

**IN THE COURT OF THE SESSIONS JUDGE::  
DIBRUGARH**

Present: Ms. A. Ajitsaria, AJS,  
Sessions Judge, Dibrugarh

Date of judgment:

**Sessions Case No. 36 of 2019**  
FIR No. 18 dtd. 06-03-2018  
Tengakhat Police Station Case No. 18/2018  
under Section 302 IPC  
G.R. Case No. 702/2018

Complainant:	Sri Narad Kawar and Sri Bitna Kawar.
Represented by	Smt. Runumi Devi, Public Prosecutor.
Accused	1. Sri Mithu Garh @ Kawar @ Bhera. S/o- Late Manglu Garh @ Kawar, R/o- Pithu Nagar, PS- Tengakhat, District- Dibrugarh.
Represented by	Mr. Wahidur Rahman, Legal Aid Counsel.

Date of offence	05-03-2018.
Date of FIR	06-03-2018.
Date of Charge sheet	30-03-2018.
Date of Framing of Charge	10-04-2019.
Date of commencement of evidence	20-05-2019.
Date on which judgment is reserved	29.1.2022 ( <i>Judgment could not be delivered on 11.02.2022 as UTP not physically produced on the court.</i> )
Date of Judgment	14.2.2022
Date of Sentence Order, if any	14.2.2022

Rank of the accused	Name of accused	Date of arrest	Date Release on bail	Offences charged with	Whether acquitted or convicted	Sentenced imposed	Period of Detention Undergone during trial for purpose of Sec. 428 Cr.P.C.
Accused No. 1	Sri Mithu Garh @ Kawar @ Bhera.	06-03-2018	NIL UTP	302 IPC	Convicted 304 Part II, I.P.C	5 years	3 Years 11 Months 8 Days

## J U D G M E N T

1. The prosecution case, in a nutshell, is that on 06-03-2018, Sri Narad Kawar and Sri Bitna Kawar lodged an FIR at Tengakhat Police Station stating inter alia, that on the previous day, i.e., on 05-03-2018, at about 5:00 o'clock, accused Sri Mithu Garh @ Kawar @ Bhera killed Rajesh Kawar in the house of Ramnath Panika. The FIR was registered as Tengakhat PS Case No. 18/2018 under Section 302 IPC and investigation commenced.

2. After due investigation, Charge Sheet was submitted against the accused person, namely, Sri Mithu Garh @ Kawar @ Bhera, under section 302 IPC.

3. After observing necessary formalities, the offence being Sessions triable, was committed to the

Court of Sessions for trial by the learned Chief Judicial Magistrate, Dibrugarh.

4. After hearing both sides and on perusal of the police report furnished under Section 173 CrPC, formal charge under Section 302 IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, this trial.

5. In support of the case, the prosecution examined nine witnesses. After closure of the prosecution evidence, the accused person was examined under Section 313 of the CrPC. Defence did not adduce evidence. The plea of defence is of total denial.

#### **POINT FOR DETERMINATION**

(i) Whether on 5.3.2018, the accused Mithu Garh, intentionally or knowingly committed murder of Rajesh Kavar?

6. I have carefully examined the evidence on record and heard arguments of both sides.

#### **DECISION THEREON AND THE REASONS FOR THE DECISION**

7. PW 1, Sri Bitna Kavar deposed that at the time of occurrence in the month of Fagun 2018, his son,

Rajesh Kavar was in the house of Ram Nath Panika and at that time, the accused was also present in the house of Ram Nath Panika and was armed with a dao. At about 6 pm, there was power cut and the accused hacked his son and cut him with the dao. Ram Nath Panika informed him that the accused had cut his son. On receiving the said information, he immediately went to the house of Ram Nath Panika and saw his son lying near the courtyard of Ram Nath Panika's house; he was still alive at that time and he had seen a cut on the neck of his son Rajesh Kavar and that neck of his son was tied with a piece of cloth. PW 1 stated that he called a 108 ambulance and took his son to Tengakhat dispensary and on the same night when his son Rajesh Kavar was being taken to Assam Medical College & Hospital, he died on the way. He informed the police and the accused was arrested by the police from the house of Ram Nath Panika on the same night. PW 1 further deposed that the body of his son was kept in the police station at night and on the next day the body was forwarded for postmortem and he had lodged an FIR in respect of the occurrence.

8. In cross-examination, PW-1 stated that he had not witnessed the incident and he had not mentioned before police that Ram Nath Panika had informed him about the incident and that the accused had cut his

son. He denied the suggestion that the accused had not killed his son.

9. PW-2, Sunil Mura deposed that at the time of incident, he was in his cousin Ram Nath Panika's house, where deceased Rajesh was present and that they were chatting. The accused was also present in the house of Ram Nath Panika and that he was holding a dao and was in an inebriated condition. The accused was in a drunken state and was dancing and brandishing the dao. The accused cut Rajesh with the dao. Rajesh screamed "Katile" and went outside and fell in the courtyard. People tried to stop the blood by tying the wound with a piece of cloth, but failed. The victim Rajesh's father was informed; he came, an ambulance was called and victim was taken to the hospital. The accused was inside the house of Ram Nath; police came and apprehended the accused. The injured Rajesh was taken to Assam Medical College & Hospital at Dibrugarh but he succumbed to his injuries.

10. In cross-examination, PW-2 denied the suggestion of not having stated before the IO that at the time of incident, he was present in Ram Nath Panika's house along with the accused and the victim Rajesh; that at that time, the accused was intoxicated and was holding a dao and was dancing; that the

incident occurred inside Ram Nath Panika's house. At the time of occurrence, light went out and it became dark. He denied the suggestion that he had not seen in the dark who had cut the victim Rajesh and that as the victim was his cousin, he had given false evidence against the accused.

11. PW-3, Sri Ram Nath Panika deposed that the accused was his distant relative and that on the evening of the incident, the accused was in his house and that the accused was carrying a dao. Before entering home he had met his wife and his wife had informed him that that the accused was inside their house in an intoxicated condition and armed with a dao. When he/PW3 entered his house, the accused threatened him not to enter the house lest the accused would kill him/PW3. In the meantime, some neighbours including Rajesh came to his/Ram Nath Panika's house. Rajesh tried to reason with the accused and dissuaded the accused from behaving in such a manner. In the meantime, the lights went out and the accused dealt a blow with a dao on the neck of Rajesh and the blow landed on Rajesh's neck. Rajesh went out and fell in the courtyard and at that time, Rajesh was alive. They called the VDP boys and they called 108 ambulance and also informed police; however Rajesh died on the way to hospital. Police

seized a dao from the accused in his/PW-3's presence. PW-3 identified in Court, the Seizure-List as Ext. 2 by which the dao was seized and his signature thereon as Ext. 2(1). PW-3 also identified the dao, in the Court, as Material Ext. 1 and stated that Material Ext 1 was the same dao which the accused was carrying.

12. In cross-examination, PW-3 stated that the incident had taken place inside a room in his house. He denied the suggestion that he had not stated before the police that when he reached home, his wife was standing outside and she told him that the accused was intoxicated and was inside his house and that he was carrying a dao and when he went inside his house, the accused threatened him not to enter, lest he would kill PW-3 and that Rajesh also came and he tried to reason with the accused and dissuaded him and then the accused dealt a blow; that the incident occurred in the veranda of his house. PW-3 stated that there were about 5/6 people at the time of incident and when the power went off, it had become dark at the time of the incident. He denied the suggestion that at the time of incident, he was outside the house and had not witnessed the incident. PW-3 further stated that he had affixed his signature on Ext. 2 as asked by police and he did not know why he had put his

signature. PW-3 stated that when police had seized the dao, there was blood on the sharp end of the dao.

13. PW-4 Sri Johan Mura, cousin of accused, deposed that on the day of occurrence, mother of Ram Nath went to his house and informed PW-4 that the accused, in an intoxicated condition was creating commotion in their house. After some time, he/Johan Mura, went to the house of Ram Nath and saw the accused carrying a dao. Few other people were also present there in the house of Ram Nath, at that time, suddenly, there was power cut and the accused dealt a dao blow on Rajesh and Rajesh went through the verandah and fell down near the gate of Ram Nath's house. PW 4 stated that he gave his gamusa to tie Rajesh's wound and people tried to stop the blood by tying gamusa around the neck of Rajesh. At that time, the accused was inside the house. Ambulance was called and Rajesh was taken, however, Rajesh succumbed to his injuries on that day itself.

14. In cross-examination, PW-4 denied the suggestion that he had not stated before police that on the evening of the incident, Ram Nath's mother came to his house and informed him that the accused was intoxicated and was creating a commotion in Ram Nath's house and that he went to Ram Nath's house.

PW-4 further stated that the incident occurred inside Ram Nath's house. At that time, there were 4/5 people inside Ram Nath's house. He denied the suggestion that he was not present at the time of the incident. He also denied the suggestion that he had not stated before police that after the incident, Rajesh went out from the verandah door and fell near the gate of the courtyard and then he (PW-4) gave his gamusa to tie the wound and people tried to stop the blood with the gamusa around his neck and that PW-4 was present near the accused person at the time of incident.

15. PW 5, Asha Panika has stated that at the time of occurrence, it was about 6 pm, she was in her house with her children; the accused came to their house armed with a dao, threatened to cut and behaved like a mad person. PW 5 stated that she came out and told her husband that the accused had chased her and was inside the house, her husband went inside the house and she along with her children went to another house. Later, she learnt that the accused had cut Rajesh with a *khamti* dao.

16. In cross-examination, PW-5 stated that she had not witnessed the incident. PW-5 denied the suggestion that she had not stated before police that the accused came to her house; that he was armed

with a dao; that he threatened to kill; that he was behaving like a mad person and so she went out of the house and then she met her husband at the gate and told him about the accused and then out of fear, she went out with her children and stayed in another house. PW 5 also denied the suggestion that she had deposed falsely to the effect that the accused had cut Rajesh.

17. PW-6, Sri Sanjib Konwar deposed that on the day of incident, he found Rajesh, his uncle's son, lying on the road in front of the house of Ram Nath and the accused was inside the house of Ram Nath Panika creating hulla. As Rajesh was severely injured, he called 108 vehicle, took him to Tengakhat hospital and from there to AMCH but Rajesh died on the way. Rajesh, sustained injuries on his neck. PW-6 stated that it was known to him that the accused was the one who cut his cousin Rajesh. PW-6 identified his signature Ext. 3(10) on Ext. 3, the Inquest-Report.

18. In cross-examination, PW-6 stated that he had not witnessed the incident. PW 6 stated that he had not stated before the police that on the evening when he was returning home, he saw his cousin Rajesh Kawa lying injured in front of Ram Nath Panika's house and then he called 108 ambulance and took him to the

hospital, however Rajesh died on the way. PW-6 stated that he did not know what was written on Ext. 2 and Ext. 2(2) signature was taken at the police station. PW-6 denied the suggestion that the accused had not killed Rajesh Kavar.

19. PW-7, Sri Uttam Gogoi deposed that on the day of occurrence, the villagers called him as he was a VDP member and when he reached the house of Ram Nath Panika, he saw the accused confined there. The accused was confined as the accused had attacked Rajesh Kawa. Rajesh was taken in 108 to the medical. He informed the police, police came to the place of occurrence and apprehended the accused. Police seized the dao which he identified as Material Ext 1, from the accused vide Seizure List (Ext 2) where he had put his signature being Ext 2 (3). PW-7 stated that Rajesh died on the way to hospital.

20. In cross-examination, PW-7 denied the suggestion that he had not stated before police that on the day of incident, at about 6:00 pm, the villagers called him over phone and when he went to Ram Nath Panika's house, he had seen that the accused had been confined in Ram Nath Panika's house, as he had attacked Rajesh Kavar with a dao and that then he called the police and the police came and seized the

dao from the accused person. PW-7 stated that he had not seen any bloodstain on the dao. PW-7 denied the suggestion that no incident had occurred as stated by him to the effect that the accused had attacked Rajesh Kowar and that he was not present during the seizure of the dao.

21. PW-8 Dr. Subha Jyoti Deka deposed that on 06-03-2018, he conducted post mortem on the body of Rajesh Kowar and found the following on the said dead body, that is:

- (i) One incised wound over the neck, left side of 9.6 cm x 3 cm upto 6<sup>th</sup> vertebrae depth,
- (ii) Muscle vessels all clean cut,
- (iii) 6<sup>th</sup> cervical vertebrae is cut, obliquely placed 10 cm below left ear and 5 cm above left clavicle and 0.6 cm from the mid line.
- (iv) Carotid sheath with the arteries, veins are clean cut,
- (v) Neck is attached with the skin over the right side.
- (vi) Trachea, larynx clean cut.
- (vii) Blood are adhered to the wound and does not go off after washing.
- (viii) Vertebrae 6<sup>th</sup> cervical is clean cut.

- (ix) Spinal cord clean cut at the level of C6 and C7.

PW-8 opined that death of Rajesh Kavar was due to haemorrhagic shock as a result of the injuries sustained. PW 8 stated that all injuries on the dead body of Rajesh Kavar were ante mortem; seen to be caused by sharp cutting moderately heavy weapon and that the same was homicidal in nature. PW 8 further stated that time since death of Rajesh Kavar was approximately 18 to 24 hours at the time of post mortem examination. On Material Ext 1, been shown to PW 8 in the Court, PW 8 stated that the weapon, being Material Ext 1 could cause the injuries as described in the post mortem report by him. PW 8 exhibited the post mortem report as the inquest report as Ext 3, post mortem report as Ext 4 and dead body challan as Ext 5 and his signatures thereon as Ext. 3(2) and 3(3), Ext 4(1) and Ext. 5(1) respectively.

22. PW 9, SI of Police, Bidyut Dutta deposed that on 6.3.2018 he was posted as OC, Tengakhat PS and on that day, he registered Tengakhat PS Case No. 18/18 u/s 302 IPC on the basis of FIR lodged by Bitna Kavar and Narad Kavar being Ext 6. PW-9 stated that after recording the statement of Bitna Konwar, he along with the Circle Officer and police party left for the courtyard of Ram Nath Panika at No. 1 Borbam

Gaon, the place of occurrence. At the place of occurrence, he found the accused kept confined inside the house of Ram Nath Panika. The Circle Officer conducted inquest on the dead body of Rajesh Kavar, which was lying in the courtyard. PW-9 stated that there was cut injury on the left side of the neck on the dead body of Rajesh Kavar. PW-9 stated that thereafter the door was opened and the accused apprehended. PW-9 further deposed that the dao (Mat. Ext 1) was lying inside the house which he seized vide Seizure List being Ext 2; he prepared the sketch map of the place of occurrence being Ext 7. During investigation, he learnt that the occurrence had taken place outside the house of Ram Nath Panika and thereafter when the public tried to apprehend the accused, he went inside the house and locked himself inside. The accused had switched off the lights inside the house and lights outside were lit. PW-9 stated that the dead body was sent for post mortem examination; the accused was taken to the police station and arrested after inquiry. On completion of investigation, he submitted Charge-Sheet being Ext 8, against the accused. PW-9 further stated that the accused used to be taunted by Rajesh Kavar and other people and named as mad or a thief. Earlier, the accused was tied by the people and the deceased Rajesh Kavar was

also present. On the date of occurrence too, the accused was tied and when the accused was freed, he chased people with dao and at that moment, the accused struck with a dao on Rajesh Kavar. During investigation, he forwarded the accused to the Court for recording his statement under Section 164 CrPC, but he declined to confess before the Court.

23. In cross-examination, PW-9 stated that it was he who had completed the investigation. PW-9 stated that witness Sunil Mura (PW-2) had not stated before him that he was present there along with the accused and the deceased Rajesh Kavar. PW 9 stated that the said witness had stated that he was present there and had seen the incident. PW 2 had not stated before PW-9 that at that time, the accused was under the influence of liquor and brandishing dao in his hand; that the incident had taken place inside the house of Ram Nath Panika. PW 9 further deposed that PW-3, Ram Nath Panika had not stated before PW-9 that when he reached home, his wife was standing outside and she informed PW 3 that the accused was intoxicated and inside the house carrying a dao and when he/PW 3 went inside, the accused threatened him not to enter into the house otherwise he would kill him and Rajesh came and reasoned with the accused and dissuaded him and then the accused dealt a blow

to Rajesh with a dao; that the incident had taken place in the verandah. PW-9 stated that PW 3 had only stated that the incident had taken place inside his campus. PW-9 stated that he had not found any blood stain on the dao at the time of seizure and that he had not sent the dao for forensic examination as the dao was handed to him by the public after bringing it out from inside the house; that he had not seen any public pick up the dao from inside the house. PW-9 stated that Johan Mura (PW 4) had not stated before PW-9 that Ram Nath Panika's mother came to his house and informed him that the accused was intoxicated and creating commotion in Ram Nath Panika's house and then he had gone there; that the incident had taken place inside the house and the victim came out from the verandah door and fell down in the courtyard and he (PW 4/Johan Mura) tied the neck of the victim to stop the blood; that at the time of incident, he was there along with the accused. PW-9 further deposed that PW 5/ Asha Panika had not stated before him that the accused came with a dao in her house and threatened to kill her and behaved in an insane manner; that she met her husband at the gate and told him about it; that out of fear of the accused, she had gone out of the house with her children to another person's house. PW-9 further stated that PW 7/ Uttam

Gogoi had not stated before him/PW-9 that on that day, at about 6:00 pm, the villagers called him over phone and he had gone to Ram Nath Panika's house and saw the accused confined in the house of Ram Nath Panika because the accused had attacked Rajesh with a dao and then he called the police and police came. PW-9 stated that in Ext. 2 (Seizure-List), he had not mentioned the time; the place had been mentioned as No. 1 Borbam Gaon; nor has it been mentioned from whom the dao was seized. PW 9 denied the suggestion that he had not made any seizure in presence of witnesses and that chargesheet had been laid against the accused without proper investigation.

24. The accused Mithu Garh is facing charge under section 302 IPC for intentionally or knowingly causing the death of Rajesh Kavar. The prosecution story is that during evening hours on 6.3.2018, the accused Mithu Garh cut the neck of Rajesh Kavar with a dao, in the compound of the house of Ram Nath Panika (PW 3).

25. PW 6 is a signatory to the Inquest Report prepared pursuant to inquest having been conducted on the dead body of Rajesh Kavar, after which the dead body was sent for post mortem examination. PW

8, Dr. Subha Jyoti Deka who conducted post mortem examination found amongst others, one incised wound over the left neck and further opined that death of Rajesh Kavar was homicidal in nature. There is no challenge to the version of PW 8. From the evidence of PW 8 it is clear that death of Rajesh Kavar was homicidal in nature. It is therefore to be ascertained how Rajesh Kavar sustained cut injury on the neck, leading to his death.

26. Learned Counsel for the defence submitted that defence having successfully confirmed from the investigating officer (PW 9) the contradictions in the evidence of Sunil Mura (PW-2), Ram Nath Panika (PW3), Johan Mura (PW 4), Asha Panika (PW 5), Uttam Gogoi (PW 7), nothing remains in the evidence of the prosecution witnesses and the accused ought to be acquitted. Learned Public Prosecutor on the other hand has submitted that there are no material contradictions in the evidence of the said witnesses and at best, it can be termed as omissions, in as much as, the witnesses gave the true picture of the occurrence in the Court and hence, the prosecution has been able to prove its case as required in law.

27. PW 2, Sri Sunil Mura and PW 4, Sri Johan Mura have been portrayed as eye witnesses by the

prosecution. Close scrutiny of the evidence of PW 2 shows that though in examination in chief, PW 2 elaborately dealt with the sequence of the incident, however the defence has been successful in eliciting through PW 9/the Investigating Officer that PW 2 had not narrated the details of the occurrence while his statement was being recorded by the I/O. While eliciting such contradictions, it is seen that PW 9 confirmed that PW 2, Sunil Mura though had not given the minute details of the incident, nevertheless, he/PW 2 had specifically stated before him that he/PW 2, had seen the incident. The defence has not been able to dislodge PW 2/ Sunil Mura with regard to the fact that PW 2 was an eye witness to the occurrence in which the accused cut the neck of Rajesh Kavar with a dao.

28. Coming to PW 4, Johan Mura it is seen that the defence has again been successful in contradicting the said witness on the point that he was present at the place of occurrence, along with the accused, which has also been confirmed by the Investigating Officer (PW 9). Hence, PW 4 cannot be considered to be an eye witness to the occurrence.

29. PW 1, PW 2, PW 3, PW 4 and PW 5 have stated that dao was the weapon of offence. PW 9, the I/O on the other hand has stated that the dao (Material Ext 1)

was given to him by the public and thus he had not sent the same for scientific examination, moreover he had not seen any blood as well, on the dao. Contrary to the same, PW 7, seizure witness stated in his cross examination that he had seen bloodstain on the dao at the time of seizure. That the I/O (PW 9) during investigation chose not to send the dao for forensic analysis, in itself is held to be not fatal, in as much as, PW 8, Dr. Subha Jyoti Deka on being shown the material exhibit 1, confirmed that nature of injuries detected on the body of the deceased Rajesh Kavar, could be inflicted by weapon such as Material Ext 1 (dao). Moreover, there is nothing on record to suggest that the defence has even put forth a suggestion that Material Exhibit 1 was not the weapon of offence. On the contrary, PW 7 has identified Material Exhibit 1 to be the dao seized by the police after the occurrence from the house of Ram Nath Panika.

30. Evidence of PW 1, Bitna Kavar, father of the deceased Rajesh and informant of the present case, PW 3, Ram Nath Panika owner of the place of occurrence, PW 6 Sanjib Konwar, PW 7 VDP Secretary Uttam Gogoi are admissible to the extent that they found Rajesh lying with cut injury on the neck with cloth tied around the neck; Rajesh being taken to hospital but having succumbed to his injuries on way

to AMCH, Dibrugarh. These facts have remained undisputed and are relevant.

31. From the evidence of PW 7, Uttam Gogoi, the VDP Secretary, it has emerged that the accused was kept confined by the villagers/public, inside the house of Ram Nath Panika. PW 9, the IO too has stated that the accused was inside the house of Ram Nath Panika and once the police went to the place of occurrence, they apprehended the accused and he was taken to the police station.

32. In order to appreciate the submissions advanced by the Learned Counsel for the defence, this Court has perused the previous statements of the witnesses as recorded by the I/O and available in the case diary, as a tool in aid of trial u/s 172 (2) CrPC. Evaluation of the statements of PW 3, PW 4, PW 5, PW 6, PW 7 u/s section 161 CrPC, before the IO shows that the said statements were precise and did not include the details of occurrence. However, before the Court, each of the witnesses have deposed at length, giving the defence opportunity to confront the said witnesses with their previous statements. On scrutiny of the same it is seen that except the material aspect of the witnesses being present at the place of

occurrence or not, rest are only omissions and will not come within the ambit of "contradictions".

33. Concept of "omission" and "contradiction" has received interpretation by the Hon'ble Supreme Court in a catena of judgments. In **Tahsildar Singh v. State of U.P** (AIR 1959 SC 1092), the Hon'ble Supreme Court while elaborately dealing with various provisions of the Evidence Act, laid down illustrative situations where an omission can be considered a contradiction.

34. In **State of U.P. Vs. M. K. Anthony** (AIR 1985 SC 48) it has been held that "*...Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole...*"

35. Again, in **State Rep. by Inspector of Police v. Saravanan and Anr** (AIR 2009 SC 152), it was observed by the Hon'ble Supreme Court that "*...The contradictions/omissions must be of such nature which materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements*

*which do not affect the core of the prosecution case should not be made a ground to reject the evidence of the witness in entirety..."*

36. Again, it is also well settled that it is the quality and not the quantity of witnesses which is relevant while appreciating evidence. Even, if for the sake of defence, the so called contradictions are excluded, the evidence of PW 2 (Sunil Mura), the eye witness, remains intact. As stated earlier, the defence not having being able to dislodge the said witness.

37. In the ultimate analysis, this Court has no hesitation to hold that it was because of the act of the accused that Rajesh Kawar sustained cut injury on the neck and died.

38. It is now to be ascertained whether the act of the accused in the instant case, is squarely covered under section 300 IPC or falls under any of the Exceptions to section 300 IPC. While considering the same, this Court takes note of the circumstance during investigation, which has come on record through PW 9, the Investigating Officer. Only because none of the other witnesses have narrated the said fact, this Court cannot remain oblivious to the same on the ground that the version is that of the I/O, who is a police officer and neither can it be held to be unworthy of

belief and totally ignored. PW 9 / the Investigating Officer, categorically deposed that *"the accused used to be taunted by Rajesh Kavar and other people and that the accused used to be named as mad or a thief. On earlier occasion, the accused was tied by people and at that time, Rajesh Kavar was also present. On the date of occurrence too, the accused was tied and when the accused was freed, he chased the people with dao and at that moment, the accused struck with a dao on Rajesh Kavar."* The defence has not tried to counter the said evidence of Investigating Officer. Considering, the aforesaid circumstance, this Court is of the considered view that the present case attracts section 304 part II IPC and not section 302 IPC.

39. To summarise, in the ultimate analysis, it is seen that:

(i) The accused actually did an act which caused the death of Rajesh Kavar, that is, the accused did chase with dao and struck with it on the neck of Rajesh Kavar. There is clear proof of casual connection between the said act of the accused and the death of Rajesh Kavar.

(ii) The accused struck Rajesh with a dao, which is a dangerous weapon and is likely to cause death if struck on vital part of body, such as

neck, thus bringing the act within the ambit of "causing death with the knowledge that the act is likely to cause death" as provided for u/s 299 IPC.

(iii) When people freed the accused from being tied, the accused without pre-meditation, chased with a dao and the dao struck the neck of Rajesh Kawar. It was this strike which was witnessed by PW 2, Sunil Mura.

(iv) The said act of the accused proved by the prosecution, does not come within the ambit of any of the four clauses of section 300 IPC. From the nature of the act, this Court has no hesitation to hold that the act of the accused person comes within the ambit of Exception 4 of section 300 I.P.C, making the accused person liable for punishment under section 304 Part II, I.P.C.

40. In the result, it is held that prosecution has been able to prove its case beyond reasonable doubt and consequently, exercising powers u/s 202 (2) CrPC, in as much as, both, the offence for which the accused has been charged that is, section 302 IPC and section 304 Part II IPC, being cognate offences, the accused person, Mithu Garh @ Kawar @ Bhera is convicted of the offence under section 304 Part II, I.P.C.

41. Convict, Mithu Garh is heard in person on the point of sentence. Mithu Garh submits that he is poor and was looking after his old mother and minor children of his elder brother, as his sister –in-law is not there. The convict further stated that he may be dealt with leniently. Learned Legal Aid Counsel for the convict Mithu Garh is present and submits that the accused may be sentenced to the period of detention already undergone, since the accused is in custody since March, 2019. Learned Public Prosecutor submits that Rajesh Kawar having lost his life, the accused ought to be punished with maximum punishment.

42. Considering all the aspects, the accused/convict, Mithu Garh is sentenced to undergo R.I. for 5 (Five) years and to pay a fine of Rs.3,000/- (Rupees three thousand), in default, S.I. for 1 (one) month, under section 304 Part II IPC.

43. Period of detention undergone so far by the accused person, shall be set off.

44. Let the seized article be destroyed in due course.

45. It is on record that the deceased Rajesh Kawar, aged 24 was the son of PW 1, Ram Nath Panika, son of Late Lakhya Panika, resident of No. 1 Borbam Gaon,

Tengakhat PS, Dibrugarh. Since PW 1, lost his son, it is deemed appropriate to direct the District Legal Services Authority, Dibrugarh to conduct an enquiry to assess the amount of compensation u/s 357 A CrPC, if any, to be granted to the family members of the deceased and proceed further in accordance with the Victim Compensation Scheme.

46. Let a free copy of this judgment be furnished to the convict immediately.

47. The convict is informed about his right to appeal before the Hon'ble Gauhati High Court against the present judgment including his right u/s 383 CrPC.

48. Let a copy of this judgment be forwarded to the District Magistrate, Dibrugarh u/s 365 of the CrPC.

Given under my hand and seal of this Court on this 14<sup>th</sup> day of February, 2022 at Dibrugarh.

A. Ajitsaria  
Sessions Judge  
Dibrugarh

Dictated and corrected by me

A. Ajitsaria  
Sessions Judge  
Dibrugarh

## **APPENDIX**

### LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

#### **A. Prosecution:**

<b>Rank</b>	<b>Name</b>	<b>Nature of evidence</b> (eye witness, police witness, expert witness, medical witness, panch witness, other witnesses)
PW1	Sri Bitna Kawar	Informant/Father of the deceased.
PW2	Smt. Sunil Mura	Relative of the deceased.
PW3	Sri Ram Nath Panika	Distant relative of the accused as well as eye-witness to the occurrence.
PW4	Sri Johan Mora	Relative of the accused and eye-witness to the occurrence.
PW5	Smt. Asha Panika	Witness to the occurrence.
PW6	Sri Sanjib Kowar	Relative of the deceased and witness to the occurrence.
PW7	Sri Uttam Gogoi	VDP member as well as witness to the occurrence.
PW8	Dr. Subha Jyoti Deka	Medical officer.
PW9	Sri Bidyut Dutta	Investigating Officer.

#### **B. Defence Witnesses, if any: Nil.**

#### **C. Court Witnesses, if any: Nil.**

### LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

#### **A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Exhibit 1/PW1	
2	Exhibit 2/PW3/ PW7/PW9	Seizure-List.
3	Exhibit 2(1)/PW3	Signature of Ram Nath Panika.
4	Ext. 2(2)/PW-6	Signature of Sri Sanjib Kowar.
5	Exhibit 2(3)/PW7	Signature of Sri Uttam Gogoi.
6	Exhibit 2(4)/PW9	Signature of Sri Bidyut Dutta.
7	Exhibit 3/PW6/ PW8	Inquest-Report.

8	Ext. 3(1)/PW6	Signature of Sri Sanjib Kowar.
9	Exhibit 3(2) and 3(3)	Signature of Dr. Subha Jyoti Deka.
10	Exhibit 4/PW8	Post-mortem Report.
11	Exhibit 4(1)/PW8	Signature of Dr. Subha Jyoti Deka.
12	Exhibit 5/PW8	Dead Body Challan.
13	Exhibit 5(1)/PW8	Signature of Dr. Subha Jyoti Deka.
14	Exhibit 6/PW9	FIR.
15	Exhibit 6(1)/PW9	Signature of Sri Bidyut Dutta.
16	Exhibit 7/PW9	Sketch-Map.
17	Exhibit 7/PW-9	Signature of Sri Bidyut Dutta.
18	Exhibit 8/PW9	Charge-Sheet.
19	Exhibit 8/PW-9	Signature of Sri Bidyut Dutta.

**B. Defence: Nil.**

**C. Court Exhibits: Nil.**

**D. Material Objects:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	MO1	One khamti dao with wooden handle.

Sessions Judge,  
Dibrugarh