

DISTRICT : DHUBRI

IN THE COURT OF THE SESSIONS JUDGE, DHUBRI

PRESENT: - Shri T. Kalita,
Sessions Judge, Dhubri

Sessions Case No. 82 OF 2017

U/S 306 IPC

Corresponding to GR Case No. 2336 of 2012

State of Assam

.....Complainant

-Versus-

Anowar Ali

.....Accused

Charge framed on : 14.06.2017

Evidence recorded on : 31.07.2017

22.02.2018

29.06.2018

25.09.2018

21.12.2018

08.01.2020

Statement recorded on : 07.03.2020

Argument heard on : 20.06.2020

Judgment delivered on : 20.06.2020

Advocates who appeared in this case

Shri Mirza Khan learned Addl. P.P. for the Prosecution

Shri M. Hoque, Advocate for the Defence

J U D G M E N T

1. Accused person namely Anowar Ali was charged to stand trial u/s 306 IPC on the basis of an investigation made upon the FIR laid by one Ashraful Hoque before the I/C Paglahat Watchpost on 30.06.2012 to the effect that his elder sister Alema Bibi was given in marriage with accused Anowar Ali according to tenets of Shariyat Law. However, she was subjected to torture at the hands of her husband by demanding dowry and also subjected to torture because she could not give birth to male child. The series of village salish were held to resolve the dispute in between the parties. Moreover, her husband was maintaining an

illicit relation with one Mamata Bibi and he decided to marry her. As a result of which trouble arose in between them. However, on 28.06.2012 conspire with each other the accused persons namely Anowar Ali, Mamata Bibi, Abdul Karim, Adam Ali and Kadorban Bewa with a view to finish her sister, assaulted her brutally and administered poison into her mouth. She was immediately taken to Kachokhana Health Centre. On being informed, he went to the Sub-Centre and found his sister Alema who told him that she was subjected to brutal torture at the hands of the accused persons. However, she subsequently died at the hospital.

2. On being received the FIR, the police registered the case and investigated the matter and upon completion of investigation, laid charge-sheet against the accused Anowar Ali, husband of the deceased woman to stand trial u/s 306 IPC. However, the police have not sent up the accused persons namely Mamata Bibi, Abdul Karim, Adam Ali and Kadorban Bewa.

3. The case is exclusively triable by the Court of Session for which the case is committed to the Court of Session by learned Sub-Divisional Judicial Magistrate (S), Dhubri.

4. Upon having furnished the copies, the accused was charged to stand trial u/s 306 IPC. He however pleaded not guilty and claimed for trial.

5. During trial, the prosecution has examined as many as eight (8) nos. of witnesses. The statement of the accused was recorded u/s 313 Cr.P.C. His plea was of denial. He has adduced none.

6. I have carefully perused the evidences on record and heard learned counsel for both the sides and accordingly, proceed to dispose of the case.

7. Now, the moot point to be answered as to whether the accused person abets his wife Alema Bibi for committing suicide and as a result of which she administered poison on 29.06.212 and thereby died in the hospital while was undergoing treatment.

**DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION
ARRIVED THEREON WITH REASONS**

8. It has already been stated that the prosecution has examined altogether eight (8) no. of witnesses out of which PW-1 is the Habibar Rahman who knows both the parties. According to him, the marriage in between the parties took place about 16 years back. However, he heard that wife of the accused has

committed suicide by consuming poison. Accordingly, he went to the house of the accused. He stated that the accused had no quarrel with the deceased victim. Accused was however not found present in his house at the relevant time.

9. PW-2 is Abdul Hussain. He also knows both the parties. He also heard that wife of the accused had committed suicide by consuming poison and she was shifted to the hospital, but died thereon. According to him, the marriage in between the parties took place about 20 years back. He had not heard anything adverse in between them.

10. PW-3 is one Samsul Hoque who also stated that the parties were married about 15-16 years back. The accused had no quarrel with the deceased/victim.

11. PW-4 is Ashraful Hoque. According to him, on 28.06.2012 his sister and the accused engaged in a quarrel wherein his sister was physically assaulted and the accused administered poison to her for which she was hospitalized. He reached the hospital on being informed, wherein he was told that accused Anowar Ali maintained illicit relation with one Mamata Bibi. While she protested, the accused physically assaulted her. Accordingly, he lodged the FIR vide Ext.-1. He stated that his house at a distance of 25 km away from the house of the accused. He received a phone call from his brother-in-law. No case was filed against anybody. He stated that the accused did not solemnize any second marriage during the lifetime of his sister. His sister was issueless. At the time of reaching the hospital, he did not find any nurse or doctor in the hospital. No dying declaration was recorded by anybody.

12. PW-5 is one Jiban Ch. Sarkar. He was working as I/C at Paglahat Watchpost. The case was investigated by ASI Ali Hussain who retired before completion of the investigation. Accordingly, he himself investigated the case and after having received the FSL Report, he submitted charge-sheet against the accused u/s 306 IPC by Ext.-2.

13. PW-6 is Dr. Harun Al Rasid conducted post-mortem on the dead body of Alema Bibi. However, he could not ascertain the cause of death by usual autopsy for which viscera was preserved and was sent for FSL analysis. However, FSL report received by him gave positive test for organophosphorus insecticide. In his opinion, the death was due to consumption of organophosphorous insecticide. He has proved the Post-Mortem Report as Ext.-3. Ext.-4 is the Toxicology Report.

14. PW-7 is one Ramen Ch. Malakar. He was working as S.D.M, Dhubri who conducted the inquest over the dead body of Alema Bibi. However, he found no external injury on the dead body. As per his opinion, the cause of death of the woman is due to poisoning. Ext.-5 is the Inquest Report.

15. PW-8 is one Abul Kalam Azad. He simply proved the hand-writing of ASI Ali Hussain who was working with him. Said Ali Hussain visited the place of occurrence, drew the sketch-map and recorded the statements of the witnesses and sent the dead body to Dhubri Civil Hospital for post-mortem. He continued the investigation till 12.09.2012. He proved the sketch-map as Ext.-6.

16. Now this much evidence is found available in the case record. Upon having perused the existing evidence on record, it appears that the deceased Alema Bibi was married by the accused Anowar Ali about 15-16 years back. They were living as husband and wife. The deceased Alema Bibi was issueless. From the evidence of the Medical Officer together with perusal of the FSL Report, it appears very clear that the death of the deceased is due to consumption of organophosphorus insecticide. There is no any doubt about the fact of death of the deceased that she consumed poison to finish her life. But, the millinaire question is that whether accused has administered the poison into her mouth by assaulting her or she consumed poison on being abetted by the accused person because she did not like to continue her life in this earth that too with the accused person.

17. The prosecution must have to prove the following essential ingredients of the offence in order to convict the person u/s 306 IPC :-

- (i) There was a suicide of a person.
- (ii) It was committed in consequence of abetment by the accused.

18. In *Wazir Chand vs. State* reported in AIR 1989 SC 378, the Hon'ble Supreme Court observed that from reading Section 306 and 107 IPC together, it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under Section 306 of the Indian Penal Code for abetting the commission of suicide. A plain reading of this provision shows that before a person can be convicted u/s 306 IPC, it must be established that such other person committed suicide.

19. Here in the instant case upon perusal of the evidence, it appears that the deceased Alema Bibi was a married wife of accused Anowar. Their marriage has been taken place 15-20 years back. Both of them were living happily since there has not been any heard of quarrel in between them. No case has been initiated against the accused with allegation of ill-treatment of the deceased wife at the hands of her husband Anowar. Admittedly, she is issueless. No evidence is there to show that the married life in between the parties have become strain at any point of time. Though, it is alleged by the PW-4 that an occurrence of quarrel took place in between the accused and deceased; and the deceased was physically assaulted and then administered poison to her. But, the evidence is not found supported by any witnesses. It is an admitted fact that the occurrence took place at Harihat Kachokhana which is about 25 km away from his house. Admittedly, he did not eye-witness of the occurrence of the quarrel that alleged to have taken place in between the parties on 28.06.2012. So, he has not seen the accused person administering poison. PW-4's evidence is that he was told by his sister that the accused Anowar Ali maintained illicit relation with Mamata Bibi and while the deceased protested, then accused physically assaulted her. The family members of the accused brought her to the hospital.

20. So from the evidence of PW-4, it appears that he went to the hospital which is 25 km away from his house, found his sister in the hospital and she told that she was assaulted by the accused while protesting as to why did he keep an illicit relation with Mamata. The statement of PW-4, even it is considered, cannot be taken as a dying declaration because the statement is found not supported by any witness. Nothing is there in the evidence on record to show as to what condition, the deceased-victim was hospitalized, whether she was sane or have sense at the relevant time. He has admitted that at the time of reaching the hospital, there was no doctor, no nurse at the relevant time. Moreover, there is no any statement made by the deceased-victim before the PW-4 that the accused administered poison. Mere keeping an illicit relation with one Mamata Bibi cannot be a ground for the victim to commit suicide by consumption of poison. The evidence of the PW-4 is found insufficient. Another disturbing feature of the evidence of PW-4 is that he did not disclose before the I.O that on 28.06.2012 there occurred quarrel between his sister with that of the accused and the accused physically assaulted his sister and administered poison. Further,

he admitted that Mamata Bibi is the sister-in-law of the accused. They lived in the same compound. Section 306 IPC when read with Section 113A of the Evidence Act enabled the Court to punish a husband or his relative who subjected a woman to cruelty within the meaning of 498(A) IPC and if such woman committed suicide within 7 years of her marriage. But, here in the instant case, the victim/deceased was living with the accused for more than 15 years as a married woman and nothing is there show that their marital relationship had become strain at any point of time. So, question of abetting the victim to consume organophosphorus insecticide is found not believable and hence, having considered these aspects, I am of the view that prosecution has not been able to prove its case beyond all reasonable doubt and situated thus, I have got no alternative but to acquit the accused person from the purview of the charge u/s 306 IPC on benefit of doubt. Accordingly, the accused Anowar Ali is acquitted from the purview of charge u/s 306 IPC by setting him at liberty forthwith.

- 21.** The Bail Bond so furnished by the bailor stands cancelled.
- 22.** Let a copy of this order be sent to the Committal Court with the case record as committed.
- 23.** Signed, sealed and delivered in the open Court on this the 20th day of June, 2020, at Dhubri.

Dictated & corrected by me.

(T. Kalita)
Sessions Judge, Dhubri

(T. Kalita)
Sessions judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

- PW-1: Habibar Rahman
- PW-2: Abdul Hussain
- PW-3: Samsul Hoque
- PW-4: Ashraful Hoque (Complainant)
- PW-5: Jiban Ch. Sarkar (I.O.)
- PW-6: Dr. Harun Al Rasid (M.O.)
- PW-7: Ramen Ch. Malakar
- PW-8: Abul Kalam Azad

2. PROSECUTION EXHIBITS:

- Exhibit-1: Ejahar
- Exhibit-2: Charge-sheet
- Exhibit-3: Post-Mortem Report
- Exhibit-4: Toxicology Report
- Exhibit-5: Inquest Report
- Exhibit-6: Sketch-map

(T. Kalita)
Sessions Judge, Dhubri