



GAHC010002732019

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

Case No. : CRL.A(J)/4/2019

JOYNAL BEPARI
S/O. MAKIJUDDIN BEPARI, VILL. KUNTIRCHAR PART-I, P.S. DHUBRI, DIST.
DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. N DEKA, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 07.11.2022.

Date of judgment : 07.11.2022.

JUDGMENT & ORDER (Oral)

(Suman Shyam, J)

This appeal against conviction has been preferred from Jail assailing the judgment and order dated 11.10.2018 passed by the learned Sessions Judge, Dhubri



in connection with Sessions Case No.88/2017 convicting the sole appellant under Section 302 of the Indian Penal Code (IPC) for committing the murder of his wife Tara Bhanu and sentencing him to undergo rigorous imprisonment for life and also to pay fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for another six months.

2. The prosecution case, in a nutshell, is that in the early morning of 22.09.2016, the accused, who is the husband of the deceased, caused grievous injury on the head of Tara Bhanu as a result of which, she had to be shifted to the Dhubri Civil Hospital. Later on, the victim was shifted to the Gauhati Medical College and Hospital (GMCH) where she succumbed to her injuries after two days.

3. On 22.09.2016 an ejahar was lodged before the Officer-in-Charge, Dhubri Sadar Police Station by Habibor Miah i.e. the younger brother of the victim, based on which, Dhubri P.S. Case No.995/16 was initially registered under Sections 341/326 IPC. However, after the death of the victim on 28.09.2016, section 302 IPC was added. The police took up investigation in connection with Dhubri P.S. Case No.995/2016 and upon completion of investigation, submitted charge-sheet against the accused/appellant. Based on the charge-sheet, the learned trial court had framed charge against the accused under Section 302 of the IPC for committing the murder of his wife. Since the appellant had pleaded not guilty and claimed to be tried, the matter went up for trial.

4. During the course of trial, the prosecution side had examined 7 (seven) witnesses including the I.O. (PW-6) who had conducted investigation and submitted charge-sheet as well as the doctor (PW-7), who had conducted post-mortem



examination on the dead body. PWs-2 and 3, who are the son and daughter of the appellant and the victim, had deposed before the court in support of the prosecution case. PW-3 had categorically deposed that soon after the occurrence, she had seen her father i.e. the appellant run away from the house. Taking note of the bulk of the evidence available on record, more particularly the testimony of PW-3, the learned trial was of the opinion that the prosecution has succeeded in establishing the charge brought against the appellant under Section 302 of the IPC beyond reasonable doubt and accordingly, convicted the appellant and sentenced him to undergo life imprisonment and to pay fine, as indicated herein above. Aggrieved thereby, the present appeal has been filed.

5. We have heard Mr. N. Deka, learned Amicus Curiae appearing for the appellant. We have also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam, representing the State.

6. According to Mr. Deka, the evidence available on record is insufficient to rule out the possibility of any other person entering the house and committing the murder of the victim. As such, the appellant may be acquitted by giving him the benefit of doubt. Ms. B. Bhuyan, learned Addl. P.P., Assam, on the other hand, has argued that the evidence on record establishes each link in the chain of circumstances so as to prove that it was none other than the appellant/accused who had committed the murder of his wife. As such, there is no scope for this Court to interfere with the impugned judgment and order of conviction passed by the learned trial court.

7. We have considered the arguments advanced by the learned counsel



appearing for both the sides and have also gone through the materials available on record.

8. PW-1, Md. Habibar Miah is the informant in this case. He is the younger brother of the victim. PW-1 had lodged the ejahar before the Dhubri Police Station on 22.09.2016 based on which, Dhubri P.S. Case No.995/2016 was registered. PW-1 has deposed that he did not see the incident but came to know about the same from the son of the victim viz., Nur Mohammad, who told him that the victim had been shifted to the Dhubri Civil Hospital. Then he went to the Dhubri Civil Hospital and found that his sister Tara Bhanu (victim) was lying in an injured condition. She was not in a position to speak. Then he lodged the ajahar (Ext-1). Ext-1 (1) was his signature therein. This witness has also deposed that the doctors at the Dhubri Civil Hospital had advised them to shift Tara Bhanu to Guwahati. Accordingly, she was shifted to Guwahati. After two days, Tara Bhanu succumbed to her injuries at the GMCH. During his cross-examination by the defence side the testimony of this witness could not be shaken.

9. PW-2, Nur Mohammad is the son of the accused/appellant and the deceased Tara Bhanu. He has deposed before the court by stating that on the day of the occurrence at about 5:00 a.m., his elder sister called him and told that his father had killed his mother and thereafter, fled away. Then he went to the bed of her mother and found that she was lying there in a pool of blood. He then put a gamocha (towel) over her wounds on the head and took his mother to the Dhubri Civil Hospital. There, the doctors told them to shift the victim to GMCH, which they did. After 1/2 nights his mother succumbed to the injuries at the GMCH. During his cross-



examination PW-2 has stated that at the time of the incident he was sleeping in his room. He has denied the suggestion made by the defence side that his father had not killed his mother.

10. Musstf. Joybhanu Bibi is the daughter of the accused/appellant and the victim. She was examined by the prosecution side as PW-3. She is the key witness in this case and her testimony has been heavily relied upon by the learned trial court for the purpose of awarding the conviction and sentence upon the appellant. PW-3 has stated that on the day of the alleged occurrence she had gone to the backyard of their house to attend to nature's call and when she came back, she heard a noise and saw that her father was running away from the house. Then she entered into the house and saw her mother (victim) lying on the bed with injuries on her head. She then called her brother Nur Mohammad (PW-2) and told him that her father had killed her mother. At that time, no other person was present in the house. Her brother Nur Mohammad then took her mother to the hospital. Later on, her mother succumbed to her injuries at Guwahati.

11. During her cross-examination, PW-3 has replied that on the day of the occurrence, she was sleeping in the room of her parents, on the floor and her parents were sleeping on their bed. PW-3 had denied the suggestion that on the day of occurrence her father was not present in the house and that he did not kill her mother. She has also denied the suggestion that she did not see her father running away from the room of her mother. This witness could not be shaken during her cross-examination.



12. PW-4, Abu Bakkar Siddique had merely heard that the accused had murdered his wife but he did not see anything. As such, the testimony of this witness would not be of much significance in this case.

13. Sri Sahadat Ali is also related to the victim. He was examined as PW-5. This witness has deposed that on the day of the occurrence, at around 5:00 a.m. in the morning, the daughter of the accused i.e. PW-3 came to his house and told him that the accused had murdered the victim. Then he went to the house of the accused and saw a bleeding wound on the head of the victim. She was lying unconscious. They had immediately shifted her to the Dhubri Civil Hospital wherefrom, the victim was shifted to the GMCH. After two days of treatment she succumbed to her injuries at the GMCH. In his cross-examination PW-5 has stated that there was a marriage ceremony in the house of the accused on the previous day. This witness has also denied the suggestion made to him to the effect that the accused had not murdered the victim or that he had deposed falsely before the court.

14. Shri Sukanda Das was posted as an ASI at the Dhubri Police Station when the incident occurred. He was examined as PW-6. This witness has stated that on 22.09.2016, when he was posted at the Dhubri Police Station, on that day, the Officer-in-Charge of the Police Station had entrusted him with the responsibility to carry out investigation in the connected police case. During the course of investigation he had found the victim had been shifted to Dhubri Civil Hospital and therefore, he had gone to the Dhubri Civil Hospital and recorded the statement of some of the witnesses. As the condition of the victim was critical, she was shifted to the Gauhati Medical

College Hospital (GMCH) where she died after two days due to her injuries. PW-6 has also stated that he had collected the post-mortem report and after completion of investigation, having found sufficient evidence against the accused, he had submitted charge-sheet against the accused for committing offence punishable under Sections 302/341 of the IPC. Ext-2 is the charge-sheet submitted by him which bears his signature as Ext-2(1). PW-6 has also exhibited the post-mortem report collected by him as Ext-3. During his cross-examination PW-6 has stated that he had arrested the accused on the day of the occurrence and that on the previous day there was a marriage ceremony in the house of the accused.

15. Dr. R. Rongpharpi was serving as Assistant Professor in the Department of Forensic Medicine at the Gauhati Medical College and Hospital and he had conducted the post-mortem examination on the dead body of the victim on 24.09.2016. The doctor was examined as PW-7. According to the post-mortem examination conducted by the PW-7, the following injuries were noticed in the dead body :-

"Injuries:

1. *Surgically stitched wound was present over the left side of face repaired with ten numbers of stitches, starting 3 c.m. lateral to left eye brow and directed anteriorly towards left cheek. On removal of stitches lacerated wound with irregular margins of size 8 c.m. x 0.5 c.m. x muscle deep was present and area was contused.*
2. *A surgically stitched wound was present over left temporal area of scalp, 3 c.m. above left ear, repaired with 3 numbers of stitches. On removal of stitches lacerated wound of size 5 c.m. X scalp deep was*

present with irregular and contused margin.

3. *A surgically stitched wound was present 4 c.m. medial to injury number (2) and repaired with 3 numbers of stitches. On removal of stitches, lacerated wound of size 5 c.m. X 0.5 c.m. X bone deep is present with irregular and contused margin.*

*No ligature mark is detected around the neck. On dissection neck tissues are found healthy. **Scalp** – Contusion present over left frontal temporal and post parietal area of scalp. **Skull** – Comminuted and depressed fracture is present over left frontal-temporal area of skull of size 12 c.m. X 12 c.m..**Membrane** – Extradural hemorrhage is present over left front-temporal area of size 6 c.m. x 5 c.m. x 1.5 c.m. Subarachnoid hemorrhage is present over both cerebral hemisphere. Brain – Lacerated at left temporal area.”*

The doctor had opined that the death of the victim occurred due to coma as a result of injuries sustained over the head. All the injuries were antemortem and caused by blunt force impact.

16. During the examination of the accused under Section 313 Cr.P.C. he had denied all the incriminating circumstances put to him. The accused/ appellant, however, did not adduce any evidence in his defence.

17. From the evidence available on record we find that the incident took place in the early morning hours of 22.09.2016, inside the house where the accused/appellant and the victim used to live. From the testimony of PW-3, we find that on the day of the occurrence, the accused and the victim were both at home and they were sleeping in the same bed. PW-3 was also sleeping inside the same room but on the floor. When she had gone out to answer the nature's call at about 4:00 a.m. in the



morning and returned within about 10 minutes, by that time the incident had occurred. PW-3 had also seen her father running away from the place of occurrence. She had narrated the incident to her brother PW-2 who immediately came to the place, saw his mother lying in an injured condition and took her to the hospital. The testimonies of PWs-2 and 3 corroborates the version of each other and both these witnesses had remained unshaken during the cross-examination. From the evidence of PWs-2 and 3 it is apparent that none other than the accused/appellant had caused grievous injury on the head of the victim and thereafter, ran away from the scene so as to save himself. Although the incident had evidently taken place in the house of the accused, that too at a very odd hour, the accused/appellant has neither offered any explanation as to the circumstances under which the incident took place nor did he take the plea of alibi. As such, in view of the evidence of PW-3 it is established that the accused/appellant was present inside the house at the time of the occurrence. The evidence available on record also clearly establishes the fact that he ran away from the house after the victim had sustained injuries. No attempt was made by the accused/appellant either to raise an alarm or to take the victim to the hospital. Under the circumstances, the failure on the part of the accused to offer any plausible explanation as to his conduct, in the opinion of this Court, would amount to an additional link in the chain of circumstances pointing towards the guilt of the accused.

18. From a careful examination of the impugned judgment dated 11.10.2018 as well as the materials available on record, we are of the view that the evidence adduced by the prosecution side establishes each link in the chain of circumstances



so as to bring home the charge brought against the accused/appellant. We are, therefore, of the opinion that the learned trial court has rightly held that the prosecution has succeeded in establishing the charge brought against the accused by adducing cogent evidence. We accordingly affirm the judgment dated 11.10.2018 passed by the learned trial court. Consequently, the conviction and sentence awarded to the appellant by the learned court below is hereby upheld.

The appeal is found to be devoid of any merit and is accordingly dismissed.

Before parting with the record, we put on record our appreciation for the services rendered by Mr. N. Deka, learned Amicus Curiae and recommend that the Registry may make payment of appropriate remuneration to the learned Amicus Curiae as per the existing norms.

Registry to send back the LCR.

JUDGE

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant