

BEFORE THE SESSIONS JUDGE, GOALPARA

Sessions Case No. 234 / 2015

Under Section 302 of the I.P.C.

State of Assam

-VS-

1. Asom Ali Accused person

Present: **Shri.T.K.Bhattacharjee, A.J.S.**
Sessions Judge,
Goalpara.

Dates of evidence : 02.11.16; 20.07.17; 04.03.18, 06.07.18,
04.09.18.

Date of argument : 12.06.2019

Date of judgment : **26.06.2019**

For the Prosecution : Mr. B.K. Das, Ld. P.P.

For the Defence : Mr. Abdul Matin, Ld. Advocate.

J U D G M E N T

1. The brief facts of the prosecution case is that on 30/04/2014 at about 7:00 p.m. at Chandmari under Agia P.S. the accused person assaulted and injured his wife severely with a sharp *Bothi(Dao)* and hence this case was filed.

2. On receipt of information to that effect a GDE was made vide Agia P.S. GDE No. 05 dated 01-05-2014 and subsequently the police registered a case vide Agia P.S. Case No. 52/2014 u/s 326/307/34 of the I.P.C. and after the investigations were completed the police submitted a charge-sheet against the above-named accused person u/s 326/307/302 of the I.P.C. sending him up for the purpose of trial.

3. Thereafter, on appearance of the said accused person before the learned Committal Court the relevant copies were furnished to him and the case was committed and thereafter, vide order dated 28/01/2016 this Court was pleased to frame a charge u/s 302 of the I.P.C. against the accused person and the contents of the said charge was also read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Accordingly, the trial of this case commenced.

4. In the course of the trial, 7(seven) witnesses were examined in support of the prosecution case which included the informant, medical officer and also the Investigating officer of this case and after the prosecution evidence concluded, the examination of the accused person u/s 313 Cr.P.C. was conducted and his statements were recorded during which he declined to adduce any evidence in his defence.

5. Thereafter, the arguments of the Ld. respective counsels of both the sides were heard and the entire evidence in the case record was duly perused.

Point for determination:-

6. Whether on or about the 30/04/2014 at about 7:00 p.m. at Chandmari under Agia P.S. the present accused person committed the murder of his wife Sajmina Bibi @Chenehi Begum in his house, as alleged?

Discussion , Decision and Reason:-

7. The PW-1 had filed the ejahar, Ext-1 vide which the police were informed about the occurrence and from his testimony it is found that

according to him, one day when he was in the Agia P.S. the accused surrendered there and confessed that he had cut his wife and killed her. The P.W.-1 further deposed that the victim was taken to Goalpara Civil Hospital and then to Guwahati from where she was brought to her mother's house at Krishnai where she subsequently died. His cross examination reveals that he had not seen the occurrence.

8. The PW-2 was one Sofiquil Islam and according to this P.W. on the day of occurrence he heard hue and cry in the house of the accused and went there and found that the victim was cut and she was taken to Golapara Civil Hospital by 108, and subsequently she died. His cross examination reveals that he had not seen the occurrence.

9. The PW-3 was Dr. B. J. Baishya who conducted the post mortem examination on the dead body of the victim Sajmina Bibi and from his testimony as well his report, the Ext-2, it is found that Sajmina had died as a result of head injury caused by sharp weapon which was ante-mortem in nature.

10. The P.W.-4 was one Sahe Imran who is the father of the deceased and from his testimony it is found that his daughter was married to the accused and they were leading a peaceful conjugal life and on the day of the occurrence he heard about the injury of his daughter and came to know that she was admitted to Goalpara Civil Hospital and later when he came to visit her in hospital he saw injury over her head. From his testimony it is also found that his daughter was referred to GMCH, Guwahati for better treatment and accordingly she was admitted there and after 1 week she was released from GMCH as there was improvement of her injuries. Thereafter, the PW-4 took her to his house where she died after 3 days at about 5:00/6:00 am as she was suffering from high temperature. His cross examination shows that his daughter was having cordial relationship with her husband and her in-laws. This witness also could not say how his daughter got injury on her head.

11. The PW-5 was one Ishidul Ali and from his testimony it is found that he could not say anything worthwhile during his deposition in the court in order to lend any support to the prosecution case and he failed to state anything against the persons who may have been involved in the alleged occurrence.

12. The PW-6 was one Asmot Ali who is the younger brother of the accused and according to him the victim sustained injuries by falling and she was hospitalized and after treatment she was taken by her father to his house where she subsequently died.

13. The P.W. 7 was the Police official who took part in the investigation of this case and from his testimony it is found that during the investigation he recorded the statements of witnesses, seized a dao vide Ext.-5, prepared a sketch map which was brought on record as the Ext.-6, collected the inquest report and the postmortem report respectively vide Ext.-2 and 3. From his cross-examination it is found that he did not record the statement of victim, he did not seized any document with respect to medical treatment of the victim at GMCH, he did not make any effort for getting recorded the confessional statement of the accused etc.

14. The prosecution side did not examine any other witnesses and from the entire materials available in the case record, it is found that the P.W.s- 2, 4, 5, and 6 have failed to state anything incriminating against the accused person and the P.W.-7 who was the Investigating officer and the PW-1 who was the informant both deposed that the accused went to the Agia P.S. and reported that he himself caused grievous injuries upon his wife by cutting her. According to the P.W.-1 the accused had stated that he had cut his wife and killed her and according to the P.W.-7(IO) the accused had stated that he had cut his wife and injured her grievously.

15. Apart from that, the ejahar was also not filed immediately after the occurrence and does not mention anything about the accused surrendering at the police station and no reasons for the delay that was caused were given in the Ext.-1 even though the informant claimed that

he was present at the Agia P.S. at the time the accused allegedly surrendered there. It may be mentioned in this context that, by placing reliance on the decisions reported in **2012(1) Gauhati Law Journal 112 and 2018(6) Gauhati Law Journal 709** it is apparent that the statement allegedly made by the accused before the police at the police station is inadmissible in evidence and moreover, the seized dao which was also not exhibited in the court as a material exhibit cannot help the prosecution case to any significant extent and the mere seizure of a dao from the house of the accused cannot be accepted as conclusive evidence against him and the whole fact of surrender before the police without there being any other supporting evidence to implicate him in the crime would not make him guilty. Further, no blood stained clothes were seized in connection with this case and moreover, the father of the victim categorically stated that the victim and the accused were having a cordial relationship and moreover, no effort was made by the IO to record the statement or dying declaration of the deceased victim despite the fact that she only died after a considerable period of time from the date of the alleged occurrence which was also in her father's house and during which she was suffering from high temperature. While appreciating the evidence in criminal cases the courts must remember that in the absence of any eye witnesses the circumstantial evidence, if any, must form a complete chain implicating the accused but in the instant case the chain of circumstances is completely broken and there are numerous missing links and discrepancies in the evidence adduced by the prosecution and taking into consideration all the facts and circumstances of this case I am of the opinion that the prosecution has failed to establish the charges against the accused beyond reasonable doubt.

16. In the result, the accused person named above is not found guilty u/s 302 of the IPC beyond reasonable doubt and as such he is acquitted of the said charge and set at liberty forthwith. His bail bond shall however remain in force for the next six months.

17. A copy of this judgment shall be forwarded to Ld. District Magistrate, Goalpara and also the Superintendent of Police, Goalpara for their information and necessary action.

Given under my hand and the seal of this court on this the 26th day of June/2019.

(T. K. Bhattacharjee)
Sessions Judge,
Goalpara.

Dictated & corrected by me:

Sessions Judge,
Goalpara.

Appendix:

Prosecution Witnesses:

PW1:- Abdul Awal Hoque,
PW2:- Sofiqul Islam,
PW3:- Dr. B.J. Baishya (MO),
PW4:-Sahe Imran,
PW5:- Ishidul Ali,
PW6: Asmot Ali,
PW7: Ali Hussain (IO)

Court witnesses:-Nil.

Prosecution Exhibit:

Ext.1:- FIR,
Ext.2:- Post mortem report,
Ext.3:- Inquest Report,
Ext.4:- GDE,
Ext.5:- Seizure List.
Ext.6:- Sketch Map.
Ext.7:- Charge-sheet.

Defence Witness: Nil.

Sessions Judge
Goalpara