

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

**PRESENT :** Smt. M.R. Sharma  
Additional Sessions Judge  
Sonitpur, Tezpur

**SESSIONS CASE NO. 99 OF 2008**

**Under Section 302 of Indian Penal Code  
(Arising out of G.R. Case No. 669 of 2003)**

State of Assam

**-Versus-**

Sri Binanda Deb @ Binoy  
Son of Late Paresh Ch. Deb  
Resident of Na-bil  
P.S. – Jamuguri  
Dist – Sonitpur, Assam ..... Accused Persons

[Committed by Sri B.K. Chetry, Sub-Divisional Judicial Magistrate  
(Sadar), Tezpur, Sonitpur]

**ADVOCATES WHO APPEARED IN THIS CASE**

For the State	:	Sri H. Sedai Addl. Public Prosecutor Sonitpur District
For the Accused	:	Sri S. Acharjee, Advocate
Date of Evidence	:	16-09-2008, 18-03-2009, 02-06-2009, 10-08-2009, 22-02-2010, 05-10-2010, 11-11-2011
Date of Argument	:	15-09-2012
Date of Judgment	:	<b>21-09-2012</b>

## J U D G M E N T

This case was initiated on 23-05-2003 with an ejahar filed by the complainant Sri Anup Das, before the Chariduar Police Out Post at 1-30 p.m. stating that the complainant's sister Smt. Anjana Dey, who was married seven years back with one Nila Kanta Dey, had gone with her son to Tupia school, but later on she did not return. As she did not return, he searched for his sister and came to know that some miscreants had killed her with a sharp weapon and her dead body was lying in the jungle near the Bank of Jia-Bharali River.

**2.** After this ejahar was filed before the Chariduar Police Out Post at 1-30 p.m., a General Diary Entry being No. 513 was made and the written ejahar was forwarded to the O.C., Rangapara Police Station for registering a case. the O.C., Rangapara Police Station registered a case u/s 302 / 201 IPC and the investigation was entrusted to one S.I. Azizur Rahman.

**3.** During the investigation Post Mortem Examination was done and Inquest Report was prepared in presence of Executive Magistrate and the Investigating Officer recorded the statements of witnesses u/s 161 Cr.P.C. Also during investigation accused Binanda Deb was arrested and forwarded to the Judicial custody. Thereafter, on completion of the investigation, the Investigating Officer was transferred, the case diary was handed over to O.C. of Rangapara Police Station and one Sri Kulendra Bharali, S.I. of Police, submitted the charge sheet against the accused Sri Binanda Deb u/s 302 / 201 of the Indian Penal Code.

**4.** Subsequently, the learned Sub-Divisional Judicial Magistrate, Tezpur, committed the case to this Court as the offence u/s 302 / 201 IPC was exclusively triable by the Court of Sessions. The case was, thereafter transferred to this Court for trial.

**5.** During the process of trial, my predecessor of this Court, on 25-07-2008 framed charge against the accused Sri Binanda Deb @ Binoy under Section 302 of the Indian Penal Code. The particulars of charge was read over and explained to the accused, to which he pleaded not guilty. So, the case proceeded for further trial.

**6.** It is seen from the record that the prosecution side for establishing the case examined as many as 13 (Thirteen) witnesses including both the Investigating Officers and exhibited the documents including Post Mortem Report, Inquest Report, seizure list and the charge sheet and also exhibited the two General Diary Registers of Rangapara Police Station. My predecessor had also recorded the statement of the accused u/s 313 Cr.P.C. and the accused denied all the allegations, but refused to adduce any defence evidence. So, the case was fixed for argument.

**7.** Learned counsel for the State as well as the accused made their respective arguments. I have perused the entire materials on record including exhibits, made by the prosecution side during examination of the witnesses.

## **8. POINTS FOR DECISION**

Now, the point for determination is :-

Whether on 22-05-2003, after 8 a.m. at village Bokagaon Miri, near Jia-Bharali River, under Rangapara Police Station, the accused committed murder by intentionally causing death of Smt. Anjana Dey, as alleged and is punishable u/s 302 IPC ?

## **DISCUSSIONS, DECISION AND REASONS THEREFOR**

**9.** To come to a decision as to the extent to which the prosecution has proved the case u/s 302 IPC against the accused Binanda Deb, the evidence on record is required to be analysed, along with the exhibits.

**10.** PW-1 is Smt. Shanta Dey, who in her evidence before the Court stated that the accused Binanda Deb is her cousin and Smt. Anajan Dey is her sister-in-law. The deceased, had illicit relation with the accused person since a long time. After the death of her elder brother, i.e. the husband of the deceased, the accused used to come off and on to their house and this illicit relationship with the deceased continued. This fact had also come to their knowledge on several occasions. Later on, he stopped coming to their house. She also deposed that the house of the accused was also damaged by the neighbourers and in the year 2003 the accused had come to their house and talked with the deceased Anjana Dey. On the day of the incident the deceased had gone to Jamuguri Block in the morning to receive her pension and also drop her son to school and she had also gone to the Block on that day to

bring the pension of her mother. But she did not find the deceased and also she did not return home on that day. She also deposed that on the following day she came to know that her sister-in-law Anajan was murdered. Thereafter searches were made and her dead body was found and ejarah was also lodged.

In her cross-examination she stated that to reach Jamuguri Block, about half an hour time is required from their house and when she did not find Anjana at the Block, she did not ask anyone. The deceased had two children and they were living in the same house. The accused Binanda Deb was her cousin and denied the suggestion that she did not state before the police that the deceased and the accused had illicit relation. She also denied the suggestion that she did not state before the Investigating Officer that the accused used to visit their house. She also denied the suggestion that the deceased Anjana used to stay out of the house sometimes.

**11.** PW-2 is Sri Bangshi Das and he, in his evidence, deposed that he knows the accused person Binanda Deb, who was from their same village and after the accused was arrested he was taken by the police to the police station. He however, deposed that he does not know anything as to how Anjana Dey had died. He also deposed that he does not know anything about the incident and also does not know who had killed Anjana.

**12.** PW-3 is Dr. Siba Prasad Bordoloi, Senior Medical & Health Officer of Kanaklata Civil Hospital, Tezpur, who had conducted the Post Mortem Examination on the dead body of the deceased and found the following :-

**INJURIES –**

1. Three numbers of stab wound, each measuring 3 cm long on right side and middle of the neck (transverse) involving deeply and severed the great vessels of the neck caused by sharp weapon.

**2. (a)** One deep perforating injury over right side of epigastrium involving up to left lobe of liver which is lacerated. Size of the wound is 2 cm wide.

**(b)** One deep perforating injury over middle abdomen (ant) with laceration of the stomach profuse blood clots inside the abdomen.

The Medical Officer deposed that Other organs are healthy but uterus bulky and she was a pregnant woman of 10 weeks size of uterus and on dissection (autopsy) contains product of conception is found.

The Medical Officer also deposed that injuries found were ante mortem in nature and sufficient to cause death. Injuries are caused by sharp and pointed weapons or instruments.

The Medical Officer also deposed that in his opinion, the cause of death was due to shock resulting from profuse blood loss from the injured liver and the great vessels of the neck.

This witness further deposed that Ext – 1 is the Post Mortem Report, where Ext – 1(1) is his signature and Ext – 1(2) is the signature of Dr. R.K. Deka, the then Superintendent of Kanaklata Civil Hospital, Tezpur.

In cross-examination the Medical Officer deposed that he could not give the time of occurrence as he was not sure whether the weapon was sharp cutting or pointed weapon.

**13.** Here, it may be stated that PW-1 and PW-2 though have deposed about the death of Smt. Anjana Dey and PW-1 also stated about the illicit relation between the deceased and the accused, there is no implication from which it can be inferred that the accused Binanda Deb @ Binoy had committed the offence of murder u/s 302 IPC on Smt. Anjana Dey. As regards PW-3, the Doctor, though he has stated about the injuries of stab wounds on the body of the deceased, which were caused by sharp weapon on the vital parts of her body, i.e. on the neck and the liver causing her death the said injuries cannot be related to have been caused by the accused Binanda Deb so far PW-1 and PW-2 are concerned. They have not implicated the accused.

**14.** Then comes the evidence of PW-4, Sri Anup Das. He, in his evidence before this Court, stated that he knows the accused Binanda Deb and about 5 years prior to deposing in the case, one day in the evening, the mother-in-law of the deceased Anjana Dey came and told that the deceased Anjana had gone to Tezpur, but did not return home. On the next day morning, his aunt Smt. Parul Dey informed that the dead body of Anjana Dey was found on the bank of Jia Bharali River as reported by the villagers.

So, he went to the bank of Jia-Bharali River and there people told him that the dead body was already taken to Chariduar Out Post. Thereafter, he went to the Out Post and saw the dead body. He also saw cut injuries on the neck, stomach and thereafter, the dead body was taken to Kanaklata Civil Hospital for Post Mortem Examination. He also deposed that the deceased was his sister and she was married to one Nila Kanta Dey about 12 years back and they had two children. So, he had filed the ejahar before the In-charge, Chariduar Police Out Post and he has exhibited Ext - 2 as the ejahar and Ext - 2(1) is his signature. He has also exhibited Ext - 3 as Inquest Report with Ext - 3(1) is his signature.

When the defence advocate cross-examined him, he stated that at about 10 a.m. he lodged the FIR on 23-05-2003. But the same was not written by himself. He deposed that he filed the ejahar after identifying the body. He has admitted that he had not written in the ejahar that Anjana had gone to Tezpur on the previous day and did not return. He also deposed that he does not know who had killed her. He has also admitted the suggestion that he did not mentioned about the injuries which he saw on the deceased and also the fact that the mother-in-law of the deceased had told him that the accused Binanda Deb had killed her. So, it is seen that this witness also cannot throw any light on the fact that the accused Binanda Deb had killed Smt. Anjana Dey.

**16.** Then comes PW-5, Sri Ajit Das. He, in his evidence, deposed that he is the VDP Secretary and at that time, he was not VDP Secretary of Na-bil Towbhanga and one day, 7/ 8 years back, one Smt. Swapala Rani Dey, the mother-in-law of the deceased, went to his house and



informed that the accused Binanda Deb had killed her daughter-in-law. He also deposed that the said Swapala Rani Dey, had informed him that the dead body was lying at Chariduar Police Out Post and at that time, he advised her to file the ejahar at Jamuguri Police Station. On the next day, at about 9 a.m., Swapala Rani Dey, again came to his house and informed him that Binanda Deb is available in his house and he had to inform the police. So, he informed Jamuguri Police Station over telephone and the police from Jamuguri Police Station came and asked him to show the house of Binanda Deb, which he accordingly done. The accused was thereafter arrested.

Now, in his cross-examination he said that he does not know had killed Anjana. He has admitted that he did not tell the Investigating Officer that the mother-in-law of Anjana Dey came and informed him about death of the deceased and also the fact that he had advised Swapala Rani Dey, to file the ejahar. He has also admitted that he did not state the fact before the Investigating Officer that the accused was in his house.

This witness has, therefore, narrated the fact of circumstances which were not found in the evidence of either PW-1 or PW-2. Neither such facts have come in the ejahar and the evidence is therefore contradictory.

**17.** PW-6, Sri Naba Das, who in his evidence has stated that about 5 years back, while he was coming towards Tezpur in a Bus, he saw the accused Binanda Deb also in that Bus. He has also stated that he heard some hue and cry among the villagers stating that accused Binoy had killed the woman.

This witness, at the same time, in his cross-examination has stated that he does not know who had killed the deceased.

**18.** Similarly, the evidence of PW-7, Kalicharan Ungate is that 6 years back, police called him to the place of occurrence, where a dead body of a woman was lying and police prepared a document and took his signature. Ext - 4 is the said seizure document and ext - 4(1) is his signature. He has also stated that he could not identify the woman.

In cross-examination he has stated that he does not know what articles were also seized. From the seizure list, it is seen that articles, such as, one plastic handled knife, one blue printed baby umbrella with white handle, one light green printed saree covered with dust and blood stain and also one small money bag, were seized.

But this seizure witness cannot say what articles were seized. This creates a doubt as to the acceptance of the evidentiary value of the seizure witness.

**19.** Then, there is the evidence of PW-8, Sri Rongtu Ungate. He was declared hostile by the prosecution and in the cross-examination by the prosecution, he has stated that he did not give any statement before the Investigating Officer of this case that on 22-05-2003, at about 10 a.m., accused Binanda Deb came with police near the Jia-Bharali river and showed how he killed Anjana Dey with the knife.

In cross-examination by defence, he has stated that he does not know anything about the incident and also he did not see any dead body.

Analyzing the evidence of this hostile witness, though the prosecution has suggested that he had shown the way how he had killed the deceased, it is hard to believe that an accused who had committed any offence of murder will demonstrate to the police how he had committed the offence. Also this fact of contradiction on being declared hostile was not corroborated by the prosecution while examining the Investigating Officer Md. Azizur Rahman. Hence, the evidence of this witness is not reliable and will not help the prosecution in any manner.

**20.** PW-9 is Sri Dushmanta Sarma, a businessman, who is also a seizure witness and though he has stated that he had accompanied the police to the bank of Jia-Bharali River, saw a dead body and the police had also seized some articles in his presence.

In cross-examination he has stated that m he does not remember where police took his signature. It may have been a blank paper. He also deposed that he had gone with the police to the place of occurrence at about 8-30 p.m., where he was shown the dead body in the flash of light. If the ejahar was filed on the next afternoon when the dead body was already brought to the police station, how the police had taken this witness at night at about 8-30 p.m., is not explained by the prosecution.

**21.** PW-10 is Md. Md. Hasen Ali, who is also another seizure witness. In his evidence before this court,

he deposed that about 4 years back, the village head man Kalicharan Ungate informed him that the dead body of a woman was lying in the jungle of the locality. Now, this evidence contradicts the facts that the dead body was found on the bank of the river Jia-Bharali. He has further deposed that police took him to that place and showed him the dead body by a torch light. A knife was also seized and a bag was also lying near the dead body. From there the police brought the dead body to the road. In his deposition, he has further stated that police took his signature in Ext - 4. But he does not know about the occurrence and the police also did not record his evidence. These facts show that there are contradictions in circumstantial evidence also.

**22.** All the statements are quite contradictory to the statements given by the witnesses discussed earlier. The finding of the dead body in the jungle is contradictory to the evidence given by other witnesses, who stated that the dead body was found on the bank of river Jia-Bharali.

**23.** The witness Sri Debo Mili (PW-11), deposed in Court and his evidence is not relevant at all and he has deposed that he knows nothing about the occurrence.

**24.** PW-12 is S.I. Kulendra Bharali, who had filed the charge sheet after collection of the Post Mortem Report on the investigation done by PW-13, Md. Azizur Rahman. Ext - 5 is the charge sheet, where Ext - 5(1) is his signature.

He is a formal witness and he has deposed of his submission of charge sheet and needs no detailed discussion.

**25.** There are no eye witnesses to the incident in this case. Also, the 'last seen theory' is also not found to be existent in this case. The Hon'ble Supreme Court in AIR 1979 SC 1979 in Pahalaya Motya Valvi -Vs.- State of Maharashtra held that the circumstance of the accused and deceased seen alive last together is a circumstantial evidence, and has to be proved by the prosecution. In this case, the said circumstance is absent. The deceased was last seen going to get the pension. The Hon'ble Supreme Court in AIR 1979 SC 1410 has explained the theory of 'last seen together' very appropriately. Court can act on circumstantial evidence, when the circumstances proved must be complete and of a conclusive nature so as to be fully inconsistent with the innocence of the accused, and are not explainable on any of the hypothesis except the guilt of the accused. Neither the prosecution has established the fact that the deceased was seen with the accused alive prior to the incident, nor there is any evidence in this regard. No materials are on record to show that the circumstances can prove that the accused had caused the death of the deceased. Rather, none of the witnesses have stated that the accused had committed the offence.

**26.** Under the above facts and circumstances and in view of the discussions made in the forgoing paragraphs, the prosecution is seen to have totally failed to bring home the commission of offence u/s 302 IPC in this case. None of the witnesses have implicated the accused Sri Binanda Deb @ Binoy of committing such an offence. So, there is no other alternative but to give the accused on benefit of doubt and accordingly, he is found not to be guilty of offence u/s 302 IPC. Accordingly, the accused Sri Binanda Deb @ Binoy deserves acquittal.

**O R D E R**

**27.** The prosecution evidence being not sufficient to punish the accused u/s 302 IPC, he is acquitted of committing any offence u/s 302 IPC and he is set at liberty forthwith.

The bail bond stands discharged.

Destroy the seized articles in due course of law.

Given under my hand and seal of this Court on this 21st day of September, 2012.

**(M.R. SHARMA)  
ADDITIONAL SESSIONS JUDGE  
SONITPUR : TEZPUR**

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

**( M.R. SHARMA)  
ADDITIONAL SESSIONS JUDGE  
SONITPUR : TEZPUR**

Transcribed & Typed on dictation by me

(I. Goswami)  
Stenographer

**SESSIONS CASE NO. 99 OF 2008****ANNEXURE****LIST OF PROSECUTION WITNESSES**

PW-1	:	Smt. Shanta Dey
PW-2	:	Sri Bangshi Das
PW-3	:	Dr. Siba Prasad Bordoloi, M.O.
PW-4	:	Sri Anup Das, Informant of this case
PW-5	:	Sri Ajit Das
PW-6	:	Sri Naba Das
PW-7	:	Sri Kalicharan Ungate
PW-8	:	Sri Rongtu Ungate,
PW-9	:	Sri Dusmanta Sarma
PW-10	:	Md. Hasen Ali
PW-11	:	Sri Debo Mili
PW-12	:	Sri Kulendra Bharali, S.I.
PW-13	:	Md. Azizur Rahman, I.O.of this case.

**LIST OF DEFENCE WITNESSES**

N I L

**LIST OF DOCUMENTS EXHIBITED BY PROSECUTION**

Exhibit -1	:	Post Mortem Report
Exhibit -2	:	Ejahaar
Exhibit -3	:	Inquest Report
Exhibit -4	:	Seizure list
Exhibit -5	:	Charge sheet
Exhibit - 6	:	Printed FIR
Exhibit - 7	:	Dead body challan
Exhibit - 8	:	G.D. Entry.

**DEFENCE EXHIBIT**

N I L

(M.R. SHARMA)  
**ADDITIONAL SESSIONS JUDGE**  
**SONITPUR :: TEZPUR**