

**Arjun Kumar Vs. The State of Assam**

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**Court :** Guwahati

**Decided On :** Apr-22-2014

**Judge :** B.P. Katakey & M.R. Pathak

**Appeal No. :** Crl.A.(J) No. 103 of 2011

**Appellant :** Arjun Kumar

**Respondent :** The State of Assam

**Judgement :**

(Oral) Katakey, J.

1. This appeal is directed against the judgment of conviction dated 19.08.2011 passed by the learned Sessions Judge, Jorhat, in Sessions Case No.124(JJ)/2008, whereby and whereunder the learned Sessions Judge has convicted the accused appellant under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life and also to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for a further period of 2(two) months.

2. On the basis of the G.D. Entry No.404, dated 26.06.2008, recorded by the Officer-in-Charge of Rowriah Police Out Post under Jorhat Police Station, based on the information furnished by the Wing Commander of Air Force Hospital about the death of the wife of the accused appellant due to the burn injuries sustained by her, the investigating agency started the investigation. Subsequently a written first information report was also filed by Sri Binud Borah (PW-1), on 27.06.2008 at

about 7.30 P.M. alleging that on 25.06.2008 the accused appellant set her wife on fire, who has confessed before him as well as the other members of the public, based on which Jorhat P.S. Case No.325/2008 registered on 27.06.2008, under Section 302 IPC. During investigation, the police visited the place of occurrence, recorded the statements of the witnesses under Section 161 Cr.P.C., cause conduct of the inquest and also sent the dead body of the deceased for post mortem examination. On completion of the investigation, the police submitted the charge-sheet against the accused appellant under Section 302 IPC. The learned Magistrate has committed the accused to the learned Sessions Judge for trial on 05.11.2008, since the offence alleged was exclusively triable by the Court of Sessions. Sessions Case No.124(JJ)/2008 was thereafter registered. The learned Sessions Judge on 25.11.2008 has framed the charge under Section 302 IPC against the accused appellant, which when read over and explained to him, he pleaded not guilty and claimed to be tried. Hence the trial commenced.

3. The prosecution in order to bring home the charge has examined 9(nine) witnesses, namely, Sri Binud Borah (PW-1), who has lodged the first information report; Sri Dinesh Das (PW-2); Sri Bipul Ch. Borah (PW-3); Sri Bubul Bora (PW-4); Smt. Rinju Bora (PW-5); Dr. Jitendra Nath Gogoi (PW-6), who conducted the autopsy on the dead body of the deceased; Sri Gauri Sankar Sharma (PW-7), learned Executive Magistrate, who has done the inquest; Sri Damarudhar Bora (PW-8), S.I. of police, who conducted part of the investigation and Sri Ghana Kunwar (PW-9), S.I. of police, who completed the investigation and submitted the charge-sheet. On completion of recording of the evidence of the prosecution witnesses, the statement of the accused under Section 313 Cr.P.C. was also recorded. The accused initially though wanted to examine the defence witnesses, he, however, subsequently has given up examination of any defence witnesses. The learned Sessions Judge upon appreciation of the evidence adduced by the prosecution in support of the charge, has recorded the judgment of conviction, based on the circumstantial evidence, there being no eye witness to the occurrence. Hence the present appeal.

4. We have heard Mrs. R.S. Choudhury, learned amicus curiae and Mr. H. Sarma, learned Addl. Public Prosecutor.

5. The learned amicus curiae referring to the evidence of PWs-1 to 5 and also of PWs-8 and 9, has submitted that there being contradiction on material part of the evidence relating to the involvement of the accused with the commission of the crime, the learned Sessions Judge ought not to have recorded the judgment of conviction based on the circumstantial evidence, more so, when no incriminating circumstances appears against the accused appellant from such deposition. It has also been submitted that it has come out from the evidence of PWs-8 and 9, the Investigating Officers, that the accused appellant was never taken to the place of occurrence on 26.06.2008 at any time and hence the version of PWs-1 to 5 relating to making an extra judicial confession by the accused appellant on 26.06.2008 after his arrest is not at all believable, more so, when PW-9 in his evidence has categorically stated that the accused appellant was arrested only on 27.06.2008 when he for the first time visited the place of occurrence. The learned amicus curiae referring to the evidence of PW-1 has also submitted that his version relating to his presence and his effort to doze the fire and reluctance of the accused appellant to try to doze the fire cannot be believed when the said version has not been supported by PW-5, the wife of PW-1, who also claims to be present along with PW-1, when PW-1 was present at the place of occurrence. The learned amicus curiae further submits that PWs-2, 3 and 4 even do not support the version of PWs-1 and 5 about their presence in the place of occurrence at that relevant point of time. Referring to the deposition of PW-4 Bubul Bora, the brother of Binud Borah (PW-1), it has also been submitted that though PW-1 in his evidence has stated that at the time when he was present at the place of occurrence, Bubul Bora (PW-4) was also present, PW-4 in his version has not supported such version relating to the presence of either PW-1 or PW-5 at the place of occurrence, who in his statement has stated that someone has tried to doze the fire, without, however, naming the PW-1. The learned amicus curiae submits that PW-4 would have naturally named had the PW-1 been present at the place of occurrence and tried to doze the fire. The learned amicus curiae, in view of such deposition of the prosecution witnesses, has submitted that it is not safe to record judgment of conviction against the accused appellant, the prosecution having failed to prove the charge beyond all reasonable doubt. The learned amicus curiae, therefore, submits that the judgment of conviction recorded by the learned

Sessions Judge needs interference.

6. The learned Addl. Public Prosecutor, on the other hand, supporting the judgment of conviction, has submitted that it is evident from the deposition of PWs-1 to 5 that at the time of occurrence they were present and though they have not seen personally the accused appellant setting his wife on fire, they, however, have stated that the accused appellant was very much present at the place of occurrence in the house where his wife was set on fire and he did not make any attempt to doze the fire. The learned Addl. Public Prosecutor also submits that that apart PWs-1 to 5 have also stated relating to making an extra judicial confession by the accused appellant. Hence according to the learned Addl. P.P., the judgment of conviction has rightly been recorded.

7. We have considered the submissions advanced by the learned counsel for the appearing parties and also perused the evidence adduced by the prosecution in support of the charge framed against the accused appellant apart from the judgment of conviction recorded by the learned Sessions Judge.

8. Admittedly the prosecution has not led evidence of any witness, who has seen the occurrence i.e. the prosecution has not led evidence of any eye witness. The prosecution case was based on the circumstantial evidence. The conviction of the accused appellant, based on the circumstantial evidence, can be recorded, provided there are incriminating circumstances appearing against the appellant and the chain of such circumstances is complete pointing to the guilt of the accused appellant only and no one else.

9. The defence in this case has not challenged the cause of death of Lalita Devi, wife of the accused appellant i.e. the death due to burn injury, which was found by Dr. Jitendra Nath Gogoi (PW-6), in the post mortem examination and hence the deposition of PW-6 vis--vis the deposition of other witnesses relating to cause of death has not been discussed in this judgment.

10. The prosecution case as revealed from the evidence adduced by it is that it was the accused appellant who set Lalita Devi on fire by pouring kerosene oil and on the other hand the defence case is of committing suicide by Lalita Devi. PW-1

in his deposition has stated that on noticing the fire he went to the place of occurrence i.e. his rented house and opened the door and found Lalita Devi on fire when he sprayed water with a view to doze the fire. This witness has further stated that though the accused appellant was present, he, however, did not make any attempt to save his wife. PW-1 has further deposed that the accused appellant in presence of PWs-2, 3 and 4 even made a confessional statement that he set his wife on fire for not meeting the demand of dowry. During cross-examination this witness, however, stated that he saw Lalita Devi on fire through the window of the kitchen in the rear and then threw water through the kitchen window and thereafter Arjun Kumar, the accused appellant brought the woman out, who was in a state of speaking and then taken to the hospital by the accused appellant. He has further stated that the accused appellant was all along in the hospital till the death of Lalita. This witness has, therefore, contradicted his own evidence in chief that he opened the door and saw Lalita on fire and with a view to doze the fire sprayed water. This witness, however, has not stated anything relating to the presence of PW-5 at the place of occurrence.

11. PW-5 in her evidence has stated that she was present along with PW-1 and both of them went to the place of occurrence upon noticing the smoke coming out of the house, which was rented to the accused appellant. PW-5 has not stated anything relating to making any attempt by PW-1 to put down the fire. PW-5 has also stated that the accused appellant, who was inside the house took Lalita to the hospital. That apart PW-5 has also stated making an extra judicial confession by the accused appellant to the effect that he poured kerosene oil and set Lalita on fire. During cross-examination this witness, however, has stated that such extra judicial confession was made on the next day of occurrence i.e. 26.06.2008 at about 6 P.M. when the accused was taken to the place of occurrence under handcuff by the police. PW-5, therefore, has not supported the PW-1 relating to the request allegedly made by Lalita to PW-1 to take her to the hospital, apart from the attempt to doze the fire by spraying water by PW-1.

12. PWs-2, 3 and 4, who have stated about their presence at the time of occurrence have not supported the version of PW-1 relating to the presence of PW-1 as well as PW-5 at the place of occurrence at the relevant point of time,

though PW-1 in his evidence has categorically stated that PWs-2, 3 and 4 were present when he was present at the place of occurrence. PW-4, who is brother of PW-1 in his evidence has stated that after hearing commotion, he went to the place of occurrence and saw the smoke coming out from the house of the accused appellant, which is the rented house of the PW-1 and at that time someone poured water from outside to extinguish the fire. Had the PW-1 tried to extinguish the fire by spraying water, the PW-4 would have definitely mentioned the name of PW-1 he being the elder brother, which naturally casts a doubt on the version of PW-1 about his presence at the place of occurrence. PWs-2, 3 and 4 in their evidence have also stated that on the next day of occurrence i.e. on 26.06.2008 when the police took the accused appellant to the place of occurrence, he made an extra judicial confession in their presence. Making of extra judicial confession by the accused appellant in presence of PWs-2, 3 and 4 on 26.06.2008 also cannot be believed in view of the fact that neither PW-8 nor PW-9, who were the Investigating Officers, have supported such version.

13. PW-8, the initial Investigating Officer in his evidence has stated that on the next day of occurrence i.e. on 26.06.2008 he visited the place of occurrence and found the door open and did not find anybody in the house. PW-9, the subsequent Investigating Officer, who completed the investigation and submitted the charge-sheet, in his evidence has also stated that the accused was arrested only on 27.06.2008 and after his arrest he was not taken to the place of occurrence. PW-8 has not stated that about his arrest prior to 27.06.2008 and hence the version of PWs-1 to 5 noticing the accused appellant at the place of occurrence on 26.06.2008 with the police and with the handcuff on and making the confession before them, is not believable.

14. It also appears from the evidence of PWs-2 to 5 that it was the accused appellant, who took the deceased to the hospital by an auto rickshaw and was all along present by the side of the deceased till her death. The burden though lies on the prosecution to prove the charge framed against the accused appellant beyond all reasonable doubt, the prosecution, however, could not discharge such burden. There is no incriminating circumstance other than the presence of the accused appellant at the house when the incident of fire took place. There being an

explanation and there being the attempt made by the accused appellant to save the life of the deceased by taking her to the hospital immediately for providing all available medical treatment in the Air Force Hospital, such circumstance alone cannot be the basis for recording the conviction against the accused appellant. Hence the judgment of conviction recorded by the learned Sessions Judge is set aside. The accused appellant is set at liberty, if not wanted in any other case.

15. The appeal is accordingly allowed by setting aside the judgment of conviction dated 19.08.2011 passed by the learned Sessions Judge, Jorhat, in Sessions Case No.124(JJ)/2008.

16. The learned amicus curiae shall be paid the professional fee of Rs.7,500/- by the State within a period of 1(one) month from today.

17. Registry is directed to send down the records.

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