

IN THE COURT OF SESSIONS JUDGE ::::: AT GOALPARA

Present:- T.K. Bhattacharjee, AJS.
Sessions Judge, Goalpara.

Session Case No. 182/13

State of Assam.

-Versus-

- (1) Dipak Nath,
- (2) Biren Nath &
- (3) Jiten Nath **Accused-persons**

Appearance :

Mr. B.K. Das, learned Public Prosecutor for the State.

Mr. A.K. Ghosh & A. Rahman, learned Advs. for the accused.

Date of evidence : 26.3.2014, 13.11.2014, 29.1.2015,
22.7.2016, 27.6.2017, 23.5.2018.

Date of Argument : 15.02.2020.

Date of Judgment : 11.03.2020.

-J U D G M E N T-

1. The brief facts of the prosecution case is that an ejahar dated 30.08.2010 was filed at the Matia Police Station by one Dhiren Nath stating that on 29.08.2010, at night, his younger brother's wife namely Sakila Nath had died while she was sleeping in her house. Accordingly, Matia PS U.D. Case No.05/10 was registered but subsequently, Alin Kr. Nath filed a complaint dated 02.09.2010 before

the Chief Judicial Magistrate, Goalpara stating that his wife Sakila Nath was murdered by strangulation by the accused-persons named in the complaint which was witnessed by the witnesses named in the said complaint and on the basis of the said complaint which was forwarded to Matia P.S., a case was registered u/s 302/34 of the IPC vide Matia P.S. Case No.147/2010 and after investigations were completed, a charge-sheet was submitted against the accused persons, namely Dipak Nath, Biren Nath and Jiten Nath u/s 302/34 of the IPC sending them up for the purpose of trial and showing two of the accused persons Dipak Nath and Jiten Nath as absconders.

2. Thereafter, on appearance of the said accused persons before this court after the committal formalities were completed, this court was pleased to frame charges u/s 302/ 34 of the I.P.C. against all the three accused persons on 25.07.2013 and the contents of the said charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Accordingly, trial of this case commenced.

3. In the course of trial, 6 (six) witnesses were examined in support of the prosecution case which included the informant, the Medical Officer and also the Investigating Officer of this case and after the prosecution evidence concluded, the examination of the accused-persons u/s 313 of the Cr.P.C. was conducted and their statements were recorded during which they declined to adduce any evidence in their defence.

4. Thereafter, the arguments of the respective learned counsels of both the sides were heard and the entire evidence in the case record was carefully perused in order to determine the matter at hand.

5. **Points for determination :-**

(i) Whether on or about the 30.8.2010, at night, the accused persons, in furtherance of their common intention, committed murder of Sokila Nath, the wife of the complainant Alin Kumar Nath by intentionally causing her death in her house at village Bamunpara, as alleged?

DISCUSSION, DECISION AND REASONS :-

6 The PW-1 was the informant Anil Kr. Nath and during his deposition in the court, he stated that the daughter of Biren Nath namely Tripti had fled away from her house with a boy of Nagaon who used to work with the son of this witness and who used to come to the house of this witness and had also stayed there for a few days. His testimony also reveals that his house is opposite to the house of accused Biren and separated by a village road in between. His testimony further shows that a kidnapping case was filed against him and as such, he had gone searching for the girl and on the following day, he came to know from Binita Nath over phone that the dead body of his wife was lying in their house and when he returned home at about 10-30am, police also came to his house with Magistrate. This witness found the dead body of his wife with five finger impressions on her neck and swollen injury on her left cheek and also cut injuries on her left ear and other injuries also. His testimony further shows that he filed the case after two days of the occurrence in the court prior to which his elder brother Dhiren informed the police about the occurrence. This witness also deposed that he came to know that after the occurrence, the accused persons fled away from the village. This witness also claimed that his brother Sashi Mohan informed him that on the date of occurrence, accused Biren Nath was hurling abuses by using the name of his family members in the village road after getting down from a vehicle and he

also threatened to cut and kill but Sashi Mohan was not examined in connection with this case. He also stated that on the date of occurrence, at about 1-30/2-00am, Naba Kr. Nath had seen the accused-persons Jiten Nath , Biren Nath and Dipak Nath coming out from the house of this witness and on the basis of the information given by them, he had filed the case. He also stated that the accused-persons had fled away from the village for about ten months but subsequently, police caught Biren Nath while the other two accused persons surrendered after three years. During his cross examination, the PW-1 admitted that due to a kidnapping case filed by the accused against him, he was fleeing from the police. The PW-1 also admitted that in the subsequent complaint that was filed, six persons were named out of whom names of three persons were deleted and that their names were inserted as they had insulted him. He also admitted that the date of occurrence mentioned in the subsequent complaint was 30.8.2010 though in the Ext.1, the date of occurrence was mentioned as 29.8.2010. The PW-1 also stated in his cross examination that a village meeting took place in this regard during which the President was one Bhupen Nath and Secretary was one Molin Ali but these witnesses were not examined even though the case was filed on their instructions. The PW-1 also admitted that he did not state to the police that accused Biren had abused and threatened to kill his wife in the road. He also stated that he deleted the names of three persons from the subsequent complaint on the instructions of the villagers.

7. The PW-2 was Naba Kr. Nath and from his testimony it is found that he is the nephew of the complainant. According to this witness, accused Biren's daughter namely Tripti Nath had eloped for which the accused had filed a case against the complainant and his deceased wife. This witness deposed that on Sunday, at about 2-

30am, he saw accused Biren, Jiten and Dipak coming out from the house of the complainant and at 9-30/10-00am, in the next morning, he came to know about the occurrence and he came back home at about 1-30pm after which he saw injuries on the dead body. His testimony also shows that he had met the complainant at that time but he did not ask him anything. His cross examination shows that the complainant and the accused live adjacently to each other having the same courtyard. His cross examination further shows that one Nripen Nath was with him when he had gone for driving on the previous night but this Nripen was not examined in order to corroborate his version.

8. The PW-3 was one Dhiren Nath who is the elder brother of the complainant and from his testimony it is found that the daughter of one of the accused party had eloped with a servant. This witness stated that he does not know anything about the occurrence and he had gone to the house of the deceased and found her lying dead but this witness did not mention anything about the injuries upon the deceased. This witness had filed the Ext.1 vide which police were informed about the occurrence initially and he had clearly stated in his deposition that he does not know who was involved in the occurrence.

9. The PW-4 is Kakoli Nath who was sleeping with the deceased/victim at the time of the alleged occurrence and from her testimony it is found that after sleeping with the deceased at night, she got up in the morning on being called by her sister Rita Moni Nath and thereafter, she opened the lock of the room after taking the keys from the top of a box and she went home. This witness did not mention anything about any unusual scenario inside the room where the occurrence took place and where she had spent the night with

the deceased.

10. The PW-5 was the Medical Officer who conducted the post-mortem examination on the body of the deceased at the Goalpara Civil Hospital on 30.08.2010 in connection with Matia P.S. U.D. Case No.5/10 and he had found irregular distributed finger marks and finger nail marks on the neck of the deceased and also bruises and laceration, petical haemorrhage, fracture etc. and in his opinion, the cause of death was due to asphyxia as a result of manual throttling which was homicidal and ante mortem in nature.

11. The PW-6 was the police official who took part in the investigation of this case and from his testimony it is found that preliminary investigation was carried out by him in connection with the U.D. Case No.5/10 and that till the receipt of subsequent complaint i.e. Ext.7, this witness did not examine any witnesses. His cross examination shows that the subsequent complaint dated 2.9.2010 was received in the police station on 5.9.2010 and thereafter, Matia P.S. Case No.147/10 was registered. This witness also deposed that the accused side had some dispute with the informant side and they were from the same family and his testimony also shows that he did not take any finger prints of the accused Dhiren Nath who was arrested by him. This witness also did not examine Rita Moni Nath, the sister of the PW-4.

12. The prosecution side did not examine any other witnesses and from the above evidence of the witnesses it is apparent that the relationship between the informant side and the accused persons were not cordial though they belonged to the same family and that a case was filed against the informant party by the accused party. Further, the evidence on record shows that information was given to

the police regarding the occurrence on two occasions vide the Ext.1 which was filed by the PW-3 namely Dhiren Nath and the Ext.7 which was subsequently filed by the PW-1 namely Anil Kr. Nath. The PW-3 had gone to the place of occurrence and he had seen the dead body of the deceased but he did not mention anything about seeing any injuries on the dead body of the deceased and nor he mentioned anything specific in the Ext.1 where he simply stated that the deceased died while she was sleeping in her house in the absence of her husband. On the other hand, the PW-1 had filed the subsequent complaint after a few days of the occurrence naming six persons in the complaint but subsequently, the names of three persons were deleted. Further, the PW-4 namely Kakoli Nath who was sleeping with the deceased on that night, did not mention anything about the entry of any persons in that room on that night and further, she categorically stated that in the morning, she opened the lock of the room and came out from there and went to her house and in the absence of any evidence on the side of the prosecution to show that there was something unusual or amiss in the said room to indicate as to how the accused-persons or anybody else could have entered the room and committed the alleged offence, there is not much scope to rely on the testimony of the prosecution witnesses with respect to the role of the accused persons and in view of the numerous discrepancies in the testimony adduced by the prosecution, non-examination of vital witnesses, various missing links, enmity between the parties, non filing of a proper ejahar in proper time, non collection of finger prints, deletion of names of some persons from the subsequent complaint etc. I am of the opinion that the prosecution case has become clouded with grave doubts and I am inclined to opine that the prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt by adducing reliable evidence.

13. In the result, the accused persons are not found guilty u/s 302/34 of the IPC beyond reasonable doubt and as such, they are acquitted of the said charges and set at liberty forthwith. However, their bail bonds shall remain in force for the next six months.

14. A copy of the judgment shall be forwarded to the learned District Magistrate, Goalpara and the Superintendent of Police, Goalpara for their information and necessary action.

Given under my hand and seal of this court on this 11th day of March, 2020.

(T.K. Bhattacharjee)
Sessions Judge,
Goalpara

Dictated and corrected by me:

Sessions Judge, Goalpara.

contd..... appendix..

Appendix :-

Prosecution Witnesses:

PW1:- Anil Kr. Nath,
PW2:- Naba Kr. Nath,
PW3:- Dhiren Nath,
PW4:- Kakoli Nath,
PW5:- Dr. M.K. Rahang
PW6:- Kanak Ch. Bharali (IO).

Court witnesses:-Nil.

Prosecution Exhibit:

Ext.1:- Ejahar,
Ext.2:- Inquest report,
Ext.3:- Post mortem report,
Ext.4:- Sketch map,
Ext.5:- Sketch map,
Ext.6:- Charge-sheet,
Ext.7:- Ejahar.

Defence Witness: Nil.

Sessions Judge
Goalpara