

Item No.4

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

C.R.R. No. 3323 of 2009

**Kajal Barua @ Kajal Kanti Barua
Vs.
Rupa Barua and others**

For the petitioner	:	Mr. Arun Kumar Maity, Ms. Komal Shome, Mr. Avishek Chowdhury, Ms. Diya Bain
For the State	:	Mr. N.P. Agarwal, Mr. Pratick Bose
Heard on	:	17.01.2023
Judgment on	:	17.01.2023

Siddhartha Roy Chowdhury, J:-

This criminal revision assails the judgment passed by the learned Additional District and Sessions Judge in S.T. No. 11A(7) of 2004 recording an order of acquittal in a case registered under Section 306/120B of the Indian Penal Code.

Briefly stated that the petitioner consequent upon suicidal death of his elder brother Prasanta Barua @ Tufun informed Jagatdal Police Station in writing that his brother was living with his wife Rupa Barua after their

marriage according to the rituals of Buddhism at Golghar, Jagatdal in the house of Nemai Khatua.

His sister-in-law Rupa used to inflict mental torture upon his brother. On 17th February, 1997, he received information that his brother committed suicide. As the information disclosed offence cognizable in nature, Jagatdal P.S. Case No. 172 of 1997 was registered under Section 302 of the Indian Penal Code (IPC). Police took up the investigation and submitted charge sheet against the accused persons. The accused persons stood trial by pleading their innocence. The learned Trial Court after considering the testimony of ten witnesses examined by the prosecution, was pleased to pass the order impugned.

Assailing the impugned judgment, Mr. Maity, learned counsel for the petitioner vehemently submits that the incident took place in the room shared by the victim and his wife. The wife has been arrayed as one of the accused persons along with her mother. She was the person who had special knowledge under what circumstances the victim Prasanta put an end to his life. Prosecution since has established that the victim died an unnatural death by hanging himself in his bed room, the onus shifted upon the accused Rupa Barua, the wife of the victim, who had the special knowledge, but the lady failed to discharge her onus. The learned Trial Court did not appreciate the principle of law as laid down under Section 106 of the Evidence Act. Therefore, the impugned order merits

interference from this court and should be reversed to an order of conviction.

I have perused the materials on record. Though ten witnesses have been examined by the prosecution, none had direct knowledge about the day-to-day life of the victim and his wife. From the autopsy report, it is found Prasanta Barua committed suicide and it was not a case of homicidal death. In order to prove the charge under Section 306 of the IPC, prosecution is required to prove the ingredients of offence within the meaning of Section 107 of the IPC. There has to have some evidence indicating that the accused persons instigated and thereby abetted the victim to commit suicide. The *de facto* complainant as P.W.2 stated in his evidence-in-chief that his brother Prasanta died on 16th February, 1997 and he was killed by Rupa Barua, his wife. This evidence is not sufficient to bring the case within the purview of Section 306 of the IPC. P.W.4, Madhabi Debi, a co-tenant stated that she found Prasanta Barua in hanging condition when she peeped into the room of Prasanta through the window, but that fact is of no consequence so far as the case under Section 306 of the IPC is concerned.

In my humble opinion, the learned Trial Court was left with no other option but to record an order of acquittal in absence of any evidence to justify the charge under Section 306 of the Indian Penal Code. The impugned judgment does not warrant any interference.

The criminal revision is devoid of merit and is dismissed, however, without cost.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Siddhartha Roy Chowdhury, J.)

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