

**IN THE COURT OF THE SESSIONS JUDGE :: :: TINSUKIA**

Present: **Sri C. Das,**  
Sessions Judge,  
Tinsukia

Date of Judgment :- 21.05.2022

The case was committed on 13.07.2016 by learned Sub-Divisional Judicial Magistrate(M), Sadiya, Chapakhowa in G.R. Case No.116/2013)

**Sessions Case No. 100 (CH) of 2016**

U/s.302/34 I.P.C.

(FIR No.57 of Sadiya P.S.)

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	A.K. CHOUBEY, Ld. P.P., TINSUKIA
ACCUSED	SRI BANAMALI GOGOI @ PUWALI, S/o Sri Kulaman Gogoi, R/o Tupsinga Gaon, P.S. Sadiya, Dist. Tinsukia (Assam)
REPRESENTED BY	ADVOCATE, SRI G. ALLEY

Date of Offence	19.11.2013
Date of FIR	20.11.2013
Date of Charge Sheet	29.02.2016

Date of Framing of Charges	21.12.2016
Date of commencement of evidence	15.05.2017, 01.08.17, 29.05.18, 27.06.18, 11.02.21 & 12.11.21
Date on which judgment is reserved	NA
Date of Judgment	21.05.2022
Date of its Sentencing Order, if any	NA

### **Accused Details:**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.PC
1	Sri Banamali Gogoi	01.12.2013	28.02.2014	302/34 of IPC	—		90 days

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

1. The case of the prosecution briefly, is that on

20.11.2013, the complainant Sri Jiten Gogoi lodged an ejahar before Sadiya police station, alleging *inter-alias* that on 19.11.2013, when his wife was alone in his house, at that time, some miscreant entered in to his house and killed his wife.

2. On the basis of filing of the above ejahar, the police registered the Sadiya P.S. Case No.57/2013 u/s.302 IPC and started the investigation. During the investigation, I.O. visited the place of occurrence, examined the witnesses u/s.161 CrPC and then, arrested the accused. Thereafter, I.O. on completion of the investigation, filed the charge-sheet against the accused to face trial in the court.

3. The accused when appeared in the Court, learned Sub-Divisional Judicial Magistrate(M), Sadiya, Chapakhowa furnished the copy of the case as required u/s. 207 CrPC. Since the offence was exclusively triable by the Court of Sessions, learned court below committed the case to this court for trial. Accordingly, a separate Sessions case was registered and was taken up for trial.

4. After hearing both the parties and on perusing the materials on record, the charge u/s.302/34 IPC was framed against the accused Banamali Gogoi and Kartik Neog. The charge so framed, was read over and explained to the accused persons, who pleaded not guilty and claimed to be

tried. It is to be mentioned here that during pendency of trial, the accused Kartik Neog died and hence, the case against the accused Kartik Neog was abated. Now, the judgment only relates to the accused Banamali Gogoi.

5. During the trial, the prosecution examined as many as, 13(Thirteen) witnesses including the I.O. and M.O. to get support of its case. In the statement recorded u/s. 313 CrPC, the plea of the accused was total denial to the circumstances appeared against him in the evidence on record. But the accused did not adduce any defence witness for his favour. The argument of the parties was heard at length and the evidence on record perused.

**POINT FOR DETERMINATION:**

6. Whether on 19.11.2013, at night at Bahani Gaon under Sadiya police station, the accused Banamali Gogoi along with deceased accused Kartik Neog committed murder intentionally by causing the death of Sumi Gogoi in furtherance of common intention and thereby committed an offence punishable u/s.302/34 I.P.C.?

**DECISION AND REASONS THEREOF :**

7. It appears from the record that the prosecution

examined the Medical Officer Dr. Amar Jyoti Saikia as PW1. For the convenience and brevity, the evidence of PW1 along with other witnesses are reproduced herein below. PW1 deposed in his evidence that on 20.11.2013, he was working as Senior Medical & Health Officer at Chapakhowa FRU and on that day at about 11 A.M., he conducted post-mortem examination on the dead body of Sumi Gogoi in connection with Sadiya P.S. Case No.244/2013. On examination, he found the following:

*“External Appearance:- An average built female dead body with rigor mortis appeared.*

*Injuries:*

- 1. Huge clean cut wound on neck, anteriorly and it completely dissected the trachea, oesophagus and carotid vessels of size 6 x 3 x 4cm.*
- 2. Abrasion injury on nose and orbital region, on right side.*

*Other organs were normal and healthy.”*

8 PW1 opined that cause of death was due to shock and haemorrhage resulting from severe haemorrhage from cut wound (antemortem wound). He has not stated the nature of the injury, whether it was homicidal, suicidal or accidental. Ext.1 is the post-mortem report and Ext.1(1) is his signature. One dao was produced before the PW1 and said dao is marked as M.Ext.1 and PW1 says that the

injuries shown in the post-mortem report, can be caused by M.Ext.1.

9. During cross-examination, PW1 stated that he has not mentioned in Ext.1 that the injuries may be caused by M.Ext.1 (dao). PW1 denied that the injuries found on the body of the deceased were self-infliction.

10. PW2 is the complainant Sri Jiten Gogoi. He deposed that the deceased Sumi Gogoi was his wife and he knows both the accused Kartik Neog and Banamali Gogoi. On the fateful day, he had gone to Bhobola Gaon and returned back to his village on the next day of the incident. When he was at Bhobola Gaon, one Puspa Gogoi made a telephone call to him and told that his wife was ailing. After receiving the information, he came to his village on the next day and found that the villagers had gathered in his house and police was also, there. He found his wife lying dead on the ground. He noticed cut injury on her neck. Police conducted inquest over the dead body. Ext.2 is the inquest report and Ext.2(1) is his signature. After one week or so, the accused persons confessed before him and in presence of villagers that they killed his wife. Thereafter, he lodged the ejahar vide Ext.3 with his signature as Ext.3(1). During investigation, police seized one dao, which was lying near the dead body. Ext.4 is the seizure list and Ext.4(1) is his

signature. M.Ext.1 was seized by police from the house of accused Kartik.

11. In his cross-examination, PW2 stated that it is not mentioned in the ejahar that the accused persons confessed their guilt before him as well as, before the villagers. He denied the suggestion that he did not state before the police that the accused persons confessed their guilt before him. He does not know the contents of Ext.2 and Ext.4, as the contents of Ext.2 and Ext.4 were not read over to him. He cannot say specifically as to who committed murder of his wife.

12. PW3 is Sri Biman Gogoi. He deposed in the evidence that he came to know from the villagers that the deceased was killed by some one. Hearing this, he went to the house of the deceased and found her lying dead in the kitchen of her house. He noticed injury on her neck. After few days of the incident, police seized one dao from the house of Kartik Neog vide Ext.4 with his signature. He identified the dao vide M.Ext.1. He further stated that Kartik was apprehended by the villagers and handed him over to the police and Banamali himself surrendered at the police station.

13. PW3 during cross-examination stated that police did not record his statement. He denied the suggestion that he

deposed falsely that Kartik was apprehended by the villagers and handed him over to the police and Banamali himself surrendered at the police station in connection with this case.

14. PW4 is Smti Putuli Gogoi. She deposed in her evidence that the deceased was her own sister. On the day of occurrence, she was sleeping in her house and at that time, Kumoli, the daughter-in-law of the deceased, came to her house and told that something had happened to the deceased and so, she should come to her house. On arrival, she saw that the deceased was lying on the floor of the kitchen. She was unable to move. She tried to lift the deceased, but could not and at that point of time, she saw that her hands were splattered with blood. It was still dark in the morning, so she could not see the injuries on the person of the deceased. She raised hue and cry over the incident and neighbouring people gathered. Later on, the accused persons were detained by the villagers for causing the death of her sister.

15. In her cross-examination, PW4 stated that on the next day of the occurrence, police recorded her statement.

16. PW5 is Smti Kumoli Gogoi. She deposed that the deceased was her mother-in-law. On the day of occurrence,

she had gone to attend a funeral ceremony and at about 4 in the morning, she returned home. On entering in to her house, she saw that her mother-in-law was lying on the floor of the house. PW5 tried to wake her up, but she did not respond. PW5 called the villagers and a lot of people had gathered at their house. She saw an injury on the neck of her mother-in-law. After about one week, their villagers detained Banamali and Kartik Neog for causing death of her mother-in-law. On the day of occurrence, her mother-in-law was alone in the house, because her father-in-law and husband had gone out for some work on that night. Near the dead body of her mother-in-law, she also, saw one dao.

17. In her cross-examination, PW5 stated that the dao, which she saw near the dead body of her mother-in-law, is not shown to her in the court.

18. PW6 is Ritul Gogoi. He deposed that the deceased Anjali Gogoi was his mother. His mother was also, known as Sumi Gogoi. At the relevant time of occurrence, he was at Tezu, where he worked. His nephew informed him over phone that his mother was murdered. When he reached his home, he saw the dead body of his mother at the cremation ground. Later on, he came to know that the accused Banamali, who is his brother-in-law, had killed his mother. He did not know, why his mother was murdered.

19. During cross-examination, PW6 denied the suggestion that he did not state before the police that he came to know that the accused Banamali had killed his mother.

20. PW7 Prabin Gogoi deposed that after the death of the deceased, they were informed and accordingly, he went and saw the dead body of the deceased, having a cut injury on her neck. A lot of people had already gathered there.

21. PW8 is Smti. Nayanmoni Gogoi. She deposed that the deceased was her mother. At the relevant time of occurrence, she was in her matrimonial home, which is situated at a distance of about one kilometre from the house of her deceased mother. Next day morning, some people of the village came to her house and informed her that her mother was hacked to death. She immediately, came to the house of her mother and saw the dead body of her mother. She saw that the neck of her mother was slit. She could not know who had committed murder of her mother.

22. PW9 Jit Gogoi deposed that after getting the information about the occurrence, he went to the house of the deceased and saw the dead body of the deceased. He noticed cut injuries on the neck and forehead of the

deceased. After about eight days of death of the deceased, on one night, while the people were talking in the house of the deceased, the accused Banamali and the deceased-accused Kartik themselves, admitted before the villagers that both of them had committed murder of the deceased. At that time, he was also, present in the house of the deceased and in his presence, Banamali and Kartik had admitted their guilt.

23. In cross-examination, PW9 stated that after the accused and the deceased-accused made confession, then, police recorded his statement. He denied the suggestion that he deposed false evidence that the accused Banamali and deceased-accused Kartik had confessed their guilt before him and the villagers.

24. PW10 is Lishna Neog. He deposed in the evidence that one neighbour informed him about the occurrence and after that, he came to the house of the deceased. When he reached there, the dead body of the deceased was being brought out of the house and then he noticed one cut injury on the neck of the deceased. The accused and the deceased-accused Kartik admitted their guilt before the villagers and at the time of confession made by the accused, he was present along with Probin Gogoi, Ananda Gogoi, Jeet Gogoi, Bubul Gogoi, Lila Baruah and some other

persons.

25. In cross-examination, PW10 stated that the accused persons made their confession in the house of the deceased. He denied the suggestion that he deposed false evidence that the accused persons admitted before them that they had committed murder of the deceased.

26. PW11 is Lila Baruah. He deposed that someone from the house of the deceased informed him over phone that the deceased was murdered. He came to the house of the deceased. Other villagers also, gathered in the house of the deceased. He saw one cut injury on the neck of the deceased. After about eight days of the occurrence, the accused Banamali and the deceased-accused Kartik had confessed before him and some other villagers in the house of the deceased that they committed murder of the deceased. The accused persons did not tell them as to why they committed murder of the deceased. Inquest on dead body was done in his presence. Ext.2 is the inquest report and Ext.2(3) is his signature.

27. In his cross-examination, PW11 stated that police did not record his statement. He denied the suggestion that he deposed false evidence that the accused Banamali and the deceased-accused Kartik had confessed before him and

some other villagers in the house of the deceased that they had committed murder of the deceased.

28. PW12 Dinesh Doley is the I.O of the case. He deposed that on 20.11.2013, he was working as In-charge of Na-Sadiya Out-Post and on that day, at about 6.30 A.M., the Gaonbura of Bahoni village, informed him over phone that some unknown miscreants had murdered Sumi Gogoi, the wife of Jiten Gogoi(PW2), by cutting her neck. Accordingly, he lodged G.D. Entry No.244; dated 20.11.2013. Ext.5 is the extract copy of above G.D. entry. He informed his superior authority and proceeded to the place of occurrence. He inspected the place of occurrence, which was the house of Jiten Gogoi. He found the dead body of Sumi Gogoi in the kitchen of the house with cut injury on her neck. He informed the Executive Magistrate and accordingly, Executive Magistrate; Dr. Laxmanan S came to the spot and in his presence, inquest was conducted. He prepared a sketch map of the place of occurrence vide Ext.6. He found one dao, stained with blood, was lying near the dead body. He seized the said dao vide Ext.4 with his signature. He seized the said dao vide M.R. No.28/2013. He examined the witnesses at the spot. As per his instruction, the complainant Jiten Gogoi lodged written ejahar. After receipt of the ejahar, he forwarded the same to the Officer-in-Charge of Sadiya police station for

registration of a case. Accordingly, Sadiya P.S. Case No.57/2013 was registered and he was entrusted to continue with the investigation. During investigation, on 30.11.2013, he was informed that the culprits of Sumi Gogoi were identified by the local villagers and they were apprehended in the village. Accordingly, he went to Bahoni village and found that accused Banamali Gogoi @ Puwali and Kartik Neog detained by the villagers and he took custody of both the accused and sent them to Sadiya police station. Again, he recorded the statement of witnesses; Abhiram Gogoi, Probin Gogoi, Lila Baruah, Jeet Gogoi, Lishon Neog and Bulbul Gogoi and these witnesses told him that both the accused persons confessed before them that both the accused murdered the deceased by cutting her neck by means of dao. He examined both the accused and they also confessed before him their guilt by stating that they murdered the deceased; Sumi Gogoi as she used to scold Banamali regularly. He arrested both the accused persons and forwarded them to the court. He obtained the finger prints of both the accused persons at Sadiya Jail in order to compare the finger prints on the seized dao. He sent the finger prints of the accused persons for FSL examination. He received the post-mortem report. In the mean time, he was transferred and as such, he handed over the Case diary to the O.C., Sadiya police station. On perusal of the Case diary, he found that his successor I.O. Sri

Birinchi Duwara continued with the investigation and he collected the finger print-report from State Finger Print Bureau, CID, Guwahati. Thereafter, Birinchi Duwara submitted the charge-sheet on the basis of investigation done by him.

29. In cross-examination, PW12 stated that he did not make any prayer before the court for recording confessional statement of both the accused persons by the Magistrate. He further, stated that the witness Ritul Gogoi(PW6) did not state before him that the accused Banamali killed his mother-in-law. He denied the suggestion that he did not conduct the investigation as per law.

30. PW13 is Sri Birinchi Duwarah, who is another I.O. He deposed that on 21.6.2015, he received the C.D. of Sadiya P.S. Case No.57/2013 for investigation. On perusal of the Case diary, he found that two other police officers already investigated into the case. He simply collected the FSL report and at the end of investigation, submitted charge-sheet against the accused persons vide Ext.7 with his signature.

31. Thus, from the evidence of the prosecution witnesses, it appears that there is no eyewitness of the occurrence. However, it is not disputed that the deceased Sumi Gogoi,

wife of PW2 was murdered at her own house on the fateful day, by slitting on her neck by means of dao. On perusal of the evidence of PW2, it shows that his testimony is not direct and only he filed the FIR, which he proved it. His evidence that the accused Banamali Gogoi along with deceased-accused Kartik Neog confessed before him and other villagers about the commission of murder of Sumi Gogoi by them. PW3 does not corroborate the version of PW2 that the accused confessed his guilt of murder of the deceased but he proved the seizure of offending dao. PW4 and PW5 does not implicate the accused persons in any manner however, supports the fact of apprehension of the accused by villagers.

32. The evidence of PW6, who is son of the deceased is not direct and as such, his evidence that he came to know that the accused killed his mother, cannot be reliable to believe. Further, the version of PW7 is not direct evidence and as such, it does not come to assist the prosecution case. The evidence of PW8 shows that she could not know who committed murder of Sumi Gogoi, since deceased. Hence, such evidence of PW8 cannot help the prosecution. Apart from above, it appears that the evidence of PW9 discloses that his evidence is also not direct. However, his evidence shows that the accused confessed their guilt before local villagers and him. Similarly, PW10 though his evidence is not direct, discloses that the accused confessed

his guilt to implicate in the occurrence. Likewise, PW11 also discloses that the accused confessed his guilt before the villagers and in his presence. The I.O. corroborates the same fact that the accused confessed his guilt before the local public.

33. Thus, from the evidence of the prosecution witnesses, it appears that although there was no direct eyewitness of the occurrence, the evidence of PW2, 9, 10 and 11 shows that the accused confessed his guilt of murder of Sumi Gogoi with Kartik Neog, since deceased. From the evidence of PW2 discloses that the offending dao was recovered from the house of dead accused Kartik Neog, which is supported by PW3. But PW5 contradicts the said version that he saw the dao near the dead body and I.O. did not lend support to version of PW1 and 3. Thus, from the evidence on record, it does not appear satisfactorily that the offending dao was recovered from either of the accused. So, the prosecution case is based on extra-judicial confession of the accused Banamali Gogoi.

34. In case of extra-judicial confession by an accused, the principle laid down by Hon'ble Supreme Court in **Balwinder Singh vs. State of Punjab 1995 Supp (4) SCC 259**, that *An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with*

*great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.*

35. In **State of Rajasthan vs. Raja Ram (2003) 8 SCC 180**, the principle was that *An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has such made.*

36. In **Sansur Chand vs. State of Rajasthan (2010) 10 SCC 604**, it was held that *There is no absolute rule that an extra-judicial confession can never be the basis of a conviction although ordinarily an extra-judicial confession should be corroborated by some other material.*

37. Further, in **Madan Gopal Kakkad vs. Naval Dubey & anr. (1992)3 SCC 204**, it was held that *The law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of procedure does not require that each and every circumstances mentioned in the confession must be separately and independently corroborated.*

38. Thus, from the above law so laid down in case of evidence of extra-judicial confession, it must be corroborated in every case but the same itself is weak evidence, which therefore, requires extra care and caution at the time of its appreciation. In the present case in hand, it appears that the evidence of PW2, 9, 10 and 11 that after one week or so, the accused with Kartik Neog confessed before them and other villagers that the accused killed the wife of PW2. On the other hand, I.O. does not lend support to the fact as discloses by PW2 and 3 that the police seized a dao from the house of deceased Kartik Neog. The version of I.O. is that the dao was lying near the dead body of wife of PW2, which is supported by PW5. Thus, the evidence of PW2 and 3 as regards to recovery of offending weapon from the house of co-accused/ since deceased Kartik Neog by police, comes under doubt. Moreover, PW3, 4, 5, 6, 7 and 8 does not lend support to the extra-judicial confession made by the accused to implicate him in the occurrence. The FSL report as regards to finger print of the accused gave negative test. The accused in his statement u/s 313 CrPC does not admit that he confessed before the public. Thus, after considering entire aspects of the facts and circumstances of the case, as surrounding circumstances of the case leading to making extra-judicial confession by the accused is not supportive in nature, it appears that relying solely on such extra-judicial confession of the accused is not

safe. No other evidence is adduced against the accused by the prosecution to implicate him in the occurrence with any kind of common intention with the other which casts doubt over the implication of the accused in the offence. Hence, the accused Banamali Gogoi is given the benefit of doubt.

39. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Accused is held not guilty u/s 302/34 IPC. The accused Banamali Gogoi is acquitted and set at liberty. His bail bond shall be remained in force u/s 437A CrPC. The seized article shall be destroyed in due course. Forward a copy of judgment to the District Magistrate, Tinsukia u/s 365 CrPC. This court recommends payment of compensation to the victim of the crime under Assam Victims Compensation Scheme r/w section 357 CrPC.

40. Given under the hand and seal of this court on this the 21<sup>st</sup> day of May, 2022.

Dictated & corrected by:

Sessions Judge  
Tinsukia

**(C. Das)**  
Sessions Judge  
Tinsukia

**A P P E N D I X**

## LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW1	Dr. Amar Jyoti Saikia	M.O. - Official
PW2	Sri Jiten Gogoi	Complainant - Indirect
PW3	Sri Biman Gogoi	Indirect
PW4	Smti Putuli Gogoi	Sister of the deceased - Indirect
PW5	Smti Kumoli Gogoi	Daughter-in-law of the deceased - Indirect
PW6	Sri Ritul Gogoi	Son of the deceased - Indirect
PW7	Sri Prabin Gogoi	Indirect
PW8	Smti Nayanmoni Gogoi	Daughter of the deceased - Indirect
PW9	Sri Jit Gogoi	Nephew of the deceased - Indirect
PW10	Sri Lishna Neog	Indirect

PW11	Sri Lila Baruah	Indirect
PW12	Sri Dinesh Doley	I.O. – Official
PW13	Sri Birinchi Duwarah	I.O. - Official

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
NA	NA	NA

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
NA	NA	NA

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

**A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>1</b>	Exhibit 1	Postmortem Report
<b>2</b>	Exhibit 2	Inquest Report
<b>3</b>	Exhibit 3	Ejahaar
<b>4</b>	Exhibit 4	Seizure list
<b>5</b>	Exhibit 5	Extract copy of G.D.E. No.244
<b>6</b>	Exhibit 6	Sketch map

<b>7</b>	Exhibit 7	Charge-sheet
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**B. Defence:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NA</b>	NA	NA

**C. Court Exhibits:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NA</b>	NA	NA

**D. Material Objects:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	MO1	Dao

Sessions Judge  
Tinsukia