

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

PRESENT : Sri B. Debnath
Sessions Judge
Sonitpur, Tezpur

SESSIONS CASE NO. 68 OF 2011

**Under Section 302 of the Indian Penal Code
(Arising out of G.R. Case No. 176 of 2010)**

State of Assam

-Versus-

Sri Rajesh Amrit KheriaAccused person

[Committed by Sri M. Kalita, Additional Chief Judicial Magistrate,
Sonitpur, Tezpur,]

A P P E A R A N C E

For the State	:	Sri D. C. Borah Public Prosecutor Sonitpur District, Tezpur
For the Accused	:	Sri N.C. Dev Goswami, Advocate
Date of evidence	:	12-08-2011, 26-09-2011, 16-11-2011
Date of argument	:	16-11-2011
Date of Judgment	:	16-11-2011

J U D G M E N T

A written ejahar has been submitted by Sri Kamini Kalita, Assistant Manager of Panbari Tea Estate, stating inter-alia the following fact :

That on 3-2-2010 at 7 O'clock the Line Chawkidar Stiphen Topno informed verbally that their permanent labour Sri Bijoy Amrit Kheria was murdered by his younger brother Sri Rajesh Amit Kheria and accordingly on receiving the written ejahar the O.C., Dhekiajuli Police Station registered Dhekiajuli P.S. Case No. 32 of 2010 under Section 302 of Indian Penal Code and S.I. A. Zaman was entrusted to investigate the case. The case was investigated and charge sheet was submitted against the accused person Rajesh Amrit Kheria. He has been charge sheeted u/s 302 IPC.

2. In course of process the case was committed to the Court of Sessions. I framed formal charge against the accused under Section 302 of Indian Penal Code after hearing both sides' learned counsel and perusal of the record committed u/s 209 Cr.P.C. The said formal charge was read over and explained to the accused person to which, he pleaded not guilty rather claimed trial.

3. During trial prosecution side examined as many as 7 (seven) witnesses out of 8 (eight) witnesses. All the witnesses were cross-examined by the defence side. The prosecution evidence was closed without examining the Investigating Officer because nothing found in the record to confirm the contradictions from the Investigating Officer. After closing the prosecution evidence the accused was examined u/s 313 Cr.P.C. and

his statement was recorded. He denied the incriminating evidence and also declined to examine any defence witness.

4. Heard argument of both sides' learned counsel and perused the evidence on record.

POINT FOR DETERMINATION

5. Whether the accused has committed murder of Bijoy Amrit Kheria ?

DECISION AND REASONS THEREOF

6. In this case prosecution side examined Sri Babul Kheria as PW-1, Smt. Guna Das as PW-2, Sri Bircha Kheria as PW-3, the informant Sri Kamini Kalita as PW-5, Sri Golap Das Panika (PW-6) and Sri Rameswar Jajowar as PW-7. In addition of the above, the prosecution side also examined the informant Stiphen Topno as PW-8 and the Medical Officer Dr. Tilak Bhattacharjee as PW-4.

7. PW-4, Medical Officer, deposed that on 3-2-2010 he conducted Post Mortem examination on the dead body of Bijoy Amrit Kheria, a male person aged about 46 years old on being identified by UBC / 685 Abdul Hakim Khan and Sri Birsha Kheria and found the following wounds :-

Lacerated injury on forehead (right side) extending from centre of the forehead to right parietal region exposing brain matter and multiple depressed fractures of right frontal and parietal bone.

His opinion is that the cause of death was shock and haemorrhage as a result of injury sustained. He exhibited the Post Mortem Report as Ext - 4. The said report was accepted without objection. So, it can be opined without hesitation that Bijoy Amrit Kheria has been killed by somebody because the injury which found by the Doctor cannot be self-inflicted.

8. Who killed Bijoy Amrit Kheria ? It is the burden of the prosecution to prove the evidence before this Court against the accused person to implicate him of killing of the accused person. But in this case though the prosecution side examined six other witnesses but none of them are eye witnesses or witness of circumstantial fact. Prosecution side though brought a circumstances before this Court that some of the persons found the dead body in the house having head injuries and the accused was available in the house at the relevant time but the evidence which adduced by the prosecution side are not sufficient to establish any relevant material fact beyond all reasonable doubt. So, there is no attempt I found from the prosecution side to establish a chain of circumstance towards the accused person to make him guilty of commission of murder. However, PW-1 though deposed that he found the dead body inside the house but he is a hearsay witness. He deposed that his wife told him that a quarrel took place between the accused person and the deceased but his wife has not been produced before this Court to adduce any material evidence. So, his evidence will not help this Court to come to a right conclusion.

9. PW-2, Guna Das, is only a seizure list witness. So, he cannot help the prosecution to establish the case against the accused person. Similarly, PW-3, Bircha Kheria, straightly deposed before the Court that he cannot

say who killed Bijoy Amrit Kheria. PW-7, Sri Rameswar Jajowar, also adduced no evidence against the accused person. The informant deposed that he found the dead body in the house; that's why he informed to Kamini Kalita, Assistant Manager, Panbari Tea Estate. The Garden Manager supported this fact and stated that after getting information from Stiphen Topno (PW-8) he lodged the ejahar, Ext - 2. Both the aforesaid witnesses are not at all material to the alleged fact of killing. That is why in my considered view, the case is not established against the accused person. So, accused person is not found guilty.

10. The accused Sri Rajesh Amrit Kheria is acquitted of the charge under Section 302 of the Indian Penal Code setting him at liberty forthwith.

The bailor is discharged from the liability of the bail-bond.

Given under my hand and seal of this Court on this 16th day of November, 2011.

**(B. DEBNATH)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Dictated and corrected by me
and every page bears my signature.

**(B. DEBNATH)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Transcribed and typed on dictation by me

(I. Goswami)
Stenographer

-

-