

Sessions Case No. 114 (B)/2011.

U/S 306 IPC

State

Vs

Sri Sanjoy SarkarAccused

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

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

*Sri N.K. Ghose, Advocate
for the accused.*

Date of Argument : 28.11.2014.

Date of Judgment : 12.12.2014.

JUDGMENT AND ORDER

1. This case has been instituted on a complaint petition filed by the complainant Rabindra Das in the Court of learned SDJM, Bijni but the complaint petition was forwarded to O/C, Bijni Police Station for investigation and to submit report in final form.

2. It is stated in the complaint petition that the daughter of the complainant, Kalpana Das got married to the accused Sanjoy Sarkar by following social custom of Hindu marriage. After their marriage, his daughter started to lead conjugal life in the house of the accused, but after the marriage his daughter complained that she has been tortured by her husband and his family members on demand of Rs. 50,000/- and asked her to bring such money from her parents. In spite of such physical torture, she continued her conjugal life and after that she was carrying pregnancy of eight months. But her pregnancy has been terminated by administering medicine by the accused person. On 03.03.2010 the accused, her husband and the other accused persons

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named in the complaint petition Sudhindra Sarkar and Sangram Sarkar assaulted his daughter and after that set fire on her body for which she died.

3. On receipt of the complaint petition from the Court, a case was registered by O/C, Bijni P.S. and after completion of investigation submitted charge sheet against the accused Sanjoy Sarkar U/S 306 IPC. As the offence is exclusively triable by the Court of Sessions, the case is committed to this Court. The other accused persons named in the complaint petition were not sent up for trial. During trial all the accused person put his appearance before the court and he was enlarged on bail. Charge was framed U/S 306 IPC which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4.. In this case, prosecution examined 13 witnesses. Defence examined none. The plea of the defence is the plea of denial.

5. I have heard argument advanced by learned counsel of both sides.

6. **Point for determination:**

1. *Whether on 03.03.2010 Kalpana Das @ Sarkar committed suicide and the accused had abetted the commission of suicide by demanding illegal money and by causing miscarriage and thereby committed an offence U/S 306 IPC !*

DECISION AND REASONS THEREOF

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

8. PW 1 is the informant Rabindra Das. He deposed in his evidence that in the year 2007 on 15th day of Bohag, the marriage between his daughter and the accused was held by following social custom of Hindu marriage. After their marriage, his daughter led conjugal life with the accused

for six months peacefully. After that the accused started to torture his daughter on demand of Rs. 50,000/- and other golden ornaments. It was reported by his daughter Kalpana. Thereafter he gave one golden bangle to his daughter. After some days he sent his cousin Sanju Das alongwith his son to the house of the accused to bring his daughter. But the accused stated that if money is paid, he will take Kalpana to his house. After that sometimes he paid money to the accused. He met his daughter Kalpana and the accused in the marriage ceremony of his sister-in-law. On the next day, elder brother of the accused Madhab Sarkar came to his house and he was informed by Sangram that Kalpana was suffering from disease and she has been assaulted. On receipt of the information he became unconscious. When he regained his sense, he went to the house of the accused and found his daughter dead. Her face has been burnt. He suspected that the accused killed his daughter and thereafter set fire on her body. At the time of marriage of his daughter, she gave ornaments, furniture and cash of Rs. 25,000/-. At the time of death of his daughter, she was carrying pregnancy.

In his cross-examination, PW 1 replied that he did not mention in his complaint petition that he paid Rs. 25,000/- cash to the accused and gave furniture, golden ornaments at the time of marriage of his daughter. He did not file any case against the accused regarding demand of money and other dowry articles. He came to know from the neighbours of the accused that after coming from marriage party, there was an altercation between the accused and his wife, but he did not know the name of that persons.

9. PW 2 is Gangadhar Mallick. He deposed in his evidence that the informant is his son-in-law and his daughter Kalpana got married to the accused. The occurrence took place in the year 2010. After her marriage, Kalpana sometimes visited his house and complained that the accused used to torture her on demand of money and her father sometimes paid some money to his son-in-law. Before 20 days of the incident Kalpana told him that her husband demanded Rs. 20,000/- to purchase a cultivable land. Out of Rs. 20,000/- her father paid some money to the accused. On 02.03.2010 the accused and the deceased were in the house of marriage ceremony at Bijni. On

the next day, accused Sanjoy and Kalpana returned back home. After that one cousin of the accused informed him that Kalpana died. On receipt of the information he went to the house of the accused and found the dead body of Kalpana lying on the floor. The lower portion of her body and the wearing clothes were burnt.

In his cross-examination, PW 2 replied that on 02.03.2010 both the accused and Kalpana came to the marriage ceremony and spent the said night in his house. On the next day, they left his house, but he could not say how Kalpana died.

10. PW 3 is Nirmal Das. He deposed in his evidence that the deceased Kalpana got married to the accused about four years back. After that they lived together as husband and wife, but he came to know that they used to quarrel each other as Sanjoy demanded money for cultivation. As money was not paid, there was altercation between them. On receipt of the information regarding the death of Kalpana, he went to the house of the accused and he came to know that the accused set fire on the body of Kalpana. He had noticed some burn injury on the dead body of Kalpana.

In his cross-examination, PW 3 replied that Sanjoy and Kalpana led conjugal life peacefully. He came to know from the informant that the accused Sanjoy demanded money from Kalpana, but he could not say why the accused demanded money from his wife.

11. PW 4 is Ajoy Mallick. He deposed in his evidence that his cousin Kalpana got married to the accused about two and half years of the incident. After 6/7 months of their marriage, the accused demanded one mobile and the father of Kalpana gave one mobile to his son-in-law. After sometimes Rs. 10,000/- was demanded by the accused which was also paid by the informant. After that the accused again demanded money and the informant paid Rs. 5,000/-. Sometimes he visited the house of Kalpana and then Kalpana complained that her husband used to demand money from her. The deceased and the accused before the date of incident attended one marriage ceremony. On the next day, they returned back to his house. The two sisters of Kalpana

went to the house of the accused and they found the dead body of Kalpana in the house of the accused and the accused stated that Kalpana set fire on her body. The two sisters of Kalpana returned back home and informed them about the incident. Then he and other family members went to the house of Sanjoy and found Kalpana dead inside the house of the accused.

In his cross-examination, PW 4 replied that he did not state before the police that on being demanded by the accused, Rs. 10,000/- and Rs. 5,000/- was paid by the informant. He stated before the police that he came to know that Kalpana committed suicide by pouring kerosene on her body.

12. PW 6 is Bela Rani Arjya. She deposed in her evidence that she is a neighbour of the accused. On the next day of the marriage, she came to know that Kalpana set fire on her body. Before three years of the incident, there marriage was held. The relation between the accused and the deceased were cordial.

13. PW 7 is Mona Sarkar and PW 8 is Mina Sarkar, who are the relatives of the accused deposed before the Court that the accused and the deceased are husband and wife. After their marriage, they led conjugal life for three years. After that Kalpana set fire on her body. At that time accused was not present in his house. They could not say why the deceased set fire on her body.

PW 7 & 8 replied in their cross-examination that the relation between the accused and the deceased were cordial.

14. On perusal of the evidence of aforesaid witnesses, it is seen that there is no eyewitness to the incident. The allegation against the accused is that he used to torture his wife on demand of money and according to the informant, the accused killed his daughter and then get her ablazed. But there is contradiction in the statement of the witnesses regarding payment of money. PW 1 stated that the accused demanded Rs. 50,000/- from his daughter and also complained her that the quality of the golden ornaments given at the time of her marriage is not good and accordingly the informant gave one golden

bangle to his daughter. Though the informant lodged ejahar alleging torture towards his daughter by the accused, but subsequently he made an affidavit vide Ext-'A' wherein he stated that his daughter Kalpana got married to the accused about three years back and after their marriage, they lived together as husband and wife. On 03.03.2010 in absence of any person in the house of his son-in-law his daughter set fire on her body. He knew that the accused or his family members never tortured his daughter and they were not involved on the death of his daughter.

15. Regarding demand of money, PW 2 stated that his son-in-law i.e. the accused demanded Rs. 20,000/- from Kalpana to cultivate his land and out of Rs. 20,000/- some money was paid by the informant. PW 4 stated that the accused demanded one mobile phone and Rs. 10,000/- from Kalpana and the said mobile phone and money was paid by the informant and again on demand of money, the informant also paid Rs. 5,000/- to the accused.

16. PW 5 is Dr. Sushma Brahma. She deposed in her evidence that on 04.03.2010 she was working as M. & H.O. at RNB Civil Hospital, Kokrajhar. On that day at about 11.30 am she performed postmortem examination on the dead body of Kalpana Sarkar vide Bijni P.S. UD Case No. 8/10 and found as follows:

The victim was without clothing and rigor mortis present. Flexion of both legs also detected and extrusion of left upper leg. Tongue is protruded and froth from both nostrils.

Whole thickness of skin lose with exposure of muscles on lower abdomen and on the right upper thigh.

Ribs and cartilage – healthy.

Pleurae, larynx and trachea, right lung and left lung are healthy.

Pericardium, heart and vessels – healthy.

Peritoneum, stomach, intestine healthy.

Mouth, pharynx – congested.

Liver, spleen, kidney, bladder, brain, spinal cord – healthy.

Doctor opined that the cause of death is due to multi-organ failure due to systemic inflammatory response syndrome following burn injury.

17. The learned counsel for the accused has submitted that there is no evidence at all that the accused subjected the deceased Kalpana Das to cruelty and there is also no evidence that the accused being the husband of the deceased abetted the commission of suicide of deceased Kalpana. It is further submitted that there is no evidence at all that the accused committed cruelty on the victim so as to raise presumption as to the abetment of suicide U/S 113 A of Evidence Act. In order to constitute an offence U/S 306 of IPC, it must be proved that there was abetment and the abetment must be for the commission of suicide. Learned counsel for the accused also contended that there is no evidence at all that the accused urged forward or provoked or encouraged his wife Kalpana to commit suicide. In order to establish offence U/S 306 IPC elements of abetment as mentioned in Section 107 of IPC must be fulfilled. It cannot be said that whenever a person responsible for such cruel acts had either the knowledge or intention that the person subjected to such cruelty would commit suicide. Something else is necessary to hold a person responsible for the acts of cruelty and torture in order to find him guilty U/S 306 of IPC. As there is no evidence at all that the accused did such acts or commit such cruel act either with the knowledge or intention that Kalpana who was subjected to such cruelty would commit suicide, the prosecution has failed to bring home the charge U/S 306 IPC against the accused and the accused may be acquitted.

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

- (i) I (2006) DMC 737 Calcutta High Court
(Noyal Barla v. State of West Bengal).

- (ii) I (2006) DMC 130 Rajasthan High Court
(Suresh Kumar @ Sushil v. State of Rajasthan & Anr.)
- (iii) 2004 Supreme Court Cases (Cri) Supp 420
(Sakharam and Another v. State of Maharashtra).
- (iv) 2013 (4) Gauhati Law Journal 650
(Kajal Datta @ Ujjal v. State of Tripura).

19. On the other hand, learned P.P. has contended that the deceased Kalpana Sarkar expired within three years of her marriage. Unless there was perpetrated torture on her why a newly married wife would commit suicide within three years of her marriage when women in India generally try to adjust in their in-laws house. In the instant case, presumption U/S 113 A of the Evidence Act can easily be drawn.

20. What are the requirements to establish a charge under Section 306 IPC, the law is clear that in order to establish a charge under Section 306 IPC, the elements must be fulfilled is laid down in the case of *Nihalbala Banerjee & Anr. v. The State* reported in 1989 CriLJ NOC 38 (Cal), wherein it was held that -

“In order to amount to abetment there must be means rea or community of intention. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. The mere fact that the deceased wife was treated by the accused husband and her mother-in-law with cruelty is not sufficient to prove that the accused abetted commission of suicide by the deceased. In the absence of proof of any direct or indirect acts incitement to the commission of suicide or a conspiracy or any act facilitating the commission of suicide it cannot be said that the accused were guilty of abetment to commission of suicide by the deceased merely because they treated the deceased with cruelty. The definition of abetment in Section 107 of the Penal Code includes not merely instigation which is the normal form of abetment but also conspiracy and intentional aiding. In order that there may be abetment, there must be either instigation or

intentional aiding or engaging in a conspiracy as laid down in this Section. The word 'instigate' literally means to goad or urge forward or to provoke, incite, urge or encourage to do an act, by usage now an evil act.”

21. In another case of *Padmabai v. State of M.P.* reported in 1987 CriLJ 1573, it was observed that -

“It is the essence of the crime of abetment of suicide that the abettor should be proved to have substantially assisted in the commission of the offence of suicide. Investigation, incitement, provocation, encouragement, insinuation, solicitation, which words connote different meanings are, no doubt, some of the acts, which may constitute an 'abetment' for commission of suicide. But all such acts or any of them have to be positive and potent in nature of such a degree that the direct result of such acts may be none other, but the commission of suicide. Stray domestic quarrels, perfunctory abuses by mother-in-law to her daughter-in-law in the Indian society, crude and uncultured behaviour by the in-laws or the husband towards his wife being mundane matters of normal occurrence in the traditional joint Hindu families, will not go to form and constitute 'abetment' unless these acts or conduct singly or cumulatively are found to be of such formidable and compelling nature as may lead to the commission of suicide or may lead to the commission of suicide may facilitate in a singular and prime manner, the commission of the same.”

22. I have already discussed the evidence of the witnesses as above. The allegation against the accused is that the accused demanded money during his conjugal life with the deceased, but there is no corroboration in the statement of the witnesses regarding demand of money by each of the witnesses. According to the complainant, the accused demanded Rs. 50,000/-. PW 2 stated that the accused demanded Rs. 20,000/- to cultivate the land and another witness PW 4 also stated that he came to know that the accused demanded Rs. 10,000/- which was paid by the informant to the accused and later on, he also paid Rs. 5,000/- to the accused person.

23. In a joint family of Indian society domestic quarrel between

a wife and her husband or in-laws, difference of opinion between the daughter-in-law and her mother-in-law or father-in-law, between wife and husband are natural and expected, but these circumstances are not sufficient so as to constitute abetment to commit suicide unless there is strong and cogent evidence that act or conduct of in-laws or husband either singly or cumulatively were of such formidable and compelling nature which lead to the commission of suicide. Stray domestic quarrels, perfunctory abuses by mother-in-law to daughter-in-law in Indian society is common and such incidence cannot be denied. There may be some indecent and uncultured behaviour by the in-laws or the husband towards the wife and these are normal incidence or occurrence in traditional joint Hindu family. Unfortunately in the instant case, I did not find any such evidence to show that the acts or conduct either singly or cumulatively of the accused was of such formidable and compelling nature which lead to the commission of suicide by deceased Kalpana.

24. The evidence which the prosecution could introduce before the Court was not sufficient to prove abetment by the accused in the commission of suicide by the deceased. There is no evidence of any act or conduct of accused to establish direct nexus or close in proximity prior to the suicide sufficient to establish abetment by the accused person. There is no evidence at all as well as circumstance to prove that the accused assisted in the commission of the offence of suicide by his active suggestion, solicitation, insinuation or encouragement. There is also no evidence that incitement, provocation, encouragement etc. were given by the accused and also such acts or any of them was positive in nature or of such a degree that the outcome of these acts was none other but commission of suicide. General allegations of torture by the husband, father-in-law, mother-in-law etc. on the married wife or torture or teasing the newly married wife demanding dowry, more ornaments, articles etc. may be elements of other offence, namely, under Section 498A of IPC, but such general allegations of torture is not sufficient to prove abetment by the accused in the commission of suicide by the deceased Kalpana Sarkar. The prosecution has failed to bring home the charge U/S 306 IPC against the accused beyond reasonable doubt. Hence, the accused is acquitted on benefit of

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doubt and set at liberty forthwith. His bail bond stands discharged.

25. LCR be transmitted back to the learned court below with a copy of this judgment and order.

Given under my hand and the seal of the court on this **12th** day of ***December, 2014.***

(M. Nandi)
Sessions Judge,
Bongaigaon.

Dictated and corrected by me,

(M. Nandi)
Sessions Judge,
Bongaigaon.

Sessions 114(B)/2011

12.12.2014

Accused person is present.

Judgment is prepared in separate sheets of paper,
delivered in the open Court and appended with the record.

As dictated,