

HEADING OF JUDGMENT IN SESSIONS CASE

:: IN THE COURT OF SESSIONS JUDGE :::::::::::NALBARI ::

**Present:- Smti S. Bhuyan,
Sessions Judge,
Nalbari.**

**Sessions Case No- 101 of 2011
u/s-302/201/34**

STATE

Versus

1. Md. Fazal Ali.

S/O- Lt Farmud Ali

2. Anju Bibi.

W/O-Md Fazal Ali.

3. Md Raju Ali

S/o- Lt Farmud Ali

All are R/O; Vill Malikuchi,

PS & District- Nalbari (Assam)

4. Hasina Begum.

W/O- Tafazzul Ali

R/O; Vill Raimada

PS & District- Nalbari (Assam)

.....**Accused persons.**

(Committed by Addl Chief Judicial Magistrate, Nalbari in GR case No-211/10 u/s-302/201/34 IPC.)

Advocate appeared:-

For the state:-

Mr. D. Barman, learned. P.P

For the accused:-

Mr. A. Mazid, learned Advocate.

Date of institution of the case :- 28-02-2010.

Date of commitment :- 21-07-2011.

Date of Framing charge :- 15-12-2011.

Date of prosecution evidence :- 08/05/2012, 29/05/2014,
7/01/2015, 10/12/2015, 21/06/2016,
9/11/2016, 11/06/2018, 12/07/2018

Statement of accused recorded on:- 08-10-18.

Date of Argument :- 22-05-19 & 20-06-2019.

Judgment delivered :- 03-07-2019.
Hearing on Sentence :- 08-07-2019.
Sentence Pronounced :- 08-07-2019.

JUDGMENT

Prosecution Case

1. The prosecution case in brief is that PW-1 Md. Tafazzul Ali, elder brother of deceased Manjuwara Begam lodged written ejahar inter alia, citing that his sister Manjuwara Begum was married to Raju Ali as per Islamic shariyat and two children born out of their wedlock and Manjuwara was living at her husband house with the family member of her husband along with her children. On 26/02/10, Manjuwara went to attend a feast arranged by Fatenur Ali with her in-laws family member and on that day at about 5 pm he got information about missing of his sister Manjuwara and verbally informed police about the missing of his sister. He made search for his sister but could not trace out. Informant alleged husband of Manjuwara maintain illicit relation with his sister in law Anju and at the instance of accused Raju, other accused persons Fajal, Anju, Hasina, Farmud and Shahijan Bibi committed murder of Manjuwara and as per information of Raju Ali, search was made in the Malekuchi Gandhipukhuri park pond by using fishing net but dead body of Manjuwara was not found and on 28/02/10 dead body of Manjuwara was recovered at Malekuchi Gandhipukhuri park pond at about 6 AM. It is alleged other accused persons killed his sister in connivance with accused Raju Ali.

Investigation

2. Officer in charge Nalbari PS on receipt of ejahar from Tafazzul Ali registered a police case vide Nalbari Police Case No. 97/10 u/s-302/201/34 I.P.C and SI Dilip Kr. Hajong was entrusted to conduct the investigation of the case. During course of investigation IO of the case visited place of occurrence, send dead body of deceased Manjuwara Begum to SMK Civil Hospital, Nalbari for autopsy after

inquest, drawn sketch map of the place of recovery of dead body, arrested accused Farmud Ali, Sahijan Bibi, Anju Bibi and Fazal Ali, Raju Ali and seized articles from the house of arrested accused Farmud Ali (since deceased) and recorded statement of the witnesses, produced accused persons before the Id. Judicial Magistrate and after completion of investigation IO submitted charge sheet against the accused persons Fazal Ali, Hasina Bibi, Anju Bibi, Raju Ali, Sahijan Bibi (since deceased), and Farmud Ali (since deceased) u/s -302/201/34 IPC .

Committal

3. On receipt of the charge sheet, Ld Chief Judicial Magistrate, Nalbari, took cognizance and transfer the case to the court of Addl Chief Judicial Magistrate Nalbari and Ld Addl Chief Judicial Magistrate Nalbari, after furnishing necessary copies to accused persons committed the case for trial.

Charge

4. My then learned predecessor after hearing learned counsel for both sides and perusal of material on record framed charges u/s-302/201/34 IPC against the accused persons Fazal Ali, Hasina Bibi, Anju Bibi, Raju Ali, Sahijan Bibi, and Formud Ali and when charges are read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the prosecution charges against the accused person, prosecution adduced evidence of all together nine number of witnesses and exhibited 11 numbers of documents. PW-1 Md. Tafazzul Ali. PW-2 Dr. Jatindra Nath Barman, PW-3 Md. Mainuruddin Ahmed, PW-4 Md. Rijul Ahmed, PW-5 Dr. Manalisha Choudhury. PW-6 Miss Ashma Begum. PW-7 Sri Bisweswar Saikia (S.I), PW-8 Dr. Dilip Kr. Hajong, and PW-9 Sri Dibyajyoti Mahanta (CJM). Ext-1 Ejahar, Ext-2 Seizure list, Ext-3 post mortem report, Ext-4 FSL report on seizure item, Ext-5 forwarding report of ext-4. Prosecution exhibited inquest report and statement of the witness Ashma Begum recorded u/s 164

Cr.P.C and both the documents marked as Ext-6. Prosecution exhibited sketch map of the place of occurrence and statement of the witness Rijul Ahmed recorded u/s 164 Cr.P.C and both the documents marked as Ext-7 is the statement of Rijul Ahmed similarly prosecution exhibited charge sheet and GR case record 211/10 and marked as Ext-8 and order dated 08-03-10 passed by the then learned CJM, Nalbari and marked as Ext-8 (1). During trial accused Sahijan Bibi, and Farmud Ali expired and case against them abated on their death. After closure of the prosecution evidence, statement of the accused persons Raju, Anju, Hasina and Fazal recorded u/s 313 Cr.P.C. by my then learned predecessor. Accused plea is total denial, however declined to adduce evidence in support of the plea of denial.

6. POINTS FOR DETERMINATION:-

- (i) Whether accused persons on 26/02/10 at about 5pm at village Malikuchi under Nalbari PS in furtherance of their common intention committed murder by intentionally causing death of Manjuwara?
- (ii) Whether the accused persons same day, time and place in furtherance of their common intention to make disappear of evidence thrown the dead body of the deceased Manjuwara Begum into a pond to escape and screening from the legal punishment which likely to be come for killing the deceased ?

ARGUMENT

7. Learned PP made submission that all the prosecution witness corroborated each other statement and PW-1 supported the statement made by him in the ejahar and ocular evidence and autopsy report of the deceased fairly established the charge of section 302 IPC against the accused person and they throw out the dead body in a pond to screened them from getting punishment for commission of the offence of murder of Manjuwara Begum and prosecution beyond all reasonable doubt establish the charge of section 302/201/34 I.P.C against the accused persons beyond all reasonable doubt and evidence of child witness is believable beyond

all reasonable doubt and there is no dash of tutoring comes out during their lengthy cross examination and they remain stood in their stand and prays to impose the punishment against the accused persons as per law.

8. On the other hand learned defence counsel submitted that informant got information of missing of deceased at about 5 pm on the date of incident but he did not lodged the ejahar on the date of missing i.e on 26/2/10 and lodged ejahar on 28/2/10 that pointed the ejahar portray one made out case and after thought prepared document. Learned counsel further submitted the evidence on record pointed that deceased come outside with a bucket to bring water from the pond and thereafter she was not found and this shown there is every possibility of deceased may slipped and fall on to the pond and pond water is full of intoxicating substance and post mortem report pointed the stomach is full of 2 liters of water but could not give opinion about the cause of death and FSL report available in the case record pointed presence of organophosphorus insecticide and this may be due to inhalation of water of the pond by the deceased when she fell into the pond. He further submitted informant was informed about the missing of Manjuwara by Hasina and others but at that time he did not lodge ejahar and this caste doubt in the prosecution story alleged against the accused persons and case of the prosecution is not believable beyond all reasonable doubt.

9. Ld counsel further argued accused Raju Ali was not present in the house on the date of incident and he was at his place of posting and this has been admitted by informant in his evidence and therefore, the allegation made against him in the ejahar by the informant is baseless and not proved against the accused Raju and therefore he entitled acquittal.

10. It is the further argument of learned defence counsel that expert report not disclosed it is a case of murder rather pointed this is a case of poisoning and the story stated by informant Tafazzul does not substantiate the prosecution allegation made against the

accused persons. He further submitted child witness evidence not corroborated by other witness as such evidence of the child witnesses not established the prosecution case because their evidence also pointed that on the date of incident Tafazzul came to their house but he took no steps and evidence of child witness is tutored statement, they are staying at their maternal uncle 'informant' house from the time of death of their mother so credibility of their piece of testimonies is under doubt and not reliable piece of evidence. He further stated that the story stated by child witnesses are not corroborated by any other PWs and cause of death of deceased Manjuwara is not substantiated by the expert opinion and autopsy report, there is no mark of injury found, no ligature mark found and presence of poisonous substance ruled out accused persons hand in the death of deceased Manjuwara. In support of his submission learned counsel relied on the decision of: Digambar Vishnav and another versus State of Chattisgarh, 2019 (196) AIC 34(SC); Raees and others versus State of Uttarakhan, 2012 (115) AIC 581 (UTT. H.C); Chandra Manik Debbarma versus State of Tripura, 2011(3) Gauhati Law Journal 222; Jogesh Morang versus State of Assam, 2010(6) Gauhati Law Journal 358.

EVIDENCE

11. PW-1, Tafazzul Ali informant of the case stated deceased Manjuwara was his sister and her marriage was solemnized with accused Raju Ali about 7/8 years prior to her death and husband's house of deceased Manjuwara is at village Malikuchi. He deposed at the time of incident he was also residing at village Malikuchi. His statement is that on the date of incident "Bhaity" nephew of Raju Ali at about 5 pm informed him that his sister is missing from her matrimonial residence and on that day one feast was arranged in the house of Fatenur Ali where all members of accused Raju visit along with his deceased sister Manjuwara and in the evening his sister and accused Hasina returned home in advance to the other family members of accused Raju and other family members of accused Raju reached home after sometime and when other family members

returned, they did not find Manjuwara in the residence. After getting the information he came to the accused house, met all accused persons at their residence, asked them whereabouts of Manjuwara and got reply that she was missing from the house. Thereafter, he informed his father and responsible persons of the village and when he again came to the accused house with his father and other responsible persons they did not allow them to enter into their (accused) house. Thereafter, quarrel was took place. Villagers left accused house and made search for Manjuwara for the whole night but they did not trace out Manjuwara and on that night at about 11 pm he informed police about the missing of his sister. On the next day he went to the house of accused again made inquiry about Manjuwara but got no clue and accused Hasina told him on that day Manjuwara went backside with a bucket in hand and they searched in the pond situated on the backside of accused residence but her body was not found and at that time accused Raju Ali was absent. He informed accused Raju over phone about the incident and accused Raju asked him to make vigorous search in the pond. On 28/02/10 father of accused Raju Ali along with one Nazimuddin came to his residence at Malikuchi at 5 am and told him that all will make search for Manjuwara's dead body and then he suspected them. Thereafter, he went to his residence to inform the villagers and prior to his return he received call from one Akhtar Ali about floating of the dead body of Manjuwara in the pond. He deposed prior to that villagers searched the pond using fishing net but found nothing. He deposed Rijul Ali told him that after killing Manjuwara accused persons thrown her dead body in the pond and prior to that they kept the dead body in accused house under the bed and accused persons did not allow Rijul Ali to come out from the residence. Police took the dead body for post-mortem and arrested the accused persons and thereafter dead body was buried in the courtyard of the accused persons. He stated Hasina informed him that quarrel was took place between accused Raju and Manjuwara regarding relationship of Raju with his sister-in-law.

12. In cross stated on 26th, 27th & 28th Feb, 2010 he asked accused Raju Ali over phone about missing of his sister and at that time Raju Ali was at Allahabad in connection with his service. His further cross is that on 26/02/10 when he first came to the residence of accused persons after getting information about missing of his deceased sister Manjuwara, he found parents of accused Raju, his sister-in-law Anju and sister Hasina at their house and all of them were present in their courtyard and he was present at the courtyard for about ½ an hour and during that period no outsider present. After one hour of his visit to the accused house, he informed President of village Malikuchi about missing of his sister Manjuwara and when his father came to the place of occurrence, about 20 people of village Malikuchi entered into the courtyard of the accused persons. He stated they searched his sister till midnight of 27/2/10 but the accused persons not allowed them to enter into the residence of accused and accused persons allowed them to enter into their house when police case. He lodged FIR on 28/02/10 but did not mention in his FIR that accused persons did not allow him to enter into the residence but he made this statement before police when police recorded his statement. He further stated in cross he did not mention in ejahar that Hasina told him his sister Manjuwara went to the backside where there is a pond but he state this fact before police during investigation. During cross he stated at the time of incident Rijul was 5½ years old and when his sister returned from the feast her son accompanied her but he did not know when her daughter returned back from the feast and he did not find the children of his deceased sister prior to the recovery of her dead body and police recovered the children of Manjuwara from the house of accused when police arrested accused persons. From 26/02/10 residence of the accused persons were opened but they did not allow them to enter in their house till arrival of police. About 1000 village people searched dead body of Manjuwara in the pond on 27/02/10 but not found on that day and said pond is adjacent to the residence of accused persons and after recovery of the dead body accused Fazal left the place in the pretext of attending office.

13. PW-2, Dr. Jatindra Nath Barman is the medical officer and on 28/02/10 he performed autopsy on the dead body of Manjuwara Begum in connection with Nalbari PS, UD Case No.10/10 dated 28/02/10 and found as follows :

“Stout body, no external wound, larynx full of water, both the lung full of water, stomach full of about two liters of water. According to police requisition the dead body was recovered from pond. No ligature mark seen. Stomach and its contents, kidney, part of liver sent to FSL for examination.”

14. Doctor opined that cause of death could not be ascertained. So viscera sent for FSL examination. Ext-3 is the post mortem report. In cross he stated after receipt of the FSL report he submitted the final post-mortem report. Viscera contains water also and after perusal of FSL report, he opined death is due to organophosphorous Insecticide poisoning.

15. PW-3, Md. Mainuruddin Ahmed deposed in his evidence that he knows all the accused persons and the deceased Manjuwara Begum and she was married to accused Md. Raju Ali. On 26/02/10 in the evening informant Tafazzul Ali informed them that nephew of accused Raju Ali informed him about missing of his sister Manjuwara from the house of accused persons and they came to the house of accused persons and found some people thronged there. Thereafter, they could know from the accused persons that there was a feast in the locality arranged by their relatives where they were invited, the accused persons with the deceased attended the feast, and deceased Manjuwara left the party attending the same before the other accused persons to home and other accused persons too followed her. He further deposed he could know from the accused persons that deceased Manjuwara had talk with her husband accused Raju Ali over mobile phone and after getting phone call she was weeping. He along with other villagers searched for Manjuwara but she was not found. He returned to his house at 2 am and again he came to the house of the accused at 8-30 am and searched for Manjuwara. Some people of the locality searched Manjuwara by

using fishing net in the nearby pond but not trace of Manjuwara. On the next day he heard that dead body of Manjuwara was found in the said pond in the edge of the water of the pond. They immediately came to the place of occurrence and thereafter dead body was lifted to the bank where inquest was done by the Executive Magistrate. Police sent the dead body for post-mortem to SMK Civil Hospital, Nalbari and after post-mortem dead body was taken by informant, Tafazul Ali and buried the dead body in the courtyard of accused persons. In cross stated he was present at the time of burial.

16. PW-4 Rijul is the child witness and he deposed accused Raju Ali is his father, Fazal Ali is his bardeuta, Anjuwara Begum is his barama and Hasina is his pehi. He deposed his dangar amma Anjuwara begum, pehi Hasina, grand-father (Nana) Farmud Ali killed his mother and after killing kept the body of his mother under the box paleng (Box Bed) and he seen the incident of murder of his mother while he was sitting in the chair. He made statement before the Magistrate. Police recorded his statement and he disclosed incident to police and stayed at his father's house for 2/3 days after his mother death and thereafter his mama (Maternal uncle) brought him to their house.

17. In cross stated his "danger amma" Anjuwara have two children. His sister is a student of class VIII. During his stays at his father's house his sister read in English school, his nana Farmud and Nani Sahijan expired. His mother was recovered in the pond and on that day he was present at his father's house. After death of his mother search for his mother made by his mama and large number of village people also search for his mother and after death of his mother for 2/3 days he stay in the house of his father along with children of his bardeuta and his sister. He cannot say where his father (accused persons) present when he was taken to his maternal uncle's house and since then he did not see his father, bardeuta but he saw them when came to the court and he made statement after staying few days in the house of his maternal uncle. He denied that he deposed as tutored by his maternal uncle (mama). He do not

want to go with the accused persons and he will go with his 'Mama' (maternal uncle).

18. PW-5, Dr. Manalisha Choudhury is the Scientific Officer, serology Division, Directorate of Forensic Science, Assam, Kahilipara, Guwahati. She stated on 01/04/10 she received one parcel vide Memo No.PNB/Crime-SR/10/4025 in connection with Nalbari PS Case No.97/10 u/s-302/201/34 IPC. The parcel consisted of two exhibits enclosed with a sealed cloth cover. The received articles are (i) one bamboo mat suspected to contain stain of blood. Mark as Sero-2601/A. (ii) One wooden handle axe suspected to contain blood stain. Total length of the axe is 71.6 cm (approx.). On examination found exhibits No. Sero-2601/A and Sero-2601/B gave negative test for presence of blood and Ext-4 is the FSL report.

19. PW-6, Ashma Begum is another child witness and she deposed in her evidence that she is the daughter of the deceased Manjuwara and her mother died about seven years ago and informant Tafazzul Ali is her maternal uncle. At the time of incident she stayed with her parents with other accused persons at Malikuchi. On the date of occurrence she along with her mother and accused persons went to the house of her aunt (elder sister of her father) at Malikuchi for feast. At about 5 pm her mother, brother, she and aunt, Hasina return home together and she was reading at her house after return from her aunt house. At about 6 pm she could know that her mother was not in the house and while they searched for her mother, her brother Babu @ Rijul told her that her aunt (pehi) Hasina and another aunt (barma) Anju committed murder of her mother and her dead body was kept in 'Box Paleng". She deposed further getting information of her mother's missing, her maternal uncle came to the house of accused persons and searched for her mother but could not trace out. After two days of the incident dead body of her mother was found nearby pond of their house. Thereafter dead body was brought from the said pond and police came. Prior to the recovery of the dead body she left her house and went to the house of maternal uncle. Now they are staying in their maternal uncle's house and after

recovery of dead body of her mother, her brother Babu (Rijul) too brought to the house of maternal uncle. Police recorded her statement and produced her before the Magistrate and Magistrate recorded her statement and ext-6 is her statement u/s 164 Cr.P.C.

20. In cross she stated she cannot remember after how many days her statement was recorded by police but her statement was recorded after some days. Magistrate also recorded her statement after few days. At the time of incident her brother was just admitted in the school in the said year. After missing of her mother all of the family members including accused persons searched for her mother and informant Tafazzul came to their house on getting information of missing of her mother. On the very day of the incident the family members of her maternal uncle's house came to their house at Malikuchi and searched for her mother. She also stated that she could not remember whether police came to their house on the date of incident or not. She did not witness the occurrence herself. She also stated that she did not see any quarrel between her parents prior to the incident. But on the day of occurrence while they returned back from the house of their aunt in the evening then her mother called her father over phone and thereafter her mother was weeping. For the last time she saw her mother when she went towards basti of their house. She also stated in her 164 CrPC statement that she did not see her mother in the 'box paleng'. On the next day of occurrence her maternal uncle brought her to their house and since then she has been living with her maternal uncle. She deposed as their house was locked from inside so their house was not searched by the village people. She, her grand-mother and brother Babu was inside their house on the night of occurrence and they came out from their house in the morning.

21. PW-7 ASI Bisweswar Saikia deposed that on 28/02/10 based on the ejahar lodged by one Raja Ahmed one U/D case was registered bearing Nalbari PS UD Case No. 10/10 and O.C Nalbari entrusted him to investigate the case. He visited the place of occurrence which is situated at Malikuchi under Nalbari PS, prepared

sketch map (Ext-7) of the place of occurrence and recovered a dead body of a woman from a pond. The inquest of the dead body was done by C.O, Nalbari vide Ext-6 inquest report, thereafter sent the dead body for postmortem to SMK Civil Hospital, Nalbari and collected the postmortem report and recorded the statement of the witnesses, namely, Raja Ahmed, Mainul Haque Choudhury, Tafazzul Ali, Rijul Ahmed, Ashma Begum, Moniruddin Ahmed, Zakir Hussain, Abdul Nasir and Firoz Ali. Viscera of the dead body was sent to the FSL, Kahilipara for forensic examination and he collected the report from FSL, Kahilipara. He submitted the FR on 29/06/10. From the report of FSL, it appears that the deceased died due to organo phosphorus poison so regarding the death another case bearing Nalbari PS Case No.97/10 has been registered u/s-302/201/34 IPC.

22. In cross he stated deceased was the sister of witness Tafazzul Ali, witness Rijul Ahmed is the son of the deceased and witness Ashma Begum is the daughter of the deceased. He also stated as per inquest report no visible injury was found and as per sketch map the pond is situated within the Gandhi park. As per his sketch map on eastern side house of Firoz Ali and on the southern side house of Abdul Nazir is present. On the western side of the place of occurrence the Municipality water supply office is situated. The house of the deceased is situated at the side of the municipality water supply office. The house of Zakir Hussain is also situated on the southern side of the place of occurrence. In cross he also stated that deceased died due to organo phosphorus poison.

23. PW-8, SI Dilip Kr. Hajong deposed in his evidence that on 28/02/10 on receipt of an ejahar lodged by Tafazzul Ali, the O.C Nalbari PS registered Nalbari PS Case No.97/10 u/s-302/201/34 IPC and entrusted him with the charge of investigation. After taking the charge of investigation he visited the place of occurrence at Malikuchi village under Nalbari PS. He prepared the sketch map and indicated the important places of the place of occurrence. Earlier to his investigation an UD Case was registered and during the period of the said UD case, inquest of the dead body was done and dead body

was sent for post-mortem. He arrested Farmud Ali, Sahijan Bibi and Anju Bibi and produced them before the CJM.Nalbari. On that day other accused Fazal Ali, Raju Ali and Hasina Begum could not trace out. Later on Raju Ali surrendered at Nalbari PS and thereafter he arrested Hasina Begum and Fazal Ali and forwarded them to the CJM, Nalbari. In presence of witnesses and Smti Nadira Jesmin the circle officer, Nalbari, he searched the house of accused and seized one bamboo mat, one blood stained axe with wooden handle from the house of accused Farmud Ali vide Ext-2 the seizure list. The seized articles were sent to FSL, Kahilipara for forensic examination. Statement of Asma begum and Rijul Ahmed who were the son and daughter of deceased were got recorded by the Addl. CJM, Nalbari u/s-164 CrPC.

24. In cross stated Manjuwara became untraced on 26/02/10 and her elder brother Tafazzul lodged the ejahar and on the basis of the ejahar Nalbari PS Case No.97/10 u/s-302/201/34 IPC was registered. At the time of recovery of dead body he was not present but he was present at the time of post-mortem. He stated in cross that PW-1 Tafazzul Ali during his 161 CrPC statement did not state before him that when he asked Raju Ali over phone then Raju Ali told him that the body of the Manjuwara will be found in the pond and asked him to search in the pond and when he went to inform Raju Ali about the incident then he found his mobile phone switched off. This witness also did not state before him in her 161 CrPC statement that he talked to Raju over phone and dead body of Manjuwara was kept under the bed and Hasina told him about the relationship of Raju Ali with his sister-in-law. He recorded the statement of neighboring witnesses. He did not send the water of the pond for forensic examination. The dead body of Manjuwara was buried at the compound of accused Farmud Ali. He further stated in the cross he visited the house of the accused and searched the house of accused persons and except the two sized articles he did not find any articles. He recorded the statement of witness who was present at the time of recovery of dead body.

25. PW-9, Dibyajyoti Mahanata the then Addl CJM, Nalbari stated on 08/03/10 he recorded statement of Asma Begum and Rijul Ahmed u/s-164 CrPC in connection with Nalbari PS Case No.97/10 after finding both of them having understanding capacity and on being satisfied he recorded their statement. Ext-6 is the statement of witness Asma Begum recorded by him u/s-164 Cr.P.C Ext-7 is the statement of witness Rijul Ahmed recorded by him u/s-164 Cr.P.C.

ANALYSIS OF EVIDENCE ON RECORD

26. PW-2 is the medical officer who performed autopsy. Ext-3 is the post-mortem report. As per statement of PW-2 and the autopsy report on the dead body of Manjuwara Begum done on 28/02/10 at SMK Civil Hospital, Nalbari and during autopsy found both lung full of water, stomach about 2 liters of water, viscera sent for FSL examination and as per FSL report the cause of death is due to organo phosphorus insecticide poisoning.

27. Admittedly, the dead body was recovered from a pond and the death was due to organo phosphorus insecticide poisoning. It is not the plea of defence that deceased consumed the poison and then fell in the pond while going out. In course of argument learned defence counsel argued deceased went to bring water with bucket in her hand and probably she fell down and due to intoxicated water she dies. In view of this, these points are coming, i) this is not a case of suicide, ii) the next probability that deceased slipped into the pond is also not deriving force, because the bucket that was deceased carried with her as argued by the learned defence counsel is not found in and around the pond area or near the place of occurrence and her slipper etc is also not found, iii) when dead body was searched on 26-02-10 no traces sign of slipping noticed and on 27-02-10 her dead body was not found when about 1000 villager made search in the pond by using big fishing net. All these facts are coming from the cross examination of PWs. Therefore, it is a case of accidental fall is totally ruled out and this is a case of homicide.

Prosecution allegation is that it is the accused who had committed murder of deceased Manjuwara Begum.

28. The post-mortem report does not show any muddy substances in the stomach. Had it was a case of accidental fall, along with water, muddy water would also have been found in the stomach. No trace of muddy substance, weed etc found in the body. There is no mention in the inquest report marked as Ext-6 and in post mortem report marked as Ext-3. Thus, the possibility of accidental fall in the pond is completely ruled out.

29. Now let me find out whether it were the accused persons who murdered Manjuwara Begum by intentionally causing her death by administering her insecticide and thereafter threw her body in the pond where from it was recovered. In this case prosecution adduced evidence of all together nine numbers of witnesses to establish the charge against the accused person out of which two numbers are child witness. Learned defence counsel heavily attacked on the evidence of child witness citing that their testimonies is tutored and their evidence pointed that deceased went to bring water from the pond and she might have slipped and fell in the pond and PW-6 heard from PW-4 and their evidence being tutored evidence is not acceptable as same not corroborated by any independent witness.

30. PW-1 is the informant. PW-1's evidence pointed on the date of incident Manjuwara with family members of her matrimonial home visited the house of Fatenur Ali for the feast arranged by Fatenur Ali and after feast returned to her matrimonial home with her sister-in-law Hasina Begum and other accused followed her to the house and after that she was found missing.

31. Admittedly, on the date of incident deceased Manjuwara Begum with accused person Hasina, Anju including deceased accused persons with their children went to the house of Fatenur Ali, one of the relatives of the accused persons in a feast arranged and invited by Fatenur Ali. It is also an admitted fact that from the feast deceased Manjuwara and other family members of her matrimonial

home returned to their house and after that her where about is unknown. The evidence on record pointed the missing of Manjuwara Begum took place after reaching her matrimonial home. Prior to her missing she reached home and other accused persons too reached home and thereafter Manjuwara was missing.

32. During argument learned defence counsel submitted that deceased went backside with a bucket in hand to bring water and she might have slipped while going to bring water. At the same time he submitted that the pond where from dead body of the deceased was recover is full of insecticide substance, so when she fell down she died.

33. I have scrutinized the cross-examination of the PWs. During cross-examination defence put question to PW-1 that he did not mention in his FIR that Hasina disclosed to him that Manjuwara went backside where there is a pond and during cross-examination defence wanted to contradict this statement of the PW-1 from IO. These points clinching one point that if pond is full of insecticide material then why a person would go to bring water from the said pond and this is totally illogical concept and statement. From the cross-examination of the PW-1, PW-3, PW-4 & PW-6 nothing comes out that near the pond there is public supply water tube-well or potable water source present to bring the water. More so, the bucket deceased had carried with her as argued by learned defence counsel is not found and there is no sign of slipping at the side of the pond. Ext-6 sketch map show pond is after the PHC office and its staff quarter. Just opposite the house of accused persons, PHC office and then the pond present that is, in front of the house of one Naser Ali. From the house of accused persons if one comes out then first reach PHC and pond is after PHC office. Thus, the submission that Manjuwara Begum went to bring water from the pond, slipped in the pond does not sound true in terms of the evidence on record more specifically from the line of cross-examination of PW-1, PW-3, PW-4 & PW-6 done by the defence.

34. The statement of PW-3 pointed when he came to know about missing of Manjuwara he went to the house of accused persons at about 7 pm. He found presence of some other persons and on asking it was accused Hasina who told him that after returning home from the feast Manjuwara Begum talked with Raju Ali over mobile and accused persons also informed him that after conversation between Manjuwara and Raju Ali she left the house. It is also appeared from the testimony of PW-3 that accused persons followed deceased Manjuwara to their residence that means when Manjuwara reaching home other accused persons too reaching home except Raju Ali who was not present at their native village on the date of incident.

35. The further statement of the PW-3 that he could come to know from the accused persons that accused Raju Ali had talked with Manjuwara and she was weeping after conversation with accused Raju Ali over phone and then she left. PW-3 not stated he was told by accused persons that Manjuwara went to bring water with a bucket in her hand from pond. Here draws attention on two point, one on the line of cross examination of defence side on the contradiction that Pws not stated before police that deceased had talk with her husband and accused Hasina disclosed them that deceased went to fetch water and therefore, when same is taken up at the time of argument is not acceptable. Apart from this fact when daughter in law having minor children is going outside leaving the children at home that too under sadness and after receiving phone call, the other family members did not call her back, not follow her to bring back her, not call her children to call their mother sounded not natural and not a believable story. It is no doubt prosecution must have to establish its case on its own foot but here defence plea does not get any strength and defence plea found to be contradictory and irrelevant and against the line of their cross examination and the plea is unfounded.

36. The statement of PW-3 further pointed that on the very day of the missing of the Manjuwara they searched her vigorously and they also made search in the nearby pond by using fishing net where

from on the 3rd day her dead body was found floating upside down. PW-1 deposed on the night of incident village people made search and fishing net used in the pond while searching for Manjuwara in the pond in the next morning but nothing was found on that day and in the morning of 3rd day her dead body was found and just prior to it he was told by accused Farmud (since deceased) that they all will search in the pond for the recovery of the dead body of the deceased in the pond. This pointed one important sign how one person is so sure that dead body of the Manjuwara would definitely found in the pond unless there is connection between the two. The statement of PW-3 pointed he corroborated the statement of PW-1 on the point that on the next day of incident of disappearance of Manjuwara from her matrimonial house after return to her matrimonial house from the feast, when search was made in the pond by using fishing net nothing was found and on 3rd day dead body of deceased Manjuwara found floating upside down. During cross-examination not a single question put that pond water is contaminated. Had this is a case of slipping then dead body would have floated not found upside down.

37. PW-4 is a child witness. He deposed four years back (from the date of adducing his evidence before court) his mother died. He deposed his mother was murdered by his aunt, Anju Begum (barma), Hasina Begum (pehi) and nana Farmud Ali (grand-father) and after committing murder she was put in the 'box paleng' and at the time of incident he was sitting on a chair and witnessed the incident. He stated he made statement before Magistrate and before the police. He further stated he stays for 2/3 days at his father's house after the incident of murder of his mother. Thereafter, he was taken to his maternal uncle's house.

38. His cross pointed his sister Ashma Begum now student of Class VIII and his paternal grand-father and grand-mother, namely, Farmud Ali and Sahijan Bibi expired and he did not return to his father's house after coming to his maternal uncle's house and he want to go with his maternal uncle's house. His further cross pointed

on the date of recovery of dead body of his mother he was present at his father's house and his maternal uncle made search for his mother after her death and other villagers also made search for his mother. He denied that he deposed as tutored by his maternal uncle. His cross pointed when he was playing Ludu in the house with her children her mother went to filter the water. The cross-examination of the PW-4 Rijul Ahmed does not point that his mother came outside from the campus after reaching home from the feast on the date of incident. Learned defence counsel submitted that Rijul Ahmed stated his mother went to bring the water but cross-examination pointed his mother went to filter the water and at that time he was playing Ludu with other. Rijul Ahmed did not state that his mother went to pond. Obviously a person will not go to filter water in the pond and to filter water one will go to kitchen. PW-1 Tafazzul stated that his nephew Rijul Ali told him that accused did not allow him to come out from the residence and accused persons after committing murder of Manjuwara thrown her dead body in the pond.

39. This child witness stated in the same line what he had make in his earlier statement. This witness claim that his mother was murdered before his eye. So thus, he will never forget the incident and he will remember the same for his whole life. This child lost his mother at the tender age of 5 ½ years. One accused is his father, other accused were his pehi, grand-parents, borduta and borma. He stated it was his grandfather, borma and pehi killed his mother. He did not took the name of his grandmother, borduta and his father. The age of the witness is not only one factor to discard the whole evidence stated by the child if the child evidence is found to be truthful, cogent convincing. PW-4 stood in his position during the lengthy cross examination and he answer all the question rationally put forth to him by defence and he did not resile from his earlier statement and stood firmly during cross examination. I do not find any cogent reason to discard the testimonies of the child. In the house except the children of the deceased, no other persons present to disclose the true facts and it is the PW-4 who witness the incident and he disclosed the incident to his sister too. The rational answer

given by the child witness pointed his evidence is not tutored and he deposed what he had seen with his own eye and therefore, he took the name of those accused persons who participated in killing of his mother. I find no reason to disbelief the testimonies of PW-4 and for only ground that he is a child, his evidence cannot be discarded.

40. PW-6 is another child witness. His evidence pointed informant is his maternal uncle and statement of PW-6 was recorded after finding that PW-6 has proper understanding to give evidence. Her evidence also pointed from the feast she, her mother, her aunt Hasina, Anju returned back to their house and thereafter she was studying and her brother was with her mother and at 6 pm she could know her mother was not in the house and her brother Babu @ Rijul told her that her (pehi) Hasina and (barma) Anju committed murder of her mother and kept the dead body in the 'box paleng'. She stated that on that night her maternal uncle Tafazzul came to their house searched for their mother but not found. She stated for the last time she witnessed her mother going towards basti of their house. Her cross further pointed about 200/300 people searched for their mother but they did not search their mother inside their house. The cross-examination of PW-6 also pointed that no search were made inside the house of accused persons and their house were under locked from outside. The cross-examination of PW-6 again pointed and corroborated the statement of PW-1 informant that accused persons did not allow them to search inside the house.

41. PW-6 not stated she witness the incident with her own eye. Had she was tutored witness, she would have stated this fact. She stated what she noticed, what she had heard from her brother and it was her brother PW-4 who disclose before her that accused Hasina, Anju and Nana killed their mother. At the time they are in the house of accused persons. Defence admits the part of the statement of child witness going to feast, conversation with the accused Raju but when same child witness stated it was accused Anju, Hasina and Farmud (since deceased) kill their mother their testimonies is not acceptable being they are child witness. When incident was took

place these two child witnesses are present in the house of accused persons. PW-6 gives rational answer to the question put to her and she made consistent statement at all stages. Her testimonies that they went to attend fest, they returned from fest, thereafter her mother disappeared from the house, all made search in the pond on previous day of the recovery of the dead body of the deceased in the pond are all corroborated by other witness. The fact that these two witness present in the house when incident took place and other witness not present in the house, so other witness not seen the incident. PW-6 was reading at the time when incident of murder was taking place. PW-4 was just 5 ½ years at that time. PW-6 stated her brother PW-4 was with her mother after their return from the feast. It is quite natural because at that time he was just 5 ½ years old boy and so he was with his mother and at that time he witness the incident while he was sitting on a chair and incident was going in the room. As at the time of incident except the PW-4 other witness were not present so thus, other witness not witness the incident and therefore on that count alone the evidence of PW-4 and PW-6 cannot be discarded when found not tutored and are found reliable and trustworthy piece of evidence.

42. PW-9, Dibyajyoti Mahanata the then Addl CJM, Nalbari stated that on 08/03/10 he recorded statement of Ashma Begum and Rijul Ahmed u/s-164 CrPC in connection with Nalbari PS Case No.97/10. After finding that both of them having understanding capacity and on being satisfied, he recorded their statement. Ext-6 is the statement of witness Asma Begum recorded u/s-164 CrPC. Ext-7 is the statement of witness Rijul Ahmed recorded by him u/s-164 CrPC. Perusal of their statement pointed they made statement before the court what they had made earlier before the police and Id Magistrate and their statement is consistent with earlier statement and found satisfactory.

43. I have perused Ext-6 & Ext-7 statement of PW-6 & PW-4, Ashma and Rijul. On scrutiny of their statement it is revealed that on the date of incident they, their mother, paternal grand-mother,

grand-father, pehi, their barma, and children of barma went to attend the feast and they all return home. Both the witness stated same fact before the court and PW-9, Id Addl Chief Judicial Magistrate recorded their statement on being satisfied that both of them have rational capacity to give answer. I find from the record that both the child witness have sufficient understanding capacity and accordingly they stated before the court.

44. Ld defence counsel highly objected on the statement of PW-4 on the point he deposed he witness the incident and this is a tutored statement and PW-6 that she heard from PW-6 citing that their evidence is not reliable as they are child witness.

45. I have perused the statutory provision of law. There is no bar in the statute who can be the witness of the case. Section 118 of the Evidence Act says - "Who may testify. —All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Explanation.— A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them. "

46. Under the law there is no bar to accept the testimony of a person who is a child below 18 years. It is the settled principle of law if the statement of child inspire confidence and it appears that his evidence is free from any influence then there is no bar in accepting the statement of child evidence.

47. In Sakhare Vs. Stated of Maharashtra (1997) 5 SCC 341, Hon'ble Apex Court observed- "A child witness if found competent to deposed to the faith and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered u/s- 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of

a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while recording the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored”.

48. In *Mangoo & Anr Vs. State of Madhya Pradesh*, AIR 1995 SC 95, Hon'ble SC hold “this court while dealing with the evidence of a child witness observed that there was always scope to tutor the child, however, it cannot be a ground to come to conclusion that the child witness must have been tutored. The court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring”

49. In *Digambar Vishnav and another vs. State of Chhattisgarh*, 2019 (196) AIC 34(SC). In para 23 of the judgment Hon'ble Supreme Court discussed as:

"36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

50. PW-4 and PW-6 before the magistrate while making statement u/s-164 Cr.P.C and in the court stated similar consistent statement in all the stages. PW-6 stated she heard from her brother PW-4 that it was accused Hasina, Anjuwara and their grandfather committed murder of their mother deceased Manjuwara.

51. PW-9, Dibyajyoti Mahanta then Addl CJM, Nalbari stated that he after being satisfied that the child Ashma and Rijul have understanding capacity recorded their statement u/s-164 Cr.P.C. and thereafter read over the same to the witnesses. The then Addl CJM Nalbari before recording of the child witnesses u/s-164 Cr.P.C put question to verify the intelligence of the witnesses and thereafter recorded their statement.

52. From the cross examination of PW-4, it is seen that the witness PW-4 Rijul Ahmed remember where his sister studied when they stay at their father's house. He also stated in cross that his grandfather Farmud and grandmother Sahijan expired. His mother's dead body recovered from the pond on third day and on that day he was present at his father's house and on the same day he was taken to his maternal uncle. The cross examination of PW-4 clearly pointed that this witness stated in his chief what he had seen by his own eye. He lost his mother at the very tender age so thus, the scenery is very much surrounded before his eye.

53. The police submitted charge sheet against his father grandmother and uncle Fazal Ali but he did not implicate their name. He specifically stated that it was his aunt Anju Bibi and Hasina Begum and his grandfather Farmud Ali (since deceased) who killed his mother and thereafter keep her body under the box bed.

54. PW-6 Ashma stated that she heard from her brother that it was accused Hasina, Anju and Farmud assaulted their mother and killed her. During vigorous cross examination faced by child witness PW-4 and PW-6 they remain stucked on their stand. During cross examination it is comes out that villagers though searched for their mother on the night but did not make search inside the house as the

house is locked and cross examination of PW-6 corroborated the statement of PW-1 that accused persons did not allow villagers to search inside their house. Villagers made search outside their house and on the said pond where dead body was found on the next day of search made by using fishing net and on the next day of incident when search made in the pond nothing was found in the pond.

55. Here the child witness PW-4 witness the incident. Before him, his mother was murdered. I do not find any reason to discard the testimony of the child witness PW-4. The child witness given rational answers on the questions put to him. The statement of PW-4 and PW-6 inspire confidence and therefore their evidence can be safely acted upon. It is seen from the statement of the accused Anju recorded u/s 313 Cr.P.C that she had admitted Hasina came along with deceased with her children from the feast and Hasina admitted the same in her statement recorded u/s-313 Cr.P.C. Accused Anju and Hasina did not give any reply to the question put to them that Hasina told Tafazzul that Manjuwara went to backside with a bucket and again both the accused in another question put to them stated that Manjuwara went to fetch water. Therefore story that Manjuwara went to fetch water from the pond does not stand and the statement made by PW-4 who was present with his mother is revealed from the reply of accused person in their statement recorded u/s-313 Cr.P.C that clearly pointed PW-4 witnessed the incident and he make statement before the court what he had seen with his own eye on the date of incident.

56. I find the statement of PW-4 and PW-6 are reliable believable being rational, trustworthy piece of evidence and same inspire confidence and same can be safely acted upon. Accordingly, I have accepted their piece of testimony and the same is acted upon. The statement of the prime witness PW-4 pointed hand of accused Anju Bibi, Hasina Begum and deceased accused Farmud in causing death of Manjuwara intentionally and thereafter they caused disappearance of the dead body of Manjuwara.

CONCLUSION

57. From the entire scrutiny of the record, I find that prosecution has been fairly able to bring home the charge of section 302/201/34 I.P.C against the accused Anju Bibi and Hasina Begam beyond all reasonable doubt and I hold them guilty of commission of offence punishable u/s 302/201/34 I.P.C and both of them are convicted under charge of section 302/201/34 I.P.C. Their bail stands cancelled.

58. From the statement of PW-1, PW-4 and PW-6 it is revealed that accused Raju Ali was not present at the place of occurrence on the date of incident and he was present at his place of posting in connection with service. The statement of PW-1, PW-3, PW-4, PW-6 pointed that deceased had conversation with their father accused Raju Ali. It is not the statement the PWs that accused Raju and Fazal made any contact with the other accused persons. The absence of accused Raju Ali at the place of occurrence on the date of incident is clearly evident from the evidence on record.

59. The charge against the accused person u/s-302/201/34 IPC. The hand of the accused Raju Ali in the murder of Manjuwara not coming out from the evidence on record. Similarly the prime witness of this case PW-4, who had seen the incident did not took the name of accused Fazal Ali and another accused Sahijan Bibi (since deceased) and I come to my considerate finding that prosecution totally failed to prove the charge of section 302/201 I.P.C against the accused Fazal and Raju Ali and they are acquitted from the charge of section 302/201 I.P.C.

60. The nature of the offence committed by the convicted accused persons does not entitle them the benefit of section 360 Cr.P.C. and under the Probation of Offender Act and therefore, both the convicted accused persons are heard on the point of sentence.

HEARING OF THE ACCUSED ON THE POINT OF SENTENCE

61. Convicted accused Anju Bibi and Hasina Begum heard on the point of sentence and their plea of sentence is reduced into writing in a separate sheet and keep with case record. I heard Ld defence

counsel as well Ld P.P for the state on the point of sentence. Accused pleaded mercy and prays for considering leniently.

62. Learned PP prays to for sentencing the accused as per the law and the plea taken by convicted accused persons being pity the same should not be consider by the court while sentencing the accused taking in to consideration nature of the offence committed by the offence.

63. Learned defence counsel made submission that accused Hasina Begum is having a minor child both the accused persons are lady and prays for bail.

64. After hearing learned PP and Id defence counsel and also hearing the accused persons on the point of sentence, and further considering the nature of the offence which accused persons have committed, I am the opinion that this is not a case to consider the accused leniently. Accordingly, I sentenced accused Anju Bibi and Hasina Begum to undergo R/I for life and to pay fine of Rs. 10,000/- (ten thousand) only i/d, R/I for 6 (six) months for committing offence u/s- 302 IPC. I further sentence each of the convicted accused persons to undergo R/I for 3 (three) years and to pay fine of Rs. 3000/- (three thousand) only i/d, S/I for 1 (one) month for committing offence u/s- 201 IPC. All the sentences will run concurrently.

ORDER

65. Accused persons Anju Bibi and Hasina Begum are found guilty of offence u/s-302/201 I.P.C and all accused persons are sentenced to undergo R/I for life and to pay fine of Rs. 10,000/- (ten thousand) only i/d, R/I for 6 (six) months for committing offence u/s- 302 IPC. I further sentence each of the convicted accused persons to undergo R/I for 3 (three) years and to pay fine of Rs. 3000/- (three thousand) only i/d, S/I for 1 (one) month for committing offence u/s- 201 IPC. All the sentences will run concurrently. The period of detention already undergone by the convict accused shall be set off against the period of imprisonment.

66. The convicted accused is told that he has right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court. Let furnish free copy of Judgment to convicted accused persons.

67. Send copy of judgment to learned District Magistrate Nalbari u/s-365 Cr.P.C.

68. Seized goods be disposed of in accordance with law in due course of time.

69. Send back the GR case record to the learned committal Court with a copy of the judgment.

70. Given under hand and seal of this Court on this 8th day of July, 2019 at Nalbari, Dist- Nalbari.

(Smti S. Bhuyan)
Sessions Judge, Nalbari

Dictated and Corrected by me,

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Typed by,
D. Roy Stenographer Gr. II.

APPENDIX

PROSECUTION WITNESS.

PW-1 Md. Tafazzul Ali,
PW-2 Dr. Jatindra Nath Barman,
PW-3 Md. Mainuruddin Ahmed,
PW-4 Md. Rijul Ahmed,
PW-5 Dr. Manalisha Choudhury,
PW-6 Miss Ashma Begum,
PW-7 Sri Bisweswar Saikia (S.I),
PW-8 Dr. Dilip Kr. Hajong,
PW-9 Sri Dibyajyoti Mahanta (Judicial officer).

PROSECUTION EXHIBIT

Ext-1 Ejahar,
Ext-2 Seizure list,
Ext-3 post mortem report,
Ext-4 FSL report on seizure item,
Ext-5 forwarding report of ext-4.
Ext-6 inquest report and statement of the witness Ashma Begum recorded u/s 164 Cr.P.C
Ext-7 sketch map of the place of occurrence and statement of the witness Rijul Ahmed recorded u/s 164 Cr.P.C.
Ext-8 charge sheet and GR case record 211/10
Ext-8(1) order dated 08-03-10 passed by the then learned CJM, Nalbari.

DEFENCE WITNESS:- Nil

DEFENCE EXHIBIT :- Nil.

COURT WITNESS :- Nil

COURT EXHIBIT :- Nil.

(Smti S.Bhuyan)
Sessions Judge Nalbari