

**(2016) 07 GAU CK 0076**

**GAUHATI HIGH COURT**

**Case No:** Criminal Appeal No. 62 (J) of 2014.

Anil Gogoi - Appellant/Accused  
@HASH The State of Assam

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** July 15, 2016

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2016) 5 GauLJ 406 : (2016) 5 GauLR 482

**Hon'ble Judges:** Ajit Singh, CJ. and Suman Shyam, J.

**Bench:** Division Bench

**Advocate:** Ms. B. Sarma, learned Amicus Curiae, for the Appellant/Accused; Ms. Shamima Jahan, learned Additional Public Prosecutor, Assam, for the Respondent; Mr. C.S. Hazarika, learned counsel, for the Respondent No. 2

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

**Ajit Singh, C.J.** - The sole appellant Anil Gogoi has been convicted under Section 302 of Indian Penal Code and sentenced to imprisonment for life and fine of Rs.3,000/- with default stipulation for committing the murder of Madan Hazarika.

2. According to the prosecution case, Madan Hazarika lived with his family in the neighbourhood of appellant. On 8.4.2012 at about 8.30 a.m. Madan Hazarika went to the house of appellant for some work. And there appellant gave repeated blows on the head of Madan Hazarika with a heavy sharp edged dao (hatchet), as a result of which, he died on the spot. The incident was witnessed by Putoli Gogoi (P.W.4), sister of appellant. Renuka Gogoi (P.W.5) is wife of appellant. At the time of incident, she was in the backyard of her house. And as she came inside she saw the appellant fleeing away. An ejahar (Exhibit-2) of the incident was lodged by Renu Hazarika, wife of Madan Hazarika at Police Station Mariani on the same day. The police came to the

spot and prepared the Inquest Report.

3. Dr. Nitu Kumar Gogoi (P.W.3) conducted the postmortem examination on the body of Madan Hazarika. He found two chop wounds on the head and one incised wound on the right thumb of Madan Hazarika. Dr. Nitu Kumar Gogoi opined that the cause of death of Madan Hazarika was homicidal due to injuries which were ante-mortem in nature. Dr. Nitu Kumar Gogoi also opined that injuries were caused by moderately heavy sharp cutting weapon. His postmortem report is Exhibit-1.

4. The appellant had also surrendered within half an hour of the incident with a dao at the police station where after, he was arrested and dao was seized. The Seizure of dao is Exhibit-3.

5. It is pertinent to note that the appellant while being examined as an accused in reply to Question No.2 admitted that he had hit Madan Hazarika with a dao in his house, but he did so to save himself because Madan Hazarika had beaten him. The appellant also admitted that soon after the incident he went to the Police Station and surrendered.

6. The body of Madan Hazarika was admittedly found in the house of appellant. The body had chop injuries on the head and one incised wound over dorsum of right thumb. Dr. Nitu Kumar Gogoi has opined that the cause of death of Madan Hazarika was homicidal and injuries were caused by moderately heavy sharp cutting weapon. Sister Putoli Gogoi of appellant has categorically testified that she saw the appellant killing Madan Hazarika with a dao. Likewise, Renuka Gogoi (P.W.5), wife of appellant has also testified that she saw him fleeing from the house at the time of incident. The evidence of Putoli stands substantially corroborated by the postmortem examination report (Exhibit-1). The prosecution has thus successfully proved by adducing reliable evidence that appellant committed the murder of Madan Hazarika in his house by giving repeated blows on his head with a heavy dao. As seen above, even the appellant has admitted that he did hit Madan Hazarika with a dao, but in order to save himself because Madan Hazarika had beaten him. No injury was found on the body of appellant. Therefore, the explanation of appellant that he caused the death of Madan Hazarika to save himself cannot be accepted.

7. For these reasons, we find no merit in the appeal. It is accordingly dismissed.