

IN THE COURT OF THE SESSION JUDGE, NALBARI

Present: **Smti S. Bhuyan**
Session Judge
Nalbari

Sessions Case No. 29/14

u/s- 302 IPC

(Committed by the court of learned Addl CJM,

Nalbari in GR Case No. 740/13 u/s- 302 IPC)

State of Assam

-Vs-

Sri Madan Thakuria

S/o- Late Bhagiram Thakuria

R/o- village Sandeli (Makrapara), PS- Belsor

Dist- Nalbari (Assam)Accused person

Appearance:

For prosecution : Dharendra Nath Barman, PP

For defence : Samindra Kalita, Legal aid counsel

Date of institution of the case : 01-06-2013

Date of committal : 09-04-2014

Date of framing charge : 27-06-2014

Date of evidence : 09-01-15, 16-09-15, 25-04-16,
01-07-16, 26-08-16, 05-12-16,
19-05-17, 13-06-18 & 23-03-21

Statement of accused recorded : 05-04-2021

Date of Argument : 03-05-2021
Judgment Delivered : 06-08-2021
Sentence hearing : 06-08-2021
Sentence Pronounced : 06-08-2021

J U D G M E N T

Prosecution Case

1. The case of the prosecution as revealed from the ejahar lodged by informant Sri Sadananda Deka is that on 01-06-2013 at about 3:45 pm accused Madan Thakuria committed murder of his wife Lila Thakuria by inflicting injury with an axe.

Investigation

2. On receipt of the ejahar O/C, Belsor PS namely SI Kusum Ranjan Nath registered Belsor PS case No. 54/2013 u/s- 302 IPC and took up the charge of investigation himself. During investigation, the I/O visited place of occurrence, drawn sketch map of the place of occurrence, recorded statement of the informant and other witnesses, informed the Executive Magistrate for inquest on the dead body, sent the dead body for postmortem to SMK Civil Hospital, Nalbari, arrested the accused and as he was transferred to another station, he handed over the case diary to his successor SI Ramesh Bordoloi and he getting prima-facie materials submitted charge sheet against accused Madan Thakuria u/s- 302 IPC.

Committal

3. On receipt of the charge sheet, learned Addl CJM, Nalbari took cognizance and after furnishing necessary copies to accused person, as per provision of the CrPC, committed the case for trial.

Charge

4. After hearing learned counsels for both sides and perusal of entire materials on record charge has been framed against the accused u/s- 302 IPC and when charges are read over and explained to the accused, he pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the charge against the accused, prosecution adduces evidence of 10 witnesses including the informant and exhibited 6 no's of documents. PW-1 Sri Bhagawan Barman, PW-2 Sri Sadananda Deka (informant), PW-3 Sri Nareswar Deka, PW-4 Sri Ramesh Barman, PW-5 Sri Bhagirath Bezbaruah, PW-6 Md Sonali Huzuri, PW-7 Sri Aniruddha Talukdar, PW-8 Dr Sadananda Rai Baruah (medical officer), PW-9 Smti Daiji Thakuria and PW-10 SI Ramesh Bordoloi (I/O). Ext-1 seizure list, Ext-2 inquest report, Ext-3 ejahar, Ext-3A postmortem report, Ext-4 charge sheet and Ext-5 sketch map of place of occurrence. After closure of the evidence of the prosecution, statement of accused Madan Thakuria is recorded u/s-313 CrPC and

accused plea is of total denial. However, accused declined to adduce evidence in support of his plea of denial.

6. **Points For Determination**

- i) Whether accused Madan Thakuria on 10-06-2013 at around 3:45 pm at village Sandheli (Makrapara) committed murder of Lila Thakuria by intentionally causing her death?

Argument

7. Learned PP made submission that prosecution has fairly able to prove the case against the accused and daughter of the accused and deceased, who witnessed the incident, disclosed before the court in lucid manner which defence failed to demolish. Learned PP further submitted that Gaonburah of the village disclosed before the court what he witnessed and seen and the chain of circumstances with the evidence of eye witness proved the prosecution case beyond all reasonable doubt and there left no room of accused innocence and prays for conviction of the accused.

8. Learned legal aid counsel for the accused filed written argument where he submitted that though I/O of the case seized a blood stained axe but sample of blood stain and finger print in the handle of the axe was not sent for forensic examination. There is no eye witness of the

alleged incident, this is a false case lodged against the accused, accused is an innocent person and he is noway involved in the alleged offense and prays for acquittal of the accused.

Evidence

9. PW-1 Bhagawan Barman deposed in his evidence that the incident took place on 01/06/13 at about 1 to 1.30 pm and on the previous day of the date of incident there was a quarrel between the accused and his neighbours and accused spent that night at his (PW-1) house. He further stated on next day he came from the house of PW-1 with a dao in his hand and proceeded to Belsor PS and PW-1 went to Belsor PS and as per advice of O/C, Belsor PS, they returned to the house of accused and accused came first on the motorcycle of his nephew and they followed accused to his house riding on his motorcycle and reaching accused house, he heard that accused gave a axe blow on the head of his wife resulting death on the spot and PW-1 saw dead body of the deceased in the room of the accused. He further stated that he went to the house of gaonburah and gaonburah informed the police. Police came and took accused to police station and police seized one axe with bamboo handle with blood stain from the place of occurrence near the deceased dead body. Thereafter, inquest was done by the Executive Magistrate, Paschim Nalbari Revenue Circle on the dead body of the deceased and dead body was sent to SMK Civil Hospital for

postmortem examination. His evidence pointed that accused ran away from his house immediately after committing the incident and took shelter in the house of village headman (PW-4) and villagers reached house of village headman to apprehend the accused. His cross examination pointed that he noticed accused running from his house when he (PW-1) reached there. Belsor police station is at a distance of 20 minutes from accused house.

10. PW-2 Sadananda Deka stated in his evidence that on the date of occurrence at about 4.30 pm after giving axe blow on the head of the deceased Leela Thakuria, accused fled away to the house of village gaonburah and gaonburah took accused to Belsor PS. Thereafter, police took the dead body of the deceased from the house of accused and postmortem was done on the dead body and after postmortem last rite of the deceased was performed.

11. PW-3 Nareswar Deka deposed that about 2 years ago from the date of his evidence, one day hearing hue and cry in the house of accused, he went to the house of the accused and noticed dead body of the wife of accused in the courtyard. When police lifted the cloth from the dead body he noticed injury on the neck of the deceased and police seized one axe from the place of occurrence vide Ext-1.

12. PW-4 Ramesh Barman, who is the village headman, deposed that on the date of incident at about 2.30 pm, accused came running to his house and uttered to save him "Barman da, mok bachauk" and on asking by PW-4, accused replied that he cut Leela and pleaded before him to save him and to inform the police. He informed police and police came and police guard accused in his house and police took PW-4 to the house of accused and in the house of accused PW-4 noticed dead body of deceased and blood oozing out from the back of the neck of the deceased. Thereafter, police took accused to the police station. In cross he stated that he talked to accused about 20 minutes and during that time accused disclosed before him about the incident. Accused did not bring weapon of offence with him to his(PW-4) house.

13. PW-5 Bhagirath Bezbaruah stated that on the date of incident at about 3 pm, when he was working near the side of river, he heard hue and cry from the house of accused Madan Thakuria and he went to the house of accused and heard that accused Madan cut Leela. Thereafter, he entered in to house of accused and noticed dead body of the deceased with cut injury on the neck and accused took shelter in the house of village gaonburah. From the house of gaonburah police took accused to the place of occurrence and later on accused was arrested and police seized one axe from the place of occurrence.

14. PW-6 and PW-7 are only seizure witnesses and they are declared hostile by the prosecution. In their statement, PW-6 and PW-7 deposed that on the date of incident, O/C, Belsor PS called them to the police station and asked them to put signatures in the seizure list and accordingly they put their signatures. Cross of PW-6 is declined by the defence. It has been denied by PW-7 in the question put by prosecution side that on 02/06/13 in the morning, he along with Sonali Huzuri came to Belsor PS and then accused on being asked by Sonali Huzuri confessed that he committed murder of his wife on 01/06/13 at about 3.45 pm with the help of an axe causing blow at her neck. In cross by defence PW-7 stated that he did not talk with Sonali Huzuri on that particular day.

15. PW-8, M/O of the case deposed on 02/06/13, he performed autopsy on the dead body of the Leela Thakuria who was identified by Constable No. 186 Kandarpa Das and Bhagirath Bezbaruah in connection with Belsor PS Case No. 54/12 u/s-302 IPC. During autopsy, he found a young adult lady with average built, rigor mortis present, mouth and eye half open, wearing blood stain cloths. There are 4 numbers of clean cut injuries found in right side of the neck and sizes are- (1) 2" X 1 ½" X 1" (2) 1" X 1" X 1" (3) 2 ½" X ½" X ½" and no other injuries found except those injuries. All the injuries are antemortem in

nature. In his opinion, death is due to shock and hemorrhage from the injuries sustained.

16. PW-9 Daiji Thakuria is the daughter of accused and deceased. She deposed that her father accused often used to quarrel with her mother (deceased), herself and other family members as well as he used to cause torture upon them in both intoxicated and un-intoxicated state since 4/5 years prior to the incident. She further deposed that on the date of occurrence at about 4 pm, accused and her mother were talking in the room and she went for bath and at that time, she heard scream of her mother and she immediately rushed to the room and noticed that her father (accused) inflicted injury on the neck of her mother by means of an axe and she also noticed accused inflicted injury by means of axe upon her mother twice and noticed the last blow on the neck of her mother by means of an axe which severed head of her mother from her body. Due to the said blow, he mother was severely injured and her father (accused) left the axe at the place and came out of their house with a lathi in his hands. Thereafter, she raised hue and cry and many people gathered at the place of occurrence. She further deposed that her maternal uncle took her mother to the hospital but her mother expired.

17. PW-10, I/O, SI Ramesh Bordoloi deposed that on 10/07/13 he joined as O/C, Belsor PS and his predecessor

handed over him the case diary of Belsor PS Case No. 54/13 u/s-302 IPC. He further deposed after going through the case diary he find that I/O of the case visited place of occurrence, draw sketch map of the place of occurrence, examined complainant and witnesses, collected the postmortem report and after receiving of the case diary he found the investigation is almost complete and he sent the case diary to the Circle Inspector, Belsor PS for writing progress report. Thereafter, CI, Belsor directed to dispose off the case in the form of charge-sheet u/s-302 IPC and accordingly, he had submitted charge-sheet against the accused Madan Thakuria u/s-302 IPC.

DISCUSSION, DECISION AND REASON THEREOF:

18. PW-2 Sadananda Deka, who is the informant of this case, deposed that on the date of incident at about 4.30 pm accused gave axe blow on the head of deceased Lila Thakuria and thereafter he fled away from the place of occurrence and took shelter at the house of village headman Ramesh Barman. Thereafter villagers surrounded the house of village headman, village headman informed police, police arrived and arrested the accused from the house of village headman. PW-1 Bhagawan Barman deposed that on the date of incident after reaching house of the accused, he heard that accused gave axe blow on the head of deceased Lila Thakuria as a result of which Lila Thakuria died on the spot. He noticed dead body of Lila

Thakuria inside the house of accused with injury and blood oozing out from her injury. Thereafter, accused took shelter at the house of village headman Ramesh Barman after committing the offence, he along with the villagers rushed to the house of village headman to apprehend the accused and thereafter police was informed by the village headman, police arrived and police arrested the accused. PW-3 Nareswar Deka deposed that hearing hue and cry in the house of the accused he rushed there and noticed the dead body of Lila Thakuria with cut injury at the neck of the deceased and PW-5 Bhagirath Bezbaruah deposed that on the date of incident hearing hue and cry in the house of the accused he rushed there and he noticed the dead body of Lila Thakuria with cut injury at the neck inside the house of the accused.

19. PW-1, PW-2, PW-3 and PW-5 stated that after committing murder of deceased Lila Thakuria accused took shelter at the house of PW-4 Ramesh Barman, who is the village headman of their village and thereafter they along with other villagers surrounded the house of Ramesh Barman to apprehend the accused. Evidence of PW-4 Ramesh Barman shows that on the date of incident while he was sleeping at his house, accused rushed to his house and pleaded for saving him and told that he inflicted cut injury upon Lila Thakuria. Thereafter, as the villagers proceeded towards his house he kept the accused at his

drawing room and police arrested the accused from his house and seized the axe from the place of occurrence. Accused in his statement recorded u/s- 313 CrPC in question No. 18 admitted the fact that on the date of incident he took shelter at the house of PW-4 Ramesh Barman after the incident of murder of his deceased wife and police arrested him from the house of PW-4. PW-1, PW-3, PW-5 are the villagers of accused and PW-4 is the village headman of their village. Defence could not elicit why the accused took shelter at the house of village headman when his wife was murdered and lying at his house or why the villagers and village headman gave false statement against the accused. PW-4 deposed that accused disclosed before him that he (accused) cut his wife with an axe. There is no enmity of villagers with the accused for which they would falsely implicate accused with the murder of his wife. The presence of accused at this house just before the incident with his wife clearly visible and appearing from the statement of his daughter PW-9.

20. As per Ext-2 inquest report three injury marks were found on the dead body of Lila Thakuria i.e. (i) Injury at the right side of the neck of size approx 3 inches wide. (ii) Injury at the back side of neck of sized 4 inches X 2 inches & (iii) One injury at the back side of the head. Evidence of PW-8 Dr. Sadananda Rai Baruah and Ext-3(A) postmortem

report pointed four nos of clean cut injuries at the right side of the neck of the deceased of size of size (i) 2 inch X 1 inch X 1 inch (ii) 2 inch X 1 inch X 1 inch (iii) 2 inch X ½ inch X ½ inch (iv) 2 inch X ½ inch X ½ inch. PW-8 opined that death was due to shock and haemorrhage from the said injuries stained by the deceased. From the aforesaid evidences and materials on record it can clearly be held that Lila Thakuria died due to the antemortem cut injuries sustained by her. PWs stated that they noticed head and neck injuries with blood oozing out from the injuries of the deceased. Ocular evidence on injury of deceased is similar with Ext-3(A) postmortem report of the deceased.

21. Now let me discuss the testimony of vital witness of this case PW-9 Daiji Thakuria who is the daughter of the accused and deceased and the single eye witness of this case. PW-9 in her evidence before the court stated that on the date of incident at about 4:00 pm her deceased mother and accused father was talking in the middle room of their house and she went to take bath. In the meantime she heard scream of her mother and she immediately rushed to the room and noticed that accused inflicted injury at the neck of her deceased mother by means of an axe. She also noticed already accused inflicted injury by axe blow twice upon her deceased mother and the last blow of axe was inflicted by the accused at the neck of her mother which

she noticed. Thereafter the accused left the said axe in his house and went out from house taking a lathi in his hand.

22. 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."

23. 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.

24. 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”.

25. In *Mangoo & Anr Vs. State of Madhya Pradesh*, AIR 1995 SC 95, Hon'ble Supreme Court hold that “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.”

26. 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."

27. Relying upon the aforesaid decisions of the Hon'ble Apex Court I opine that in this case testimony of PW-9 Daiji Thakuria has the same importance and credence as like the other witnesses and her evidence cannot be treated inferior to the evidence of other witnesses. More so, PW-9 was 21 years old at the time of adducing her evidence and her evidence recorded on 13-06-2018. Incident took place on 01-06-2013. At the time of incident she was 16 or 16+ years old. When she deposed before the court, she was a major girl and at the time of incident she was minor but above 12 years of age. She is the child of accused and deceased. So she disclosed before the court what she had noticed at the time of incident.

28. Ext-5 sketch map of the place of occurrence shows that dead body was found inside the house of the accused and police seized one blood stained axe with bamboo handle from the place of occurrence vide Ext-1 in presence of villagers and PW-1 and PW-3. All the witnesses noticed injury on the neck of the deceased. Postmortem report shows injury on the neck of the deceased and her death

was due to the said injury sustained by her. All the witnesses soon reaching house of the accused came to know that accused committed murder of deceased by inflicting axe blow on her neck and accused ran away from his house. All the documentary evidence and evidence of independent witnesses supports the testimony of eye witness PW-9 Daiji Thakuria. Defence failed to bring any fact or reason why all the witnesses give false statement against the accused, whereas PW-9 is the daughter of the accused. There being no such ground or reason appears against the witnesses, I find testimonies of the witnesses, which are cogent and convincing and are believable and safe piece of evidence to rely upon and I have accepted their evidences.

29. With regard to accused running away from his house immediately after the incident and taking shelter at the house of village headman (PW-4) and disclosing incident to village headman, asking his help to save him and he cut his wife with an axe, villagers chasing him to the house of village headman, accused statement recorded u/s- 313 CrPC that he was arrested by police from the house of village headman and village headman kept him at his drawing (living) room to save him from villagers, together with the testimony of PW-9, the eye witness of this case, all goes to show that the accused gave axe blow at the neck of his wife with intent to take her life and evidence on

record clearing pointed and satisfy the ingredient of section 300 IPC the offense of murder which is punishable u/s-302 IPC.

30. In **Amar Singh vs The State (Nct Of Delhi)** decided on 12 October, 2020 (Crl Apl No. 335 of 2015) the Hon'ble Supreme Court has observed as follows:

"16. As a general rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony Courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time honoured principle is that evidence has to be weighed and not counted."

31. In **Thoti Manohar Vs State of Andhra Pradesh** (Crl Apl No.1739 Of 2007) the Honb'le Apex Court cited as below:

"24. In this context, we may refer with profit the decision of this Court in **Dalip Singh v. State of Punjab**, wherein Vivian Bose, J., speaking for the Court, observed as follows:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to

dispel in Rameshwar v. The State of Rajasthan (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59).”

In the said case, it was further observed that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

25. In ***Masalti v. State of U.P.***, it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.”

32. From the entire scrutiny of the record, I find that prosecution fairly able to bring home the charge of section 302 I.P.C against the accused Madan Thakuria beyond all reasonable doubt and I hold accused Madan Thakuria guilty of commission of offence punishable u/s-302 I.P.C and accused Madan Thakuria is convicted under charge of section 302 I.P.C.

33. The nature of the offence committed by the convicted accused does not entitle him the benefit of section 360 Cr.P.C. and under the Probation of Offender

Act and therefore, the convicted accused Madan Thakuria is heard on the point of sentence.

HEARING OF THE ACCUSED ON THE POINT OF SENTENCE

34. I have heard the accused on the point of sentence which is written in separate sheets, kept with record. Accused prays for showing him leniency. Also heard learned legal aid counsel and learned PP on the point of sentence. Learned legal aid counsel made submission that accused may be considered leniently while passing the sentence. Learned PP submitted that court may pass sentence as per the provision of law which is just and proper for the offence committed by the accused.

35. After hearing learned counsel for both sides and accused on the point of sentence, going through the material on record and considering the nature of the offence committed by the convicted accused, I sentenced accused Madan Thakuria to undergo Rigorous Imprisonment for life and to pay fine of Rs. 50,000/- (fifty thousand) only in default of payment of fine Simple Imprisonment for another one year u/s-302 IPC. The period under detention is hereby set off under section 428 CrPC. Issue Jail warrant accordingly.

36. Accused person is told that he has right to appeal before the Hon'ble High Court against the judgment and

sentence of this court of his own, through jail or through legal aid counsel. Let furnish free copy of the judgment to the accused person.

37. Destroy seized goods in accordance with law.

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

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

Judgment is given under my hand and seal of this court on this the 6th day of August, 2021.

(Smti S. Bhuyan)
Session Judge, Nalbari

Dictated & corrected by me

(Smti S. Bhuyan)
Session Judge, Nalbari

Typed by:
Jitumani Talukdar,
Computer Typist

A P P E N D I X

A. Prosecution witnesses

- PW-1 Sri Bhagawan Barman
- PW-2 Sri Sadananda Deka (informant)
- PW-3 Sri Nareswar Deka
- PW-4 Sri Ramesh Barman
- PW-5 Sri Bhagirath Bezbaruah
- PW-6 Md Sonali Huzuri
- PW-7 Sri Aniruddha Talukdar
- PW-8 Dr Sadananda Rai Baruah (MO)
- PW-9 Smti Daiji Thakuria
- PW-10 SI Ramesh Bordoloi (I/O).

B. Defence witness

NIL

C. Prosecution Exhibits

- Ext-1 Seizure list
- Ext-2 Inquest report,
- Ext-3 Ejahar,
- Ext-4 Charge sheet
- Ext-5 Sketch map of place of occurrence.

D. Defence Exhibit

Nil.

(Smti S. Bhuyan)
Session Judge, Nalbari