

**IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI**

**Sessions Case No.107/2010**

**G.R. Case No. (GKJ) 690/2007**

**U/S.304-B/302 I.P.C.**

**State of Assam**

**- Vs -**

**Sri Kamal Saha**

Committing Magistrate : Bina Tripathi, Addl. Chief Judicial  
Magistrate, Dhubri

Present : Sri A. Bhattacharyya, AJS  
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor for the State.  
Sri A.L. Bairagi, Advocate for the defence.

Date of Evidence : 24-09-2010, 16-03-2011, 11-01-2012,  
21-05-2012, 03-10-2012 & 17-12-2012,

Date of Argument : 04-01-2013

Date of Judgment : 07-01-2013

**J U D G M E N T**

Shri Dhaneswar Roy vide an ejahar dated 20-12-2007 states before the Golakganj Police Station that his elder sister Dipali Roy had developed love affairs with the accused Kamal Saha since 8 (eight) years back. On 13-05-2007 her marriage ceremony was performed at Mahamaya Temple and the same was registered on 24-05-2007. After the marriage her sister went to her matrimonial home but the accused and his family members subjected her to cruelty on demand of dowry, money and other articles etc. Thereby, his sister became weak. On 27-10-2007 at about 6 a.m. his sister fled away from her matrimonial home and started to reside at his house & since then the accused did not visit her. On 20-12-2007 at about 6 a.m. his sister Dipali Roy committed suicide by hanging. Thus the occasion of filing of the instant ejahar.

2. The Glokganj Police Station on registration of a case took up investigation and at the conclusion of the investigation laid charge sheet U/s.120 (B)/304 (B)/306 I.P.C. against the accused.

3. After commitment and on the appearance of the accused, this Court was pleased to frame the charges Under Sections 304 (B)/302 I.P.C. against accused named above. The charges so framed were read over and explained to the accused to which he pleaded not guilty.

4. During trial prosecution side after examining as many as 7 (Seven) P.Ws closed their side. Statement of the accused person is recorded U/s.313 Cr.P.C. I heard the argument of the case from both the parties.

5. Now, point for determination in this case will be as to whether the materials surfaced during trial in the testimonies of the P.Ws would justify the conviction of the accused person U/s.304(B)/302 I.P.C?

### **Decision and reasons thereon**

6. Here in this case the ejahar under Ext-1 discloses that the deceased Dipali Roy committed suicide by hanging at the house of the informant. The materials so far available would show that after the death of the deceased her dead body was sent to Dhubri Civil Hospital for postmortem examination vide dead body challan under Ext-5. At Dhubri Civil Hospital, Dr. Ramani Talukdar (since deceased) conducted the postmortem examination of the deceased and the Doctor prepared the report of postmortem examination under Ext-3. From the testimonies of the Dr. Tapas Majumdar (P.W-6), it is revealed that the Dr. Ramani Talukdar (since deceased) found one oblique non continuous ligature mark and the cause of the death was asphyxia as a result of hanging.

7. Now, it is to be ascertained as to whether the accused named above can be fastened on the liability to commit murder of the deceased so also under the offences of dowry death.

8. It needs to be mentioned here that the ingredients for dowry death are.

- (a) *There is a married lady.*
- (b) *She has died an unnatural death including death by burn or by bodily injury or by poisoning etc.*
- (c) *That such death has occurred within 7 (seven) years of marriage.*
- (d) *It must be found that soon before her death she was subjected to cruelty or harassment for, or in connection with any demand for dowry by her husband or any of his relatives.'*

9. Now, it is incumbent upon this Court to search for the ingredients of dowry death and murder in the testimonies of the P.Ws.

11. In order to do so let us have a look at the evidences on record.

12. P.W-1 Shri Dhaneswar Roy being the informant of this case during his examination-in-chief narrated the story as he disclosed in the ejahar under Ext-1. Further, during examination-in-chief he stated that the deceased had led conjugal life for a period of 3/4 months at her matrimonial home. Thereafter, she recorded mental disorder. Then she returned to her parental home and stayed for a period of two months therein and did not return to her matrimonial home. Prior to the date of occurrence altercation took place between her and her father in regard to the marriage and thereafter, the deceased committed suicide by hanging.

During cross examination, the P.W-1 disclosed that he did not know as to the contents of the ejahar. According to him it was written by the people of the police station.

From a perusal of the testimonies of the P.W-1, it is revealed that the P.W-1 could not become successful to bring cogent materials in support of the allegation of the prosecution story.

13. P.W-2 Shri Monteswar Roy being the uncle of the deceased states during trial that on 27-10-2007 deceased came to his house in an ailing state. On being asked she told that she was suffering since some time back. On being further asked, she told that she was not passing days peacefully as she was harassed by the inmates of the house of her husband. Subsequently, the deceased Dipali committed suicide by hanging.

Considering the aforesaid testimonies of the P.W-2 in the light of the deposition of the I.O. (P.W-7), it is revealed that the P.W-2 during investigation did not tell before the I.O. that on being asked, Dipali had told before him that she was harassed in the house of her husband. Therefore, it is very much clear from the testimonies of the P.W-2 that the witness had embellished the prosecution story to a great extent.

14. P.W-3 Sumitra Roy during her examination-in-chief also brought the story of mental torture committed upon the deceased by the family members of the accused.

During cross examination the aforesaid witness stated that Dhaneswar Roy would be able to speak about the relation between the deceased and the accused.

Considering the testimonies of the P.W-3 in the light of the deposition of the P.W-7, it is revealed that the witness Sumitra Roy did not tell before the I.O. during investigation that on being asked the deceased had told before her that she was harassed.

So, from the aforesaid facts and circumstances, it is revealed that the P.W-3 had also embellished the prosecution story during trial.

15. P.W-4 Smti Pinki Roy being the sister of the deceased narrated the incident in the same manner and tune as it was disclosed in the ejahar. P.W-4 during her examination-in-chief deposed that the inmates of the house of the accused harassed her elder sister mentally.

16. P.W-5 S.I. Biren Ch. Barman during trial states that he completed the investigation of this case. Thereafter, he had laid charge sheet under Ext-2 wherein Ext-2 (1) is his signature.

17. P.W-6 Dr. Tapas Majundar was called by this Court to exhibit postmortem report as the Doctor who conducted postmortem examination expired. Accordingly the P.W-6 exhibited the postmortem report under Ext-3.

18. P.W-7 is Inspector Jatin Das. According to him on 20-12-2007 he was posted as O/c. Golakganj Police Station. On that day one Kamal Saha laid the ejahar before the police station stating that his wife had committed suicide. On the aforesaid ejahar a U.D. Case being No. (GKJ) P.S. Case No.29/2007 was registered and he himself took up the investigation. By this time, one Dhaneswar Roy laid another ejahar, where on also a case was registered and he himself took up the investigation. In course of investigation of both the cases, he visited the place of occurrence, prepared sketch map. Ext-4 is the Sketch Map wherein Ext-4 (1) is his signature. During investigation dead body of Dipali Roy was inquested and thereafter, it was sent for postmortem examination vide Ext-5 wherein Ext-5 (1) is his signature. By this time he got the transfer order and as such he handed over the C.D. to his successor.

During cross examination P.W-7 states that the neighbour of the deceased namely Siben Master, Manik Master, Dhiren and Karen were not examined by him during investigation. Nor did he examine the ejahar writer.

So these are all about the evidences on record.

19. Here in this case the accused person has faced the trial on the allegation of Section 302 I.P.C. alongwith Section 304 (B) of I.P.C. It is alleged that the accused had committed murder of the deceased Dipali Roy but the evidences so far surfaced during trial would not show that the murder of deceased Dipali Roy has been committed by the accused & the same has been established beyond all reasonable doubts as the materials so far surfaced during trial have not supported at all the aforesaid factum. Therefore, it can be held that the allegation U/s.302 I.P.C. has not at all been proved beyond all reasonable doubt against the accused.

20. Here in this case in the ejahar it is alleged that the accused harassed the deceased on demand of dowry, money and other articles. But the informant during trial did not tell the aforesaid story of the ejahar, rather he being the own brother of the deceased deposed during trial that the deceased developed mental disorder and accordingly committed suicide by hanging at his house. Some of the witnesses as it is revealed from the testimonies had tried their level best to bring the story of mental harassment allegedly perpetrated by the accused upon the deceased. But the said testimonies as surfaced during trial appear to be the embellished version of the prosecution story during trial.

21. Here in this case from the testimonies of the P.Ws, it is revealed that the deceased was a married lady, she died in an unnatural death by hanging and such death had occurred within seven years of marriage. But it has not been found that soon before her death she was subjected to cruelty or harassment for, or in connection with any demand for dowry by her husband or any of his relatives. Thus it is vividly clear that here in this case the most important ingredient to attract Sec.304 (B) I.P.C. is lacking.

22. Considering the aforesaid aspect in the light of the observations recorded by the Hon'ble Apex Court of the Country in a decided case law reported in *2001 Supreme Court Cases (Cri) 1148*, it can be observed that here in this

case the materials so far surfaced during trial are not at all sufficient to bring home the offence U/s.304 (B) I.P.C. against the accused beyond all reasonable doubt. Therefore, due to the insufficiency of evidences the accused is entitled to get the benefit of doubt

23. In the result for the reasons as stated above, the accused is acquitted on benefit of doubt from the charge U/s.304(B) I.P.C. and the accused is acquitted from the charge U/s.302 I.P.C.

Given under my hand and seal of the Court on this 7<sup>th</sup> day of January, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.