

Akram Ali @ Akram Uddin Vs. State of Assam

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Court : Guwahati

Decided On : Aug-19-2011

Judge : The Honourable Chief Justice Mr. Madan B. Lokur & Hrishikesh Roy

Appeal No. : Criminal Appeal No. 31(J) of 05

Appellant : Akram Ali @ Akram Uddin

Respondent : State of Assam

Judgement :

Hrishikesh Roy, J.

1. Heard Mr. R. Goswami, learned Amicus Curiae appearing for the appellant. Mr. Z. Kamar, learned PP appears for the State.

2. This appeal is filed against the judgment and order dated 5.3.2005 in Sessions Case No.11/2004 rendered by the learned Sessions Judge, Karimganj, whereby the accused appellant is convicted under Section 302 IPC and was sentenced to imprisonment for life and fine of Rs.10,000/- and in default, to SI for 2 years.

3. The criminal process in this case was set in motion with an FIR filed by Md. Abdul Aziz, a co-villager of the accused, who stated that on 1.10.202 the informant learnt that Zulfina Bibi the wife of the accused was lying dead and seeing none from the family of the deceased had arrived in the matrimonial home of the deceased, and finding the circumstance to be suspicious, information was lodged

and Karimganj PS Case No. 97/02 was registered at 1 P.M. on 2.10.2002. After completion of the investigation, the accused was charged with the offence of committing the murder of his wife Zulfina Bibi and the learned Chief Judicial Magistrate, Karimganj by order dated 13.2.04 committed the case for trial by the Sessions Court.

4. In the trial, 12 witnesses were examined by the prosecution whereas no evidence was adduced by the defence.

5. It may now be appropriate to take note of the evidence in the case.

5.1. PW-1 Manazir Ali is the father of the deceased. He testified that when he saw his daughter Zulfina's body, he saw blood marks in her mouth, under the bed and also on the walls of her room. He also noticed marks of beating on the body of the deceased. He further stated that the accused used to physically assault his daughter and the domestic dispute on earlier occasion was resolved through the arbitration of the villagers. In his cross evidence, the witness stated that the accused had visited the in-laws to inform them of the illness of his wife Zulfina.

5.2. The other witness examined from the family of the deceased was PW-8 Mufikur Rahman, the uncle of Zulfina. He was told by the mother-in-law of the deceased that Zulfina's husband Akram Ali (appellant) had beaten her and then mother-in-law gave Zulfina first aid during the night. He also testified that the accused used to quarrel with the deceased Zulfina demanding dowry and that the couple did not have amicable relationship.

5.3. The witnesses Mamata Begum (PW-2) is a cousin sister of the appellant. She stated that the deceased at the relevant time was suffering from vomiting, diarrhoea and fever and she died leaving behind her son and a daughter. But since the witness back tracked from her earlier statement given to the police, PW-2 was declared a hostile witness.

5.4 PW-4 is a ward member of the Gaon Panchayat and was the informant in the case. He stated that at around 8 A.M. he was informed by PW-6 the brother-in-law of the deceased that Zulfina died due to diarrhea. But when he learnt that the

accused had killed his wife and burial rites was going to be performed in the absence of anyone from the deceased's family, he went to the police station to lodge an ejahar. He noticed beating marks on the chest and back of the dead body. He also saw blood on Zulfina's face also on the floor, where the dead body was lying.

5.5. PW-5 is a younger sister of the accused Akram Ali. She stated that the deceased Zulfina used to live with her husband Akram in a separate home but in a common compound. At night PW-5 was woken by the witness's mother, Rufina Bibi who went to Zulfina's room at night after hearing her cries. PW-10 brought injured Zulfina to her own house because she learnt that her son the accused Akram beat up his wife. Then the mother-in-law gave first aid to Zulfina. The PW-5's brother Abbas Uddin (PW-6) and father (PW-7) Sonohar Ali returned home late at night and saw the mother-in-law attending on the injured Zulfina. Then Doctor was summoned but Zulfina died before the doctor could be called. In her cross-examination, PW-5 has stated that the deceased was ill at the time of her death and was suffering from loose motion.

5.6. PW-6 is the elder brother of the accused and his testimony corroborates his sister (PW-5) on all material particulars. The witness testified that when he returned home at about 9-30 P.M., he found the deceased lying down and his mother told that the accused had beaten Zulfina severely. He did not know the whereabouts of the accused Akram Ali at that point of time. In his cross-examination the witness stated that since the birth of her child, Zulfina was very sick and was also suffering from diarrhea.

5.7. PW-7 Sonohar Ali is the father of the accused. He arrived home at about 8/9 p.m. and found that Zulfina was being attended by his wife and others in his own house. As the witness resiled from his earlier statement made to the police about being told by his wife (Rufina Bibi) that Zulfina was assaulted by her husband Akram Ali, he was declared a hostile witness. In his cross-examination, the witness stated that after the birth of her second child, Zulfina used to remain sickly and had to be scolded by the family members, for not taking medicine.

5.8. PW-9 was a Bench Assistant in the Court of the Sub-Divisional Judicial Magistrate, Karimganj. He proved the signature of the Magistrate N. Ghosh, who recorded the statement(s) (Ext. 4 and 5) of PW-7 Sonohar Ali and PW-10 Rufina Bibi given under Section 164 Cr PC.

5.9. PW-10 Rufina Bibi is the mother of the accused. On that particular night on hearing the cries of her daughter-in-law Zulfina, She went to her son's (accused) room. But since she retracted from her earlier statement given to the police about her son beating his wife Zulfina, she was declared a hostile witness. In her cross-examination, the witness stated that after the birth of her child Zulfina remained sick.

5.10. PW-11 was the Circle Officer who conducted the inquest on the dead body. He noticed blood oozing out from the nose and found the right hand of Zulfina twisted and covered with black spots. He also noticed other injury marks on the arms, chest and on of the head of the deceased. He determined the cause of death as "torture".

5.11 PW-12 was the Investigating Officer of the case and arranged to have the statement of PW-7 Sonohar Ali and PW-10 Rufina Bibi recorded before the Magistrate under Section 164 Cr PC.

6. As can be seen from the evidence in the case that 3 witnesses i.e. PW-2, PW-7 and PW-10 were declared as hostile witnesses. They are the cousin sister, father and the mother respectively of the accused appellant. But the other related witnesses namely PW-5, and PW-6 of the accused had clearly mentioned that the Akram Ali beat up his wife Zulfina at night and that is how the mother of the accused Akram Ali had to give first aid to Zulfina, by shifting her from the accused's room to her own room.

7. PW-3 is Dr. S. Suparna Paul conducted the postmortem examination on the dead body of Zulfina on 3.10.2010 at about 11-15 a.m. She recorded multiple bruises all over the posterior trunk of the body. The injuries noticed by the Doctor are extracted here-in-below for ready reference:-

“ External Appearance

An overage built muslim female about 25 years of age with rigor mortis absent, eyes closed, mouth half open and blood stain present in the mouth and nose and left ear. Multiple bruises present all over the posterior trunk of the body about 6” by 2”.

Of the left parietal bone.

Cranium and Spinal Canal

Scalp, skull, vertebrae- Haematoma over the left parietal bone of the skull of the left parietal region. Membrane- Haematoma present underneath the membranes below the line, brain and spinal cord-Left parietal region of the brain is lacerated.

Thorax Walls, ribs and cartilages-bruise over the back of the shoulder about 6” X 2” ribs and cartilages healthy, Pleurae-Pale larynx and trachea, Right lung, Left lung Pericardium- Pale. Heart-Right empty left full, vessels- full.

Abdomen

Walls- Healthy, peritoneum, Mouth, pharynxoesophagus- Pale Stomach and its contents-empty, Small intestine and its contents-contain mucoid substance. Large intestine and its contents-contain fecal matter, Liver, spleen, Kidneys-pale, Bladder-empty, Organs of generation, external and internal-healthy.

Muscles, Bones and joints

As described on column II

The injuries are antemortem,

In my opinion, death is due to shock and haemorrhage resulting from antemortem injuries sustained. Ext-1 is the post mortem report, Ext-1(1) is my signature and Ext-1(2) is the signature of Superintendent of Karimganj Civil Hospital.

The death of the injured was not natural one. The injuries of the injured may be caused due to impacts of lathi blow.”

The Doctor opined that the injuries may be caused due to impact of lathi blows.

8. The postmortem report clearly shows that the deceased suffered multiple injuries on various parts of her body. The evidence of PW-5, PW-6, who are close relation of the accused is found to be trustworthy. They testified that Zulfina was beaten up by her husband Akram on that fateful night. The corroboration of the evidence of PW-5 and PW-6 can be taken from the evidence of PW-2, PW-7 and PW-10 although the latter 3 witnesses were declared hostile. These 3 hostile witnesses who are the parents and a cousin sister of the accused and had earlier indicated that the accused had beaten up his wife Zulfina on that particular night and she had to be administered first aid by PW-10 and Doctor also was sent for, to attend to the injured Zulfina.

9. In the statement under Section 164 Cr PC given by the mother of the accused (Ext.- 5), it is stated that she woke up at night and heard cries of her daughter-in-law Zulfina Bibi and she went to the room of her son to enquire why Zulfina cried. She saw her daughter-in-law weeping while sitting on the floor and on enquiry, Zulfina told that her husband had beaten her. The mother-in-law shifted Zulfina to her own room. While giving first aid to her injured daughter-in-law, she noticed a number of injuries on her person. Her husband was sent out to call a Doctor. But after her husband Sonahar Ali covered a little distance, Zulfina died. She stated before the Magistrate in her Section 164 Cr PC statement that, it was her son Akram, who killed her daughter-in-law.

10. PW-7 Sonahar Ali, who is the father of the accused also gave a statement under Section 164 Cr PC (Ext-4). He stated that while returning home at night, he saw lamp burning in his house. On entering his house, he found his wife Rufina Bibi (PW-10) nursing his daughter-in-law Zulfina. His wife stated that the accused Akram had severely beaten Zulfina . Seeing the serious injuries on Zulfina, Sonohar Ali was asked by his wife to call a Doctor. While he was proceeding to fetch the Doctor, one boy came running and told that his daughter-in-law died. In his statement, the witness stated that his son Akram had killed Zulfina Bibi.

11. On conjoint reading of the evidence of PW-5 and PW-6 it is apparent that Zulfina was severely beaten up by the accused on the night preceding her death.

The report of the Doctor (PW-3), who conducted the postmortem examination, shows multiple bruises all over the posterior trunk of the body. There are injury marks also on the scalp, skull and vertebrae portion of the deceased. Bruises on the back of the shoulder were also noted and the Doctor opined that injuries on Zulfina were not through natural cause but were due to impact of lathi blows. He also opined that such injuries may be the cause of death.

12. But the evidence of the witnesses including the trustworthy testimony of PW-5 and PW-6 shows that Zulfina was already sick after the birth of her second child and at the relevant time was suffering from Diarrhoea and vomiting. Evidence also shows that Zulfina was neglecting to take medicine for her ailment and she did not have the physical strength to walk properly and used to fall down on occasion.

13. Considering the above circumstances, it has now to be considered as to whether the conviction of the accused under Section 302 IPC can be sustained. Even while accepting that the injuries to Zulfina was caused by her accused husband, to sustain the conviction under Section 302 IPC, it must also be established that the accused intended to commit the murder of his wife. But the father of Zulfina himself testified that he was informed about his daughter's illness and was requested by the accused Akram Ali to visit her. The sickly status of Zulfina is affirmed by practically all the witnesses. Considering the weakened physical condition of Zulfina and considering further the fact that the death was not instantaneous but on the next date, it appears to us that although the accused had beaten up his wife, it is doubtful whether he intended to cause her death. Thus the poor health of Zulfina must have been a factor for the death. Therefore, we find it difficult to sustain the conviction under Section 302 IPC.

14. But considering the severity of the injuries found on the body of Zulfina, we feel that the accused should be convicted under Section 304(II) IPC for culpable homicide not amounting to murder. For such conviction, the accused Akram Ali @ Akram Uddin is sentenced to 6 years R.I. Accordingly, interference is made with the impugned conviction and sentence in Sessions Case No. 11/04 to the extent indicated.

15. For the assistance of the learned Amicus Curiae Mr. R. Goswami, he is entitled to a fee which is quantified at Rs.5000/-.

16. Send down the LCR forthwith.

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