

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

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

Date of Judgment :- 13.05.2022

The case was committed on 20.11.2019 by learned Judicial Magistrate, 1st Class, Tinsukia in G.R. Case No.1819/2019)

Sessions Case No. 100 (T) of 2019

U/s. 302 I.P.C.

(FIR No. 244 of Doomdooma P.S.)

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	A.K. CHOUBEY, Ld. P.P., TINSUKIA
ACCUSED	SRI RONE TIRKEY, S/o Sri Paharu Tirkey, R/o Samuguri Line, P.S. Doomdooma, Dist. Tinsukia (Assam)
REPRESENTED BY	ADVOCATE, SRI D. BOSE

Date of Offence	28.07.2019
Date of FIR	29.07.2019

Date of Charge Sheet	31.10.2019
Date of Framing of Charges	14.02.2020
Date of commencement of evidence	04.01.2021, 25.01.21, 08.02.21, 03.04.21, 20.11.21, 07.02.22 & 04.02.2022
Date on which judgment is reserved	NA
Date of Judgment	13.05.2022
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 Rone Tirkey	11.09.2019	In Jail	302 of IPC	Acquitted	NA	914 days (Since arrest)

J U D G M E N T

1. The case of the prosecution briefly, is that on 29.07.2019, the complainant Sri Atul Karmakar lodged an ejahar before the In-charge of Talap Out- Post under Doomdooma police station, alleging *inter-alias* that some unknown person committed murder of his son; Deep Karmakar and his dead body was thrown at Ting-Line Road with cut mark on his neck.

2. On the basis of filing of the above ejahar, the police registered the Doomdooma P.S. Case No.244/2019 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, collected the post-mortem report with inquest report of the deceased 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 Chief Judicial Magistrate, Tinsukia, he was furnished with the copy of the case as required u/s. 207 CrPC. The offence u/s 302 IPC since, triable exclusively by 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 IPC was framed against the accused. The charge so framed was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined as many as, 10(ten) witnesses including the M.O. and I.O. to get support of its case. After closure of the prosecution evidence, the statement of the accused was recorded u/s.313 CrPC., where 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 was perused.

POINT FOR DETERMINATION:

6. Whether on 28.07.2019, at night, at Laina Ting- Line, Talap under Doomdooma police station, the accused committed murder by causing the death of Deep Karmakar and thereby committed an offence u/s. 302 IPC?

DECISION AND REASONS THEREOF :

7. In the present case the prosecution examined the complainant Sri Atul Karmakar as PW1. He stated that the deceased Deep Karmakar was his eldest son. He knows the accused, who resided near his house. On the fateful day, on 28.7.2019, he was not present in his house. At that time, he

was in the house of his daughter at Talap. His niece; Binti Gorh informed her over phone that someone killed Deep Karmakar and his dead body was thrown in a tea garden line road. Immediately, he came to his house and went to the place of occurrence with his wife and daughter. He saw the dead body of his son; Deep Karmakar, lying on the roadside of the garden. In the meantime, the police arrived at the spot and took away the dead body to the police station. He also, accompanied police to the police station. Along with him, his son; Gopi Karmakar and his son-in-law; Anup Munda also, went to the police station. There, police inspected the dead body. He did not notice any injury on the dead body of his deceased son. Inquest was done on the dead body of his son in his presence. Ext.1 is the inquest report and Ext.1(1) is my signature. Thereafter, he filed the ejahar on the next day vide Ext.2 and Ext.2(1) is his signature. PW1 further stated that he came to know from the wife of the accused that the wife of the accused told that the accused threatened her after the occurrence that like Deep, the accused will also, kill her, the wife of the accused.

8. During cross-examination, PW1 stated that the ejahar was written by Rajiv Barhoi, the Union Secretary of their garden. He has not narrated the facts in the ejahar, which he deposed in the court. He did not state to the police earlier that he came to know from the wife of the accused

that the wife of the accused told that the accused threatened her after the occurrence that like Deep, the accused will also kill her.

9. PW2 is Sri Bikram Bhumij. He deposed that the deceased Deep Karmakar was the son of the complainant. He knows the accused. The occurrence took place at Laina Bagan in the month of July' 2019. From there, someone informed to his sister; Binoti that one dead body was recovered and she was asked to identify the dead body. Accordingly, his brother and others went to the spot and identified the dead body as Deep Karmakar. The dead body was sent for postmortem examination. After passing of one and half month, the accused had quarreled with his wife and stated that he would cut his wife like Deep Karmakar. Thereafter, the wife of the accused informed him(PW2), regarding involvement of the accused in the occurrence of killing Deep Karmakar. Accordingly, the line-chowkidar, Union Secretary and other persons of the garden inquired the accused about his involvement in killing Deep Karmakar. Since the accused did not accept his guilt, it was informed to the police. The police arrested the accused. At that time, the police brought him along with Binoti Garh and Smti Mayawati Devi, the wife of the accused to the court to record their statements before the Magistrate. Ext.3 is his statement and Ext.3(1) and 3(2) are his signatures.

10. During cross-examination, PW2 stated that he did not state before police earlier that someone from Laina Bagar informed his sister; Binot Garh about recovery of dead body. He had no quarrel with the accused. The wife of the accused told him about the involvement of the accused in killing Deep Karmakar at the house of Atul Karmakar, in presence of Binoti Garh, Koishalya Bhumij, Putli Karmakar, his brother Gopi Karmkar, Kishon Bhumij and others. He does not remember, if some other persons were present at that time. He denied that the wife of the accused did not tell him anything about involvement of the accused in the occurrence.

11. PW3 is Smti Binti Garh. She deposed that Smti Mayawati Debeswar, the wife of the accused told her that when a quarrel took place between her and the accused, the accused told her that like Deep Karmakar, he will also, cut her to death. Having heard about the above fact, the local public apprehended the accused and after beating him, handed over to police. The police brought her to the court for recording her statement and accordingly, she gave her statement vide Ext.4 and Ext.4(1) and 4(2) are her signatures. Her daughters; Anuradha Garh and Anupama Garh and her sister-in-law; Dasami Garh heard what was told by the wife of the accused to her about the accused.

12. PW3 during cross-examination, stated that after one and half month of the occurrence, the wife of the accused

told her about the incident with Deep Karmakar at her residence. In addition to her daughters and sister-in-law, Atul Karmakar, Putli Karmakar, Gopi Karmakar and Bikram Bhumij were present at her residence at the relevant time. She denied that she deposed falsely that the wife of the accused told her that when a quarrel took place between her and the accused, the accused told her that like Deep Karmakar, he will also cut her to death.

13. PW4 Smti Mayawati Debeswar is the wife of the accused. She deposed that the occurrence took place in the month of August' 2019. At the relevant time, she was in the hospital in connection with accident of her son. One day, the accused came under the influence of liquor and threatened her that like Deep Karmakar, the accused will cut her to death. At that time, her daughter; Dipika Garh and Sabita Garh were present with her. Then, she called other persons out of fear. Hence, Bikram, Atul, Binti, Kaushalya came before her. She told that about the threatening given by the accused to her. All of them apprehended the accused and assaulted him physically. Thereafter, the accused was handed over to the police. The police brought her to the court for recording her statement. Accordingly, she gave her statement before the Magistrate, wherein she put her thumb impression.

14. In her cross-examination, PW4 stated that the accused under the influence of liquor, raised hue and cry in

the house. Hence, she raised protest before the accused, for which the accused gave such threatening to her. The accused used to quarrel with her under the influence of liquor. She denied the suggestion that as the accused used to quarrel with her under the influence of liquor, as such, she deposed falsely against the accused.

15. PW5 Sachin Bhumij deposed in the court that the occurrence took place about more than one year ago. On the fateful day, at night, while he was in his house, the Samuguri Line-chowkidar; Lele Kolibor called him over phone and told him that the accused was apprehended due to killing of Deep Karmakar. Accordingly, he went to the spot and saw that the accused was beaten by local public. Hence, he suggested for handing over the accused to police. The accused was taken to the hospital and handed over to police. He along with Lele Kolibor, in presence of parents of Deep Karmakar and wife of the accused asked the accused, if he had killed Deep Karmakar, to which the accused admitted the same.

16. During cross-examination, PW5 stated that he did not state to the police earlier that the line-chowkidar of Samuguri; Lele Kolibor called him over phone and told him that the accused killed Deep Karmakar and held up by the local public and accordingly, he went to the spot and the local public had beaten up the accused and he along with Lele Kolibor and in presence of parents of Deep Karmakar

and wife of the accused inquired the accused, if he had killed the deceased Deep Karmakar, to which the accused admitted the same. He denied that he deposed falsely in the court, for which he did not disclose the same to the police earlier.

17. PW6 Smti Koshailya Bhumij deposed that the deceased Deep Karmakar was the son of the complainant. She knows the accused. She came to know about the occurrence after one and half month. One day, the wife of the accused told her that her husband/ accused had caused injury to Deep as well as, to the wife of the accused, as told by her husband. After filing of the case, police sent her to the court to record her statement. Accordingly, she gave her statement before the Magistrate, wherein she had put her thumb impression.

18. PW7 is Sri Lila Kolabor. He deposed in the court that the occurrence took place about three years back, in the year 2019. When the accused came to his line, the public apprehended him and called him as a line-chowkidar. The wife of the accused told to the public that the accused told her that he will kill her/his wife, like Deep Karmakar. The accused was apprehended after 42 days of the occurrence.

19. In his cross-examination, PW7 stated that he did not state before police earlier that the wife of the accused told to the public that the accused told her that he will kill

her/his wife, like Deep Karmakar. She stated that she has no personal knowledge about the occurrence.

20. PW8 Sri Silvesto Tirkey deposed that on the fateful day, in the morning, one lady came to his house and told him that one person was killed at Lina Tea Estate and the dead body was lying near the road. Accordingly, he went to the spot and found the dead body. Then, he informed the President of the garden, who informed the Garden Manager. The Garden Manager informed the police. Accordingly, police came and took away the dead body. Police conducted inquest on the dead body vide Ext.1 and Ext.1(2) is his signature.

21. PW9 is the Medical Officer Dr. Chandan Jyoti Das. He deposed that on 29.7.2019, he was working as M & HO-1 at Tinsukia Civil Hospital and on that day, at about 3 P.M., he conducted postmortem examination on the dead body of Deep Karmakar, in connection with Talap O.P. G.D.E. No.498, dated 29.7.2019. The dead body was brought and identified by UBC/558 Ujjal Handique and Atul Karmakar, family member of the deceased. On examination, PW9 found the following:

“A male dead body of approximate 28 years old, medium built, 4 feet half inch height, swarthy complexion, black hair, wearing blue colour shirt and black colour track pant with cut neck injury, single in number away from floor

of mouth horizontal direction, hesitation cut absent. Rigor-mortis present.

A horizontal cut throat wound at the level of thyroid cartilage of size 8cm x7cm. All the laryngeal structure exposed, vocal cord exposed, carotid arteries are spared. Blood present in the trachea.

Other organs are healthy. Spinal cord, mouth and brain – congested. Pharynx is open due to cut neck.”

22. PW9 opined that cause of death is asphyxia as a result of aspiration of blood. Injury cut wound is antemortem and homicidal in nature. Approximate time since death was 12 to 24 hours. Ext.5 is the postmortem report and Ext.5(1) is his signature. PW9 further stated that along with the dead body, he received the dead body challan and inquest report. Ext.6 is the dead body challan and Ext.6(1) is his signature. Ext.1 is the inquest report and Ext.1(3) to 1(6) are his signatures.

23. In the cross-examination, PW9 stated that column-10 of Ext.1, there is no mention of any injury on the dead body.

24. PW10 is the I.O., of the case, Sri Jayanta Deka. He deposed that on 29.07.2019, he was the In-charge of Talap Outpost under Doomdooma police station. On that day, he received the information at about 10 A.M. that one dead

body was found lying on the Ting Line road with cut mark on the neck. Accordingly, he made the G.D.E. No.498, dated 29.7.2019 vide P.Ext.7, which is the extract copy of the said G.D. entry. Thereafter, he along with his staff proceeded to the place of occurrence. He inspected the dead body and surrounding area and drew a sketch map of the place of occurrence vide P.Ext.8 and P.Ext.8(1) is his signature. He found gathering of public near the dead body. He informed the Revenue Circle Officer, Doomdooma circle about the dead body's inquest at the spot. He recorded the statements of the witnesses, namely; Silvastu Tirki, Ushila Beg, Sabina Paulash, Atul Karmakar and Amit Karmakar. In the meantime, the Circle Officer/Executive Magistrate arrived at the spot and conducted inquest on the dead body vide P.Ext.1. Thereafter, he brought the dead body to the police station. He sent the dead body for postmortem examination. On his inquiry, it was informed to him that the dead body belonged to one Deep Karmakar, who is the son of Atul Karmakar who lodged the ejahar vide Ext.2 before him. Accordingly, he sent the ejahar to Doomdooma police station to register a case after lodging the G.D. Entry No.501. P.Ext.2(2) is the note of the G.D. Entry No.501 and P.Ext.2(3) is his signature. P.Ext.9 is the extract copy of the G.D. Entry No.501 and P.Ext.9(1) is his signature. On receipt of the ejahar, the Officer-in-charge of Doomdooma police station, Sri Moni Mohan Koch registered the case

No.244/2019 and endorsed him to investigate the case. During the investigation on 10.9.2019, the local public apprehended the accused Rone Tirkey and informed him and handed over the accused at the police station. Accordingly, he arrested the accused. On the next day, he forwarded the accused to judicial custody. He sent the witnesses, namely; Bikram Bhumij, Mayabati Debeswar, Binti Gorh and Kosholya Bbumij to the court to record their statements u/s.164 Cr.P.C. He also, collected the statements of the witnesses recorded u/s.164 Cr.P.C. Thereafter, he was transferred and as such, he handed over the C.D. to the O.C. concerned. Subsequently, Sri Kapil Ch. Das, S.I. of Police, was entrusted to investigate the case. On the basis of his investigation of case, IO Sri Kapil Ch. Das submitted the charge-sheet after completing the investigation. P.Ext.10 is the said charge-sheet and P.Ext.10(1) is the signature of Kapil Ch. Das, which he knows, as he was undergone probation under him.

25. During cross-examination, PW10 stated that he took the charge of investigation on 29.7.2019 at about 10 A.M. He visited the place of occurrence on the same date at same time. He recorded the statements of witnesses on the same day at the spot. On 11.09.2019, he recorded the statements of Mayabati, Binti Gorh and Kosholya Bhumij. In the printed form of the FIR, in the column of 3(A) the general diary entry number and time is not filled up by the

O.C. concerned. Further, in the printed form of the FIR, the information of the occurrence was received on 29.7.2019 at about 6.45 P.M. by the O.C., concerned. He could not recovery any offending weapon during investigation. He did not find any eyewitness of the occurrence. PW10 further stated that PW1 Atul Karmakar did not state to him earlier that he came to know from the wife of the accused that the accused told his wife that like Deep, the accused will also kill his wife.

26. From the above evidence of the prosecution witnesses, it appears that there was no eyewitness of the occurrence. The dead body of the deceased was recovered from abandoned condition near road of the tea garden. All the evidence of witnesses of the prosecution like PW1, 2, 3, 4, 5, 6, 7 and 8 are circumstantial in nature. All of them stated that the accused threatened his own wife(PW4) that like Deep since deceased, the accused will cut his wife(PW4). Such threatening of the accused was divulged to the public by PW4. Hence, local public apprehended the accused after 42 days of the occurrence. The evidence of PW5 discloses that the accused admitted his guilt after inquiry. Apparently, the accused confessed his guilt publicly. So, the prosecution case rests on extra-judicial confession of the accused since there is no confession of the accused recorded u/s 164 CrPC.

27. In case of extra-judicial confession made by the accused, it was held in **Rameswar Kalita vs. State of Assam; (1997) 2 GLR 360** that *It would be wrong to approach an extra-judicial confession with a presumption that it is a weak type of evidence. If otherwise proved to be voluntary and truthful, even extra-judicial confession made by an accused can sustained a conviction for offence u/s 302 IPC.*

28. Thus, the above decision indicates of prove of voluntariness and truthfulness of extra-judicial confession of the accused to record a conviction order. In another case reported in **Dwijen Kalita vs. State of Assam (1998) 3 GLR 34**; it was held that *Where prosecution presses for conviction on the basis of extra-judicial confession they will have to prove the date, time and place of the alleged statement and the facts and circumstances under which the alleged statement was made.* Thus, this instant decision called for prove of date, time and place of making statement of extra-judicial confession by an accused in addition to prove of facts and circumstances under which the accused made such extra-judicial confession.

29. In **Sahadevan vs State (2012)3 SCC(Cri) 146**, it was held that *Extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same*

inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration. Thus, the above decision makes it clear that extra-judicial confession by an accused must be corroborated by other evidence of the prosecution as well as, it must be cogent to record a conviction against an accused.

30. Having gone through the above law laid down in respect of admissibility of extra-judicial confession of an accused, it would be proper to appreciate the evidence on record of this case. It appears from the evidence of PW1, 3, 6 and 7 that they heard from PW4, the wife of the accused that the accused threatened PW4 to kill like Deep, since deceased. The evidence of PW5 discloses that in presence of PW1, 4 and 7, it was asked if the accused killed Deep Karmakar to which the accused admitted the same. But on the other hand, the evidence of PW3 that the accused did not accept his guilt. Thus, there is discrepancy appears in the evidence of the prosecution witnesses as regards to confession made by the accused.

31. Be that as it may, it appears from the evidence of PW4 that she was first person who heard from the mouth of the accused that like Deep since deceased, the accused will kill her in a domestic quarrel with her after the murder of Deep Karmakar, which was uttered to her by the accused to implicate him in the occurrence. Such disclosure of the accused to PW4 about death of Deep Karmakar was made public by PW4.

32. On perusal of the evidence of PW4, it appears that after passing of one and half month of occurrence, the accused under the influence of liquor, threatened her that like Deep Karmakar, the accused will cut her to death. Apparently, PW4 failed to narrate the date, time and place of such confession of the accused. Moreover, it appears that such statement in the form of extra-judicial confession was made by the accused under influence of intoxication. Hence, there would be lack of truthfulness in such statement by the accused. It was also seen that such statement of the accused made after much delay of the occurrence. Therefore, such statement of the accused before PW4 to implicate him in the occurrence cannot be safe piece of evidence to rely upon. Thus, it shows that PW4 could not tender a reliable piece of evidence to inspire confidence upon it and as such, the evidence of PW1, 3, 6 and 7 is not reliable to accept who received disclosure of such statement by the accused from PW4. Further, it can be

mentioned herein that from the version of IO, it appears that PW1 omitted to state before IO earlier that the accused threatened PW4 to kill like Deep Karmakar. Hence, on this count the evidence of PW1 is hit u/s 162 CrPC as significant contradiction with his previous statement. No offending weapon could be recovered by the I.O. during the investigation from the accused which another deficit in the case.

33. Apart from above, it reveals from the evidence of PW3 corroborated by PW4 and 5 that the accused was beaten up by the local public after apprehending him and thereafter, the accused admitted his guilt before public. Thus, such extra-judicial confession of the accused was obtained by using force. Hence, such extra-judicial confession of the accused cannot be held as voluntary and as such, it is not admissible in the evidence. Therefore, it appears that the extra-judicial confession upon which the prosecution relied against the accused is not a reliable piece of evidence which entails lack of truthfulness and voluntariness and as such, casts doubt on it. Thus, on the basis of such extra-judicial confession, the accused cannot be implicated for murder of Deep Karmakar, the son of PW1.

34. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Accordingly, the

accused Rone Tirkey is held not guilty **u/s 302 IPC** and the accused is acquitted and set at liberty forthwith. 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 **u/s 357 CrPC** r/w Assam Victims Compensation Scheme by DLSA, Tinsukia after due inquiry.

35. Given under the hand and seal of this court on this the 13th day of May, 2022.

Dictated & corrected by:

Sessions Judge,
Tinsukia

(C. Das)
Sessions Judge,
Tinsukia

Transcribed by:-
H. Baruah,
Stenographer-II

A P P E N D I X

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Sri Atul Karmakar	Complainant/Father of the deceased- indirect
PW2	Sri Bikram Bhumij	Independent -Indirect
PW3	Smti Binti Garh	Independent - Indirect
PW4	Smti Mayawati Debeswar	Wife of the accused - Indirect
PW5	Sri Sachin Bhumij	Independent - Indirect
PW6	Smti Koshailya Bhumij	Independent - Indirect
PW7	Sri Lila Kolabor	Independent – Indirect
PW8	Sri Silvesto Tirkey	Independent – Indirect
PW9	Dr. Chandan Jyoti Das	M.O. - Official
PW10	Sri Jayanta Deka	I.O. - Official

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	NA	NA

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	NA	NA

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Inquest report
2	Exhibit 2	Ejahaar
3	Exhibit 3	Statement of Bikram Bhumij
4	Exhibit 4	Statement of Smt. Binti Gorh
5	Exhibit 5	Postmortem report
6	Exhibit 6	Dead body challan
7	P. Exhibit 7	Extract copy of G.D. entry
8	P. Exhibit 8	Sketch map
9	P. Exhibit 9	Extract copy of G.D. entry
10	P. Exhibit 10	Charge sheet

B. Defence:

Sr. No.	Exhibit Number	Description
NA	NA	NA

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NA	NA	NA

D. Material Objects:

Sr. No.	Exhibit Number	Description
NA	NA	NA

Sessions Judge,
Tinsukia