

IN THE COURT OF THE SESSIONS JUDGE :::: BONGAIGAON

Sessions Case No. 61(BGN)/2016
U/S 302/304-B IPC
(Arising out of G.R. Case No. 765 of 2015)

State of Assam

Vs.

Md. Ali HussainAccused

***PRESENT : Smt. I. Barman,
Sessions Judge,
Bongaigaon.***

ADVOCATES APPEARED :

For the State : Smt. J. Barua, Public Prosecutor

For the accused : Sri M. Islam, Advocate

Date of Argument : 05.04.17

Date of Judgment : 11.04.17

JUDGMENT AND ORDER

1. The prosecution case in brief is that the informant's daughter Nureja Khatun got married with accused Ali Hussain prior to five years of filing the F.I.R dtd 14.08.15. It is alleged that since after marriage accused Ali Hussain and her father-in-law used to torture her and subjected her to cruelty both physically and mentally and lastly on 11.08.15 at about 11:00 A.M accused Ali Hussain in conspiracy with his father attempted to commit murder of Nureja Khatun by pressing neck with a maflar. On receiving the information, he along with others got admitted the deceased at Lower Assam Hospital, but on 12.08.15 at

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around 8:00 A.M she died.

2. On receipt of the FIR from Nur Hussain, the I/C, North Bongaigaon P.P. made the GDE No. 378 dtd. 14.08.15 and forwarded the same to the O/C, Bongaigaon P.S. Accordingly, the O/C, Bongaigaon P.S. registered a case being Bongaigaon P.S. Case No. 660/2015 U/S 304(B)/34 IPC dtd 14.08.15 and launched investigation of the case. The Investigating Officer visited the place of occurrence, recorded the statement of the witnesses including the informant, sent the dead body of the deceased for autopsy and at the close of investigation submitted charge sheet against the accused Ali Hussain U/S 302 IPC.

3. On appearance of accused Ali Hussain, after observing required formalities, the Learned CJM, Bongaigaon vide order dtd. 30.05.16 committed the case to the Court of Session, Bongaigaon, being the offense U/S 302 IPC exclusively triable by the Court of Session.

4. After commitment, on going through the police report furnished under section 173 CrPC and hearing both sides, having find a prima facie case, charge was framed against the accused person Ali Hussain U/S 302 IPC. The accused person pleaded innocence when charge was read over and explained to him and claimed for the trial.

5. POINT FOR DETERMINATION:

- i. *Whether the accused on 11.08.15 at about 11:00 A.M at No.3 Nachanguri under Bongaigaon P.S with intent to murder his wife pressed her neck by a muflar due to which she died on 12.08.15?*

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ii. *Whether the death of Nureja Khatun the wife of the accused Ali Hussain was caused otherwise under normal circumstance within seven years of her marriage with the accused and before her death she was subjected to cruelty with demand for dowry?*

6. In this case to bring home the charge against the accused person, prosecution side examined as many as 10 (ten) witnesses. In statement U/S 313 CrPC the accused denied all the allegation levelled against him and adduced no evidence. I also heard argument of both sides.

DISCUSSION, DECISION AND REASONS THEREOF:

7. At the very out set, I would like to scrutinize the evidence on record for the purpose of adjudicating the charge against the accused.

8. PW1 Jeherul Islam deposed that deceased Nureja Khatun got married with accused Ali Hussain four years earlier and out of the wedlock a female child was born. According to him, on the day of incident at 12 noon while he was in cultivation, hearing halla, when he came, found deceased Nureja Khatun hanging with a muflar within the house of the accused. Then finding her alive, she was taken to Majgaon Hospital from where on being referred she was admitted at Lower Assam Hospital but later on, he heard that Nureja died. After death, the dead body of Nureja was taken to the house of the informant Nur Hussain and buried the dead body. Thereafter, the villagers had beaten the accused and his father. He further stated that some days ago, he heard that the deceased picked up quarrel with the accused suspecting him of having

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relation with her brother's wife and thereafter Nureja came to her parental house. During cross he stated that prior to the incident, he never had seen any quarrel between the accused and the deceased, but only one day a quarrel took place between them in the parental house of the deceased on suspicion of having illicit relation between the accused and the brother's wife of the deceased. He further stated that for suspecting the accused, the mother of the deceased scolded her and then the deceased told her mother that she would die after leaving her parental house and then they could bury her body in her parental house. According to him, after having quarrel with mother, Nureja committed suicide.

9. PW2 Jaheda Bibi the mother-in-law of the victim deposed that on the day of incident at about 10:30 A.M while she along with her husband, her son accused Ali Hussain with two labours were working in jute cultivation, then Nureja coming there requested the accused to go with her to the hospital but at that time as he was busy in working, hence, accused asked Nureja to go with her mother i.e PW2 but, then Nureja refused and entered into the house. After some time when her (PW2) daughter Manju Khatun entered into the room, found Nureja hanging and raised alarm. Immediately, they rushed and had seen Nureja hanging by fastening with a muflar from the bamboo roof of the house. Thereafter, they brought down Nureja and took her to Majgaon Hospital and on being informed, the parents of Nureja admitted her at Lower Assam Hospital but she died there. After her death, the dead body of Nureja was taken to her father's house and then they filed this case. During cross she stated that the accused and the deceased though resided together along with them but they took food separately. According to her, there was no

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dispute between the accused and the deceased and they resided peacefully. She admitted that about one week ago of the incident, the brother-in-law of the accused took the accused and Nureja to his house for 'Naiyar' and they stayed there for 3/4 days. During that period Nureja scolded the accused for which Nureja's mother objected and then Nureja by crying left her parental house saying that for scolding her, she would die and they could bury her body in their mother's house. Thereafter, Nureja committed suicide.

10. PW3 Dr. Puspendu Das the Medical Officer deposed that on 12.08.15 at about 3:55 P.M he conducted the autopsy on the dead body of deceased Nureja Khatun and found as follows:-

External Appearance:- A medium build female dead body, fair complexioned, long black hair, aged about 30 years, not emaciated and not decomposed, rigor mortis seen in upper limb.

Wounds- position and character:-nil; Bruise – position, size and nature:- nil; Mark of ligature on next dissection etc.:- A ligature mark in front of neck, oblique and above the level of thyroid cartilage seen. On dissection congestion of neck tissue with pale area underneath the ligature mark.

Cranium and Spinal Canal:- 1. Scalp, skull, vertebrae – intact. 2. Membrane – intact & congested. 3. Brain and spinal cord – multiple pale area surrounded by red area found in the brain substance (area of Cerebral infarct).

Thorax: 1. Walls, ribs and cartilages – intact. 2. pleurae – intact and congested. 3. Larynx and trachea – intact and congested and

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edematous larynx. 4. Right lung, left lung and pericardium – intact and congested. 5. Heart and vessels – intact.

Abdomen: 1. Walls, peritoneum, mouth, pharynx and oesophagus – intact. 2. Stomach and its contents – intact and contains undigested food matters. 3. Small intestine and its contents – intact and contains semi digested food matter. 4. Large intestine and its contents – intact and contains faecal matters. 5. Liver, spleen – intact & congested. 6. Kidneys – intact. 7. Bladder – intact and contains little amount of urine. 8. Organs of generation – external and internal :- intact, no injury seen, uterus empty normal size.

Muscles, Bones and Joints:- Injury – nil. Disease or deformity – Nil. Fracture – nil. Dislocation – nil. He proved the post-mortem report as Ext.1.

During cross he stated there is no injury marks over her body and neck. He further stated that the death was due to ischemic cerebral damage resulting from hanging which is ante-mortem.

11. PW4 Nur Hussain the informant/father of the deceased in his evidence stated that five days prior to the incident Nureja came to his house and stayed for 4 days. After returning to her matrimonial home on 11.08.15 at around 5:00 P.M he was informed by one of his village that Nureja committed suicide in the house of the accused. Then immediately he rushed to the house of the accused and thereafter admitting Nureja at Lower Assam Hospital he returned home for taking money but on next day at around 8/8:30 A.M, when he came to hospital with money he found Nureja died. He further stated that till two years of marriage

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Nureja and the accused led conjugal life peacefully. But thereafter the accused Ali Hussain started demanding money from Nureja which fact was informed to him by the deceased herself. He further stated that as per demand, once he sent Rs. 2,000/- to Nureja. He further stated that Nureja and the accused used to pick up quarrel and the accused also used to assault her for which once he along with headman of the village made understand them. He again stated that prior to five days of death, when Nureja came to his house she lost Rs.300 belonging to the accused and hence, he gave Rs.200 to Nureja asking her not to disclose the matter of losing money to the accused and also promised that he would pay the remaining Rs. 100 later on. He further stated that the accused confessed before Sattar dewani that he had killed Nureja by pressing her neck with the muflar. During cross, he stated that before 5 days of the incident, his son Mograb Ali took Nureja and the accused to his house for 'naiyar' and before 3 days of the incident by crying, Nureja left their house. He also stated that he could not say about the presence of other inmates of the house of the accused while she was committing suicide. He admitted that he could not say for what matter quarrel took place between the accused and the deceased after two years of marriage. But regarding dispute between the parties prior to the instant incident no case was filed. He also could not say, if the deceased committed suicide in absence of other family members at home for being scolded by her mother.

12. PW5 Sahatan Bibi @ Sahatan Nesa the mother of the deceased deposed that the accused and the victim led conjugal life peacefully for about six months and thereafter the accused and his parents used to torture her for which on three occasions, she brought Nureja for treatment and made understand the accused. She stated that

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prior to the incident on arrival of her (PW5) son Sahjamal who resided in Delhi, she brought Nureja and accused by sending her son Magrab and they stayed in her house for about 3/4 days but during that time they had some quarrel and then of being asked Nureja by crying told her that accused did not like her and wanted to marry another one. She also categorically stated that during that period the deceased lost Rs. 370 out of which they gave Rs.200 and promising to pay the remaining amount of Rs.170/- later on, asked not to quarrel in this matter. She further stated that hearing about the incident when she went to the house of the accused, at that time Nureja was not in a position to speak. She suspected that as the accused used to torture her from earlier, hence, the accused had killed her. During cross she stated that the accused in front of Nureja said that Firuja Khatun the wife of her brother Sarif Ali was more beautiful than her for which Nureja started crying. Hence she (PW5) rebuked Nureja. After 3 days, Nureja along with her husband returned to her matrimonial home and thereafter she committed suicide. At the time of incident the parents of the accused was cleaning jute in a pond situated in premises of their house and according to father of the accused, at that time the accused was sitting in a chair outside the house. She testified that, there was no dispute between the accused and the deceased regarding money rather petty quarrel like preparing food lately etc. took place between the parties. PW5 further stated that, child of the deceased is still residing with the parents of the accused. She testified that as in the incident Nureja was not in a position to talk, hence she said nothing about the incident. She also stated that prior to six months of the incident, the accused with the deceased started taking food separately from them (PW5). He admitted that regarding quarrel between the parties in marital life, they did not file any case earlier.

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13. PW6 Sahara Bibi the neighbor of the accused in her evidence stated that on the day of incident at about 11:30/12:00 noon hearing halla in the house of accused Ali Hussain, she came there and came to know that Nureja Khatun wife of Ali Hussain committed suicide. She also stated that when Nureja was brought down from hanging, she had some sense and hence, the parents of the deceased took her forcefully to Lower Assam Hospital as the accused person did not want to take her to Lower Assam Hospital and on next day of incident Nureja died. She further stated that due to quarrel in parental house, Nureja committed suicide. According to her also, she had never seen any quarrel between the deceased and the accused or his other family members. She stated that before one week of the incident, the brother of the deceased took accused Ali Hussain and Nureja for Naiyar to their house where they resided for 4/5 days and during that period, the deceased suspected the accused of having illicit relation with her sister-in-law. Hence, regarding this, the mother of the deceased scolded Nureja and then Nureja by crying said her mother that they would not get her back which incident was reported to her (PW6) by none other than but Nureja herself and after two days of returning to matrimonial home, Nureja committed suicide.

14. PW7 Manjuwara Khatun the sister of the accused deposed that on the day of incident at about 10:00/11:00 A.M when she entered into the house of the accused to bring a mirror, she had seen Nureja hanging with a maflar. Then she raised halla to which her parents and accused Ali Hussain reached there and all of them had got down Nureja. She had cut down the maflar and also provided her massage. Thereafter, Nureja was taken to Majgaon hospital and then to Barpeta and from

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Borpeta, Nureja was brought back home but her family members had taken her to Lower Assam Hospital forcefully wherein she died. She further stated that in Majgaon and Barpeta, Nureja was not admitted. During cross she stated that the deceased Nureja had never quarreled with the accused and prior to one week of incident, the brother of Nureja took Nureja and the accused to their house for 'Naiyar' and they stayed there for 3/4 days. After returning Ali Hussain told that as Nureja suspected him with her sister-in-law, hence, the mother of the accused scolded Nureja. According to her, for that matter, Nureja coming to her matrimonial home committed suicide.

15. PW8 Mohela Bewa only stated that Nureja committed suicide and died in hospital. She also during cross categorically stated that she had never seen any quarrel between the accused and the deceased. She also supporting the evidence of other witnesses stated that one week ago of the incident, Nureja's brother took Nureja and the accused to her parental home for Naiyar wherein Nureja had quarrel with her mother for suspecting the accused with her sister-in-law which fact was told to her by the deceased herself. She also stated that as the deceased could not tolerate quarrel with her mother, hence she committed suicide.

16. PW9 Somarjyoti Ray the Investigating Officer deposed that on 11.08.15 while he was serving at North Bongaigaon PP at about 10:15 A.M on receipt of an F.I.R from PW4 Nur Hussain (Ext.2) about committing suicide of his daughter Nureja Khatun who died on 12.08.15, the I/C, North Bongaigaon P.P instructed him to take necessary steps and sent the F.I.R to the O/C Bongaigaon P.S for registering an UD case. Accordingly, he took the steps for conducting inquest on the dead body

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by Executive Magistrate at Lower Assam Hospital and thereafter sent the dead body for post-mortem examination. He proved the inquest report as Ext.3. Later on, a case was registered on filing an F.I.R by PW4 again.

17. PW10 Ajit Kr. Ray the Investigating Officer of this case deposed that on 14.08.15 while he was working as I/C, North Bongaigaon P.P on receiving the F.I.R from PW4 Nur Hussain, he sent the same to the O/C, Bongaigaon P.S for registering a case and also recorded the statement of the informant in the thana premises. During investigation, he found that PW9 S.I Somarjyoti Ray already took steps regarding inquest and post-mortem examination in UD case No. 42/15 which was later on amalgamated with this case. In course of investigation, he visited the place of occurrence, prepared the sketch map of the P.O, recorded the statement of the witnesses, arrested the accused Ali Hussain and submitted charge-sheet against the accused u/s 304B IPC vide Ext.6. He proved the second F.I.R lodged by Nur Hussain as Ext.4 and sketch map as Ext.5. During cross, he stated that he received the Ext.4 F.I.R on 14.08.15. He confirmed that PW4 Nur Hussain did not tell before him that the accused before Sattar Dewani confessed that he killed the deceased with muflar. He admitted that when the accused came to thana, he arrested him.

18. In this case, admittedly the marriage between the accused and the deceased was solemnized five years back of the date of occurrence and out of the wedlock a child was born. The evidence of PW4 the father of the deceased is that after two years of marriage, accused demanded money from deceased Nureja and accordingly once he sent Rs.2,000/- to Nureja. Though this witness stated that the deceased and the accused picked up quarrel and she was assaulted by the accused

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but during cross he stated that he did not know for what matter, quarrel took place between husband and wife. The fact of demanding money and paying Rs.2,000/- was not supported by most natural witness i.e. PW5 the mother of the deceased. Regarding torture, her allegation is that the accused and his parents used to scold and assault her. But she said nothing regarding manner of assault. Further, according to father, deceased led conjugal life peacefully for two years but mother alleged that since six months of marriage, the accused had assaulted Nureja. Other witnesses remain silent about torture or demand of dowry.

19. In order to appreciate the evidence of PW4, it is useful to refer the definition of “dowry death” under Section 304-B IPC which reads as under:-

“304-B. *Dowry death.* – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused he death.

Explanation. – For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

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20. A perusal of Sec. 304-B IPC clearly shows that if a married woman dies otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused the death. The conditions precedent for establishing an offence under this section are:

(a) that a married woman had died otherwise than under normal circumstances;

(b) such death was within seven years of her marriage; and

(c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.

21. This section will apply whenever the occurrence of death is preceded by cruelty or harassment by the husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

22. In this case according to PW4, deceased told him that the accused demanded her money for which he once sent Rs.2,000/- to Nureja. So, he did not allege that the accused himself demanded him money or that he paid Rs. 2,000/- to the accused. Giving money of Rs. 2,000/- has not supported by her mother. Other witnesses, no where stated about any mal treatment to the deceased or any incident of torture. Rather PW1, PW6 and PW8 the neighbors, PW2 and PW7 mother and sister respectively of the accused categorically stated that they never

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heard or seen any quarrel between the accused and the deceased. Admittedly, out of love, the deceased married the accused. Though PW5 deceased's mother testified that on three occasions, they brought the deceased to her parental house and got treated her but no medical document is proved by prosecution. On the other hand, PW5 is the same breath again negates of any quarrel between the husband and wife. According to her, sometimes regarding some minor matters like preparing food lately they had quarrel. For some petty quarrel between husband and wife, one could not be held guilty for dowry death. On the other hand, the parents of the deceased admitted that before 5 days of the fateful incident, the deceased with the accused came to her parental home on 'Naiyar' and stayed there for three days and during that period the deceased had quarrel with the accused as the accused told that her brother's wife is more beautiful than her which fact was reported by the deceased herself to her mother. For that matter, her mother abused her and thereafter returning to matrimonial home, the deceased committed suicide. PW6 and PW8 the neighbors of the accused also categorically stated that none other than the deceased herself after returning matrimonial home told them about quarrel with her own mother for suspecting the accused with her brother's wife PW5 mother of the victim also stated that after quarrel with her mother, the accused and the deceased returned home and after 2/3 days, she committed suicide. All the PWs categorically stated that the deceased did not die instantly and on next day she died in hospital. The post-mortem report also supported that she died due to ischemic cerebral damage resulting from hanging.

23. Section 304-B IPC read with section 113-B of the Evidence Act shows that there must be material to show that soon before her death,

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the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and in that case presumption operates. As observed earlier, in this case, the cruelty meted to the victim is too remote. In such circumstances the evidence of PWs particularly the admission of the parents coupled with the post-mortem report, the possibility of committing suicide for the incident of suspecting the accused with victim's brother's wife for which she was scolded by her mother, cannot be ruled out.

24. Further, as per evidence of the mother of the deceased, at the time of incident, the parents of the accused was cleaning jute in the pond of their premises and as per version of the father of the accused, the accused was sitting on a chair outside the home at that time. There is no iota of evidence that at the time of incident accused was within his house.

25. From the reasons aforementioned, I am of the opinion that the prosecution failed to prove its case beyond all reasonable doubt and the accused is entitled to benefit of doubt. Accordingly, accused Ali Hussain is acquitted on benefit of doubt and set him at liberty forthwith. His bail bond shall remain in force till next six months.

26. Given under my hand and the seal of this court on this 11th day of **April, 2017**.

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(I. Barman)
Sessions Judge,
Bongaigaon.

Dictated and corrected by me,

(I. Barman)
Sessions Judge,
Bongaigaon.

APPENDIX

Prosecution witness:

PW 1 – Jeherual Islam

PW 2 – Jaheda Bibi (mother-in-law of the victim/deceased)

PW 3 – Dr. Puspedu Das (IO)

PW 4 – Nur Hussain (father of the victim/deceased)

PW 5 – Sahatan Bibi @ Sahatan Nesa (mother of the victim/deceased)

PW 6 – Sahara Bibi

PW 7 – Manjuwara Khatun

PW 8 – Moleha Bewa

PW 9 – S.I Somarjyoti Ray (IO)

PW 10 – S.I Ajit Kr. Ray (IO)

Defence Witness:

Nil.

Documents exhibited by Prosecution:

Ext-1 Post-mortem report.

Ext-2 Ejahar.

Ext-3 Inquest report U/S 176 CrPC.

Ext-4 Ejahar.

Ext-5 Sketch map.

Ext-6 Charge-sheet.

Materials exhibited by Prosecution:

Nil.

Defence Exhibit:

Nil

(I. Barman)
Sessions Judge,
Bongaigaon

