

**IN THE COURT OF THE ADDL. SESSIONS JUDGE,
UDALGURI**

SESSIONS CASE NO 99 (U) of 2014 u/s 302 of IPC

Present : **Nisanta Goswami**
Addl. Sessions Judge, Udalguri

Prosecutor : **State of Assam**
Represented by Public Prosecutor,
Udalguri

Accused : **Dhanjit Koch & Ors.¹**

Counsel for the State: **Sri Rajib Sarma**, Addl. PP

Counsel for the accused: **Sri Madhab Ch Narzary**, Adv

Dates of recording evidence: 26.08.2014, 03.09.2014,
18.09.2014, 21.10.2014, 12.11.2014, 20.11.2014,
20.02.2015, 04.03.2015, 19.03.2015, 27.03.2015,
15.05.2015, 16.07.2015 & 29.07.2015

Dates of argument : 16.11.2021 & 22.11.2021

Date of Judgment : 06.12.2021

JUDGMENT

PROSECUTION CASE

1) The case of the prosecution, in brief, is that on 21-05-2013 at about 12 midnight, some unknown miscreants entered into the house of the informant Sri Mantu Deka and thereafter they stabbed the informant's father with some sharp weapon. The informant's father was, later on, taken to the hospital, but, he succumbed to his injuries on the

¹ Kukeswar Koch, Jugeswar Koch and Hiren Koch

way to the hospital. The informant's father was Lt. Sishu Deka. The incident occurred at No.4 Namabari village under Majbat police station of Udalguri district.

- 2) An FIR was registered based on that incident at the Majbat police station on 22-5-2013. Police started investigation and after completion of investigation, charge-sheet was submitted against 5(five) accused persons, namely, Sri Bhupen Deka, Sri Kukheswar Koch, Sri Jugeswar Koch, Sri Hiren Koch and Sri Dhanjit Koch U/S 447/302/34 IPC. However, accused Sri Bhupen Deka was shown as an absconder and subsequently, vide order dated 11-07-2014 of the then Ld. Addl. CJM, Udalguri, the case against accused Sri Bhupen Deka was split up and the case against the other 4(four) accused persons, namely, Sri Kukheswar Koch, Sri Jugeswar Koch, Sri Hiren Koch and Sri Dhanjit Koch was committed to the Court of Sessions.
- 3) Accused Sri Kukheswar Koch, Sri Jugeswar Koch, Sri Hiren Koch and Sri Dhanjit Koch had appeared before this Court on 12-08-2014. Upon hearing the parties and on perusal of materials on record, my Ld. Predecessor framed charge against these four accused persons u/s 302 IPC. The accused persons pleaded not guilty and claimed to be tried. Thus, the case proceeded to the trial stage.
- 4) During the course of trial, the prosecution side adduced evidence of 27 witnesses. The accused persons were

examined U/S 313 CrPC. The defence side had not adduced any evidence.

POINTS FOR DETERMINATION:

5) Whether the accused persons, namely, Sri Kukheswar Koch, Sri Jugeswar Koch, Sri Hiren Koch and Sri Dhanjit Koch committed murder of the deceased Sri Sishu Ram Deka by stabbing him with sharp weapons in the night of 21.05.2013?

POINTS DECIDED AND REASONS THEREOF:

6) In this case, the evidence of PW 1 Bharati Deka is the most crucial one since she appears to be the sole eye witness of this case. PW 1 is the wife of the deceased Sishu Ram Deka. PW1 Bharti Deka has stated in her examination-in-chief that the informant is her son and she could recognize the accused persons standing in the dock. The deceased was her husband. The incident occurred on 21-05-2013 at about 12:30 AM. Her husband went outside hearing the barking of dogs. Thereafter she saw the accused person, namely, Bhupen Deka, Kukheswar, Hiren Deka, Jogeswar and Dhanjyoti Deka stabbing her husband and on seeing her they ran away. PW1 clearly saw the accused persons in the light of her torch. She also saw the accused persons loitering on the road since evening. PW1 saw the accused persons cutting her husband in their courtyard. Thereafter she raised a hue and cry. Hearing

the commotion Bishal Orang, Raju and Eгна came there. Thereafter her daughter Bandana Deka and son Raju Deka took her husband to Mangaldai Civil Hospital.

- 7) In her cross-examination, PW1 has stated that hearing dogs bark, her husband went outside and she followed him. She herself saw the accused persons stabbing her husband. The accused persons reside at a distance of about 2 km from the house of PW1. Accused Bhupen once stated that he loves Bandana, the daughter of PW1, but that love was not reciprocated by her. PW1 has further stated that it took about 5 minutes for her to wake up and reach the place of occurrence and then she found her husband lying in an injured condition. PW-1 has denied the suggestion that she deposed falsely.
- 8) During her cross examination it was suggested to PW 1 that she had not stated before the police that she saw the five accused persons loitering on the road since evening. The PW 1 admitted this suggestion. The IO of this case Sri Nabin Boro (PW-2) has stated in his cross examination that witness Smt. Bharati Deka (PW 1) had not stated before him (while recording her statement u/s 161 of CrPC) that accused Bhupen Deka, Kusheswar, Hiren Deka, Jogeswar and Dhanjit Deka had stabbed her husband and that she saw the accused persons clearly. The PW 1 has also not stated before the police that the accused persons ran away

when they saw her and that she saw them in torch light. The PW 1 has further not stated before police that her husband went out first and then she followed him and that she herself saw the accused persons stabbing her husband.

9) The learned counsel for the accused has sternly submitted that there are improvements in the evidence of the PW 1 which makes her evidence less credible. In this context the learned counsel has referred to the following decisions of the Hon'ble Apex Court as well as the Hon'ble Gauhati High Court:

- i) **Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Another 2003 SCC(Cri)596**
- ii) **Deoraj Goala & Another v. State of Assam 2010 (6)GLJ 658**
- iii) **Radha Kumar v. State of Bihar 2005 SCC(Cri)1507**
- iv) **Yazid Ali & Anr v. State of Tripura 1996 (III)GLT 473**

In the above cases, while appreciating evidence it was suggested that if a witness doesn't disclose a fact before the police, while his statement is being recorded u/s 161 of CrPC, and he deposes those facts subsequently before the Court for the first time, the

Court should be cautious while placing reliance on that evidence of the witness.

- 10) In the present case the PW 1 is the only eye witness who claims to have seen the accused person stabbing her husband. But she had not stated those facts before the police during the investigation. The other witnesses have heard about the presence of the accused persons in the place of occurrence from the PW 1 only.
- 11) PW2 Daisy Deka has stated in her evidence that the informant is her brother-in-law and she knows the accused persons. The deceased is her father-in-law. The incident occurred about 2 years ago. She was at her matrimonial home at the time of occurrence. The incident occurred at night and she had not witnessed the same. She woke up from her sleep when she heard the cries of her mother-in-law. She witnessed the cut injuries on the body of her father-in-law.
- 12) In her cross-examination, PW2 has stated that her mother-in-law informed her that somebody had stabbed her husband and that Raju and Mantu needs to be informed.
- 13) PW3 Bandana Deka has stated that the informant is her younger brother and she knows the accused. The deceased was her father. She was unmarried at the time

of the incident and hence she was at her paternal home. The incident occurred at night. At the time of the incident her elder brother and younger brother went to watch a theatre. Her father went outside hearing the barking of dogs. Hearing the scream of her father, her mother went out first and thereafter PW3 went out after sometime. Her mother told her that she had seen the persons who killed her husband. On the next day, PW3 heard Bhupen Deka's father saying before the villagers that Bhupen had stabbed her father. PW3 has exhibited her statement recorded before the magistrate as Ext.1.

14) In her cross-examination, the PW3 has confirmed that she went outside after her mother went out. There was moonlight outside. The accused persons ran away when her mother went out. PW3 has further stated that Bhupen used to love her and he also proposed to marry her but she refused that proposal, since she didn't get her parents' consent and, as a result, Bhupen developed some resentment towards her family. It is clear from her evidence that the PW 3 had not seen the incident herself. She merely heard about it from her mother Smt. Bharati Deka.

15) PW 5 Mantu Deka has stated that he is the informant and he knows the accused persons. The deceased was his father. He had not seen the incident. At the time of the

incident he was watching a function. His elder sister, Bandana Deka, informed him over phone that somebody has stabbed their father. Thereafter the PW5 came home and his mother told him that accused Bhupen, Kukheswar, Jogeswar and Hiren stabbed their father. Ext.3 is the ejahar lodged by PW5. The IO Sri Nabin Boro (PW 27) has stated in his evidence that the witness Mantu Deka had not stated before him that the accused Bhupen, Kukheswar, Jogeswar and Hiren had stabbed his father. Hence this evidence of PW 5 appears to be an improvement made subsequently. It also worth noting that the PW 5 Mantu Deka lodged the ejahar on the next day of the incident but in his ejahar he had not mentioned the names of the accused. Instead, it was mentioned that some unknown miscreants stabbed his father.

- 16) PW6 Raju Paul has stated that he knows the accused, the informant and the deceased. At the time of the incident he was at his home. There are about 2-3 homesteads between his house and the house of the informant. At about 12:30 AM he heard some commotion in the gate of the informant's house. Thereafter the PW6 saw the informant's father with a cut injury in his neck. Later on, Raju Deka and Mantu Deka came and took the injured to the hospital.

- 17) PW7 Prasenjit Brahma has stated that he knows the informant, the accused and the deceased. The incident occurred on 21-05-2013. PW 7 had not seen the incident. At night he heard a commotion in the house of the informant and he went there. He saw the informant's father lying with cut injuries in his body. The father of the accused Bhupen stated before police that his son Bhupen had inflicted the cut injuries to the deceased and the PW7 overheard this.
- 18) In his cross-examination, PW-7 has confirmed that he heard Bhupen's father saying that Bhupen inflicted the stab injuries to the deceased.
- 19) PW-8 Bishal Toppo has stated that he knows the informant, the accused and the deceased. At the time of the incident he went to watch some function and he also saw the informant in that function. After returning from the function he saw a gathering of about 5 persons near the house of the informant. In his cross-examination, the PW-8 has stated that on the day of the incident some people who went to watch the function were present in the road.
- 20) PW-9 Raju Deka has stated that the informant is his own brother and he knows the accused standing on the dock. The incident occurred on 21-05-2013. PW-9 has not seen the incident but his mother Bharti Deka has informed

him about the incident over phone just after the occurrence. The incident occurred between 11 PM to 12 AM. The PW 9 went to watch a Bihu function at Lamabari T.E. when his mother telephoned him. When his mother informed him about the incident over phone immediately thereafter he came to his home and found his father lying in front of the gate of their house. PW 9 saw cut injuries in his father's neck, chest, waist and arms. His mother informed him that, 5 persons, namely, Kukheswar Koch, Jogeswar Koch, Bhupen Deka, Hiren Koch and Dhanjit Deka had inflicted cut injuries to his father. PW 9 has also stated that when he took his father to the hospital in a vehicle his father told him that Bhupen Deka, Jogeswar Koch and Hiren Koch stabbed him. While cross examining the PW 9 he was confronted with this statement and he denied the fact that he had not stated before the police that his father had named the accused persons when he was on his way to the hospital. The IO (PW 27) has also proved in his evidence that the PW 9 Raju Deka had not stated before him that his father had named the accused persons who stabbed him, when he was taken to the hospital. The IO has also stated that the PW 9 had not stated before the police that he was told by his mother that the accused persons, namely, Kukheswar Koch, Jogeswar Koch, Bhupen Deka, Hiren Koch and Dhanjit Deka had stabbed his father.

- 21) In his cross-examination, PW 9 has stated that his mother informed him about the incident firstly and thereafter his wife told him about the incident. His mother rang him using the phone number of his father. His father succumbed to his injuries on the next day of the incident.
- 22) PW 12 Megh Ram Deka has stated that he knows the informant and the accused persons. He stated that on the day of the incident at about 3 O'clock at night his son Bhupen informed him over phone about the incident and thereafter the PW 12 advised him to surrender in the police station either at night or in the next morning. His son Bhupen used to love the daughter of the deceased namely Bandana. In his cross-examination, PW 12 has stated that he did not know the present whereabouts of his son Bhupen. When Bhupen was in love with Bandana, PW 12 once went to have a discussion with the girl's father in the market. Thereupon, the girl's father, i.e. the deceased, asked him not to call on him again.
- 23) PW 13 Jogen Koch has stated that he knows the informant and the accused. He further stated that on the day of the incident at about 3 AM in the morning Megh Ram informed him that Bhupen had stabbed Sishu.
- 24) PW-14 Hali Ram Koch has stated that he knows the informant and the accused. The incident occurred in the

month of Bohag. He was informed by Bhupen's father that Bhupen had stabbed the deceased Sishu Ram Deka.

25) PW 15 Jiten Koch had stated that he knows the informant and the accused. The incident occurred on 21/5/2013. On that day at about 11:30 at night, his nephew Raju Deka and Sister Bharati Deka informed him over phone that the accused persons, namely, Hiren Koch, Bhupen Deka, Kukheswar Koch and Jogeswar Koch had murdered his brother-in-law. The next morning he came to the house of the deceased. In the meantime, the deceased was taken to the hospital. PW 15 saw blood clots scattered over the ground in front of their gate.

26) PW 17 Smt. Padma Deka has stated that she knows the informant and the accused. The incident occurred at the time of Bohag Bihu. She came to know at about 8 AM in the morning that somebody has stabbed Sishu deka.

27) PW-18 Pabitra Mochahary and PW-19 Mukunda Deka are seizure witnesses. They have exhibited the seizure-list prepared after seizing mobile phones

28) PW-21 Sri Bhaskar Jyoti Mahanta was the executive Magistrate who conducted inquest on the dead body of the deceased Sishu Ram Deka on 22/5/2013. While doing so, he found cut mark on right hand and left hand of the

deceased. He also found stab injuries on the stomach with dagger. Ext.5 is the inquest report.

29) PW-22 Bappi Paul was declared as a hostile witness by the prosecution. However this witness has not stated anything which can demolish the prosecution story.

30) PW-23 Dr. Pramod Deka was the Senior Medical & Health Officer of Mangaldai Civil Hospital. On 22-5-2013, he conducted post-mortem on the dead body of the deceased. While doing so he found the following injuries in the body of the deceased:

- i) Sharp cutting injuries on right shoulder. Right clavicle is cut size 4cm x 1.5cm bone deep.
- ii) Sharp cut injury on left arm just below left arm shoulder. Left humerus is cut size 6cm x 2cm bone cut.
- iii) Right forearm is cut in lower part and left ulna is cut size 3cm x 1cm.
- iv) Sharp cut injury on chest from left nipple to right nipple. Injury going upwards muscles and bones cut sized 16cm x 2 cm.
- v) Shoulder cut at two places on lower occipital region size 10cm x 2cm.

- vi) Lower iliac wall on right side is cut from right iliac crest. Size 11cm x 2cm.
- vii) Scalp cut on lower occipital region. Bone is cut and brain tissues exposed. Membrane is cut at the lower occipital region. Brain tissue injured in the lower occipital region.
- viii) Sharp cut injury on chest from left nipple to right nipple.

The injuries are ante-mortem in nature.

- 31) PW-23 has opined that the cause of death is due to shock and haemorrhage as a result of the injuries sustained. The postmortem report has been exhibited as Ext.10.
- 32) PW-25 ASI Jiban Deka has stated that on 06-06-2013, he was posted at Majbat PS. As per the direction of his OC, he visited the informant's house. He came to know there that the injured person was taken to the hospital. He seized one *mit-dao* of 1 and half feet length and one iron rod. Ext.9 is that seizure-list.
- 33) PW-27 Sri Nabin Boro has stated that on 22-05-2013, he was at Majbat PS as the Officer-in-Charge. On that day, informant Mantu Deka lodged an ejahar. Based on that, the PW-27 filed a case and started

investigation himself. He visited the place of occurrence and prepared a sketch-map. Ext.-11 is the sketch-map. He also recorded statements of the witnesses and got the inquest of the dead body done by a Magistrate. After completion of the investigation, he submitted charge-sheet against the accused persons U/S 443/302/34 of IPC. Ext-12 is the charge-sheet.

- 34) As has been observed above, in this case the evidence of PW 1 Smt. Bharati Deka is most crucial since, she claims to be the only eye witness in this case. She is the wife of the deceased Sri Sishu Ram Deka. However, the evidence reveals that there were improvements in her testimony. She had not named the accused persons while giving her statement before the police. Her sons, namely, Raju Deka and Mantu Deka came to know about the accused persons from her only. However, the evidence reveals that there are improvements in the evidence of these two witnesses also. Though all the omissions were not proved following the strict procedure of law, that is, by firstly confronting the witnesses with the omission part and then proving those omissions through the evidence of the IO, the omissions pointed out by the IO (PW 27) cast a shadow of doubt over the evidence

of these witnesses, particularly, PW 1, PW 5 and PW 9.

- 35) Though witness Mantu Deka (PW 5) claims that he came to know about the accused persons from his mother on the date of the incident itself, for reasons best known to him, he had not mentioned those names in the FIR lodged on the following day. This suggests that the names of the accused persons were subsequently discovered. It is worth noting that the incident occurred on 21.05.2013 and witness Smt. Bharati Deka deposed before the Court on 26.08.2014. There is a big time gap in between and this provides the scope for improvement.
- 36) There are some incriminating materials against the accused Sri Bhupen Deka, but the case has been splitted up and accused Sri Bhupen Deka is not before this Court in this proceeding.
- 37) In a criminal case, to punish the accused, prosecution needs to prove the case against the accused beyond reasonable doubt. However, in this case there is only one witness who claims herself to be the eye witness and her evidence is also tainted with material omissions and contradictions. There is no corroboration from other witnesses. FIR was silent about the accused persons, though the informant's

mother claims herself to be an eye witness. Hence, the prosecution has failed to prove its case against the accused beyond reasonable doubt.

ORDER

- 38) In the result, the accused persons, namely, Sri Kukheswar Koch, Sri Jugeswar Koch, Sri Hiren Koch and Sri Dhanjit Koch are acquitted and set at liberty forthwith. The bailors are discharged.
- 39) Seized articles, if any, shall be disposed of in accordance with law. Let the GR record be sent back to the learned Lower Court.
- 40) Given under my hand and seal of this Court on this 6th day of December, 2021.

(Nisanta Goswami)
Addl. Sessions Judge, Udalguri

Dictated and Corrected By:

(Nisanta Goswami)
Addl. Sessions Judge, Udalguri

Transcribed and Typed by:

(Bristi Rekha Das)
Stenographer Grade-III

APPENDIX

A) Prosecution Witnesses:

1. PW1: Smti Bharati Deka
2. PW2: Smti Deiji Deka
3. PW3: Smti. Bandana Deka
4. PW4: Sri Mahendra Kalita
5. PW5: Sri Mantu Deka
6. PW6: Sri Raju Paul
7. PW7: Sri Prasenjit Brahma
8. PW8: Sri Bishal Toppo
9. PW9: Sri Raju Deka
10. PW10: Miss Biju Devi
11. PW11: Smti. Sarala Sarmah
12. PW12: Sri Megh Ram Deka
13. PW13: Sri Jogen Koch
14. PW14: Sri Hari Ram Koch
15. PW15: Sri Jiten Koch
16. PW16: Miss Dipali Das
17. PW17: Smti. Padma Deka
18. PW18: Sri Pabitra Mochahary
19. PW19: Sri Mukunda Deka
20. PW20: Sri Amar Mahatoo
21. PW21: Sri Bhaskar Jyoti Mahanta
22. PW22: Sri Bappi Paul

- 23.PW23: Dr. Pramod Deka
- 24.PW24: Smti, Ranjita Deka
- 25.PW25: ASI Jiban Deka
- 26.PW26: Sri Manoj Gohain
- 27.PW27: Sri Nabin Boro

B) Defence Witnesses: Nil

C) Court Witnesses: Nil

D) Prosecution Exhibits:

- 1. Ext.1: 164 statement of Bandana Deka
- 2. Ext.2: 164 statement of Megh Ram Deka
- 3. Ext.3: FIR
- 4. Ext.4: Seizure-list
- 5. Ext.5: Inquest report
- 6. Ext.6: Seizure-list
- 7. Ext.7: Seizure-list
- 8. Ext.8: Seizure-list
- 9. Ext.9: Seizure-list
- 10. Ext.10: PM report
- 11. Ext.11: Sketch-Map
- 12. Ext.12: Charge-sheet
- 13. Ext.13: 161 statement of Bappi Paul
- 14. Ext.14: 161 statement of Padma Deka

E) Material Exhibits: Nil

F) Defense Exhibits : Nil.

G) Exhibits produced by witness: Nil.

H) Court Exhibits : Nil

(Nisanta Goswami)
Addl. Sessions Judge, Udalguri

