

CAUSE TITLE

Sessions Case No.238(NL)/2018.

Informant : Sri Bubul Biswas.

Accused : Sri Maron Biswas.

ADVOCATES :

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

For the Defence: Mr M.D. Gohain Boruah, learned 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.238(NL)/2018.
GR Case No.425/2018.

State of Assam

Vs

Sri Maron Biswas.

Charge : Under Section 302 IPC.

Date of evidence on : 19/11/2020, 21/01/2021 and 08/03/2021.

Date of argument : 25/03/2021.

Date of judgment : 26/03/2021.

J U D G M E N T

1) The prosecution case in a nutshell is that Rina Biswas was the wife of Maron Biswas (hereinafter the accused person). On 21/02/2018, the accused person forcefully administered insecticide and killed his wife Rina Biswas. However, before her death, Rina Biswas was taken to the hospital, but she succumbed on her way to the hospital. On 22/02/2018, at about 11:30 AM, Rina Biswas' elder brother Bubul Biswas was informed about her

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death. Immediately, Bubul Biswas (hereinafter the informant) went and saw his sister's body which was been taken for post mortem examination. The informant became suspicious because he was not informed about the consumption of insecticide by Rina Biswas (hereinafter the deceased). Moreover, the accused used to assault the deceased during her life time.

2) An ejahar regarding this incident was lodged by the informant and a Harmuti OP GD Entry No.380 dated 22.02.2018 was registered and the ejahar was forwarded to the Laluk PS and registered as Laluk PS Case No.43/2018 under Section 302 of the Indian Penal Code (IPC for short) and SI Anil Borah was entrusted to continue the investigation.

3) During investigation, the Investigating Officer (I/O in short) made preparations for inquest. He forwarded the body for autopsy. He went to the place of occurrence, prepared a Sketch Map and recorded the statements of the witnesses. On finding prima facie material, he submitted charge-sheet against the accused person under Section 302 IPC.

4) On appearance of the accused, copies were furnished and this case was committed for trial vide order dated 09/11/2018 passed by the learned Additional Chief Judicial Magistrate, Lakhimpur in GR Case No.425/2018. After hearing both sides, a formal charge under Section 302 IPC, was framed, read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

5) To substantiate its stance, the prosecution adduced the evidence of seven witnesses including the Medical Officer (M/O in

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short) and the I/O. The defence cross-examined only three witnesses. I have heard the arguments forwarded by the learned counsel for both the sides.

Points For Determination:

(i) Whether on 21/02/2018, the accused person committed murder of his wife Rina Biswas by administering poison?

Decision Thereon And The Reasons For The Decision :

6) The informant Bubul Biswas testified as PW-1 that the accused is his brother-in-law, who married his sister in the year 2006. Both the accused and his sister, the deceased had a harmonious relationship. Suddenly, in the year 2018, his sister Rina Biswas (deceased) consumed poison and she was brought to the hospital. He (PW-1) misunderstood the accused person because they did not receive any information regarding his sister's death on the previous day. Later on, he learnt that the accused called him through his Aircel number which was not functional at the time of the incident. He received the information about her sister's (deceased's) death from her neighbour. Then he went to his sister's house and he saw many people assembled in her house. He heard people murmuring and gossiping against the accused and on being influenced by the gossips, he lodged this case. The deceased and his brother-in-law had a harmonious relationship. Ext.1 is his FIR and Ext.1(1) is his signature.

7) The evidence of PW-1 further proceeds that the deceased died in the hospital. His parents went to the hospital to meet the deceased and they were grief-stricken by her death and as they were crying in the hospital, he failed to take a look at his sister's

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body. His sister's body was handed over to the accused person after autopsy. He later realized that the accused is not responsible for his sister's death.

8) This witness was not at all cross-examined. It is apparent that this witness tried to shield the accused person. It is not clear from his evidence how many family members resides in the accused person's house. The prosecution also failed to put forward the circumstances leading to the victim's death. Although the victim died in her house and although the accused failed to discharge his burden under Section 106 of the Indian Evidence Act, 1872 (Evidence Act for short), the accused gets the benefit of doubt. Although PW-1 mentioned in the FIR that his sister Rina Biswas (deceased) was subjected to cruelty by the accused, he retracted his statement when he testified that deceased and the accused had a harmonious relationship. The contradictions cast a shadow of doubt over the veracity of PW-1's evidence. The victim was married to the accused in the year 2006, which is way beyond 7 years.

9) The evidence of the other witnesses also does not at all implicate that the accused is the person who forcefully administered poison to his wife. If the poison was taken by the victim voluntarily, yet the accused cannot be brought to book because there is no evidence of abetment to commit suicide. There is also no evidence of any cruelty to saddle the accused with the offence of dowry death.

10) The evidence of Papu Biswas also does not implicate that the accused is complicit. He testified as PW-2 that Rina Biswas was (deceased) his elder sister, who was married to the accused, about 12 years back. She died in her matrimonial home. As they

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did not get any information regarding her death, they got suspicious about the situation and an ejarah was lodged against the accused on suspicion. In his cross-examination, he testified that his sister had (deceased) a good relationship with her husband. Out of grief and misunderstanding a case was lodged against the accused.

11) Thus, it can be safely held that the evidence of PW-1 and PW-2 exonerates the accused. In sync with to the evidence of PW-1, Smt Usha Biswas testified as PW-4 that Rina Biswas (deceased) died about 10/12 years ago, and she did not know how she died. However, Smt Sabitri Chowtal who testified as PW-5 added that she heard that there was a fight between the accused and his wife. In her cross-examination, PW-5 testified that she personally did not know about the fights and quarrels between the accused and his wife. She visited them long time back and she noticed that they had a cordial relationship. She has admitted that she did not mention before the police that she heard from the people that the accused used to fight with his wife.

12) After scanning the evidence of PW-5, it is held that although there is a hint of dispute between the accused and his wife, yet the accused cannot be fastened with the guilt of cruelty to his wife. The evidence of PW-5 is hearsay evidence and contradictory. In her evidence-in-chief, she testified that she heard about a fight between the accused and his wife. In her cross-examination, she testified that she noticed a good relationship between the accused and his wife.

13) Pradip Biswas who testified as PW-6 denied any knowledge about the incident. He did not even know whether Rina Biswas was alive or dead. The I/O is a formal witness. Sri Anil Borah

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testified as PW-7 that on 22/02/2018, while serving as I/C of Harmuti OP, he received a phone call from Laluk PS, at about 10:15 AM, informing about the death of Rina Biswas. He directed ASI Rubul Amin to conduct inquest and registered a Harmuti OP GD Entry No.317 dated 22/02/2018. On the same night, Bubul Biswas lodged the ejahar which was registered as Laluk PS Case No.43/2018 under Section 302 IPC. Ext.1 is the ejahar and Ext.1(1) is his signature. He conducted investigation and submitted charge-sheet against the accused person under Section 302 IPC. Ext.4 is the charge-sheet and Ext.4(1) is his signature. The M/O's evidence also depicts that the cause of death could not be ascertained. Dr Probin Mili testified as PW-3 that in his opinion, the cause of death could not be ascertained. So, specimen from stomach and its contents, kidneys, lungs and liver were sent for forensic analysis to ascertain the cause of death. The approximate time of death was 6-12 hours. He performed post mortem of the body of Rina Biswas on 22/02/2018. He could not detect any injuries on her body.

14) It has already been held in my foregoing discussions, that evidence is lacking against the accused person. The informant retracted his FIR. There is no evidence of cruelty or instigation to commit suicide. It could not be ascertained whether the victim committed suicide. The cause of death could not be ascertained. However, it is in the evidence that the victim consumed insecticide. No injuries were detected by the doctor who conducted autopsy. So, this is not a case of homicidal death. The accused cannot not be saddled with the guilt of murder on conjectures and surmises. Strong suspicion arises against the accused person, but according to the tenets of criminal jurisprudence, an accused cannot be incarcerated on conjectures and surmises. It is held that the prosecution failed to prove

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beyond a reasonable doubt that the accused committed murder of his wife by administering poison. There is no evidence that the accused instigated his wife to commit suicide. There is no evidence of cruelty extended by the accused to his wife. The accused Sri Maron Biswas, is hereby acquitted from the charges under Section 302 IPC, on benefit of doubt, and is set at liberty forthwith.

Judgment is signed, sealed and delivered in the open Court on the 26th day of March, 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.

A P P E N D I X**Sessions Case No.238(NL)/2018.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW-1 - Sri Bubul Biswas.
2. PW-2 - Sri Papu Biswas.
3. PW-3 - Dr Probin Mili, M/O of the case.
4. PW-4 - Smt Usha Biswas.
5. PW-5 - Smt Sabitri Chowtal.
6. PW-6 - Sri Pradip Biswas.
7. PW-7 - Sri Anil Borah, I/O of the case.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Ejahar.
2. Ext.2 - Post Mortem Report.
3. Ext.3 - Sketch Map.
4. Ext.4 - 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.