

**IN THE COURT OF THE SESSIONS JUDGE, SONITPUR
AT TEZPUR**

PRESENT : **Sri A. Borthakur**
 Sessions Judge, Sonitpur
 Tezpur

JUDGMENT IN SESSIONS CASE NO. 119 OF 2007

Under Section 302 of the Indian Penal Code
(Arising out of G. R. Case No. 1493 of 2006)

State of Assam

–Versus–

Smt. Bulu Saikia
Wife of Sri Tarun Saikia
Resident of Shankar Nagar
Police Station – Tezpur
District – Sonitpur, Assam

[Committed by Smt. N. Rajkumari, Addl. Chief Judicial Magistrate,
Sonitpur, Tezpur]

A P P E A R A N C E

For the State	:	Mr. H. P. Sedai Public Prosecutor Sonitpur District
For the Accused	:	Mr. S.E. Alam Senior Advocate Smt. D. Sinha Advocate
Date of framing charge	:	06-09-20007
Date of prosecution evidence	:	08-01-2008, 16-06-2008 20-01-2009, 08-04-2009 17-06-2009, 17-09-2009 17-11-2011, 06-01-2012 18-06-2012 10-12-2012 & 24-09-2013
Date of Argument	:	24- 04-2014 & 08-05-2014
Date of Judgment	:	19- 05-2014

J U D G M E N T

One day, mid-night, the accused went to the house of the accused-woman and demanded repayment of loan of Rs.50,000/-. The accused allegedly delivered Rs.40,000/-. Thereafter, in a scuffle, the accused killed him inflicting single 'dao' blow on the neck. Then the accused surrendered at Police Station and lodged FIR against the deceased.

PROSECUTION CASE :

2. The prosecution case, as unfolded in the ejahar, may be stated as follows :

One Sri Ranjan Kalita, son of Late Dharmeswar Kalita, resident of Shankar Nagar, under Tezpur Police Station lodged an ejahar, on 12-10-2006, before the Officer-in-charge of the said Police Station, alleging that on 11-10-2006, at about 9-30 p.m., his elder brother Pranjal Kalita went to the house of related aunt, the accused Smt. Bulu Saikia to bring money due to him. On the following day, early morning, he came to know that the accused Smt. Bulu Saikia hacked to death of his said brother Pranjal by a 'dao', on the previous night at her home and then surrendered with the 'dao' at the police station.

INVESTIGATION :

3. Based on the above ejahar, Tezpur PS Case No. 611/2006 u/s 302 IPC was registered vide GD Entry No. 361, dated 12-10-2006 and Inspector Bipin Rajbongshi, the Officer-in-charge, endorsed the case to SI Sisir Bhatta, the then In-charge Lalmati OP, for investigation.

It may be mentioned that on 12-10-2006, at about 2-15 a.m., the accused Smt. Bulu Saikia appeared at Tezpur PS, along with a 'dao' and reported the occurrence to the Officer-in-charge, whereupon Tezpur PS, GD Entry No. 348, dated 12-10-2006, was made and as per endorsement, SI Sisir Bhatta, the In-charge, Lalmati OP, took up investigation.

4. In course of investigation, the IO seized the weapon of offence, the 'dao' and arrested the accused. Thereafter, the IO, visited the place of occurrence. Then the IO held inquest on the dead body of the

deceased Pranjali Kalita at the courtyard of the house of the accused and sent the dead body to Kanaklata Civil Hospital for post mortem examination. The IO also seized other materials from the place of occurrence. Thereafter, the IO recorded the statements of the witnesses u/s 161 CrPC and prepared a rough sketch map of the place of occurrence and on completion of investigation, submitted the charge-sheet u/s 302 of the IPC against the accused-woman.

TRIAL :

5. Since the charge-sheeted offence u/s 302 IPC is exclusively triable by the Court of Sessions, the Learned Additional Chief Judicial Magistrate, Sonitpur, vide order, dated 18-06-2007, passed, in GR Case No.1493/2006, committed the case, after observing the procedure laid down in Section 209 CrPC, to this Court of Sessions for trial.

6. Upon perusal of the materials on record and hearing the learned counsel for both the sides, a formal charge u/s 302 of IPC was framed, vide order, dated 06-09-2007. The charge was read over and explained to the accused, to which she pleaded not guilty and claimed to be tried.

7. In order to prove the above charge, the prosecution has examined 14 (fourteen) witnesses including the autopsy surgeon and the Investigating Officer, while the defence cross-examined 13 (thirteen) witnesses.

8. On closing the evidence of the prosecution side, the statement of the accused was recorded u/s 313 CrPC, vide order, dated 03-12-2013. The accused pleaded not guilty, and declined to examine any witness in defence. While denying the prosecution case, the accused has pleaded that she, in self defence, appeared at Tezpur Police Station without any 'dao' and that she never killed Pranjali.

9. I have heard the argument advanced by Mr. H. P. Sedai, the learned Public Prosecutor, and Mr. S.E. Alam, the learned Senior counsel for the defence. I have gone through the entire evidence proffered by the prosecution and also the statement of the accused, recorded u/s 313 CrPC.

POINT FOR DETERMINATION :

10. From the evidence on record, and on the basis of oral submission of the learned counsel of both the sides, the following point emerged for determination :

Whether the accused, in the intervening night of 11-10-2006 and 12-10-2006, at her home, situated at Shankar Nagar, under Tezpur Police Station, committed murder by causing the death of Pranjali Kalita ?

THE DECISION AND THE REASONS THEREFOR

Point No.1 : WHETHER MURDER :

Legal position :

11. The offence of 'murder' has been defined in Section 300 of the IPC. The basic difference between the 'culpable homicide' defined in Section 299 IPC and 'murder' lies in the degree of the gravity of the offence. In order to bring home the offence within the parameter of Section 300 of the IPC, the prosecution must establish that the assailant had the definite intention to cause death of the deceased or that the offender had the knowledge that the wounds which he was inflicting would be sufficient to cause the death or that the same will be dangerous, to human life. Therefore, the essential ingredients of the offence have to be deduced and inferred from a series of facts, like weapon used in the crime, nature of the wound, situs of the wound and other attending circumstances. The burden lies on the prosecution to establish that the act alleged to constitute the offence of 'murder' was really the act of a person other than the deceased and at the same time, the onus of proving Exceptions to Section 300 of the IPC, so as to reduce the offence of murder to one of 'culpable homicide not amounting to murder' lies on the accused. However, even though none of the five Exceptions are pleaded or prima-facie established on the evidence, the prosecution must still be required under the law to bring the case under any of the four Clauses of Section 300 of the IPC, to sustain the charge of 'murder'. If the prosecution fails to discharge this onus in establishing any one of the four Clauses of Section 300 of the IPC, the charge of murder would not be made out and the case may be one of 'culpable homicide not amounting to murder' as described u/s 299 of the IPC.

ANALYSIS OF EVIDENCE ON RECORD :

(i) WHETHER CULPABLE HOMICIDE :

12. There is no dispute from the defence side that Pranjal Kalita met with a homicidal death. It is the consistent case of the prosecution that Pranjal died due to single cut wound over his neck caused by sharp cutting weapon 'dao'. PW-13 Inspector Sisir Bhatta, the IO, found one deep cut injury with profuse bleeding caused by sharp cutting weapon over the neck of the deceased, during preparation of the inquest report, Ext.5, u/s 174 CrPC. On the other hand, PW-8 Dr. Pradip Kumar Kalita, the autopsy surgeon, has opined that the deceased died due to deep cut injury over the neck, which he found during post mortem examination, vide Ext.6, the post mortem report. In cross-examination, PW-8 has further opined that the weapon used was sharp and heavy. The defence appears to have not been able to destroy or weaken the findings and opinion of the doctor through cross-examination of PW-8. The evidence of the remaining prosecution witnesses has also described the post crime scenario at the place of occurrence, that is, the courtyard of the house of the accused, specifically shown in the sketch map, Ext.9, where the corpse of Pranjal Kalita was found, revealing the nature of fatal act committed on him. There is no indication on evidence showing even remotely that the deceased might have sustained the fatal cut injury over the vital part of his body – the neck for any other reason other than the act of a human being. Therefore, as a whole this Court finds no difficulty to hold that the death of Pranjal Kalita was an act of 'culpable homicide' defined in Section 299 of the IPC, beyond doubt.

(ii) WEAPON USED :

(SHARP CUTTING WEAPON)

13. According to PW-14 Sri Bipin Rajbongshi, the then Officer-in-charge of Tezpur PS, on 12-10-2006, at about 2 a.m., the Emergency Officer, on duty, at the police station, informed him, over phone, that a woman wielded with a 'dao' appeared at the Police Station and reported him that she killed a person. On receipt of the information, he rushed to the Police Station, from his official quarter and found the accused-woman sitting in front of the emergency officer, whose name he has forgotten, and the 'dao' being kept on a paper on the table of the said officer. He personally enquired from the accused as to what she had

done, to which she replied that she killed one boy at the courtyard of her house. In the meantime, SI Sisir Bhatta (PW-13), the In-charge of Lalmati OP arrived, on receipt of information from the Emergency Officer, on duty, and Literate Constable (LC) Sri Gobinda Das, who was on duty, noted down the information, in the General Diary of the Police Station. He recognised Ext.5, the General Diary of Tezpur PS, where Ext. 5(1) is the relevant GD Entry No. 348, dated 12-10-2006 at 2-15 a.m. and where Ext. 5(2) is his signature. He has deposed that the weapon of offence – the ‘dao’ was seized by SI Sisir Bhatta (PW-13), aforementioned, which he recognized to be Mat.Ext.1 and thereafter, the said seized ‘dao’ was kept in the Malkhana of the police station under one ‘Chetry’, the in-charge of Malkhana. He has further deposed that Mat.Ext.1 bears the M.R. No.2/08 and that this number was not marked in his presence.

14. PW-13 Inspector Sisir Bhatta, the then in-charge of Lalmati OP, has corroborated the evidence of PW-14, abovementioned, and recognized Ext.8, the extract copy of GD Entry No. 348, dated 12-10-2006, which was copied by himself under his own handwriting and also Mat.Ext.1, the alleged weapon of offence – the ‘dao’, which was seized by Ext.7, the seizure memo at Tezpur PS at 2-30 a.m. Corroborating the evidence of PWs 14 and 13, aforementioned, PW-9 Md. Jamaluddin Ahmed, the Constable on Sentry duty at the Tezpur PS, at the relevant time, within 12 to 1 O’clock, mid-night, has deposed that the accused appeared at the Police Station, along with a blood stained ‘dao’ and stated to him that she had cut a boy with the ‘dao’, whereupon he reported the incident to the ASI Sunil Sarkar (PW-11), who was on phone duty and he (PW-11), in turn, forthwith informed the In-charge of Lalmati OP (PW-13). PW-13, the In-charge of Lalmati OP, arrived at Tezpur PS, after about 1 / 1½ hours and seized Mat. Ext.1, the ‘dao’, by seizure memo, Ext.7, where Ext.7(3) is his signature and Ext.7(1) is the signature of PW-9 Md. Jamaluddin Ahmed, on being handed over by PW-11 ASI Sunil Sarkar, the emergency officer, on duty. It has been clarified in cross-examination that at the time of effecting seizure of the ‘dao’, it was neither wrapped with any material nor signature was obtained thereon. Similarly, PW-11 ASI Sunil Sarkar, who corroborated the evidence of PW-9, aforementioned, recognized his signature, Ext.7(2) in the seizure memo, Ext.7, and stated, in cross-examination that the ‘dao’ bears MR No. 2/08, but it is revealed from the seizure memo Ext.7 that it was marked MR No.240/06.

15. From the evidence of PWs 9,11,13 and 14, coupled with the contents of the documents Ext.8, the Tezpur PS, GD Entry No.348, dated 12-10-2006, at 2-25 a.m. (Ext.8 is the extract copy thereof) and Ext.7, the seizure memo, as a whole, it transpires that the alleged weapon of offence, one 'dao' was seized at Tezpur PS, allegedly on being produced by the accused. The seized 'dao' is exhibited as Mat.Ext.1 admittedly bearing MR No. 2/08, but the seizure memo, Ext.7 and Ext. 10, the charge-sheet bear mention of MR No. 240/06. The, aforementioned, MR No.2/08 of the exhibited Mat. Ext.1, the 'dao', indicates that it was seized in the year, 2008, whereas the incident of the instant case occurred in the year, 2006. Such lapse, without any explanation on record assumes significance, because the identity of the seized weapon is clouded thereby and when there was no independent witness to the seizure of the weapon and further, when the defence through cross-examination of the PWs brought out the aforementioned contradictions in M.R. number of the exhibited weapon as well as the accused in her statement, recorded u/s 313 CrPC, vehemently denied production of the alleged weapon of offence- the 'dao' by herself at Tezpur PS. Moreover, it is noticed from the evidence that alleged production of the seized 'dao' by the accused, without her statement accompanying such production is undoubtedly without any consequence. Further, from the cross-examination of PW-9, as stated above, the seized 'dao' was not wrapped with any material at the time of seizure and likewise, the evidence of PW-13, the IO, reveals that the said blood stained weapon was not sent for chemical examination or for examination by a finger print expert. Therefore, in the considered opinion of this Court, the omission to seal the seized weapon of offence – the 'dao' at the time of seizure and failure to send the same for chemical examination or finger print expert, to ascertain by scientific test that it was used in the commission of the offence, it cannot safely be concluded that it was, in fact, used to cause death of the deceased.

16. For the above stated reasons, it cannot be said that Mat.Ext.1, the 'dao' was seized by Ext.7, the seizure memo. Accordingly, it is held that Mat.Ext.1, the 'dao', was not used, though undoubtedly sharp cutting weapon was used, in the commission of the offence, beyond reasonable doubt.

(iii) PLEA OF MURDER & RIGHT OF PRIVATE DEFENCE ::

(CIRCUMSTANCES IN WHICH THE INCIDENT OCCURRED)

17. In **Babul Roy -Vs- State of Assam [(2010) 2 GLR 1]**, the Hon'ble Gauhati High Court held that the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, courts cannot record a finding of the guilt of the accused. It was further held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Apex Court in **K. Prakashan -Vs- P.K. Surenderan [(2008) 1 SCC (Cri) 200]** held that the burden of proof lying on the accused required to be discharged by preponderance of probability, while that lying on the prosecution to be discharged by proof, beyond reasonable doubt.

18. Turning to the evidence on record, it appears from the evidence of PW-7 Sri Pranjal Pratim Saikia and PW-12 Sri Hemen Medhi, both friends of the deceased Pranjal Kalita since their childhood, on 11-10-2006, at about 9-30 p.m., PW-7 gave a lift to the deceased, by the motorcycle of PW-12, from Chandmari Tiniali market, where they met in the evening, to drop him (the deceased) at his home and accordingly, PW-7 dropped him near his house, with advice not to go to the house of the accused Smt. Bulu Saikia, during that dark night, as he expressed willingness, to demand repayment of loan amount of Rs.50,000/- from her. Thereafter, both PWs 7 and 12 returned to their respective home. The evidence of PW-2 Smt. Nirupama Kalita, the mother of the deceased and PW-10 Sri Yadav Saikia, the son of the accused-woman, it is revealed that the house of the deceased is situated near to the house of the accused and both the families had visiting terms and further, that the deceased Pranjal used to fetch water from the well of the accused.

19. According to PW-10 Sri Yadav Saikia, the son of the accused, at home, his mother lives with him and his father stays outside at his workplace and during the relevant night of the occurrence, he, who was a minor, at that time, and his accused-mother were at home. The defence appears to have not denied this material fact. He (10), who was the only eye witness to the initial stage of the occurrence, deposed, in his examination in chief, that at about 12-30 O'clock, mid-night, when he and his mother were asleep, the deceased Pranjal Kalita accompanied by three other boys, who were in drunken condition, appeared at their house and on being given call by a boy to his mother, from outside, his mother opened the door and thereupon, all the four boys entered into

their house and demanded money from his mother. He has further deposed that his mother- the accused handed over money to them and then three boys left their home leaving behind the deceased Pranjal Kalita, who threatened his mother and got involved in a scuffle with her. At that moment, PW-10 went out of home to call the villagers.

20. The evidence of PW-10 Sri Jadav Saikia, the son of the accused, further reveals that he called the villagers, but none came forward to rescue them from the crisis and so, he knocked at the door of Sri Paresh Choudhury (PW-4). It is further revealed from his evidence that he, on the advice of PW-4 bet the drum of the 'Namghar', situated near their house and hearing the sound of beating of drum, the villagers came out of home and PW-4 accompanied by him (PW-10) and some other villagers went to their (PW-10 and accused) house. They found Pranjal Kalita lying at the frontal courtyard of the house and his (PW-10) mother was found not available at home. These facts have been corroborated by the neighbours PW-3 Sri Chandi Charan Deka, PW-4 Sri Paresh Choudhury, PW-5 Smt. Pramila Devi and PW-6 Sri Jantu Borah. Therefore, in the opinion of this Court, the testimony of PW-10, the son of the accused woman, cannot be disbelieved for the incident occurred in the mid-night, when only he, who was a minor at that time, and his mother were at home and as such, the neighbours, aforementioned, had no immediate excess to the incident, until, as it appears to be quite natural, beating of the drum of the nearby "Namghar" inviting attention of the neighbours to the on going incident at their home and when his evidence is consistently corroborated by PWs 3, 4 and 6, the independent neighbouring witnesses except the fact of entry of four boys including the deceased Pranjal into their house, in the relevant mid-night. This follows the conclusion that though PWs 7 and 12 have deposed that the deceased Pranjal was dropped by PW-12's motorcycle, at about 9-30 p.m., near his house, he (the deceased), in fact, went to the house of the accused, later on, at odd mid-night, to demand repayment of the loan money from her, because had he gone there early before mid-night, the question of beating of the drum of the 'Namghar', in the relevant mid-night, would have not arisen, to overcome the crisis that developed at their house. Hence, this Court finds that, in fact, the deceased went alone to the house of the accused-woman, who was a neighbour, to demand repayment of the loan amounting to Rs.50,000/-.

21. According to PW-1 Sri Ranjan Kalita, the younger brother of the deceased Pranjal Kalita, one day, morning, the police of Lalmati OP appeared at his home, situated near the house of the accused (just crossing two houses) and informed him that his brother Pranjal was lying dead in the house of the accused Smt. Bulu Saikia and thereupon, he rushed to the house of the accused and found Pranjal lying dead on the ground. His evidence further reveals that thereafter, he lodged the ejahar, Ext.1, before the in-charge of Lalmati OP, and came to know from the police that the accused had allegedly surrendered, along with the 'dao', which she used in the commission of the offence, at the Police Station. He has stated that at that time, the accused's husband was not available at home. The evidence of PW-2 Smt. Nirupama Kalita, the mother of the deceased Pranjal Kalita, is similar to the evidence of PW-1. She (PW-2) has also deposed that on the following day, morning, the police appeared at her home and informed about the incident and thereupon, she rushed to the house of the accused and saw her son lying dead in front of the door of the house of the accused. From the evidence of PW-3 Sri Chandi Charan Deka, PW-4 Sri Paresh Choudhury, PW-5 Smt. Pramila Devi, PW-6 Sri Jantu Borah, as a whole, it transpires that they saw the corpse of Pranjal Kalita lying at the courtyard of the house of the accused, in the relevant night of the occurrence. PW-13 Inspector Sisir Bhatta, the IO, who drew up the sketch map of the place of occurrence, Ext.9, has distinctly indicated the place of occurrence. The accused in her statement, recorded u/s 313 CrPC, has admitted the incident in the relevant night at her house, but while pleading innocence stated, as implicitly revealed that she acted in self defence to thwart the attempt to attack her by the deceased with a dagger in his hand. Her plea of right of private defence is discussed later on at an appropriate place. Thus, it is crystal clear from the evidence proffered by the prosecution that immediately after the occurrence at the courtyard of the house of the accused, the corpse of Pranjal was found by the villagers and so also PW-13, the IO, found the dead body at the courtyard of her house, while the accused was found absent, as she ran to Tezpur Police Station to surrender, beyond reasonable doubt.

22. In the instant case, the seized materials also cast some definite evidence to the circumstances in which the occurrence had taken place. According to PW-13, Inspector Sisir Bhatta, the IO, in course of investigation, by Ext.2, the seizure memo, he seized one blood stained T. Shirt and one blood stained ganjee out of the dead body of Pranjal

Kalita, on 12-10-2006 at Kanaklata Civil Hospital, which indicated profuse bleeding from the deep single cut wound sustained by the deceased, as PW-8 Dr. Pradip Kumar Kalita, the doctor, found during post mortem examination. PW-1 Sri Ranjan Kalita and PW-7 Sri Pranjal Pratim Saikia have supported the seizure of those materials, in their presence, by Ext.2, the seizure memo. PW-13, the IO, has further deposed that he seized one pair of chappal, used by the deceased, from the side of his dead body, at the place of occurrence, by Ext.3, the seizure memo. PWs 1 and 7 have supported this fact. Ext. 4 is the other seizure memo, whereby PW-13, the IO, seized one bottle of wine containing some amount of wine from the pocket of the trouser of the deceased, at the place of occurrence, on 12-10-2006, and this fact has been corroborated by PW-3 Sri Chandiram Deka and PW-4 Sri Paresh Choudhury, the seizure witnesses. Therefore, there cannot be any doubt, in the absence of any evidence to the contrary that at the time of the occurrence, the deceased Pranjal Kalita was in inebriated condition, though the degree of intoxication and where he consumed alcohol are not ascertainable. However, the fact of the deceased's inebriated condition is revealed from the evidence of PW-10 Sri Yadav Saikia, who stated in cross-examination that " At that time four boys were in a drunken mood" and PW-12 Sri Hemen Medhi, the friend of deceased stated that Pranjal had the habit of drinking alcohol. The aforesaid seizure of bottle of wine with wine content out of the pocket of the trouser of the deceased reveals, beyond doubt, that at the time of the incident that occurred in the mid-night in the house of the accused-woman, where only she and her minor son (PW-10) resided, as it clearly appears from the evidence of PW-5 Smt. Pramila Devi, a neighbour and PW-10 Sri Yadav Saikia, the son, that the deceased was not in a normal harmonious condition of mind and body. Therefore, any disorderly and unusual behavioural approach to the accused-woman at her home, during the relevant mid-night on the part of the deceased Pranjal Kalita cannot be ruled out, beyond doubt.

(iv) PLEA OF ACCUSED :
(SELF DEFENCE)

23. The accused in her statement, recorded u/s 313 CrPC, while denying her intentional commission of the act of killing her neighbour Pranjal Kalita, pleaded her exercise of right of private defence and followed by taking shelter at Tezpur PS, immediately after the incident that took place at her home, during the relevant night, as follows :

“ With regard to the instant case, I have to say that –

On the mid-night of 11-10-2006, a group of four youths, who were in intoxicated condition, entered into my house and demanded me Rs. fifty thousand. At that time, myself and my minor son only were at home. Finding no way out and being frightened, I delivered Rs. forty thousand, in the compelling situation. Then, Pranjali Kalita, who was among them said addressing me “ if you remain alive, you will file case against us”. Saying this, he with a dagger chased towards me. Finding no alternative, I threw off a piece of brick towards him. He again got up and when he chased towards me, I, in exercise of self defence, took up one ‘dao’, which was at my home and brandished it in the darkness and after leaving the ‘dao’ there, with intent to save my life, I ran to Tezpur PS for shelter. I cannot say, if while brandishing the ‘dao’ in self defence, it hit the body of Pranjali. I narrated all this at the police station. I was detained at the Police Station and on the following day, morning, the police caused writing of an ejahar and obtained my signature thereon. I have filed a certified copy of the ejahar in the Court. I have not murdered Pranjali. They have filed this false case against me to save themselves.”

(v) CONFESSION BEFORE POLICE OFFICER :

24. Here, it is pertinent to be mentioned that u/s 25 of the Evidence Act, it is inadmissible when a confession is made to a police officer and u/s 26 of the Evidence Act, confession made when in the custody of the police officer unless it be made in the immediate presence of a Magistrate. However, when any fact is deposed to as discovered in consequence of information from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as it relates distinctly to the fact, thereby discovered, is admissible u/s 27 of the Evidence Act. The Apex Court in **Aghnoo Nagesia -vs- State of Bihar (AIR 1966 SC 119)**, discussed the impact of Sections 25,26 and 27 of the Evidence Act, as follows :

“ 9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in Ss.24 to 30 of the Evidence Act and Ss.162 and 164 of the Code of Criminal Procedure, 1898. Section 17 to 31 of the Evidence Act are to be found under the heading “Admissions”. Confession is a species of admission, and is dealt with in Ss.24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confession caused by certain inducements, threats and promises. Section 25 provides : “No confession made to a police officer shall be proved as against a person accused of an offence”. The terms of S. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against he accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression “accused of any offence” covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by S.25 on a confession made to a police officer. Section 27 is the form of a proviso, and partially lifts the ban imposed by Ss. 24, 25 and 26. It provides that when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of S. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A Statement or confession made in the course of an investigation may be recorded by a Magistrate under S.164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by S.27 of the Evidence Act, a confession by an accused to a police officer is absolutely protected under S. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by S. 162 of the Code of Criminal Procedure, and a confession to any other person made by him while in the custody of a police officer

is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confession made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy and fullest effect should be given to them.”

(vi) SURRENDER WITH ‘DAO’ :
(Surrendered without ‘dao’)

25. Turning to the evidence on record, it is found from the testimony of PW-9 Md. Jamaluddin Ahmed, constable, PW-11 ASI Sunil Sarkar, PW-13 Inspector Sisir Bhatta, the IO, and PW-14, the then Inspector Bipin Rajbongshi, the Officer in-charge of Tezpur P.S., as a whole, it appears that on 12-10-2006, at about 2/2-25 a.m., the accused-woman taking a blood stained ‘dao’ in hand surrendered at Tezpur PS and confessed to killing of a boy. PW-7 Sri Pranjal Pratim Saikia, the friend of deceased, has stated that he saw PW-1 and the accused at Tezpur PS, when on receipt of information about the occurrence, from one Sri Sourav Borkataki, at about 3-30 a.m., went there. The accused, in her statement u/s 313 CrPC, as stated above, has admitted her appearance at Tezpur PS, immediately after the occurrence, but denied production of any blood stained ‘dao’, which she used at the time of occurrence. The prosecution evidence of seizure of the ‘dao’, Mat. Ext.1 by Ext.7, the seizure memo held disproved for, as stated above, disproved MR number on it. Further, it may be mentioned that the seized ‘dao’, Mat. Ext.1 and other seized blood stained cloths were also not sent to the Forensic science Laboratory for chemical examination or examination of weapon by a finger print expert to scientifically establish their connection to its use in causing death of the deceased. Hence, it cannot be inferred, beyond all reasonable doubt that the accused-woman produced the weapon of offence – the ‘dao’, Mat.Ext.1, at Tezpur PS, as contended by the prosecution.

(vii) FIR BY ACCUSED :
[REPORTED IN FINAL REPORT]

26. The defence side has very fairly furnished a copy of the ejahar, dated 12-10-2006, which the accused lodged before the Officer in-charge of Tezpur PS. This Court had called for the record of GR Case

No.1494/06. On perusal of the aforesaid case record, it appears that the police, after completion of investigation, submitted Final Report, in the case which was registered u/s 447/384 IPC against the deceased Pranjali Kalita. In the ejahar, on the basis of which the aforesaid Tezpur PS Case No. 612/06, vide GDE No.362, dated 12-10-2006 was registered, the accused had narrated the same facts as she has stated in her statement u/s 313 CrPC. However, she stated contradicting her denial of non-production of the 'dao' used in the commission of the alleged offence that she appeared at Tezpur PS with the said 'dao'. Be that as it may, it is apparent that the accused woman, in fact, appeared at Tezpur PS for self defence. Therefore, it transpires that though the accused woman killed the deceased in the midst of a quarrel in the relevant mid-night and surrendered to the police, immediately thereafter along with the blood stained 'dao' and further lodged an ejahar containing confession, the admission of the incriminating facts is, undoubtedly, not admissible in evidence, but her aforesaid conduct is admissible u/s 25 of the Evidence Act. The accused, as it appears from her ejahar itself, has satisfactorily explained her conduct of going to Tezpur PS, surrendering and producing the blood stained knife, immediately after the occurrence that occurred at her home by evidence of preponderance of probability.

(viii) RIGHT OF PRIVATE DEFENCE :

27. It may pertinently be mentioned that the right of private defence embodied in Section 96 to 100 IPC when read together is such that the apprehension of danger to life and property must be real and well founded and the harm inflicted on the assailant should not be more than necessary as demanded by a given situation. The apprehension must be imminent and the right is exercisable so long this right does not disappear. In **Radhe -Vs- State of Chattisgarh [2008 CrLJ 3520]**, the Apex Court held that the burden of proving the claim that the right extended to voluntarily causing death lies on the accused and it has to be shown that there were circumstances for apprehending grievous hurt or death to him. It was held that the right commences as soon as from attempt or threat and it lasts so long as reasonable apprehension of danger continues. The Apex Court in **Dominic Varkey -Vs- the State of Kerala [AIR 1971 SC 1208]** held that question of exceeding right of self defence is entirely a question of fact to be decided according to the circumstances of each case.

28. On scrutiny of the evidence of PW-10, Sri Yadav Saikia, the son of the accused, the deceased Pranjal and three others, in drunken condition entered into their house at about 12-30 O'clock, mid-night, and demanded money and accordingly, his mother-the accused delivered money, whereupon three boys left their house, but the 4th boy Pranjal Kalita threatened his mother and in the result, a scuffle took place between him and his mother. He (PW-10) left his house to call the villagers to their help. His mother- the accused stated that she handed over Rs.40,000/- to Pranjal, in the compelling situation, but Pranjal addressing her said that “ **if you remain alive, you will file case against us**”, and at once, saying this, he chased towards her with a dagger and thereupon, she threw off a piece of brick, but he again chased towards her, for which she brandished one 'dao', in the darkness of the night and ran away to the Police Station to save her life. This later part of the alleged scuffle between Pranjal and the accused-woman took place, in absence of his minor son (PW-10). As stated above, the accused with her minor son only lived at their home. There is no evidence that the deceased went to the accused's house, on her call. In the emerging facts and circumstances, at the relevant mid-night, this Court finds, the deceased, in fact, played the role of aggressor. Therefore, when the deceased, in the real sense, trespassed in the mid-night hours, into the dwelling house of the accused-woman to demand money by way of repayment of loan amount due to him, which the accused at once met and thereafter, apprehending that she would file a case against them for their wrong acts, he attempted to cause fatal injury to her by a dagger (though it was not recovered), who was at that time alone at home, definitely had a reasonable right of exercise of private defence to thwart the imminent attack of the aggressor. Hence, brandishing of a sharp cutting weapon in self defence, was within her right of private defence to thwart the imminent danger to her life at the hand of the deceased, who was certainly in drunken condition, though she escaped uninjured, cannot be ignored.

29. Hence, in the considered opinion of this Court, when the deceased acted as aggressor, during mid-night, in inebriated condition, by entering into the dwelling house of the accused-woman, who lived with her minor son only and demanded money and then attempted to kill her, by a dagger like weapon, the probability of the accused woman having acted in self defence, by brandishing a sharp cutting weapon like 'dao' and then running for shelter to Tezpur PS, cannot be disbelieved.

30. Situated thus, in the considered opinion of this Court, though the prosecution has established that the accused-woman killed the deceased by sharp cutting weapon, in the relevant mid-night occurrence at her home, beyond reasonable doubt, however, for the above stated reasons, the accused woman, in fact, acted in self defence in course of scuffle initiated by the deceased, cannot be ruled out. Therefore, the probability of the plea of exercise of the right of private defence set by the accused is accepted. It is held that though the act of the accused falls within the definition of 'culpable homicide' in Section 299 IPC, her act does not attract the offence of 'murder' defined in Section 300 IPC and as such, falls within the general exceptions, aforementioned, provided in the IPC, beyond doubt.

31. In **Ramesh Rongpi @ Rahang -Vs- State of Assam [(2010) 1 GLR 599]**, the Hon'ble Gauhat High Court held that suspicion however grave, cannot be a substitute for legal proof.

C O N C L U S I O N

32. For the reasons, set forth above, this Court is constrained to hold that the prosecution has failed to establish the charge levelled against the accused, beyond all reasonable doubt.

33. Accordingly, the accused Smt. Bulu Saikia is acquitted of the charge u/s 302 of IPC and set at liberty forthwith, giving the benefit of doubt.

34. The seized materials, including the alleged weapon of offence, be destroyed, in due course of law.

35. The judgment and order, as above, is pronounced in the open Court, in presence of the accused and the learned counsel for both

the sides, on this the 19th day of May, 2014, under the Hand and Seal of this Court.

Accordingly, the case is disposed of.

(A. BORTHAKUR)
SESSIONS JUDGE
SONITPUR :: TEZPUR

Typed to my dictation and corrected by me, bearing my signatures on each page :

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Typed by me,
on dictation :

(J.K. Muru, Steno)

* * * * *

SESSIONS CASE NO. 119 OF 2007**ANNEXURE**
LIST OF PROSECUTION WITNESSES

PW-1	:	Sri Ranjan Kalita
PW-2	:	Smt. Nirupama Kalita
PW-3	:	Sri Chandi Charan Deka
PW-4	:	Sri Paresh Choudhury
PW-5	:	Smt. Pramila Devi
PW-6	:	Sri Jantu Bora
PW-7	:	Sri Pranjal Pratim Saikia
PW-8	:	Dr. Pradip Kr. Kalita, the MO
PW-9	:	Md. Jamaluddin Ahmed
PW-10	:	Sri Yadav Saikia
PW-11	:	Sri Sunil Sarkar
PW-12	:	Sri Heman Medhi
PW-13	:	Sri Sisir Bhatta, the IO
PW-14	:	Sri Bipin Rajbongshi, the IO

LIST OF DEFENCE WITNESSES

N I L

LIST OF COURT WITNESSES

N I L

LIST OF DOCUMENTS EXHIBITED BY PROSECUTION

Exhibit -1	:	Ejahaar
Exhibit -2	:	Seizure Memo
Exhibit -3	:	Seizure Memo
Exhibit -4	:	Seizure Memo
Exhibit -5	:	Inquest Report
Exhibit -6	:	Post Mortem Report
Exhibit -7	:	Seizure Memo
Exhibit -8	:	Extract copy of GDE
Exhibit -9	:	Sketch Map
Exhibit -10	:	Charge-sheet
Exhibit -11	:	Dead body challan

MATERIAL EXHIBIT

Mat. Ext.1	-	the 'dao'
Mat. Ext.2	-	the chappal
Mat. Ext.3	-	the ganjee

DEFENCE EXHIBIT

N I L

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR