

**IN THE COURT OF SESSIONS JUDGE:::::BAKSA:::::MUSHALPUR**

Present: N.U. Ahmed, AJS.

Sessions Judge,

Baksa, Mushalpur.

Date of judgment :18.11.2022

**SESSIONS CASE NO. 138/2019**

**u/s 302 IPC**

FIR No. 470/2019 of Tamulpur P.S.

Complainant : **State of Assam**

Represented by : Mr. R. Chetry,  
Learned Public Prosecutor, Baksa.

Accused : Sri Jatin Kalita

Represented by : Mr. M. Mazumdar  
Learned Legal Aid Counsel.

Date of offence	02.10.2019
Date of FIR	03.10.2019
Date of charge-sheet	30.10.2019
Date of framing charges	10.01.2020
Date of recording evidence	26.02.2021, 21.09.2021, 24.02.2022, 10.03.2022, 10.06.2022, 13.06.2022 and 27.09.2022
Date of recording S.D.	02.11.2022
Date of argument	05.11.2022
Date of judgment	18.11.2022

**ACCUSED DETAILS**

Rank of accused	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A-1	Sri Jatin Kalita	12.10.2019	-	u/s 302 of the IPC	Convicted	R. I. for three years, one month and 10 days.	3 years, one month and 6 days

**JUDGMENT**

1. The instant sessions case arose out of Tamulpur P.S Case No. 470/2019, u/s 302 of the IPC.
2. The prosecution case revealed from the FIR is that on 03.10.2019, Smt. Sarala Kalita lodged an FIR with the I/C Gandibari outpost stating inter alia that on 02.10.2019 at about 6 pm, while she and her husband Bhabesh Kalita were talking inside of their house, then accused Jatin Kalita on some fictitious allegations dragged her husband towards the courtyard and thereafter assaulted him with wooden stick and as a result her husband died on the spot. The accused person also threatened that he would kill all the family members and left the place of occurrence. On receipt of the FIR, I/C Gandhibari Outpost entered the same in the general diary vide GDE No. 35 dated 03.10.2019 and forwarded the same to the Officer-in-charge of Tamulpur P.S for registering a case.
3. The Officer-in-charge Tamulpur P.S on receipt of the FIR, registered the case vide Tamulpur P.S Case No. 470/19 u/s 302 of the IPC.

4. During the course of investigation, ASI Sarat Boro, the Investigating Police Officer visited the place of occurrence, drew sketch map of the place of occurrence, conducted post mortem examination on the dead body through doctor and held inquest on the dead body through Circle Officer. After collecting the post mortem report, he handed over the case diary to the Officer-in-charge of Tamulpur P.S. Thereafter, Inspector Ashim Bora, the then O/C Tamulpur P.S completed the investigation and laid charge-sheet against accused Jatin Kalita u/s 302 of the IPC.

5. Complying the mandate of Section 207 Cr. P. C, Ld. Addl. CJM, Baksa committed the case to this court for trial and disposal. Accordingly, upon receipt of PRC Case No. 852/2019, the instant Sessions case was registered. Initially the case was transferred from this court to the court of learned Additional Sessions Judge, Baksa and learned Additional Sessions Judge, Baksa after hearing both sides on the point of charge and also scrutinizing the materials on record, framed charge u/s 302 of the IPC, which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. During the part heard stage, as per Gauhati High Court Notification vide Memo No. HC. VII-33/2018/26/A dated 02.01.2020, the case record was withdrawn from the court of Addl. District & Sessions Judge, Baksa to this court.

6. To substantiate the charge against the accused person, prosecution adduced evidence of seven witnesses including the Medical Officer and the Investigating Police Officer. Besides, prosecution also relied upon the ejehar (FIR), post mortem report, inquest report, sketch map, charge-sheet, etc.

7. Upon closure of the prosecution evidence, the accused was examined u/s 313 of the Cr.PC. The defence plea is of total denial of the prosecution allegation and the accused declined to adduce defence evidence.

8. I have heard argument advanced by Mr. R. Chetry learned PP for the State of Assam as well as Mr. M. Mazumdar learned legal aid counsel for the defence. I have gone through the case record as well as evidence on record.

### **POINT FOR DETERMINATION**

*Whether the accused on or about 2<sup>nd</sup> day of October, 2019 at about 6 pm at village- Majgari under Tamulpur P.S, committed murder by intentionally or knowingly causing the death of his father Bhabesh Kalita and thereby committed an offence punishable u/s 302 IPC ?*

### **DISCUSSION, DECISION AND REASONS THEREOF:**

9. The prosecution to bring home the charges against the accused persons, examined altogether six witnesses including the Investigating Police Officer. Now, let me appreciate the evidence on record to come to just decision of the case.

10. PW1 Smt. Sarala Kalita is the informant of this case. PW1 in her evidence revealed that at the relevant time, it was almost evening and she was cooking food and at that time, she came out to throw dirty kitchen water outside the house. At that time, her husband was in full drunken state and then her elder son, accused Jatin Kalita had pushed him to the ground. Her husband instantly died. She raised hue and cry

and on hearing hue and cry, neighbouring people immediately arrived at their courtyard and the villagers called the police person. Police came and took away the dead body. She lodged the FIR in the police station by putting her thumb impression.

11. PW2 Dr. Dipen Kumar Das, In-charge Tuberculosis Centre, Nalbari on 02.10.2019, while posted as Senior M&HO at Dr. R.Boro Civil Hospital, Mushalpur conducted post mortem examination on the dead body of Bhabesh Kalita, male, 70 years, s/o- Late Hatark Kalita, Hindu, Village- Majgari, P.S- Tamulpur, Baksa vide reference No. Tamulpur P.S GDE No. 25 dated 02.10.2019.

On examination he found the followings-

**External appearance:** A male dead body of average built, fair complexion, wearing half shirt and gamosa. Garments are blood stained. Eyes and mouth are closed. Rigor mortis present.

**Injuries:** Lacerated cut injuries on occipital region about (4 x 2 x 1) inches breadth. Brain matters and blood clot protruded through cut injuries. Bruised on back of body. No mark of ligature or non detected.

**Cranium and Spinal Canal:**

Scalp, skull and vertebrae: As described, Membrane: Extra dural haemorrhage, Brain and Spinal cord: Brain: pale, Spinal cord not examined.

12. PW2 after post mortem examination on the deceased opined that the death was due to haemorrhage and shock as a result of ante mortem head injuries and time since death is 18 – 36 hours approximately. He has confirmed that Exbt.1 is the post mortem report and Exbt.1(1) is his signature. Exbt.1(2) is the signature of

Superintendent Subash Sarma, Exbt.1(3) is the signature of Dr. Gunindra Deb Sarma and Joint Director of Health Services, Mushalpur which he know in his official capacity. He has also proved that Exbt.2 is the inquest report and Exbt. 2(1) and 2(2) are his signatures. Exbt.3 is the dead body challan and Exbt.3(1) is his signature.

13. PW3 Pankaj Kalita is the brother of the accused person and one of the son of the deceased Bhabesh Kalita. PW3 in his evidence revealed that about two and half years ago, one evening at about 7 pm, he heard that his father got severe injury on his head and at that time, he was at his shop. After getting the information, he came to his house and he saw the dead body of his father was lying in their courtyard. He heard that his elder brother Jatin Kalita assaulted his father. After examination to this extend, the prosecution declared him as hostile witness.

14. PW4 Tilak Ujir in his deposition has deposed that he know complainant Sarala Kalita. He also knew deceased Bhabesh Kalita who was the husband of Sarala Kalita and accused Jatin Kalita who is the elder son of Sarala Kalita and deceased Bhabesh Kalita. He further deposed that the occurrence took place about two years back at the time of Durga Puja. At the time of occurrence at around 6 pm, he heard that at Latibari Market deceased Bhabesh Kalita was killed by his son Jatin Kalita at his house. Then he and the members of Puja Committee went to the house of deceased. At that time they met local public and police personnel. Local people also stated to them that Jatin Kalita had killed his father Bhabesh Kalita.

15. PW5 Rekha Kalita in her deposition has deposed that complainant Sarala Kalita is her paternal grandmother. Accused is her father and

deceased Bhabesh Kalita was his paternal grandfather. She further deposed that the occurrence took place about three years back on a certain evening at about 6 pm. She also stated that on the relevant evening, she was not present at her house as she had gone out for school examination. She stated that she do not know anything about the occurrence. The prosecution side declared PW5 as hostile witness.

16. PW6 Nagen Das in his deposition has deposed that he knows the informant and the accused person. He also knew deceased Bhabesh Kalita. He further deposed that on the relevant evening, while he was taking rest after returning from his agricultural field, he heard hulla of the villagers that Bhabesh Kalita had been killed. Then he immediately went to the house of Bhabesh Kalita. In the meantime, police had already arrive and he saw Bhabesh Kalita was lying dead on his courtyard and nearby people were also gathered around him. He also stated that when he arrived, he did not find accused Jatin Kalita at the house. He further deposed that peoples gathered at the place of occurrence stated to him that Jatin Kalita had killed Bhabesh Kalita.

17. PW7 ASI Sarat Boro is the Investigating Police Officer of this case. He deposed that on 02.10.2019, while he was working as I/C at Gandhibari OP under Tamulpur P.S, at about 7.30 pm, he received an information from one Bubul Deka over telephone that one man had been killed at village- Majgari Gaon. Thereafter, he entered the same in the general diary vide Gandhibari OP GDE No. 25 dated 02.10.2019. He informed the matter to his senior officials and thereafter, he along with his staff proceeded to the place of occurrence. He visited the place of occurrence, drew sketch map of the place of occurrence, recorded the statement of the witnesses. At the place of occurrence, he came to know

that accused Jatin Kalita had killed his father deceased Bhabesh Kalita. He searched for accused Jatin Kalita but he was found absconding. The dead body was lying on the courtyard of the house of the deceased with injured condition. He brought the dead body to the outpost. On the next day, i.e., on 03.10.2019 the inquest on the dead body was held by Tanmay Bora, the then Circle Officer, Tamulpur Revenue Circle. He sent the dead body to Dr. R. Boro Civil Hospital, Mushalpur for post mortem examination. On 03.10.2019, the wife of deceased namely Sarala Kalita lodged an FIR at the outpost and he made Gandhibari OP GDE No. 35 dated 03.10.2019 and forwarded the FIR to O/C Tamulpur P.S who registered the same as Tamulpur P.S Case No. 470/19 u/s 302 of the IPC. The O/C Tamulpur P.S entrusted him to investigate the case. He searched for accused Jatin Kalita at his house for 2/3 times but could not apprehend him. On 11.10.2019, at about 11.50 pm, accused was found at his house and he apprehended him from his house and brought him to the outpost. He interrogated the accused person and finding materials against him, arrested him and he was forwarded to the court. After collecting the post mortem report, he handed over the case diary to O/C Tamulpur P.S. Thereafter, Inspector Ashim Bora, the then O/C Tamulpur P.S completed the investigation and laid charge-sheet against accused Jatin Kalita u/s 302 of the IPC.

18. PW7 has proved that Exbt.4 is the FIR and Exbt. 4(1) is his signature and Exbt. 4(2) is the signature of Inspector Ashim Bora, the then O/C of Tamulpur P.S which he knows in his official capacity. He has also confirmed that Exbt. 5 is the sketch map of the place of occurrence and Exbt. 5(1) is his signature. PW7 has also confirmed that Exbt.3 is the dead body challan and Exbt.3(2) is his signature. He has also proved



that Exbt. 6 is the charge-sheet and Exbt.6 (1) is the signature of Inspector Ashim Bora, the then O/C of Tamulpur P.S which he knows in his official capacity.

### **APPRECIATION**

19. Ongoing through the evidence on record, it reveals that prosecution altogether examined seven witnesses to bring home the charge u/s 302 of the IPC against the accused person.

20. PW1 Sarala Kalita is the informant as well as wife of the deceased and mother of the accused and she is an eye-witness. PW2 Dr. Dipen Kr. Das is the Medical Officer who conducted autopsy on the dead body of deceased Bhabesh Kalita. PW3 Pankaj Kalita is the younger brother of the accused and one of the son of the deceased and he is declared as hostile witness by the prosecution. PW4 Sri Tilak Uzir is the neighbour of the informant who has not seen the incident but he heard that Jatin Kalita had killed his father Bhabesh Kalita. PW5 Rekha Kalita is declared as hostile witness by the prosecution. PW6 Nagen Das heard that accused Jatin Kalita killed Bhabesh Kalita and PW7 S.I Sarat Boro is the Investigating Police Officer. So, it appears that there is only one eye-witness of the incident i. e. the PW1.

21. In this case, first of all we should decide whether death of Bhabesh Kalita was homicidal in nature or not. There is no dispute regarding death of deceased Bhabesh Kalita. PW1 in her evidence stated that the accused pushed the deceased and the deceased died. From the evidence of PW1, it reveals that she has not clearly disclosed the facts before the

court. PW1 is the mother of the accused person who lost her husband due to the act of her son. Naturally, a mother has motherly affection to her son and she was so soft that she cannot utter any words which would affect her son. So, though she saw the entire incident and narrated the same in the FIR but she reluctantly restrained herself from disclosing the real facts. But from her evidence, it reveals that the accused had done something for which her husband died. In the FIR, PW1 stated that the accused person assaulted the deceased with wooden stick and as a result her husband died. From the evidence of PW2, it reveals that during post mortem examination he found the following injuries-

“Lacerated cut injuries on occipital region about (4 x 2 x 1) inches breadth. Brain matters and blood clot protruded through cut injuries. Bruised on back of body.”

22. After conducting post mortem examination, PW2 opined that the death was due to shock and haemorrhage as a result of ante mortem head injuries. The accused also during his examination u/s 313 of the Cr.PC admitted that at the time of incident, the deceased was in a drunken state and he pushed his father and his father fell down and thereafter died. Therefore, it is crystal clear that accused also admitted that he pushed the deceased and as a result deceased fell down and got injury on his head and died. So, it appears that the evidence of PW2 is corroborated by the evidence of PW1 and statement of accused to the extent that deceased died due to injuries caused by accused person. So, there is no doubt that the death of deceased was homicidal in nature.

23. Learned legal aid counsel for the accused submitted that it is a fact that on the night of incident, the deceased was in a drunken state and quarreled with the mother of the accused for which he pushed the deceased and as a result the deceased fell down and sustained injuries on his head and died. Learned legal aid counsel further submitted that the accused had no intention to kill his father and he just pushed his father to remonstrate him from quarreling with his mother and as such, the accused cannot be booked u/s 302 of the IPC and at best, if the prosecution case be entirely believed, then it is a case u/s 304 Part II of the IPC.

24. On the other hand, learned public prosecutor, Baksa submitted that the accused person assaulted his father with a wooden stick and gave a blow on the head of the deceased and head is a vital part of a human body and as such, from the conduct of the accused, it is crystal clear that accused had intention to kill his father i.e., the deceased. Learned PP further submitted that had the accused no intention to kill the deceased then he would not have given a blow on the head of the deceased and as such, this is a fit case to convict the accused u/s 302 of the IPC.

25. So, we should decide whether the accused person intentionally killed his father or not and whether this case fall u/s 302 of the IPC or u/s 304 part-II of the IPC.

26. Here in this case, there is only one eye-witness and other witnesses have not seen the incident but they heard that accused killed

his father Bhabesh Kalita. Though, PW3 was declared hostile but he heard that accused killed his father Bhabesh Kalita. During examination of the accused u/s 313 of the Cr.PC, he also admitted that at the time of incident, he pushed his father and his father fell down and sustained injury on his head and died. So, in this case, we should see whether the prosecution has able to prove the offence u/s 302 of the IPC or whether the case falls u/s 304 Part II of the IPC.

27. To come to a conclusion we should go through the definition of murder defined u/s 300 of the IPC. Section 300 of the IPC is provided as follows-

300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—

(First) —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly) —That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

(Thirdly) —That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact. Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife.

Here B may have committed only culpable homicide, but A is guilty of murder. Exception

2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Illustration Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide. Exception

3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused. Exception

4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. Illustration A, by instigation, voluntarily causes, Z, a person under eighteen years of age

to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

28. The Hon'ble Supreme court in the case of **Shankar Narayan Bhadolkar vs State of Maharashtra** distinguish the culpable homicide amount to murder and culpable homicide not amount to murder as under-

"Section 299

Section 300

A person commits culpable homicide if the act by which the death is caused is done-

Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done-

#### INTENTION

(a) with the intention of causing causing death; or

(b) with the intention of causing such bodily injury as is likely to cause death; or

(1) with the intention of death; or

(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

#### KNOWLEDGE

(c) with the knowledge that the act is likely to cause death.

(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.



Clause (b) of [Section 299](#) corresponds with clauses (2) and (3) of [Section 300](#). The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to [Section 300](#). Clause (b) of [Section 299](#) does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of [Section 300](#) can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of [Section 300](#), instead of the words 'likely to cause death' occurring in the corresponding clause (b) of [Section 299](#), the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if

overlooked, may result in miscarriage of justice. The difference between clause (b) of [Section 299](#) and clause (3) of [Section 300](#) is one of the degrees of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of [Section 299](#) conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

29. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant and Anr. v. State of Kerala*, (AIR 1966 SC 1874) is an apt illustration of this point.

30. [In Virsa Singh v. State of Punjab](#), (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under [Section 300](#), "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. Thirdly, It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely

objective and inferential and has nothing to do with the intention of the offender. The ingredients of clause "Thirdly" of [Section 300, IPC](#) were brought out by the illustrious Judge in his terse language as follows:

"To put it shortly, the prosecution must prove the following facts before it can bring a case under [Section 300](#), "thirdly".

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

31. The Hon'ble Supreme court in the case of ***Tularam vs The State of Madhya Pradesh*** regarding culpable homicide amount to murder and culpable homicide not amount to murder has held as follows:

"12. [Section 304](#) of the IPC provides the punishment for culpable homicide not amounting to murder. Part I of this Section provides that if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death then the punishment may extend up to imprisonment for life. On the other hand, Part II of [Section 304](#) provides that if the offending act is done with the

knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death then the punishment may extend to imprisonment for 10 years.

13. The intention to cause death must not be readily inferred. We are afraid that both the Trial Court as well as the High Court have, on the basis of the mere fact that Tularam pierced the chest of Bhadri Lodhi with a ballam, assumed that he intended to cause the death of Bhadri Lodhi. There is nothing on the record to suggest such an intention and none of the witnesses have given any indication of Tularam's intention to cause the death of Bhadri Lodhi. It is quite clear that during the altercation Tularam did pierce the chest of Bhadri Lodhi but the intention to kill him is not apparent. However, Tularam must be attributed with the knowledge that piercing the left side of the chest with a spear would result in a bodily injury that is likely to cause death. Crl. A. No.663 of 2018 (@SLP (Crl.) No.7483 of 2017) page 5 of 6.

14. In view of the evidence on record, we are satisfied that the ingredients of murder as explained in [Section 300](#) of the IPC are missing in this case. The intention of Tularam was to cause bodily injury to Bhadri Lodhi and piercing the chest of Bhadri Lodhi with a spear was such an injury that could possibly cause his death. This knowledge must be attributed to Tularam".

32. From the ratio of the different judgment of Hon'ble Supreme court regarding culpable homicide amount to murder and not amount to murder, the Hon'ble Supreme Court concluded that when the Court is confronted with the question whether the offence is murder or culpable homicide not amounting to murder, it would be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be as to whether the accused has done an act, by

doing which he caused the death of another. The second stage would be to consider whether that act of the accused amounts to culpable homicide as defined in [Section 299](#) IPC. If the answer is found to be in the affirmative, the third stage for consideration would be to determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of murder contained in [Section 300](#) IPC. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder punishable under the first or the second parts of [Section 304](#) IPC, depending on whether the second or the third clauses of [Section 299](#) IPC is applicable. If, however, the answer to the question is found in the positive, but the case comes within any of the exceptions enumerated in [Section 300](#) IPC, the offence would still be culpable homicide not amounting to murder, punishable under the first part of [Section 304](#) IPC.

33. In ***PARVESH V/s. STATE***, a Division Bench of the Allahabad High Court indicated the broad differences between murder and culpable homicide, stating that in the case of murder, the offender has a positive intention to cause the death of the victim and assaults him with the intention of causing death or with the definite knowledge that the bodily injury inflicted by him would cause death, or the injury would be sufficient in the ordinary course of nature to cause death, or the injury was so imminently dangerous that it must cause death. But in the case of culpable homicide, the intention or knowledge is not so positive or definite as the injury caused may or may not cause death and even if Exceptions 1 to 4 to [Section 300](#) IPC are not applicable, the offence can still be culpable homicide. To find an offender guilty of murder, his case must fall within any of the four clauses of [Section 300](#) IPC; otherwise, he will be guilty of culpable homicide not amounting to murder.

34. Herein in this case in hand, there is no doubt that accused pushed the deceased who was in drunken state and he fell down and sustained injuries. So, it appears that deceased sustained injuries due to the act of the accused and as such it amount to cause injury to deceased by accused person. Therefore, death of deceased was culpable homicide. The accused pushed the deceased and as a result he fell down and got injuries and due to that injuries he died. From the conduct of the accused person it reveals that he had no intention to cause such bodily injury to kill the deceased and he has only intention to cause some bodily injury to prevent the deceased from quarreling. Accused also had no such knowledge that pushing the deceased would fell him down and got injuries which would cause death. PW1 in her cross examination also stated that due to sudden provocation, Jatin Kalita pushed her husband to the ground, because her husband abused Jatin Kalita with filthy language. She also stated that her husband was habitual drinker and used to abuse all family members. So, considering the entire evidence on record, I have nothing to hesitate to hold that the culpable homicide of deceased is not amount to murder. The accused had no intention to cause bodily injuries with the knowledge that he would kill the deceased. Hence, I find that this case falls under section 304 part-II of the IPC.

35. From the discussion made above, I find that the prosecution has able to prove that accused has committed an offence u/s 304 part II of the IPC beyond all reasonable doubt. Hence accused is convicted u/s 304 part II of the IPC.

36. Heard the convict accused Jatin Kalita, the learned legal aid counsel for the accused and the learned PP on the point of sentence. Accused during sentence hearing stated that he is the only bread earner of his

family and he has to look after his two children and wife and sought leniency.

37. Hence, considering all aspect accused Jatin Kalita is convicted and sentenced to undergo ***rigorous imprisonment for three years, one month and 10 days.***

38. The period of detention already undergone by the accused shall be set off against the sentence of imprisonment as per provision of section 428 of the Cr. P. C.

39. The convict Jitu Das is remanded to District Jail, Nalbari to serve out the sentence.

40. From the case record, it reveals that the wife of the deceased lodged the FIR. Due to death of her husband, she suffered mental agony as she lost her life partner. As the wife of the deceased suffered from mental agony, so in my considered view, she is a victim of the crime and she is entitled to get victim compensation as per Assam Victim's Compensation Scheme. Therefore, I recommend the matter of victim compensation u/s 357-A of the Cr.PC to the DLSA, Baksa, to explore appropriate victim compensation to the wife of deceased.

41. Furnish a copy of the judgment to the convict accused free of cost immediately.

42. Send a copy of the judgment and order to the District Magistrate, Tamulpur as per provision of section 365 of the Cr. P. C.

43. I will be failing in my duty if I do not place on record the legal assistance rendered by Mr. M. Mazumdar, Ld. Legal Aid Counsel during the trial. His legal assistance rendered during the trial is deeply appreciated. He is entitled to his fees as per existing rule which shall be paid by Secretary DLSA, Baksa.

44. Send a copy of the judgment and order to the DLSA, Baksa for information and taking necessary action.

45. Convicted accused Jatin Kalita is informed about his right of appeal against the judgment and order of conviction and sentence either by appointing his own advocate or through legal aid panel advocate or by way of jail appeal.

46. The seized articles be destroyed in due course of time.

47. Judgment is declared and delivered in the open court under my hand and seal of this court on this **18<sup>th</sup>** day of **November, 2022**.

Dictated and Corrected by me:

Sessions Judge,  
Baksa, Mushalpur

(N. U. Ahmed)  
Sessions Judge,  
Baksa, Mushalpur



**APPENDIX:**

**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW1	Smt. Sarala Kalita	Informant
PW2	Dr. Dwipen Kr. Das	Medical Officer
PW3	Pankaj Kalita	Reported witness
PW4	Tilak Ujir	Reported witness
PW5	Rekha Kalita	Reported witness
PW6	Nagen Das	Reported witness
PW7	ASI Sarat Boro	Investigating Police Officer

**B. Defence witnesses:**

NIL

**C. Court witnesses:**

NIL

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution Exhibits:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exbt.1	Post mortem report
2.	Exbt.2	Inquest report
3.	Exbt.3	Dead body challan
4.	Exbt.4	FIR
5.	Exbt.5	Sketch map
6.	Exbt.6	Charge-sheet

**B. Defence Exhibits:**

NIL

**C. Court Exhibits:**

NIL

**D. Material Objects:**

NIL

( N. U. Ahmed)  
Sessions Judge,  
Baksa, Mushalpur