

**(2013) 08 GAU CK 0076**  
**In the Gauhati High Court**  
**Case No : Criminal Appeal (J) No. 130 of 2012**

Sri Sanjib Tanti

APPELLANT

Vs

The State of Assam

RESPONDENT

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**Date of Decision :** 29-08-2013

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Evidence Act, 1872 — Section 6, 8  
Penal Code, 1860 (IPC) — Section 300, 302

**Citation :** (2013) 4 GLT 998

**Hon'ble Judges :** Tinlianhang Vaiphei, J; M.R. Pathak, J

**Bench :** Division Bench

**Advocate :** M. Buzarbaruah, Amicus Curiae, for the Appellant; Z. Kamar, Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Tinlianhang Vaiphei, J.—The legality of the judgment and order dated 19.9.2012 passed by the learned Sessions Judge, Golaghat in Sessions Case No. 13 of 2009 convicting the appellant u/s 302 IPC and sentencing him to life imprisonment with a fine of Rs. 5,000/- and, in default thereof, to undergo rigorous imprisonment for another one year. Both Ms. M. Buzarbaruah, learned Amicus Curiae appearing for the appellant, and Mr. Z. Kamar, learned P.P. appearing for the State of Assam, are heard at length.

2. The case of the prosecution is that on receipt of the ejahar, from Sri Sibdhan Tanti, Tipujan Tea Estate, Bokakhat alleging that the appellant killed Bishikeswar Tanti by inflicting dao blow upon him, the Officer-in-Charge of Bokakhat Police Station registered a regular case being Bokakhat P.S. Case No. 99 of 2008 u/s 302 IPC. After investigation of the case, the I.O., charge-sheeted the appellant u/s 302 IPC to face the trial. The learned Sessions Judge, Golaghat whereafter framed the charge u/s 302 IPC to which the appellant pleaded not guilty and claimed to be tried. In the course of trial, the prosecution examined as many as

9 (nine) witnesses and exhibited the post-mortem report, the inquest report, dead body challan, sketch map of the place of occurrence to bring home the charge against the appellant. At the conclusion of the trial, the appellant was examined u/s 313 Cr.P.C., whose case is that of total denial. The learned Sessions Judge thereafter passed the impugned judgment of conviction and sentence. The findings of the learned Sessions Judge upon which he convicted the appellant are found at para 18, 19, 20 and 21 of the judgment, which are reproduced below-

18. From the aforesaid evidence on record, we find that PW-1, Smti. Longamoni Tanti, PW-2, Sri Sitaram Mura and PW-3 Sri Dukheswar Tanti are the eye witnesses to the occurrence and they saw the occurrence. At the time of incident, PW-2 was gossiping with the deceased, PW-3 was tying cattle in the cowshed belonging to the deceased and PW-1 was standing near her cowshed. They saw when accused Sanjib Tanti came and talked with the deceased in respect of the BPL card and when the deceased told him that he has received the BPL cards in the name of 3 persons of Karbi-Anglong, then the accused dealt fatal dao blow on the head of the deceased. The Doctor (PW-4) corroborated the evidence of PW-1, PW-2 and PW-3 by her post mortem report, Ext-1. PW-5 Sibadhan Tanti, PW-6 Mondhar Tanti, PW-7 Kalyani Hazarika and PW-8 Asha Tanti did not see the incident. But, immediately after the occurrence, they arrived at the spot. As per evidence of PW-5, he found the injured Bishikeswar Tanti was writhing on his court-yard. Then he took him from there and laid upon the bed. PW-7 found the injured on the bed when she arrived at the spot. PW-8, the daughter of the injured found the injured lying near the cowshed.

19. The accused inflicted cut injury when the injured was sitting on the back side of the house in front of the door and gossiping with PW-2, Sitaram Mura. Just near the said place, there is their cowshed. From the evidence of PW-1, it is found that at the time of incident, she was near the cowshed and at that time, PW-3 Dukheswar Tanti was in the cowshed and was tying cattle belonging to the deceased. Therefore, the court-yard and cowshed are adjacent to each other.

20. From the aforesaid evidence, I find that the accused Sanjib Tanti came with a dao in his hand and talked with Bishikeswar Tanti regarding the BPL card. When the deceased could not provide the BPL card to the accused Sanjib Tanti, then the accused gave fatal dao blow on his head. All the witnesses saw the cut injury on the head of the deceased. PW-4, Dr. Rekha Baruah gave opinion that the head injury is sufficient to cause the death of a person in ordinary course of nature. The Doctor (PW-4) found sharp incised wound in the left side of the parietal bone of size 6"X 1 1/2 X11 1/2. On dissection, sharp clean cut incised wound in the left side of the parietal bone was found by the Doctor. The evidence of the eye witnesses has been well corroborated by the medical evidence. There being no argument in respect of the injury of the deceased. The injury sustained by the deceased can be safely accepted. Such a grievous injury by a single blow can only be caused by a sharp weapon like dao. The weapon of offence has not been

seized by the I.O. Neither the prosecution, nor the defense raised any point for non-seizing of the weapon of offence. The I.O. (PW-9) has stated that the accused Sanjib Tanti surrendered before the Court of learned Sub-Divisional Judicial Magistrate, Golaghat.

21. When we examined the original record of G.R. Case No. 769/08, we find that the accused surrendered before the Court of learned Sub-Divisional Judicial Magistrate, Golaghat on 28.7.2008 and he was remanded to judicial custody till 11.8.2008. The Investigating Officer on 2.8.2008 took the accused person in his custody. From the forwarding report (Ext-7) of the I.O. (PW-9), it is found that he after taking the accused person in police custody for two days, i.e. with effect from 2.8.2008, produced the accused before the Court on 4.8.2008. It is not known whether the I.O. seized the weapon of offence or not. But, non-seizing and non-production of the weapon of offence before the Court by the prosecution, does not affect the veracity of the case as the accused surrendered before the learned Court after the occurrence, I find that this is the another circumstance u/s 8 of the Indian Evidence Act as after commission of the crime, the accused surrendered before the Court. From the evidence of PW-8, it is found that when she found the accused person in the courtyard of her deceased father, the accused person had a dao with blood stained in his hand. Except the some suggestions here and there, which were denied, the defense did not cross examine her on this point. From the evidence of PW-8, it is also found that the accused person inflicted cut injury on the deceased with dao. PW-1, PW-2 and PW-3 are the eye witnesses to the occurrence. The evidence of the prosecution witnesses are direct, cogent, reliable and trustworthy. Non-production of weapon of offence before the Court by the prosecution, does not discredit the prosecution case. The irresistible conclusion is that it was the accused Sanjib Tanti, who committed the murder of deceased Bishikeswar Tanti. The accused attacked the deceased with dao and gave fatal blow without any provocation. The very mode of committing the offence shows that the accused intended to cause death of Bishikeswar Tanti and accordingly, he inflicted fatal dao blow. When the death was intentional act of the accused, Section 300 of IPC is well attracted and accused is accordingly punishable u/s 302 IPC. Hence I find that the prosecution is able to prove the case u/s 302 IPC against the accused Sanjib Tanti. I find that the accused Sanjib Tanti is guilty u/s 302 IPC and convicted him accordingly.

3. Thus, in convicting the appellant, the learned Sessions Judge had relied on the evidence of PW-1, PW-2 and PW-3, who are ocular witnesses to the incident. The learned Sessions Judge also relied on the evidence of PW-8, whose evidence was reliable u/s 6 of the Evidence Act. We have carefully gone through the evidence of PW-1, PW-2 and PW-3, who have vividly described the manner in which the appellant hit the deceased on his head with dao. The cross-examination of these witnesses does not bring out any tangible material to impeach their credibility. On the contrary, the evidence of PW-3 in his cross examination instead of helping the case of the defense rather established the motive of the appellant in causing the death of the deceased. According to PW-3, in his cross examination, there

was a dispute between the appellant and his brother-in-law i.e. the deceased and on the day of the occurrence also a quarrel had taken place. Furthermore, PW-8, who is the daughter of the deceased deposed that on the day of the incident at around 5 p.m., on hearing the hue and cry raised by her mother, she rushed there and met the appellant in the courtyard of her father and caught hold of him, who threatened him to leave him otherwise he would also hacked her and that out of fear, she had to leave the place. According to PW-8 at that time, the appellant had a blood stained dao in his hand while his father was lying dead with cut injuries, near the cow shed. Though this witness did not actually see the appellant assaulting her father, she was the first to arrive at the scene of occurrence and noticed the presence of the appellant with dao just after the occurrence. In our opinion, PW-8 has corroborated the evidence of PW-1, PW-2 and PW-3. Moreover, the evidence of PW-7 which is relevant u/s 6 of the Evidence Act has also implicated the appellant by deposing that when she was at her house; the wife of the deceased came and shouted that the appellant has hacked her husband and when she found there, she found the deceased lying there and struggling for life with cut injuries on his head and he died then and there in her presence. In her cross examination, PW 8 reiterated that though she did not see the appellant hacking her father, she found him in the courtyard as he came out. In our opinion, we do not find any reason to disbelieve her testimony.

4. From the evidence of the Medical Officer conducting the post-mortem examination of the deceased i.e. PW-4, it is seen that the cause of death of the deceased is due to head injury leading to shock and brain haemorrhage sustained by the deceased and the head injury was sufficient in the ordinary course of nature to cause the death of the person. In cross examination, he testified that the type of the injury sustained by the deceased might be caused by sharp blunt object. It may be noted that the nature of the injury sustained by the deceased or of cause of death of the deceased are not disputed by the defense. The medical evidence of PW 4 fully corroborated the statements of PW 1, 2 and 3 that dao blow was given to the deceased. Thus, considering the weapon used by the appellant, which has been proved to be dao and the place where the deceased was struck by him, which was in the head, we have no doubt that the intention of the appellant was to cause the death of the deceased. Under the aforesaid circumstances, we fully agree with the findings of the learned Sessions Judge for convicting the appellant u/s 302 IPC and sentencing him to life imprisonment. Resultantly, this appeal has no merit which is, accordingly, dismissed. The appellant is directed to serve out the remaining period of his sentence. The State Legal Services Authority will pay a sum of Rs. 5,000/- to the learned Amicus Curie for assisting this Court. Transmit the L.C. record forthwith.