

**HEADING OF JUDGMENT IN SESSION CASE**

**IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA**

**Present:- Smti S. Bhuyan, AJS**

**Additional Session Judge, Bilasipara**

**Session Case No- 82 of 2009**

**u/s 306 IPC**

**STATE**

**Versus**

Samad Ali

Accused person

(Committed by Shri N.S. Deori, then Ld. SDJM (M) Bilasipara in GR(CPR)  
case No- 92/02 u/s 306 I.P.C.)

**Advocate appeared:-**

For the state:-Mr. T. Kr. Bhattacharya, Addl. P.P

For the accused:- Mr. Tofazul Hoque ,Advocate.

Date of institution of the case                    :- 12-09-02

Date of commitment                                    :- 14-07-09

Date of Framing charge                                :- 28-07-09

Date of prosecution evidence                        :- 05-11-09, 25-01-10, 17-06-10,  
23-09-10, 18-11-13,12-05-15,  
20-01-16,13-12-06.

Statement of accused recorded on                    :- 21-11-17

Date of Argument                                        :- 12-12-17

Judgment delivered                                    :- 21-12-17

## **JUDGMENT**

### **Prosecution Case**

1. Prosecution case as unfurled from ejahar is that informant's sister Minara Begum got married with accused Samad Ali about 5 months ago and on 11-09-02 at about 11.30 a.m suddenly informant got information over phone that his sister Minara Begum committed suicide by hanging herself in the accused's house but informant did not take the information easily and suspected that accused persons Fulchand Ali, Samad Ali, Samanta Bhan Bibi, Opia Begum and Ahamed Ali killed his sister Minara Begum by torturing and beating her and to conceal the actual fact give it colour of suicide by hanging the dead body of Minara after committing her murder. Hence the case.

### **Investigation**

2. Officer-in-charge of Chapar police station on receiving the ejahar from Md. Anowar Ali registered a police case vide no Chapar police case No. 92/02 under section 302/34 I.P.C. and SI Nripendra Mahanta was entrusted to conduct the investigation of the case and after completion of investigation IO submitted charge sheet against the accused person named herein above u/s 306 I.P.C.

### **Committal**

3. On receipt of the charge sheet, then SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused person committed the case before the Learned. Sessions Judge, Dhubri for trial.

### **Charge**

4. After hearing Id. Counsel for both sides and perusal of material on record Ld. Sessions Judge, Dhubri framed charge u/s 306 IPC against the accused Samad Ali and when charge read over and explained to the accused person he pleaded not guilty and claimed to be tried. After framing charge u/s 306 I.P.C. against accused Samad Ali Ld. Sessions Judge, Dhubri hand over the case to this court for trial

### **Trial**

5. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 8 number of witnesses and exhibited 3 no of documents. PW- 1 Md. Anowar Ali, PW-2 Md. Hayet Ali, PW-3 Md. Safar Ali, PW-4 Md. Ashimuddin, PW-5 Aimana Begum, PW-6 Dr. Sashidhar Deka, PW-7 Biswajit Goswami, PW-8 SI (U.B) Paramananda Singha. Ext-1 Inquest report, Ext-2 Ejahar, Ext-3 Charge sheet. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is total denial, however declined to adduced evidence in support of the plea of denial.

### 6. **POINTS FOR DETERMINATION:-**

i) Whether accused on 11-09-02 at about 11.30 am at village Dhirghat Maruar Tila under Chapar PS abated Minhara Khatun to commit suicide?

### **ARGUMENT**

7. Ld. Addl. P.P submitted that deceased died within 1 year of her marriage as such presumption can be drawn against accused that it is accused who had abated victim to commit suicide.

8. On the other side ld. defence counsel contended that this is a pure case of suicide as evident from the evidence of MO and PM report of the deceased. There is no sing, mark of injury on the body found at the time of post mortem in the deceased body. He further submitted that evidence of PW-2 is not corroborated with PM report of the deceased and other PWs evidence. Ld. defence counsel lamented that there is no whispering by PWs that accused subjected torture on deceased in demand of dowry and it is not a case of dowry demand and blackish spot on deceased as seen by PW-2 may be due to her pregnancy and accused is not the abated deceased to commit suicide.

### **DISCUSSION, DECISION & REASON THERE OFF:-**

9. Prosecution allegation leveled against accused is that after marriage of deceased with accused, accused abated Minara Khatun to commit suicide on 11-09-02 at about 11.30 am at village Dhirghat Maruar Tila under Chapar PS.

10. PW-1 Md. Anowar Ali is the informant of the case and he lodged ejahar. Prosecution exhibited ejahar as Ext2. In the ejahar it is stated that five month prior to suicide incident of Minara Begum, she was married to

accused Samad Ali and informant received information of death of Minara Begum on 11-09-02 at about 11.30 am. Informant suspect about truthness of suicide incident and accused subjected physical torture on Minara (deceased), sister of informant and accused after killing her hanged her dead body to give impression of suicide and accused pulled down the dead body.

11. His evidence is that his sister Minara (deceased) lived with accused as husband and wife for 6 month after their marriage and at the time of death she was 3 month pregnant. He went to his sister's matrimonial home( place of occurrence) on next morning of the incident and found his sister ( deceased) was hanged tiding with her wearing apparel and seen black spot injury. He stated police and Magistrate arrived at the place of occurrence and did inquest on the dead body. Thereafter, post mortem was performed on the dead body. In cross he stated prior to the marriage of his sister with accused, his sister did not visit accused house, did not see her would be husband( accused) and his house. After marriage she with her husband( accused ) came to their house for 5/6 times and before one month of this incident she visit his house with accused. He denied that his sister did not wanted to marry accused but they forcefully give her in marriage with accused against her will and consent. PW-1 in his evidence did not whisper subject of torture on deceased by accused.

12. PW-2 Hayet Ali deposed deceased Minara was his sister in law( Khulkhali) and he get information from Rupchand that Minara was killed at accused house and he tried to visit deceased's matrimonial house on that day but failed and on next morning he visited place of occurrence ( matrimonial house of deceased) and found dead body of Minara was laying in a chair and accused informed him that Minara commits suicide by using her own wearing sari by tiding around her neck but is not possible to commit suicide from the place shown to them by accused. In cross he stated Minara visit her parent's house 2/3 days prior to the incident. He denied defence suggestion that he did not found injury on the dead body; deceased was forcefully given marriage to accused; deceased did not want to marry accused.

13. PW-3 Safar Ai deposed deceased was accused's wife and he heard that Samad's wife committed suicide. In cross he stated he did not see injury on the dead body of Minara. PW-4 Ashimuddin deposed he heard that accused's wife committed suicide and visit his house and seen police

was making arrangement to take dead body. In cross he deposed prior to 5/6 month of this incident accused married Minara and she hails from Dhubri. PW-5 Aimona Begum deposed she heard Minara died by hanging but she did not see the incident and she only removed the cloth of deceased to show dead body to police and Magistrate during inquest as deceased was female during inquest.

14. Evidence of PW-6 Dr. Sashidhar Deka is that on 13-09-02 he conducted PM examination of deceased Minara Begum and found a female dead body of 19 years age which is in decomposition state, saliva was coming out from the mouth cavity, a ligature mark high up in the neck which is oblique in nature, non-continuous a gap just below the right mastoid process, other injuries absent, uterus is non gravid and according to his opinion deceased died due to asphyxia as a result of hanging which is anti-mortem in nature.

15. PW-7 Biswajit Goswami is then Executive Magistrate Bilasipara. His evidence is that he conducted inquest on the dead body of Minara Begum in presence of witnesses and found dead body in lying condition on the floor of dwelling house of accused, head of deceased was towards west side and feet were towards east side facing slightly bent towards south, mouth of deceased were closed, some jelly like substances seems to come out from the right nose, some injury marks on the neck and left upward portion of chest without blood, whole face and stomach were swelling and remaining other parts partially swelling, no any defect found on the remaining other parts of body including genital organs and he submitted inquest report vide Ext 1 wherein he put signature vide Ext 1(1). In cross he stated at the time of conducting inquest on the dead body of deceased many people including male and female were present but in his report he did not make any female witness. He stated he has not mentioned type of injury on inquest report.

16. PW-8 SI Paramananda Singha is the IO of the case and he filed chargesheet against the accused u/s 306 I.P.C. Ext 3 chargesheet. Ext 3(1) is his signature.

17. PW-7 did the inquest on dead body. According to PW-7 he found injury marks on the neck and left upward portion of chest without blood stains. PW-1 and PW-2 deposed they seen injury mark on dead body of Minara. PW-1 deposed he noticed black colour injury mark. PW-2 seen swelling injury on deceased body. PW-7 found injury mark on deceased's

chest. PW-6 conducted post mortem on the dead body. PW-5 deposed, he showed dead body by removing the cloth but PW-5 did not state that she noticed injury mark. Though PW-1 and PW-2 deposed they seen injury on deceased's body but they specifically did not state on which body part they saw injury mark. Statement of PW-7 is contradicted by post mortem report submitted and conducted by PW-6. Post mortem report of deceased does not shown presence of any injury on the chest of dead body. After inquest dead body was sent for post mortem. Ligature mark on neck present which is as a result of hanging. PW-6 conducted post mortem on the dead body on 13-09-02. Deceased died on 09-09-02. According to PW-6 death is due to asphyxia as a result of hanging. He deposed other injuries are absent. Thus, post mortem report, inquest report and evidence of PW-1 and PW-2 contradict on material point of injury present on chest of the deceased. Other PWs including PW-5 did not whisper presence of injury mark on the dead body and their statement corroborated with post mortem report.

18. PW-1 and PW-2 who are the relative of the deceased stated prior to 2/3 days of incident, deceased with her husband accused visit the house of deceased's parents. PW-1 is the brother of the deceased. In his evidence he did not speak a single words that accused subjected any kind of torture on deceased after her marriage with accused. Though PW-1 in his ejahar stated that accused inflicted torture on deceased victim but on oath while adducing evidence before court, he was totally silent and did not utter a single word in this respect. PW-2 in his evidence stated that place where from deceased was shown to commits suicide is quite impossible to commits suicide from said place but he too was silent while adducing evidence on oath on the fact of cruelty ( torture) being meted on deceased by the accused after her marriage with the accused. Reading of the statement of PW-1 and PW-2 does not led any material of dowry demand or any kind of torture be it physical or mental on deceased that could pointed that deceased commits suicide as provoked , abated by the accused.

19. In this case deceased died before completion of 7 years of her marriage with accused. She died after 5/6 month of her marriage with accused. But in the case in hand none of the PWs including PW-1 and PW-2, the brother (informant of the case) and brother in law of the deceased while adducing evidence before the court on oath did not utter a single word that accused made unlawful demand from his wife Minara( deceased)

after her marriage with accused or even prior to her death. Deceased victim who visited her parent's house with accused just 2/3 days of her committing suicide does not disclosed any kinds of torture on her by accused in demand of dowry to her parents or to PW-1 who was her brother. Thus section 113 A of the evidence Act does not come to play and aid the prosecution case against the accused. I am quoting here with section 113A of evidence Act.

20. Section 113A of Evidence Act: Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

21. For a presumption of abetment of suicide, prosecution to prove that the woman committed suicide on account of cruelty inflicted on her by her husband and his relatives, prosecution has to bring on record the cruelty meted to wife prior to her death and nature of cruelty must be as envisaged u/s 498(A) I.P.C. (a) and (b)

22. In the case in hand apart from the cruelty mentioned in explanation (b) of section 498(A) I.P.C. of dowry demand. The prosecution is also unable to bring any other kind of cruelty as envisaged under explanation (a) of section 498(A) I.P.C. PW-1 and PW-2 who were relative of the deceased did not made any statement before court while adducing evidence that accused beaten his wife, or that accused had any bad habit or that accused inflicted or caused any mental or physical torture, pain to deceased that could led her to the extreme point to end her life. PW-1 and PW-2 is totally silent on the point of dowry demand. They did not make any allegation against the accused that he made illegal demand of dowry and to fulfill his alleged demand subjected physical and mental torture on deceased victim. That being the position of evidence of prosecution, I am to hold that submission made by the Ld. Addl. P.P that as victim died within 7 years of her marriage with accused, it is accused who had abated victim to commit suicide does not took hold in the case in hand.

23. In view of the aforesaid discussion and upon meticulous scrutiny of the evidence on record, I have come to my considerate judiciary finding that prosecution failed to bring home charge of section 306 I.P.C. against the accused Samad Ali beyond all reasonable doubt. Accordingly, he is acquitted from the charge of section 306 I.P.C and set at liberty.

24. Bail bond of accused person will remain stands for next six (6) months u/s 437(A) Cr.P.C.

25. Send back the GR case record to the learned committal Court with a copy of the judgment.

26. Given under hand and seal of this Court on this 21<sup>st</sup> day of December 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr. III.

**APPENDIX**

PROSECUTION WITNESS:-

PW- 1 Md. Anowar Ali,  
PW-2 Md. Hayet Ali,  
PW-3 Md. Safar Ali,  
PW-4 Md. Ashimuddin,  
PW-5 Aimana Begum,  
PW-6 Dr. Sashidhar Deka,  
PW-7 Biswajit Goswami and  
PW-8 SI (U.B) Paramananda Singha.

PROSECUTION EXHIBIT:-

Ext-1 Inquest report,  
Ext-2 Ejahar,  
Ext-3 Charge sheet,

DEFENCE WITNESS :- NIL  
DEFENCE EXHIBITS :- NIL  
COURT EXHIBITS :- NIL  
COURT WITNESS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara