

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No. \_\_\_\_\_ of 2025  
(@ Special Leave Petition (Crl.) No.7303 of 2025)**

**Budheswar Karmakar**

**...Appellant**

**Versus**

**The State of Assam**

**...Respondent(s)**

**ORDER**

Leave granted.

2. Three blows on the head with a bamboo lathi, leading to the death of the brother of PW-1, witnessed by him and his wife, PW-5, led to the conviction of the appellant under Section 302 of the Indian Penal Code, 1860<sup>1</sup> with a sentence of life imprisonment. The High Court confirmed the conviction and sentence in appeal, against which the present appeal is preferred.

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<sup>1</sup> For short, 'the IPC'

3. That the death occurred due to the injuries sustained by the deceased on the head has been established through PW-2, the Doctor who conducted the postmortem. The lacerated injuries, three in number were on the head, measuring respectively 2 inches on the right side, 1½ inches on the middle part & 3 inches on the lower back of the head. The postmortem report emphasized the underlying collection of blood and fracture of skull bone.

4. The learned counsel appearing for the appellant argued that the death occurred from a fall from a bicycle which was unnecessarily alleged to be a murder by the appellant. Without prejudice, it was argued that the appellant/accused was provoked by the deceased who outraged the modesty of his wife inside his house which led to an altercation, leading to a fall and consequential death by the injuries suffered.

5. The learned Senior Counsel for the State, however, would submit that such a plea was never taken before the trial court.

**6.** PW-1, the brother of the deceased witnessed the accused delivering three blows with the bamboo stick on the head of his brother, the deceased, which was spoken of in his deposition. He further stated that after the overt act, the accused dropped the lathi in his courtyard and entered his house. Here we have to clarify the categorical statement made in Court by PW-1 was that the accused dropped the lathi inside the courtyard of his own house and not that of PW-1, as was wrongly understood by the High Court. This becomes relevant insofar as the seizure made of the objectionable lathi which we will deal with a little later.

**7.** PW-5, the wife of PW-1 had also spoken of having heard the shouts of the accused and the deceased, upon which she came out of her house and saw the occurrence. She only spoke of a lathi blow by the accused and the accused running away to enter his house after throwing away the lathi.

**8.** The argument of the State that the plea of outraging the modesty of his wife was never taken up before the trial Court, is not correct. In cross examination of PW-1, there

was a specific suggestion made, which of course was denied by the witness. The accused also examined DW-1, his own wife who spoke of the deceased having entered their house to outrage her modesty by tearing her blouse and treating her in an untoward manner. She also asserted that her husband reached home to witness the objectionable conduct of the deceased and pushed the deceased down, on account of which the deceased suffered an injury on his head. It was her contention that it was her husband who lifted the deceased up and took him to the hospital where the deceased succumbed.

**9.** Pertinently, PW-7 one of the witnesses of the prosecution deposed that she had seen the injured Biswanath (deceased victim) being taken to the hospital in a hand cart by the accused, corroborating the version of the defense witness.

**10.** The defense of a retaliation on the deceased attempting to outrage the modesty of the wife of the accused cannot be ruled out. This is especially so when the prosecution does not allege any other motive on the

accused to carry out the heinous act. In this context, we cannot but refer to the seizure of the lathi which was from PW-1, who had deposed that the lathi was thrown away by the accused in the compound of the house of the accused itself. The bamboo lathi, though seized, there is no reference to any blood stains having been found on the offending weapon. Nor was the alleged weapon sent for forensic analysis.

**11.** The eyewitness cannot be disbelieved but the defense setup by the accused, of the victim having attempted to outrage the modesty of the wife of the accused gets strengthened by the fact that the accused, even according to PW-7, took the injured deceased to the hospital. The blows delivered on the head of the deceased, though is with the knowledge that it is likely to cause death, the accused cannot be imputed with an intention to cause death or to cause a bodily injury likely to cause death. The conviction under Section 302 IPC has been wrongfully entered into by the Trial Court and the Appellate Court. We modify the conviction to one under Part II of Section 304 IPC and alter

the sentence to one of ten years. The accused having already undergone the sentence of more than twelve years, he shall be released forthwith, if not wanted in any other case. If the accused is already on bail, the bail bonds shall stand discharged.

**12.** The appeal shall stand allowed to the extent of the modification of conviction and sentence.

**13.** Pending application, if any, shall stand disposed of.

..... **CJI.**  
**(B. R. GAVAI)**

..... **J.**  
**(K. VINOD CHANDRAN)**

**NEW DELHI;**  
**SEPTEMBER 01, 2025.**