

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

Sessions Case No. 127 (MCR)/2013.

U/S 302/201 IPC

State

Vs.

1. Tota Miah,
2. Siraj Uddin,
3. Ajad Ali,
4. Askar Ali,
5. Ainal Haque,
6. Abdul Hussain,
7. Sunari Khatun,
8. Ajahar Ali,
9. Asab Uddin,
10. Sanowar Hussain,
11. Jahir Ali

.....Accused.

***PRESENT : Smt. M. Nandi,
Sessions Judge,
Bongaigaon.***

***ADVOCATES APPEARED : Sri A. K. Nath, Public Prosecutor
for the State.***

*Sri M. Rahman, Advocate
for the accused.*

Date of Argument : 04.02.2015

Date of Judgment : 18.02.2015

JUDGMENT AND ORDER

1. The prosecution case, in brief, is that the informant Bairan Ali lodged an ejahar before the O.C. Mererchar Police Station stating inter-alia that the accused Asabuddin got married to his sister

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Asma Khatun about before one year of the incident. On 24.07.2012, the accused Asabuddin with connivance of other accused, namely, Tota Miah, Siraj Ali, Ainal Haque, Sar Alom, Abul Hussain, Jahar Ali, Ajad Ali, Sunari Khatun, Askar Ali started to torture his sister both physically as well as mentally. On 29.07.2012 the dead body of his sister Asma and her daughter Momtaj Khatun, aged about 3 years were found in the kitchen of the accused.

2. On receipt of the ejahar, police registered a case and after completion of investigation submitted charge sheet against the aforesaid accused persons. During trial all the accused persons put their appearance before the court. Except accused Asabuddin, other accused persons were enlarged on bail. Charge was framed U/S 302/201 IPC which was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. In this case, prosecution examined 10 witnesses and the defence examined none. The plea of the defence is the plea of denial.

4. **Points for determination:**

1. *Whether the accused persons on 29.07.2012 at night at Santoshpur Part-II under Mererchar P.S. have committed murder by causing the death of Asma Khatun and her daughter Momtaj Khatun and thereby committed an offence U/S 302 IPC !*

2. *Whether the accused persons on same date, time and*

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place knowing that they have committed the offence of murder punishable with death has been committed, did cause certain evidence of the said offence to disappear, kept concealed the dead body folding with mattress in the kitchen, with the intention of screening offender from legal punishment and thereby committed an offence U/S 201 IPC !

DECISION AND REASONS THEREOF

5. To arrive at just decision of the case, let me consider the evidence of the witnesses.

6. PW 1 is the informant Bairan Ali. He deposed in his evidence that his sister Asma Khatun got married to the accused Asabuddin and after their marriage, his sister led conjugal life with the accused Asabuddin in his house. Before her marriage with Asabuddin, his sister Asma got married to one Maijuddin and out of their conjugal relationship, one female child, Momtaj was born. She was three years old. During her conjugal life with Maijuddin, his sister had love affairs with the accused Asabuddin and subsequently, his sister left the house of her first husband, Maijuddin and started to live with the accused Asabuddin. Her daughter Momtaj also came along with her in the house of Asabuddin. At first the relationship between Asma and Asabuddin was cordial. After sometimes some misunderstanding arose between them and started to quarrel each other. He came to know from his elder sister Hamida that Asabuddin started to torture Asma. On receipt of the

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information, Hamida asked Asabuddin to take her to the doctor, but Asabuddin asked them to take his wife Asma on the next day. On the next day morning, Hamida went to the house of accused Asabuddin but did not find anybody in the house. Only the kitchen was opened. She entered into the kitchen and found the dead body of Asma and Momtaj, which were covered with wooden sticks. Having heard hue and cry, some neighbouring people came to the spot. Jahidul informed him over mobile phone. He came to the spot. He found injuries on the face of Asma and Momtaj. He informed police and on the same day, he lodged ejahar. The other accused persons are the relatives of Asabuddin. Later on, police conducted inquest on the dead body of Asma in his presence and he put his signature in the inquest report vide Ext-2(1). At the time of incident, his sister Asma was carrying 8 months pregnancy.

In his cross-examination, PW 1 replied that before marrying his sister, accused Asabuddin got married to one Majeda Khatun and led conjugal life with her for 5/6 years and they have two children. After that some relationship developed between his sister and Asabuddin and Asabuddin brought his sister to his house. But there was no divorce between his sister with her earlier husband. After arrival of his sister to the house of Asabuddin, his first wife Majeda left his house along with her children. Asma and Asabuddin led conjugal life peacefully for one year. Asma did not tell him anything in respect of torture caused by the accused Asabuddin towards her.

7. PW 2 is Hawa Khatun. She deposed in her evidence that the deceased Asma got married to the accused Asabuddin and after

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their marriage, they led conjugal life. On receipt of the information regarding her death, he went to the house of Asabuddin and found the dead body of Asma and her daughter Momtaj in the kitchen.

In her cross-examination, PW 2 replied that she could not say how Asma and Momtaj died.

8. PW 3 is Hamida Khatun, who is the sister of the deceased and the informant as well. She deposed in her evidence that her sister Asma Khatun got married to the accused Asabuddin. Earlier the marriage of her sister Asma was held with one Maijuddin and one female child was born out of their conjugal relationship. Later on, some relationship developed between Asabuddin and her sister Asma and she left the house of her first husband and went to the house of accused Asabuddin along with her daughter Momtaj. The first wife of Asabuddin used to quarrel with Asma for which Asabuddin started to torture Asma. When she visited the house of Asabuddin, she had noticed some injuries on the body of Asma and asked Asabuddin to treat her sister by a doctor. Then Asabuddin told her that she would take Asma on the next day and she also stated that she would accompany them to doctor. On the next day morning at about 9 AM, she went to the house of the accused and did not find anybody in the house. When she entered into the kitchen, she found the dead body of Momtaj and Asma. Their neck were surrounded with rope and she had noticed some injuries on their bodies. When she raised alarm, some people of their village came. She informed Bairan Ali about the incident and he came along with police.

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In her cross-examination, PW 3 replied that she could not say whether Asma gave any Talaq to her first husband Maijuddin. She also did not say whether the relatives of the first wife of Asabuddin abused her sister Asma after her marriage with the accused Asabuddin. She was not present when the incident took place.

9. PW 4 is Sanjab Ali. He deposed in his evidence that the occurrence took place about one and half years back. The sister of Bairan Ali got married to the accused Asabuddin and after their marriage, they led conjugal life. They have one daughter. They stayed in the house of Asabuddin. Both the sister of Bairan Ali and her daughter were found dead in the house of Asabuddin, but he did not go there to see them.

10. PW 5 is Jahirul Islam. He deposed in his evidence that the incident occurred about one and half years back. Before marrying Asabuddin, the deceased Asma got married to another person and one daughter was born from the side of her first husband. At the time of incident, Asma was carrying pregnancy. Before seven days of the incident at about 7/7.30 AM, he along with his brother Mofidul Islam and Sahidul while went out for cutting grass, he found a big crowd in front of the house of accused Asabuddin. He found Ajad Ali, Jahir Ali sitting on the spot. On being asked, they stated that Asabuddin assaulted his wife. He asked them to treat the wife of Asabuddin by a doctor. After 5/6 days, he came to know that Asabuddin committed murder of his wife. After one week police officer came to his house and asked him to accompany to the house of Asabuddin and accordingly, he went there. The people were examined by police.

In his cross-examination, PW 5 replied that he could not say who killed Asma. He was not present at that time.

11. PW 6 Amir Hamja @ Hussain and PW 8 Ainuddin deposed in their evidence that the informant Bairan Ali is their brother-in-law. His sister Asma got married to the accused Asabuddin and after their marriage, they led conjugal life. Before marriage with Asabuddin, Asma got married to another person and one child was born from the side of first husband of Asma. When Asma came to the house of Asabuddin, she also brought her daughter Momtaj along with her. The first wife of Asabuddin also stayed together. On the date of incident, a big crowd gathered in front of the house of Asabuddin. They also went there and found the dead body of Asam and her daughter inside the kitchen. They also noticed some injuries on the dead body. Their necks were also surrounded with rope. Asabuddin was not present at that time. Police came and took the dead bodies from the spot.

12. From the evidence of the aforesaid witnesses, it is seen that the deceased Asma is the second wife of the accused Asabuddin. Earlier deceased Asma also got married to one Maijuddin and out of their conjugal relationship, one female child was born. During her conjugal life with Maijuddin, some relationship developed with accused Asabuddin and subsequently, she has been eloped with the accused Asabuddin and she was brought to the house of Asabuddin along with her daughter Momtaj and started to lead conjugal life in his house.

13. According to PW 1 and 3, who are the brother and

sister of the deceased Asma, after marriage, their relationship was cordial for one year. After that some misunderstanding arose. They started to quarrel with each other and Asabuddin also started to torture Asma. PW 3 stated that the first wife of Asabuddin used to quarrel with Asma for which Asabuddin used to beat her. According to Bairan Ali (PW 1), he came to know about the torture from his sister Hamida, but Hamida stated that he came to know from Bairan Ali that as the first wife of Asabuddin used to quarrel with Asma, she has been tortured by the accused Asabuddin. So, apparently they did not have any direct knowledge regarding the relationship between Asma and the accused Asabuddin. But it is not in dispute that the dead body of Asma and her daughter Momtaj were found inside the kitchen, which were kept concealed inside the kitchen in the house of Asabuddin. The other witnesses also stated that on receipt of the information, they went to the house of accused Asabuddin and found the dead body of Asma Khatun and her daughter Momtaj inside the kitchen room.

14. The inquest of both the deceased were done by the Executive Magistrate, Abhijit Singha. He was examined in the case as PW 7. He deposed in his evidence that on 29.07.2012 he was working as Circle Officer, Srijangram Revenue Circle. On that day as per direction of S.D.O. (Civil), North Salmara, Abhayapuri, he had conducted inquest on the dead body of Asma Khatun, aged about 22 years, W/O Asabuddin in connection with Mererchar P.S. Case No. 80/2012 identified by Bairan Ali and found as follows:-

The dead body was lying face upward at Abhayapuri

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P.S. campus. Built – Medium. Height was around 5'2". Complexion was swarthy. Hair – black and long. Eyes were half closed. The deceased was wearing white floral colour saree. There was cut mark on the head. Right side of the face was smashed. There was slight cut mark on the chest. Right hand was swollen and bears black mark. There was cut mark on the left leg. The inquest was done at Abhayapuri P.S. campus. Ext-2 is the inquest report of Asma Khatun and Ext-2(2) is his signature.

On the same day, he had also conducted inquest on the dead body of Mamata Khatun, aged about 3 years, on same police requisition and found as follows:

The dead body was lying face upward. Built – medium. Height – 3'4" approximate. Complexion was swarthy. Hair – black and short. Eyes were half closed. The deceased was in naked position. Right side of the face was smashed. The inquest was done at Abhayapuri P.S. campus.

15. After completion of inquest, the dead body of the deceased were taken to Bongaigaon Civil Hospital wherein their postmortem examination was done by Dr. Shalini Bhasin, who was examined in the case as PW 10. She deposed in her evidence that on 29.07.2012 she was working as Medical & Health Officer-1 at Bongaigaon Civil Hospital. On that day at about 4.30 PM she had conducted postmortem examination on the dead body of Asma Khatun and found as follows:-

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EXTERNAL APPEARANCE:

A thin built, stout, starved, pregnant woman of approximate 7 months pregnancy examined. Non-decomposed body.

Face was smashed on the right side, cut injury on right side of forehead.

Multiple bruises present over body on both arms, legs and abdominal wall.

Strangulation mark seen on the neck. A thin plastic rope found around the neck.

Echymosis present over the chest wall. Abrasion was found over chest wall.

On examination, she was pregnant approximately 7 months with fetus inside the uterus.

Fracture of right exidle zygomatic process and right side of mandible.

Scalp, skull, vertebrae – Intact & congested. Membrane – Intact and congested. Brain and spinal cord – Congestion seen in brain peripheral tissue.

Walis, ribs and cartilages – Congested and echymosis present over the chest wall. Abrasion present over chest wall clearly and profusely. Pleurae – Congested and intact. Larynx and trachea, right lung, left lung, pericardium, heart and vessels – Intact & congested.

Walls – Intact and pregnancy of approximate 7 months in uterus fetus found. Peritoneum – Intact. Mouth, pharynx, oesophagus – Frothing seen in mouth. Stomach and its contents – Intact and congested and contains small amount of undigested food material. Small intestine

and its contents – Intact and contains small amount of partially digested food material. Large intestine and its contents – Intact and contains faecal matters. Liver, spleen, kidneys – Intact and congested. Bladder – contains small amount of urine. Organs of generation, external and internal – Intact.

Doctor opined that the cause of death was due to asphyxia following strangulation which is ante mortem in nature.

On the same date at about 5 PM, she had also conducted postmortem examination on the dead body of Momtaz Khatun and found as follows:-

A fresh non-decomposed, medium built, swarthy complexion of approximate 3' 4" height of three years age.

Multiple abrasion and bruises on face, legs, hands seen.

Strangulation mark seen on the neck.

Frothing was seen inside the oral cavity.

Right side of the face was smashed.

Fracture of right zygomatic and maxilla bone seen.

Intra cerebral bleeding was seen.

Scalp, skull, vertebrae – Intact. Membrane – Intact and congested. Brain and spinal cord – Intact and congested. Intracerebral bleeding seen.

Walis, ribs and cartilages – Congested and bruised. Pleurae, Larynx and trachea, right lung, left lung, pericardium, heart and

vessels – Congested.

Walls – Intact and congested. Peritoneum – Intact. Mouth, pharynx, oesophagus – Frothing seen inside the oral cavity. Stomach and its contents – Congested and contains small amount of undigested food material. Small intestine and its contents – Congested and contains small amount of semi digested food material. Large intestine and its contents – Congested and contains faecal matters. Liver, spleen, kidneys – Intact and congested. Bladder – Intact, contains small amount of urine. Organs of generation, external and internal – Intact.

Doctor opined that the cause of death was due to asphyxia following strangulation which is ante mortem in nature.

16. In the case in hand, it is an admitted fact that there is no eyewitness to the incident. The prosecution case mostly rests on circumstantial evidence. The cardinal principles of criminal Jurisprudence regarding the case depending circumstantial evidence is that there must be a chain of events so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. It must be such, from which it could be inferred that in all human probability the act must have been done by the accused. Circumstantial evidence admits of no other rational explanation than that of the guilt of the accused. The link in the chain of events must be complete and it can be unequivocally point to the guilt of the accused and exclude any hypothesis consistent with the innocence of the accused.

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17. Learned counsel for the accused has submitted that there is no evidence worth the name to connect the accused with the crime and the circumstances highlighted by the prosecution did not lead unerringly to the guilt of the accused. It is further stated by the learned counsel for the accused that the prosecution has failed to prove beyond reasonable doubt that it is the accused who caused the death of Asma Khatun and her daughter Momtaj and the burden lies upon the prosecution to prove beyond reasonable doubt by adducing evidence before the Court the guilt of the accused.

18. In support of his submission, learned counsel placed reliance on some case laws:

- (i) 2014 (2) GLT 579
(Ataur Rehman Mazarbhuyan @ Atabur v. State of Assam).
- (ii) (2010) 3 Supreme Court Cases (Cri) 1179
(Babu v. State of Kerala)
- (iii) 2013 STPL(Web) 283 SC
(Sunil Kundu & Ors. v. State of Jharkhand).
- (iv) 2011 CRI. L. J. 817
(Deoraj Goala & Anr. v. The State of Assam).

19. On the other hand, learned Public Prosecutor for the State submitted that the relation between the accused and his wife deceased Asma was not cordial. The dead body of the deceased Asma and her daughter Momtaj were found inside the kitchen room in the house of

the accused Asabuddin and the accused never stated that he was not present in his house during the time of incident and, therefore, the onus was upon the accused, who had personal knowledge of the incident as to under what circumstances his wife Asma suffered homicidal death and in the absence of the explanation offered by the accused as to the circumstances under which death of his wife took place, the said circumstances alone is sufficient to bring home the guilt of the accused.

20. It has been consistently laid down by the Hon'ble Supreme Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person as observed by the Hon'ble Supreme Court in *Hukam Singh v. State of Rajasthan* (AIR 1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Erabhadrapa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhbasi and Ors.* (AIR 1958 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621)), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any

reasonable doubt.

21. In the case of *C. Chenga Reddy & Ors. v. State of A.P.*, (1996) 10 SCC 193 wherein it has been observed thus:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should not be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

22. In *Padala Veera Reddy v. State of A.P. & Ors.* (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain

conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

23. In the case of *State of U.P. v. Ashok Kumar Srivastava*, (1992 Cr.L.J. 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

24. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra* (AIR 1984 SC 1622). Therein while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are; (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(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 circumstance 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.

25. In the case in hand, it is not much in dispute that Asma Khatun wife of the accused Asabuddin and her daughter Momtaj died an unnatural death on the fateful day. Now the question is who is responsible for the death of the deceased Asma and her daughter Momtaj. There is no suggestion put to the postmortem doctor that the injury could have been caused in an attempt to commit suicide. The postmortem doctor had noticed that the deceased Asma was carrying seven months of foetus in her uterus. There is apparently no material brought on record nor it is suggested why the deceased Asma committed suicide along with her daughter Momtaj. From the evidence of PW 1 and 3, it appears that the day before the incident, Hamida (PW 3) visited the house of the accused Asabuddin and found Asma in his house and she noticed some injuries on her person and she asked the accused Asabuddin to take her sister Asma to the doctor for treatment and Asabuddin stated that he would take his wife Asma to the doctor on the next day. On the next day morning when

she visited the house of the accused Asabuddin, she found the house under lock and key and nobody was seen in the house. When she entered into the kitchen, she found the dead body of Asma and her daughter Momtaj inside the kitchen. Their bodies were covered with mattress and wooden sticks. She also noticed rope on the neck of both the deceased. Though accused stated that he was not present during the incident in his house when his statement was recorded U/S 313 CrPC, but it was not suggested for the accused that both the deceased have been killed by some unknown miscreants. There was no third person residing with the accused Asabuddin in their house. According to the medical officer, death of both the deceased was due to asphyxia following strangulation. PW 10, the medical officer proved the postmortem reports of Asma Khatun and Momtaj as Ext-7 & 8 respectively and doctor was not cross-examined about these facts and her opinion. As per postmortem report, rope was surrounding the neck of both the deceased. This proves that the deceased Asma and Momtaj had died an unnatural and non-accidental death and death was caused by strangulation. As opined by the postmortem doctor (PW 10) some undigested food was found on the dead body of both the deceased which showed that probably food was taken not more than one hour before their death. It also appears from the evidence on record that the deceased Asma was married to the accused Asabuddin about one year before the date of incident. Admittedly, after the marriage, the deceased Asma along with her daughter Momtaj came to reside with the accused in his house. Plea of alibi was taken by the accused. But not proved. On the date of incident the accused was very much present in his house as no plea was taken by the accused earlier that

he remained absent on the date of incident in his house. As I have already stated that the prosecution has also established the fact that the dead body of both the deceased Asma Khatun and her daughter Momtaj were found inside the kitchen of the house of the accused Asabuddin.

26. The next circumstances noticed is that the accused was alone with his wife Asma and her daughter on the date of incident and nobody else was present in the house and there is no explanation given by the accused as to how his wife Asma and her daughter Momtaj died and their dead bodies were found inside the kitchen of his house.

27. In the case of *Trimukh Maroti Kirkan v. State of Maharashtra* (AIR 2006 SCW 5300), wherein the Hon'ble Supreme Court has held that in view of the provision of Section 106 of the Evidence Act, when no explanation is given by the accused as to how his wife received injuries, the same would point towards the guilt of the accused.

28. In 1999 Supreme Court Cases (Cri) 17 (*State of Rajasthan v. Mahavir @ Mahavir Prasad*), wherein the Hon'ble Supreme Court observed that circumstances establishing guilt of the accused i.e. the death of a married woman caused by extensive burn injuries, husband and wife stayed together and none else residing with them, broken piece of bangle found in the verandah, dead body found lying in the centre of the Cot, delay in sending information of the incident to the father of the deceased, false plea of alibi taken by the accused and in the said

circumstances of the case, chain of circumstances is complete and High Court was justified in reversing the order of acquittal passed by the trial Court in view of the provisions of Sections 11 and 106 of the Evidence Act and Section 302 of the Penal Code.

29. In the present case, it is seen that the deceased Asma was married to the accused and after their marriage, she started to live with the accused along with her daughter Momtaj in the house of the accused Asabuddin. No other reason is shown nor suggested nor any material brought on record that the deceased would have committed suicide. There is no suggestion to the postmortem doctor also that the injury noticed had been caused in an attempt to commit suicide. According to postmortem doctor, the deceased Asma was carrying seven months pregnancy at the time of her examination. This would not have prompted her to end her life. The deceased was found covered with a mattress and wooden sticks. The witnesses examined in the case also supported the fact that the deceased was lying dead covered with mattress and wooden sticks. If the deceased had committed suicide, she would not have covered herself and her daughter with mattress and wooden sticks and the position the two dead bodies were found inside the kitchen. Obviously they had been so covered by someone else and he would be no other than the accused Asabuddin, who was present on the date of incident in his house along with both the deceased. This circumstance alone will eliminate the possibility of the death being in any other means except the homicidal death.

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30. In the case in hand, firstly, there is no material on the record to show why the deceased would have committed suicide. The accused was present at the time of occurrence and if it was a case of suicide or death by any other person, there is no material brought on the record to show that the accused had taken any steps either to prevent her from so doing or get them medical aid immediately. As a normal human conduct on the death of a near kith and kin, one laments and would raise hue and cry and even take assistance and counsel from the neighbours. Instead of doing so, the accused had slipped away and remained absconding for several days. This conduct certainly destroys presumptions of innocence on his part.

31. In view of the above discussion, I am of the opinion that the prosecution has clearly established the fact that the accused Asabuddin had committed murder of his wife Asma and her daughter Momtaj by throttling their necks and caused the evidence of the commission of that offence to disappear by putting the dead body of both the deceased keeping inside the kitchen covering with mattress and wooden sticks with an intention to screen himself from legal punishment. Hence, the accused Asabuddin is found guilty U/S 302/201 IPC. Accordingly, he is convicted thereunder.

32. No case is proved against the other accused persons. Hence, they are acquitted.

33. Accused Asabuddin is heard on the point of sentence.

He has submitted that his first wife has two minor children. They are at present staying in the house of her father-in-law as he is in jail for a long time. He has also parents and he is the only earning member of his family. Due to his detention in jail hazot, they are facing great hardship and prayed for leniency.

O R D E R

I convict the accused Asabuddin U/S 302/201 IPC and sentence him to R.I. for life and also to pay a fine of Rs. 2,000/- (Rupees Two Thousand) i/d, R.I. for one year for the offence U/S 302 IPC and R.I. for three years and also to pay a fine of Rs. 1,000/- (Rupees One Thousand) i/d, R.I. for six months for the offence U/S 201 IPC. Both the sentences shall run concurrently.

The period which he detained in custody shall be set off from the period of imprisonment imposed on him.

No case is proved against the other accused persons. Hence, they are acquitted and set at liberty.

Copy of Judgment be furnished to the accused free of cost.

Copy of the Judgment and Order be sent to Deputy Commissioner, Bongaigaon as per provision U/S 365 CrPC.

LCR be transmitted back to the learned court below

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with a copy of this judgment and order.

Given under my hand and the seal of the court on this
18th day of ***February, 2015.***

(M. Nandi)
Sessions Judge,
Bongaigaon.

Dictated and corrected by me,

(M. Nandi)
Sessions Judge,
Bongaigaon.

A N N E X U R E

Prosecution witness:

PW 1 – Bairan Ali
PW 2 – Hawa Khatun
PW 3 – Hamida Khatun
PW 4 – Sanjab Ali
PW 5 – Jahirul Islam
PW 6 – Amir Hamja @ Hussain
PW 7 – Abhijit Singha
PW 8 – Ainuddin
PW 9 – Darbesh Ali Ahmed
PW10 – Dr. Shalini Bhasin (M.O.)

Exhibit (Prosecution):

Ext-1 Ejahar.
Ext-2 & 3 Inquest report.
Ext-4 Seizure list.
Ext-5 Sketch map.
Ext-6 Charge sheet.
Ext-7 & 8 Postmortem reports.

Material Exhibit (Prosecution):

M. Ext-1 Plastic rope (red in colour).

Defence Witness:

Nil.

Defence Exhibit:

Nil.

(M. Nandi)
Sessions Judge,
Bongaigaon
