

GAHC010120702012



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

Case No. : CrI.A./49/2012

DILIP KALITA
S/O LATE ROKHESWAR KALITA, R/O CHINATOLI, P.S. TEOK, DIST. JORHAT,
ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.D BARUAH

Advocate for the Respondent :

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. D. Baruah, Adv

For the Respondents : Mr. R. R. Kaushik, Addl. PP

Date of hearing : 11.08.2023

Date of judgment : 11.08.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. D. Baruah, learned counsel for the appellant and Mr. R. R. Kaushik, learned Addl. PP, appearing for the State of Assam.
2. The present appeal is directed against the judgment and order dated 02.01.2012 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 66 (JJ)/2008 in corresponding G.R. Case No. 1281/2007 arising out of Teok P.S. Case No. 131/2007 convicting the appellant/ accused to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only and in default of payment of fine, further simple imprisonment for 2 (two) months under Section 306 of the IPC.
3. The prosecution case was launched on the basis of an ejahar dated 17.10.2007 filed by the PW-1 (Tuniram Kalita) inter alia alleging that on that very day at about 5 P.M. he got information from his son-in-law's house that his daughter Bina Kalita met with an accident and immediately thereafter while his son Gajen Kalita on being accompanied by neighbor Pranjal Gogoi went to the village of his son-in-law he got information that Bina Kalita was brought to Jorhat Civil Hospital with burn injury. It is further narrated in the ejahar that while they went to Jorhat Civil Hospital they found Bina Kalita almost in a dying condition. It is further stated that earlier to this incident his daughter stayed for several days in his house at Randhanijan due to family dispute and only fourteen days prior to the occurrence, on 04.10.2017 his son-in-law brought back her to her matrimonial home. Allegation is also made that his son-in-law and the family members of son-in-law's set the victim on fire.

4. On receipt of the FIR, the officer in charge, Teok Police Station registered a case being Teok Police Station Case No.131/2007 under section 304B of IPC for investigation. Accordingly, the investigation was conducted and thereafter charge sheet was filed under section 304B of IPC against the appellant/accused.

5. Thereafter, committal court committed the matter to the Court of learned Sessions Judge, Hailakandi. Charges were framed on 18.07.2008 against the appellant and was read over and explained to the accused/appellant to which he pleaded not to be guilty and claimed to be tried. Accordingly, the trial was commenced.

6. To bring home the charges, the prosecution examined as many as 9 witnesses and no defence evidence has been adduced on behalf of the appellant. The statement of the accused was recorded under section 313 Cr.P.C.

7. Thereafter, the learned trial Court convicted the appellant/ accused to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only and in default of payment of fine, further simple imprisonment for 2 (two) months under Section 306 of the IPC. Assailing such judgment and conviction, the present criminal appeal is filed.

8. On the basis of the aforesaid evidence, the learned trial court concluded that the appellant is guilty of the offences and accordingly, pass the impugned judgment as discussed herein above.

9. Before determining the legality and validity of such conviction, let this Court now examine the deposition of the witnesses so as to arrive at a just and fair decision.

I. PW-1 Sri Tuniram Kalita, was the informant and father of the deceased victim. He deposed that the victim is his daughter and the

accused is his son-in-law. His daughter got married in the month of April, 2000 and till 2004, their family life was running smoothly and in the year 2004, a male child was born to her. According to him, after birth of the child both the husband and wife got separated from the main house. Thereafter, the victim informed the PW-1 i.e. father that the accused was demanding money from him as he was jobless and without money. According to the PW-1, as demanded he also gave the accused a bicycle. Thereafter, quarrels started taking place between the accused and deceased every day. According to him, as the accused assaulted the victim in the year 2004, she came back to her paternal home. Thereafter, the accused came and promised not to quarrel with her and took her back to her matrimonial home. Again in the year 2006, according to the PW-1, the victim along with her son and daughter came to his house and said that she could not live with the accused as he quarreled with her and also assaulted her. He further deposed that in the year 2006, itself, before the month of April-May, the accused forcibly took their son away from the victim and at that time, the PW-1 was not present. Thereafter, the victim stayed in his house for about one and half year i.e. till the month of October, 2007. But, the accused again lured his deceased daughter and took her away with him. 14 days thereafter, the accused informed him that the victim had caught fire. Though the PW-1 was preparing to visit his daughter, but again he received a phone call not to go. Thereafter, the accused called him and said that they need not go to Teok as the victim had been taken to Jorhat Civil Hospital and at 8:00 P.M. PW-1 arrived at Jorhat Civil Hospital but did not see his daughter, however, at 09:30 P.M. the

victim was brought to the hospital and he saw the victim dead. The victim was accompanied by the accused and some of his co-villagers. After bringing the victim to the hospital, the accused and other persons fled away and he could not ask the accused anything. The dead body of the victim remained in the verandah of the hospital. He noticed one cut injury caused with dao blow in the lower part of the left hand and black marks on the whole body. On the following day, the Magistrate prepared the Inquest Report on the dead body and he put his signature in the inquest report.

During cross-examination, he deposed that a boy was born to the victim in the year 2001 and a girl in the year 2005. During cross-examination, he further deposed that around 2002-2003, they i.e. the accused and the victim got separated from their main family. The parents of the accused lived in Chinatoli village and the three brothers of the accused lived with their parents. During cross-examination, he reiterated that both the husband and wife used to quarrel. The victim used to come back home and the accused used to take her back and the same thing repeated. During cross-examination he also deposed that he did not send back the victim again to the accused, after some days, but the accused came along with his uncle and younger brother to the house of PW-1 and then, the victim said that she will not go with her husband. During cross-examination, he also deposed that in the year 2006, the victim lodged a case against the accused but he did not know the result of the case. He denied the suggestion that they called the accused to stay in their house. He also denied the suggestion that the accused and victim were living separately and victim suffered from

mental illness. During cross-examination, he further deposed that he did not state before the Police that he gave the money to the accused and accused demanded money. During cross-examination, he further deposed that at around 10:00 P.M., on the date of the incident, he lodged the FIR at Jorhat Police Station. After lodging the FIR, he went to his house and he did not know who were at the hospital along with the victim's dead body. During cross-examination, he admitted that at the first, the victim was taken to Teok Hospital. He further deposed that he mentioned in the ejahar that he had lodged the case against the accused on suspicion. One person of the Police Station wrote the ejahar for him. He brought the children of the victim to his house. He denied the suggestion that victim was suffering from mental illness prior to her death. During corss-examination, he further deposed that victim was a service holder.

II. PW-2 (Sri Pradip Kalita) was a neighbor of the appellant. He was declared hostile as he deposed that on the fateful day in the evening when the incident took place, he went in search of his buffalos and while he was coming back along with his buffalos, he saw the accused walking with his children. Then he saw smoke in the house of the accused and informed about the same to the accused. Accordingly, he went to the house of the accused and other villagers also went there and saw that door of the house was kept locked from inside and there was smoke inside the house. They entered the room by breaking the door and saw the victim lying on the floor in flames and they doused the fire. The victim was not in a state to speak. Around 6:30 P.M., the incident took place and they fetched a vehicle and took the victim to

Teok Hospital and the Doctor pushed an injection to the victim and referred to Civil Hospital. Then, the victim was taken to the Civil Hospital. The Doctor examined her and five minutes after that, the victim died. He deposed that he did not know how the victim caught fire. He also deposed that there was a cordial relationship between the victim and the accused. He further deposed that he was not aware whether there was any quarrel or misunderstanding between the accused and the victim. He was declared hostile and accordingly was cross-examined by the Prosecution.

During cross-examination by the Prosecution, he admitted that police examined him. He denied stating before police that since the date of marriage, the victim and accused had misunderstanding and as a result of which, the victim went to her parental house and stayed there and in the year 2006, victim quarreled with her husband and went to her parental home and some 15 days ago from the date of incident, she returned to her matrimonial home. He denied the suggestion that he had deposed falsely.

During cross-examination by the defence, he stated that the on the next date of incident itself, police examined and recorded his statement and stated before the police the fact of breaking the door open and that he saw her gas stove in flames etc. However, he further deposed that in month of April, 2006, when he went to house of the PW-1 i.e. father of the victim in order to bring the victim back, the victim did not come out of her house and she did not talk with them. She was in a sad mood. The relatives of victim said that the victim was suffering from illness and they were providing treatment to her and they would

not send her. He further deposed during cross-examination that on the date of incident, he met the accused in the Co-Operative shop of one Gagan Kalita and accused returned with him. During cross-examination, he further deposed that the door was closed from inside the house and he had not seen any quarrel between the accused and victim. He also deposed that the accused did not consume liquor. According to him, the accused is a teacher of a M.E. School.

III. PW-3 Sri Gagan Kalita, the shopkeeper. According to PW-2, both PW-2 and the accused were present in the shop of the PW-3. PW-3 deposed that he knew all the persons and on the fateful day, the accused was in his shop. The customers who came to his shop told him that they had seen smoke in the house of the accused, then accused went to his house. PW-3 also went to the place later on and saw that the door of the house was opened and the victim with burns injury and she was not speaking. The villagers took the victim to the hospital and victim died at Jorhat Civil Hospital. According to him, along with the accused, his children also came to his shop. He also deposed that there is a cordial relation between the accused and victim. He deposed he was ignorant how the victim died.

This witness was neither cross-examined by the defence nor was he declared hostile.

IV. PW-4 Sri Paniram Kalita was another co-villager. According to him, he was a teacher and after coming from School, he went to fetch their goats and while he was returning with his goats, he heard that something had happened in the house of the accused and after keeping the goats in the pen, he went to the house of the accused and saw

people gathering there and thereafter, the victim was taken to the hospital and he left for his house.

During cross-examination, he deposed that he came to know about the incident in the shop of the PW-3.

V. PW-5 Sri Rajen Kalita is the younger brother of accused Dilip Kalita. According to him, he and the accused live separately. On the date of incident, he was at his home. In the evening, on hearing a commotion, he went to the house of his elder brother and saw his sister-in-law, the victim lying in an injured state and she was hardly speaking. He saw his sister-in-law with burns injury and when he reached there, the accused also arrived there. According to him, accused had cordial relation with his wife and father-in-law. After an hour, the victim was taken to hospital in a vehicle. He also stated in the similar line during the cross-examination. Nothing materials were taken out of him. During cross-examination, he deposed his ignorance about any case lodged by the victim and quarrel between them.

VI. PW-6 Sri Rongai Kalita was also one of the neighbors of the accused. His deposition is also in the same line. According to him, he was informed by one boy called Dudu that victim caught fire. Accordingly to him, they came searching for a vehicle and took his vehicle away. When he reached the house of the accused, the victim was already taken to the hospital. He deposed that he learnt from the people that the victim herself set fire on her body. Nothing important was taken out during cross-examination from this witness.

VII. PW-7 Sri Amar Jyoti Kalita was the son of the victim aged about 7 years. Before recording his deposition, to test his ability to give

evidence, the learned Court asked his name, father's name and recording his feeling of absence of his mother and it seems that he had properly answered those queries and was capable of testifying before the Court. When a specific question was asked, where was his mother, the child answered that his mother was no more. She herself poured kerosene oil on her body and set fire on her body. According to him, at that time, his father and younger sister went to the shop. The people of the village informed his father that their house had got fire. They came to their house and after reaching home saw that their house had got fire and his mother was lying on the floor. He further deposed that he did not know how his mother died. No cross-examination was done by the defence to this witness.

VIII. PW- 8 Sri Phani Madhab Saikia is the Investigating Officer. According to him, after receipt of the FIR, case was registered. He examined the witnesses, prepared the inquest report and finally, he was transferred and he handed over the Case Diary to one SI/ Ismail Hussain who collected the post mortem report and submitted the charge sheet.

During his cross-examination, he deposed that the houses of Pradip Kalita (PW-2), Sri Gagan Kalita (PW-3) and Sri Paniram Kalita (PW-4) are situated near the place of occurrence and they saw the victim dying as a result of catching fire. During cross-examination, he further deposed that according to the said three witnesses, at the time of incident, the accused was not present at the place of occurrence. According to PW-3 Sri Gagan Kalita, at the time of the incident, the accused person with his children was in his shop.

The I.O. further deposed that the accused persons son stated that at the time of incident, he was with his father in the shop. According to him, there is no evidence of presence of the accused person at the place of occurrence at the time of incident.

IX. PW-9 is Dr. Ahmed Ariful Zaman, who conducted the post mortem of the body of the deceased victim. According to him, following are the finding:-

“Superficial deep burn injury mostly covering 90% of body surface.

All the other organs are congested.

The injuries mentioned are ante-mortem in nature.

The doctor opined that death of the deceased was due to syncope as a result of burn which is ante-mortem in nature.

He also stated that there was 90% burn injury on the body”.

He exhibited the post mortem report and his signature.

During cross-examination, he deposed that there were only burn injuries and he did not find any other injury on the body of the deceased.

X. During the examination of the accused under Section 313 of the Cr.P.C., he denied the allegation of demand of dowry from the victim and denied all other allegations. He took a stand that he never lured the victim when she was ill and she was at her parental place and he brought her back when she was feeling well and she on her own volition came with him. He also stated that after the victim got fire, he first brought her to Teok and as referred by them, she was brought to the Jorhat Civil Hospital. He further deposed that they brought the

victim to the Civil Hospital while she was alive. He claimed that he was innocent and in the year 2006, he took the victim to a Doctor from her parent's house.

10. This Court has given anxious consideration to the submissions made by the learned counsels for the parties and also perused the materials available on record.

11. The learned Additional Public Prosecutor for the State of Assam submits that it is not always necessary that there must be a proximate cause, continuous harassment can also lead to commission of suicide which will amount to an abatement as defined under Section 107 of the IPC and in this case, the prosecution has been able to establish through evidence of PW-1 that from the date of marriage till 15 days prior to her death, there were continuous quarrel, harassment and dowry demand and therefore, even in absence of any proximate action on the part of the accused, the prosecution has been able to prove that it is none other than the accused who has abated the victim to commit suicide and such fact has been proved beyond any reasonable doubt. In support of his contention, he relied on the decision of the Hon'ble Apex Court in the case of ***Arnab Manoranjan Goswami –Vs- The State of Maharashtra & Ors*** reported in ***2020 SCC Online SC 964***.

12. Before making a determination on the issue whether the appellant has committed an offence under Section 306 of the IPC, this Court is to first deal with the section 107 of IPC.

13. Section 107 of IPC defines that to commit an offence of abetment or to abet an offence, certain essential requirements are necessary such as that the person instigated any person to do that thing, or engaged with one or more

other person or persons in any conspiracy for doing that thing and if any act or illegal omission takes place in pursuance of that conspiracy, it will be an abetment to that action. It will also be an abetment of a thing, when a person intentionally aids, by any act or illegal omission, the doing of that thing.

14. Law is by now well settled that to establish and prove an offence under Section 306 of IPC, the prosecution is to prove that there is an abetment on the part of the accused, secondly, there is an intention of the accused to aid and / or to instigate and / or abet, the deceased to commit suicide. There must be sufficient evidence to suggest that the accused has done certain acts and such acts are intended to instigate the deceased to commit suicide. There must be a proximate relation or a live link between the action of the accused leading to the commission of suicide. Therefore, this Court can sum up that to constitute an abetment, the intention and involvement of the accused must be there which lead or aid to the commission of suicide.

15. It is by now well settled that merely an allegation of harassment to the deceased, cannot be the sole basis for convicting a person under Section 306 of IPC.

16. Now keeping the aforesaid principles of law in mind, let this Court consider the facts of the present case.

17. Here, in this case, though allegations of quarrel and leaving the matrimonial house by the victim was there, however, nothing is available on evidence of any of the witnesses including the PW-1, which was the star witness for the prosecution that there is some immediate and proximate incident which lead to the commission of the offence under Section 306 of IPC. Even the quarrel continued for years and it is established through the evidence of PW-1 that the victim even after quarrel went back to her matrimonial home. Nothing

on record has been brought to even remotely suggest that something had happened or some action had been taken by the accused to abet the committal of suicide by the victim, rather from the deposition of the villagers a doubt itself was created that the accused was even not present at the place of occurrence though for the purpose of 306, his presence at the place of occurrence is not even necessary. Therefore, though it is established beyond reasonable doubt that the victim died out of the burn injury inside her matrimonial home, however, there is no iota of evidence to suggest that for any action on the part of the accused which is proximate or which is the cause behind the commission of suicide by the victim.

18. In view of the aforesaid, this Court is of the considered opinion that the appellant is entitled for acquittal. Accordingly, the judgment and order dated 02.01.2012 passed by the learned Sessions Judge, Jorhat in Sessions Case No. 66 (JJ)/2008 in corresponding G.R. Case No. 1281/2007 arising out of Teok P.S. Case No. 131/2007 convicting the appellant/ accused to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs. 1,000/- (Rupees one thousand) only, in default of payment of fine, further simple imprisonment for 2 (two) months under Section 306 of the IPC is set aside. The appellant be set at liberty forthwith. The bail bond stands discharged.

J U D G E

Comparing Assistant