

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**SESSION CASE NO. 199 of 2018**

Under section 302 of I.P.C  
(Arising out of G. R Case No. 1754 of 2018)

**State of Assam**

**-Vs-**

1. Sanjay Limbu

...Accused Person

**Present: Smti I. Barman,  
Sessions Judge,  
Sonitpur :Sonitpur.**

For the State : Mr. Munin Ch. Baruah,P.P.

For the accused : Mr. P. Singh Sethi,  
Legal Aid Counsel.

Date of Argument : **17-02-2021.**

Date of Judgment : **18-02-2021.**

**JUDGMENT**

**1.** The prosecution case against the accused person as projected in the FIR , in brief is that on 07-05-2018, at around 9 p.m., while he was returning home, he noticed his brother Kharka Bahadur Rai speaking with five persons loudly. He ignored them and returned home, but, in the morning at around 5.00 PM one of the said five persons namely Sanjay Limbu informed him that his brother Kharka Bahadur was lying unconscious in injured condition at the side of the road. He informing the matter to his family members went in search for a vehicle to take his brother to hospital for treatment, but, before arrival of the vehicle, his brother

succumbed to his injuries. He noticed froth coming out from the mouth of his brother and bleeding from the injuries of the back side of head.

2. On receipt of the ejahar from the informant Santosh Rai (PW4), the O/C Chariduar PS registered the case being Chariduar PS Case No. 135/18 under Section 302 of IPC and launched investigation of the case. The Investigating Officer recorded the statement of the witnesses, arrested the accused and on completion of investigation having found materials submitted charge-sheet against the accused Sanjay Limbu u/s 302 of the IPC.

3. On producing the accused person, Learned SDJM(S), after furnishing copies of the documents as required under section 207 Cr.PC, committed the case to the court of Session, being the offence u/s 302 IPC exclusively triable by the court of Session.

4. Accordingly, on being produced the accused person before this Court, after hearing both side, charge u/s 302 of the IPC was framed against the accused Sanjay Limbu and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.

5. To substantiate the case, prosecution examined as many as nine witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations charged against him stating that he is innocent. Defence examined none.

6. I have heard the argument of learned counsel of both sides and also have gone through the evidence on record.

7. The point for decision in this case is that -

***Whether accused Sanjay Limbu on 09-05-2018 after 9.00 PM, at Sonai Miri, under Chariduar Police station, had assaulted Kharka Bahadur Rai and in the next morning at 5 AM he found dead and thereby committed murder knowingly or intentionally causing the death of Kharka Bahadur Rai and committed an offence punishable under section 302 of the IPC?***

**8.** Mr. Baruah, learned Public Prosecutor referring to the evidence on record submitted that the corroborative evidence of the PWs with regard the last seen together the accused and the deceased prior to the incident leaves no room for any doubt that the accused caused the death of the accused.

**9.** Refuting the argument, Mr. Sethi, learned Legal Aid counsel of the accused submits that the circumstances relied by the prosecution has not been established and there being no eye witness, the accused cannot be held as perpetrator of the crime.

**10.** In order to appreciate the counter submissions made by the learned counsel appearing for the parties, I deem it appropriate to take note the Medical evidence on record.

**11.** PW 8 the Medical Officer, conducted the post mortem examination upon the dead body of Kharka Bahadur on 09-05-2018 and found the following :

A middle aged male body of average built in fresh condition, rigor mortis present, froth was in the mouth and found a 2" size lacerated cut with haematoma over the right parieto temporal region of the deceased.

Other organs were healthy. There was sub-dural haematoma on the head.

The injury was antemortem in nature, blunt injury and sub-dural haematoma.

He opined that the cause of death was due to intra cranial haemorrhage as a result of the injuries sustained. He proved the post mortem report as Ext.5.

During cross-examination, PW8 stated that the injury sustained by the deceased may cause by fall on a hard substance.

**12.** In the case, as reveals from the evidence of the Medical Officer, the deceased sustained 2" size lacerated cut with haematoma over the right parieto temporal region of the deceased and sub-dural haematoma on the head which was antemortem in nature caused by blunt weapon. According to the Medical Officer,

the cause of death was due to intra cranial haemorrhage as a result of the injuries sustained by the deceased. In cross examination, he stated that the injury sustained by the deceased may cause by fall on a hard substance. With the above medical evidence, let us scrutinize the other evidences on record as to how the deceased sustained the said injury.

**13. PW 1** Samraj Limbu, the neighbour of the informant stated that one night accused Sanjay, Josule(deceased), Kishan Limbu, Pritam and Raj Kr. Rai came to his house and consuming liquor raised hullah and after about half an hour they left their house. Being drunken, they raised hullah on the road also. After some time hearing sound like breaking of bamboo, he came out from home and had seen Sanjay and Josule on one side and other three were on other side. He noticed Josule lying on road and Sanjay was calling him as "daju", "daju". He called three others i.e. Kishan Limbu, Pritam and Raj Kr. Rai and informed the father of Sanjay. In the next morning Josule was found in other place i.e. "Choutara" (rest house).At that time Josule was alive. From Choutara the deceased was taken by his brothers. Lateron, he heard that Josule expired.

During cross, he stated that the accused and the deceased with their respective families resided separately in the same village and their relation were cordial. He also stated that deceased Kharka Bahadur Rai @ Josule was a habitual drunker, so his wife deserted him two years back. Deceased was often found lying here and there at night hours in drunken state and on the day of incident also deceased Kharka Bahadur Rai being heavily drunk was not in a position to walk properly. He admitted that on the night he had not seen any quarrel between the accused and the deceased. He also did not know whether the deceased went to his residence or to some other place after he noticed the deceased on road. He stated that on the night he had not seen any bamboo stick where he saw the accused and the deceased. He witnessed the accused requesting the deceased to get up. In the next day morning, the accused was found helping the injured (deceased) to go to hospital. He did not know how the deceased sustained injuries.

**14.** PW 2 Pritam Gurung stated that one night at about 6/7 PM, he along with Kishan Limbu and Raj Kr Rai went to the house of PW 1 Samraj Limbu and at about 8/8.30 PM, they went to the rest house. After some time, PW1 called them to

come forward. Accordingly when they went there, had seen Josule lying upon the road with bleeding injury upon back side of his head. In the morning, he came to know that Josule had died. He proved his statement under Section 164 of CrPC as Ext.1.

During cross-examination he testified that deceased Kharka Bahadur Rai was a habitual drunker and often he was found lying here and there for which his wife left his company and used to reside in her parental house. On the day of incident deceased had gone to the house of PW 1 for taking liquor. Due to drink liquor excessively, the deceased was not in a position to walk properly. He also stated that on the night of incident, he had not seen any quarrel between the accused and the deceased. He does not know how the deceased sustained injuries. He stated that the road where the deceased was found lying is a hard pitch road.

**15.** Corroborating the evidence of PW 2, Kishan Limbu (PW 3) also stated on the night at around 7 PM, he along with Raj Kumar, Pritam Gurung, Raju were sitting together in rest shed situated near his house. At that time, accused Sanjay Limbu and deceased Kharka Bahadur were in the house of PW1. From the rest shed they all returned to their respective home at around 7.30 PM and in the morning he came to know that Kharka Bahadur was found dead at a few distance from the house of accused Sanjay Limbu. He does not know how he died. He proved his statement under Section 164 of CrPC as Ext.2.

In cross, PW 3 stated that the accused and the deceased belonged to the same village. The deceased was a habitual drunker and he used to sleep here and there at night hours for which his wife left his company. On the night of incident also, the deceased consumed liquor heavily and was not in a position to walk.

**16.** PW 4 Raj Kumar Rai stated that on the night of incident, at about 8.20 PM, he along with PW 3 & PW 2 were sitting together in rest shed. At that time one boy informing them that something happened to Kharka Bahadur near the house Sanjay Limbu, called them there. Then they all three went there and had seen that Sanjay Limbu was holding Kharka Bahadur. When they asked the accused what happened, he replied that perhaps the deceased consumed alcohol and had

vomiting tendency, so asked them to bring water. Then, he brought water and thereafter left the place. In the morning he heard that Kharka Bahadur was found lying in the rest shed.

During cross-examination PW4 also stated the deceased was a habitual drunker and on the night of incident also deceased consumed liquor heavily. He had not seen any quarrel between the accused and deceased on the night of incident. He did not know how the deceased died.

**17.** Smti Basanta Bhujel, the sister of the deceased deposing as PW 5 stated that on 08-05-2018 in the morning time, her brother Santosh Rai informed her over phone that accused Sanjay Limbu coming to his house told that her elder brother Kharka Bahadur was lying senseless. Thereafter, by a vehicle she reached the place and found that her elder brother already died. She brought the dead body home. Police came and took the dead body to KCH for post mortem examination and also conducted inquest (Ext.3) on the dead body.

In cross-examination PW5 stated that her brother Kharka Bahadur was a drunker for which his wife left his company. Hence, the deceased used to reside with his three children. She stated further that she did not know how her brother died.

**18.** PW 6 Santosh Rai, the informant/brother of the deceased stated that on 08-03-2018 at around 9 PM, he had seen Kharka Bahadur along with the accused Sanjay Limbu and other four persons near the house of accused Sanjay. On the next morning at around 4 AM, accused coming to his house informed him that Kharka Bahadur was lying in serious condition and he should be treated in hospital. Then, he went to the place where his brother kharka Bahadur was lying and had seen him in serious condition but till arrival of vehicle his brother expired. Then, he informed police. He had seen bleeding injury over the back side of the head of his brother. He stated further that he did not know how the deceased died. Thereafter, he lodged the FIR (Ext.4) regarding the incident. Police conducted inquest (Ext.3) upon the dead body of his brother.

During cross-examination he stated that his deceased brother was a habitual drunker for which his wife left his company about two years back. On the

night of incident also his brother did not return home. He further stated that the accused and his elder brother had cordial relation and they had no enmity.

**19.** PW 7 Raju Gowala testified that on the day of incident at around 7.30 PM, he along with Pritom(PW2), Kishan(PW3) and Surjya Rai were in a rest shed. At that time accused Sanjay Limbu and deceased Kharka Bahadur Rai were coming towards the rest shed but, seeing them, they returned. After about 10 minutes, they all four returned to their respective houses and on the next morning he heard that Kharka Bahadur died.

In cross PW 7 said that he cannot say how Kharka Bahadur Rai expired. He had not seen any quarrel between the accused and the deceased.

**20.** PW 9 Dr. S.K. Borah, the then Circle Officer of Chariduar Revenue Circle, stated that on 08-05-2018 at about 2-2.15 PM he conducted inquest on the dead body of the deceased. At that time, the person was wearing long pant, height – 5'2", eyes, mouth closed, hair normal and he noticed one spot of injury mark on his back side head. He sent the dead body for post mortem examination. He proved the inquest report as Ext. 3. He deposed that as reported by public, last night the deceased could not control himself for consuming alcohol and was lying in a drain near village road and the night was raining. During cross he admitted that other than the spot injury, he noticed no other injury.

**21.** In the instant case, there is no eye witness to prove the unfortunate incident who saw the deceased on being murdered and the entire case is based on circumstantial evidence and last seen theory.

**22.** In a case based on circumstantial evidence, it is well settled that the circumstance from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of keeping swayed by emotional considerations,

however, strong they may be, to take the plea of proof.

**23.** The Apex Court in the case of **Padala Veera Reddy v. State of A.P. 1989 Supp (2) SCC 706**, laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

"10. (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

**24.** In the case of **Sharad Birdhichand Sarda V state of Maharashtra, AIR 1984 SC 1622**, while dealing with the circumstantial evidence, the Apex court laid down that the following conditions precedent must be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

**25.** In the case of **Bhagat Ram Vs. State of Punjab reported in AIR 1954 SC 621**, the Apex Court laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

**26.** In the back drop of the above position of law with regard to circumstantial evidence, we are now in the centre of the arena as to who is the author of the commission of the crime.

Here admittedly, the accused and the deceased were co-villagers. All the PWs categorically stated that the deceased was a habitual drinker and he used to move here and there after having liquor heavily for which his wife deserted him. PW 1, Samraj Limbu the neighbour of the informant, stated that on the fateful night accused Sanjay, deceased Josule @ Kharka Bahadur, Kishan Limbu, Pritam and Raj Kr. Rai came to his house and consuming liquor raised hullah and after half an hour they left his house and raised commotion upon in drunken state. After some time hearing sound like breaking of bamboo, he came out and saw accused Sanjay Limbu and the deceased Josule on one side while other three were on other side. He noticed the deceased lying on the road and accused Sanjay calling him as 'Daju, Daju' asked to get up. Seeing the deceased lying on the road, PW 1 called Kishan Limbu, Pritam and Raj Kr. Rai who were on the other side of the road and informed the father of the accused and in the next morning found the deceased in other place i.e. "Choutara" (a rest shed). His evidence also reveals that the accused helped the injured to take to hospital. Another material witness PW 2 Pritam Gurung also stated that one night at about 6/7 PM, he along with Kishan Limbu and Raj Kr. Rai went to the house of PW 1 and thereafter at about 8/8.30 PM they went to the rest shed. After some time PW 1 called them to come forward, accordingly, when they proceeded forward, had seen Josule lying upon the road with bleeding injury upon back side of his head and in the morning he heard that the deceased died. His evidence also disclosed that on the day of incident deceased went to the house of the PW 1 for taking liquor and due to taking liquor heavily, he was not in a position to walk properly. His evidence does not disclose presence of the accused with the deceased.

PW 3 Kishan Limbu disclosed that on the night at around 7 PM he along with Raj Kumar (PW 4), Pritam Gurung (PW 2) and Raju were sitting in a rest shed situated near his house and at that time Sanjay Limbu and Kharka Bahadur were in the house of PW 1 whereas according to PW 1, along with the accused and the deceased, PW 3, PW 1 and PW 2 also came to his house and consuming liquor they all five left his house. On the other hand, according to PW 2, only Kishan Limbu and Raj Kumar came to the house of PW 1. Another material witness PW 4 Raj Kr. Rai corroborating the evidence of PW 3 Kishan Limbu stated that on the night of incident, at about 8.20 PM when he along with PW 3 and PW 2 Pritam Gurung were sitting together in a rest shed, at that time, one boy informing that something happened to Kharka Bahadur near the house of Sanjay Limbu, called them there. Accordingly when they went there, they found the accused holding Kharka Bahadur and then on being asked, the accused told that perhaps the deceased consumed alcohol and had vomiting tendency, so asked them to bring water. After providing water, they left the place and in the morning they heard that Kharka Bahadur was found lying in the rest shed. He also did not know how the deceased sustained injury. He did not state that he had seen any fight between the accused and the deceased on the night of the incident. The testimony of PW 4 reveals that the accused was helping the deceased. PW 5, the sister of the deceased, was informed that her elder brother Kharka Bahadur was lying senseless and before she reached the place of occurrence the deceased had died. She also did not know how the deceased sustained injury. Another material witness PW 6, the informant as well as the brother of the deceased, stated that on the day at around 9 PM he had seen the accused and four other persons with his deceased brother near the house of the accused Sanjay and on the next morning the accused himself coming to his house informed him that Kharka Bahadur was lying in injured condition and he should take to hospital. So this witness saw the deceased with five persons including the accused together on that evening. PW 7 Raju Gowala in the same tune stated that on the day of incident, at around 7.30 PM, when he along with Pritam (PW 2), Kishan (PW 3) and Surjya Rai were in the rest shed, at that time accused Sanjay Limbu and deceased Kharka Bahadur Rai were coming towards the rest shed but seeing them they returned and next day morning he heard that Kharka Bahadur died. This part of the testimony of PW 7 is not corroborated by other PWs. The PWs

made different version in regard to how many persons were seen with the deceased in that evening.

**27.** Here in this case, it is found that on the night at around 6/7 PM, PW 1, PW 3, PW 4, PW 6 and PW 7 saw the accused with the deceased on road and in the next day morning, the deceased was found with injuries in a rest shed. The evidence of PW 1, PW 3, PW 4, PW 6 and PW 7 though reflects that they saw the accused with the deceased together in evening time at 6/7 PM but none had seen any quarrel in between them. Nobody also saw lathi or any other weapon with the accused Sanjay Limbu. Moreover the last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased found dead is so small that possibility of any person other than the accused being the perpetrator of the crime became impossible. To apply the last seen theory and the provision under Section 106 of Evidence Act, it must be established that the deceased was seen in the company of the accused, immediately before death. Hence, the time gap between the period when the deceased was seen alive in the company of the accused and the time when the dead body was found or the deceased died is important factor. In the present case, there is nothing on record to show that none except the accused was in the company of the deceased till the later got injured. When in the evening there were 4/ 5 persons together with the deceased, it cannot be held that the accused and the deceased were last seen together. In the instant case, I find nothing substantive to hold that the accused was involved in the alleged offence. Moreover, there is no evidence as to how the deceased reached the rest shed in injured condition.

The evidence of PW 1 shows that none other than the accused himself requested the deceased to get up and in the morning the accused was found busy in taking the deceased to hospital. Except the circumstance of last seen, there is no other circumstance to link the accused with the death of the accused. When there is corroborative evidence that the deceased was a habitual drunker and on the evening also he was in drunken state, taking the evidence of the Medical Officer that injury sustained by the deceased may cause by fall on hard substance, possibility of receiving injury due to fall upon hard substance cannot be ruled out.

**28.** In view of the attending facts and circumstances and the evidence rendered by the prosecution witnesses, I find that the prosecution failed to adduce substantive and cogent evidence inspiring confidence of this court. The circumstance relied by the prosecution, in this case is not consistent with the hypothesis of the guilt of the accused in the alleged offence and as such he cannot be held guilty.

**29.** In view of what has been discussed above, I am inclined to hold that the prosecution failed to prove the case beyond all reasonable doubt. Accordingly, accused Sanjay Limbu is acquitted of the charge u/s 302 of the IPC on benefit of doubt and set him at liberty forthwith. His bail bond shall remain in force till next six months.

**30.** Send a copy of the Judgment to the District Magistrate, Sonitpur, Tezpur as per provision of section 365 Cr.P.C.

**31.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **18<sup>th</sup> day of February, 2021.**

**(I. Barman)**  
**SESSIONS JUDGE**  
**SONITPUR : TEZPUR**

Dictated and corrected by me.

**(I. Barman)**  
**SESSIONS JUDGE,**  
**SONITPUR :: TEZPUR.**

**APPENDIX**  
**Prosecution Witness**

- |    |                          |    |                                 |
|----|--------------------------|----|---------------------------------|
| 1. | Prosecution Witness No.1 | :- | Sri Samraj Limbu,               |
| 2. | Prosecution Witness No.2 | :- | Sri Pritam Gurung,              |
| 3. | Prosecution Witness No.3 | :- | Sri Kishan Limbu                |
| 4. | Prosecution Witness No.4 | :- | Sri Raj Kumar Rai               |
| 5. | Prosecution Witness No.5 | :- | Smti Basanta Bhujel             |
| 6. | Prosecution Witness No.6 | :- | Sri Santosh Rai,                |
| 7. | Prosecution Witness No.7 | :- | Sri Raju Gowala                 |
| 8. | Prosecution Witness No.8 | :- | Dr. A.K. Baruah, M.O.           |
| 9. | Prosecution Witness No.9 | :- | Dr. S.K. Borah, Circle Officer. |

**Documents proved by Prosecution.**

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|----|--------------|----|--|
| 1. | Exhibit No.1 | :- | Statement of PW 2 before the Magistrate. |
| 2. | Exhibit No.2 | :- | Statement of PW 3 before the Magistrate. |
| 3. | Exhibit No.3 | :- | Inquest report                           |
| 4. | Exhibit No.4 | :- | FIR.                                     |
| 5. | Exhibit No.5 | :- | Post mortem report.                      |

**(I. Barman)**  
**SESSIONS JUDGE**  
**SONITPUR: TEZPUR**