

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE

:::UDALGURI

**Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.**

Sessions Case No. 117/2017

Under Section 302 IPC

GR Case No. 1158/15

State of Assam

-Vs-

**Mantu Gourh @ Bishnu Majuwar @ Sahra @ Mentu @
Mutu.....Accused person.**

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. Jayanta Kr. Brahma, Learned Advocate.

Date of Evidence : 08-01-18: 22-05-18: 30-08-18: 05-10-18:
05-12-18: 21-01-19: 16-02-19: 16-03-19:
17-07-19.

Date of Argument : 19-08-2019.

Date of Judgment : 31-08-2019.

J U D G M E N T

1. The prosecution case in brief is that on 04-11-15, at about 05 pm, deceased Sanjoy Giri went to the bank of river Suklai situated towards eastern side to his house in search of a missing cow calf. When he did not return back home for a long time, search was made for him in all possible places, but no trace of him was found. Next day morning, at about 09.30

am, the dead body of Sanjoy Giri was found in the tea garden of one Loknath Sarma.

2. On the basis of the FIR, Dimakuchi P.S. Case No. 59/15 U/S 302 IPC was registered and after completion of investigation police had submitted charge sheet U/S 302 IPC, against the accused Mantu Gourh @ Bishnu Majuwar @ Sahra @ Mentu @ Mutu.
3. Learned Chief Judicial Magistrate, Udalguri, after having complied with the provision U/S 207 CrPC found that the offences U/S 302 I.P.C. is exclusively triable by the Court of Sessions and accordingly, committed the case to the Court of Sessions on 21-11-2017.
4. In consideration of the submission of the learned counsel for both the parties and on evaluation of materials on record having found sufficient grounds for presuming that the accused person had committed offence U/S 302 I.P.C., learned Sessions Judge framed charge there under and the ingredients of charge U/S 302 I.P.C., were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge vide Order dated 16-03-19, transferred the case to this court for disposal.
5. The prosecution in order to prove its case examined the following 12 (twelve) witnesses.
 - PW1- Birbal Giri.
 - PW2- Ajoy Giri.
 - PW3- Gita Rajbhar.
 - PW4- Namita Giri.
 - PW5- Dr. Bhadra Kanta Sarma.
 - PW6- Manohar Sitoula.
 - PW7- Indra Rajbangshi.
 - PW8- Madan Mitra.

PW9- Kishor Rajbhar.

PW10- ASI Ajay Montry.

PW11- ASI Anil Sonowal.

PW12- Inspector Tridip Thakuria.

6. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence case was of total denial and declined to adduce defence evidence.
7. In the light of the above facts and circumstances, the point for determination in the instant case is set up as follows:-
 - (I) Whether the accused committed murder intentionally causing the death of Sanjoy Giri?

DISCUSSION, DECISION AND REASON FOR DECISION:

8. I have heard arguments placed by learned counsel for both sides and carefully appraised the evidence on record in its proper perspective.
9. Learned counsel for the prosecution Mr. R. Sarma, Addl. P.P. has argued that prosecution has proved the case beyond all reasonable doubt. The accused was the 'adhiar' of the land where the dead body of the deceased was found. The accused has failed to give any reasonable explanation as to how the dead body of the deceased came to his land. The behavior of the accused changed after the incident, the accused has stopped laughing and working after the incident. Moreover, there is extra judicial confession made by the accused in front of PW6, PW7 and PW8 that he committed murder of the deceased.
10. Per contra learned defence counsel Mr. J.K. Brahma has argued that there is no eye witness of the case. There is no evidence that the deceased was last seen with the accused and that some incriminating article was recovered relating to the incident on the basis of the statement made by the accused. The only circumstance on which prosecution case is based is

the extra judicial confession made by the accused before the police. Under Section 25 of Evidence Act put an embargo to prove a confession made to police officer as against the person accused of any offence. Therefore, the evidence that the accused had confessed his guilt before the police is barred under the provision of Section 25 of Evidence Act. Learned defence counsel has further argued that the evidence of the PW2 that after the incident the accused stopped laughing and working is hearsay and as such not admissible in evidence. He has further argued that the PW2 had admitted that he did not state before the police that after the incident Mantu Gourh stopped laughing and changed his attitude. PW2 also admitted that he did not state before the police that the accused cultivated on the land of Madan Gour. Therefore, it appears that in his evidence PW2 had made material improvement in his version and, therefore, the evidence of PW2 is not worthy of credence.

11. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel I would like to discuss the evidence adduced by the prosecution.
12. PW1 is Birbal Giri, informant of this case and father of the deceased Sanjoy Giri. In his evidence PW1 had deposed the occurrence took place on 04.11.2015 at about 05:00 PM. On the date of incident his son went near Suklai river for bringing calf but he did not return home. On search PW1 found the dead body of his son near the tea garden of Lok Nath Sarma. The police sent the dead body for post-mortem examination. Madan Gour, the owner of the paddy cultivation told him that the accused Mantu Gour was the adhiar of his land. PW1 had heard that after 11 days of the death of his son the accused was arrested by the police. PW1 had deposed that his son was physically handicapped. Later on, PW1 lodged the FIR. Exhibit 1 is the FIR and Exhibit 1 (1) is the signature of PW1. In his cross-examination, PW1 had stated that in the FIR he did not mention the name

of the accused. He did not know how and who killed his son. PW1 had denied the suggestion that his son died due to falling.

13. PW2 is Ajay Giri, elder brother of the deceased. In his evidence PW2 had deposed that on the date of incident his brother went near Suklai river for bringing calf but thereafter he did not return to home. Though they made search but could not trace out his brother. Next day they found that the dead body of his brother was lying near the tea garden of Lok Nath Sarma. Local people had informed the police and police came to the place where the dead body of his brother was lying. Police sent the dead body for post-mortem examination. PW2 had noticed injuries on the face of his brother. The owner of the paddy cultivation Madan Gour told them that the accused Mantu Gour cultivated the paddy of bean. On the day of the incident the accused Mantu Gour came to the paddy field, thereafter the owner did not see him. PW2 had heard from the villagers that accused Mantu Gour stopped his laughing and working after the incident. He also heard from the villagers that accused Mantu Gour came to the paddy field at 04:00 AM and he goes from the paddy field at midnight. In his cross-examination, PW2 had stated that he did not know how his brother died. He did not know the accused. PW2 had admitted the fact that he did not state before the police that the accused Mantu Gour cultivated in the land of Madan Gour and he stopped his laughing and changed his attitude.

14. PW3 is Gita Rajbhar. In her evidence PW3 had deposed that on the day of the incident she heard that the son of informant had died. She saw the dead body. Cross-examination of PW3 had been declined by the defence.

15. PW4 is Namita Giri, grandmother of the deceased. In her evidence PW4 had deposed that before 3 years ago, one day, her grandson Sanjoy Giri went missing from his house. She was informed by Tapan Pandit that dead body of Sanjoy Giri was found and asked her to go to the house of Sanjoy Giri. Accordingly she went to the house of Sanjoy Giri and seeing the dead

body she became unconscious. Cross-examination of PW4 had been declined by the defence.

16. PW5 is Dr. Bhadra Kanta Sarma. In his evidence PW5 had deposed that on 6.11.15, while he was working as M & HO, Udalguri Civil Hospital, he had performed post-mortem upon the dead body of Sonjoy Giri, in connection with Khagrabari O.P. GDE No.64 dated 4.11.15. and on examination, he found the following:-

EXTRANAL APPEARANCE:-

Built- average, swarthy complexion, hair black, dress- sky blue T-shirt, purple white check half pant, tongue- bitten, blood on left nostril.

Abrasion on both sides of neck (Nail marks multiple). Laceration on left nostril.

CRANIUM AND SPINAL CANAL:-

Scalp, Skull- normal, Vertebrae- fracture and dislocation, Membrane- intact, Brain- intact, spinal cord- congested with lacerated at C1 level, Liver, Kidneys, Bladder, Organs of generation- all are intact.

THORAX:-

Walls ribs and cartilages- intact.

Pleurae- intact, Larynx- fracture, trachea- intact, lungs- intact, Vessels- intact. Heart- intact.

ABDOMEN:-

Walls, Peritoneum- intact, Mouth, pharynx, oesophagus, Small intestine and its contents, Large intestine and its contents- all are intact.

MUSCLES, BONES AND JOINTS:

Fracture- fracture dislocation of C1 and C2 vertebrae. Dislocation- fracture dislocation of C1 and C2 vertebrae.

More details description:-

1. Laceration of left nostril..
2. Abrasion on both sides of neck (Nail marks multiple).
3. Fracture and dislocation of C1 and C2 vertebrae.

4. Congested S. cord and fracture at C1 level.

5. Fracture of larynx.

PW5 had deposed that in his opinion, death was due to asphyxia as a result of manual strangulation and homicidal in nature. All the injuries are ante-mortem in nature. Time since death is approximate 30 hours. Ext.2 is the post-mortem report and Ext.2(1) is the signature of PW5. Cross-examination of PW5 had been declined by the defence.

17. PW6 is Manohar Sitoula. In his evidence PW6 had deposed that the occurrence took place on 04-11-15. On that day he was in his home. At around 5-6 pm, the informant Birbal Giri came to his house and told him that his son Sanjay Giri was found missing from house. Though search was made till late night, the son of the informant remained traceless and they could not find any clue as to his whereabouts. On the next day in the morning it was discussed among the villagers that a dead body was seen inside Loknath Sarma's tea estate. On getting information he went to see the dead body which was lying inside Loknath Sarma's Tea estate alongwith many persons including the informant. On that day the informant asked him to scribe the FIR to be lodged before the police. Accordingly he scribed the FIR as per the version of the informant and the informant having found the FIR as per his version put his signature. He also being the scriber put his signature in the FIR with a note that the same was scribed as per the version of the informant. After lodgment of the FIR by the informant one day he went to Dimakuchi P.S. alongwith Madan Mitra, VDP Secretary of No. 1 Borengajuli. At the police station he came to know that the accused of this case had been arrested by the police. When he met the officer in charge, he saw the accused was standing there and the O/C also asked to hear them what the accused would say. Then the accused said before them that on the date of occurrence he committed murder of the deceased Sanjay by throttling. Ext.-1 is the FIR and Ext.-1(2) is the signature of PW6. In his cross-

examination, PW6 had stated that he did not witness the incident of murder of deceased Sanjay Giri. When the accused confessed his guilt in the room of O/C there were no other persons except him and VDP Secretary Madan Mitra. He was not brought before the Magistrate to get recorded his statement under Section 164 Cr.P.C.

18. PW7 is Indra Rajbangshi, VDP Secretary. In his evidence PW7 had deposed that about 2½-3 years ago he went to Dimakuchi in connection with some matter along with his two friends. At that time Tridip Thakuria, the then OC of Dimakuchi PS, was interrogating the accused present in the dock. The accused disclosed in their presence in the room of the OC Dimakuchi PS that he killed the deceased by his hands. The OC also recorded statement of the accused by video. In his cross-examination, PW7 had stated that he did not know as to when and from which place the accused was arrested by the police. At the time of the recovery of the dead body of the deceased he was not present. The police did not bring him for recording his statement before the court.

19. PW8 is Madan Mitra, VDP Secretary. In his evidence PW8 had deposed that the incident took place on 4-11-15. As being the VDP Secretary he used to visit the Dimakuchi PS now and then. On that day he went to the Dimakuchi PS along with one Manohar Sitoula at about 1100-1200 hours. When they met the OC Tridip Thakuria, he told them that the person who was standing behind him committed the murder of deceased. PW8 was aware of the murder of the deceased. The OC asked them to hear what the accused would say in respect of the murder committed by him. Then the accused stated before them that he killed the deceased by fist blows. In his cross-examination, PW8 had stated that he cannot say when and how the accused was arrested by the police. They were not produced before the magistrate for their statement U/S 164 Cr.P.C.

20. PW9 is Kishor Rajbhar. In his evidence PW9 had deposed that the occurrence took place about 2 years ago. At the material time one day he came to know that Sanjay Giri son of Birbal Giri was found lying dead inside Barangajuli TE. He did not know as to how the deceased died and he also did not visit the place of occurrence. Cross-examination of PW9 had been declined by the defence.
21. PW10 is ASI Ajay Montry, Investigating Officer of this case. In his evidence PW10 had deposed that on 05-11-15, he was posted as In-charge of Khagrabari OP under Dimakuchi PS. On that day at about 10.20 AM the Officer-in-Charge Dimakuchi police station informed him over telephone that a dead body was at the Atherikhat Jungle Basti and asked him to take necessary action in this regard. On receipt of that information he recorded the GD entry No. 64 dated 05-11-15 and rushed to the place of occurrence. The officer-in-charge Dimakuchi police station and one Executive Magistrate also arrived at the place of occurrence. The inquest on the dead body was held on the place of occurrence by the executive Magistrate in our presence. PW10 prepared a sketch map of the place of occurrence, recorded the statement of available witnesses at the place of occurrence including the informant and sent the dead body for post mortem examination. On that very day at about 5 PM the father of the deceased Birbal Tirkey lodged an FIR before the officer-in-charge Dimakuchi PS. On receipt of the same the officer-in-charge registered a case being Dimakuchi Police Station case No. 59/15 U/S 302 IPC and endorsed PW10 for investigation of the case as he had already taken the preliminary investigation of the case on the basis of GD entry recorded by him. In course of investigation he examined further witnesses U/S 161 CrPC and the accused was arrested and forwarded him to court. In the midst of the investigation he went on leave and hence handed over the case diary to the officer-in-charge Dimakuchi PS for taking further necessary action in this behalf. Ext. 3 is the GD entry No. 64 dated 05-11-15. Ext. 3(1) is the signature of PW10. Ext. 4 is the sketch map wherein

Ext. 4(1) is the signature of PW10. In cross-examination, PW10 had stated that in course of his investigation he did not make seizure of any articles in connection with this case.

22. PW11 is Anil Sonowal, another Investigating Officer of this case. In his evidence PW11 had deposed that on 23.9.17, he was posted as I/C, Khagrabari Police out post under Dimakuchi P.S. On that day, Officer-In-Charge of Dimakuchi PS handed over him the case diary of Dimakuchi PS case No.59/15 U/S 302 IPC to complete the investigation of the case which was earlier investigated by his predecessor investigating officer. On perusal of the case diary he found that the investigation of the case was almost completed and only the charge-sheet had remained to be filed before the court. After perusal of the case diary having found a prima-facie case against the accused he laid the charge-sheet against the accused U/S 302 IPC. Ext.5 is the charge-sheet. Ext.5(1) is the signature of PW11. Cross-examination of PW11 had been declined by the defence.

23. PW12 is Inspector Tridip Thakuria. In his evidence PW12 had deposed that on 05-11-2015, he was working as O/c Dimakuchi PS. On that day at about 6 pm, Sri Birbal Giri lodged a written FIR at Dimakuchi PS. On receiving the FIR, he registered Dimakuchi PS case No. 59/2015 U/S 302 IPC. After registering the case, he entrusted ASI Ajoy Mantri, I/c Ghagrabari OP to conduct preliminary investigation of the case. In this case on 15-11-2015, on receiving information from secret source, PW12 arrested the accused Mantu Gourh S/o Sukra Gourh from a house situated in village Belfenga near Suwala Bagan. After arrest of the accused they sent message to Mazbat PS for ascertaining the identity of the accused. Then they received information from Mazbat Police station that the accused was known by several names. It had been informed that the name of the accused is Mantu Gourh @ Bishnu Majuar @ Sahara @ Nandu @ Mutu. The original house of the accused was in village Ramgarh, Majgaon under Mazbat PS. Hence, they sought information from Mazbat PS about the accused. After

arrest of the accused, PW12 forwarded him to the learned court. On prayer made by the IO, the accused was given in two days Police custody. When the Police custody was over, the accused was sent to judicial custody by the learned court. After arrest of the accused, basing on his statement, he recorded statement of witnesses Manohar Sitoula, Indra Rajbongshi and Madan Mitra U/S 161 Cr.P.C. On 21-11-15, he prayed before the learned court for recording confessional statement of the accused. On the same day, he handed over the case diary to Investigating officer ASI Ajoy Mantri. In cross-examination, PW12 had stated that no prayer for recording statement of witnesses Manohar Sitoula, Indra Rajbongshi and Madan Mitra U/S 164 Cr.P.C had been made before the court.

24. On careful scrutiny of evidence on record it appears that in the instant case, there is no doubt that death of the deceased is homicidal in nature. Evidence of Medical Officer (PW5) who conducted postmortem examination of the dead body of the deceased Sonjoy Giri clearly reveal that death of the deceased is due to asphyxia as a result of manual strangulation and homicidal in nature. Postmortem examination also revealed that there was abrasion on both sides of neck of the deceased and fracture and dislocation of cervical1 and cervical2 vertebrae. Evidence on record also revealed that there is no eye witness of the incident. The prosecution case entirely rests upon three circumstances; first, accused is the 'adhiar' of the land where the dead body was found, secondly, after the incident there were changes in the attitude of the accused, he stopped laughing and working after the incident and thirdly, confession made by the accused before the police.

25. In his evidence PW1, the informant of this case and the father of the deceased has deposed that he was told by Madan Gour, the owner of the paddy cultivation that accused was the adhiar of his land. PW2 Ajay Giri, the elder brother of the deceased had also corroborated the evidence of PW1 that Madan Gour told them that accused Mantu Gourh cultivated the

land on the date of occurrence. The accused came to his paddy field but thereafter the owner did not see him. What has been transpired from the evidence of PW1 and PW2 though they stated that the accused was the adhiar of the land but their evidence is not specific that the dead body was found on the land of which the accused was the adhiar. They had categorically stated that the dead body was found near the tea garden of one Loknath Sarma. The prosecution has also failed to examine Madan Gour to substantiate its claim that the dead body of deceased found on his land which was given to the accused on adhi basis. The other prosecution witnesses have deposed nothing about the place where the dead body of the deceased was found. Under such circumstances, the first circumstance that the body of the deceased was found in the land of the accused deserve not to be considered as an incriminating circumstance against the accused as there is no cogent and reliable evidence to that effect adduced by the prosecution. The second circumstance that there were changes in the attitude of the accused after the incident is solely based on the evidence of PW2, Ajay Giri. According to PW2 he had heard from the villagers that accused Mantu Gourh stopped laughing and working after the incident. Apparently such evidence of PW2 is hearsay and not admissible in evidence. He has even failed to state the name of the person from whom he had heard that accused stopped laughing and working after the incident. Moreover, PW2 had made a material improvement in his version as in cross-examination, he had admitted that he did not state before the police that accused stopped laughing and changed his attitude. Thus from the evidence on record it appears that prosecution has failed to establish that after the incident there was noticeable changes in the behavior and attitude of the accused.

26. With regard to the extra judicial confession made by the accused learned defence counsel has vehemently argued that under the provision of Section 25 of Evidence Act any confession made to a police officer shall be prove against the accused person.

27. Prosecution has examined PW6, PW7 and PW8 to prove the extra judicial confession made by the accused before the then Officer-in-Charge, Dimakuchi P.S. According to these three witnesses in their presence in the Dimakuchi P.S. during interrogation by Tridip Thakuria the then O/C of Dimakuchi P.S., the accused confessed that he committed murder of the deceased. Now the question is whether as argued by learned defence counsel the evidence of PW6, PW7 and PW8 is not admissible in evidence.
28. Section 25 of Indian Evidence Act lays down that no confession made to a police officer shall be proved as against the person accused to any offence.
29. In the decision reported in **AIR 1997 SC 2780, State of Gujarat vs. Anirudh Singh and Another**, the Hon'ble Supreme Court has stated that "the object of Section 25 is to ensure that the person accused of the offence would not be induced by threat, coercion or force to make a confessional statement and the officers also would make every effort to collect the evidence of the commission of the crime de hors the confession to be Extracted from the accused while they are in the custody of the police."
30. In the decision reported in **1994 SCC (2) 467, Bheru Singh vs State Of Rajasthan**, the Hon'ble Supreme Court discussing about the admissibility of confession as evidence against the maker held that "A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24 to 30 of the Evidence Act and of Section 164 of the Code of Criminal Procedure deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any

investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not. Inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence. Section 26 of the Evidence Act deals with partial ban to the admissibility of confessions made to a person other than a police officer but we are not concerned with it in this case. Section 27 of the Evidence Act is in the nature of a proviso or an exception, which partially lifts the ban imposed by Sections 25 and 26 of the Evidence Act and makes admissible so much of such information, whether it amounts to a confession or not, as relates to the fact thereby discovered, when made by a person accused of an offence while in police custody. Under Section 164 CrPC a statement or confession made in the course of an investigation, may be recorded by a Magistrate, subject to the safeguards imposed by the section itself and can be relied upon at the trial."

31. Thus the provision of law is well settled that statement of the accused before the police cannot be used against him unless and until such statement leads to discovery of a fact. In the instant case there is no evidence available on record that on the basis of the statement made by the accused before the police any incriminating articles were discovered by the police in connection with the commission of the offence. The prosecution has led evidence to establish the statement made by the accused before the police solely as confessional statement regarding his involvement in commission of murder of the deceased. Thus under the provision of Section 25 of Evidence Act as well as the decisions of Hon'ble

Apex Court the evidence of prosecution witnesses regarding confession and statement made before the police officer by the accused is not admissible in evidence.

32. In view of above discussion it appears that the prosecution has failed to prove the charge under Section 302 IPC against the accused person beyond all reasonable doubt.

33. Situated thus the point for determination is decided in the negative and against the prosecution.

ORDER

34. In the result, the accused Mantu Gourh @ Bishnu Majuwar @ Sahra @ Mentu @ Mutu is found not guilty under Section 302 IPC and acquitted of charge under Section 302 IPC and set with liberty forthwith.

35. Send back the original case record of GR Case No. 1158/15 to the learned Chief Judicial Magistrate, Udalguri, alongwith a copy of the Judgment, forthwith.

36. Judgment is signed, delivered and pronounced in the open court today the 31st day of August, 2019.

Dictated and Corrected

**(N.Talukdar)
Addl. Sessions Judge
Udalguri**

**(N.Talukdar)
Addl. Sessions Judge
Udalguri**

IN THE COURT OF ADDL. SESSIONS JUDGE:.....:UDALGURI.
SESSIONS CASE NO. 117/2017
APPENDIX

(A) Prosecution Exhibits:

Ext.1: FIR.

Ext.2: Postmortem Report.

Ext.3: GD entry no. 64 dated 05-11-15.

Ext.4: Sketch map.

Ext.5: Charge-sheet.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced
by witnesses : Nil.

(E) Court Exhibits : Nil.

(F) Prosecution witnesses:

PW1- Birbal Giri.

PW2- Ajoy Giri.

PW3- Gita Rajbhar.

PW4- Namita Giri.

PW5- Dr. Bhadra Kanta Sarma.

PW6- Manohar Sitoula.

PW7- Indra Rajbangshi.

PW8- Madan Mitra.

PW9- Kishor Rajbhar.

PW10- ASI Ajay Montry.

PW11- ASI Anil Sonowal.

PW12- Inspector Tridip Thakuria.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)
Addl. Sessions Judge.
Udalguri