

GAHC010093442022



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

Case No. : CRL.A(J)/56/2022

KRISHNA MALO DAS
BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Ms. T. Begum, Amicus Curiae.

For the Respondents : Ms. A Begum, Addl. PP, Assam.

Date of Hearing : 06.11.2024.

Date of Judgment : 25.11.2024.

Judgment & Order

25.11.2024

(SK Medhi, J)

The present appeal has been preferred from jail against a judgment dated 25.02.2022 passed by the learned Addl. District & Sessions Judge, Barpeta in Sessions Case No. 13/2017 arising out of GR Case No. 5169/2016. By the aforesaid judgment dated 25.02.2022, the appellant was convicted for the offence under Section 302 of the IPC and sentenced to undergo Rigorous Imprisonment for life with a fine of Rs. 3000/- (Rupees three thousand), in default to pay fine and to suffer further imprisonment for six (6) months.

2. The criminal law was set into motion by lodging of an *ejahar* on 08.10.2016 by the mother of the deceased who had deposed as PW7. As per the same, her daughter was married to the appellant about 1½ years back whereafter she was physically assaulted by the appellant under the influence of alcohol. On 07.10.2016 at about 10 p.m., the appellant had assaulted her daughter causing injuries on her face and killed her by pressing her neck with a rope made of cloth and laid her on the ground. He had also tied her to a sewing machine and did not inform anyone and remained silent. At that time, the daughter was six months pregnant. Based on the aforesaid *ejahar*, a police case was registered, being Tarabari PS Case No. 292/2016 and investigation was done. On completion of investigation, the charge sheet was submitted. The formal charges were framed by the learned Court and on denial thereof, the trial had begun. In the trial, 9 nos. of PWs were examined, including the IO as PW6 and the Doctor conducting the post-mortem as PW9.

3. PW1 is a neighbour of the appellant who, however deposed that he heard that the deceased had committed suicide and the relationship between the deceased and the appellant was cordial. PW2 is also a neighbour who claims to have been called by the appellant at about 10 p.m. on the same date and on arrival, she saw the body of the deceased lying. She has also deposed that the appellant told her that the deceased was killed by someone. PW3 and PW5 are neighbours whose depositions, however are of not much relevance. PW4 is the Inquest witness whose deposition also does not play any significant role. PW6 is the Investigating Officer who had deposed that on lodging of the *ejahar*, the case was registered and he had made seizure of certain articles. PW7 (informant) is the mother of the deceased who has given a description of the event wherein she was informed over telephone that her daughter was in a critical condition and accordingly, she along with few other persons, including PW8, had come to the house of the appellant which is at Tarabari. PW7 resides at Jogighopa which is about four hours journey by road.

4. PW8 is the nephew of the informant and cousin of the deceased. Apart from the fact that his statement was recorded under Section 164 of the Cr.PC, the said PW8, as a witness, had deposed that the appellant had confessed before him regarding the commission of the offence. It is seen that there is consistency between the statement made by the said PW8 as a witness and his statement made under Section 164 of the Cr.PC.

5. PW9 is the Doctor who has deposed that he had given a concurring report in the postmortem done by another Doctor. As per the opinion recorded in the

postmortem report, the death was due to asphyxia resulting from anti-mortem manual strangulation homicidal in nature and the time since death was 12-18 hours approximately. On completion and closure of the prosecution witness, the allegations made by the said witnesses towards proving the same against the appellant were put to him which he had denied.

6. After such recording of the statement of the appellant under Section 313 of the Cr.PC, the materials on record along with the evidence were duly considered which culminated in passing of the impugned judgment of conviction and sentencing the appellant which is the subject matter of the present appeal.

7. We have heard Ms. T Begum, learned Amicus Curiae for the appellant. We have also heard Ms. A Begum, learned Addl. PP, Assam.

8. Ms. T. Begum, the learned Amicus Curie has submitted that the present is not a case of direct evidence but of circumstantial evidence. She reiterates that in such cases, the chain of events should be continuous and complete and only one conclusion has to be reached which is consistent with the guilt of the accused and nobody else. She submits that in the instant case, the materials against the appellant would not be sufficient to come to a conclusion of guilt against him. She submits that the *ejahar* was lodged on 08.10.2016 by the mother of the deceased who was examined as PW7 in which, the suspicion was made against the appellant. In her deposition as PW7, she had stated that an information was received regarding her daughter and she had accordingly, come from Jogighopa to Tarabari where the matrimonial house was situated and on reaching the said house could come to know regarding the death of her

daughter. She has also highlighted the aspect that the PW1, who is a neighbour, had deposed that the relationship between the deceased and the appellant was cordial and the deceased had committed suicide.

9. As regards the deposition of PW8 who had deposed that the appellant had allegedly made a confession before him, the learned Amicus has submitted that such confession has been stated to be made in the presence of other persons. She, therefore contends that no other persons were presented or appeared as witnesses who had heard such confession. She submits that in any case, extrajudicial confession is a weak piece of evidence and in absence of corroboration, the same cannot be relied upon. She has also submitted that the aspect that the deceased had died by committing suicide cannot be totally ruled out. She submits that a rope was found tied on the neck of the deceased and attached to the sewing machine.

10. Ms. T. Begum, learned Amicus has also submitted that the death was a result of asphyxia which would give an indication that the deceased had died of hanging. She accordingly submits that when other possible postulates were available leading to the death of the deceased, the appellant cannot be held to be guilty of causing death to the deceased. The learned Amicus has also contended that admittedly, the mother of the appellant stays in the same house and there was no attempt on the part of the prosecution to record the statement of the mother or produce her as a witness in the trial as her deposition would have been crucial. She accordingly, submits that the present is a fit case for interference by giving benefit of doubt to the appellant and acquit him.

11. *Per contra*, Ms. A Begum, learned Addl. PP has submitted that no case for interference has been made out in the present appeal. She submits that the offense involved is one under Section 302 of the IPC involving the heinous crime of murder of the deceased who was none other but the wife of the appellant who was six months pregnant. She submits that the deceased had originally come from Jogighopa and was married to the appellant at Tarabari and the distance by road was about four hours journey. It is submitted that the mother of the deceased, PW7 had received the telephonic information regarding some critical condition of her daughter whereafter she along with certain other persons, including the PW8, had rushed to Tarabari at night of the fateful day. On reaching, they could find the body of the deceased on the ground with a rope tied on her neck and attached to a sewing machine.

12. The learned Addl. PP submits that the contention that the death was by suicide was not at all acceptable both on the aspect that the rope was attached to a sewing machine as well as the evidence of PW9, the Doctor, who had conducted the post-mortem upon the deceased. She submits that though a rope was said to be found tied on the neck of the deceased, the same would, itself not be a conclusive evidence that the death was by hanging more so, when the same was attached only to a sewing machine and not to any object at an altitude like a ceiling fan. She has also drawn the attention of this Court to the post-mortem report which was proved as Ext.-3 by the Doctor, namely, PW9 in which the opinion was given that the death was due to asphyxia resulting from ante-mortem manual strangulation homicidal in nature.

13. The learned Addl. PP has highlighted the position of PW2 whose version is consistent with the deposition of the other witnesses. PW2 had deposed that she was called by the appellant over phone at about 10 pm and on reaching the house, she had seen the deceased lying on the floor and that the appellant had told her that she was killed by someone. The explanation tried to be given by the appellant that the deceased was killed by somebody else is not at all consistent with the other materials on record. There is nothing on record to show that the appellant had raised a hue and cry on the death of his wife even assuming that somebody else had killed her. There is nothing on record even to suggest that some intruder had entered the house to commit the offence. The materials on record would also indicate that a version was tried to be introduced by the defence that the deceased had committed suicide. The said version, apart from being wholly without any basis is contrary to the medical evidence produced by the PW9 wherein there is a clear finding that the death was a result of manual strangulation. On the aspect of extra-judicial confession which has been deposed by the PW8, it is submitted that it is not necessary that the other persons, who were present at that time, were witness to such confession and therefore, there may not be any strict requirement of further corroboration on the aforesaid aspect.

14. By drawing the attention of this Court to Section 106 of the Indian Evidence Act, the learned APP has submitted that the present was an ideal case wherein an explanation ought to have been forthcoming from the appellant. She submits that at the relevant point of time, it was only the appellant who was present in the house with the deceased wherein the death had occurred. She submits that it is not the case of the appellant that at the time of the incident,

he was elsewhere and therefore, the burden shifts upon the appellant to put forth a cogent explanation on the incident which was not discharged. The learned APP has also drawn the attention of this Court to the statement of the appellant recorded under Section 313 of the Cr.PC wherein he had said that the death was by commission of suicide which is not consistent with the other evidence as well as the medical evidence. Ms. Begum, learned APP accordingly contends that the appeal be dismissed and the conviction be upheld.

15. The rival contentions of the parties have been duly considered and the materials on record, including LCRs have been carefully examined.

16. The facts, as revealed from the records, portray a very sorry state of affair wherein a young woman who was pregnant by six months had lost her life in an unnatural circumstance. The evidence on record, more particularly that of the PW7, the mother and PW8 would show that the accused was directly implicated in the offence. In the *ejahar* lodged by the PW7, the accused was named and PW8 in his evidence has deposed that a confession was made by the appellant regarding his involvement in the offence of causing death to his wife.

17. To examine the materials against the appellant, it would be required to look into the other aspects. PW2 had deposed that she was called by the appellant at about 10 pm over telephone asking her to come to the house which she had accordingly done. On reaching, she had found the dead body of the deceased on the ground and as per her deposition, the appellant had told her that the deceased was killed by someone. There are other materials on record, including the statement of the appellant recorded under Section 313 of the

Cr.PC that the deceased had committed suicide. Both the versions are not at all supported by any other materials or even appear to be probable or acceptable. If the projection that the deceased was killed by someone else has to be accepted, the conduct of the appellant becomes of immense significance. Admittedly, the appellant did not raise any hue and cry at that point of time when the incident had occurred and rather, he had called the PW2 to his place. On the aspect of the projection made that the death was by commission of suicide, the same does not inspire any confidence at all inasmuch as though a rope was found tied to the neck of the deceased, the other end was attached to a sewing machine and not to any object on a higher altitude like a ceiling fan. The medical evidence clearly shows that the death was by manual strangulation. For ready reference, the opinion of the doctor conducting the post-mortem is extracted herein below:

“Death was due to asphyxia resulting from anti-mortem manual strangulation homicidal in nature. Time since death 12-18 hours approximately.”

18. Under the facts and circumstances, it becomes essential that the appellant had a burden to discharge explaining the position as envisaged under Section 106 of the Indian Evidence Act. There is no material on record, whatsoever, to explain the position and though the appellant was admittedly present with the deceased at the time of the occurrence. On the aspect of the extra-judicial confession as deposed by PW8, though such confession is a weak piece of evidence and a conviction cannot be based solely on such confession, in the instant case, we have seen that the other materials, including the evidence of

the Doctor would conclusively lead to the complicity of the appellant with the offence of commission of murder upon his wife. We have also noticed that the deceased was a young lady aged about 22-23 years and was married about 1½ years ago from the date of the occurrence and was also pregnant and it is really unfortunate that a young life had come to an end.

19. In view of the aforesaid facts and circumstances, we are of the view that the conclusion arrived at by the learned Addl. District and Sessions Judge, Barpeta in convicting and sentencing the appellant is based on cogent materials which do not call for any interference.

20. The appeal accordingly stands dismissed.

21. Send back the LCR.

22. Before parting, we wish to put on record our appreciation for the assistance rendered by Ms. T Begum, the learned Amicus Curiae and she would be entitled for the fee, as prescribed.

JUDGE

JUDGE

Comparing Assistant