

GAHC010177712022



2026:GAU-AS:6321-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/96/2022

MODON URANG
S/O. LT. RAMESWAR URANG, R/O. LEKAI THAKURTHAN, P.S. DIBRUGARH,
DIST. DIBRUGARH

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY PP, ASSAM

2:SRI BIJEN URANG
S/O LATE BISHA URANG
R/O- LAKAI GAON MALEMARI PATH
PS-DIBRUGARH
DIST- DIBRUGARH ASSAM
PIN- 78600

Advocates for the appellant : Mr. H.R.A. Choudhury, Sr.Adv.
Mr. I. U. Choudhury, Adv.
Mr. U. Choudhury, Legal Aid Counsel

Advocate for the respondents : Ms. B. Bhuyan, Sr. Adv. & A.PP

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved : 06.05.2026

Date of pronouncement of judgment : 08.05.2026

Whether the pronouncement is of the : N/A
operative part of the judgment ?

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. H. R. A. Choudhury, learned senior counsel for the appellant, assisted by Mr. I. U. Choudhury, learned counsel and Mr. U. Choudhury, learned Legal Aid Counsel for the appellant. Also heard Ms. B. Bhuyan, learned Senior Counsel and Addl. PP, Assam, assisted by Ms. R. Das, learned counsel.

2. This appeal has put to challenge the conviction of the appellant under Section 302 of the IPC for having killed his wife, who had eloped. The appellant has been convicted by the impugned Judgment dated 01.08.2022 passed by the learned Addl. Sessions Judge, Dibrugarh in Sessions Case No.168/2017 and sentenced to undergo rigorous imprisonment for life with a fine of Rs.3000/-, in default, to undergo simple imprisonment for three months.

3. The appellant's counsel submits that the only eye witness to the crime in question is PW-5, who is an Assistant Sub-Inspector of Police at Milan Nagar Outpost, Dibrugarh Police Station. He submits that though the alleged incident took place in a tea garden, where bonus was being paid to the workers and a nearby market had been set up in the area, the charge-sheet has not listed any private/independent person to be a prosecution witness. Instead PW-5, who is a policeman, has been made an eye witness to the crime. He submits that in the absence of any private/independent witness, the evidence of PW-5 cannot be the sole ground for convicting the appellant.

4. The learned counsel for the appellant further submits that as the *dao* that has been seized by the police, which was the weapon used for the crime, had not been sent to the FSL for examination, the same was fatal to the prosecution case. He also submits that though PW-2 had stated that he had seen the appellant with a blood stained *dao*, which PW-2 had asked the appellant to drop, there was no proof that the said *dao* was the weapon used by the appellant to kill his wife.

5. The learned senior counsel for the appellant submits that the evidence of PW-2 shows that he did not give any prior statement to the police under section 161 Cr.PC and as such, the appellant was not given the chance to defend himself against the testimony of pw-2. He also submits that though the charge-sheet submitted in this case had listed 12 Prosecution Witnesses, who were to prove the case against the appellant, only 7 Prosecution Witnesses have been examined by the prosecution, thereby giving rise to an inference that the prosecution was hiding certain facts, which could have proved the innocence of the appellant. The appellant's counsel further submits that PW-5, who is a

policeman, is a chance witness and the evidence of a chance witness cannot be relied upon without proper scrutiny. He accordingly submits that the prosecution not having been able to prove the guilt of the appellant under Section 302 of the IPC beyond all reasonable doubt and as all the procedures required to be followed had not been followed, the impugned judgment should be set aside, as the same caused prejudice to the appellant.

6. On the other hand, the learned Addl. PP submits that there is no infirmity with the decision of the learned Trial Court, inasmuch as, there is no reason to doubt the evidence of PW-5, only because he is a policeman. In this regards, he has relied upon the judgment of the Supreme Court in the case of **Govindaraju @ Govinda vs. State by Sriramapuram Police Station**, reported in **(2012) 4 SCC 722**. The learned APP submits that even though PW-5 may be a chance witness and a policeman, the evidence of a chance witness is admissible in evidence and in this regard, she has relied upon the decision of the Supreme Court in the case of **Sarvesh Narain Shukla vs. Daroga Singh and others**, reported in **(2007) 13 SCC 360**. The learned APP further submits that due to the appellant having killed his wife, who had eloped with another person, the 3 children born to them, who were deaf and dumb, need support. As such, the benefits under Section 357A Cr.PC should be provided to them. She submits that on a perusal of the records, she does not find any written statement of PW-2 under Section 161 Cr.PC, though his signature is there as a seizure witness. She thus submits that as there is no infirmity with the decision of the learned Trial Court, the impugned judgment should not be interfered with.

7. We have heard the learned counsels for the parties.

8. The facts of the case in brief is that an FIR dated 17/09/2017 was submitted by the informant (PW-1), who stated that the appellant had hacked his wife with a *dao* at around 4.30 p.m. on 16/09/2017 at line no. 5 of Hatigarh, Bokpara Tea Estate. The informant also stated that the appellant's wife was his elder sister. Pursuant to the FIR, Milan Nagar Police Out Post GDE No. 400 dated 17/09/2017 was registered and the same was sent to the Officer-in-Charge of Dibrugarh Police Station, wherein, Dibrugarh PS case No. 1163/2017 under section 302 IPC was registered on 17/09/2017 at 12.30 pm. During investigation of the case, PW-7 was transferred, due to which the charge sheet was filed by sub-inspector of police Pradip Rajkhowa.

9. Charge under section 302 IPC was framed against the appellant by the learned Trial Court, to which the appellant pleaded not guilty and claimed to be tried. After examining 7 out of the 12 Prosecution Witnesses and examining the appellant under section 313 Cr.P.C., the learned Trial Court came to a finding that the appellant had killed his wife with a *dao*. The appellant was accordingly convicted under section 302 IPC and sentenced to undergo rigorous imprisonment for life with a fine of Rs. 3,000/-, in default, to undergo simple imprisonment for 3 (three) months. Being aggrieved, the appellant has filed the present appeal.

10. PW-1, who is the informant and the brother-in-law of the appellant, testified that the deceased was his elder sister and that he had been informed that the appellant had hacked his elder sister.

11. The evidence of PW-2, who works as a Homeguard, is to the effect that the incident took place during the last puja and at that time, the workers of the

Tea Estate were being given bonus and he was engaged with the said task of distributing the bonus. During distribution of the bonus, he heard a hue & cry at about 3.30 pm. However, as he was at the cash counter, he could not go outside but ASI Dilip Gogoi and the rest of the Police personnel, who were with him, went to the place of occurrence. Due to the commotion, the cash counter had to be closed and he accordingly went to see what had happened. PW-2 stated that he saw the appellant with a *dao* stained with blood in his hand. Then the appellant was asked to throw away the *dao*. At that instance, the appellant threw away the *dao*, whereupon the *dao* was taken away and the appellant was apprehended. He further states that they had gone to the Police Station along with the appellant and the *dao*. He also saw a dead body in a drain. PW-2 further stated that he heard that the wife of the appellant had eloped with another person, due to which the appellant had hacked his wife with the *dao*. PW-2 was a seizure witness to the seizure of the *dao* and he also identified the seized *dao* in the court, while giving evidence.

In his cross examination, PW-2 stated that he did not know how the *dao* got stained with blood or whether it was human blood or not.

12. The evidence of PW-3, who is a Doctor and working as Demonstrator in the Department of Forensic Medicine, Assam Medical College and Hospital, Dibrugarh, is to the effect that he conducted the post-mortem examination of the deceased on 17/09/2017 and found the following injuries on the deceased.

“Injuries

External Injury - A chop wound of size 10 cm X 4 cm X 7.5 cm was found present 7 cm below the cubital fossa of the elbow joint on the left side

along with underlying cut fracture of both radius and ulna separate the lower 2/3rd of left hand and fore arm from the upper 1/3rd of the left forearm and it was attached only by a skin tag. The margins of the wound were found regular and clean cut with contusion of the edges at places.

(2) A chop wound of size 11 cm X 5 cm X 7 cm was present. 12 cm below the cubital fossa of elbow joint of the right forearm in the flexor aspect with underlying cut fracture of both radius and ulna separating the lower part of the right forearm from the above except an attachment with the skin tag. The margins of the wound were found regular and clean cut and contused at places.

(3) A chop wound of 12 cm X 3 cm X 8 cm was present on the anterior aspect of the right arm 7 cm above the elbow joint with underlying complete cut fracture of the humerus and the lower part of the limb was attached to the upper part by only a skin tag. The margins of the wound were found regular clean cut and contused at places.

(4) A chop wound of size 25 cm X 3 cm X bone deep was found present obliquely over face from right angle of the mandible upto the left frontal area 6 cm above the lateral end of the left eye brow. The margins of the wound were found regular, clean cut and contused at places. The brain matter was seen coming out through the frontal area of the wound and its cut fracture of frontal bone.

(5) A chop wound of size 14 cm X 4 cm X brain deep was found present over the right fronto temporal area obliquely upward along with the underlying cut fracture of the right frontal and temporal bone starting in the midline upto the temporal area. The margins of the wounds were found regular, clean cut and contused. The brain matter was seen coming out through the wound and was partly missing along with the membrane.

Cranium and spinal canal: Scalp and Skull as described. Vertebrae all were healthy. Membrane as described. Brain as described. Spinal cord not examined. In the abdomen Walls healthy, Peritoneum, mouth, pharynx and esophagus were pale. Stomach and its contents - Mucosa was pale and the stomach cavity was empty. Small intestine and its contents - Mucosa was pale and contained glue like substance. Large Intestine and its contents Mucosa was pale and contained gaseous and

faecal matters.

Liver, Spleen and Kidneys were pale. Bladder Mucosa was pale and the bladder cavity was empty.

Organs of generation externally healthy and internally uterus was healthy and empty. Others were healthy. In the thorax Walls, ribs and cartilages were healthy. Pleurae, Larynx and Trachea, right and left lung and pericardium all were pale. Heart healthy and the chambers were empty and the vessels healthy. Muscle bones and joints, Injury as described. Disease or deformity not detected. Fracture as described. Dislocation not detected.

Opinion regarding death -Death was instantaneous as a result of the injuries sustained over head as described. All the injuries described were antemortem and caused by heavy sharp cutting weapon and was homicidal in nature. Approximate time since death 12 to 24 hours."

13. The evidence of PW-4, who is a businessman, is to the effect that he knew about the death of the deceased though he did not see the dead body.

14. The evidence of PW-5, ASI Dilip Gogoi, is to the effect that on 16/09/2017, he was entrusted with Law and Order duty in the Bokpara Tea Estate, as payment of bonus to the workers was to be made on that day. While performing his duty, he heard a hue & cry near Bokul L.P. School. On rushing to the spot, he found a person attacking a woman with a *dao*, due to which the victim fell into a ditch. He then asked the attacker to drop the *dao*, which he did. The attacker was apprehended and the *dao* was seized and brought to the Police Station. PW-5 also identified the appellant who had attacked the victim. He also identified the seized *dao* in the Court. The cross-examination of PW-5 did not shake the evidence given in the examination-in-chief.

15. The evidence of PW-6, who is a Gaonburah, is to the effect that he saw

a dead body of a woman lying in the drain and that he did not see the incident.

16. The evidence of PW-7 is to the effect that he was the in-charge of the Milan Nagar Police Outpost. On 16/09/2017, A.S.I. Dilip Gogoi along with two Home Guards were sent to the Bokpara Tea Estate to perform duty in the tea garden, as it was a bonus day. A.S.I. Dilip Gogoi informed him over phone at around 4.30 pm that the appellant had committed an offence of murder and was apprehended by Dilip Gogoi. Further, Dilip Gogoi was on the way to the Police Station along with the accused person. On receipt of such information, GDE number 379 dated 16/09 2017 was registered. He thereafter took up the investigation and during that time, he received a transfer order. PW-7 then handed over the investigation material collected by him to Sub-Inspector Pradip Rajkawa, who submitted a charge sheet against the appellant under Section 302 IPC.

17. In the examination of the appellant under Section 313 Cr.P.C, the appellant has denied killing his wife.

18. As can be seen from the evidence of PW-5, the deceased had been killed by the appellant, by hacking the deceased with a *dao*, causing multiple injuries as has been testified by PW-3. The evidence of PW-5 has also been corroborated by PW-2, who states that he saw the appellant with a *dao* stained with blood. Thus, it is quite apparent that the appellant had used a *dao*. Further, the appellant was seen near the dead body with the *dao* in hand by PW-2, while the actual assault had been seen by PW-5.

19. With regard to whether a police officer can be a sole witness in a criminal case and whether the evidence of a Police Officer can be accepted

without corroboration, the Supreme Court in the case of **Govindaraju (Supra)** has held that a police officer can be a sole witness in a criminal case. If the testimony of the police officer is reliable, trustworthy and cogent, it can form the basis of conviction and the absence of some independent witnesses of the locality does not in any way affect the creditworthiness of the Prosecution case. No infirmity can be attached to the testimony of the police officers, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials. It also held that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect a police officer without good grounds.

20. In the case of **Girja Prasad Vs. State of M.P.**, reported in **(2007) 7 SCC 625**, the Supreme Court has held that there is no rule of law which lays down that no conviction can be recorded on the testimony of a police officer even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. If a presumption is raised against the police officers without exception, it will be an attitude which could neither do credit to the magistracy nor good to the public, it can only bring down the prestige of the police administration.

21. With regard to whether the evidence of a chance witness is admissible in evidence, the Supreme Court in the case of **Sarvesh Naraijan Shukla (Supra)**, has held that if a Court comes to the conclusion that the testimony of a chance witness is credible, the evidence cannot be thrown out merely on the ground that the witness happened to be present by chance.

22. In the present case, we have got no reason to doubt the evidence of

PW-5 regarding seeing the incident of the appellant hacking his wife with a *dao*. There is no whisper or any enmity, ulterior motive or reason given by the appellant, for PW-5 to have given any false evidence. Just because there might have been some other eye-witness to the crime and who were not made Prosecution Witnesses or who are not made to give evidence in the Court, we don't have any reason to doubt the truthfulness of the evidence given by PW-5. In fact, the credibility of the testimony of PW-5 has also been corroborated to some extent by the evidence of PW-2, who stated that he saw the dead body of the victim in a drain and saw the appellant with a *dao* in his hand, which was stained with blood.

23. The above, to our mind is sufficient evidence to prove the fact that the appellant had killed his wife. It is no doubt true that the weapon should have been sent for examination before experts in the FSL. However, when there are eye-witnesses to the crime, the non-compliance of the requirement of sending the weapon for FSL examination does not mean that the prosecution story is unreliable and not believable.

24. With regard to the point raised by the appellant counsel that the statement of the appellant under section 161 Cr.P.C. had not been reduced to writing, we find that section 161 (3) Cr.P.C. provides that the Police Officer may reduce into writing any statement made to him in the course of an examination under section 161 Cr.P.C. Section 161(1) Cr.P.C. provides for examining orally any person supposed to be acquainted with the facts and circumstances of the case. Section 162 Cr.P.C. provides that no statement made by any person to a Police Officer in the course of an investigation under Chapter-XII, Cr.P.C need be signed by the person making it, even if the same has been reduced into writing.

25. The above provisions of section 161 and 162 Cr.P.C, thus, does not make it mandatory for any statement made by an accused or a witness, to be reduced in writing. In any event, the record shows that the PW-2 had been examined orally by the Police under section 161 Cr.P.C.

26. In view of there being no statement of the appellant under section 161 Cr.P.C. being reduced into writing, the same does not in any manner vitiate the Trial Court proceedings or the Prosecution case.

27. In view of the above reasons, we do not find any infirmity in the decision of the learned Trial Court in convicting and sentencing the appellant under section 302 IPC, as the prosecution has been able to prove the guilt of the appellant under section 302 IPC beyond all reasonable doubt.

28. The appeal is accordingly dismissed.

29. Send back the TCR.

30. In appreciation of the assistance provided by Mr. U. Choudhury, the learned Legal Aid Counsel for the appellant, his fees should be paid by the Gauhati High Court Legal Services Committee.

31. As we have been informed that the 3 children born to the deceased and the appellant are deaf and dumb who need support, we recommend that the Assam State Legal Services Authority and the concerned District Legal Services Authority should enquire and take a decision if the benefits of Section 357A Cr.P.C can be provided to them. If they are deserving and can be provided benefits under Section 357A Cr.P.C, the authorities should keep in mind that

some portion of the benefit may be kept in fixed deposits till they come of age, while the rest may be used for their present upkeep.

JUDGE

JUDGE

Comparing Assistant