

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

**SESSIONS CASE NO.** :- **52 OF 2012**  
*(Under Section 302 of the Indian Penal Code arising out of G.R. Case No. 04 of 2012)*  
*Committed by Sri S.K. Dhar, Chief Judicial Magistrate, Sonitpur, Tezpur.*

**Present** :- **Mridul Kumar Kalita, AJS  
Sessions Judge, Sonitpur  
Tezpur**

**Prosecutor** :- **State of Assam**

**-vs-**

**Accused** :- **Sri Netra Bahadur Newar,**  
 Son of late Nar Bahadur Newar,  
 Village – Kailashpur, Balijuri,  
 Police Station – Sootea,  
 Dist:- Sonitpur, Assam

Date of framing Charge :- 21/03/2012

Date of Recording Evidence :- 30/04/2013,17/07/2013,  
 14/08/2013,18/09/2013,23/04/2014  
 27/05/2014 & 19/11/2014.

Date of examination of accused u/s  
 313 Cr.P.C :- 05/01/2015

Date of Argument :- 23/04/2015 & 02/05/2015

Date of Judgment :- 18/05/2015

Counsel for the Petitioner :- Mr. Hari Prasad Sedai  
 Public prosecutor,  
 Sonitpur.

Counsel for Opposite Party :- Sri N.K. Mishra, State defence  
 counsel.

**JUDGMENT**

**1.** On 1st January, 2012, the In-charge of Itakhola Police Post received an FIR (First Information Report) from one Gyan Bahadur Newar, wherein it was alleged, *inter alia*, that on 01-01-2012, at about 3 p.m., Sri Netra Bahadur Newar, who is a resident of Kailashpur, assaulted his father Nar Bahadur Newar with an axe resulting in his death and it was further alleged that, later on, Netra Bahadur Newar had thrown the dead body of his father in the pond situated in front of their house.

**2.** On receipt of the aforementioned FIR, the In-charge of Itakhola Police Post, Sri Dhanjit Kalita, made GD Entry No. 9 dated 01-01-2012 at 3.30 p.m. in the General Diary of the Police Post, took up the investigation and forwarded the FIR to the Officer-in-Charge of Sootea Police Station. After receiving the said FIR, the Officer-In-Charge of Sootea Police Station, registered a case, being Sootea PS Case No. 01 of 2012 u/s 302 of IPC. The investigation was already initiated by the In-charge of Itakhola Police Post, Sri Dhanjit Kalita. During the course of the investigation, the investigating officer visited the place of occurrence of offence, took statement of the witnesses, drew the sketch map of the place of occurrence of offence, conducted the inquest and sent the dead body of Nar Bahadur Newar for post-mortem examination, he also seized an axe, which was the weapon of offence, and arrested the accused Sri Netra Bahadur Newar. It also appears from the case diary that the accused confessed his guilt before the IO, however, when the investigating officer sent the accused before the Judicial Magistrate first class, Sonitpur for recording his confessional statement under section 164 Cr.P.C, his statement was not recorded. Ultimately, after completion of the investigation, on 21/02/12, charge sheet u/s 302 of the Indian Penal Code was laid against the accused Netra Bahadur Newar in the Court of Chief Judicial Magistrate, Sonitpur. On 27-02-2012, the G.R. Case No. 04 of 2012, which was registered in connection with this case, was duly committed to this Court, after observing all formalities prescribed by the Code of Criminal procedure, by Sri S.K. Dhar, Chief Judicial Magistrate, Sonitpur, Tezpur. The accused Netra Bahadur Newar was in judicial custody at the time of commitment of this case to the Court of Session.

**3.** On 07/03/2012, this case was transferred to the Court of Additional Sessions Judge (FTC), Sonitpur for disposal. The accused, who was in judicial custody, was produced before the Court. On 21-03-2012, formal Charge, u/s 302 IPC, was framed, in writing, by Smt. C.R. Goswami, the then learned Additional Sessions Judge, Fast Track Court, Tezpur, Sonitpur, against the accused Netra Bahadur Newar. The Charge was read over and explained to him and, on being asked, he refused to plead guilty and claimed to be tried. On 22/02/2013, this case was again withdrawn to the file of court of Sessions Judge from the Court of Additional Sessions Judge (FTC). As the accused did not engage any counsel on his own, this Court appointed Sri N.K. Mishra, Advocate as the defence counsel for the accused at state's expenses. The accused faced the trial remaining in judicial custody.

4. During Trial, the prosecution side examined ten (10) Prosecution Witnesses and exhibited eight (8) documents, marked as Ext.1 to Ext.8. The accused was examined u/s 313 Cr.P.C. during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded innocence. The accused also declined to adduce any evidence in defence.

5. The point to be determined in this case is as follows:-

***"Whether on the 01-01-2012, at about 3 p.m., at village Kailashpur under Sootea Police Station, the accused Sri Netra Bahadur Newar committed murder, by intentionally causing the death, of his father Sri Nar Bahadur Newar and thereby committed an offence punishable under section 302 of the Indian Penal code?"***

6. I have gone through the entire materials on record, including the oral testimonies of the witnesses, exhibited documents and the statement of the accused recorded under section 313 Cr.P.C very carefully as well as heard argument advanced by Ld. Public Prosecutor and Ld. State Defence counsel, at length.

7. Let me, now, scrutinise the evidence on record to find out as to whether the accused is guilty of committing the offence with which he is charged with.

8. P.W-1, Sri Gyan Bahadur Newar has deposed that accused Netra Bahadur Newar is his younger brother and the occurrence took place on 1<sup>st</sup> January, 2012, on Sunday, at about 12 noon to 1 p.m., in their house situated at Balijuri. He has deposed that immediately after the incident some small children of his village came running to his shop and informed him that his father Nara Bahadur Newar was killed by accused, his younger brother, and the dead body was thrown to the pond adjacent to their house. He has deposed that on receipt of the information he rushed to his paternal house and found the dead body of his father lying in the adjacent point. When he arrived at the place of occurrence, his sisters also arrived and started weeping that "our father is killed". He and all villagers then started searching for the accused who, after vigorous search, was found hiding on the ceiling of the kitchen of their house. The villagers got him down from the ceiling of the kitchen and tied him up with a rope. Thereafter, the VDP Secretary, Sri Gyanendra Upadhyay reported the incident to police of Itakhola Police Post. Police arrived at the place of occurrence; however, before arrival of the police, the villagers had retrieved the

dead body from the pond. He also deposed that he noticed that the deceased's face was smashed and the younger daughter of his sister's daughter, aged about 5 years saw the occurrence and she said that the accused delivered an axe blow in the face of his father. There was sign of abrasion caused due to dragging of the dead body. There was stain of blood from the house of PW 1 to the pond. PW 1 has also deposed that the police seized the axe which was used by accused for killing his father in his presence. He exhibited as seizure memo as Ext. 2 and his signature as Ext. 2(1) and the axe as Material Ext. 1, which was seized by police vide seizure list, which is exhibited as Ext. 2. PW 1 has also deposed that he lodged the FIR, which is exhibited as Ext. 3 and his signature as Ext. 3(1). He has also stated that the FIR was written by Sri Gyanendra Upadhyay, the VDP Secretary, as per his instruction.

**9.** During cross examination, PW 1 has deposed that he lives separately at about half a kilometre away from his father's house. He has also stated that his all three brother except the accused lived separately from the deceased father. He has also stated that the wife of the accused Smt. Anima Newar and other youngsters of the village reported him about the incident. He has stated during cross-examination that he found the body of his father lying on the pond but he did not try to retrieve the dead body from the water. It is only after the VDP secretary was instructed by the police to retrieve the dead body from the pond, it was removed from there. He has also stated that he has not witnessed the occurrence himself. He has also stated that he saw the face of the deceased being smashed with bleeding present in the nose and mouth; however, there was no blood stain on the forehead. He has also stated that his sister's daughter's daughter saw the occurrence of offence peeping through the window of the father's house. He has also stated during cross-examination that he did not know what was written by VDP Secretary in the FIR on which he put his signature. He was asked many other suggestive questions by the learned defence counsel, however, all of which he answered in negative.

**10.** P.W-2 Sri Gyanendra Upadhyay has deposed that on 01-01-2012 at about 2 p.m. he was at Balijuri Centre Daily bazaar and he is the VDP Secretary of Madhya Balijuri Gaon. He was informed over telephone by Narayan Thapa that accused Netra Bahadur Newar killed his father. Thereafter, he rushed to the place of occurrence and informed about the incident to Itakhola Police Post. PW 2 has further deposed that when he arrived at the place of occurrence, he found the accused being tied by the villagers and he noticed the signs of

dragging of the dead body from the house of the accused to the adjacent pond situated about 50 meter away from the dwelling house. He has also deposed that there were stains of blood from inside the house to the pond where the dead body was found lying. Thereafter, on the instruction of Police Officer present at the place of occurrence, the dead body of Nara Bahadur Newar was retrieved from the pond and it was kept on its bank and police took away the dead body and the accused person. He has exhibited the Inquest report as Ext. 1 and his signature as Ext. 1(2). He has also stated that he wrote the FIR on behalf of the elder brother of the accused Gyan Bahadur Newar and he exhibited the FIR as Ext. 3 and his signature as Ext. 3(3). He has also stated that police seized one axe stained with blood from the house of the accused in his presence. Ext. 2 is the seizure memo and Ext. 2(2) is his signature. Material Ext. 1 is the seized axe. He has also deposed that he saw the face of the deceased with profuse bleeding.

**11.** During cross-examination, PW 2 has deposed that he do not know as to whether any outsider killed the deceased or not. He has also stated that he do not know whether the deceased Nara Bahadur Newar was a drunker. He was also put some suggestive questions by the learned defence counsel which were answered in negative by him.

**12.** P.W-3 Sri Gangaram Newar has deposed that deceased Nara Bahadur Newar was his father-in-law. He also deposed that the occurrence took place on 01-01-2012 at about 2.30 p.m. when he was at his house situated about 100 meters away from the house of the accused. All of a sudden, he heard accused's wife Smt. Anima Newar raising hue and cry shouting that "father is killed, father is killed" and hearing hue and cry of Anima, he rushed to the house of the accused. He has further deposed that on reaching the house of the accused, he found his father-in-law Nara Bahadur Newar floating on the pond of the water, situated adjacent to their house and later on, Gyan Bahadur Newar who is the elder brother of the accused and other villagers retrieved the dead body from the pond and kept it on the bank of the pond. He has also stated that he has himself not seen the occurrence and it is the wife of the accused Smt. Anima Newar who reported him that Netra (the present accused) killed his father. He has also deposed that police arrived at the house of the accused and performed inquest and prepared the inquest report in his presence. He exhibited his signature on the inquest report as Ext. 1(3).

**13.** During cross-examination, PW 3 has deposed that Anima Newar has been residing separately from her husband due to some difference for about one year before the incident.

He has also deposed that at the time of incident, Anima Newar was not staying with the accused. He was also put some suggestive questions by the learned defence counsel, which were answered in negative by him.

**14.** P.W.-4, Smt. Anima Newar, has deposed that accused Sri Netra Bahadur Newar is her husband and the deceased Nara Bahadur Newar was her father-in-law. She has deposed that on the day of occurrence of offence i.e. on 01-01-2012 at about 1/ 2 p.m. she was at her parental house situated near to her matrimonial house. She has stated that when she went out of the house of her parents she saw her husband, the accused, dragging away Nara Bahadur Newar from the frontal court-yard towards the pond situated adjacent to the house. She has further stated that she saw her husband throwing Nara Bahadur Newar to the pond and he was holding an axe in his hand. Witnessing the incident, she raised hue and cry and hearing her hue and cry, the neighbouring people including Gyan Bahadur Newar and Ganga Ram Newar rushed to the house of the accused. Later on, VDP Secretary also came there.

**15.** During cross-examination, she has deposed that deceased Nara Bahadur Newar was aged about 80 years and he used to drink alcohol which has led to frequent breaking out of quarrel amongst the family members. She has further deposed that deceased Nara Bahadur Newar used to drive the family members out of his house in the midst of quarrel. She was also put many suggestive questions by the learned defence counsel, which were answered in negative by her and her testimony could not be shattered during her cross examination.

**16.** P.W-5 Sri Dil Bahadur Newar has deposed that accused Netra Bahadur Newar is his own younger brother and deceased Nara Bahadur Newar was his father. He has deposed that the occurrence took place on 01-01-2012 at about 3 p.m. at the house of the accused and at that time he was at nearby Tejalpatty Mising Gaon daily market. There was a sudden commotion in the daily market and in the midst of the commotion; he heard that his father was killed. Hearing about the incident, he rushed back the house of the deceased father. On reaching the house of his deceased father, he found the accused being tied by rope by the villagers and he also found the dead body of his father lying in the water of the adjacent pond. He also found his brother i.e. the accused in drunken state since morning and he was informed by the villagers that the accused inflicted cut injuries on the person of his father. Thereafter, the VDP Secretary Narayan Thapa informed the police and after some time police of Itakhola Out Post arrived and with the help of police the dead body retrieved from

the water of the pond. He has also deposed that police seized the axe which was used for inflicting injuries.

**17.** During Cross examination, P.W- 5 has deposed that he himself do not know as to how his father sustained injury on his forehead and nose. He was also put some suggestive questions by the learned defence counsel, which was answered in negative by him.

**18.** PW – 6 Sri Tikaram Dhakal has deposed that the occurrence took place on 01-01-2012 and on that day he was at Gohpur and it is only on the following day he heard that Netra Bahadur Newar killed his father Nara Bahadur Newar by means of an axe.

**19.** P.W-7 Dr Sanjay Roy, has deposed that on 02-01-2012 he was at Kanaklata Civil Hospital, Tezpur as SDM & HO-1, and on that day, on police requisition, in connection with Sootea PS Case No. 1/2012, u/s 302 of IPC, he performed the Post-Mortem examination on the body of Nar Bahadur Newar, on being identified by Ranjit Saikia and Gyan Bahadur Newar and found as follows:

**External appearance.**

An average built male dead body having right eye ball crushed, full with blood clot. Rigor mortis present.

**Wounds:**

1. Lacerated injury over bridge of the nose, 2 cm x 1 cm extending nasal bone.
2. Tongue protruded.
3. Lacerated injury 2 cm x 1 cm x ½ cm over upper lip
4. Lacerated injury on mucosal surface, of size 3 cm x 1 cm x ½ cm, on the upper lip.
5. Lacerated injury on forehead over left eyebrow 2 cm x 1 cm x ½ cm. On dissection, blood is coming out; Blood clot seen in muscle layer.
6. Abrasion of lower abdomen around iliac crest 2 x 2 (both sides).

Liner fracture, over frontal bone, on left side. Sub-dural haematoma in frontal region. Other organs were found healthy. The injuries are all ante-mortem in nature. P.W-7 Dr Sanjay Roy opined that the cause of death is due to shock and haemorrhage as a result of injuries sustained.

PW-6 has exhibited the Post Mortem report as Ext.4 and his signature as Ext.4 (1). He has also exhibited the Joint Director of Health Services, Sonitpur at Ext. 4(2).

**20.** During cross-examination, P.W-7 Dr Sanjay Roy has stated that he did not find any water contained in the abdomen of the deceased, during post-mortem examination. He has also stated that had the deceased died due to drowning, there would have been water in the abdomen of the deceased. He has also stated that the crush injury found on the body of the deceased cannot be caused by dashing against hard substance like bamboo pole, because the crash injuries were very extensive. He has also stated that the injuries numbering six found on the body of the deceased might have been caused by repeated assault by heavy blunt weapon. He has also stated that one stroke caused by blunt weapon on the forehead of the deceased might have also caused damage, covering to the extent of the nose. He has denied the suggestion that the injuries were not sufficient in the ordinary course of nature, to cause instantaneous death of a person. He was put many other suggestive questions by learned defence counsel, which were all answered in negative by him.

**21.** PW-8 Sri Dhanjit Kalita, was the investigating officer in this case, has deposed that on 01-01-2012, he was working as In charge of Itakhola Police Post. On that day, he received a written FIR from Gyan Bahadur Newar and thereafter he made Itakhola PP GD Entry No. 09 dated 01-01-2012, at 3.30 p.m. and forwarded the same to the O/C of Sootea PS for registering a case. Accordingly, the case was registered as Sootea PS Case No.1 /12, u/s 302 IPC and was endorsed to him for investigation. PW-8 exhibited the FIR as Ext.3 with note and Ext. 3(5) is the signature of then then O/C of Sootea PS. He also exhibited the sketch map of the place of occurrence as Ext.5 and his signature as Ext.5 (1). He also deposed that he performed the inquest over the dead body and prepared a report vide Ext. 1 and his signature as Ext. 1(4). He recorded the statement of the witnesses, arrested the accused. He also exhibited the disclosure statement as Ext. 6 and his signature as Ext. 6(1). He also deposed that he seized the weapon of offence, an Axe, and exhibited it as Material Ext. 1 vide seizure-memo Ext. 2 and his signature as Ext. 2(3). He has exhibited the dead body challan as Ext. 7 and his signature as Ext. 7(1). He has also deposed that after completion of investigation, he submitted the charge-sheet u/s 302 IPC against accused Netra Bahadur Newar. Ext.8 is the charge-sheet and Ext.8 (1) is his signature. He has also

stated that he recorded the statement of witness Sri Padum Bahadur Limbu who stated before him that the accused confessed killing his father in front of him and Sri Siba Newar.

**22.** PW- 8 has stated during cross-examination that he did not visit the place of occurrence of offence before receipt of the written FIR. Has also denied the suggestion that he received FIR at the place of occurrence, he has also denied the suggestion that he received a telephonic message from the informant Sri Gyanendra Upadhyay and thereupon he proceeded to the place of occurrence without making G.D. Entry. He has also stated that he found the dead body and on the bank of a pond situated near the house of the accused. The house of the accused is marked as 'A' in the sketch map. He has also stated that he had found the signs of dragging of dead body from inside the house of the accused to the adjacent pond. He has also stated that he could not to record his statement of a neighbour of the accused Sri Langkan Narah as he was not available at his home. He has also stated that the seized axe was not sent to the forensic Science Laboratory for chemical examination. He has also stated that the axe was seized at the place of occurrence, on being produced by the accused. He has also deposed that Gyan Bahadur Newar did not made a statement that he saw stain of blood of dragging of the dead body from the house to the adjacent pond. He has also stated that PW 1 has not stated before him that accused's brother was found hiding on the ceiling of the kitchen of their house. He has also stated that PW 2 Gyanendra Upadhyay has also not stated before him that there was sign of dragging from inside the house to the adjacent pond with blood stains. He has also stated that PW 3 Sri Gangaram Newar did not state in his statement before him that –“ I heard Anima shouting, 'father is killed! father is killed!'” He has also stated that Gangaram Newar did not state before him that the dead body of Nar Bahadur was floating on the water of the pond. He has also stated that PW 4 Smt. Anima Newar did not state in her statement made before him that she has seen the accused holding an axe in his hand. He has also denied the suggestion that he had launched the investigation on the basis of a telephonic message which was entered in the GD Entry, but he has stated that he launched the investigation after receipt of the written FIR. He has also denied the suggestion that he has submitted the charge-sheet against the accused on the basis of mere suspicion.

**23.** PW - 9 Sri Siba Newar has deposed that he knew the accused and the deceased. The occurrence took place on a day about 1 ½ years ago at about 3 p.m. at the common house of the accused and the deceased. In the evening time when he was

returning home at Kailashpur Balijuri Gaon from Balijuri market, he heard that accused's wife Anima Newar shouting that her father-in-law was killed by her husband Netra Bahadur. Then he rushed to the house of Netra Bahadur and saw blood stains at the court yard of the house and found the dead body of Nara Bahadur Near at the adjacent pond. He also deposed that after half an hour of their arrival at the place of occurrence police arrived. Police took away Netra Bahadur Newar to Sootea PS and during interrogation, the accused told before police, in presence of him and Padum Bahadur Limbu that "I killed my father".

**24.** During cross examination, PW 9 has deposed that while he was returning from Balijuri bazaar at about 3 p.m. he heard the accused's wife shouting that her husband killed her father-in-law. He has also stated that when he reached the place of occurrence, there were only five persons namely, Khem Thapa, Ram Bahadur Dorji and four others. He has also stated that when he reached the place of occurrence he found the accused sleeping at home and the body of Nar Bahadur was seen floating on the water of the pond. The accused's sister and his elder brother retrieved the dead body to the bank of the pond in their presence. He has also denied the suggestion that the accused did not confess to killing of his father Nar Bahadur Newar, in his presence.

**25.** PW - 10 Sri Padum Bahadur Limbu has deposed that He knew the accused and the deceased. The occurrence took place on 1<sup>st</sup> January, at about 3 p.m. about 2 ½ years ago, at the common house of the accused and the deceased. When he returning from the market, at about 3 p.m. the wife of the accused called him and told that her husband killed her father-in-law and thrown the dead body to the adjacent pond. Thereafter he along with Siba Newar went to the house of the accused and deceased and found the accused sleeping at home but witnessing their presence, the accused climbed to the ceiling of the house. He has also stated that the accused told police, in their presence that his father received for head injuries and on face, at the time of sudden hit of axe, which he was holding. This witness was declared hostile by the prosecution, and he was cross examined by the prosecution, with leave of the court. During cross examination by the prosecution he admitted that he stated before police that accused confessed of killing his father to police in presence of him and Siba Newar. During cross-examination here stated that he has seen Gyan Bhadur Newar and a sister of the accused lifting the dead body of the accused from water to the bank of the pond.

**26.** In a trial involving an offence under section 302 of the Indian penal code, the prosecution side must prove following:-

- (a) That the death of a human being has actually taken place*
- (b) Such death has been caused by, or in consequence of, the act of the accused.*
- (c) Such act was done with the intention of causing death; or it was done with the intention of causing such bodily injury as-
 
  - (i) The accused knew to be likely to cause death; or*
  - (ii) was sufficient in the ordinary course of nature to cause death**
- (d) or the accused caused death by doing an act known to him to be so imminently dangerous that it must in all probability cause-
 
  - (i) death*
  - (ii) such bodily injury as is likely to cause death**
- (e) the accused having no excuse for incurring the risk of causing such death or injury*

**27.** In the instant case, almost all the witnesses have deposed that they had seen the dead body of late Nara Bahadur Newar. Exhibit No.4, which is the post-mortem examination report clearly mentions that Nara Bahadur Newar died due shock and haemorrhage as a result of injuries sustained by him. Thus the fact of death of Nara Bahadur Newar is not in dispute. The "*corpus delicti*" is not disputed in the instant case.

**28.** Now, the question is as to whether such death has been caused by, or in consequence of, an act of the accused. On careful scrutiny the evidence on record, it appears that nobody saw the incident of accused Netra Bahadur Newar assaulting his father Nara Bahadur Newar (*since deceased*). The first person who witnessed any kind of involvement of the accused with the offence, with which he has been charged with, was his own wife, Smt. Anima Newar. As discussed in the foregoing paragraphs, Smt. Anima Newar, while deposing as P.W.-4, has stated that she saw her husband, the accused, dragging away Nara Bahadur Newar from the frontal court-yard towards the pond situated adjacent to the house. She has further stated that she saw her husband throwing Nara Bahadur Newar to the pond and he was holding an axe in his hand. This statement of P.W.-4 could not be demolished or contradicted by learned defence counsel during cross examination. The only fact, which could be contradicted, in this regard, was that portion of the statement of P.W.-4

that she saw that the accused was holding an axe in his hand, as the I.O (P.W.-9) has admitted that Smt. Anima Newar had not stated the same, before Police, during investigation. This is a very significant and otherwise relevant omission which may amount to contradiction under explanation to section 162 of the Code of Criminal Procedure. I am, therefore, not inclined to believe this portion of the statement of P.W.-4. However, even if I disbelieve this portion of the deposition of P.W.-4 Smt. Anima Newar where she has stated that she "saw that the accused was holding an axe in his hand" the remaining part of her testimony could not be demolished by the defence side and it inspires confidence. Other prosecution witnesses namely, P.W-1, Sri Gyan Bahadur Newar, P.W-3 Sri Gangaram Newar, P.W. - 9 Sri Siba Newar and PW - 10 Sri Padum Bahadur Limbu have stated that they all heard P.W.-4 Smt. Anima Newar shouting that "father is killed". Though, P.W-1, Sri Gyan Bahadur Newar has also stated that "the younger daughter of his sister's daughter, aged about 5 years saw the occurrence and she said that the accused delivered an axe blow in the face of his father", however, this five years old girl was not cited as a witness by the prosecution side and she was not brought before the court. Thus, there is no direct eye witness, before the court, who has seen the accused assaulting the deceased. However, circumstances, disclosed in evidence, reveal involvement of accused in the alleged offence.

**29.** Let me now, discuss those circumstances. As seen, from the evidence discussed above, the accused was dragging the dead body of Narabahadur Newar from his house to the pond situated near the house. It will be not out of place to mention here in that the investigating officer of this case has drawn the sketch map of the scene of crime in a most shabbily manner. While deposing as P.W.-8 he has stated that "he found the signs of dragging of dead body from inside the house of the accused to the adjacent pond", however, in the sketch map, exhibited as Ext.No.5, he has not shown existence of any pond there. It only reflects the casual manner in which investigation of the instant case involving accusation as grave as "commission of murder" has been conducted by the investigating officer. However, though, the investigation appears to have been conducted perfunctorily, the testimony of prosecution witnesses makes it clear that the scene of actual crime was the house of the deceased. Though, most of the prosecution witnesses saw the dead body of Narabahadur Newar lying near the pond, however, P.W.-2 Sri Gyanendra Upadhyay had deposed that "he noticed the signs of dragging of the dead body from the house of the accused to the adjacent pond situated about 50 meter away from the dwelling house" the

investigating officer also found the signs of dragging of dead body from inside the house of the accused to the adjacent pond. Moreover, the accused himself, while giving his statement under section 313 Cr.P.C, has stated that he carried his injured father to the pond to pour water on him. He also answered in affirmative while answering to the question No. 7, put to him, during his examination under section 313 Cr.P.C, wherein he was asked that the occurrence took place on 01/01/2012 at about 2 pm at the common house of accused and his father. Thus, it is apparent that the place of occurrence of offence was the common house of accused and his father and at the time of commission of offence only the deceased Sri Nara Bahadur Newar and the accused Netra Bahadur Newar were present inside the house.

**30.** Now, as evident from above it is the accused and the deceased who were inside the common house of accused and his father. The accused, during his examination under section 313 Cr.P.C has stated that his father was in inebriated condition and when he attempted to assault the accused, he accidentally inflicted axe blows himself. The weapon of assault is admittedly an axe. However, the procedure of seizure of the weapon of assault (Material Exhibit No.1) by the investigating officer is again done perfunctorily. On perusal of "Exhibit 2", it appears one 3.5 inches axe with a bamboo handle of about two metres length was seized on being produced by the accused; however, P.W.-2 Sri Gyanendra Upadhyay, who is one of the seizure witnesses, has deposed that the police seized one axe stained with blood from the house of the accused in his presence, he has not stated that the axe was produced by the accused. Exhibit No.7, which is purportedly the disclosure statement of the accused, appears to be inadmissible in evidence, even under section 27 of the Indian Evidence Act, as it a statement given to the Police by the accused and there is no information in that statement which has led the investigating officer in discovery of any fact. There is no information, in Exhibit 7, as to where the weapon of assault was kept. The statement of the accused in Exhibit 7 that "I have given the axe to the police" is not admissible under section 27 of the Indian Evidence Act as this is not information which led to discovery of any fact. Moreover, this is a statement which accused is giving to the investigating officer, who has himself, seized the weapon of offence, thus when accused says that "I have given the axe to the police" to the investigating officer, it appears that he has given the axe to some other police, which is not the fact. It is, thus, not difficult to conclude that the investigating officer

has recorded the Exhibit 7, the so-called disclosure statement, in a most perfunctorily manner. Though there is a lapse in investigation, however, under the facts and circumstances of this case, I do not see any reason to disbelieve the testimony of P.W.-2 Sri Gyanendra Upadhyay, who is one of the seizure witnesses, and who has deposed that the police seized one axe stained with blood from the house of the accused in his presence. I have myself examined the Material Exhibit No.1 which is one 3.5 inches axe with a bamboo handle of about two metres length. On lifting, it appears that it weighs, approximately one and a half kilogram.

**31.** Now, as it is seen that the actual crime scene is the common house of the accused and the deceased and no one has seen what happened inside the house therefore the entire case rest on circumstantial evidence. Though, PW - 9 Sri Siba Newar has deposed that during interrogation, the accused told before police, in presence of him and Padum Bahadur Limbu that "I killed my father", this confessional statement is inadmissible in evidence, as it is given to police and therefore, inadmissible under section 26 of the Indian Evidence Act. The accused, during his examination under section 313 Cr.P.C, has stated that his father was in an inebriated condition and when he tried to assault the accused with an axe, he accidentally inflicted axe blows on himself. On perusal of the post-mortem report as well as the evidence of P.W-7 Dr Sanjay Roy, who conducted the post-mortem, it appears that most of the injuries suffered by the deceased were on his face and head. There was also Liner fracture, over frontal bone, on left side. P.W-7 Dr Sanjay Roy, has also opined that the injuries numbering six found on the body of the deceased might have been caused by repeated assault by heavy blunt weapon. However, he has also stated that one stroke caused by blunt weapon on the forehead of the deceased might have also caused damage, covering to the extent of the nose. P.W.-4 Anima Newar has deposed that her father-in-law was eighty years of age. There was nobody else, inside the house, apart from the deceased and the accused. Considering the weight and the length of the weapon of assault, it appears highly improbable and very difficult for an old person of eighty years of age to lift axe and inflict injuries on his own face and head, even accidentally. On perusal of Exhibit 5, which is the sketch map of the crime scene, it appears that the houses of Lumkeng Narah and Shiv Newar were adjacent to the house of the accused where the incident happened. Had the accused been innocent, his normal reaction would have been to shout for help, however, there is no evidence on record to suggest that the accused shouted for help from anybody.

Further, the conduct of the accused after the incident also points the finger towards his involvement in the crime. PW - 10 Sri Padum Bahadur Limbu has deposed that when he along with Siba Newar went to the house of the accused and deceased he found the accused sleeping at home but witnessing their presence, the accused climbed to the ceiling of the house. The conduct of accused in hiding himself in the ceiling of the house after the occurrence of the incident only points towards his involvement in the crime. The only conclusion which any prudent man can arrive at under the facts and circumstances is that it is the accused who assaulted his father Gangaram Newar with the axe.

**32.** Now, the question is as to whether *Such act was done with the intention of causing death; or it was done with the intention of causing such bodily injury as-*

- (i) The accused knew to be likely to cause death; or*
- (ii) was sufficient in the ordinary course of nature to cause death*

Hon'ble Supreme Court of India, in one of its Classic Verdict rendered in **"Virsa Singh – vs- The State of Punjab"** reported in **"AIR 1958 SC 465"** has very lucidly explained as to when a case can be said to be proved under 'thirdly' of Section 300 of the Indian Penal Code as hereunder :-

***"In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquiry into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.".....***

....."To put it shortly, the prosecution must prove the following facts before it can bring a case under s. 300, "3rdly";

**22. First, it must establish, quite objectively, that a bodily injury is present;**

**23. Secondly, the nature of the injury must be proved; These are purely objective investigations.**

**24. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.**

**25. Once these three elements are proved to be present, the enquiry proceeds further and.**

**26. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.**

**27. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under s. 300, 3rdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a license to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."**

In the instant case, as apparent from the discussion made in foregoing paragraphs, the accused assaulted his father with an axe with a bamboo handle of about two metres length weighing approximately one and a half kilogram. The injuries were caused on the vital part of the body, that is, on the face and head. There was also Liner fracture, over frontal bone,

on left side. P.W-7 Dr Sanjay Roy has opined that the cause of death is due to shock and haemorrhage as a result of injuries sustained and he has denied the suggestion put to him by learned defence counsel, during cross examination, that the injuries were not sufficient in the ordinary course of nature, to cause instantaneous death of a person. The nature of injury caused , as well as the kind of weapon used and the parts of body where the injuries are caused prove that there was an intention, on the part of the accused, to inflict those bodily injuries on the deceased. There is no convincing evidence on record to show that the injuries caused were accidental or unintentional, or that some other kind of injury was intended. It is also in evidence to show that the injuries are sufficient, in the ordinary course of nature, to cause death. In view of the facts and circumstances discussed herein before, I am of the considered opinion that the prosecution side has been able to bring the present case under section 300, "3rdly" of the Indian Penal Code.

**33.** There are a number of Judgements of Hon'ble Supreme Court of India laying down a law regarding requirement of proof necessary in criminal case wherever the prosecution cases wholly based on circumstantial evidence. Very recently Hon'ble Supreme Court of India in "**Raja Vs. State of Haryana**" reported in **MANU/SC/0412/2015** has reiterated the principles laid down by the Apex Court in earlier Judgments ("**Padala Veera Reddy Vs. State of Andhara Pradesh**" reported in **1989 Supp (2) SCC 706**, "**Balwindar Singh Vs. State of Punjab**" reported in **1995 Supp (4) SCC 259**) as follows:-

*"When a case rests on circumstantial evidence, the Court has to be satisfied that the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; 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 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.”***

**34.** In the instant case, the facts and circumstances as discussed in paragraph numbers 27, 28, 29, 30, 31 & 32 taken cumulatively, 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. The circumstances as discussed above are incapable of explanation of any other hypothesis than that of the guilt of the accused.

**35.** Now, let me see as to whether the present case falls under any of the exceptions of section 300 of the Indian Penal Code. Learned Counsel for the defence has submitted that the instant case falls under exception 4 to section 300 of the Indian Penal Code as both the father and son were drunkards and there was a sudden fight between them. P.W.4 Smt. Anima Newar has deposed that the deceased, Nara Bahadur Newar, was aged about 80 years and he used to drink alcohol which has led to frequent breaking out of quarrel amongst the family members. She has also deposed that deceased Nara Bahadur Newar used to drive the family members out of his house in the midst of quarrel. P.W-5 Sri Dil Bahadur Newar has deposed that, on the day of commission of offence, he found the accused in drunken state since morning. The accused, during his examination under section 313 Cr.P.C, has stated that his father was in an inebriated condition and he tried to assault the accused with an axe. The prosecution side has failed to impute any motive for the offence on the accused. The prosecution side has also failed to show that the offence was premeditated or there was any previous animosity between the son and the father. As no one has seen what actually happened inside the house which was the place where the offence was committed, all conclusions are to be made on the basis of circumstantial evidence, and circumstances as discussed above suggest the probability of a sudden fight, it also suggest that there was no premeditation for the offence and that it was committed in a heat of passion. It also appears under the facts and circumstances of this case that the accused had not taken any undue advantage or acted in a cruel manner, the blow of the Axe, on his father by the accused appears to be in a fit of anger. Learned public prosecutor has also fairly submitted that this is a case where the accused assaulted his father in a fit of anger. Under the aforementioned circumstances, I am of the considered opinion that this case falls under exception 4 to section 300 of the Indian Penal Code.

**36.** In view of the above discussion, the accused Sri Netra Bahadur Newar is found guilty of committing culpable homicide not amounting to murder of his father Sri Nara Bahadur Newar. As it has been discussed in paragraph No.32 above that the present case falls under section 300, "3rdly" of the Indian Penal Code, the accused is found guilty under Part I of section 304 of the Indian Penal Code. Accordingly, the accused Sri Netra Bahadur Newar is convicted under section 304 Part I of the Indian Penal Code.

**37.** As the accused has been convicted of an offence where the maximum penalty is Life Imprisonment and as the accused is aged 43 years, he is not entitled to benefit u/s 360 Cr.P.C or under the provisions of Probation of Offenders Act. I have heard the accused, in person, on the question of sentence. I have also heard learned public prosecutor as well as learned State defence Counsel on the question of sentence. The accused has again pleaded that he has not committed the offence and further pleaded mercy on the ground that he has three children of the age of 17 years, 15 years and 12 years respectively. Learned Public Prosecutor has submitted that as in this case the conviction is for culpable homicide not amounting to murder U/s 304 Part I of IPC and as it is evident both the accused as well as deceased were, at some point of time on the date of incident, under influence of liquor, therefore, instead of inflicting maximum punishment of Life Imprisonment, the accused may be awarded lesser punishment of Imprisonment for 10 (ten) years. On the other side, learned State Defence Counsel has submitted that as in the instant case no motive was attributed to the accused and there is nothing on record from which it can be presumed that the offence was pre-meditated, the Court could show leniency. He has also submitted that the accused having a family of three teenage sons, longer period in detention would deprive his sons from the parental care. The accused has submitted that he was a carpenter before he was involved in this case and his earning was a meagre earning. Learned State Defence counsel has fairly submitted that the accused has already undergone detention for about three years and further five years imprisonment may meet ends of justice. I have considered the submissions made by both the learned counsel as well as the accused. Taking into consideration entire aspects of this case, I am of the considered opinion that this is not a fit case where maximum punishment should be inflicted. Considering the circumstances under which the offence was committed as well as other factors I am of the opinion that the punishment suggested by learned State defence Counsel would meet the ends of justice. I, therefore, sentenced the convict Netra Bahadur Newar to undergo Rigorous Imprisonment

for a period of 8 (eight) years and also to pay a fine of Rs. 1000/- (one thousand only) in default to further undergo Simple Imprisonment for 1 (one) month. The period of detention already undergone by the accused shall be set off against the sentence imposed.

**38.** In the instant case the victim namely Sri Nara Bahadur Newar, who was killed, was the father of the accused and he was eighty years of age. There is no evidence on record that any of the dependent of the victim require rehabilitation as a result of commission of the offence, I am, therefore, passing no order, u/s 357 A Cr.P.C, for compensation of the victim. This, however, would not preclude any of the victim or dependent of the deceased to seek compensation in appropriate forum if they so desire.

**39.** The accused/convict has been informed about his right to appeal against this judgment before the Hon'ble Gauhati High Court. Let a copy of this Judgment be given free of cost to convicted accused immediately. Let also a copy of this order be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 Cr.P.C.

Given under my Hand and Seal of this Court on this 18<sup>th</sup> day of May, 2015.

**(Mridul Kumar Kalita)**  
**SESSIONS JUDGE**  
**SONITPUR: TEZPUR**

Dictated and corrected by me

**(Mridul Kumar Kalita)**  
**SESSIONS JUDGE,**  
**SONITPUR :: TEZPUR**

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

## **APPENDIX**

### **Prosecution Witness**

1.	Prosecution Witness No.1	:-	Sri Gyan Bahadur Newar
2.	Prosecution Witness No.2	:-	Sri Gyanendra Upadhaya
3.	Prosecution Witness No.3	:-	Sri Gangaram Newar
4.	Prosecution Witness No.4	:-	Smti Anima Newar,
5.	Prosecution Witness No.5	:-	Sri Dil Bahadur Newar,
6.	Prosecution Witness No.6	:-	Sri Tikaram Dhakal,
7.	Prosecution Witness No.7	:-	Dr. Sanjay Roy,
8.	Prosecution Witness No.8	:-	Sri Dhanjit Kalita,
9.	Prosecution Witness No.9	:-	Sri Siba Newar,
10.	Prosecution Witness No.10	:-	Sri Padum Bahadur Limbu,

### **EXHIBITS**

1.	Exhibit No.1	:-	Inquest report.
2.	Exhibit No.1(4)	:-	Signature of SI Dhanjit Kalita
3.	Exhibit No.1(1) & 2(1)	:-	Signature of Gyan Br. Newar
4.	Exhibit No.1(2) & 2(2)	:-	Signature of Gyanendra Upadhya.
5.	Exhibit No.1(3) & 2(3)	:-	Signature of Gangaram Newar.
6.	Exhibit No.2	:-	Seizurelist.
7.	Exhibit No.3	:-	Ejahaar
8.	Exhibit No.3(1)	:-	Signature of Gyan Br. Newar,
9.	Exhibit No.3(2)	:-	Signature of FIR Writer Gyanendra Upadhya.
10.	Exhibit No.3(4)	:-	Signature of Dhanjit Kalita (IO)
11.	Exhibit No.3(5)	:-	Signature of O/C of Sootea PS
12.	Exhibit No.4	:-	Post mortem report.
13.	Exhibit No.4(1)	:-	Signature of Dr. Sanjay Roy
14.	Exhibit No.4(2)	:-	Signature of Joint Director of Health Services.
15.	Exhibit No. 5	:-	Sketch map.
16.	Exhibit No. 5(1)	:-	Signature of SI Dhanjit Kalita,

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|----------------------|----|----------------------------------|
| 17. Exhibit 6        | :- | 161 Cr.P.C statement of accused. |
| 18. Exhibit No. 6(1) | :- | Signature of SI Dhanjit Kalita,  |
| 19. Exhibit 7        | :- | Deadbody challan.                |
| 20. Exhibit No. 7(1) | :- | Signature of SI Dhanjit Kalita,  |
| 21. Exhibit No. 8    | :- | Chargesheet.                     |
| 22. Exhibit No. 8(1) | :- | Signature of SI Dhanjit Kalita,  |

**( M. K. Kalita )**  
**SESSIONS JUDGE**  
**SONITPUR : TEZPUR**