

**IN THE COURT OF THE ADDL. SESSIONS JUDGE-2(FTC), TINSUKIA**

**Sessions Case No. 54(CH)/18**

U/S 302 of the IPC

Present : Md. Abdul Hakim, M.A.,LL.B.,  
Addl. Sessions Judge-2 (FTC),  
Tinsukia.

The State of Assam

-Vs-

**1) Sri Ratna Bahadur Chetri. -----Accused**

Appearance:

For the State : Sri R.C Das, Ld. Addl.P.P,

For the accused : Sri. N.K Phukan, DLSA appointed  
Advocate.

Date of evidence : 17.07.18, 01.08.18, 12.10.18,  
05.07.2019.

Date of argument : 26.07.19

Date of judgment : **31.07.19**

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

1. The Prosecution story, is in brief that Sri Sukraj Rai had lodged an FIR alleging that on 19.03.18(Monday) at 2:10 P.M at Nitai Ambikapur, Sadiya the accused Ratna Bahadur Chetri had caused death to his father, Sri Arjun Rai by assaulting him with bamboo stick without any reason.

2. Receiving the FIR, Chengchap Chariali P.S. registered a case no. 07/2018 and investigated the case. On completion of the investigation, charge sheet was filed against the above named accused person and forwarded him to face the trial.

3. On appearance before the court by the accused person, copy was furnished to the accused u/s 207 Cr.P.C. Thereafter, the GR case no. 32/2018 was committed to the Court of Session by the Sub-Divisional Judicial Magistrate (M), Sadiya, Chapakhowa. The GR case no. 32/2018 was registered as session's case no. 54(CH)/18 and transferred to this court for trial.

4. On appearance of the accused person and upon hearing both sides and considering the materials charge had framed u/s 302 IPC, particulars of which on being read over and explained, the accused person had pleaded not guilty and claimed to be tried.

5. During trial, prosecution examined seven (7) witnesses to prove the case. The accused person was examined u/s 313 Cr.P.C.

6. I have heard argument put forward by the Id. Counsels from both sides as well as gone through the entire evidence available on record to adjudicate the case.

**7. Point for determination :-**

(i) Whether the accused 19.03.18(Monday) at 2:10 P.M at Nitai Ambikapur, Sadiya had committed murder with lathi intentionally or knowingly by causing the death of Arjun Rai, the father of the informant and thereby committed an offence punishable U/s. 302 IPC?

**Discussion, Decision & Reasons thereof:**

8. PW.1, Sri Sukraj Rai has deposed that he is the informant of this case. He knows the accused Ratna Bahadur Chetry. The incident took place on 19<sup>th</sup> March, 2018. At the time of incident he was in Tezu. His

relative, Budhiraj Raj called him over telephone and informed him that his father was assaulted by somebody asked him to come immediately. At 5P.M he reached the place by hiring a private car. He saw that his father was lying dead in their courtyard. He has seen lots of people around his father's dead body. Before he reached the place he heard that police took away the accused Ratna Bahadur Chetry. Police took away his father's dead body to the police station. The doctors examined his father's dead body at Chapakhowa Civil Hospital. Police did not record his statement. He lodged a ejahar before the police. Ext. 1 is the ejahar, Ext. 1(1) is his signature. Ext. 2 is the seizure-list, Ext. 2(1) is his signature. He saw the bamboo stick at P.S. M. Ext. 1 is the said bamboo stick.

9.In Cross-examination he has stated that he was not present at the P.O at the time of incident. He has no personal knowledge how his father died. Police did not record his statement. He has no knowledge who wrote the Ext. 1 and he has no knowledge about the contents of Ext. 1. He was asked to put his signature and accordingly he puts his signature thereon. He does not know why he puts his signature on Ext. 2. He puts his signature at P.S. He saw the M. Ext. 1 at the P.S. He has no knowledge why police seized the M. Ext. 1.

10.P.W.2, Sri Budhiraj Rai has deposed that he knows both the informant and the accused. The incident took place on 19<sup>th</sup> March, 2018, the day was Monday. At the time of incident he was at his home. The place of occurrence is at 3-4 house distance from his house. People going for market told him that "Man killed man killed". He then rushed to the place of occurrence. He saw the victim was lying in his courtyard. He saw the accused also there. Then he asked the accused Ratna Bahadur Chetry who killed? The accused confessed that he has killed with a bamboo stick. He saw the stick at the court today. Police took his signature on the M. Ext. 1. He puts his signature on Ext. 2 at the place of occurrence. Police came to the place of occurrence and took the body to the Chencap P.S. Thereafter the body was taken to Chapakhowa Civil Hospital for Post Mortem. Police

recorded his statement.

11. In Cross-examination he has deposed that at the time of occurrence he was not present at the P.O. He did not see how the deceased sustained injury. He denies the suggestion that he did not state before police that People going for market told him that "Man killed man killed". He then rushed to the place of occurrence. He saw the victim was lying in his courtyard. He saw the accused also there. Then he asked the accused Ratna Bahadur Chetry who killed? The accused confessed that he has killed with a bamboo stick.

12. The bamboo stick seized by police is available in every house of people. It is true that in M. Ext. 1 does not bear his signature. He has no knowledge about the contents of Ext. 2. As police asked him to put his signature and accordingly he puts his signature thereon. He has no personal knowledge how Arjun died.

13. P.W.3, Sri Debraj Chetry has deposed that he knows the accused person. He knows the complainant. He can not recollect the date but it was a Monday. He was at home he heard a sound that some body was telling that a person was murdered. He ran to the spot and saw the accused person was sitting near the dead body of Ratna Bahadur Chetry. He saw a bamboo stick was lying near the dead body. He asked the accused person why he had killed Ratna Bahadur Chetry but the accused replied that his head did not work. Then One Bodhi Raj Rai informed the Gaubura over the telephone about the incident. Then Gaubura Teg Bahdur Limboo reached the place of occurrence. Then the police was informed and later within half an hour police reached the place of occurrence. The police took away the dead body along with the accused.

14. In Cross-examination he has deposed that Police did not record his statement. He did not state before the police whatever he state today in the court. He did not know how Arjun Rai died. No body told him that the accused killed the deceased Arjun Rai. When he reached the place of occurrence he saw two person in the Place of occurrence. He did not state before the police that on asking the accused told him that he killed the

deceased. He denies the suggestion that he did not know how the deceased had died.

15. P.W.4, Arun Rai has deposed that he knows both the informant and accused. Around four months back incident took place, date he could not recollect but the day was Monday. At the time of incident he was at Haram Basti. The incident took place Nitai Deori Gaon. He got a call from his village about the incident. After three hours of the incident he came to the village. Deceased Arjun Rai was lying on the ground. People of the village told him that the accused killed Arjun Rai. Police already came to the place of occurrence. Police took the accused and deceased to thana. Dead body was taken to the ChapaKhowa Civil Hospital for the postmortem. Police recorded his statement at the P.S.

16. In Cross-examination he has deposed that he came to the P.O after three hours he does not have any knowledge how the deceased was died and nobody told him how deceased Arjun Rai died.

17. P.W.5, Krishna Bahdur Rai has deposed that he knows the informant Shukhraj Rai. Shukraj Rai is the son of deceased Arjun Rai. He does not know the accused person. Two month back from today the incident took place. On the day of incident he was at Tezu. Informant Shukhraj Rai informed him that his father was killed by a person. On getting information he along with the informant came to the village Ambikapur. They arrived at the village at 5 P.M. and saw the dead body of Arjun Rai was lying in the court yard of Shukhraj. He saw police. Police recorded his statement. Police already taken away the killer.

18. In Cross-examination he has deposed that he was not informed who killed Arjun Rai.

19. P.W.6, Dr. Robin Doley has deposed that on 20.03.18 when he was Chapakhowa FRU as Deputy Superintendent. On that day, on the requisition of Chengchap Chariali P.S case no. 07/18 U/s. 302 IPC, he performed Post mortem examination on the dead body of Arjun Rai, 65 years, male and on examination he found as follows :

**External appearance :**

One male dead Body of medium build fresh body with lacerated wound over temporal area left side of size - 4 " X 4". On scalp dissection laceration of left temporo mandibula are of size - 4 " X 4". Skull - fracture of temporal bone. Membrane torn damage by fractured skull fragments. Brain - Damage of gray matter by fractured bone.

**Detailed description :**

Deep lacerated wound over left temporal area of size - 4 " X 4". Membrane/bone depth. There is fracture of the temporal bone destructing membrane and brain tissue inside.

**Opinion :** In his opinion death occurred due to direct damage of gray matter of left hemisphere causing respiratory distress. Type of weapon - blunt. Time since death 12 hours to 24 hours prior to Post Mortem. Ext. 1 is the Post mortem report and Ext. 1(1) is his signature.

20. In Cross-examination he has deposed that the injuries which are mentioned in no. column 2 of External appearance may be caused by falling on a hard substance.

21. P.W.7, Sri Dipak Gogoi (Asstt. Sub-Inspector) has deposed that on 19.03.18 he was at Sengchap Chariali P.S as Asstt. Sub-Inspector. On that day he received an ejahar from Sukraj Rai. Thereafter he registered the case in the P.S. Ext. 1 is the said ejahar, Ext. 1(2) is his signature. On that day, the then OC, Sri Padma Gogoi was out of station, as such, he was in charge. Thereafter he visited the place of occurrence and he drew up a sketch map. Ext. 4 is the sketch map, Ext. 4(1) is his signature. On reaching the place of occurrence, he saw the dead body of Arjun Rai was lying in the courtyard of Sukraj Rai. He recorded the statements of witnesses, namely, Sri Sukraj Rai, Sri Buddhiraj Rai, Sri Debraj Chetri and Sri Arun Rai. He did inquest of the dead body at the place of occurrence. He recorded the statements of witnesses. He arrested the accused person Sri Ratna Bahadur Chetri after recording his statement. The accused told that as the deceased was telling him that he would die, hence, he

assaulted him and consequently the deceased died. Later he was brought to the police station. As it was night fall he brought the dead body to the P.S. He also seized a bamboo stick vide Ext. 2, seizure-list. Ext. 2(3) is his signature. Today he has seen the M. Ext. 1, bamboo stick in the court. On the next day morning, he sent the dead body to the Chapakhowa FRU for Post Mortem. The accused was forwarded to the Court of Ld. SDJM, Sadiya and he was remanded to Jail hajot. Later, Post Mortem report of the deceased was collected by OC, SI Sri Padma Gogoi and later on he submitted the Charge-sheet. Ext. 5 is the charge-sheet, Ext. 5(1) is his signature, he can identify it.

22. In Cross-examination he has deposed that he took up the investigation of the case at 7:25 P.M and he reached the place of occurrence at 7:25 P.M. The distance in between the P.O and P.S is about half an hour. As per sketch map, the house of Smt. Basmoti Sah is situated on the Northern side of P.O. And the house of Sri Kamal Limbu is situated on the Southern side of P.O. He did not examine and record the statements Smt. Basmoti Sah and Sri Kamal Limbu. He did not obtain the signatures of any witnesses in Ext. 4. He denies the suggestion that he did not prepare the Ext. 4 at the P.O but in the P.S. He seized a piece of bamboo from the Sukraj Rai. There is difference between a piece of bamboo and bamboo stick. He has written in the Ext. 2 that the weapon is a piece of bamboo, not stick. None of the witnesses stated before him that they saw the incident. He did not send the seized material to the FSL to ascertain the finger print. He denies the suggestion that he did not make inquest on the dead body of the deceased at the P.O.

23. PW.2, Sri Buddhiraj Rai did not state before him that the accused confessed that he had killed the deceased with a bamboo stick. He did not make any prayer before the SDJM, Chapakhowa to record the statement of the accused U/s. 164 Cr.P.C. He denies the suggestion that the accused did not confess before him that he had killed the deceased. PW.3, Sri Debraj Chetri did not state before him that when he asked the accused, why he had killed the deceased,

the accused replied that his head did not work. In this case he has completed the whole investigation and basing on his investigation, S.I Sri Padma Gogoi submitted charge-sheet against the accused person. He knows that in their Police Manual their powers are categorically mentioned. As per police manual, S.I Power and ASI powers are different. He knows that ASI is not empowered to investigate a murder case and he has not filed any authority letter empowering him to investigate this case. It is a fact that he has conducted the investigation unauthorisedly. As such, the investigation done by him illegally.

24. With regard to the point for determination, Ld. Defence counsel has pointed out (i) that there is no eye witness that the accused has assaulted and killed the deceased. Hence it cast a doubt about the authenticity of the prosecution story. (ii) That the statement of the PW 2 & 3 are proved contradictory by the I/O and hence the statements of the PW 2 & 3 are doubtful. (iii) That the weapon of assault is doubtful. Hence it cast a doubt about the reliability of the prosecution story.

25. In reply Ld. Addl. P.P has pointed out that the PW's have deposed that the accused has killed the deceased and he was caught at the place of occurrence immediately and recovered the weapon of assault. Apart from this the accused has confessed his guilt before the witnesses, I/O as well as during the time of the examination U/S 313 Cr.P.C. The cause of the death is corroborated by the medical evidence and the defence side could not create any doubt in this regard. In view of the all facts and circumstances of the case the prosecution has succeeded to prove the case beyond reasonable doubt and hence the accused should be punished in accordance with law.

26. Upon hearing both sides I have gone through the materials on record and found that the prosecution has examined 7 witnesses in total. The complainant, PW.1 has alleged in the FIR that on 19.03.18 Monday at around 2:10 P.M the accused Ratna Bahadur Chetry, S/o. Tez Bahadur Chetry killed his father Arjun Rai with a bamboo stick

without any rhyme and reason. The complainant, PW.1 has stated in his examination in chief that he lodged the FIR, Ext. 1. but in course of his cross-examination he has stated that as he was not present at the place of occurrence at the time of the incident he has no personal knowledge how his father died.

27. The PW.1, PW2, PW 3, & PW 4 have deposed that the accused has killed the father of PW.1. But the statement of the PW 2 and PW 3 are proved to be contradictory so far the admission of the killing of the father of the PW 1 by the accused is concerned.

28. PW.2 has deposed that on hearing about killing of a man he rushed to the place of occurrence and saw the victim was lying in his courtyard. He saw the accused there. On asking who killed the deceased, then the accused Ratna Bahadur Chetry told that he killed the deceased with a bamboo stick. But this statement is proved contradictory by defence. PW.7(I.O) has stated that PW.2, Sri Buddhiraj Rai did not state before him that the accused confessed that he had killed the deceased with a bamboo stick.

29. Likewise, the Defence side has also succeeded to prove the statement of the PW.3 contradictory so far the admission by the accused about the killing of the father of the PW 1 is concerned. During examination in chief, PW.3, Devraj Chetia has deposed that while he asked the accused person why he had killed the deceased but he replied that his head did not work. But this statement is proved contradictory by the defence side. In view of the contradictory statement it cast a doubt that the accused had admitted his guilt of killing the father of the PW 1.

30. Upon perusal of the evidence on record as a whole it is apparent that PW.1, PW.2, PW.3, and PW.4 had reached the place of occurrence on hearing the killing of the deceased Arjun Rai. PW.2 and PW.3 had reached the place of occurrence immediately after the alleged occurrence and saw the accused Ratna Bahadur Chetry was sitting near the dead body. The weapon of assault was also recovered from the place of occurrence. The defence side could not disprove the

presence of the accused at the place of occurrence at the time of the incident. The accused has also could not explain why he was there at that time. Instead he admits in his examination u/s 313 Cr.P.C that he was present at the place of occurrence and told the PW 2 that he killed the deceased.

31. PW.6 (M.O) has opined that the death occurred to the deceased is due to direct damage of gray matter of left hemisphere causing respiratory distress. PW.6 (M.O) has also deposed that type of weapon was blunt. The PW's have deposed that they had recovered alleged bamboo stick from the near of dead body of the victim. Thus the weapon of assault is corroborated by medical evidence. From the evidence on record it is crystal clear that the testimony of the witnesses are corroborated by medical evidence.

32. With regard to the cause of death of the deceased, the defence side could not create any doubt. Apart from this, it is pertinent to mention here that in course of examination of the accused U/s. 313 Cr.P.C, the accused has stated that he told PW.2 that he killed the victim as his head was not working. He has also stated that he told before police that he assaulted deceased Arjun Rai as he was telling him that he would die and consequently the deceased had died.

33. From the material evidence on record, it is found that PW.2, PW.3, PW.4 are natural witnesses. The defence side could not prove that the testimony of the witnesses are exaggerated or embellished. The PW's are cross-examined at length by the defence side but the defence side could not create any doubt in the evidence of the PW's. The defence side could not show any animosity between the accused and the witnesses. The defence side could not create any major contradiction which can belies the authenticity of the prosecution story. The witnesses have deposed in a very straightforward manner and hence, their testimonies have become trustworthy and reliable. The witnesses have been corroborated with each other and material circumstances which makes the prosecution story believable. There is

no undue delay in lodging the FIR. The defence side could not prove any exaggeration or embellishment in the FIR. The statements of the witnesses are corroborated with the FIR Ext. 1 and hence, the prosecution story becomes reliable and believable.

34. In view of the discussion made in above and considering all facts and circumstances of the case I am of the considered view that prosecution has succeeded to prove the offence against the accused beyond all reasonable doubt. It is proved beyond doubt that the accused has committed murder of the deceased Arjun Rai. Hence the accused Ratna Bahadur Chetry is convicted U/S 302 IPC.

35. The accused is heard on the point of sentence. Accused has stated that he is a poor farmer. He has old parents, wife and one child at home hence he prays for leniency.

36. Upon hearing the accused person and both sides I have deliberated over the prayers of the accused. I am of the view that considering the gravity and nature of the offence and to give a lesson and to send a stern warning to the like-minded people of the society I do not like to allow the accused persons to go unpunished and does not like to administer the principle of leniency.

37. Hence, the accused Ratna Bahadur Chetry is sentenced to undergo with Life Imprisonment u/s. 302 IPC and a fine of Rs. 10,000/- (Rupees Ten Thousand only) in default he shall have to undergo another Rigorous Imprisonment for 1 (one) year. The period of detention already undergone by the accused person shall be set off against the aforesaid sentence of imprisonment as envisaged u/s.428 of the Cr.P.C.

38. Furnish a free copy of the Judgment to the accused person immediately.

39. As per S. 357 A Cr.P.C, the DLSA Tinsukia is hereby recommended to pay the compensation to the next kith and kin of the deceased Arjun Rai.

Send a copy of the Judgment to the DLSA Tinsukia for necessary action with regard to the payment of compensation.

40. Destroy the seized materials in due course of time in accordance with law.

41. Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.

42. Given under her hand and seal of this court on this the 31<sup>st</sup> day of July, 2019.

Dictated & corrected by me:

(Md. Abdul Hakim)  
Addl. Sessions Judge- 2 (FTC),  
Tinsukia.

(Md. Abdul Hakim)  
Addl. Sessions Judge 2  
(FTC),Tinsukia.

Transcribed by :

P.D Phukan, (Steno).

**A N N E X U R E**

**PROSECUTION WITNESSES:**

PW.1, Sri Sukraj Rai,  
PW.2, Sri Buddhiraj Rai,  
PW.3 Sri Debraj Chetry,  
P.W.4, Sri Arun Rai,  
P.W.5, Sri Krishna Bahadur Rai,  
P.W.6, Dr. Robin Doley,  
P.W.7, Sri Dipak Gogoi(Asstt. Sub-Inspector).

**PROSECUTION DOCUMENTS :**

Ext. 1, the Ejahar,  
Ext. 2, Seizure-list,  
Ext. 3, Post Mortem Report,  
Ext. 4 is the sketch map,  
Ext. 5, charge-sheet,  
M. Ext. 1, Bamboo Stick.

(Md. Abdul Hakim)  
Addl. Sessions Judge-2(FTC),  
Tinsukia