

CAUSE TITLE**Sessions Case No.204(NL)2018.**

Informant : Sri Umesh Baruah.

Accused : Sri Mohan Baruah.

ADVOCATES :

For the State: Mr. Jagneswar Saikia, the learned Public Prosecutor.

For the Defence : Mr. M.C. Hazarika, Advocate.

**IN THE COURT OF THE SESSIONS JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
Sessions Judge,
Lakhimpur, North Lakhimpur.

Sessions Case No.204(NL)2018

G.R. Case No. 230/2018.

State of Assam

Vs

Sri Mohan Baruah.

Charge: Under Section 306 IPC.

Date of evidence on : 11.12.2018, 26.03.2019, 30.10.2019,
25.02.2020, 21.12.2020 and 21.01.2021.

Date of argument : 21.01.2021.

Date of judgment : 21.01.2021.

J U D G M E N T

1) The prosecution case in nutshell is that six months prior to 28.07.2018, Rashmi Rekha Baruah's marriage was solemnized with Mohan Baruah (hereinafter the accused person). She started her matrimonial life in the accused person's house, residing with his joint family. On 28.07.2018 at about 7 am, the accused confined the victim inside a room and set her ablaze. An ejahar regarding this incident was lodged by Sri Umesh Baruah (hereinafter the informant), which was registered as Dhakuakhana P.S. Case No.139/2018 u/s 498(A)/ 326/ 307 of the Indian Penal Code (IPC in short).

Contd...

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He went to the place of occurrence, prepared the Sketch Map and recorded the statements of the witnesses. He also tried to record the statement of the victim, and managed to get the victim's dying declaration recorded by Dr. Gitali Dutta, and finally on finding prima facie materials, he submitted Charge-sheet against the accused u/s 306 IPC.

3) On appearance of the accused, copies were furnished and vide order dtd. 15.10.2018, this case was committed for trial by the learned Sub Divisional Judicial Magistrate (M), Dhakuakhana, in connection with GR Case No.230/2018.

4) After hearing both the sides, a formal charge u/s 306 IPC was framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5) To substantiate the stance, prosecution adduced evidence of eleven witnesses including the Medical Officer (M.O. in short) and the I.O.

6) I have heard arguments forwarded by the learned counsel for both the sides.

POINT FOR DETERMINATION :

i) Whether on or before 28.07.2018 at about 7 am, the accused through his conduct induced and abetted the victim to commit suicide by setting her ablaze?

Contd...

DECISION THEREON AND THE REASONS FOR THE DECISION :

7) The informant, Sri Umesh Baruah testified as PW.1 that the accused is his brother-in-law, who married his sister, Rashmi Rekha Baruah about 10 / 11 months back from the date of the incident. After her marriage, his sister went to stay in her matrimonial home, which also had the accused person's sister and parents staying with him as joint family. The victim peacefully lived with the accused persons and also with the other family members. On 26.07.2018, his mother was in the accused person's house. At about 8.30 am, his mother called him over phone and informed him that his sister, Rashmi Rekha set herself ablaze. He immediately rushed to the Civil Hospital, where his sister was taken. After three days, his sister was brought back to her matrimonial home. After fourteen days, his sister succumbed to her injuries. His sister was able to talk when she was in the hospital as well as in the accused person's house. His sister informed him that she set herself ablaze, but she did not inform him that why she took such a drastic step. He did not know if the accused tortured his sister before her death. After his sister's death, she was taken to North Lakhimpur Civil Hospital for Post Mortem examination, and thereafter, her body was handed over to the accused person for funeral rites. He lodged an ejahar with the police at Dhakuakhana P.S. The ejahar was written by a scribe and he affixed his signature, but he did not know what was written in the FIR.

8) It is clear from the evidence of PW.1 that he tried to shield the accused. He even went to the extent of exonerating the accused by stating that he did not know what was written in the ejahar

Contd...

because it was written by a scribe. His evidence belies the allegation against the accused. He is a literate person and he could easily read what was written in the FIR, but he chose to remain silent. His sister had committed suicide, but despite knowing the facts, he did not mention why his sister committed suicide, for the reasons best known to him. Even the other witnesses also tried to shield the accused, for reasons best known to them.

9) Smt Rekha Baruah testified as PW.2 that the accused person's house is about 4 / 5 kms away from her house. Her daughter's marriage was solemnized with the accused as per Hindu rites about 10 / 11 months before the incident. After her marriage, her daughter, Rashmi Rekha started her conjugal life in the accused person's house, and she had a peaceful married life. The incident occurred about five months back, and at that time, she was in the accused person's house. In the morning, she found that her daughter was suffering from fever and she was in her bed. At about 8.30 am, she heard her daughter's call from the backside of her house. She immediately went to the spot, and saw her daughter engulfed in the fire. Then, she raised alarm and poured water on her body to douse the fire. On hearing commotion, the villagers assembled, but the accused person was out on duty driving his bus. The accused person's mother fainted as soon as she saw fire, and thereafter, '108' ambulance was called and her daughter was taken to Dhemaji Civil Hospital. From Dhemaji Civil Hospital, she was taken to North Lakhimpur Civil Hospital. On the same day, her daughter was taken to Guwahati and was admitted at Nemcare Hospital. From Nemcare Hospital, she was taken to Gauhati Medical College Hospital (GMCH in short), and from GMCH, her daughter was sent back to the accused person's

Contd...

house. Her daughter was under treatment for fourteen days. After her daughter was brought back to the accused person's house, she succumbed to her injuries after ten days. Post Mortem examination was performed on her daughter's body at North Lakhimpur Civil Hospital, and thereafter, her daughter's body was handed over to the accused person for funeral rites. Her daughter had a peaceful married life with the accused person. She did not know why her daughter committed suicide. The accused never tortured her daughter while she was alive.

10) The evidence of the victim's mother also does not implicate that the accused abetted the victim to commit suicide. The victim's dying declaration was recorded by Dr. Gitali Dutta in her presence, but PW.2 failed to mention about the dying declaration. This is the extent, to which PW.2 had gone to shield the accused from legal action. The dying declaration was prepared as Ext.5, which was admitted by the I.O. Sri Umesh Bora as PW.11.

11) Dr. Gitali Dutta (PW.12) proved the dying declaration as Ext.5. It is stated in the dying declaration that the victim stated in presence of her mother and father-in-law, Smt Rekha Baruah and Sri Khirod Baruah respectively that her husband at times used to assault her when he gets infuriated. Her husband restrained her from going to her parental home. Once, her parents along with the Gaonburah and local villagers came to take her to her parental home, her husband's family members restrained her from going to her parental home, and so, she set herself ablaze.

12) It is true that the victim did not mention in her dying declaration that her husband was responsible for the obstruction to her to go to her parental home. The victim has mentioned that

Contd...

her husband used to assault her when he used to get infuriated. But, she has not mentioned that her husband is responsible for preventing and forbidding her to go to her parental home. She has not mentioned that the accused person's family members did not allow her to go to her parental home. This dying declaration cannot be accepted as the sole evidence to saddle the accused with the offence of abetment to commit suicide. If the victim was able to speak, may be it was not possible to obtain her signature or thumb impression due to the burns, which led the doctor to record the victim's dying declaration in indirect speech. There is evidence of cruelty in the dying declaration. The evidence is writ at large that the accused used to assault the victim, which implicates the accused with the offence of cruelty to his wife. But, this evidence recorded in the dying declaration has not been substantiated by the evidence of PW.1, PW.2 and PW.3. This dying declaration cannot form the basis of conviction. Ext.5 has to be substantiated.

13) Sri Jiban Baruah testified as PW.3 that the accused, Sri Mohan Baruah is his son-in-law, who married his daughter about 10 /11 months back from the date when he deposed evidence in the court. The accused person's house is about 4 / 5 kms away from his house. After her marriage, his daughter went to her matrimonial home and started her conjugal life, which was peacefully led by his daughter with the accused person, who used to reside with his joint family. The incident occurred about five months back. At that time, he was in Dhemaji. He received a phone call from the accused person's house that his daughter set herself ablaze. At that time, his wife, Rekha Baruah was in the accused person's house. His daughter was taken to North Lakhimpur Civil Hospital, and he reached the hospital in the

Contd...

evening. He saw that his daughter had burn injuries all over her body except her face. In the same evening, his daughter was taken to Guwahati. After 4 / 5 days, his daughter was sent back to the accused person's house from Guwahati. After 15 days, his daughter passed away in the accused person's house. Post mortem was conducted in the North Lakhimpur Civil Hospital, and after the Post mortem examination, his daughter's body was handed over back to the accused person for funeral rites. When he met his daughter at North Lakhimpur Civil Hospital, his daughter could not speak. His daughter had a peaceful married life during her lifetime. He did not know why his daughter committed suicide.

14) When the parents of the victim did not implicate the accused, there is nothing much left for the prosecution to act. Both the victim's parents and brother testified that the victim had a peaceful married life. As PW.3 did not accompany his daughter up to Guwahati, so, he could not talk to his daughter and ask her about the reason behind her decision to commit suicide. Both PW.1 and PW.2 may have been able to have a discussion with the victim, but their evidence also depicts that the victim had a peaceful married life. The dying declaration depicts that the accused person's reluctance to send her to her parental home drove her to commit suicide. They had spent only five months of their married life, but the reason which drove the victim to commit suicide within such a short span of time could not be deciphered even through her dying declaration. The dying declaration was cryptic and the reason for not taking the thumb impression and noting down the statement in the victim's own words were not given by the doctor, who recorded her statement. May be the victim's condition could have prevented her from

Contd...

giving a lengthier detail regarding the reasons of her decision to take such a drastic step. The victim's dying declaration does not clearly implicate the names of her in laws, whose conduct drove her to commit suicide.

15) Sri Tulon Konwar testified as PW.4 that he is the Gaonburah of Namrupiya Jalbhari Laat. The marriage between the accused and the victim was solemnised about eleven months back. Both the victim and the accused embarked on their conjugal life. About five months back, the victim's mother, Rekha Baruah went to Rashmi Rekha's house. He accompanied Rekha Baruah to bring back Rashmi Rekha to her parental home. Then, they had lunch in the accused person's house, and he returned home while Rekha Baruah stayed in the victim's house. In the following morning at about 11 am, Umesh Baruah informed him that Rashmi Rekha Baruah set herself ablaze. After fifteen days, Rashmi Rekha Baruah succumbed to her injuries.

16) The evidence of the Gaonburah depicts that he accompanied Rekha Baruah to the accused person's house. It is similar to the statement in the victim's dying declaration, but even PW.4 refrained from exposing the accused. He did not mention why he went to the victim's house and why the victim committed suicide.

17) Sri Mina Kanta Baruah testified as PW.5 that the accused person is his neighbour. The accused person married the victim about 9 / 10 months back. The incident occurred about seven months back. At about 8 am, he was returning from the paddy field and he saw people gathered in the accused person's house. He rushed to the spot and saw the accused person's wife lying on the ground with burn injuries on her body. At that time, the victim

Contd...

was able to speak, but her speech was slurred. He learnt from the villagers that the victim set herself ablaze. The police came and took the victim to North Lakhimpur Civil Hospital and after a few days, the victim was sent back to her matrimonial home. The victim finally succumbed to her injuries in her matrimonial house. The victim and the accused had a peaceful and harmonious relationship.

18) This evidence of PW.5 also does not implicate that the victim was abetted to commit suicide. Similarly, the evidence of Mahendra Baruah who testified as PW.6 also does not implicate that the accused induced the victim to commit suicide. His evidence also depicts that the incident occurred about seven months back. When he heard a commotion emanating from the victim's house, he went to her house and found many people assembled there. He learnt from the people that the victim set herself ablaze. That morning, he saw the victim's body being charred by fire. She was unable to speak. The police came and took the victim to Dhakuakhana Civil Hospital, and from thereon, she was taken to North Lakhimpur Civil Hospital. After 10 / 12 days, the victim was sent back to her house and she finally succumbed to her injuries. He did not know if the victim or the accused ever quarrelled.

19) Both Niran Baruah and Deben Baruah are farmers and they testified that the victim died as a result of burn injuries. They heard from the villagers on the same day about the incident. They went to the place of occurrence and heard from the

Contd...

villagers assembled in the place of occurrence that the victim committed suicide. Both PW.7 and PW.8 reside almost near the accused person's house and they were not wary if the accused and the victim ever quarrelled with each other.

20) PW.9, Dr. Monoram Tayung performed the Post Mortem examination on the victim's body and found the following :

I. EXTERNAL APPEARANCE:

1. Condition of subject stout emaciated, decomposed etc. : A healthy female dead body of average built, face was distorted, both eyes open, pale, approx. 90 % deep burnt on whole body except scalp.
2. Wounds-position and character: Nil.
3. Bruise-position, size and nature: Nil.
4. Mark of ligature on neck dissection etc.: Nil.

II. CRANIUM AND SPINAL CANAL:

1. Scalp, skull and vertebrae: Scalp - spared.
2. Membrane: Petechial hemorrhage and congested.
3. Brain and spinal cord: Brain - Petechial hemorrhage, sub dural hemorrhage.

III. THORAX:

1. Walls, ribs and cartilages: Completely charred.
2. Pleurae: Petechial hemorrhage.
3. Larynx and tracheae: Edematous congested.
4. Right and Left Lung: Edematous congested.
5. Pericardium: Petechial hemorrhage.
6. Heart: Splilly of heart muscle fibre.
7. Vessels: Congested.

IV. ABDOMEN:

1. Walls: Completely charred.
2. Peritoneum: Petechial hemorrhage and congested.
3. Mouth, pharynx and oesophagus: Petechial hemorrhage and congested.

Contd...

4. Stomach and its contents: Petechial hemorrhage and congested.
5. Small intestine and its contents: Petechial hemorrhage and congested.
6. Large intestine and its contents: Petechial hemorrhage and congested.
7. Liver: Congested, cloudy swelling.
8. Spleen: Congested, cloudy swelling.
9. Kidneys: Congested, cloudy swelling.
10. Bladder: Empty and Petechial hemorrhage and congested.
11. Organs of generation, external and internal: Uterus - normal size, no product. External genitalia - Completely charred.

V. MUSCLES, BONES AND JOINTS:

1. Injury: Nil.
2. Disease or deformity: Nil.
3. Fracture: Nil.
4. Dislocation: Nil.”

The M.O. opined that the cause of death was shock due to flame burn. He proved the Post Mortem Report as Ext.1, wherein Ext.1(1) is his signature, and Ext.1(2) is the signature of Joint Director of Health Services, Dr. Harpal Singh Suri. Ext.1(3) is the signature of Superintendent of North Lakhimpur Civil Hospital, Dr. Nikhil Kakoti.

21) I have carefully perused the medical officer's evidence. It is clear that the medical officer could not even opine whether the death was accidental or suicidal because the body was completely charred to the core. This explains the reason why the thumb impression of the victim could not be taken on the victim's dying declaration.

22) PW.10, Sri Bhogeswar Chamuah is the Gaonburah, who was present when the police was preparing to forward the body for autopsy. The victim is not known to him, but, the accused is known to him. His evidence does not depict that the accused is complicit.

23) The I.O. Sri Umesh Bora testified as PW.11 that on 28.07.2019, he was In-charge at Dhakuakhana P.S. and on that day, Sri Umesh Baruah lodged an ejarah, which was registered as Dhakuakhana PS Cse No.133/2018 u/s 498(A)/ 326/ 307 IPC. He proved the FIR, Ext.2 wherein Ext.2(1) is his signature with his note. He took up the investigation and went to the hospital and the body was taken in a 108 ambulance to the medical. He prepared sketch map of the place of occurrence, Ext.3 wherein Ext.3(1) is his signature. He recorded the statements of the witnesses at the place of occurrence and seized the container with the help of which kerosene was poured. He proved the Seizure List, Ext.4, wherein Ext.4(1) is his signature. Material Ext.1 is the container (red coloured plastic can). As the victim was in North Lakhimpur Civil Hospital, he tried to obtain her statement or dying declaration. He obtained her dying declaration, Ext.5, which was recorded by Dr. Gitali Dutta. On 10.08.2018, he received an information that the victim succumbed to her burn injuries. He made preparation for inquest by delegating the task to other police personnel as he was busy. Inquest was held by the Executive Magistrate. After completion of investigation, he laid charge-sheet against the accused person u/s 306 IPC. He proved the charge-sheet, Ext.6, wherein Ext.6(1) is his signature.

24) In his cross-examination, he testified that he was serving at Dhakuakhana P.S. since 2017, and during his tenure till this case, he did not come across any case regarding cruelty to wife to meet the demand of dowry. He denied that he has only power to conduct preliminary investigation in a murder case, but he has

Contd...

no power to investigate the entire case. He affirmed that the victim stated in her dying declaration that she doused herself with kerosene and set herself ablaze.

25) On recapitulation of the entire evidence, it can be held that the prosecution failed to prove that the accused abetted the victim to commit suicide. All the witnesses testified that the victim had led a peaceful and harmonious conjugal life with the accused person. Even the victim's parents and brother testified that the victim had a harmonious life with the accused person.

26) It has already been held in my foregoing discussions that this case rests solely on the dying declaration. The dying declaration alone cannot form the basis of conviction because in this case, it is not clear from the dying declaration, whether the accused abetted the victim to commit suicide. It is true that Ext.5 depicts that the accused used to assault the victim and he used to prevent her from going to her parental home. But, the latter part of the dying declaration depicts that the victim doused herself with kerosene when the accused person's family members obstructed her from going to her parental home along with her mother. The family members of the accused persons were not booked. The accused alone was appearing in this case. A vague allegation on the dying declaration regarding conduct of the accused person is not sufficient to saddle him with the offence of abetting his wife to commit suicide. With the help of Ext.5, the accused cannot even be convicted u/s 323 IPC or 498(A) IPC because the victim's family members including informant is

Contd...

contrary to the contents of the dying declaration. The accused gets the benefit of doubt.

27) It is, thereby, held that the prosecution failed to prove beyond a reasonable doubt that the accused abetted his wife to commit suicide.

28) The prosecution failed to prove beyond a reasonable doubt that the accused is guilty of any other offence. The accused, Sri Mohan Baruah is thereby acquitted from the charges u/s 306 IPC, and is set at liberty forthwith.

29) The bail bond stands discharged.

Judgment is signed, sealed and delivered in the open Court on the 21st day of January, 2021.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Contd...

APPENDIX**Sessions Case No.204(NL)2018.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Sri Umesh Baruah.
2. PW.2 - Smt Rekha Baruah.
3. PW.3 - Sri Jiban Baruah.
4. PW.4 - Sri Tolan Konwar.
5. PW.5 - Sri Mina Kanta Baruah.
6. PW.6 - Sri Mohendra Baruah.
7. PW.7 - Sri Niran Baruah.
8. PW.8 - Sri Deben Baruah.
9. PW.9 - Dr.Monuram Tayung, M.O.
10. PW.10 - Sri Bhugeswar Chaumuah.
11. PW.11 - Sri Umesh Bora, I.O.
12. PW.12 - Dr. Geetali Dutta, M.O.

LIST OF COURT WITNESS :

Nil.

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Post Mortem Report.
2. Ext.2 - F.I.R.
3. Ext.3 - Sketch map.
4. Ext.4 - Seizure List.
5. Ext.5 - Dying declaration.
6. Ext.6 - Charge-sheet.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :

Sri Satyabrata Kshattri, Stenographer.