

GAHC010174232019



In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

CRL. APPEAL NO. 286 OF 2019

Hanufa Nasrin,
Aged about 27 years,
Daughter of Hanif Ali Choudhury,
Resident of Howly Town, Ward No.3, P.S.- Howly,
Dist.-Barpeta, Assam, Pin-781316.

.....Petitioner/Appellant

-Versus-

1. The State of Assam,
Represented by the learned Public Prosecutor.

2. Johirul Islam,
Son of- Late Joher Ali,
Resident of Village-Nagarjhar, P.S-Howly,
Dist.-Barpeta, Assam, Pin-781316.

.....Respondent

- B E F O R E -

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Advocate for the petitioner/appellant : Mr. S. C. Biswas, learned counsel.

Advocate for the respondents : Mr. R. J. Baruah, learned Additional public
Prosecutor.

Date on which Judgment is reserved : 11.08.2026.

Date of Hearing : 11.08.2026.

Date of Judgment and Order : 19.08.2026.

Whether the pronouncement is of the Operative part of the Judgment? : No.

Whether the full Judgment has been pronounced? : Yes.

JUDGMENT & ORDER

(CAV)

Heard Mr. S. C. Biswas, learned counsel for the appellant. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor appearing for the State of Assam.

2. This is an appeal under Section 374(2)(1) of the Code of Criminal Procedure, 1973, against the impugned Judgment and Order of conviction dated 20.07.2019 and sentence dated 23.07.2019 passed by the learned Sessions Judge, Barpeta in Sessions Case No. 61/2026, wherein the appellant was sentenced to undergo Rigorous Imprisonment for 5 (five) years and to pay fine of Rs.10,000/- (Rupees ten thousand) only in default to undergo rigorous imprisonment for another 6 (six) months under Section 304(II) of IPC.

3. The prosecution case, in brief, is that on 08.01.2014, one Jahidul Islam,

son of deceased Juwaher Ali, lodged an ejahar before the Officer-in-Charge of Howly Police Station alleging *inter-alia*, that on the same date, at about 2:30 p.m, accused Hanufa Nasrin alongwith two other co-accused persons committed murder of his minor granddaughter namely, Anisa Mehejubid, aged 11 months, at their residence.

In pursuance of the same, the Officer-in-charge, Howly Police Station, registered a case being Howly Police Station Case No.15/2014, under Section 302/34 of the Indian Penal Code.

The Investigating Officer investigated the case. Ultimately, on completion of investigation, filed charge sheet in the case against the accused Hanufa Nasrin under Section 302 IPC vide charge-sheet No.184, dated 31.07.2015.

4. After committal charge under section 302 IPC was framed against the accused appellant to which she pleaded not guilty and claimed to be tried.

5. The prosecution side, in order to bring home the charge, against the accused, examined as many as 12 (twelve) number of witnesses including the informant, Medical Officer and the Investigating Officers.

After recording prosecution evidence, the accused was examined under Section 313 of Cr.P.C. Defence of the accused is of total denial and innocence.

The accused, during his statement, recorded under Section 313 Cr.P.C, denied all the alleged incriminating materials against her, but claimed to adduce evidence in her defence. The accused could not produce DW, for which, evidence of accused was closed.

Thereafter, witness Partha Pratim Das (P.W.9) was further examined, on the prayer of prosecution side. The statement of accused was also recorded further under Section 313 Cr.P.C.

6. At this stage, the evidence of the case may be discussed.

7. Witness Samsul Haque Khalifa [PW1] deposed in his evidence before the court that informant is his relative and he knows the accused. Incident took place about 2 years ago. Accused was married to one Abul Kalam Azad and she got a child out of their wedlock, who was sick since its birth. PW1 further stated that accused and Abul Kalam married out of their love affairs and so parents of Abul Kalam tortured her physically and hence, finding no way out. PW1 brought back the accused. PW1 deposed that the infant child of accused was ill since her birth. However, he could not say the illness of the child. PW1 stated that he does not know as to whether accused took the child to hospital as he was in the market. In the evening he got the information that the child died in hospital. Doctor examined the child. The in-laws of accused lodged case against accused and he was called to thana. PW1 further stated that accused is his granddaughter. He also stated that Abul Kalam gave one paper to accused, but he does not know whether it was a talaqnama or not. PW1 heard that the child fell from the bed.

During his cross examination he stated that he did not see the incident himself as he was not at home. He also stated that 3/4 months prior to the death of child. Abul Kalam Azad and his family member assaulted the accused and handed over her to him. Husband of accused and the family members did not enquire about accused and her child after she came to his house. They even did not come to enquire about the incident. PW1 deposed that he did not state before police that accused killed the child. He could not say as to what case did Sahar lodged against the accused. He also deposed that after coming back from work he heard that after receiving talaqnama, accused started crying and fell down from the bed.

8. Witness Roopjan Nessa [PW2], who is wife of PW1, deposed in her evidence before the court that accused is her granddaughter. Incident occurred about 2 years ago at about 3:00 PM Accused was married to Abul Kalam Azad and they got a child out of their wedlock named Anisha, who was about one year old at the time of death. PW2 further stated that as accused was tortured in her husband's house. so they kept the accused in their house alongwith the child. She was not present at the time of incident. Later, she heard that husband of accused sent a talaqnama to accused. After receiving the talaqnama, accused started crying and at that time the child, who was sleeping on bed, fell down. PW2 also deposed that hearing hulla in the house, she went to her house and found the accused in crying condition. They took the child to hospital, but could not save her life. Postmortem was done Police examined her.

PW2 was declared hostile at the instance of prosecution.

In her cross-examination by prosecution side PW2 denied to have stated before police that, "today at about 2:00 PM one person came to their house and and gave a letter and told that it was for Hanufa. After seeing the same Hanufa learnt that Abul Kalam Azad gave her talaq. Then out of anger, Hanufa tore the letter and put the same into the mouth of Anisha Mehjabin and then the child became speechless. Later on, though his son took the child to hospital, but she died. It is true that Hanufa killed it."

In her cross-examination by defence side, PW2 stated that she did not state before police as told by the Govt. Advocate today. Accused did not put the paper of talaqnama into the mouth of the child. She further stated that Abul Kalam Azad work in police department and father of Kalam lodged the case. Abul Kalam and his family members did not enquire even after death of the child. She further deposed that she alongwith the accused took the child to

hospital. The child was sick from her birth.

9. Witness Jahidul Islam [PW3], who is the informant of this case, deposed in his evidence before the court that accused is his daughter-in-law and wife of his son Abul Kalam [PW6] About 2% years ago Abul Kalam informed him over telephone that accused killed his daughter and asked him to enquire. On going to village he came to know that his granddaughter was taken to Dr. Samsul Alam. After going to the pharmacy of Alam he came to know that the child was sent back as she already died. He heard that accused had killed the child, but he does not know how the accused killed the child. He lodged the ejahar. PW3 exhibited the ejahar vide Ext.1 wherein Ext 1(1) is his signature.

During cross-examination PW3 stated that his son Abul Kalam Azad works in the police department. When his son telephoned him, he was at Barpeta Road. He did not see how the incident took place He also deposed that he did not write the ejahar, but it was read out to him. He lodged the ejahar after being confirmed that his granddaughter died.

He further stated that before 20/25 days of the incident accused came to her mother's house. He came to know from the pharmacy of Samsul Alam that his granddaughter was taken to Barpeta medical, but he did not go to medical college. He could not say as to whether Abul Kalam sent divorce affidavit to accused or not. House of accused is located at a distance of 4/5 kms from his house. He also deposed that the date of incident is 08.01.2014.

He deposed that his granddaughter had not been suffering from any illness from her birth

He denied all other suggestions of defence side.

10. Witness Omaruddin Ahmed [PW4] deposed in his evidence that he knows

Abul Kalam Azad and his wife i.e the accused. They had a girl child who was below one year. Incident occurred about 2/2 ½ years ago. Abul Kalam informed him over phone that the accused killed his daughter and asked him to enquire about it. Then PW4 telephoned the accused and accused told him that as Kalam divorced her, so she killed the daughter. Father of Abul Kalam lodged the ejahar and police examined him.

During cross-examination PW4 deposed that Abul Kalam Azad is the son of his maternal uncle. He did not see how the incident took place. He has no any other knowledge except coming to know from accused and her husband over phone.

He denied that he gave false evidence for the sake of his brother.

11. Witness Jahanara [PW5] deposed in her evidence before court that she knows the accused. She saw Abul Kalam in the house of accused. They had a child. She further stated that she does not about the incident. She also stated that she did not meet police and her statement has not been recorded.

This witness was also declared hostile at the instance of prosecution.

During her cross-examination by prosecution PW5 denied to have stated before police that "today I was standing near the gate during evening. Suddenly, sister-in-law of Hanufa came running from house by saying 'killed the child! Hanufa killed the child ! and out of fear she went and stayed at the house of Bicha's mother."

She denied that she gave false evidence to save the accused. Defence declined to cross examine PW5.

12. Witness Abul Kalam Azad [PW6] deposed in his evidence before the court that incident took place in the year 2014. Accused is his wife. They got married

in the year 2010 and their deceased daughter was born in the year 2012. His deceased daughter was 9 month old at the time of incident. He further deposed that about 20 days, prior to the date of incident, accused went to the parent's house with her grandmother. He went to bring back the accused after 4/5 days. At that time his daughter was fine. Accused did not come with him. He deposed that accused met him at Guwahati on 31.12.2013 when he was serving at Gauhati High Court. His daughter was also fine on that day. On the same day accused returned from Guwahati to her mother's house. He alleged that accused kept his daughter in the hands of sentry at the gate of High Court for which police searched the accused and handed over the child to her.

On 08.01.2014, his Senior Officer Rameswar Singh was informed by the accused that she had killed the daughter of Kalam i.e PW6, and asked him to do whatever he can do. Then PW6 came to know after enquiry that the accused had killed his daughter. Then his father lodged the case at Howly Police Station.

PW6 went directly to Barpeta medical and found his daughter in dead condition. He further deposed that he suspected that accused had killed his daughter as accused on earlier occasion also threatened him that she will kill the baby if he do anything wrong.

During his cross-examination PW6 deposed that accused stayed with him till 13.12.3013. Accused has also lodged case u/s 498A IPC as well as maintenance case. He also stated that his deceased child had infection immediately after her birth, for which, she was treated at Medical Hospital. After that she was not suffering from any illness. He also deposed that he did not find the accused at the time of seeing his deceased daughter.

He denied to have stated before the police that about 20 days prior to the

date of incident accused went to her parent's house with her grandmother; that he went to bring back the accused after 4/5 days: that at that time his daughter was fine, that accused did not come with him; that accused met him at Guwahati on 31.12.2013, when he was serving at Gauhati High Court; his daughter was fine on that day; that on the same day accused returned from Guwahati to her mother's house; that accused kept his daughter in the hands of sentry at the gate of High Court for which police searched the accused and handed over the child to her, as police did not ask him.

He also confirmed that he is having good relation with Rameswar Singh, under whom he is working.

He denied that he gave the telephone No. of accused, by which, she talked to Rameswar Singh [PW-10].

He denied all other suggestions of the defence side, including the suggestion of defence side that his deceased daughter was suffering from illness from her childhood and she died for that illness.

13. Witness Jahanara Begum [PW7] deposed that accused is her stepdaughter who got married with Abul Kalam Azad about 6/7 years ago. A girl child was born to her. Their relation as husband and wife was going on smoothly. The girl child of accused died in the house of mother of accused and regarding this incident case was lodged. She did not state anything before police.

Defence declined to cross-examine PW7.

14. Witness Sri Bimal Deka [PW8] deposed in his evidence before the court that on 09-01-2014 he was working as Circle Officer, Bagbar Revenue Circle.

On that day as per order of the District Magistrate, Barpeta, he performed inquest over the dead body of Anisa Mehjebin Azad, on being identified by Abul Kalam Azad, in presence of witnesses Abul Kalam Azad. Saiful Islam, Moinur Hoque and Md. Rafiqul Islam, as per order of Additional District Magistrate, Barpeta vide No. BMJ2/2013/191 dated 9-01-2014 and found as follows:-

The dead body was found in Emergency Ward of Fakhruddin Ali Ahmed Medical College & Hospital, Barpeta.

Dress: Frock(white with blue strip)

Height:-1/1' ft(Approximate)

Complexion:- Fair

Hair:- Black 1 inch long(approx).

Age(Approximately):- 11 months(approx)

Body built:

Medium

Head(Front):- Normal

Head(Back):- Normal.

Eyes:- Normal(Closed).

Nose:- Normal

Mouth: Half closed.

Hands:- Straight

Legs :- Almost straight

Toes and heel:- Normal

Chest:- Normal

Abdominal part:- Normal

Genital organs:- Normal

Nails and fingers:- Normal

Visible injury marks(if any): Not seen

Any other points noticed:- Nil.

Apparent cause of death: As per P.M. Report.

Inquest completed at: 3.10 PM.

Remarks:-

To ascertain the actual cause of death, the body was sent for post-mortem examination to Fakhruddin Ali Ahmed Medical College & Hospital, Barpeta.

PW8 exhibited the Inquest report vide Ext.2 wherein Ext.2(1) is his signature.

During his cross-examination, PW8 has deposed that the inquest was done on the deceased vide U.D. Case, which is mentioned in the order of A.D.M, Barpeta.

15. Witness Dr. Partha Pratim Das [PW9], who is the M.O. of this case, deposed that on 09.01.2014 he was working as Demonstrator of Forensic Medicine, FAAMC & H. Barpeta. On that day, in connection with Barpeta U/D Case No. 03/14, he performed Postmortem on the death body of Anisha Mehjebin Azad, Village Nagarjhar, Female, daughter of Abdul Kalam Azad, P.S. Howly. Dist- Barpeta. The body was identified by UBC/455 Shamsul Hoque and Abul Kalam Azad father of the deceased. On examination I found as follows:-

External appearance:-

Female body, average built, wheatish complex wearing white frock with purple print, blue and white shirt, white shirt with red criss cross pattern. Eyes closed, mouth open. Rigor moties present and fully developed. Body cold to touch. Postmortem hypostasis present and fixed.

Injury:-

1. Contusion of size 2 cm x 1 cm on right side of occipital protuberance.
2. Bilateral diffuse sub arachnoid haemorrhage.
3. A cyst of size 1 cm diameter present in the third ventricle of the brain.

(SUBARACHNOID CYST)

4. No ligature mark present around neck and on dissection neck tissues healthy. Other organs are all healthy, viscera preserved:

Jar 1 contains portion of lung, liver, brain, kidney and stomach with contents.

Jar 2 contains sample of preservative used i.e saturated solution of common salt.

Opinion regarding cause of death is kept pending till the receipt of report of chemical analysis of viscera from DFS, Kahlipara. Approximate time since death 24 to 36 hours.

Ext.3 is the postmortem report and Ext.3(1) is his signature and Ext.3(2) is the signature of Dr. S.I. Barbhuyan Prof. & Head Deptt. Of Forensic Medicine FAAMC & H, Barpeta which is known to PW9.

Defence declined to cross-examine PW9.

PW9 was re-examined on the prayer of learned Public Prosecutor, where PW9 deposed that on 26.06.2015, he was working as Demonstrator of Forensic Medicine, FAAMC & H, Barpeta and on that day, he submitted report on the basis of postmortem findings and after receipt of chemical analysis against Chemical Examiners Report No DFS 482/916/TOX 369/14. He opined on the basis of the said chemical examination report that the cause of death of Anisha Mehjebin Azad is organophosphorus poisoning.

PW9 exhibited his report vide Ext.5 and Ext.5(1) as his signature.

During his further cross-examination, PW9 has deposed that the report dated 20.06.2014 of Junior Scientific Officer of Toxicology Division, Directorate of Forensic Science, Assam, Kahilipara, Guwahati, shows that result of examination was given on the basis of Exhibit No. Tox-240(a) & Tox-240(b), though the Exhibits nos. are not mentioned in his report i.e. Ext.5.

He further stated that the Exhibits nos. shown in his report are mentioned as Tox 369(a), Tox 369(b), Tox 369(c). Tox 369(d) & Tox 369(e) and those Tox Exhibits are not related to this case.

Thus, report [Ext.5] was given on the basis of examination report of Tox 369(a). Tox 369(b), Tox 369(c). Tox 369(d) & Tox 369(e). which were not related to this case and same cannot be considered.

16. Witness Sri Ramashry Singh [PW10] deposed in his evidence before the court that incident occurred on 08.01.2014. On that day he was performing duty at Guwahati High Court. Abul Kalam Azad. husband of accused, was also with him. On that day he received a phone call and on asking, the phone caller stated herself to be wife of Abul Kalam and enquired about Kalam. He told her that he (her husband) is with him. PW10 also deposed that she also told him

that Abul Kalam is not taking her phone call and asked him to inform Abul Kalam that she had killed his daughter. PW10, then, gave the phone to Kalam. Hearing the matter Kalam went home and also sought leave from him saying that his daughter has been killed. PW10 further stated that I.O. recorded his statement.

During his cross-examination PW10 deposed that the husband of accused worked under him for about 1/1½ years. Before that also husband of accused used to work in that platoon. He further deposed that if the family members of the employees of platoon cannot contact. then they used to telephone him.

PW10 has further deposed that on the relevant day accused did not get her husband on telephone, and for that reason, she rang him up.

He could not say how the child of accused died. He also did not give the telephone No. of accused to the police. He also denied to have verified the said telephone No. as to whether it belonged to accused Hanufa Nasrin or not?

PW10 denied that witness Abul Kalam made this telephonic call to him (PW10) by the accused for grant of leave.

He denied that accused did not inform him that she had killed her daughter.

PW10 denied all other suggestions of the defence side

17. Witness Sri Biren Sarmah [PW11] deposed that on 08.10.2014 he was working as Attached Officer at Howly Police station. On that day, on receipt of an ejahar, lodged by one person namely jahidul. the officer-in-charge of Howly PS registered a case being Howly PS case No.15/2014 u/s 302/34 IPC and entrusted him with the investigation of the case. Accordingly, he visited the place of occurrence, drew sketch map of the place of occurrence, recorded the

statement of witnesses. After coming to know that the child was at Barpeta medical college in dead condition and accused alongwith other persons were also there, he went to hospital. In-charge of hospital informed that he had already registered a UD case. He met the accused who showed him the dead child and told her age as 11 months. He also stated that the In-charge already got the Inquest and postmortem done. He then brought the accused by Lady Police to thana. The accused told him that a peon gave her a letter, where it was written by Notary that she had been divorced and then, in anger, she cried and inserted the letter into mouth of the child and then the child became speechless and she too became senseless and she does not know what happened thereafter. PW11 further stated that he found sufficient evidence for these facts.

PW11 also deposed that, to save the child, the neighbouring people of accused took the child to the pharmacy of Dr. Samsul Alam at Howly and from there to doctor at Barpeta.

PW11 arrested the accused and forwarded to court.

PW11 also stated that as he had been transferred, so he handed over the case diary to officer-in-charge on 05.02.2014.

PW11 exhibited the sketch map vide Ext.4 whereon Ext. 4(1) is his signature.

PW11 confirmed that witness Roopjan Nessa stated before him that "today at about 2:00 PM one person came to their house and and gave a letter and told that it was for Hanufa. After seeing the same Hanufa learnt that Abul Kalam Azad gave her talaq. Then out of anger, Hanufa tore the letter and put the same into the mouth of Anisha Mehjabin and then the child became

speechless. Later on, though his son took the child to hospital, but she died. It is true that Hanufa killed it."

PW11 further confirmed that witness Jahanara Khatun stated before him that "today I was standing near the gate during evening. Suddenly, sister-in-law of Hanufa came running from house by saying 'killed the child! Hanufa killed the child!' and out of fear she went and stayed at the house of Bicha's mother."

PW11, during his cross-examination, deposed that he met husband of accused at hospital, He did not seize any article. But later, he deposed that he seized the pieces of Talaqnama, but could not say the date of such seizure.

PW11 deposed that he saw the accused outside the hospital and she showed the dead body of her child.

He denied that he did not record the statement of Roopjan and Jahanara. He denied the suggestion of defence side that as husband of accused is working in police department, so he has given false evidence.

18. Witness Sri Sanjit Roy [PW12] deposed in his evidence before the court that on the 20th day of February of 2014 he was working as officer-in-charge of Howly PS. The earlier I.O., on his transfer, handed over the case diary of the case to him. PW12 stated that he collected the diary of Barpeta PS UD case No.03/2014 from ASI Sri Bhupendra Nath Talukdar, I/C, FAAMCH Out Post. As viscera report was negative, he sent the post-mortem report to medical and collected the new report. On completion of investigation, he submitted charge-sheet against the accused u/s 302 IPC. PW12 exhibited the charge-sheet vide Ext.4 wherein Ext.4(1) is his signature.

During his cross-examination PW12 stated that the UD case has been amalgamated with this case and so, the post-mortem report of the UD case is

also post-mortem report of this case.

19. Mr. SC Biswas, learned counsel for the appellant submits that the present is a case of no evidence. Pointing to the evidence of P.W.9 the Medical Officer, it is submitted that although the Medical Officer has opined on the basis of chemical examination report that the cause of death is organophosphorus poisoning, it is admitted by the said P.W.9 that the aforesaid report, dated 20.06.2014 of the Junior Scientific Officer, Forensic Division, Directorate of Forensic Science, Assam, shows that the result of the examination was given on the basis of Exhibit No. Tox-240(a) and Tox-240(b). But the said exhibits are not mentioned in the Exhibit 5, report. It was further admitted by the Medical Officer during cross examination that the exhibit numbers shown in his report are mentioned as Tox 369(a), Tox 369(b), Tox 369(c). Tox 369(d) & Tox 369(e) and those Tox Exhibits are not related to this case.

20. The learned Trial Court also came to the finding that the chemical examiners report, that is Exhibit 5 was given on the basis of examination report of Tox 369(a). Tox 369(b), Tox 369(c). Tox 369(d) & Tox 369(e), which were not related to the instant case and the same therefore, cannot be considered. In other words, the cause of death as opined by the Medical Officer, that is, organophosphorus poisoning was not accepted by the learned Trial Court. Yet the learned Trial Court came to a finding that the appellant killed the deceased without there being any other evidence to support the same.

21. Learned Additional P.P submitted that the learned Trial Court had, upon an appreciation of the medical evidence as well as the other circumstantial evidence had rightly come to the conclusion that it was none other but the appellant who had killed the deceased child.

22. A perusal of the medical evidence, besides the aforesaid chemical examination report, which was discarded by the learned Trial Court, would reveal that the deceased had contusion of size 2 cm X 1 cm on the right side of occipital protuberance and bilateral diffuse subarachnoid hemorrhage. She also had a cyst of 1 cm diameter present in the third ventricle of the brain (subarachnoid cyst). No ligature mark was found around her neck and all the neck tissues and other.

23. The medical officer offered no opinion to the effect that any of the aforesaid injuries was sufficient to cause death. Although PW2 had allegedly stated before the IO that the appellant had put a torn up piece of paper into the mouth of the child, who became speechless and was taken to the hospital where she died, the medical evidence does not point towards suffocation as the cause of death. It also cannot be ruled out that even if the injury mentioned above was sufficient to cause death, the same could have been accidental.

24. The learned trial court also did not record any finding that the death of the deceased was homicidal in nature.

25. A perusal of the circumstances relied upon by the learned trial court as indicative of the guilt of the accused, would show that inadmissible evidence in the form of statements of witnesses before the police recorded under Section 161 Cr.P.C, as well as material never introduced into the evidence such as purported photocopy of an affidavit dated 03.01.2014 sworn by PW6 were taken into consideration.

26. For the aforesaid reasons the impugned judgement must be held to be unsustainable in law and accordingly, the same is set aside.

27. The appeal stands allowed. Appellant be set at liberty forthwith.

28. Send back the TCR.

JUDGE

Comparing Assistant