and he had further stated that he had not prepared the sketch map of the place where the appellant led them stating to have thrown the knife used in commission of the crime. He had also stated that he did not record the statement of Lakhi Orang and Soben Orang and he denied the suggestion that the appellant did not make any confession before them about inflicting of knife blow on the deceased. The PW-20 in his cross-examination had stated that the appellant was sent before the Magistrate for recording of his statement under section 164 Cr.P.C., but he declined to confess. He also stated that he found blood stain at the place of occurrence but he did not collect the same. He had denied the suggestion that the seized bicycle did not belong to the appellant.

15. Relying on the oral as well as documentary evidence exhibited in this case, the learned Sessions Judge overlooked minor contradictions in the evidence of PW-7 and PW-8 on the ground that those minor discrepancies or variations in the evidence did not make the prosecution case doubtful as there were eye witnesses to the occurrence and that their evidence lend credibility to the case of the prosecution. Accordingly, on the basis of the oral evidence as well as the dying declaration, the learned Sessions Judge had held that the

prosecution has been able to establish that the appellant had inflicted the fatal knife blow on the deceased which resulted in his death and accordingly, it was held that the prosecution had been able to prove the charge against the appellant under section 302 IPC beyond all shadow of doubt and accordingly he was convicted. The appellant was heard on sentence and accordingly, the appellant was sentenced to undergo RI for life and to pay a fine of Rs.5000/- with default stipulation of further RI for 3 months.

16. Heard Mr. R. De, learned counsel for the appellant as well as Ms. B. Bhuyan, learned senior counsel and APP for State assisted by Ms. P. Bora, learned counsel as well as Mr. B. Prasad, learned Amicus Curiae for the respondent no.2.

17. The learned counsel for the appellant had referred to the minor contradictions which appeared in the evidence of PW-7 and PW-8. It was also submitted that the purported dying declaration by the deceased before the PW-8 was not reliable because PW-9 had specifically stated during his examination that the deceased was not in a position to speak. Accordingly, it was submitted that the reliance on the purported dying declaration was not sustainable and therefore, the alleged conviction of the appellant was also not sustainable. It was further submitted that the prosecution had utterly failed to prove any motive of the appellant to assault the deceased. It was submitted that none of the witnesses including the family members of the deceased was examined by the prosecution and also stated that there was no previous altercation between the appellant and the deceased. Accordingly, it was submitted that in the absence of any motive and/ or the motive of the appellant having not been

proved, the conviction of the appellant under section 302 IPC was not sustainable and his conviction was required to be altered to one under section 304 Part 1 if not acquitted. He has further stated that there was a requirement of the prosecution to prove the motive and in the absence of such motive, the conviction has to be altered to one under section 304 Part 1. The learned counsel for the appellant has referred to the case of *Mohd. Rafiq @ Kallu Vs. State of M.P., 2021 (10) SCC 706*, *State of Andhra Pradesh Vs. Rayavarapur Punnayya, (1976) 4 SCC 382*, and *Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, (2006) 11 SCC 444*.

18. The learned APP has submitted that minor contradictions would not dislodge the case of the prosecution because in this case four witnesses have proved that the appellant had fatally assaulted the victim which has left grievous injury on the victim, causing in his death while being taken to Mangaldoi Civil Hospital. It was submitted that the said ocular version is also supported by the evidence of PW8 to whom the victim before dying had named the appellant of assaulting him.

19. It is also submitted that the minor discrepancies in the investigation has also not dislodged the case of the prosecution on the facts of the present case where there were eye-witnesses to the incident. It is also submitted that the failure on the part of the prosecution to prove the motive of the appellant in assaulting the victim would not be fatal in view of the ocular evidence of the four witnesses i.e. PW nos.2, 7, 12 and 13 who had seen the appellant assaulting the victim. In this regard reliance is placed in the case of *Haji Khan Vs. State of UP and ors., 2005 (13) SCC 353*.

20. The learned counsel for the informant (respondent no.2) by referring to the case of *Prem Singh Vs. State of NCT of Valley, AIR 2023 SC 193*, has submitted that an ocular evidence of PW Nos. 2, 7, 12 and 13 and the evidence by PW-8 regarding dying declaration of the deceased, factored together completed the chain of circumstances leading to hypothesis of the guilt the appellant. It is submitted that this is not a case of circumstantial evidence on which the appellant is being held guilty as because there is ocular evidence which has proved the murderous assault by the appellant on the victim. Accordingly, it is submitted that under such circumstances, motive clearly supplies an additional link in the chain of evidence but absence of motive cannot be a ground to reject the prosecution case.

21. It is also submitted by the learned counsel for the respondent no.2 as well as by the learned APP that the ocular evidence of PW Nos.2, 7, 12 and 13 regarding the nature of assault corroborates with the medical evidence of PW-19 who had found one stab injury in the chest and two in the abdomen, which cannot be looked over.

22. Considered the submissions made by the learned counsel for the appellant, the learned Addl. PP for the State and the learned Amicus Curiae appearing for the respondent no. 2 (informant). Carefully perused the materials available in the trial Court record and also considered the cases cited at the bar.

23. At the outset, it may be stated that the learned Court, due to inadvertence, had allowed three exhibits to be marked as Ext.4, they are (i)

Post Mortem Report, proved by PW-19; (ii) Sketch Map, proved by the Investigating Officer (PW-20); (iii) Seizure List of bicycle, proved by the Investigating Officer (PW-20). However, it may be stated that there is nothing on record to show that the appellant was prejudiced in any manner with the said inadvertent error.

24. One of the points forcefully urged by the learned counsel for the appellant was the total absence of any motive. The said point is discussed herein after.

25. It is true that the prosecution had made no attempt to prove the motive of the appellant to murder the victim.

26. In the said context, it is seen that in the facts of the present case, according to the FIR (Ext.2), at about 09:30 am on 05.10.2014, the victim, namely, Samsul Hoque was going towards Dimakuchi Bazar along with his third daughter, namely, Sabina Yasmin on his motorcycle and the appellant had waylaid them on the road in front of the tea stall of Dinesh Rajbongshi at Kalikhola Bazar and struck him repeatedly with a sharp weapon.

27. The evidence of Ms. Sabina Yasmin (PW-2), during her examination-in-chief had stated that she was the pillion rider in motorcycle driven by her father, and that they had gone to Dimakuchi Bazar for shopping on the occasion of Eid. She had also stated that the appellant had stabbed her father on his belly. The said evidence could not be demolished during her cross-examination, which establishes that the PW-2 was an eye-witness to the fatal assault by the appellant on her father, who died as a result of such assault.

28. The ocular description of stabbing as stated by the PW-2 is

found to be in consonance with the nature of injury described in the Inquest Report (Ext.1), wherein it is mentioned that there was approximately 2 (two) inch long cut injury on mid chest and 2 (two) cut injury [approx. 1 (one) inch long each] was seen on the left side of the chest, and moreover, it is also mentioned that 1 (one) incised injury was seen on the left side of upper abdomen and 1 (one) incised injury on right side of abdomen. Two cut injuries were also seen on forearm.

29. PW-19, examined by the prosecution is the Doctor who had conducted the post-mortem examination of the dead body of the victim on 05.10.2014. As per the post mortem report (Ext.4), proved by the said witness, amongst others, the victim had following cut/incised injuries, viz., (1) one penetrating injury size 1 cm X 6.5 cm x 6 cm is present in the lower part of the neck on left side just above the clavicle and lateral to the midline; (2) one penetrating injury size 1 cm x 0.5 cm x 5 cm is present in the right side of abdomen 4 cm above the iliac crest through which loop of intestine had come out; (3) one penetrating injury size 1 cm X 0.5 cm x 10 cm is present in the left side of chest 3 cm away from the nipple; and (4) one penetrating injury size 1 cm X 0.5 cm x 8 cm is present 4 cm below the injury no. (3). As per the opinion of the PW-19, death was due to shock and hemorrhage and shock as a result of ante mortem injury sustained, which were caused by sharp pointed weapon and homicidal in nature.

30. As per the examination-in-chief of Musstt. Hamedha Begum (PW-7), Ratul Deka (PW-12) and Chandan Chouhan (PW-13), they had also seen that the appellant was being assaulted by the victim before he died. The PW-7 had deposed to the effect that the victim was with his daughter and that

the appellant had stabbed the victim with a sharp dagger on his stomach. The PW-12 had deposed to the effect that he had seen that the victim was with his daughter. The PW-13 had deposed to the effect that at the time when the deceased was coming on his bike, he had seen that the appellant had waylaid the victim and had assaulted him with a knife. The said ocular evidence of PW-7, PW-12 and PW-13 in their examination-in-chief could not be demolished during their respective cross-examination. It could not be shown that the said PW nos. 7, 12 and 13 were witnesses related to the deceased, or that they were planted witness.

31. The evidence of PW nos. 1, 3 to 6, 9, 10, 11 and 14 to 17 are not eye witnesses and therefore, their evidence is not being discussed herein.

32. Thus, this is not a case where the appellant has been convicted on the basis of circumstantial evidence and therefore, the prosecution case is not likely to fail only due to lack of motive of the appellant to kill the victim-deceased.

33. In this case, there is no conflict between the ocular evidence and medical evidence. Rather, it can be said that the medical evidence finds corroboration from the ocular evidence as well as from the evidence of the eye witnesses.

34. In the post mortem report, the description of 4 (four) incised wound in chest and abdomen is mentioned. It is not in dispute that stab injuries were inflicted by the appellant on vital parts of the body, as a result of which the victim had died of hemorrhage and shock as a result of the said cut injuries. From one of the incised wound in the stomach, the intestine of the

victim had come out, which demonstrates that the victim was stabbed in his stomach by applying some force. Therefore, the intention of the appellant was to cause death and it cannot be accepted that the intention was not to cause the death of the victim. Hence, the case of *Pulicherla Nagaraju (supra)* cited by the learned counsel for the appellant would not help the appellant. As injuries were on vital part of the body, this cannot be a case of culpable homicide not amounting to murder. Hence, the case of *Rayavarapur Punnayya (supra)* also does not help the appellant.

35. In light of the discussions above, the Court is inclined to hold that under the facts and circumstances of the case and in light of unimpeached evidence of PW nos. 2, 7, 12 and 13, who had seen that the appellant had stabbed the victim, lack of motive would not be fatal to the case of the prosecution.

36. It may be mentioned that the place of occurrence has been marked in the sketch map (Ext.4) with letter 'M' and the house of husband of PW-7 is marked with letter 'K', which is mentioned therein to be 50 feet away from the place of occurrence. In her examination-in-chief, PW-7 had stated that on hearing hue and cry, she had come out on the road and saw the appellant stabbing the victim on his belly with a sharp dagger and on being asked, the victim, Samsul told her that the appellant had cut him, and the said evidence could not be demolished during cross-examination. Similarly, Md. Khabir Ali (PW-8) had also stated in his examination-in-chief that on being asked, Samsul had told him that the appellant had cut him. The said evidence of PW nos. 7 and 8 could not be demolished during their cross-examination and thus, the prosecution had been able to prove the identity of the appellant as the

perpetrator of crime of stabbing the victim to death.

37. It may be mentioned herein that in his cross-examination, the Investigating Officer had stated that the PW nos. 7 and 8 did not state before him that the victim had stated that the appellant had inflicted injury on him. Though that part of the evidence of PW nos. 7 and 8 are contradictory to their previous statement recorded under Section 161 CrPC, but the said PW-7 and PW-8, during their respective cross-examination had asserted that it was not a fact that they had not stated before the police that the appellant had cut him. It may be mentioned that the "previous statement" of the PW-7 and PW-8 before the police was not placed before the said witness during cross-examination and proved. Therefore, the Court is inclined to hold that minor contradiction like the present one would not make the prosecution case unbelievable and/or doubtful. Hence, the case of *Mohd. Rafiq @ Kallu (supra)* also does not help the appellant.

38. The learned counsel for the appellant had also made submissions to discredit the inquest report on the ground that it was conducted in the hospital and not in the scene of crime. The Court does not find this to be fatal because none of the witnesses examined by the prosecution had stated that the victim had instantaneously died at the place of occurrence after being stabbed by the appellant. The PW nos. 1 to 5 and 7 to 14 had all stated that the victim had been taken to the hospital in the injured condition and that he had died on way to hospital. Therefore, it is natural that the victim, then alive, would be taken to the hospital for medical treatment and therefore, the Court is inclined to hold that inquest of the dead body, conducted by the Circle Officer-cum- Executive Magistrate, Mangaldai (PW-18), which was held in the Mangaldai

Civil Hospital would not vitiate the prosecution case in any manner.

39. Thus, the conduct of the appellant of carrying a knife, waylaid of the victim and repeatedly stabbing him fatally demonstrates that the appellant had an intention to kill the victim. Thus, the Court is inclined to hold that the prosecution had been able to prove beyond reasonable doubt that the appellant had murdered the victim.

40. Therefore, in light of the discussions above, the Court is inclined to hold that the conviction of the appellant, namely, Md. Nur Hoque Ali are based on sound, thorough and appropriate appreciation of evidence and hence, his conviction for the offence punishable under Section 302 IPC for murder of Samsul Hoque is affirmed.

41. The life sentence awarded to the appellant does not call for any interference of this Court.

42. Let a free copy of this order be served on the appellant, who is currently, lodged in District Jail, Udalguri. A copy of this order shall also be transmitted to the Deputy Commissioner, Udalguri for the record of the said authority.

43. Let the LCR be returned back.

44. The effort by the learned Amicus Curiae is appreciated and he shall be entitled to his honorarium/ fees.

JUDGE

JUDGE

Comparing Assistant