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

Case No. : CRL.A(J)/84/2022

MD. ANAM UDDIN
S/O. LT. MOSAI MIA, VILL. DAWAKURI, P.S. AND DIST. KARIMGANJ.

VERSUS

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

2:NURUL ISLAM
S/O LATE RASHID ALI
R/O VILLAGE DEUBAKURI
P.S- KARIMGANJ
DIST- KARIMGANJ ASSAM
PIN- 78871

Advocate for the Petitioner : MS. S BARPUJARI (Amicus Curiae),

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MRS. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Ms. S Barpujari, Amicus Curiae.

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

Dates of Hearing : 21.11.2024 & 25.11.2024.

Date of Judgment : 29.11.2024.

Judgment & Order

29.11.2024

(SK Medhi, J)

The instant appeal has been preferred from jail against a judgment and order dated 04.07.2022 passed by the learned Sessions Judge, Karimganj in Sessions Case No. 09/2005 whereby the appellant has been sentenced to life imprisonment and to pay a fine of Rs. 30,000/-, in default, rigorous imprisonment for a period of 1 year under Section 302 IPC. It was further directed that the period of detention undergone by him shall be set off from the period of sentence awarded to him. The appeal involves the death of the wife of the appellant.

2. The criminal law was set into motion by lodging of an *Ejhar* on 08.11.2004 by the PW7, who is the maternal uncle of the deceased. It was stated that he was informed on 05.11.2004 at about 12/12.30 am that his niece had expired. Thereafter, he had gone to the place of occurrence along with some other persons of the village and found the body hanging by a *saree* from an iron rod of a post in the roofless room. It was also stated that both her legs were touching the ground and the front side of her body was leaning forward. It was also stated that he learnt from PW5 and PW6 that the appellant, who is the husband of the deceased, had handed over his two children to them after informing the news of the death and fled away and had not returned. It was stated that they had suspected the appellant of killing the deceased and

keeping the dead body hanging and thereafter fled away. He had also stated that since he was performing the last rites, the lodging of the FIR got delayed.

3. Based on the aforesaid *Ejaha*, the formal information was registered and investigation was made leading to filing of the charge sheet. It may be mentioned that though the charge sheet was filed under Section 304B of the IPC, the charges were, however framed under Section 302 of the IPC and on denial thereof, the trial had begun. In the trial, the prosecution had adduced evidence through 9 (nine) nos. of witnesses. There was also a Court Witness. The post-mortem report, photograph of the victim, inquest report, sketch map and other documents were also proved by various witnesses.

4. PW1 is the Doctor who had conducted the post-mortem over the dead body on 06.11.2004. He had stated that on the said date, upon examination, he found that the injuries were in the nature of a non-continuous ligature mark around the neck in between the chin and the cricoid cartilage. As per the opinion, the death was due to asphyxia resulting from hanging.

In the cross-examination, he had clarified that the death was due to hanging.

5. PW2 is a neighbour who had stated that he could learn about the incident from some children and upon going there, he could see that the neck was tied with a *saree* and the legs of the deceased were touching the ground and hands were on the wall. He had also stated that the appellant was not found in the house. He had also stated that the appellant and the deceased used to quarrel every now and then. PW3 is also a neighbour who had also visited the place of

occurrence and found the deceased hanging by a cloth and the appellant was not at home.

In his cross-examination, however, he had stated that there was a cordial relationship between them.

6. PW4 is a neighbour who is also a Ward Member. He had stated that he was informed about the incident by certain persons of the village and he had gone to the place of occurrence which is about 7-8 houses from his residence. He found the deceased was hanging from a concrete beam with a *saree* in one end which was tied on the neck and the other end was tied to the said beam. He saw that the feet of the deceased were touching the ground. He had also stated that the accused was not seen in the house. He deposed that he had informed the police in the next morning and the police had taken photographs and had also examined the dead body. He had also deposed that the *Ejhar* was lodged by PW7 who was the maternal uncle of the deceased.

In his cross-examination, he had, however stated that the appellant used to go to Aizawl as he was a driver.

7. PW5 is the elder sister of the appellant. She had stated that she was staying at the paternal house and on the fateful evening when she was sleeping after dinner, the accused had come to her house and told that the deceased had expired. Thereafter, on his insistence, she had gone to his house taking her son along and in the bedroom, she could find the two children were sleeping. The appellant had thereafter handed over one child to her and the other child to her son and then absconded from the place. She had also seen the deceased partially hanging with her neck from a beam of her house with the help of a

saree. She had also stated regarding information being given to the neighbouring persons when they had come, including the informant who is the maternal uncle of the deceased.

In the cross-examination, a suggestion was given that in order to grab the land, false deposition was made to implicate the appellant which, however was denied.

8. PW6 is the nephew of the appellant and son of PW5. He has corroborated the evidence of PW5 by stating that on the fateful evening, he was coming back to his residence which passes near the house of the accused and while passing, he could hear conversation of the appellant and the deceased. Thereafter, he had gone to sleep whereafter the appellant had called him and his mother and asked them to accompany him to his residence by stating that the deceased had expired. Accordingly, they had gone to his residence and found that the deceased was hanging with her neck with the *saree* which was tied to the lintel of the house. He had also deposed that the appellant had handed over the two children to them and fled away whereafter the villagers were informed. He had also deposed that he and PW5 had taken the two children and went to the maternal uncle of the deceased-PW7 and informed him. On such information, the maternal uncle, along with some co-villagers had gone to the place of occurrence and informed the police whereafter investigation was done.

The aforesaid PW6 was subjected to cross-examination wherein his version could not be shaken.

9. PW7 is the informant. He had stated that the death had occurred after about five years of the marriage of the appellant and the deceased. He had also

indicated the aspect of demand for dowry and causing physical torture upon the deceased by the appellant. As regards the incident, he had deposed that PW5 and PW6 had come to his residence at about midnight along with two children and had given the information regarding the death of the deceased and the condition under which, she was found hanging. He had deposed that on the next morning at about 07.00 am along with certain other persons, including the Ward Member-PW4 had gone to the place of occurrence and found the dead body hanging by a *saree* which was tied in the purling of the house. He had deposed that the police had come thereafter and brought the body down and had done the investigation, including examination of the body in presence of the Magistrate. He had lodged the first information which was proved as Ext.-4.

PW7 was also subjected to cross-examination with a suggestion that the appellant was tried to be implicated falsely which, however was denied. It was also suggested that the sister of the appellant had a dispute with him and under her influence, such accusation was made and the said suggestion was denied.

10. PW8 is the nephew of the informant who is also the brother of the deceased. He has deposed that on the following day of the death of his sister, his maternal uncle PW7 had informed him of the incident over phone whereafter, he along with his younger brother had come to the house of the appellant and found the deceased in the same position as was described by the other witnesses. He also deposed that the appellant was not found and the two children were in the custody of the sister of the accused. He had also stated that though they had taken care of the two children of the deceased, the infant daughter was taken by the PW5. Unfortunately, the child had died. So far as the son is concerned, he was at Bangalore.

11. PW9 is the IO who had conducted the investigation. He had deposed that the FIR was lodged by the PW7 and after investigation, he had taken photographs which were proved as Exts.-2 and 3. He had also drawn a sketch map of the place of occurrence which was proved. The post-mortem report was collected by him and was proved as Ext.-1. After completion of the investigation, the charge sheet was submitted under Section 304B IPC. The said PW9 was subjected to cross-examination wherein his version could not be shaken.

12. The SI of police who was given the task for executing the warrant of arrest was examined as Court Witness-1. He had deposed that while he had visited the house of the accused- appellant to execute the warrant of arrest, neither did he find the appellant nor any movable or immovable property and therefore, he could not execute the warrant of arrest which was pending and put to file. He had also deposed that the Proclamation was hung in a conspicuous place of the locality.

13. Based on the allegations made against the appellant, the circumstances were put to him under Section 313 of the Cr.PC. Against the Q. No.2, the appellant had stated that out of fear, he did not go near the dead body. He has also stated that on the previous day of the incident, he had left for Aizawl. Regarding Question No. 15, he had tried to give an explanation that it was actually PW5 along with her two sons who had killed the deceased. He had submitted that both the sons of PW5, including PW6 had committed rape on the deceased two days prior to the incident which was informed to him by the deceased. Accordingly, he had asked PW5 and her two sons to leave the house

and give back certain money which was taken 8 years ago and thereafter he had left for Aizawl. Subsequently, he came to know that they had killed his wife and out of fear, he did not return home. Against the Q. No. 16, he had, however declined to adduce any evidence.

14. Based on the aforesaid materials and the evidence on record, the impugned judgment has been passed. It is the aforesaid judgment which is the subject matter of challenge in the present appeal.

15. We have heard Ms. S Barpujari, learned Amicus Curiae as well as Ms. A Begum, learned Addl. Public Prosecutor, Assam.

16. Ms. Barpujari, the learned Amicus Curiae, has submitted that the materials on record, including the evidence would not be sufficient to come to a conclusion of guilt of the appellant. She submits that there is no eyewitness or any direct evidence in this case and the evidence available is only circumstantial. She submits that the chain of events are not continuous and would not point out to only one conclusion of the guilt of the appellant and none others. She has submitted that it has come on record that there was an animosity between PW5, PW6 and the appellant and the appellant has been falsely implicated. She has also highlighted the aspect that there was an intention to grab the land and also that certain money was supposed to be returned to the appellant by the same PW5 and PW6. It is submitted that in response to the examination under Section 313 of the Cr.PC, the appellant had indicated that he had left for Aizawl on the previous day.

17. On the aspect that the abscondence of the appellant cannot be the sole factor for his conviction, the learned Amicus Curia has relied upon the case of ***Sujit Biswas Vs. State of Assam***, reported in **(2013) 12 SCC 406** wherein it has been laid down that such abscondence cannot be held to be the sole circumstance to come to a finding of guilt. She has also submitted that the versions of PW5 and PW6 are not at all trustworthy as there was previous animosity.

18. The learned Amicus Curiae has submitted that as per the evidence of the Doctor read with the post-mortem report which was exhibited, the death was due to hanging and not by strangulation. Under such circumstances, she submits that holding the appellant guilty under Section 302 of the IPC is wholly unwarranted. She has also highlighted the aspect that the implication under 304B of the IPC has been done away at the time of framing of the charges and under the aforesaid development, the appellant could not have been held guilty under Section 302 of the IPC. The learned Amicus accordingly submits that the present is a fit case for interference and acquitting the appellant.

19. *Per contra*, Ms. Begum, the learned APP has submitted that the conviction of the appellant has been done on the basis of the evidence on record which points to the guilt and complicity. As regards the defence tried to be raised by the learned Amicus Curiae regarding animosity of the appellant with PW5, she had referred to the response to Q. No. 15 of the examination under Section 313 of the Cr.PC whereby the appellant had stated that PW5 along with her two sons were staying in the same campus for 8 years. She submits that under such circumstances, animosity cannot be presumed. On the same issue, she has also

highlighted that PW7 who is the informant is none else but the uncle of the deceased who, in his deposition or any other materials, had not made any allegations against the PW5 and PW6. She has also highlighted that if at all there was any veracity in the allegation of rape tried to be made by the appellant against PW6 and the other son of PW5, he should have lodged a complaint. On the contrary, the appellant has said that he had left for Aizawl after asking them to leave the premises. She submits that such conduct is wholly inconsistent and not at all believable. She has also highlighted that PW8, who is the brother of the deceased, has also not made any allegation against PW5 and rather, he had deposed that the children were taken care by the said PW5.

20. The learned APP has also raised the issue of Section 106 of the Evidence Act and has submitted that the appellant has not discharged his burden. It is submitted that it was only the appellant who was present at the relevant time when the death had occurred and therefore, he was under an obligation to offer such an explanation. She submits that contrary to discharge such burden, the appellant had fled away and was absconding till the year 2019.

21. The rival submissions have been duly considered and the materials placed before this Court including the LCRs have been carefully perused.

22. As mentioned above, the present conviction is on the basis of circumstantial evidence where the basic requirement is to ensure that the chain of events is continuous, unbroken and leads to only one conclusion of involvement of the appellant and none others.

23. Before examining the facts and circumstances, it would be convenient if the 5 principles relating to circumstantial evidence laid down in the landmark case of ***Sharad Biridhichand Sarda Vs. State of Maharashtra***, reported in **(1984) 4 SCC 116**, are referred which reads as follows:

“7. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 where the following observations were made :

‘certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

8. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

24. Let us, therefore, scrutinize the materials on record, including the evidence and examine as to whether based on the same, conviction of the appellant could have been done. Death, in the instant case, is, accordingly to the evidence of the Doctor-PW1 is due to asphyxia resulting from hanging. The aspect whether such hanging is homicidal or suicidal is not clear from the aforesaid opinion which was proved as Ext.-1. To ascertain that, the two photographs of the deceased which have been proved as Exts.-2 and 3 are required to be sifted. The aforesaid photographs are also to be examined conjointly with the depositions of PW2, PW4, PW5, PW6 and PW9 (IO). All the aforesaid PWs have been consistent in finding the body of the deceased hanging from a beam with a *saree* tied on her neck. The significant part of the deposition is that both the feet of the deceased were touching the ground and the hands and body were found leaning on a half constructed wall. Admittedly, at that time, there were none in the house but the appellant and the two infant children.

25. The evidence of PW5 and PW6 is that the appellant had come to them and informed about the death of the deceased and asked them to accompany him to his house. After they had reached his residence which was adjacent, he had handed over the two children to them and fled away and they could find the body of the deceased in the aforesaid position.

26. Under such circumstances, it becomes essential for the appellant to discharge his burden under Section 106 of the Evidence Act. The appellant did not adduce any defence witness and therefore, it would be necessary to look into the response made by him to the questions put under Section 313 of the Cr.PC.

27. As discussed above, against Q. No. 15, he had made a very serious allegation that the two sons of the PW5, including PW6 had committed rape on the deceased two days prior to the incident for which, he had asked them to leave his house and give back certain money which was allegedly taken by them 8 years back and after such instructions, had left for Aizawl whereafter, he came to know that they have killed his wife. Against Q. No. 2, he had stated that he did not go near the dead body out of fear and on the previous day of the incident, he had left for Aizawl. The response to the aforesaid two questions is self-contradictory. Though statement made under Section 313 of the Cr.PC cannot be treated as a substantial piece of evidence, the same can be considered for the purpose of having the version of the accused *qua* the allegations made against him.

28. The aspect of previous animosity does not appear to be a reasonable explanation. As rightly pointed by the learned APP, against Q. No. 15 itself, it was stated by the appellant that PW5 was staying in his house for the last 8 years which would not be possible in case of a strained relationship. So far as the allegation of rape is concerned against PW6 and his brother who are both his nephews, it would be wholly unreasonable to accept that in spite of such

serious charge, the appellant would remain idle and on the contrary, had left for Aizawl. As observed above, the answer to Q. No. 2 regarding his leaving for Aizawl is itself wholly unacceptable.

29. The learned Amicus Curiae by relying upon the case of ***Sujit Biswas*** (*supra*) has emphasized that abscondence alone cannot be the sole factor of guilt. Though there is no dispute to the aforesaid proposition of law, in the instant case, even assuming for argument sake that the appellant was at Aizawl at the time of occurrence, the normal human conduct would be to immediately reach back his home on coming to know about the death of his wife and there were two infant children. The records would rather indicate that long after the incident i.e. after about 15 years, the appellant was arrested on his surrender. Under those circumstances, we are of the view that it is not only a case which is based solely on the aspect of absconding but other incriminating and relevant factors which are against the appellant.

30. We have also noted that on the aspect that the appellant had responded under Section 313 of the Cr.PC that he was at Aizawl at the relevant point of time, he did not take the defence of *alibi* and adduce evidence in that respect.

31. As mentioned above, while the medical opinion is that the death was due to asphyxia caused by hanging, the aspect of suicide can be safely ruled out by the materials on record, including the evidence and the Exts.-2 and 3. As observed above, both the feet of the deceased were touching the ground and her body and hands were leaning on the half constructed wall. It becomes apparent that death was a homicidal one and the evidence on record would,

without any manner of doubt, point to the guilt of the appellant.

32. The aforesaid discussions and the materials on record would, in our considered opinion, not lead us to interference with the impugned judgment of conviction of the appellant.

33. Accordingly, the appeal stands dismissed.

34. Send back the LCRs.

35. Before parting we would like to record out appreciation for the assistance rendered by the learned Amicus Curiae and she would be entitled to the prescribed fee.

JUDGE

JUDGE

Comparing Assistant