

**DISTRICT : DHUBRI**

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

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

**SESSIONS CASE NO. 01 OF 2018**

U/S 306 IPC

Corresponding to G.R. No. 2922/2015

**State of Assam**

.....Complainant

**-Versus-**

1. **Akhtar Hussain**

2. **Chanbi Bibi**

..... Accused person

Charge framed on : 16.02.2018

Evidence recorded on : 18.12.2018

14.03.2019

24.05.2020

30.07.2019

24.10.2019

22.01.2020

07.10.2020

Statement recorded on : 13.10.2020

Argument heard on : 13.10.2020

Judgment delivered on : 13.10.2020

**Advocates who appeared in this case:-**

Mr. Mirza Khan, learned Addl. P.P. for the Prosecution

Mr. I.U. Ahmed, learned Advocate for the Defence

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

**1.** One Akhtar Hussain and Chanbi Bibi were charged to stand trial for an offence punishable u/s 306 IPC on the basis of an investigation made upon an FIR lodged by one Khaitan Bewa on 02.07.2015 to the effect that her daughter Jesmina was given in marriage to Akhtar Hussain about one year ago. However, she was subjected to torture at the hands of her in-laws since the days of her marriage. On 02.07.2015, she was found to have been died by hanging to the ceiling with the help

of her orna at about 1 p.m. It is suspected that the accused persons are involved in abetting her to commit suicide.

2. Police accordingly registered the case vide Tamarhat P.S. Case No. 175/2015 u/s 304(B)/34 IPC. The police however after having completed the investigation, laid charge sheet against the accused to stand trial u/s 306 IPC.

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

4. Upon appearance, the accused persons were charged to stand trial u/s 306 IPC to which they pleaded not guilty and claimed for trial.

5. During trial, the prosecution has examined as many as ten (10) nos. of witnesses. The statements of the accused were recorded u/s 313 Cr.P.C., but their pleas are of denial; however, they have adduced none.

6. I have carefully perused the evidence on record and heard learned counsel for both the sides through video conferencing and accordingly, proceed to dispose of the case on the following point for determination:-

*Whether one Jesmina Khatun, legally married wife of the accused Akhtar Hussain committed suicide because of the abetment of the accused Akhtar Hussain and Chanbi Bibi, since the days of her marriage she was subjected to torture both physically and mentally as alleged ?*

**DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION**

**ARRIVED THEREON WITH REASONS**

7. It has already been stated that the prosecution has examined altogether 10 nos. of witnesses out of which PW-1 is Khaitan Bewa, informant. According to her, her daughter Jesmina was given in marriage with the accused Akhtar Hussain. Accused Chanbi Bibi is her daughter's mother-in-law. After marriage, accused Akhtar Hussain demanded gold ring, money, cow, bi-cycle and land. The accused Akhtar Hussain physically tortured her daughter. She has given gold ornaments, one cow and one bi-cycle despite she is very poor. The accused Akhtar Hussain continued his torture to her daughter. So, after one year of her daughter's marriage, her daughter committed suicide by hanging. A small boy informed her about the death of her daughter. She immediately rushed to the house and found her daughter hanging inside a room. Accordingly, she filed the written ejahar. She stated that the house of the accused is near to her house. There are only four families in between her house with that of the accused persons. She has two sons and four daughters. All daughters have already been married.

She denied that she tried to take accused Akhtar Hussain to stay in her house to which the accused refused, for that dispute developed in between them. She denied the fact that she did not give gold ring, cow and bi-cycle. She denied the suggestion that she did not disclose that the accused Akhtar Hussain demanded gold ring, money, cow, bi-cycle etc.

**8.** PW-2 is Firoja Bibi. She stated that the relation in between accused Akhtar with that of Jesmina was found cordial. She does not know as to why Jesmina committed suicide.

**9.** PW-3, Sirajul Hoque also stated that the relation between Jesmina and accused person was cordial. He got an information from one Abu Hai that Jesmina committed suicide by hanging. Immediately, he visited the place of occurrence and found the deadbody. But, accused persons were not present in their house. He informed the matter to the Tamarhat police. He was a witness to the inquest vide Ext.-1(1).

**10.** PW-4, Abu Hai stated that one girl namely Moriom informed her that Jesmina Khatun committed suicide hanging. Accordingly, he immediately proceeded to the place of occurrence, but accused persons were not present at the place of occurrence. He informed the matter to the village V.D.P. Secretary. Accordingly, police came to place of occurrence and inquest was done wherein he put his signature. He does not know as to why did Jesmina commit suicide. Conjugal life of Jesmina was found cordial with her husband.

**11.** PW-5 is Abdul Mojid Mollah, the Gaonburha of Polashkandi village. He further stated that the relation between the accused and the deceased was cordial. He was also a signatory to the inquest vide Ext.-1(3).

**12.** PW-6 is Aleya Bibi. Her house is near to the house of the accused. She stated that Jesmina led conjugal life with accused Akhtar for about one year. She is the elder sister of Jesmina. The accused person demanded gold ornaments and a bi-cycle from her sister and accordingly, tortured her. However, she heard from a young boy that a quarrel took place in between her sister with that of accused followed by she commit suicide by hanging. However, she could not say the name of the young boy from whom she got information about the quarrel. She also a signatory to the inquest vide Ext.-1(4).

She denied the suggestion that she did not disclose before the I.O that the relation in between the parties were not cordial. She did not disclose that the accused sought gold ornaments and bi-cycle from her sister is not a fact. However,

she admitted that her sister did not file any case against the accused regarding any torture meted to her. She denied the suggestion that she disclosed that she had not heard any quarrel occurred in between the parties.

**13.** PW-7 is one Samiran Bibi. She also stated that the relation between the deceased and the accused was cordial. She does not know as to why Jesmina commit suicide.

**14.** PW-8 is one Abdus Salam. He also stated that the relation between the accused with that of the deceased was cordial. He does not know as to why Jesmina commit suicide.

**15.** PW-9 is the Medical Officer who has conducted the post-mortem on the deadbody of the deceased Jesmina and on examination, he found rigor mortis was present on all four limbs. A non-contiguous ligature mark was present high up in her neck. The ligature mark is ante mortem in nature and he opined that the cause of death was due to asphyxia as a result of hanging. He has proved the post-mortem report vide Ext.-2. Ext.-2(1) is his signature.

**16.** PW-10 is the Investigating Officer namely Abdul Goni who was entrusted for investigating the case. Accordingly, he visited the place of occurrence, recorded statements of the witnesses, prepared sketch-map and after having completed the investigation together with collection of post-mortem report laid charge-sheet against the accused duo u/s 306 IPC. He has proved the FIR vide Ext.-3. Ext.-4 is the charge-sheet. Ext.-4(1) is his signature. Ext.-5 is the sketch-map. Ext.-5(1) is his signature. He has arrested the accused persons.

He was confronted with the statements made by Aleya Bibi who did not state before him that accused sought any gold ornaments and bi-cycle from her sister. She also did not state before the police that her sister Jesmina told her about demanding of properties made out of torture to her. She also did not state before him that she had heard any quarrel occurred in between her sister and her husband.

**17.** These much evidence are found available on record.

**18.** In order to sustain conviction u/s 306 of the Indian Penal Code, the prosecution must have to prove:-

- (a) Instigation to commit the offence.
- (b) Engaging in conspiracy to commit the offence, and
- (c) aiding the commission of an offence.

Abetment thus necessarily means some active suggestion or support to the commission of offence. The word 'instigate' literally means to goad, urge forward,

provoke, incite or encourage to do an act and a person is said to instigate another when he actively suggests or stimulates him to the act by any means, or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. In Wazir Chand Vs. State 1989 (CrI) Law Journal 809, the Hon'ble Supreme Court observed that from reading Section 306 and 107 IPC together, it is clear that if any person instigate any other person to commit suicide and as a result of such instigation, the other person committed suicide, the person causing the instigation is liable to be punished u/s 306 IPC for abetting the commission of suicide.

**19.** Burden of proof has undergone a radical change due to insertion of 113(a) of the Evidence Act. Under the said section, if a bride commits suicide within seven years of her marriage, if there is evidence of ill-treatment by the husband or other members of the in-laws' family led by prosecution, the burden shifts on to the accused husband or such other members figuring as accused to show that there was no abetment.

**20.** Keeping aforesaid dictum of law, let me examine the evidence on record to see whether the existing materials on record justify and prove a case against the accused duo to punish them u/s 306 IPC.

**21.** Upon perusal of the case record and evidence thereon, it appears that there is no witness to support the version of the prosecution save and except the PW-1 and PW-6, admittedly the mother and sister of the deceased woman Jesmina. All other witnesses such as PW-2, PW-3, PW-4, PW-5, PW-7 and PW-8 are found independent witnesses, but they have categorically stated that the relation in between the parties are very much cordial during their conjugal life. There is no any iota of evidence in the evidence of these witnesses that the married life of Akhtar Hussain with that of Jesmina had been running a rough surface during their married life though run for one full year. Accordingly, there is no evidence at all against the accused persons to bring them under the purview of charge u/s 306 IPC from the evidence of these witnesses.

**22.** Now, let me examine the evidence of PW-1 and PW-6. PW-1 stated that the accused Akhtar physically tortured her daughter. She is a poor lady. Still she has provided gold ring, one cow and one bi-cycle, but there is no witness to support and corroborate the evidence of the PW-1. She has filed the FIR by putting her thumb impression wherein it is categorically mentioned that she suspected the accused person of killing the victim and hanging her. The house of the accused is nearer to

her house. Accordingly, she is well within the knowledge of happening what is going on in the house of her son-in-law, but she has not raised any question or filed any case for alleged meeting of such torture to her daughter Jesmina at any point of time. Even by assuming that she has given some gold ring, cow, bi-cycle; but this will not be considered only material for the cause of abetment under the attending facts and circumstances of the case. There is nothing on record from the evidence of the PW-1 that her daughter was persistently tortured by the accused husband at any point of time.

**23.** Now, coming to the evidence of PW-6, though she stated many exaggerated statements that the accused person demanded gold ornaments, bi-cycle from her sister for which she was tortured but nothing has been stated by her that the accused husband was satisfied with gold ornaments, cow etc. The I.O was confronted with the statement and the I.O has confirmed that PW- Aleya Bibi did not state before him that the accused sought gold ornaments, bi-cycle from her sister. She also did not state before the police that her sister Jesmina told her that the accused demanded properties for which she was tortured. She further did not state that she heard quarrel occurred in between her sister with that of the accused.

**24.** Now, from having perused the evidence of PW-1 and PW-6, it appears nothing that the victim/deceased was subjected to persistent cruelty at the hands of her husband and others for which she committed suicide since the prosecution fails to prove the fact of torturing the victim which may be a root cause of instigating her to commit suicide. So, burden lies upon the prosecution to prove that the accused instigated her to commit suicide. So, the Section 113(A) of Evidence Act is not coming to aid the version of the prosecution. The fact that Jesmina Khatun died due to hanging is established by both oral as well as documentary evidence; but the prosecution fails to prove the fact that the victim committed suicide by hanging because of the torture, instigation, provocation, insinuation given by the accused.

**25.** Accordingly, I am of the considered view that the prosecution has failed to prove the case against the accused to prove the guilt u/s 306 IPC or any of the other sections of the Indian Penal Code or any other law for the time being in force beyond all reasonable doubt.

**26.** Situated thus, I acquit the accused persons namely Akhtar Hussain and Chanbi Bibi from the purview of charge u/s 306 IPC on benefit of doubt.

**27.** The accused persons are accordingly acquitted and they are set at liberty forthwith.

- 28.** The Bail Bond so furnished by the bailor stands cancelled.
- 29.** Let a copy of this order be sent to the Committal Court along with the case record as committed.
- 30.** Signed, sealed and delivered in open Court through video conferencing on this the 13<sup>th</sup> day of October, 2020, at Dhubri.

Dictated & corrected by me.

(T. Kalita)  
Sessions judge, Dhubri

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Sessions Judge, Dhubri

**APPENDIX**

**1. PROSECUTION WITNESSES:**

- PW-1: Khaitan Bewa (Informant)
- PW-2: Firoja Bibi
- PW-3: Sirajul Hoque
- PW-4: Abu Hai
- PW-5: Abdul Mojid Mollah
- PW-6: Aleya Bibi
- PW-7: Samiran Bibi
- PW-8: Abdus Salam
- PW-9: Dr. Tapash Mazumdar (M.O)
- PW-10: S.I. Abdul Goni (I.O)

**2. PROSECUTION EXHIBITS:**

- Exhibit-1: Inquest Report
- Exhibit-2: Post-mortem report.
- Exhibit-3: F.I.R
- Exhibit-4: Charge-sheet
- Exhibit-5: Sketch-map

(T. Kalita)  
Sessions Judge, Dhubri