

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

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

**JUDGMENT IN SESSIONS CASE NO. 139 OF 2011**

Under Section 302 of the Indian Penal Code  
(Arising out of G. R. Case No. 2359 of 2010)

State of Assam

**–Versus–**

**Shri Golap Basumatary**  
Son of Late Bania Basumatary  
Resident of Hari Mandir, Dapdapi  
Police Station – Rangapara  
District – Sonitpur, Assam

[Committed by Shri S.K. Dhar, Chief Judicial Magistrate, Sonitpur,  
Tezpur ]

**A P P E A R A N C E**

For the State : Shri D. C. Borah  
Public Prosecutor  
Sonitpur District

For the Accused : Shri Biraj Nath  
State Defence Counsel

Date of framing charge : 14- 07-2011

Date of prosecution evidence : 25- 08-2011, 15-11-2011,  
04- 01-2012 & 18- 01-

2012

**Date of Argument : 06- 06-2012**

**Date of Judgment : 16- 06-2012**

## J U D G M E N T

The accused is the husband of the deceased and both were on visit to the house of the accused's brother. On the following day morning, both got involved in a quarrel and the accused mercilessly beat up his unarmed helpless wife, allegedly by firewood, causing multiple grievous hurt, on her person, in broad day light, inside the house by locking its door, and fled away. The injured died, in course of shifting to hospital. The accused's brothers, sister-in-laws etc. have tendered incriminating evidence against the accused.

### PROSECUTION CASE :

Briefly stated, the prosecution case is that one Shri Ratul Khaklari, son of Late Puneswar Khaklari of Dapdapi, Mansiri Kachari Gaon, under Rangapara Police Station, district - Sonitpur, had lodged an ejahar, on 11-12-2010, before the Officer in-charge of the Police Station, aforementioned, alleging that, on 11-12-2010, at about 12 O'clock, noon, while he was carrying harvested paddy of his sister, an woman of the village reported him, on the way, that without any reason, the accused Shri Golap Basumatary, severely assaulted on the head of his wife Anuma Basumatary, causing her right hand fractured by inflicting blows by firewood by locking the door of the house of his brother Shri Bhutmol Basumatary, situated at Dapdapi, Hari Mandir Gaon. On receipt of the information, he rushed to the house of the accused's brother Shri Bhutmol Basumatary, aforementioned and shifted the accused's wife Anuma Basumatary, in injured condition, by a handcart, to Rangapara Civil Hospital, but the doctor declared her brought dead.

### INVESTIGATION :

Based on the above FIR, Rangapara PS Case No.246/2010, u/s 302 IPC, dated 11-12-2010, was registered and the Officer in-charge, S.I. Md. Abul Kalam Azad entrusted the investigation to SI ( P) Shri Hrikhikesh Dowarah into the case.

In course of investigation, SI (P) Shri Hrikhikesh Dowarah, the IO, visited the place of occurrence, held inquest on the dead body of Anuma Basumatary, sent the dead body to Kanaklata Civil Hospital, Tezpur for Post Mortem examination, seized firewood from the possession of the accused, arrested the accused who allegedly surrendered at the Police Station, examined witnesses and on completion of investigation, laid a charge sheet, U/S 302 IPC, against the accused Shri Golap Basumatary.

**TRIAL :**

Since the charge-sheeted offence, u/s 302 IPC, is exclusively triable by the Court of Sessions, the Learned Chief Judicial Magistrate, Sonitpur at Tezpur, vide order, dated 16-06-2011, passed, in GR Case No.2359/2010, committed the case u/s 209 CrPC to this Court of Sessions for trial. Hence, the trial commenced in the Court of Sessions Judge, Sonitpur, Tezpur.

Upon perusal of the materials on records and hearing the learned counsel for both the sides, a formal charge u/s 302 of IPC was framed, vide order, dated 14-07-2011. The charge, aforementioned, was read over and explained to the accused Golap Basumatary, to which he pleaded not guilty and claimed to be tried.

In order to prove the above charge, the prosecution has examined as many as seven witnesses, including the doctor and the IO, while the defence cross-examined six of them, at length.

On closing the case for the prosecution side, the statement of the accused was recorded, u/s 313 CrPC, vide order, dated 27-04-2012. The accused pleaded not guilty and inclined to adduce evidence in defence. However, the State Defence Counsel declined to examine any witness in defence, vide order, dated 11-05-2012. The accused in his statement, aforementioned, has pleaded as follows :

**“I am innocent. In the year, 2009, my brain tumor was operated at Mirdha Nursing Home, Tezpur. At the time of the occurrence, I was away at the house of Shri Sharma Basumatary, an Insurance agent like me, in connection with our mutual insurance business.”**

I have heard the argument advanced by Shri D.C. Borah, the learned Public Prosecutor and Shri Biraj Nath, the learned State defence counsel. I have gone through the entire evidence proffered by the prosecution and the statement of the accused, recorded u/s 313 CrPC.

**POINT FOR DETERMINATION :**

On going through the evidence, on record, and hearing the learned counsel of both the sides, the following point emerged for consideration in this case :

Whether the accused Golap Basumatary, on 11-12-2010, at about 12 noon, in village Dapdapi, under Rangapara Police Station, committed murder by intentionally causing the death of his wife Anuma Basumatary, at the residence of his brother Shri Bhutmol Basumatary ?

## **THE DECISION AND THE REASONS THEREOF**

### **(A) WHETHER 'CULPABLE HOMICIDE' ?**

‘ Homicide means the killing of human being by a human being. A person commits culpable homicide, if the act by which death is caused is done with the – (a) intention of causing death, or (b) intention of causing such bodily injury, as is likely to cause death, or (c) knowledge that the act is likely to cause death. ‘Intent’ and ‘knowledge’ in the ingredients of Section 299 IPC assume the existence of positive mental attitude and this mental condition is the special mens rea necessary for the offence.

It is the consistent case of the prosecution that Anuma Basumatary, the wife of the accused, met with a homicidal death due to sustaining of multiple injuries. The defence has not disputed it. PW-6 SI Hrikhikesh Dowarah found multiple injuries on the head, hand etc. of the deceased, during preparation of the inquest report, u/s 174 Cr.P.C., vide Ext.2. In the opinion of the doctor, PW-7 Dr. Munin Chandra Pujari, who performed the post mortem examination, on the corpse of the deceased, on 12-12-2010, at Kanaklata Civil Hospital, Tezpur, the cause of death of the deceased was due to “shock and haemorrhage as a result of the head injuries” vide Ext.5, the Post Mortem examination report. The defence has declined to cross-examine the doctor and as such, his (PW-7) finding of injuries on the corpse of the deceased Anuma Basumatary and medical opinion thereon, have remained undisputed. On the other hand, more particularly, the evidence of PW-3 Smt. Guneswari Basumatary, PW-4 Smt. Laxmi Mech and PW-5 Shri Dharani Basumatary apparently reveal the dastardly circumstances in which the accused-

husband caused death to his wife - the deceased Anuma, in the closed door house of his brother Shri Bhutmol Basumatary, that is, the house of PW-3, aforementioned, in broad day light, by means of allegedly firewood. As such, based on the evidence available on record, as a whole, I find no difficulty to hold that the death of Anuma Basumatary was apparently an act of 'culpable homicide', beyond doubt.

**(B) DATE, PLACE AND TIME OF OCCURRENCE :**

(On 11-12-2010 at about 12 noon in the house of PW-3)

The contents of F.I.R., dated 11-12-2010, vide Ext.1, supported by its maker, the informant PW-1, Shri Ratul Khaklari and the corroborative testimony of PW-2 Shri Arun Bodo, PW-3 Smt. Guneswari Basumatary, PW-4 Smt. Laxmi Mech and PW-5 Shri Dharani Basumatary apparently show that the incident of assault on the deceased Anuma Basumatary, by her husband - the accused, took place, on 11-12-2010, at about 12 noon, in the house of PW-3, that is, the house of the accused's brother Shri Bhutmol Basumatary, situated in village Dapdapi. Their evidence further reveal that the house of PW-3, that is, the place of occurrence, is situated near the house of PW-4, within the close eye view. The defence appears to have not disputed the identity of the place and time of occurrence, aforementioned, through cross-examination of the PWs. Thus, the evidence, as a whole, is crystal clear establishing the prosecution contention that the incident of assault on the deceased Anuma Basumatary, the wife of the accused, took place, on 11-12-2010, at about 12 noon, in the house of PW-3, Smt. Guneswari Basumatary, who is the wife of accused's brother Bhutmol Basumatary, beyond all reasonable doubt.

**(C) DEVELOPMENTS AROUND PLACE OF OCCURRENCE:**

( Relatives observed the external physical developments)

It may pertinently be mentioned that an F.I.R. being the earliest statement is of great importance in appreciating evidence of the prosecution witnesses, even though it is not a substantive evidence. In the instant case, the prosecution version of the case, as unfolded in the F.I.R., Ext.1, lodged by reported witness PW-1 Shri Ratul Khaklari, who is the related brother-in-law of the accused, is that, on 11-12-2010, at about 12 noon, the accused severely assaulted his wife Anuma by firewood, without any reason, in the house of his brother Shri Bhutmol Basumatary, that is, in the house of PW-3 Smt. Guneswari Basumatary, bolting the door of the house from inside. PW-1 Shri Ratul Khaklari, the informant, has supported the facts narrated in the F.I.R., Ext.1, aforementioned. From his (PW-1) evidence, it further appears that though he did not witness the occurrence, on the day of occurrence, he was working in the house of the accused, on daily wage basis, and the deceased Anuma Basumatary and her husband - the accused were on visit to the house of the accused's brother Bhutmol, that is, the house of PW-3 Smt. Guneswari Basumatary. On the day of occurrence, at about 11 a.m., an woman, who is the wife of one, locally known as 'Kabi Doctor' and others informed him about the on-going incident of assault, by the accused on his wife Anuma and thereupon, he rushed to the house of Bhutmol, but did not find Anuma, as she had already been removed to Rangapara Hospital, in injured condition, for treatment. The prosecution has not examined the said wife of 'Kabi Doctor', obviously for non-examination, during investigation. Her non-examination, in my considered view, carries no significance, as her information about the on-going incident prompted the informant (PW-1) to rush to the place of occurrence only and that the said F.I.R., Ext. 1, was not lodged on the sole basis of her information, but after he personally observed the deceased Anuma, in injured condition and when she was declared by the doctor of the hospital as brought dead. On the other hand, the other evidence, on record, clearly tends to support the prosecution version of the case.

Turning to the evidence of the remaining witnesses, it is found that PW-2 Shri Arun Bodo, a witness from the locality, did not witness the occurrence when taken place, but on receipt of the information, from the elder brother of the accused PW-5, Shri Dharani Basumatary to the effect that the accused assaulted his wife Anuma, in the house of Bhutmol, who is the another brother of the accused, and thereupon, he rushed to the house of Bhutmol, aforementioned, that is, the house of PW-3 Smt. Guneswari Basumatary, with a handcart, with a view to shift Anuma to hospital for treatment. On reaching the house of Bhutmol, he found Anuma lying on floor, in the house of Bhutmol, in injured condition and therefore, immediately shifted her to Rangapara Hospital for treatment, but before reaching hospital, she died. Thus, his evidence indicates, as held above, the incident of assault on the deceased Anuma by the accused took place in the house of Bhutmol, that is, the house of PW-3 Smt. Guneswari Basumatary, which he, of course, did not witness as he reached the place of occurrence a bit late.

PW-5 Shri Dharani Basumatary is the brother of the accused and at the time of the occurrence, who was at the paddy field, hearing the uproar of the accused and crying of his wife (the deceased) and crying of some children outside the house, he rushed to the house of his another brother Shri Bhutmol Basumatary, that is, the house of PW-3. He attempted in vain to enter into the house, as the door of house was locked from inside and therefore, returned and brought the villagers including Shri Arun Basumatary (PW-2) and on entering into the house, by door breaking, found the accused's wife Anuma lying on the floor, with profuse bleeding, on the back of her head and other injuries. They brought the injured Anuma to Rangapara Hospital, but, according to him, she expired in hospital.

Turning to the evidence of PW-3 Smt. Guneswari Basumatary, the wife of Shri Bhutmol Basumatary and PW-4 Smt. Laxmi Mech – a close neighbour to the PW-3, it is found that both of

them watched the incident of assaulting the deceased Anuma by the accused, in broad day light, that was going on inside the house of PW-3, through the window of the house of PW-4, aforementioned, as both did not dare to go near to the place of incident. Both the PWs 3 and 4 have deposed that they have seen PW-5 Shri Dharani Basumatary going to the place of occurrence, that is, the house of Bhutmol and then returning for help of the villagers, as he could not enter into the house due to bolting of the door from inside. Just before arrival of PW-5 Shri Dharani Basumatary and other villagers, the accused fled away from the house of Bhutmol. PWs 3 and 4 have deposed that although both of them could not see the actual occurrence that was going on inside the house of PW-3, that is, the house of Bhutmol, PW-3, came to know, after about a week later, when she returned home, that injured Anuma died, and other the other hand, PW-4 has deposed to have seen Anuma lying on the floor of the house with bleeding head injuries, when she also entered into the house along with PW-5 Shri Dharani Basumatary and other villagers, immediately after the occurrence was over.

On scrutiny of the cross-examination of PWs 1,2,3,4,5 and the evidence of PW-6 SI Hrikhikesh Dowarah, the IO, it transpires that the former witnesses did not state certain facts before the latter (the IO), which included contradictions in the evidence of PW-3, Smt. Guneswari Basumatary, the wife of Bhutmol, that she did not state before PW-6, the IO, that she found both the accused and his wife quarrelling at her home and PW-5 was seen struggling hard to enter into the house, but could not, as the door of the house was locked from inside and after a while, he returned with other villagers and further, that both she (PW-3) and PW-4 Laxmi witnessed the entire developments that were going around the house of PW-3, through the window of the house of PW-4, Laxmi – a close neighbour. In spite of omission of PW-3 to state the facts, aforementioned, before the PW-6, the IO, by itself would not render her evidence unreliable, because of absence of similar omissions in the cross-examination of PWs-4 and

5, aforementioned, creating material infirmity in the prosecution case. Her evidence, as a whole, appears to be truthful and honest, in the context of the humble society to which she is belong. On the other hand, the omissions on the part of PWs 1,2,4 and 5, to state certain facts, before the PW-6, the IO, as it has been clearly elicited in his (PW-6) cross-examination, being not related to the significant circumstances around the place of occurrence, at the relevant time of the incident, under broad day light, are not considered material, in the fact situation of the instant case.

Thus, from the above analysis of evidence tendered by the prosecution witnesses, it is apparent that the incident of assault by the accused on the deceased Anuma Basumatary took place inside the house of PW-3 Smt. Guneswari Basumatary, that is, the house of Bhutmol Basumatary, brother of the accused, bolting the door of the house from inside, in broad day light. The actual occurrence was being occurred within the four walls of the house of PW-3, it naturally remained beyond the purview of the neighbours until the tail of gravity of the occurrence was realized on finding the deceased Anuma in severely injured condition inside it, when the villagers including PWs 4 and 5 entered into it breaking the door. The magnitude of the incident was of such a gravity that PW-3 Smt. Guneswari Basumatary, the wife of Bhutmol, who is the sister-in-law of the accused, was frightened to go near to her own house, not to speak of entry into it, and therefore, ran away to the house of the neighbour PW-4 Laxmi Mech and both she (PW-3) and PW-4 observed the situation through the window of the house of PW-4.

**((D) WEAPON OF OFFENCE :**

( Seizure of firewood not proved )

The FIR, Ext.1, lodged by PW-1 Ratul Khaklari, the cousin brother of the deceased, reveals that the accused assaulted Anuma by means of firewood stacked in the house of Bhutmol

Basumatary, that is, the house of PW-3 Smt. Guneswari Basumatary. In evidence, however, PW-1, aforementioned, has not mentioned anything about the weapon used in assaulting the deceased Anuma. Likewise, PW-3 Smt. Guneswari Basumatary, who watched the on-going incident of quarrel between the accused and his wife, the deceased Anuma, inside her house along with PW-4 Laxmi Mech from the latter's house, situated at proximity, and did not directly witness the accused -husband inflicting assault on Anuma by firewood. However, PW-4 has added, in her evidence, that she saw the accused "fleeing away with the bag of his wife". The defence has not assailed this material piece of evidence, specifically, in her cross-examination. On the other hand, PW-5 Shri Dharani Basumatary has not deposed anything in this regard. However, PW-6 SI Hrikhikesh Dowarah has deposed that " .... *While the accused person appeared before the police station having a bag containing two pieces of firewood and confessed that he had beaten up his wife by means of those pieces of firewood. Accordingly, I seized the firewood from the possession of the accused persons and prepared the seizure list. Ext.3 is the Seizure List. But I have forgotten to put my signature on the Seizure List although I prepared the Seizure List by my own hand. Mat. Ext.1 is the seized materials.*" On perusal of Ext.3, it appears that "2 numbers of shaded firewoods with blood stained" were seized on being produced by the accused at Rangapara PS, at about 4-45 p.m., in presence of three witnesses, including PW-5 Shri Dharani Basumatary. The said document, Ext.3, is admittedly without the signature of PW-6, the IO, though it is in his handwriting, it is an undated document and it was not exhibited to PW-5, who is shown to have allegedly stood witness to its preparation, during examination as an witness and further, it was not elicited from him (PW-5) that the accused appeared with the seized firewood, which was used as weapon of offence or exhibited the seized materials, aforementioned, to him. There is no evidence to show that the said seized two pieces of firewood were sent to the Forensic Science Laboratory for serological test to establish that the said blood was the blood of a human being

and belonging to the deceased only to establish further the use of the same as weapon of offence. It is, therefore, not established, beyond reasonable doubt, that the seized pieces of firewood were ever used by the accused in inflicting assault on his wife - deceased Anuma. On the other hand, the alleged confession made before him is hit by Section 25 of the Evidence Act. Hence, in my considered opinion, the mere statement of PW-4 witnessing the accused fleeing away with the bag of his deceased wife, from the place of occurrence, which remained not seized and not exhibited to the said witness (PW-5) for identification, the seizure memo, Ext.3, cannot be accepted by placing reliance on the evidence of the police officer, PW-6, SI Hrihikesh Dowarah, the IO, beyond doubt. Accordingly, I hold that the alleged weapon of offence seized by Ext.3, the seizure memo, has remained disproved, in this case, beyond any shadow of doubt.

**(E) NATURE AND SITUS OF THE WOUNDS :**

( Multiple injuries on vital parts of body)

PW-7 Dr. Munin Ch. Pujari, Senior Medical and Health Officer, attached to Kanaklata Civil Hospital, Tezpur, who conducted the Post Mortem examination on the dead body of Anuma Basumatary, on 12-12-2010, in connection with Rangapara PS Case No. 246/2010, on being identified by C/138 Boloram Sarma, found the following injuries on her person :

**“ WOUNDS :**

1. One transversely placed wound with sharp margin below the mandible in the midline. 2" X ¼" X ½"
2. Lacerated injury of left ear placed across the lower third of the ear.

Bruises seen over left side of the face and on left side of the back of upper neck.

**ABDOMEN :**

Blood clot was present in the mouth cavity.

**SKULL, SCALP, VERTEBRAE :**

Lacerated injury of the scalp was seen over –

- (i) Left occiput extending from left ear up to mid occiput.
- (ii) Frontal region placed transversely about 3" X 1/2" X bone deep. There was fracture of the skull seen deep into injuries mentioned.

**BRAIN AND SPINAL CORD :**

Collection of about 300 ml of blood over occipital lobe ( subdural)

**MUSCLES, BONES AND JOINTS :**

Fracture of frontal bone was found, which was placed transversely with sharp margin about 3" long.

Fracture of occipital bone placed transversely on left side."

In the opinion of the doctor, the deceased Anuma died due to shock and haemorrhage as a result of the head injuries. He recognised Ext.5, the Post Mortem Report, where Ext.5(1) is his signature. The said Ext.5 shows that the injuries described above were

ante mortem in nature. The defence has declined to cross-examine the doctor and as such, taken into consideration with the evidence of the other PWs, as a whole, a presumption can be drawn to the effect that whatever the injuries the doctor has found on the corpse of Anuma Basumatary and his opinion thereon, have been true and there is no scope to discredit the medical rationality leading to his opinionative inference.

Though a Police Officer is not an expert in medical jurisprudence, PW-6 SI Hrihikesh Dowarah, the IO, in the instant case has recorded, the description of the dead body, the place where the dead body of Anuma was found, the general condition of the body, the injuries externally noticeable on her body etc., while preparing the inquest report, Ext.2, u/s 174 CrPC, and these descriptions indicate the brutality of torture perpetrated on the deceased entailing her death in consequence. On the other hand, from the evidence of PW-1 Shri Ratul Khaklari, PW-2 Shri Arun Bodo, PW-4 Smt. Laxmi Mech and PW-5 Shri Dharani Basumatary, who observed the dead body of Anuma Baumatary, found profuse bleeding on head, nose etc. immediately after the occurrence was over. Thus, the medical evidence of PW-7, the doctor, with reference to Ext.5, the Post Mortem Report, the evidence of PW-6, the Inquest Officer, and the ocular testimony of the remaining PWs 1, 2, 3, 4 and 5, aforementioned, apparently show that the deceased died as a result of sustaining of multiple injuries, on the vital parts of the body. Therefore, the totality of evidence, on record, lead to the only inference that the findings and opinion of the doctor, PW-7, can be believed, beyond all reasonable doubt.

**(F) WHETHER 'MURDER' ?:**

( A brutal act of murder)

The offence of 'murder' has been defined in Section 300 of the IPC. The basic difference between the 'culpable homicide' 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 IPC, the prosecution has to 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 IPC, so as to reduce the offence of murder to one of ‘culpable homicide’ not amounting to murder is on the accused.

A detailed discussion, on evidence on record, made above, clearly establish that the direct cause of death of Anuma Basumatary was sustaining of multiple grievous injuries on her vital parts of the body, including the head, which were ante-mortem, and homicidal in nature, vide Ext.5, as more distinctly revealed from the undisputed medical evidence of PW-7, the doctor. Therefore, in my considered opinion, the accused had the definite intention of causing death of Anuma Basumatary by mercilessly inflicting grievous assault on her person, which undoubtedly was an act of ‘culpable homicide’ in its gravest form, defined in Section 300 IPC as ‘murder’, beyond all reasonable doubt.

**(G) COMPLICITY OF THE ACCUSED TO THE CRIME ?:**

( Five basic circumstances )

It may pertinently be mentioned that in case of murder, it rarely happens that the eye of any witness sees the fatal blows of the assailant stuck on the deceased. Therefore, it is the duty of the Court

to consider whether attending to the evidence, on record, the circumstances adduced in evidence can be reconciled with any other supposition than that the accused has been guilty of the offence. Hence, it has to be seen whether the inculpatory facts, devoid of any reasonable explanation, are absolutely incompatible with the innocence of the accused establishing his complicity in the crime.

In the instant case, the following circumstances conclusively prove the complicity of the accused in the crime –

- (i) There was none except the accused-husband and his wife, the deceased, at the relevant time of the occurrence, at the place of incident, that is, the house of PW-3 Smt. Guneswari Basumatary, the wife of Shri Bhutmol Basumatary, and sister-in-law of the accused, which took place, in broad day light, and quarrelling between them.
- (ii) The accused accompanied by his deceased wife, was on visit to the house of his brother Shri Bhutmol Basumatary, that is, the house of PW-3 in the previous night and stayed as guests.
- (iii) The accused was seen leaving the house of PW-3 immediately after the occurrence, when the villagers arrived.
- (iv) The existence of alleged land dispute between the accused and the husband of PW-3, namely, Bhutmol Basumatary, set up in the cross-examination of the PWs, has not been proved by evidence. PW-3, in her cross-examination, has specifically stated that *“The paternal property of my husband and the accused person already partitioned. I have no knowledge about any dispute between my husband and the accused person regarding*

*paternal property.*” Therefore, I find no reason to disbelieve the evidence of the PWs, namely, PW-1, PW-3, PW-4 and PW-5, who are closely related.

- (v) The accused, in his statement, u/s 313 CrPC, has pleaded that at the time of the occurrence, he was away at the house of one Sharma Basumatary, an Insurance Agent like him, in connection with their mutual insurance business. This plea of *alibi*, which can be taken by the accused, is admissible under Section 11 of the Evidence Act, but the onus of proving this plea is on the accused. However, the accused has not examined the said Shri Sharma Basumatary, subject to cross-examination by the prosecution, to test the veracity of this plea of *alibi* taken by the accused. Therefore, in view of the success of the prosecution in proving the case against the accused, beyond reasonable doubt, the said plea of the accused is held to have been disproved.

### **CONCLUSION**

( Guilty of murder )

For the reasons, set forth above, I am constrained to hold that the prosecution has proved the charge of murder of the deceased Anuma Basumatary against the accused, namely, Shri Golap Basumatary, beyond all reasonable doubt. Accordingly, accused Shri Golap Basumatary is held guilty of the charge u/s 302 IPC and convicted.

### **SENTENCE**

After pronouncement of the judgment, the convicted accused Shri Golap Basumatary is heard on the quantum of punishment to be awarded. I have also heard Mr. D. C. Borah, the learned Public Prosecutor and Mr. Biraj Nath, the learned State Defence Counsel.

The convicted accused Shri Golap Basumatary has reiterated his plea of innocence. He has submitted that he deals in betel-nuts and occasionally works as agent of Insurance Company. He has about 22 ( twenty two) bighas of cultivable land. He is aged about 39 (thirty nine) years. He has one small daughter, aged about 7 (seven) years. She is reading in L.K.G. in a local school. In the interest of his young daughter, who is aged about 7 (seven ) years and reading in L.K.G., he may be punished with imprisonment for 5 ( five) years only.

The learned Public Prosecutor has submitted that considering the gravity of the offence proved to have been committed by the accused, rigorous imprisonment for life and fine will be the appropriate punishment for him.

The learned State Defence Counsel, on the other hand, has fairly submitted that considering the personal circumstances in life of the accused, punishment of imprisonment for life, instead of capital punishment, would meet the ends of justice.

On a careful consideration of the facts and circumstances, appearing in the case in regard to the personal, social, economic and domestic circumstances of the accused, I am of the humble opinion that sentence of imprisonment for life and fine, would meet the ends of justice.

In view of the fact that cruelty of murder was committed on an unarmed innocent woman, in a helpless situation, in a closed room of house, in my humble opinion, the accused person does not deserve any compassionate treatment.

**Accordingly, the accused is sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.10,000/-**

**( rupees ten thousand) only, in default, to undergo Rigorous Imprisonment for 6 (six) months u/s 302 of the Indian Penal Code.**

**The convicted accused person is told that he has the right to prefer appeal to the Hon'ble High Court against this judgment either through the Jail authority or independently, on his own. He is further informed that he is entitled to free legal aid to prefer appeal before the Hon'ble High Court.**

The judgment and order, as above, is pronounced in the open Court, in presence of the accused person and the learned counsel for both the sides, on this the 16th day of June, 2012, under the hand and seal of this Court.

Let a copy of this judgment and order, as above, shall be furnished to the convicted accused, free of cost, immediately.

Send a copy of the judgment and order to the Superintendent, Central Jail, Tezpur.

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

Dictation taken and typed by me :

(J.K. Muru, Steno )

\* \* \* \* \*

**SESSIONS CASE NO.139 OF 2011****ANNEXURE****LIST OF PROSECUTION WITNESSES**

- PW-1 : Shri Ratul Khaklari – related brother-in-law of accused  
 PW-2 : Shri Arun Bodo - a witness from the locality  
 PW-3 : Smt. Guneswari Basumatary – wife of accused's brother  
 Bhutmol ( sister-in-law of  
 accused)  
 PW-4 : Smt. Laxmi Mech - related sister of accused and  
 a close neighbour of PW-3  
 PW-5 : Shri Dharani Basumatary - elder brother of accused  
 PW-6 : Shri Hrikhikesh Dowarah, S.I.– Investigating Officer  
 PW-7 : Dr. Munin Ch. Pujari, - Medical Officer, who  
 performed Post Mortem  
 examination

**LIST OF DEFENCE WITNESSES**

N I L

**LIST OF COURT WITNESSES**

N I L

**LIST OF DOCUMENTS EXHIBITED BY PROSECUTION**

- Exhibit –1 : Ejahar  
 Exhibit –2 : Inquest Report  
 Exhibit –3 : Seizure List  
 Exhibit –4 : Charge Sheet  
 Exhibit –5 : Post Mortem Report

**MATERIAL EXHIBIT**

- Mat. Exhibit –1 : Seized materials ( Firewood)

**DEFENCE EXHIBIT**

N I L

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

