

HEADING OF JUDGMENT IN SESSIONS CASE

District :- Goalpara.

IN THE COURT OF ADDL. SESSIONS JUDGE, GOALPARA.

Present:- Sri S. Hazarika, *A.J.S.*
Addl. Sessions Judge,
Goalpara.

Sessions Case No. 201/2015.

U/s.304(B) of IPC.

In connection with GR Case No.1107/14

State -vs-

1.Mukter Ali

2. Hazarat Ali

3. Zohura Khatun

..... Accused.

Ld. Advocates appeared:-

For the State :-Sri N. K. Nath, Addl. Public prosecutor.

For the accused :-Mr. A. Ali & Mr. K.M. Akmal Hussain, Advocates.

Date of evidence :-09/03/2016, 27/04/2016, 24/05/2016,
22/07/2016, 19/09/2016, 07/11/2016, 06/05/2017
& 14/09/2018.

Date of argument :- 06/05/2019.

Date of judgment :- 07/06/2019.

J U D G M E N T

1. The incident which is unfolded during trial of this case is stigma to the society where a lady with her all dreams of starting conjugal life with her husband ended in her death along with a foetus in her womb

2. One Monowara Khatun lodged an F.I.R. wherein she alleged that her daughter Aklima khatun got married to accused Muktar Ali some two years back and at the time of incident she was carrying seven months pregnancy. Since marriage, her daughter was tortured by her husband to meet his demand for dowry. On 27/05/2014, at around 10:00 P.M., the accused killed her daughter. On receipt of the information they went to the house of the accused and found her daughter lying dead. The said F.I.R. was received by O/C of Baguan P.S. and registered as Baguan P.S. Case No.59/2014. The Officer-in-charge endorsed the case to I/O to cause investigation.

3. The I/O of this case visited the P.O., prepared the Sketch Map. The I/O also seized one piece of cloth from the P.O. The inquest Examination was done by Circle Officer of Balijana Revenue Circle. The dead body was sent to Civil Hospital, Goalpara for P.M Examination and accordingly, the P.M. examination was done. The I/O examined the witnesses. After completion of investigation, the I/O submitted Charge Sheet U/S.304(B)/34 of I.P.C. against the accused persons who are facing trial.

4. The copies of relevant documents were furnished to the accused persons who faced trial. As the Case was found to be exclusively triable by the Court of Sessions, the learned J.M.F.C, Goalpara committed the case to the Court of Sessions and thereafter, the case was transferred to this Court by the Hon'ble Sessions Judge, Goalpara, to hold the trial.

5. The accused persons appeared as directed and after considering the materials on record and hearing both parties, this Court was pleased to frame charge U/S.304(B)/34 of I.P.C. against all the three accused persons. The contents of the charge was read over and explained, to which, the accused persons pleaded not guilty and claimed to be tried.

6. POINT FOR DETERMINATION IS :-

(i) Whether the accused persons on 27/05/2014, at about 10:00 P.M., committed dowry death to Aklima Khatun ?

7. The prosecution side examined altogether 11(eleven) witnesses. After recording the evidence of the prosecution side, the statements of the accused persons U/S.313 of Cr.P.C.were recorded wherein they denied each and every incriminating circumstances against them. The defence, however, declined to adduce evidence in defence.

8. DISCUSSIONS, DECISIONS, AND REASONS THEREFORE :-

I have heard arguments advanced by learned Counsels for both parties and also gone through the evidence on record. I have also gone through the exhibits proved by the witnesses on record.

In the instant Case, the prosecution side examined as many as 11(Eleven) witnesses.

For the sake of convenience let me briefly describe the evidence of the witnesses on record.

9. PW1 is the informant. In her evidence she stated that the accused Muktar Hussain married her daughter Aklima Khatun four years back and they lived together as husband and wife . Later on, the accused started to demand money even though they gave Rs.25,000/- at the time of her marriage. One day, she got information over telephone that her daughter had died in the house her husband. She along with her husband reached the P.O. at about 7:00 A.M. She saw mark of injures over the neck and head of her deceased daughter. The dead body of the deceased was kept on the floor of the house of her husband and thereafter, she lodged the F.I.R. at Baguan P.S.

10. PW2 Abdul Sattar stated that he is the husband of the informant. Some two years back his daughter Aklima got married to accused Moktar Hussain. His son-in-law demanded money by assaulting his daughter. They gave Rs.25,000/-to the accused. At the time of his daughter's death she was carrying seven months pregnancy. On the date of occurrence at about 10:00 P.M. they got

information over telephone that his daughter died and on the succeeding day they reached the house of the accused and found his daughter lying on the floor of a room in the house of the accused and they saw mark of injuries over the neck and head of his daughter. Later on, his wife lodged the F.I.R. The dead body was sent for P.M. Examination.

11. PW3 Sukur Ali stated that the incident occurred two years back. On the date of occurrence, he was walking on the road at about 10:30 P.M. after taking dinner. At that time, he heard sounds of crying in the house of accused Muktar Ali and he immediately went there and saw deceased Aklima hanging. All the accused persons lifted the body of deceased Aklima upward and accused Muktar cut the rope. Aklima had already expired. The father of the accused immediately informed the Police over telephone but Police came on the next day morning. The father of the deceased Aklima was also informed on the same night. Many people gathered there. After witnessing this he returned back home.

12. PW4 Ramjan Ali deposed that deceased Aklima got married 6/7 years back and thereafter, they lived together as husband and wife. Sometimes there used to have quarrel between them. About two years back she heard the information regarding the death of Aklima in the house of the accused Muktar Ali and he went there and saw the dead body of Aklima lying on the ground inside the house of the accused and he noticed blackish type of injuries over her face and chest. The dead body was taken to Goalpara Civil Hospital by Police.

13. PW5 Abu Sama deposed that accused Muktar Ali married Aklima who were married about 3 years back. The incident occurred two years back at about 10:30 P.M. in the house of accused Muktar. On hearing 'hulla' he rushed to the house of the accused and on being inquired about it he was told that the victim died by hanging. He saw the dead body of the victim lying on the floor in the house of the accused. He heard that the victim died by hanging. The Police came in the morning and took away the dead body of the deceased.

14. PW6 Juran Ali deposed that he knew deceased Aklima and accused Muktar Ali. The deceased Aklima married to accused Muktar some two years prior to the incident. Two years back he heard 'hulla' in the house of the accused and thereafter, he went there. On reaching there, he heard that Aklima died due to hanging. The dead body was lying on the floor and her dead body was covered with a black colour cloth. Many persons gathered there and the Police came next morning.

15. PW7 Koser Ali deposed that the incident had taken place two years back and the deceased was his niece. On hearing news of death of his niece he went to the house of the accused and found his niece lying dead in a room. The Police came and seized one 'Urna'(cloth). He put his signature as a witness in the Inquest Report. Ext.2 is the Inquest Report.

15. PW8 Amzad Ali deposed that the incident had taken place two years back. Aklima died in the house of the accused. Magistrate came and prepared the Inquest Report. He put his signature in Ext.2.

16. PW9 Dr.S. Islam is the examining doctor who conducted the P.M. Examination on the dead body on 28/05/2014 while he was working as Medical & Health Officer at Goalpara Civil Hospital. He deposed that on police requisition in connection with Baguan P.S. Case No.59/14 he performed the P.M. Examination on the dead body of Aklima Khatun, wife of Muktar Hussain who was brought and identified by UBC -16 Umesh Pandey, Homeguards Moinuddin and Md. Kader Ali. On examination, he found oedematous and hemorrhagic on larynx and tracheae. He also saw injuries on the neck. One nail mark in the right side of the neck, four nail marks on the left side of the neck. He also found fracture of thyroid cartilage . On external appearance he found one nail mark on the right side of the neck, four nail marks on the left side of the neck and also saw bruising on both sides of the neck. One female foetus about seven months found in her uterus. The cause of the death was due to suffocation as a result of manual strangulation which is antimortem in nature. Ext. 3 is the P.M. Report and Ext.3(1) is his signature.

17. PW10 S.I. Abdus Salam Talukdar is the I/O of this case. During his investigation he proved the F.I.R. as Ext.4. He further deposed that he visited the P.O. and saw the dead body of Aklima lying on the floor inside the room of the accused. The dead body was inquested by Circle Officer of Goalpara and he collected the Inquest report. He seized one 'urni' vide seizure list Ext.1. He sent the dead body to Goalpara Civil Hospital for P.M. Examination and collected the Report. He prepared the Sketch Map Ext.5. The accused persons were arrested and forwarded to Court. After completion of investigation, he submitted Charge Sheet against all the three accused persons vide Ext.6.

18. PW11 Dr. Dhiman Kr. Choudhury stated that on 28/05/2014 he conducted the Inquest Examination on the dead body of Aklima Khatun in connection with Baguan P.S. Case No.59/14 who was identified by Abdul Sattar. The deceased was a female about 22 years, medium built, height 5 feet 4" , complexion swarthy, body normal, hair medium, eyes closed, wearing pink colour blouse , pink colour paticoat, sky colour sari. On examination he found injury marks on her neck and no other injuries found. To ascertain the real age of the deceased, the body was sent for P.M. Examination. Ext.2 is the Inquest Report and Ext.2(3) is his signature.

These are the evidence of the witnesses on record.

20. All the three accused persons are facing trial for committing dowry death of Aklima Khatun. The admitted position is that the deceased Aklima was married to accused Muktar Hussain four years prior to the death of the victim. This is also admitted fact that the deceased Aklima Khatun died in the house of accused Muktar Hussain and it was not a normal death.

21. In order to attract section **304(B) of IPC** the following ingredients are to be proved by prosecution-

'Section 113B of the Evidence Act' speaks about presumption of dowry death. The Section 113(B) of the Evidence Act speaks cruelty or harassment in order to fulfill the demand of dowry immediately before the death of the deceased. The presumption can

be drawn that the accused's/her-in-laws have committed dowry death. A bare reading 113B of the Evidence Act shows to attract such presumption, several factors are to be proved for its applicability, they are -(i) the death was due to burn or bodily injury and not a natural (ii) within seven years of the marriage,(iii) soon before her death she was subjected to cruelty.

It is not disputed that the marriage between the accused Muktar and Aklima was performed within the seven years of her death and the death had occurred in the house of the accused.

22. PW1 is the informant and in her evidence she stated that on receipt of the information about death of her daughter she reached the house of the accused and saw her daughter lying dead and kept on the floor of the house of the accused in a room.

PW2 is the father of the victim and he also corroborated the evidence of the PW1 that he also arrived at the P.O. on receipt of information regarding the death of his daughter. On arrival he saw his daughter lying dead and kept on the floor inside the house of the accused.

PW3 Sukur Ali in his evidence stated that after hearing hue and cry he reached the house of the accused and he also saw the dead body of Aklima Khatun being kept on the floor of the house of the accused in a room.

P.W.4 Ramjan Ali stated that he reached the home & saw the dead body in the home of the accused.

PW5 is another witness who also arrived after hearing hulla and on being asked he told that the victim died by hanging herself. The dead body was kept on the floor in the house of the accused.

PW6 Juran Ali also corroborated the facts during his evidence. He stated that on hearing hulla he reached the house of the accused and found the dead body of Aklima on the floor in the house of the accused covered with black cloth.

PW7 and PW8 are two witnesses who were present when the Magistrate conducted the Inquest Examination on the dead body of Aklima and both were witnesses of the Inquest Report.

23. All the witnesses on record corroborated each other regarding the death of Aklima and all of them have seen the dead body of Aklima khatun lying on the floor in the house of the accused in a room. It is also not disputed that all the three accused persons were present at the time of occurrence or immediately thereafter. Some of the witnesses who arrived at the P.O. immediately after the occurrence found all the three accused persons present at the P.O. i.e. in the dwelling house of the accused persons. Moreover, the defence also did not dispute regarding the presence of all three accused persons who are facing trial.

24. In order to attract the presumption 304(B) of I.P.C. the prosecution is required to prove not only unnatural death of the victim but also to prove that immediately before the death of the victim she was subjected to torture in order to extract dowry.

The learned Counsel for the accused also placed one decision as reported in 1993 CrI. L.J. 2723 where the Apex Court discussed the ingredients to be proved by prosecution in order to bring home the charge which according to Id. Counsel are absent in the present case.

The informant in her F.I.R has alleged that since the marriage of her daughter the accused used to demand dowry and she was subjected to physical torture. The informant in her evidence stated that the accused husband assaulted her daughter by demanding money, even though they have given Rs.25,000/- at the time of marriage.

25. PW2 is the father of the victim and he also stated that the accused who is his son in-law demanded money and assaulted his daughter. They have approximately given Rs.25,000/- to the accused. None of the witnesses have stated anything regarding the demand of dowry but such demand may not be known to any other person except for the victim and her parents. Generally a demand

for dowry is only known to the victim and her family members and forced the victim to bring dowry from her parents. The demand for dowry may not be known to any other person but the evidence of parents of the deceased cannot be thrown away.

26. PW11 Dr. Dhiman Kr. Choudhury is the Circle Officer who conducted the Inquest Examination and during his evidence he stated that he found mark of injuries on the neck of the victim. No other injuries were found.

27. Dr. S. Islam conducted the P.M. Examination on the dead body of Aklima Khatun and submitted the report. During his evidence he found oedematous and hemorrhagic on larynx and tracheae and also seen injury marks on the neck. One nail mark on the right side of the neck and four nail marks on the left side of the neck. He also found fracture of thyroid cartilage. The death was due to manual strangulation which was anti-mortem in nature. M/O further found one dead female foetus about 7 months in the uterus of the deceased.

28. The Inquest Report as well as P.M. Report clearly shows that the deceased, in fact, received injuries on her neck. The Medical Officer also found one nail mark on the right side of the neck and four nail mark on the left side of the neck and the death was due to manual strangulation.

29. The independent witnesses who arrived at the P.O. stated that they came to know that the deceased died due to hanging and one of the witness also said that three accused persons were holding the deceased while she was found hanging but the evidence of this witness cannot be accepted as there was no ligature mark found on the neck of the victim to prove that the deceased died due to hanging but due to manual strangulation only. If a person dies due to hanging there must be ligature mark encircling the neck which was not found after the P.M. Examination on the deceased. Further, this is also to be noted that the witnesses who arrived at the P.O. came to know that the deceased died due to hanging as told by the accused persons. None has actually seen

the circumstances under which deceased died.

30. The defence vehemently argued that the informant and her husband tried to improve upon their evidence specially the informant who did not alleged that she had seen the injury mark on the victim in the F.I.R.

31. The informant being mother of the victim and PW2 being the father of the victim were in tremendous mental agony or trauma and therefore, it is quite natural that the informant might have failed to describe all the facts in her F.I.R.

32. Apex Court in AIR 1997 SC 2914 has held that pendent view is to be avoided while appreciating the delay in lodging the F.I.R.

33. The learned defence counsel also argued that the injuries which were described by witnesses during their evidence cannot be relied upon as same was not mentioned in the F.I.R.

34. The F.I.R. is just a gist of information in order to set the prosecution Case into motion. Hence, it is not the mirror of the entire prosecution Case. The allegation in the F.I.R. clearly shows that the informant has alleged that immediately before the death of the victim, she was subjected to torture and cruelty by her husband for dowry. Further, it is also stated in her FIR that the deceased died due to torture and she was murdered by the accused persons.

35. Non mentioning of the injuries in the F.I.R. is in my considered view is not fatal to the prosecution case which has a ring of truth. Having considered the submissions of the learned Counsel and on carefully going through the cross-examination of the PWs it clearly appears that plea of defence has no legs to stand. The Apex Court in 55 SCC 595 Baldev Singh & Another vs. State of Punjab held thatState briefly, the F.I.R..... are not fatal...”.

36. The Id. Counsel submitted that the delay in lodging F.I.R. is fatal. It is admitted that the incident was reported to the informant at night time and the F.I.R. was lodged on the next

morning. The Id. Counsel for the defence argued that the F.I.R. is an after thought one only to harass the accused persons.

From the record it reveals that the incident occurred in the house of the accused at around 10:00 P.M. Thus the informant received the information very late at night. The informant visited the house of the accused next morning and after witnessing the dead body, she lodged the F.I.R. The informant could not have lodged the F.I.R. without visiting the P.O. This clearly explains as to why there was some delay in lodging an F.I.R. and delay is not fatal to prosecution Case.

37. The learned defence counsel further argued that it is admitted by informant that no FIR was submitted when the accused used to demand dowry and tortured the victim. Therefore, the allegation that the victim was subjected to cruelty cannot be accepted.

38. In my considered view the plea of the defence cannot be accepted as the victim might not have approached Police by filing an FIR in order to save her marriage. Such incident occurred inside the house of the accused and therefore, no person except for the family member of the victim and the accused will have direct knowledge about such demand of dowry as well as torture. It is also not possible to speculate the mindset of the victim as to why she did not approach Police for the torture upon her.

39. The defence further argued that the P.M. Examination Report cannot be accepted by this Court as the I/O in his evidence has stated that the Inquest Report is silent regarding nail mark injury on the neck of the deceased. In my considered view the I/O cannot give his opinion on the Inquest Report as the Officer who conducted the Inquest Report himself has proved the Inquest Report. Therefore, the defence cannot take the benefit of any mistake committed by Investigating Officer.

40. From the evidence as well as considering the materials on record it appears that the prosecution has proved the following circumstances against the accused who are facing trial.

(i) the death was caused on the night of 27/05/2014;

(ii) the FIR was lodged on the succeeding day by the mother of the victim;

(iii) there was demand for dowry immediately before the death of the victim;

(iv) the death was caused within the seven years of solemnization of marriage between the accused Muktar Hussan and Aklima Khatun;

(v) the death of Aklima Khatun was not natural and she died due to injuries sustained on her neck;

(vi) the deceased died due to manual strangulation which was anti mortem in nature and

(vii) at the time of the death all the accused persons were present at the P.O.

The P.M. Report proves that the deceased Akilima received one nail mark injury on the right side of the neck and four nail marks on the left side of the neck which can only occur if manual strangulation is done on the victim. The incident of death occurred inside the room in the house of the accused persons where no other person except for three accused persons and the victim were present.

41. In the instant case three accused persons i.e. husband, the father in law and mother in law of the deceased(victim) are facing trial. All the accused persons are facing charges for committing dowry death in furtherance of their common intention.

In every case, it is not possible to get direct evidence of common intention. It has to be inferred from the facts and circumstances of each case as held by Apex Court in *Jail Bhangaman vs- State of Harayana*(1993) 3 SCC 102. To apply section 34 IPC apart from the fact that there should be two or more accused, two factors must be established (i) common intention, and (ii)

participation of the accused in the commission of the offence. If a common intention is proved but no overt act is attributed to any individual accused. Sec.34 will not be attracted as essentially it involves vicarious liability. Again if participation of the accused in the crime is proved and a common intention is absent, sec. 34 cannot be invoked as held by Apex Court in *Smesh vs- State* (2012) SCC 249.

Here in this case, the crime is proved but there is nothing to show that all the accused persons committed the crime pursuant to their common intention or participated in the actual act. The allegation of demand for dowry is only against the husband of the deceased. Hence, the other two accused persons can not be booked by invoking the provision of Sec.34 I.P.C.

42. In the instant case, the informant being the mother of the deceased remained silent regarding any torture or demand for dowry given by the father-in-law and mother in-law of the victim. The FIR as well as the evidence of the PW1 and PW2 speaks that only their son-in-law has demanded and also tortured their daughter. Further, from the P.M. report it appears that only one person has caused manual strangulation as only one hand was used in strangulating the deceased. The P.M. Report is very clear that only five nail marks were found on the neck of the deceased and there is no other injury mark found on the dead body.

43. There is no eye witness to the occurrence who could see that the accused Hazarat Ali and Johura Khatun participated in any manner in commission of the crime. Even though they were also present in the house. The evidence of some witnesses also shows that the deceased was found lying dead inside a room in the house of the accused. The P.O. is the dwelling home of all the accused. So, they were present but there is nothing to show that other two took part in the commission of the offence.

44. The circumstances & the evidence on record does not inspire me to hold that the accused Hazarat Ali and Johura Khatun

took part in causing death to Aklima Khatun and hence, I hold that they are not found guilty of the charges against them and accordingly, I acquit both the accused persons from their charges on benefit of doubt.

45 The evidence of the witnesses as well as discussions made above, it is found convincing enough to hold that accused Muktar Hussain being the husband of the deceased demanded dowry and caused dowry death by strangulating the deceased. The accused, therefore, found guilty for causing death of the deceased Aklima Khatun and accordingly, the prosecution, in my view, has successfully proved the charge U/S.304(B) of I.P.C. beyond all reasonable doubt. Accused, Muktar Hussain, is accordingly, convicted U/S.304(B) of I.P.C.

46. The evidence of M.O. and other materials clearly reveals that at the time of brutal incident, the deceased(victim) was in advance stage but accused husband having knowledge about fact, caused death not only to his wife but to the foetus. The accused has not only taken life of the deceased(victim) but has also taken life in her womb.

47. Heard the accused on the point of sentence.

48. The accused stated that he is

49. Considering above facts and also considering the nature of gravity of the offence, I sentence the accused Muktar Ali to suffer R.I for 7(seven) years and to pay fine of Rs.10,000/-i/d to R.I. another 1(One) year U/S.304(B) of I.P.C.

51. The fine amount if realized shall be given to the informant.

52. The seized cloth(urna) be given to the informant.

53. The DLSA, Goalpara, is asked to pay the adequate compensation to the parents of the deceased(victim) as per the victim Compensation scheme if not already paid.

54. Send a copy of the judgment to the District Magistrate, Goalpara, as per provision of U/S.365 of Cr.P.C.

55. Furnish a free copy of the judgment to the convict/accused.

56. Given under my hand and seal of this Court on this **7th day of June, 2019.**

Dictated and corrected by:-

(Sanjay Hazarika, AJS)

(Sri S. Hazarika, AJS,)
Addl. Sessions Judge, Goalpara.

Addl. Sessions Judge, Goalpara.

Typed by: Jajneswar Nr. Deb, Stenographer, Goalpara

APPENDIX

Sessions : 201/15.

PROSECUTION WITNESSES:-

PW1-Monowara Khatun

Pw2-Abdul Sattar

PW3-Sukur Ali

PW4-Ramjan Ali

PW5-Abu Sama

PW6-Juran Ali

PW7-Koser Ali

PW8-Amzad Ali

PW9- Dr. Sofiqul Islam

PW10-S.I. Abdus Salam Talukdar

PW11-Dhiman Kr. Choudhury.

DEFENCE WITNESS :-

NIL

COURT WITNESS :-

NIL.

PROSECUTION EXHIBITS :-

Ext.1 -Seizure list.

Ext.2-Inquest Report.

Ext.3-P.M. Report.

Ext.4-FIR.

Ext.5-Sketch Map

Ext.6-charge Sheet.

DEFENCE EXHIBITS :-

NIL

COURT EXHIBITS :-

NIL

(S. Hazarika, AJS)

Additional Sessions Judge, Goalpara.