

Rohim Uddin, Assam Vs. The State of Assam

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Court : Guwahati

Decided On : May-15-2014

Judge : B.P. Katakey & the Honourable Dr. (Mrs.) Justice Indira Shah

Appeal No. : CrL.A. No. 26 of 2013

Appellant : Rohim Uddin, Assam

Respondent : The State of Assam

Judgement :

(Oral), Katakey, J.

1. This appeal is directed against the judgment of conviction dated 21.12.2012 recorded by the learned Sessions Judge, Goalpara, in Sessions Case No.124/2007, convicting the appellant under Section 302 IPC and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for a further period of 1(one) year.

2. The prosecution story as revealed from the first information report lodged by Mustt. Amina Khatun (PW-1) as well as from the evidence of the prosecution witnesses is that on the night of 19.03.2007 the accused appellant, who was residing with his wife Almina Khatun (deceased), killed her and thereafter fled away with the gold and silver ornaments. The Officer-in-Charge of Rangasai Police Outpost based on the first information report (Ext.-1) lodged by Amina Khatun (PW-1) on 20.03.2007 alleging that when her daughter Almina Khatun (deceased)

and her husband Rohim Uddin (accused appellant) did not get up from bed till 7 O'clock on the morning of 20.03.2007, she as well as other members of the family opened the door and found Almina Khatun laying dead on her bed and also did not find her husband, who has fled away from the house with the gold and silver ornaments, G.D. Entry No.244 dated 20.03.2007 was registered in the Outpost, which was thereafter registered as Lakhipur P.S. Case No.33/2007 under Section 302/380 IPC. The police during investigation recorded the statements of the witnesses, who were acquainted with the facts and circumstances of the case under Section 161 Cr.P.C., conducted the inquest on the dead body and sent the same for post mortem examination. The Investigating Officer has also arrested the accused appellant. On completion of the investigation charge-sheet under Section 302 IPC was submitted against the accused appellant. Since the case was exclusively triable by the Court of Sessions, it was committed to the Court of the learned Sessions Judge, Goalpara, based on which Sessions Case No.124/2007 was registered and numbered. The learned Sessions Judge framed the charge against the accused appellant under Section 302 IPC, which when read over and explained to him, he pleaded not guilty and claimed to be tried. Hence the trial commenced.

3. During the course of trial the prosecution examined 8(eight) witnesses, namely, Mustt. Amina Khatun (PW-1), mother of the deceased, who lodged the first information report; Md. Abdul Monnaf (PW-2), the paternal uncle of the deceased; Md. Haren Ali (PW-3), the local Gaonbura; Md. Fulbar Rahman (PW-4), the brother of the deceased; Md. Abu Hanif Sheikh (PW-5), cousin brother of the deceased; Md. Bahar Uddin (PW-6), a co-villager; Dr. Deepak Kr. Sarma (PW-7), who conducted the autopsy on the dead body of the deceased and submitted the post mortem examination report (Ext.-4) and Sri Sankar Das (PW-8), the Investigating Officer. The witnesses were duly cross-examined by the defence. The statement of the accused under Section 313 Cr.P.C. was also recorded. The defence has also examined two witnesses, namely, the accused appellant himself as DW-1 and Sri Ainul Haque, a co-villager of the accused appellant as DW-2.

4. The learned Sessions Judge, Goalpara, upon appreciation of the evidence on record, passed the judgment of conviction as aforesaid. Hence the present

appeals.

5. We have heard Mr. H.R.A. Choudhury, learned Sr. counsel for the appellant and Mr. K.A. Mazumdar, learned Addl. Public Prosecutor appearing for the State of Assam.

6. Mr. Choudhury, learned Sr. counsel, referring to the deposition of the prosecution witnesses, has submitted that it is apparent therefrom that none of the prosecution witnesses has personally saw the occurrence and the case of the prosecution was based on the circumstantial evidence against the appellant. It has also been submitted that though the prosecution has tried to prove that the accused appellant was the Ghar Jamai and was staying with his wife at his father-in-laws house on the night of occurrence, the evidence adduced by the prosecution in support of such plea is not believable and trustworthy, more so, when the defence by examining the accused himself as DW-1 and also examining a co-villager, namely, the DW-2, could prove that the accused appellant was never a Ghar Jamai i.e. never stayed with his wife in the father-in-laws house and on the night of occurrence he was not in the father-in-laws house but in his own house at Rakhalubi, which is 3 km away from the place of occurrence. The learned Sr. counsel, therefore, submits that the judgment of conviction recorded by the learned Sessions Judge needs interference and hence it may be set aside.

7. The learned Addl. Public Prosecutor, on the other hand, referring to the deposition of the prosecution witnesses, more particularly of PWs-1 to 6, has submitted that all these witnesses have stated that the accused appellant used to stay in the father-in-laws house with his wife and on the night of occurrence though he was sleeping with his wife but he was not found in the following morning, while his wife was found dead. It has also been submitted that the defence did not challenge the statements of those witnesses during cross-examination and even did not put any suggestion and hence the prosecution could prove that the accused appellant used to stay in the father-in-laws house with his wife and on the night of occurrence he was sleeping with his wife and in the following morning he was not found in the house while his wife was found dead in his room. The learned Addl. Public Prosecutor further submits that there being no

satisfactory explanation given by the accused about the cause of the death of his wife, the learned Sessions Judge has rightly convicted the accused appellant under Section 302 IPC.

8. Referring to the deposition of DW-2, it has also been submitted by the learned Addl. Public Prosecutor that this witness during cross-examination has admitted that he did not know as to whether the accused used to go and stay in the father-in-laws house with his wife and on the night of occurrence he was with his wife in the father-in-laws house, which according to the learned Addl. Public Prosecutor supports the prosecution case.

9. We have considered the submissions advanced by the learned counsel appearing for the parties and also perused the evidence adduced by the parties in the aforesaid Sessions Case, apart from the judgment of conviction recorded by the learned Sessions Judge.

10. The prosecution by examining Dr. Deepak Kr. Sarma (PW-7) could prove the injuries found on the body of the deceased Almina Khatun and also the cause of the death. This witness in his deposition has narrated that the following injuries were found on the person of the deceased:-

1). One bruise of size is about 1.5 cm x 1 cm seen over right lateral side of upper part of neck under the lower jaw.

2). Several scratches seen on left lateral side of neck obliquely downwards and upwards. The doctor has opined that the death was caused due to asphyxia due to manual strangulation which was antemortem and homicidal in nature. The defence did not cross-examine this witness relating to the injuries found on the body of the deceased and also the cause of the death, except putting the question that downward and outward fracture may be caused by hanging on rope, which suggest that the defence case was that the deceased committed suicide, which, however, could not be proved by the defence either cross-examining the prosecution witnesses or by leading any evidence.

11. We are, therefore, required to see as to whether the prosecution could bring home the charge under Section 302 IPC as against the accused appellant. PW-1, mother of the deceased, in her statement, in categorical term, has stated that on the night of occurrence the accused appellant and her daughter Almina Khatun were sleeping in their house and in the following morning since they did not wake up from bed, she opened the door and found the daughter lying dead on her bed and the accused appellant missing. This witness has not been cross-examined by the defence on such statement. Not even a suggestion was put to this witness by the defence in that regard. The version of PW-1 has been corroborated by PW-2 Abdul Monnaf, who has also stated that on the night of occurrence the deceased Almina Khatun and accused appellant were sleeping in their house and on the following morning though the accused appellant was not found in his house, Almina Khatun (deceased) was found dead on her bed. The defence has also not cross-examined this witness on this statement. PW-4, the brother of the deceased has also supported the version of PWs-1 and 2 in that regard, so also by PW-5. An independent witness, namely, PW-6 Bahar Uddin has also in his evidence stated that the accused appellant and the deceased Almina used to reside in the house of the father-in-law i.e. in the house of the informant Amina Khatun (PW-1). The defence also did not cross-examine this witness on this statement of PW-6. PW-5 Abu Hanif Sheikh, cousin brother of the deceased has also stated about the deceased and the accused appellant staying together in the accused appellants father-in-laws house. It also appears from the suggestion put to PW-4 by the defence during cross-examination that the accused appellant has admitted that he stayed in the father-in-laws house as the only plea which was taken by the accused appellant, as it appears from such suggestion that he was not available on the night of occurrence at the father-in-laws house, which, however, the accused appellant could not prove. The prosecution, therefore, could prove that the accused appellant used to stay in the father-in-laws house with his wife and on the night of occurrence though they were together sleeping in their house, on the following morning when they did not wake up, the witnesses forced open the door and found Almina dead on her bed and also the accused appellant missing with the ornaments.

12. The defence, though examined two witnesses, namely, DW-1, the accused himself and the DW-2 Ainul Haque, they could not prove that on the night of occurrence Rohim Uddin was not in the father-in-laws house staying with his wife. DW-2, on the other hand, during cross-examination though has stated that after the marriage Almina Khatun used to stay in Rohim Uddins house in Rakhaldubi and 2 years before the date of occurrence Almina left the matrimonial house for her parental house because of the illness, during cross-examination this witness, however, has stated that he did not know as to whether the accused appellant used to stay in the father-in-laws house with his wife and on the date of occurrence he was there or not. DW-2, therefore, has not supported the defence case that on the night of occurrence he was not in the father-in-laws house with his wife. DW-1 also though in his evidence has stated that the deceased left the matrimonial house 2 years before the date of occurrence, in his statement made under Section 313 Cr.P.C. the accused appellant has claimed that one month before the date of occurrence the deceased left the matrimonial house for the parental house.

13. It, therefore, appears from the evidence adduced by the parties that the prosecution could prove by leading cogent and reliable evidence that the accused appellant used to stay in the father-in-laws house with his wife and on the night of occurrence both were sleeping together in the house and next morning while his wife was found dead, he was not found in the house. The accused appellant, as noticed above, could not give any satisfactory explanation about the death of the wife.

14. In view of the aforesaid discussion, we are of the view that the judgment of conviction has rightly been recorded by the learned Sessions Judge, which does not require any interference in appeal.

15. Hence the appeal stands dismissed.

16. Registry is directed to send down the records.

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