

GAHC010027412023



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

Case No. : CRL.A(J)/26/2020

1. CHANDAN BISWAS
NAGAON
ASSAM.

2: JYOTSHNA BISWAS
NAGAON
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP
ASSAM.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the appellants : A. Sharma Advocate.

For the respondent : Ms. B. Bhuyan Additional PP, Assam.

Date of hearing & Judgment : 08.06.2023

JUDGMENT AND ORDER

(M. Zothankhuma, J)

1. Heard Mr. A Sharma, learned counsel for the appellants. Also heard Ms. B Bhuyan, learned Additional Public Prosecutor, appearing for the State of Assam.

2. This appeal is against the judgment dated 07.06.2019, passed by the learned Additional District & Sessions Judge No. 2, Nagaon in Sessions (T-1) Case No. 10(N)/2015, by which the appellants have been convicted under Sections 302/34 IPC and sentenced to undergo imprisonment for life with a fine of Rs. 5,000/- each, in default to suffer rigorous imprisonment for 3 (three) months.

3. The prosecution's case in brief is that an FIR dated 18.05.2013 was submitted by Prosecution Witness No. 9 (in short PW-9) to the Officer-In-Charge Samaguri Police Station, to the effect that her daughter, Dipali Biswas had been married off to the appellant No. 1 and that at the time of marriage various gifts had been given. However, the appellant No. 1 (husband), appellant No. 2 (mother-in-law) and the elder brother of the appellant No. 1 had been torturing her daughter physically and demanding dowry from her. The FIR further states that the above three persons had killed her daughter and packed her dead body in a gunny bag and kept it in a latrine situated behind the house of the appellant No. 1. Consequent to the above FIR, Samaguri P.S. Case No. 104/2013 under Sections 302/34 IPC was registered and PW-11 was made the Investigating Officer (I.O in short) of the said case. After investigating the case,

the IO filed a charge-sheet against the appellant No. 1, i.e., Sri Chandan Biswas, husband of the deceased and appellant No. 2, i.e., the mother-in-law of the deceased and Prahlad Biswas, elder brother of the appellant No. 1, having found a prima facie case under Sections 302/34 IPC against the above three persons.

4. During the stage of framing of charge, the learned Trial Court framed two other charges besides Section 302/34 IPC, i.e. 304-B/34 IPC and 201/34 IPC, to which the accused persons pleaded not guilty and claimed to be tried. The addition of Section 304-B/34 IPC and 201/34 IPC the charges made against the appellants is reflected in the order-sheet of the learned Trial Court dated 04.03.2015.

5. During the Trial, the evidence of 11 (eleven) prosecution witnesses and the deposition of Executing Officer-1 were recorded. Thereafter, the accused persons were examined under Section 313 Cr.P.C., in which they gave a blanket denial with respect to all the questions put to them. The learned Trial Court found the appellants guilty under Section 302/34 IPC. The accused Prahlad Biswas was however acquitted from all the charges framed against him including Section 302/34 IPC. The appellants were also acquitted of the charges under Section 201/34 and IPC 304-B/34 IPC. On conviction of the appellants under Section 302/34 IPC, the appellants were convicted to undergo life imprisonment with a fine of Rs. 5,000/- each, in default to suffer rigorous imprisonment for 3 (three) months.

6. The learned Counsel for the appellants submits that they were never

aware that the body of the deceased had been stuffed in a gunny bag and was in the septic tank/latrine of the house in which the appellants were living in. He also submits that it appears that one Ranjit Mandal who is a relative of the appellant no.1 and who had been living with them, may have been having a relationship with the deceased, as he had fled away on 19.05.2013, after the body of the deceased had been discovered.

7. The learned counsel for the appellants submits that the conviction of the appellants was made only on the basis of circumstantial evidence which has not been firmly established. He submits that the circumstances relied upon by the learned Trial Court do not form a complete chain to prove the guilt of the appellants in the death of the deceased. In this respect, he had relied upon the judgment of the Apex Court in the case of ***Trimukh Maroti Kirkan vs. State of Maharashtra***, reported in ***(2006) 10 SCC 681***. The learned counsel also relied upon the judgment of the Apex Court in the case of ***C. Chenga Reddy & Others vs. State of A.P.***, reported in ***(1996) 10 SCC 193***, in support of his submission that unless circumstantial evidence is conclusive in nature pointing only towards the guilt of the accused, the accused would have to be acquitted of the charges framed against him. He also submits that there being no proof of the hand of the appellants in the death of the deceased, two views were possible when the evidences adduced are taken into reckoning. He submits that in terms of the judgment of the Apex Court in the case of ***Gagan Kanojia & Another vs. State of Punjab***, reported in ***(2006) 13 SCC 516***, the views favourable to the accused should be accepted by the Court when there two views, one being unfavourable to them. The learned counsel for the appellants thus prays that the impugned judgment should be set aside and the appellants

should be acquitted of the charge under Section 302/34 IPC.

8. Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam, on the other hand submits that the evidence recorded in the Trial Court clearly goes to show that the appellants were guilty of the crime in causing the death of the deceased. She submits that though the entire case is built on circumstantial evidence, the circumstances definitely point towards the guilt of the accused and the facts stated in the evidence clearly proved that the appellants were lying, by stating that the deceased had gone to visit her maternal home, to escape of liability of the charge of murder. She submits that the doctor's evidence shows that the deceased had died three days prior to the filing of the FIR, i.e. on 18.05.2013 and it was inconceivable for a mother (deceased) to leave behind a five year old and six months old children and go away to her maternal house without taking them. She further submits that the evidence of PW-2 & PW-3 show that the appellants lied to the public with regard to the absence of the deceased in the house, while the fact of the matter was that the dead body of the deceased was all along hidden in the septic tank/latrine of the appellants' house for three days. The Additional Public Prosecutor further submits that the evidence of PW-7 is to the effect that the appellants did not allow the neighbours to enter the house of the appellants, which would imply that they were scared of the discovery of the body of the deceased. She submits that the death of the deceased having occurred, in all probability, within the confines of the four walls of the appellants house, the burden of proving the said fact by anyone living outside the four walls of the said house would be extremely difficult and by taking into account the circumstantial evidence, it showed that the death of the deceased was caused by the appellants. Further,

the burden of proving of what happened within the four walls of the house would lie on the persons living within the four walls of the said house. However, the appellants have not given any explanation with regard to the evidence of finding of the dead body of the deceased in their septic tank/latrine during their examination under Section 313 Cr.P.C. She accordingly submits that as there has been a clear-cut case of murder which has been proved by the lies and actions of the appellants, the impugned judgment passed by the learned Trial Court should not be interfered with.

9. We have heard the learned Counsels for the parties.

10. The evidence recorded by the prosecution witnesses goes to show that the deceased and the appellant no.1 had married about four years before the death of the deceased, i.e. in the year 2009. Two male children were born to them and at the time of the death of the deceased, the age of the elder child was five years and the age of the younger child was six months. The appellant no.2 is the mother-in-law of the deceased.

11. PW-9, who is the informant and the mother of the deceased, in her evidence states that the appellants have been torturing the deceased for dowry. On the day of the occurrence, i.e. on 13.05.2013, some neighbours of the appellant no.1 informed her over phone that her daughter had died and that her grandchildren were crying. She reached the house of the appellant no.1 around 10/11 a.m. and saw many people had gathered in the said house. Thereafter, the villagers and the village headman arrived there and found a gunny bag in

the septic tank, which was located behind the house of the accused persons. Police were called and the police and the villagers took out the gunny bag from the septic tank. When the gunny bag was opened, the dead body of the daughter of PW-9 was found. Accordingly, an FIR which was written by a person from the said village was submitted by PW-9, after putting her thumb impression on the same.

12. The evidence of PW-1, who is the Gaonburah (village Headman) is to the effect that he knew the appellants and the deceased. He states that the deceased was a member of the Mahila Bandhan Group. As the deceased was absent for the meetings of the Mahila Bandhan Group, the head of the Mahila Bandhan Group urged the Secretary to search for the deceased as she was not present in the meetings. Thereafter about ten women of the Mahila Bandhan Group informed PW-1 that the appellant no.1 had killed his wife Dipali and hide her body in a latrine. PW-1 thereafter went to the house of appellant no.1 and found many people gathered there. He also sensed a foul smell coming from the latrine. Thereafter they saw a gunny bag in the septic tank. He informed the police about the matter and the police, CRPF and Circle Officer arrived at the spot. The police lifted the gunny bag from the septic tank and on opening it, they found the dead body of the deceased Dipali Biswas. The Inquest Report was prepared by the Circle Officer and the police recorded his statement. He also states in his cross-examination that the appellants were living together with the deceased and that he did not know how the incident took place.

13. The evidence of PW-2 is that the deceased had been absent in the Mahila Bandhan Group meetings, even after her return from a visit to her

maternal house. The person that the Bandhan Group Members addressed as "Sir", asked the members of the Mahila Bandhan Group to go to the house of the deceased Dipali. Around 10 a.m., the members of the Mahila Bandhan Group i.e. Basanti, Chamulya, Maya Gowala, Sumi Chamulya, Rita Samulya, Padma Naya and PW-2 went to the house of the appellants. On arriving there they enquired about the deceased. The appellant No.2 informed them that the deceased had gone to her maternal home. Then PW-2 and the group of ladies, on seeing the children of the deceased asked the appellant no.2, as to why the deceased did not take her 5 year old and 6 months child with her, if she was visiting her maternal home. Further, the ladies belonging to the Bandhan Group believed that the deceased was hiding in the back of the house, to avoid repaying the loan of Rs.10,000/- taken from the Bandhan Group by the deceased, which was being re-paid in instalments. Accordingly, on searching for her in the back of the house, they became aware of a foul smell. Thereafter they saw the half open manhole of the septic tank and noticed a foul smell coming from the septic tank. They saw a gunny bag inside the septic tank and accordingly called the neighbours. When people prodded the bag to find out what was inside the bag, it seemed to be contain a human body. People suspected the body to be the deceased. The village Headman informed the police and after the police took out the gunny bag, the dead body of the deceased Dipali Biswas was found inside the gunny bag. The dead body was sent for Post Mortem examination. In her cross-examination, PW-2 states that a boy name Ranjit Mandal had been staying in the house of the accused persons and that she did not know if the said Ranjit Mandal had any love affair with the deceased Dipali. She also states that she did not notice any injury mark on the body of the deceased.

14. The evidence of PW-3 is to the effect that he saw many people gathered in the house of the appellants and on reaching the place of occurrence, he found that the police were opening a polythene bag, wherein the dead body of the deceased was recovered. In his cross-examination, PW-3 states that the bag in which the body of the deceased was found was stained with blood and he did not see any injury mark on the dead body.

15. The evidence of PW-4 is to the effect that he saw the dead body of the deceased, which was being examined by the police.

16. The evidence of PW-5, who is the doctor, who conducted the Post Mortem examination of the deceased, is to the effect that in his opinion all the injuries were –

1. Anti-mortem in nature.
2. Approximate time and date of death was prior to 3:30 a.m. of 18.05.2013 as regormortis absent at the time of examination and three days prior to 18.05.2013 as per inquest report.

In his opinion, the cause of death was due to shock and hemorrhage as a result of head injury, leading to coma.

The injuries mentioned in the deposition of PW5 are as follows:-

(I) “EXTERNAL APPERANCE:-

1. Condition of subject stout emaciated, decomposition, etc: Emaciated, Rigor mortis is absent. Both eyes are

closed. Mouth is halfly opened. Blood stain from mouth is present.

2. Wounds-position: (i) One abrasion mark is present over the upper middle part of the forehead, size:2cm in length X 0.5cm in breadth dry on transverse direction.

(ii) One abrasion mark is present over the right sided upper part of the face, size: 1.5cm in length X 0.5cm in breadth on transverse direction.

3. Bruise-position, size and nature: Nil.

4. Mark of Ligature on neck dissection, etc:Nil.

(II) CRANIUM AND SPINAL CANAL:-

1. Scalp, skull, vertebrate: Scalp injury is present as already describe in Column No-I.

2. Membrane: Congested, subdural clotted blood present over the membrane of the right sided upper middle part of the frontal lobe.

3. Brain and spinal cord: Congested, Hemorrhagic and clotted blood present inside the upper middle part of the right sided frontal lobe of the brain 4cm in length on transverse direction. Spinal cord healthy."

17. The evidence of PW-6 (neighbour) is that on Friday morning, when he heard the son of the deceased crying, he came to the house of the appellants

and asked the appellant no.2 why the baby was crying so much. The appellant no.2 replied that the deceased had left the house and she did not know where she had gone and that was the reason the baby was crying. PW-6 also stated that around 10:00 a.m. of the following day i.e. on Saturday, the women of the Bandhan Group came to Dipali's house, enquiring why Dipali did not go to work. The women searched for Dipali and found a gunny bag in the septic tank, in the back of the house of the appellants. Some boys were called from the neighbourhood and they removed the lid of the septic tank. They found that the gunny bag contained some heavy object. The village Headman was informed, who in turn informed the police. After the gunny bag was taken out from the septic tank, the dead body of Dipali was found in it. Further, the dead body was stinking and the same was taken away for post mortem examination.

18. The evidence of PW-7 is to the effect that on the day when the dead body was recovered, a group of women had come to the house of the appellants to enquire about the deceased, as she did not attend the meetings of the Bandhan Group. The appellants, on being asked the whereabouts of the deceased first stated that she had gone to Delhi. Later on they stated that she had gone to her maternal house. Not being convinced by the reply, the women entered the house in order to search for Dipali. The appellants did not allow them to do so. However, when the women looked for Dipali around the house, they saw a gunny bag in the septic tank. The police were informed and the gunny bag, on being taken out from the septic tank, was found to contain the body of the deceased which was stinking.

19. The evidence of PW-8 is that she was a part of the group of women of

the Bandhan Group, who had gone to look for the deceased Dipali. Her evidence is in the same line as the evidence given by PW-2.

20. The evidence of PW-10, who is the VDP Secretary of Village-Udmari is to the effect that he was informed about a dead body being found near the house of the appellant. On going to the place of occurrence, he found a gunny bag in the septic tank and on the same being removed, the police found the body of the deceased inside the gunny bag.

21. The evidence of PW-11, who is the I.O. of the case, is to the effect that the dead body of the deceased was inside a polythene bag which was kept in the septic tank near the house of the appellants. After examining the witnesses and recording the evidence of various other persons, he submitted the charge-sheet showing that the person who stayed with the appellant no.1, one Ranjit Mandal, as an absconder. He also states in his cross-examination that as the incident had taken place some days ago, no blood was found. He also denies the suggestion that Ranjit Mandal had committed the crime. He also states in his cross-examination that after the marriage of the appellant no. 1 and the deceased, the appellants had been torturing the deceased. He also denies the suggestion that the appellants were not involved in the incident.

22. The evidence of EO-1 is that he went to the house of Ranjit Mandal for execution of the proclamation and warrant of attachment. However, he could not locate the accused Ranjit Mandal.

23. As can be seen from the evidence adduced by the prosecution witnesses, it is apparent that the body of the deceased had been lying in the septic tank of the appellants for quite some time. The evidence of PW-5 (Doctor) states that the approximate time and date of the death was prior to 3:30 a.m. of 18.05.2013 and that it was three days prior to 18.05.2013, as per the Inquest Report.

24. The evidence of PW-5 also shows that the cause of death of the deceased was due to result of head injury leading to coma. Though there is nothing to prove as to what weapon was used for causing the death of the deceased, the behaviour and lies of the appellants indicates that they were responsible for the death of the deceased. The evidences of the witnesses show that the appellants were not only not allowing the group of ladies, belonging to the Mahila Bandhan Group, to enter into the house, but they had also lied to them with regard to whereabouts of the deceased, despite the body of the deceased being in the septic tank which was giving off a foul smell. The appellants had first stated that the deceased had gone to Delhi and thereafter changed their story stating that she had gone to her maternal house. However, due to the search carried out by the ladies of the Mahila Bandhan Group and due to the half opened manhole of the septic tank, the gunny bag containing the body of the deceased was found. The fact that the appellants had intentionally lied with regard to the whereabouts of the deceased points to their guilt, besides keeping in view the fact that the young children of the deceased could not have been left behind by the deceased in the house of the appellants. Further, there was nothing to show that the deceased was a bad mother, who did not take care of her children. A six months old child requires to be nursed by

a mother and the absence of a mother even for a day would have been acutely felt, not only by the child, but by the mother who naturally loves their child/baby. However, even assuming that the deceased had gone to her maternal home for around 3 days, no attempt had been made by the appellants to call her home or make any queries with regard to her whereabouts, knowing fully well that she lay inside a gunny bag, in the septic tank behind their house.

25. In the case of ***Trimukh Maroti Kirkan (supra)***, the Apex Court has held that in a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established. Further, those circumstances should be of a definite tendency, unerringly pointing towards the guilt of the accused. The circumstances taken cumulatively should form a chain so complete, that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and they should be incapable of explanation or any hypothesis, other than guilt of the accused and inconsistent with his innocence. The Apex Court further held that if an offence has taken place inside the privacy of a house and in such circumstances, where the assailants have all the opportunity, time, circumstances of their choice, to plan and commit the offence, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if strict principles of circumstantial evidence, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. In view of the law laid down by the Apex Court, the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely

difficult to be led. Where an offence like murder is committed inside the secrecy of a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish a charge cannot be of a same degree, as is required in other cases of circumstantial evidence.

26. In the present case, it is an admitted fact that the appellants have been living all along in the matrimonial home with the deceased. The evidence also shows that the appellants had been lying with regard to the whereabouts of the deceased with the members of the Mahila Bandhan Group and other witnesses. It is also a fact that the body of the deceased was found in the septic tank belonging to the appellants and that death had occurred about three days prior to the recovery of the body. It is also a fact that there was a foul smell coming out from the septic tank. It has also come in evidence that the appellants were not allowing the women of the Mahila Bandhan Group to enter the house. Keeping in view, the apparent nonchalant behaviour of the appellants, with regard to the absence of the deceased, on the ground that she was visiting her maternal house without her young children, in the opinion of this court leads us to the only conclusion that the appellants were in the knowledge of the dead body of the deceased being hidden in the septic tank for three days. The foul smell would surely have been noticed by them. Further, if the witnesses could see the gunny bag from the half opened manhole of the septic tank, the appellants would have surely seen it too. Due to the above reasons, we are of the view that the death of the deceased could only have been caused by the appellants. Besides, no alibi/explanation has been forthcoming from the appellants, as to how that deceased died or ended up in a gunny bag inside

their septic tank. The inter-play between the words “septic tank” and “latrine” by the witnesses is a minor consistency, as there is a likelihood, that the witnesses may not have understood the difference between the two words. In any event, this aspect of the matter has not been put to challenge by the appellants.

In view of the reasons stated above, we find that there is a complete chain of circumstantial evidence proving that the appellants were aware that the deceased had died and that they had hidden the body. The evidence of the doctor having also clearly proved that the deceased had died due to injuries, leads us to the conclusion that only the appellants could have caused the death of the deceased within the secrecy of the four walls of their home.

27. On considering all the above facts and the reasons given in the foregoing paragraphs, we do not find any ground to interfere with the impugned judgment passed by the learned Trial Court.

28. The appeal is accordingly dismissed. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant