GAHC010186722019

2026:GAU-AS:5249

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

Case No. : Crl.A./363/2019

SONABASI BISWAS
S/O- LATE MOSIRAM BISWAS, R/O- VILL.- MOWAMARI, P.S. MANGALDAI, DIST.- DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MR. S ALIM,
Advocate for the Respondent : PP, ASSAM,

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the applicant : Shri S. Alim

Advocates for the respondent : Ms. B. Bhuyan, APP, Assam

Ms. J. Saikia

Date on which judgment is reserved : **27.03.2026**

Date of pronouncement of judgment: **08.04.2026**

Whether the pronouncement is of the operative part of the judgment? : NA
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

(S.K. Medhi, J.)

The instant appeal has been filed under Section 374(2) of the CrPC, 1973 against the judgment and order of conviction and sentence dated 03.05.2019 passed by the learned Sessions Judge, Darrang, Mangaldai in Sessions Case No. 30(DM)/2015 convicting the accused Sonabasi Biswas and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- in default of payment of fine to undergo further RI for one year under Section 302 of the IPC.

2. The criminal law was set into motion by lodging of an *Ejahar* on 21.03.2010 by one Muchiram Biswas (PW1) alleging *inter alia* that on the said day at about 9 PM, the accused persons including the appellant had trespassed into the house of his son, Sibashi Biswas and injured him severely by stabbing with dagger and also killed his daughter-in-law, Bisaka Biswas by dealing blows with dagger. It was also stated that there was dispute regarding landed property. Based on the said *Ejahar,* police case being MLD PS Case No. 264/2010 was registered under Sections 147/448/326/302 of the IPC and investigation was accordingly made. After completion of the investigation, the police had laid the chargesheet and accordingly charges were framed. As the charges were denied, the trial had begun, in which the prosecution had adduced evidence through 10 nos. of prosecution witnesses.

3. PW1 is the informant who had deposed regarding the incident and his lodging of the *Ejahar*, which was proved as Exhibit 1. He had deposed of witnessing five persons running away from the place of occurrence. In the cross examination, however, he had admitted that there was no electricity connection

to the house of the deceased.

4. PW2 is one Prabhat Sarkar, who was the scribe of the *Ejahar* and is a neighbour. He had, however, admitted that he had heard about the incident and further that the deceased Bisaka was his cousin.

5. PW3 is the Doctor,who had conducted the postmortem upon the deceased. He had deposed that 5nos. of injuries were detected, which were caused by sharp pointed weapons. In the cross examination, he had deposed that it appears that the deceased had taken food 4 - 5 hours before her death. The postmortem was proved as Exhibit 3 and the opinion reads as follows:

> "*Death is due to hemorrhage and shock as a result of injury sustained as described above. All the injuries are ante-mortem and caused by sharp pointed object and homicidal in nature. Time since of death is approximately 12 hours to 24 hours. All injuries are fatal.*"

6. PW4 - Jyotish Mandal is the brother of the deceased, who stays in the same village at a distance of 1KM. He had deposed that Sibashi, the husband of the deceased who was also injured had told him about the attackers. PW4 was, however, was confronted with his statement made under Section 161 CrPC regarding such disclosure by Sibashi.

7. PW5 is Sibashi Biswas, who is the husband of the deceased and was also attacked and injured. In his deposition, he had clearly stated that he knew all the accused persons out of which 3 were his own brothers. He had stated that on the fateful day at about 9 PM,when they had heard a sound outside their house, his wife had come out, followed by him. At that time,the accused persons, including the appellant, had attacked his wife with daggers in her neck, stomach, face and thereafter also attacked him with daggers on his forehead,

chest, stomach and hand. He had made specific allegations against each of the accused who had attacked. PW5 was cross examined extensively where he had stated that his 2 children were also inside the house and his son, Ajoy Biswas, was hiding behind the door of his house. He had, however, clarified that his son Ajoy Biswas was aged about 12 years and his daughter, Nayan Biswas was aged about 3 years. He had also admitted that the *Gamucha*, which he was wearing, got bloodstained and he did not know whether the same was seized by the police or not.

8. PW6 is one Madhu Biswas, who is a co-villager and the uncle of Sibashi (PW5). He had stated that on hearing hue and cry on the fateful day, he had come to the house of the deceased and found Sibashi Biswas lying on the courtyard and was shouting that his wife was killed and he was also attacked. He had then seen the deceased lying dead on the courtyard, when he had given water to the head of Sibashi Biswas. He had also stated of accompanying the injured to the hospital, including the GMCH. He had also stated that Sibashi Biswas had clearly told in his presence that it was the accused persons who had assaulted him and his wife. PW6 was also subjected to extensive cross-examination.

9. PW7 is the Doctor who had examined Sibashi Biswas. In the Injury Report, which was proved as Exhibit 4, he had noted that the injuries suffered was contusion and lacerated which was caused by blunt weapon.

10. PW8 is the Police Officer who had done the last part of the investigation and had also submitted chargesheet, which was proved as Exhibit 5.

11. PW 9 is also a Police Officer who had deposed that the initial IO was one Kanak Chandra Nath, who had expired on 18.09.2016 and that he had worked

with the said Police Officer. He had, however, admitted that the blood stain was not collected, and further, that the PW5 in his statement made under Section 161 of the CrPC had stated that he was attacked first. PW10 is the Circle Officer who had done the inquest and the Inquest Report was proved as exhibit 7.

12. After completion of the prosecution evidence, the accused persons including the appellant, were examined under Section 313 of the CrPC wherein they had denied the allegations. Based on the materials on record, including the deposition and the evidence, the learned Sessions Court, while acquitting the rest of the accused, had convicted the present appellant. It is the conviction and sentence,which are the subject matter of challenge in the present appeal.

13. We have heard Shri S. Alim, learned counsel for the appellant. We have also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam assisted by Ms. J. Saikia, learned counsel.

14. Shri Alim, learned counsel for the appellant has submitted that the prosecution was not able to prove the case against his client beyond all reasonable doubt. He has submitted that the chronology of the attack was not matching. He has pointed out that while the PW5 in his examination in chief had stated that his wife was attacked first, followed by him in the courtyard,on the contrary, PW9 – the Police Officer had stated that PW5 in is examination under Section 161 of the CrPC had stated that the accused persons had entered into the house forcefully and assaulted him at first when he had fallen down and when his wife Bipasa (the deceased) had come to rescue him she was givena dagger blow by one of the accused while two accused including the appellant were grabbing her. Secondly, he has submitted that the available witnesses, namely, the two children of the deceased were not examined, which would raise serious doubts on the veracity of the prosecution case. He has submitted that

there are no reasons not to examine the 2 children who were allegedly present at the place of occurrence. Thirdly, he has submitted that the evidence on record suffers from contradiction. He has submitted that while the incident was alleged to have occurred at about 9 pm, the Post Mortem Report has stated that the food found in the stomach appears to have been taken 4 -5 hours from the time of death.

15. He has submitted that there is allegedly only one eyewitness in the form of PW5, whose evidence is also not trustworthy, and the version of PW5 does not match with the version of the other witnesses, mainly of the police officer who was involved in the investigation, namely, PW9. He has next submitted that there is a discrepancy with the place of occurrence itself. While, as per the deposition of PW5, the occurrence was outside the house in the courtyard, the Police Officer (PW9) had stated that PW5 had made a statement before him that the occurrence was inside the house. He has also submitted that there is discrepancy with the nature of the injuries suffered by the deceased as well as PW5, who was allegedly injured in the incident. He has submitted that while the PW5 had deposed of use of daggers, the Injury Report, so far as PW5 is concerned, states that blunt weapons were used. He has also submitted that the injury report of PW 5, which has been proved as Exhibit 4, would show that there were contusions and lacerations which would mean that there was no use of any sharp weapons and rather blunt weapons could have been the used. He has further submitted that there was no seizure made from the place of occurrence, which would make a major dent in the prosecution case.He has also questioned the reliability of the witnesses and has submitted that under the materials available, a conclusion of conviction could not have been arrived at.

16. In support of his submission,the learned counsel for the appellant has

relied upon the case of ***Tarun @ Gautam Mukherjee Vs.State of W.B.***reported in ***(2001)10 SCC 754***. In the said case, the aspect of inconsistency of deposition with previously recorded statement under section 161 of the CrPC has been highlighted. For ready reference, the relevant observations made by the Hon'ble Supreme Court are extracted hereinbelow:

> "*3. To appreciate this contention, we have ourselves scrutinised the evidence of PWs. 2, 4 and 5. The maid servant (PW-4), who deposed in her evidence in chief about the fact that the accused used to assault the deceased almost daily on the instigation of his sister, but in the cross-examination, it has been elicited that she has not stated so in her statement to the police recorded u/s 161 Cr.P.C. Such material omission would discredit her version in court. If her evidence is taken out from the purview of consideration, then the evidence of PWs. 2 and 5 cannot be held to be of such nature which would establish the cruelty on the part of the husband to bring home the offence u/s 498A L.P.C. In our view, therefore, the High Court was in error in upholding the conviction u/s 498A I.P.C.*"

17. *Per contra*, Ms. B. Bhuyan, learned APP Assam, has submitted that the conviction and sentence passed by the learned Session Judge, Darrang is fully justified and has been arrived at based on the materials available on record. She has submitted that, firstly, there was a motive established inasmuch as, there was admittedly a land dispute. She has also highlighted the aspect that the prosecution case was fully established, and in the present case, PW5 was himself an injured eyewitness whose status would be higher than an ordinary eyewitness. She has submitted that the non-examination of the children would not be fatal inasmuch as, PW5 is himself an eyewitness.

18. As regards the use of the weapons, they learned APP has submitted that PW5, in categorical terms had deposed of use of daggers by all the accused persons and in the Post-Mortem Report - Exhibit 3 pertaining to the deceased, it has been opined that sharp weapons were used. As regards the injuries suffered by the PW5, wherein the report indicates blunt weapon and also the injuries are contusion and laceration, she has submitted that there is also a blunt side in a dagger, and it is very much possible that the blunt side has been used. She has submitted that in view of the clear deposition of the PW5, the same aspect would not have any relevance.

19. With regard to the alleged discrepancy in the place of occurrence and chronology of events, the learned APP has submitted that when the incident had happened at night, involving a number of accused persons such discrepancy cannot be held to be major and could only be held to be a minor discrepancy which can be overlooked. She has submitted that there is no doubt that a death has been caused in which the allegations have been made against all the accused persons. She has also highlighted that PW1 - the informant is none, but the father of the accused appellant, and also the father of PW5, who had deposed clearly against the appellant. She has submitted that no father would have deposed against his own son if there was no truth.

20. In support of her submissions,the learned APP has relied upon the case of ***Kamta Yadav Vs. State of Bihar*** reported in ***(2016) 16 SCC 164***, in which the status of an injured eyewitness has been highlighted. For ready reference, the observations made by the Hon'ble Supreme Court are extracted hereinbelow:

> "*11. We have already narrated the deposition of the witnesses in brief. There are six eye witnesses and three of them are injured eye witnesses,*

which is a weighty factor to show the actual presence of these witnesses at the scene of occurrence. Moreover, the credibility and trustworthiness of all these eye witnesses could not be shaken by the accused persons. Once it is found that these witnesses, who are eye witnesses, were present and they have truthfully narrated the incidence as it happened and their depositions are worth of credence, conviction can be based on their testimonies even if they were related to the deceased. The only requirement, while scrutinizing the interested witnesses, is to examine their depositions with greater caution and deeper scrutiny is needed, which exercise has been done by both the courts below. In fact, when the learned counsel for the appellants was confronted with the aforesaid factual and legal position, he could not even provide any answer to the same."

21. She has also relied upon the case of ***Shamsher Singh @ SheraVs. State of Haryana*** reported in ***(2002) 7 SCC 536*** and the following observations of the Hon'ble Supreme Court have been pressed into service:

"*3. The learned senior counsel for the appellant urged that in view of the conflict and inconsistency between the evidence of eye-witnesses and medical evidence, in the absence of direct motive between the appellant and the deceased, non-examination of another eye-witness Satbir and the interested testimony of eye-witnesses being related to the deceased, both the courts committed serious error in convicting and sentencing the appellant. He drew our attention to the statements of PW-7 and PW-8 and the statement of doctor, to point out that PW-7 and PW-8 had stated that the appellant assaulted the deceased on his head with the axe using its sharp edge and that the doctor had specifically stated that the injuries*

sustained by the deceased could not have been caused by any sharp-edged weapon. In view of this specific evidence of the witnesses, the courts ought not have relied on the evidence of the eye-witnesses. As to the motive, he submitted that in the incident alleged to have happened 6 or 7 days earlier leading to the quarrel between Suresh, the cousin of the deceased and the accused, the appellant was not present at that time and there was no direct conflict between the appellant and the deceased. Thus, the so-called motive did not support the case of the prosecution. When the deceased and his father PW-7 had gone to the shop of Satbir and when Satbir was very much present at the time of occurrence, his non-examination was fatal to the case of the prosecution.

8. The authorities cited by the learned counsel for the appellant, on the point that when there is conflict between medical evidence and the ocular evidence, the prosecution case should not be accepted, are of no help to him in this case. On deeper scrutiny of evidence as a whole, it is not possible to throw out the prosecution case as either false or unreliable on mere statement of the doctor that injuries found on the deceased could not be caused by a sharp edged weapon. This statement cannot be taken in isolation and without reference to other statement of the doctor that the injuries could be caused by Ex. P-9 axe to disbelieve the evidence of eye-witnesses. From the evidence available in this case the possibility of the blunt head of the axe or the stick portion coming in contact with the head of the deceased cannot be ruled out. These decisions cited by the learned counsel for the appellant are related to those cases where the medical evidence and the version of the eye-witnesses could not be reconciled or that the account given by the eye-witnesses as to the

incident was highly or patently improbable and totally inconsistent with the medical evidence having regard to the facts of those cases and as such their evidence could not be believed. The case on hand is not one such case."

22. The rival contentions advanced by learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully perused.

23. In the instant case, the *Ejahar* was lodged on the date of the incident itself i.e. 21.03.2010 which had happened at about 9 pm. In the said incident, PW5 was injured, and his wife, Bishaka, was killed by six numbers of accused persons who were alleged to have been armed with daggers. Admittedly, there was no electricity at the time of the incident. The *Ejahar* has been lodged by none other but the father of the injured PW5, who is also the father of the present appellant. In his *Ejahar*, PW1 had clearly stated that there was certain land dispute for which the attack was made. PW5, in his deposition, has clearly stated that the six numbers of accused persons had attacked with daggers, in which his wife was killed by multiple injuries, and he was also injured grievously. So far as the injuries upon the deceased is concerned, the PM Report - Exhibit 3 would show that 5 nos. of injuries were caused by sharp pointed weapons. The PM report had also stated that the deceased had taken food about 4 - 5 hours from the time of death. An argument was raised that if the incident had placed taken place at about 9 pm, the said aspect would have a negative impact on the prosecution case, inasmuch as, if the incident had actually taken place at 9 pm, the food appears to have been taken by about 5 pm, which is not normal. This Court is, however, unable to accept the said contention, inasmuch as, the opinion of the Doctor in the PM Report regarding the partially digested food is

only on the basis of hypothesis based on the food particles found in the stomach of the deceased, which would only give an indication and by no means, the same can be held to be conclusive. Furthermore, it is a common knowledge that dinner timings in rural areas are early, and therefore, it is possible that by the evening, the family,along with her husband PW 5 had had dinner and was preparing to sleep when the incident had occurred.

24. As regards the submission on the issue of discrepancy regarding the use of weapons, which is mainly based on the two reports, namely, Post-Mortem report and Injury Report,this Court is of the view that PW5 in his deposition has stated that a number of accused persons had attacked with daggers and the PM report, which was exhibited as Exhibit 3, had clearly stated that sharp pointed weapons were used in the attack. The injuries, however, suffered by PW 5, were in the nature of contusion and laceration, indicating that blunt weapons have been used. It is a matter of common knowledge that a dagger has a blunt side and it is very much possible that the attack on PW 5 was made by the blunt side. In any case, when the incident had happened at night and in absence of any electricity, the aforesaid aspect would not have any major impact in the prosecution case, inasmuch as the aspect of injuries suffered by PW 5 has been duly proved by not only him, but also by the doctor, attending him who was examined as PW 7, and the injury report itself was proved as Exhibit 4. A submission has been made that no seizure has been made from the place of occurrence. While the aforesaid aspect may be true,we are of the opinion that only because of the fact that no seizure has been made, the prosecution case cannot be said to have suffered from any fatal infirmity, inasmuch as, in the instant case, there is an eyewitness in the form of PW 5, who was himself injured in the attack. With regard to the alleged inconsistency with the

statement made by PW5 visa-a-vis his statement under Section 161 of CrPC,this Court has noted that the contradiction is not a proved contradiction, inasmuch as PW5 had denied, not having stated the same before the police in his statement under Section161 of the CrPC.

25. It is a settled principle of law that it is the quality of the witnesses and not the quantity which would matter in a criminal case. For ready reference, one may gain fully rely upon the case of ***Prithipal Singh & Anr. Vs. State of Punjab [(2012)1 SCC 10]*** wherein the Hon'ble Supreme Court had made the following observations:

> *"EVIDENCE OF THE SOLE EYE-WITNESS :*
>
> *49. This Court has consistently held that as a general rule the Court can and may act on the testimony of a single 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. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."*

26. We are also of the view that the alleged inconsistencies tried to be

developed by the learned counsel for the appellant are not major at all.We have noted that there is no inconsistency of the persons involved in the attack, and there is also no inconsistency in the weapons said to have been used in the attack. We find sufficient force in the submission, advanced by the learned APP, who, by referring to the case of ***Kamta Yadav*** (supra), had submitted that the deposition rendered by the PW 5 would stand on a higher footing as PW 5 was himself injured in the incident and is an eyewitness. We are of the view that there is nothing on record to show that the evidence of PW 5 is not trustworthy or cannot be relied upon. Further, as noted above, PW1 is the father of PW5 and also the father of the present appellant, and in normal circumstances, no father would make a false accusation against his own son. Further, as observed above, the motive for causing the committing the offence is also clearly made out as there was a land dispute.

27. In the conspectus of the aforesaid discussions and the materials on record, we are of the view that the conclusion arrived at by the learned Sessions Judge, Darrang, Mangaldai in convicting and sentencing the appellant under Section 302 of the IPC vide thejudgment and order dated 03.05.2019 in Sessions Case No. 30(DM)/2015does not warrant any interference.

28. The appeal is accordingly dismissed.

29. Send back the TCRs.

JUDGE **JUDGE**

Comparing Assistant