

GAHC010015162015



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

Case No. : CrI.A./147/2015

MD IDRISH ALI @ ILIAS AHMED
S/O MD. MOIN UDDIN, R/O VILL. DHUPAGURI PATTAR, P.S. DHING, DIST.
NAGAON.

VERSUS

THE STATE OF ASSAM and ANR

2:MD. MUJIBUR RAHMAN
S/O LATE SAMS UDDIN
R/O VILL. SONAIBALI
P.S. JURIA
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR.J M SULAIMAN

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR JUSTICE SONGKHUPCHUNG SERTO

JUDGMENT (CAV)

28/02/2023

(M.R. Pathak, J)

Heard Mr. H R A Choudhury, learned Senior counsel, assisted by Mr. I A Hazarika, learned counsel for the accused appellant. Also heard Mr. Makhan Phukan, learned Additional Public Prosecutor, Assam for the State.

- 2) Being aggrieved with the judgment of conviction and sentence dated 25.03.2015, passed by the learned Sessions Judge, Nagaon in Sessions (T-1) Case No. 137(N)/2013, by which he has been convicted under Section 302 IPC and sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.10,000/- and in default of payment of fine, further term of Simple Imprisonment for 1 (one) year, the convicted accused, namely, Md. Idrish Ali @ Ilias Ahmed has preferred this appeal.
- 3) According to the appellant, there was no eye witness to the incident and the learned Trial Court failed to prove the guilt of the appellant beyond all reasonable doubt so as to convict him under Section 302 IPC.
- 4) It is also contended by the appellant that the facts and circumstances of the case as well as the evidence led by the prosecution does not disclose any offence under Section 302 IPC, that was misread by the Trial Court and hence, the impugned judgment of conviction and sentence under Section 302 IPC needs to be set aside and quashed.
- 5) The accused appellant further contended that the learned Trial Court failed to appreciate that in absence of any conclusive evidence against him with regard to the death of the victim, that was consequent to suicide committed by her and therefore, the learned Trial Judge committed illegality in convicting him under Section 302 IPC. As such, it is submitted that the impugned judgment of conviction and sentence passed by the learned Trial Judge without any reliable evidence needs to be set aside and quashed.
- 6) On the other hand, the learned Additional Public Prosecutor, appearing for the State submits that there are sufficient evidence on record proved by the prosecution with regard to the guilt of the accused and that the learned Trial Court rightly convicted and sentenced the appellant and therefore, the impugned judgment of conviction and sentence does not call for any interference.
- 7) We have heard the submissions of the learned counsel for the parties.
- 8) The brief facts of the case is that the deceased was the wife of the accused appellant and they were married for about 2½ months. The informant, father of the deceased PW.1 Mazibur Rahman on 30.12.2012 lodged an FIR before the Officer-in-Charge of Dhing Police Station stating that his daughter Ms. Parbin Sultana was given marriage to the accused about 2½ months back and a social marriage took place between them. In the said marriage, he had given some materials with his daughter as dowry and after some days of the said marriage, the accused started torturing his daughter, wife of the accused to the extreme extent and demanded cash amount of Rs.50,000/-. In

the said FIR, the informant also stated that a week prior to the date of the incident, the accused assaulted his daughter and left her in the paternal home and after consoling her he took his daughter to her matrimonial home four days prior to the incident and explained to the accused as well as the family members of the accused that he being a poor person is unable to meet the demand of the accused. He further alleged that while hearing the same from the informant, the accused threatened to kill his daughter if the demand is not fulfilled within four days and around 08:00 am on the previous of the incident day his daughter informed him over phone that the accused persons tortured her and also threatened that they would kill her if he (the informant father of the deceased) fails to give them the demanded amount of Rs.50,000/- within the night itself and on hearing that he told her that he would go to her matrimonial home in the next morning. But on 30.12.2012 morning itself, he received information that the accused persons had killed his daughter Parbin Sultana.

9) In his FIR dated 30.12.2012, the informant named his son-in-law Ilias Ahmed, the appellant herein along with his father, mother, brother and two sisters as accused persons.

10) On receipt of said FIR, Dhing Police Station Case No. 279/2012 (corresponding to G.R. Case No. 3685/2012) under Sections 304(B)/34 IPC was registered and thereby a criminal case was set in motion.

11) During the course of investigation, police visited the place of occurrence, drawn the sketch map, made inquest on the person of the deceased and forwarded it to the Bhogeswari Phukanani Civil (BPC) Hospital, Nagaon for postmortem examination of the person of the deceased, recorded the statements of the acquainted witnesses, arrested the accused persons.

12) After conclusion of the investigation and on obtaining the Post Mortem Report of the deceased, the Investigating Officer of the case on 28.02.2013 vide No. 26/2013 submitted the Charge-Sheet under Section 302 IPC in said Dhing PS Case No. 279/2012 against the accused person Ilias Ahmed. However, the concerned Investigating Officer during the investigation as did not find sufficient materials against the other FIR named accused persons of the case, in his said Charge-Sheet he prayed to discharge those FIR named accused persons.

13) On receipt of said Charge-Sheet, the learned Chief Judicial Magistrate, Nagaon, Assam by his order dated 15.03.2013 passed in G.R. Case No. 3685/2012 made over the case to the learned Judicial Magistrate, First Class, Nagaon for trial and disposal. However, by order dated 20.03.2013, the learned JMFC, Nagaon committed the said G.R. Case No. 3685/2012 to the Court of the learned Sessions Judge, Nagaon under Section 209 CrPC as it involves Section 302 IPC, which is exclusively

triable by the Court of Sessions.

14) Said G.R. Case No. 3685/2012 on being committed, was registered as Sessions (T-1) Case No. 137(N)/2013 in the Court of learned Sessions Judge, Nagaon. Finding prima-facie materials, the learned Sessions Judge, Nagaon, by order dated 03.04.2013 framed charge under Sections 302/304-B IPC against the accused appellant that were read over and explained to him, to which the accused pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

15) To prove the guilt of the accused the prosecution adduced evidence of ten witnesses including the concerned Autopsy Doctor as well as the Investigating Officer of the case and exhibited the documents including the inquest report, postmortem examination report of the deceased, sketch map etc.

16) After conclusion of recording of evidence of prosecution witnesses, the learned Trial Judge on 05.01.2015 recorded the statement of the accused under Section 313 CrPC and the accused denied all the allegations and acquisitions made against him by the prosecution and also denied to give any defence evidence. However, the defence cross-examined the prosecution witnesses. Let us briefly examine the evidence adduced by the prosecution witnesses.

17) PW.9, Dr. Mofidul Islam Afsar, the autopsy doctor who conducted the postmortem examination on the person of the deceased Parbin Sultana on 13.12.2012 in his examination-in-chief deposed that the deceased was a female of 19 years of age and he found transverse ligature mark measuring 0.5 cm broad completely circling the neck situated in the mid part of the neck of the deceased, prominent more in the front and on the sides of the neck. He also found pleura congested with presence of sub-pleural hemorrhages and in thoracic part presence of external injury, fracture of both the superior horns of thyroid cartilage where the injuries were ante-mortem in nature and sub-coetaneous tissues under ligature mark was ecchymosed. PW.9 opined that the injuries of the deceased were ante mortem in nature and that the cause of her death was due to asphyxia as a result of strangulation by ligature. Said autopsy doctor proved the Post Mortem Examination Report of the deceased Exhibit.3 and his signature on it.

During his cross-examination by the defence the PW.9 stated that the ligature mark and the strangulation that he found on the neck of the deceased can be caused by a rope, but the ligature mark that he found on the neck of the deceased cannot be said to be self implicated and he denied all the suggestions made by the defence.

18) It is seen that the death of the deceased was not suicidal but homicidal due to asphyxia by

strangulation having transverse ligature mark measuring 0.5 cm broad completely circling her neck, situated in the mid part of the neck of the deceased, prominent more in the front and on the sides of the neck.

19) PW.1 Majibur Rahman, father of the deceased and the informant of the case in his examination-in-chief deposed that the deceased and the accused visited his house on three occasions after their marriage of two months and after two months of their marriage, the accused demanded Rs. 50,000/- from him, and he replied that as he is a poor person, he will not be able to satisfy the demand and on hearing it, as the accused became angry and he left in-laws house to his own residence, leaving his wife, i.e., the daughter of the informant in her paternal home infuriated.

After two days of the said incident, he took his daughter to her matrimonial home and informed the accused, his parents and sister that he being a poor person will not be to fulfill the demand of Rs.50,000/-. Hearing the same, the accused got infuriated and warned him that if he fails to pay the said amount of Rs. 50,000/- within four days he shall face the consequences. He also deposed that after four days his daughter died. He deposed that around 09.30 pm his daughter informed him over mobile phone that as he did not pay the said amount of Rs.50,000/- to her husband, she was rebuked and she asked him to come to her house, in reply he said that since it is already night, he shall come on the next morning and around 03:00 am the accused telephoned him that his daughter was trembling and asked him to come, to which he replied that as it is night and dark it is not possible for him to go at that time and shall proceed in the morning. After 15 minutes of the first call, the accused again telephoned him and stated that his daughter was unable to speak and asked him to come immediately to which he directed the accused to call for a doctor and 10/15 minutes thereafter the accused informed him over phone that his daughter had expired. Hearing this he went to his uncle house and informed him about the incident and he on his motor cycle to the house of the accused and arrived there at dawn and found his daughter wrapped with cloths keeping her face exposed, found the dead body of his daughter on the bed and on touching her body he found that she had already dead and also noticed injury marks on her neck. He also stated that when the injury marks on the neck of the deceased were detected and disclosed it to the public gathered therein, the accused and his parents tried to flee from the place of occurrence, but the villagers took them out and detained them in a room. He further stated that when the villagers made an enquiry with regard to the incident and as to why he had killed his wife, the accused replied that she had committed suicide with the help of a *gamocha* and when by the villagers threatened him to say the truth, the accused admitted that he put an iron chain on the neck of he victim and twisting the said chain he caused death of the victim and she died due to strangulation. He further stated that the

people further asked him where did he keep the chain, then he confessed before them that the chain was kept beneath the bed, which was intimated to the Dhing Police Station and when police arrived they recovered the chain with the lock. He also stated that he lodged the FIR of the case that was written by a boy from their village which was read over to him. Said PW.1 also deposed that the accused, in presence of Muktar Ahmed, Abul Kasem (PW2) and other people confessed that he with the iron chain strangled his daughter.

During his cross-examination by defence the PW.1 admitted that as a father he gave some household items on his own as a token of love to his daughter and thereafter, he was not asked to give any articles upto the date of the incident. He also admitted that after the said marriage of his daughter they visited the house of his son-in-laws and further admitted that there was no dispute amongst them. He stated that after the marriage, within the period of said 2½ months, they visited their house on three occasions and that during the first two months, there was no complaint either from his daughter or from his son-in-law, the accused and it is only after their third visit dispute arosed as there was demand of Rs.50,000/- as dowry from him and due to such demand of money by the accused, the relation between them strained.

Further in his cross-examination, the PW.1 denied the suggestion made by the defence and reiterated the statement made by him in his examination-in-chief.

20) PW.2 Abul Kasem, a Government appointed village head man in his evidence-in-chief deposed that a boy of the village and younger brother of the accused came to his house around 04:00 am on the date of the incident and informed him that his sister-in-law, i.e., Prabin Sultana committed suicide by hanging and when he enquired he was informed that the body had already been removed from the rope and that the body of the deceased was lying on the floor of the house of his brother, i.e., the accused. On receiving such information he went to the house of the accused and saw the dead body of the deceased on the bed wherein the villagers already gathered and as they became aggressive towards the accused, he being the Gaonburha (village headman) of the village called the Secretary of the Village Defence Party and handed over the accused to him and then he went to the police station to inform about the incident and on such information, police came to the place of place of occurrence, took the dead body from it. He further deposed that when he reached the place of occurrence along with police he heard from people gathered therein that a chain and a lock were recovered beneath the mattress of the bed of the deceased and police seized the same vide Exhibit.2, to which he is one of the witness of said seized Material Exhibit.

During his cross-examination by the defence, the said PW.2 stated that he is not aware as to

who took out the chain and lock beneath the bed where the dead body was lying and did not see from which those seized materials were recovered and that he could know about the said recovery from people gathered in the place of occurrence and the police seized the same. He further stated that he did not see any blood stain. He also stated that he is the Government appointed Village Headman and that the family members of the accused informed him about the incident and he denied the suggestions that he reported falsely.

21) PW.3 Ostahid Ahmed, a teacher in a Madrassa, deposed before the learned Trial Court that the deceased was the daughter of his elder brother and he reached the house of the accused immediately on getting the information. He also deposed that he heard that the accused demanded Rs. 50,000/- from the paternal house of the deceased and she was kept in the house of her father as the demand was not fulfilled. He also deposed that his brother brought her back to her matrimonial home before the incident and admitted the fact that on reaching the place of occurrence he found many villagers in the house of the accused and saw the dead body of his niece lying on the bed and about the recovery of one chain and lock under the mattress where the body of his niece was kept, which police seized later. He also deposed that he noticed the mark of stains on the neck of the dead body.

During his cross, he stated that he was not present at the time of marriage of the niece with the accused and also cannot say the amount of consideration between the parties at the time of solemnization of the marriage and it is his brother the PW.1 informed him about the incident.

22) PW.4 Mst. Monowara, a neighbour of the accused denied of having any knowledge about the incident.

23) PW.5, Samsuddin, a neighbour of the accused deposed before the learned Trial Court that on the date of the incident around 11:00 pm, he heard noise in the house of the accused and on hearing it he went there and saw that the wife of the accused was lying on dead condition in a bed and did not see any injury on the dead body and that he does not know the cause for her death. He also deposed that when he enquired with the accused, he replied that he is not aware how the deceased died. Said PW deposed that as he found her dead on the bed, witnessing the same he returned home.

During his cross-examination by the defence said PW.5 stated that the accused and deceased used to live as a husband and wife and the deceased resided with the accused for the last 2½ months after their marriage and he did not hear about any quarrel between them during that period and that

he did not have any information as to how the deceased died.

24) PW.6 Nasiruddin in his evidence deposed before the learned Trial Court that the accused is his nephew and on the date of the incident at 11/12 at night as something had happened in the house of the accused, he went there and saw the dead body of the deceased lying on the bed. However, he deposed that he did not know as to how she died and that when he enquired from the villagers as to how the deceased died, no one could answer about the same.

During his cross-examination said PW.6 stated that he went to the house of the accused around 11/12 at night and stayed there during the night in the house of the accused and that police came in the morning and took his statement and that he is not aware of the contents of the Exhibit.2, the Seizure List, to which he is a signatory.

25) PW.7 Rabia Khatun a co-villager of the accused deposed before the learned Trial Court that she does not know about the incident that occurred in the house of the accused as well as with regard to the death of the deceased and that she is also not aware about the FIR lodged by the PW.1.

During her cross examination by the defence she stated that she had gone to see the dead body of the deceased after hearing the news of her death but she does not know as to how the deceased died.

26) PW.8 Mallika Khatun deposed before the Trial Court that on the day of occurrence Prabina was in the residence of her husband and she was pregnant. She complained about headache on that day and thereafter at about 01:00 pm she expired at her husband's house, whose name is Ilias Ahmed who was present at the time occurrence. She deposed that after hearing hue and cry, she went to the house of the accused Ilias, saw him weeping and also saw the dead body of Prabina. Said PW.8 also deposed that Prabina was suffering from headache for the whole day on the date of occurrence and that she came to know about it as Prabina told her when she went to her house and she presumes that Prabina died due to her illness.

The defence declined to cross examine PW.8.

27) PW.10, Sadananda Kalita, Sub-Inspector of Police, deposed before the Trial Court that on 30.12.2012 he was serving as S.I. of Police attached to Dhing Police Station and on that day around 10:00 am its Officer-in-Charge received the FIR from the informant Mujibur Rahman stating that his daughter Praveen Sultana was given marriage with Ilias, son of Md. Mainuddin about two and half months back as on the date of filing the said FIR and after few days of the marriage the accused

person and his family members started committing torture on his daughter demanding dowry amounting Rs. 50,000/-and while his said daughter was in her matrimonial home the accused person and the inmates of her matrimonial home caused her death as their demand for dowry money couldnot be paid. Said FIR was registered as Dhing Police Station Case No. 79/2012 under Sections 304(B)/34 IPC and he was entrusted with the investigation of the said case. He deposed that during investigation he followed the producers, seized a chain of brass material along with lock and key from the place of occurrence vide Seizure List Exhibit-2 and he proved the same by identifying his signature on it and the Material Exhibit.1, the said chain with lock and key. He made inquest on the dead body of Praveen Sultana in presence of Magistrate and witnesses, dead body of the said deceased was sent to B P Civil Hospital, Nagaon for its Post-Mortem Examination. After completion of the investigation, Charge Sheet in the case was filed along with PM report of the deceased and finding prime facie case under Section 302 IPC against the accused Ilias Ali @ Ilias Ahmed, Charge Sheet in the case was submitted vide Exhibit.6 and he proved his signature in it.

During his cross examination by the defence, said I.O., PW.10 stated that in the FIR Exhibit.1 though there is no mention about the General Diary Entry Number of the Police Station, but it was mentioned that GD Entry was recorded at 10:00 am. He stated that when he reached the place of occurrence he found the dead body covered with clothes and that the plastic cover by which Material Exhibit.1 is covered was not the seized article and that the Material Exhibit.1 the brass chain with key and lock was found by the side of the dead body of the deceased women. He admitted that during investigation he did not send the said Material Exhibit.1 to FSL so as to obtain expert opinion and he stated that in the Seizure List he mentioned that said Material Exhibit.1 was found by the side of the dead body of the deceased and also recorded the statement of the accused Ilias Ali regarding the discovery of said seized Material Exhibit.1. He also stated that he recorded the statements of the witnesses. Said PW.10 stated that the witness Mujibur Rahman did not state before him about his inability to pay Rs. 50,000/- in presence of the parents and sister of the accused and that the accused threatened said witness Mujibur Rahman on his inability to pay the said amount he would face the consequences within four days. PW.10 also stated that witness Mujibur Rahman also did not state before him that the accused over phone informed him around 03:30 pm that his daughter was strangulated and about the death of his daughter. PW.10 further stated that the witness Mujibur Rahman did not state before him that he informed the incident to his uncle after receiving the phone call and also did not state he found body of his daughter wrapped with clothes and about the fact that the accused tried to flee from the place of occurrence. PW.10 stated that said witness did not state before him that accusation made by the witnesses regarding strangulation committed by the accused

and also about recovery of an iron chain under the mattress on being produced by the accused. Said PW.10 also stated that the PW.1 did not tell him about keeping of iron chain under the mattress and that it was recovered there from and handed over to police.

Said PW.10 in his cross-examination by defence further stated that the witness Abul Kasem did not state before him that the brother of the accused came and informed him about the death of the deceased by hanging in a bamboo tree. However he denied the suggestion that Material Exhibit.1 was not found lying besides the dead body of the deceased and in the Seizure List he did not mention as to whether the seized lock was found close or in-operable condition. PW.10 mentioned that in the inquest report of the deceased he stated about noticing a black spot and except it he did not mention any external injury in the person of the deceased and that he did not seize any clothes of the bed, where the body of the deceased was found lying, in connection with the case.

28) We have seen that PW.9, Dr. Mofidul Islam Afsar, the autopsy doctor who conducted the post mortem examination on 13.12.2012 on the person of the deceased proved the Post Mortem Examination Report of the deceased Exhibit.3 and specified that the death of the deceased was not suicidal but homicidal in nature due to asphyxia as a result of strangulation having transverse ligature mark measuring 0.5 cm broad completely circling the neck situated in the mid part of the neck of the deceased, that was prominent more in the front and on the sides of the neck. He also proved that in the thoracic part of the deceased external injury was present, the deceased had fracture of both the superior horns of thyroid cartilage and that those injuries were ante-mortem in nature. Said autopsy doctor PW.9 deposed that the ligature mark and the strangulation that were found on the neck of the deceased though can be caused by a rope, but he categorically stated that the ligature mark that was found on the neck of the deceased, cannot be said to be self implicated. These evidence of the PW.9, the autopsy doctor remained intact which the defence failed to demolish.

29) We have also seen from the evidence adduced by the prosecution that the deceased was in her matrimonial home with her husband, i.e., the accused and her dead body was found lying on the bed in the house of the accused. During recording of Section 313 CrPC statement though the learned Trial Court brought to the notice of such injuries sustained by the deceased, i.e., his wife, being proved by the prosecution and when the accused was asked about the cause and/or reasons for such injuries on the person of the said deceased, the accused did not answer those and mere gave a statement that he does not have any knowledge about such facts.

30) Though the prosecution could not adduce any ocular evidence with regard to the incident,

but it adduced corroborated evidence that the deceased and the accused leaved together as husband and wife, that their marriage was solemnized for about 2½ - 3 months, and that at the time of death of the deceased she was in her matrimonial home, with the accused and further, the dead body of the deceased was lying on the bed in the house of the accused.

31) The Hon'ble Supreme Court in the case of *Ganeshlal -Vs- State of Maharashtra* reported in (1992) 3 SCC 106, wherein the accused was prosecuted for the murder of his wife which took place inside his house, have held that –

“When the death had occurred in the custody of accused, he is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 of the Code of Criminal Procedure. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife.”

32) In the case of *Trimukh Maroti Kirkan -Vs- State of Maharashtra* reported in (2006) 10 SCC 681, where a husband is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together, the Hon'ble Supreme Court have approved the well settled principle that –

“When the offence takes place in the dwelling house where the husband also normally resided and when an incriminating circumstance is put to the accused, that accused either offers no explanation or offers an explanation, which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.”

32A) The Hon'ble Supreme Court in the case of *State of Rajasthan -Vs- Kashi Ram* reported in (2006) 12 SCC 254, have held that –

“When the accused was last seen with his murdered wife, he must give explanation or plead alibi in support of his innocence or else it would be a strong circumstance against him pointing towards his guilt.”

33) In these cases the Hon'ble Supreme Court have held that if the husband does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it was a strong circumstance pointing that he alone was responsible for the commission of crime.

34) In the present case, the appellant admittedly used to reside in the same house with his wife Prabina Sultana and she was found dead in his house. At the time of death of said Prabina Sultana she used to live with the appellant. It was the appellant who informed Md. Majibur Rahman, PW.1,

father of Prabina Sultana about her death. Appellant was expected to explain as to how his wife died while living in his house with him. As noted above Dr. PW.9, Dr. Mofidul Islam Afsar, the autopsy doctor has categorically deposed that she died due to asphyxia as a result of strangulation completely circling the neck that was not suicidal but homicidal in nature, where injuries were ante-mortem in nature and that the ligature mark that was found on the neck of the deceased, cannot be said to be self implicated.

35) We, therefore, considering the above referred decisions of the Hon'ble Supreme Court as well as the evidence of PW.9, the autopsy doctor, PW.2 Ostahid Ahmed, PW.5 Samsuddin, PW.6 Nasiruddin find ourselves in complete agreement with the finding of the learned Trial Court that the appellant alone was the perpetrator of the crime.

36) For these reasons stated above, we find no merit in this appeal and it is accordingly dismissed.

37) Registry shall return the relevant records to the respective Courts along with a copy of this order.

38) A copy of this order be also furnished to the accused appellant Md. Idrish Ali @ Ilias Ahmed, Son of Late Samsuddin, through the Superintendent, District Jail, Nagaon.

JUDGE

JUDGE

Comparing Assistant