

GAHC010145242021



2024:GAU-AS:12405

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

Case No. : Crl.Rev.P./207/2021

RAISUDDIN AND ANR.
S/O LT. HEKMAT ALI
R/O VILL- PACHIM SILPUKHURI
P.S. MIKIRBHETA
DIST. MORIGAON, ASSAM

2: KAD BANU
W/O LT. HEKMAT ALI
R/O VILL- PACHIM SILPUKHURI
P.S. MIKIRBHETA
DIST. MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:MD. MAINUL ISLAM
S/OLT. ABDULMAJID
R/O VILL- LAHORIGHAT

RAJA GADHOWA
P.S. LAHORIGHAT

DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR. M A SHEIKH, MS F INTAZ,MR M H CHOUDHURY,K U AHMED

Advocate for the Respondent : PP, ASSAM, MS. M BEGUM (R-2),MR. T HUSSAIN (R-2)

Date of hearing : 02.12.2024

Date of Judgment : 09.12.2024

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

JUDGMENT AND ORDER (CAV)

Heard Mr. M.A. Shiekh, learned counsel appearing on behalf of the petitioners. I have also heard Mr. D.D. Das, learned Addl. P.P. State of Assam.

2. By filing this criminal revision petition under section 401 of the Cr.P.C., the petitioners are challenging the order dated 05.4.2021, passed by the Sessions Judge, Morigaon, Assam, in Sessions Case No.29/2021. By this order, charges were framed against both the accused/petitioners under sections 302/34 and alternatively under section 306/34 and 498 (A)/34 of the IPC.

3. The brief fact of the case is that on 31.7.2018, the father of the deceased Md. Mainul Islam, lodged a written FIR before the Officer In charge of the Baribazar Police Out Post, stating that 10 months earlier, his daughter Masuma Begum was married to the accused petitioner No.1 Raisuddin, in accordance with social customs. However, after one month of their marriage, a quarrel occurred between them. On 30.7.2018, the accused petitioner No.1 informed his maternal uncle, Md. Araj Ali, via telephone that his daughter Masuma Begum had committed suicide and had been taken to Dhing Hospital. Upon receiving this information, they

went to Dhing hospital and found their daughter deceased. The informant suspects that the accused and his family may have killed his daughter and staged her hanging. Based on the written FIR, a case, Mikirbheta PS Case No. 279/2018, has been registered under sections 302/34 IPC and investigated into.

4. Upon completion of the investigation, the Investigating Officer submitted a charge sheet against the accused petitioners, having found sufficient evidence against them to face trial for offence under section 302/34 of the IPC, and alternatively under section 306/34 IPC read with section 498 (A)/34 IPC. Since the case is exclusively triable by the sessions Court, it was committed to the Court of Sessions Judge, Morigaon, Assam. After hearing the parties and perusing the police report, the judge found sufficient materials to presume that the accused persons had committed the alleged offences punishable under section 302/34 IPC and, alternatively, under section 306/34 IPC read with section 498 (A)/34 IPC. The charges framed were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

5. Being aggrieved and dissatisfied with the impugned order dated 5.4.2021, and the framing of charges against the accused petitioners under two alternative heads by the Sessions Judge, Morigaon, in Sessions Case No.29/2021, the petitioners filed this criminal revision petition on the following grounds: -

(i) the post-mortem report and cause of the death of the deceased, as elucidated by the Medical Officer, clearly proves that it was a case of suicide committed by the deceased by consuming poison. As such, no

case under section 302 IPC is made out against the accused persons. Therefore, by framing of charges under section 302/34 IPC, against the petitioners, the learned Sessions judge has committed an illegality.

(ii) there is no evidence of torture of the victim by the accused petitioners, and there is no evidence of abatement for the commission of suicide by the victim through consuming poison or by hanging herself. As such, there is no legal ground to frame charges under section 306/34 IPC read with sections 498/34 IPC.

(iii) there is no evidence that the poison found in the victim's stomach was administered by the petitioners. Therefore, the impugned order is flawed in the eyes of law and is liable to be quashed and set aside.

6. The learned counsel for the petitioner submits that during investigation, the investigating officer (I.O) recorded statements, from the informant as well as the witnesses under section 161 Cr.P.C. The witnesses who saw the dead body of the deceased clearly stated that they observed the victim hanging by the neck a bamboo rafter inside the house. They removed the rope and lowered the body, and at that time, the deceased was not yet dead. Subsequently, the deceased was immediately taken to Dhing hospital, where she was declared dead. For the reasons and grounds stated above, the learned counsel for the petitioner submits that no case has been made out against the accused for commission of offence punishable under section 302/34 IPC. Therefore, the impugned order dated 4.5.2021, and the charges framed against the accused persons under section 302/34 IPC should be set aside and quashed.

7. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor for the State, while referring to the trial Court record, submits that according to the post-mortem report, there is no any ligature mark found on the neck of the deceased. He further submits that the Doctor who conducted the post-mortem examination could not ascertain the exact cause of the death. However, a viscera sample was collected and sent for forensic laboratory analysis.

8. The learned Additional Public Prosecutor further submitted that the Forensic Science Laboratory report was received from the Scientific officer, Toxicology, Division, Directorate of Forensic Science Kahilipara Guwahati. According to the report received from the Forensic Science Guwahati, the Article marked as exhibit nos. Tox-508 /18 (a) and Tox-508 /18 (b) tested positive for Organophosphorus insecticide. Based on the aforementioned evidence on record, the learned Sessions Judge, Morigaon, framed charge against the accused persons for offence under section 302/34 IPC. Furthermore, based on the allegation of dowry demands and torture on the deceased by the accused persons while she was still alive, the alternative section 306/34 IPC read with section 498 (A)/34 IPC, were framed against the accused petitioners. As such, there is no infirmity in passing the impugned order and framing charges against the accused persons under the above offences. Therefore, the learned Additional Public Prosecutor prays for dismissal of the criminal revision.

9. I have heard the arguments advanced by both the learned counsel for the parties. I have also perused the documents available on record, including the police report submitted by the Investigating Officer under section 173 Cr.P.C, and considered them.

10. After hearing and considering the record, it appears that the deceased was married to the accused petitioner No.1 approximately 10 months prior to the incident. About one month of their marriage, the accused petitioners began demanding dowry and thereby caused mental and physical harassment to the deceased. The record also reveals that the family of the deceased had intervened and attempted to settle the matter amicably. However, the dispute persisted. On 30.01.2018, the informant received an information regarding the death of his daughter. Consequently, the informant lodged an FIR against the accused petitioners and others, suspecting that his daughter was killed and that her death was staged to look suicide by hanging.

11. The record does not reveal any eye witness to the case. However, it is unclear why none of the family members of the accused petitioners came forward to give statement to the police. Interestingly, the news of the deceased's death was communicated by the accused husband to his maternal uncle instead of notifying the parents of the deceased directly. Furthermore, it was only the neighbours of the deceased who later came to the house of the accused. Upon seeing the deceased hanging by rope, they entered the house and lowered her down.

12. Furthermore, the post mortem report reveals that no any ligature marks found on the neck of the deceased. And the Doctor, after conducting post-mortem on the dead body, could not determine the exact cause of the death. These findings in the context of a suicide case are improbable. To ascertain the cause of death, viscera were collected and sent to Forensic laboratory for examination. It is important to note that after examining the viscera, a report was received. The Forensic Science

Laboratory report indicates that the examination of the viscera gave positive test for organophosphorus insecticide. Under the circumstances, prima facie, it appears that the deceased died of poisoning, even though she was found hanging by a rope. This situation involves facts and circumstances that require proof through leading evidence at trial.

13. In view of the above facts and circumstances, it appears that prima facie materials have been found against the accused petitioners for their involvement in the case. based on the aforementioned facts and circumstances, I do not find any infirmity in the impugned order dated 5.4.2021, whereby the learned Sessions Judge, having found prima facie materials against the petitioners, framed charges against them for offence under section 302/34 IPC and alternatively under section 306/34 of IPC, read with section 498 (A)/34 IPC.

14. For the reasons stated above, this criminal revision petition fails and is accordingly dismissed.

15. With the observations made above, the criminal revision is disposed of.

Send back the record.

JUDGE

Comparing Assistant