

**IN THE COURT OF ADDL. SESSIONS JUDGE (FTC), SONITPUR
AT TEZPUR**

SESSIONS CASE NO. :- **161 of 2018**
(Under Section 302/34 of IPC,
arising out of GR Case No 1854 of 2017)

Present :- **R. Baruah**
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur.

Prosecutor :- **State of Assam**

-Vs-

Accused :- **1.Sri Jitesh Sarkar** S/o Naresh Sarkar,
2.Smti Swapna Sarkar,
Both are resident of Bishnupur, Balipara,
PS – Chariduar
Dist- Sonitpur, Assam

Date of framing charge :- 16-08-2018.

Date of Recording Evidence :- 01-11-2018, 24-01-2019, 20-02-2019,
20-03-2019, 24-04-2019.

Date of examination of accused u/s :- 02-05-2019.
313 of Cr.P.C.

Date of Argument :- 02-05-2019.

Date of Judgment :- **15-05-2019.**

Counsel of the Prosecution :- A Baruah & J Baruah,
Addl. Public Prosecutors,
Tezpur.

Counsel for Accused :- P Biswas, Learned advocate.

J U D G M E N T

1. In this case accused Jitesh Sarkar and Swapna Sarkar are put for trial for the allegation of charge under Section 302/34 of Indian Penal Code.
2. The prosecution case in brief is that on 26-05-2017 informant Indra Mohan Das lodged an ejahar before Chariduar PS alleging inter alia that about three month back, his daughter Mamoni Das got married with accused Jitesh Sarkar. But, after one week of the marriage, the accused persons subjected her with mental and physical torture. On 20-05-2017, the accused persons conspired and kept inside the bathroom, set fire on her by pouring kerosene oil. As a result, his daughter died.
3. On receipt of the ejahar, O/C, Chariduar Police Station registered the case vide Chariduar PS Case No. 117/17 under Section 304-B/34 of IPC. Police after completion of investigation, submitted charge sheet against the accused Swapna Sarkar and Jitesh Sarkar under Section 120-B/304-B/34 of IPC and laid the same before the learned CJM, Sonitpur, Tezpur for trial. Since the offence is triable by the Court of Sessions, the same was committed to the Court of Sessions after furnishing the relevant copies under the provisions of Cr.P.C.
4. On appearance of the accused and after hearing the learned Advocate for both the sides, charges under Section 302/34 of the IPC framed against the accused. The above offences were read over and explained to the accused to which they pleaded not guilty and claimed to be tried.
5. To substantiate the case, prosecution has examined as many as 7(seven) nos. of witnesses including the informant of this case viz 1. Sri Indra Mohan Das (PW1), 2. Sri Ashim Sarkar (PW2), 3. Smti Jharna Bhowmik (PW3), 4. Smti Mamoni Sarkar @ Mitali (PW4), 5. Sri Dilip Sarkar (PW5), 6. Sri Rajen Medhi (PW6) & 7.Sri Dwijomoni Sarma (PW7).

6. Accused are examined under section 313 CrPC. The defence plea is of total denial and declined to adduce defence evidence.
7. I have carefully gone through the record of the case and heard the learned Counsel for both the sides.
8. The point for decision in this case is that –

(1) Whether the accused persons, on 20-05-2017, at Bishnupur (Bamgaon), Balipara under Chariduar Police Station, in furtherance of common intention, committed murder by intentionally causing death of Mamoni Das?

Discussion, Decisions and reasons for decision:

9. Before appreciating the evidence, I am of the opinion that the evidence so adduced by the prosecution witnesses needs to be reflected.
10. PW1 the informant of this case said that victim/deceased Mamoni Das was his daughter. Accused Jitesh Sarkar is his son-in-law and Swapna Sarkar is the elder sister of Jitesh Sarkar. The incident took place about 1½ year ago. Prior to 3-3½ months of death, his daughter was given in marriage to accused Jitesh Sarkar. After 10/12 days of marriage, the accused started harassing his daughter alleging that she cannot cook and wash clothes. They told them that they should teach her. For her marriage, he sold land and also gave articles with her. Prior to one month of death, his daughter visited them and informed them that accused Swapna Sarkar used to rebuke her alleging that she cannot cook food. His daughter was reluctant to return to her matrimonial home, but, they convinced her and took her to her matrimonial home. His daughter explained the manner of torture in detail to her mother and her uncle Rai Mohan Das. After 7/10 days, the accused killed his daughter. The accused set his daughter under fire inside the bathroom. Accused

Swapna Sarkar over phone informed them that his daughter died. Immediately, he went to the house of accused, but, he could not find the dead body of his daughter and the accused threatened him not to file any case with the police. Due to shock and trauma, he could not file the FIR immediately. After 4/5 days, he lodged before Chariduar PS. Ext.1 is the ejahar.

In his cross-examination, he said that at the time of marriage, the age of his daughter was 20/22 years.

He denied the fact when suggested by the defence that prior to marriage, there was love affairs between his daughter and one goldsmith and hence, she refused to enter into marriage with the accused, and after marriage the deceased never allowed her husband to consummate the marriage.

He further said that he does not know what is written in the FIR and who wrote the FIR. He does not remember the date of incident. After getting the information from Swapna Sarkar over phone, they 4/5 persons went to the house of the accused.

He also denied that he has deposed before police that he went to the house of accused and noticed the dead body of his daughter.

On the day of lodging FIR, police recorded his statement. His brother Rai Mohan Das accompanied me to the police station. On the day of incident, after visiting the house of Swapna they went to the PS, but, did not lodge any FIR, as the accused asked them not to lodge the FIR. After marriage, his daughter came to his house in the occasion of "Aathmongola". They noticed that his daughter and his son-in-law are happy. After that his daughter informed him that accused Swapna used to rebuke her alleging that she do not know to cook or wash clothes. They i.e. himself and his wife never visited his daughter in her matrimonial home to enquire regarding the complain of his daughter

He further denied that that Swapna Sarkar never rebuked his daughter, that he never stated before police that accused harassed his daughter, that he did not state before police that accused Swapna used to rebuke his daughter alleging that she cannot cook or wash clothes.

PW1 denied that he did not state before the police that after 10 days of marriage his daughter was subjected to harassment, that he sold his landed

property for the marriage of his daughter, that prior to one month of death his daughter visited them and informed them that accused Swapna Sarkar used to rebuke her alleging that she cannot cook food, that his daughter was reluctant to return to her matrimonial home, but we convinced her and took her to her matrimonial home, that his daughter explained the manner of torture in detail to her mother and her uncle Rai Mohan Das, that after 7/10 days the accused killed his daughter, that the accused set his daughter in fire inside the bathroom, that Accused Swapna Sarkar over phone informed that his daughter died, that immediately he went to the house of accused but I could not find the dead body of his daughter and that the accused threatened him not to file any case with the police.

He denied that Swapna over phone informed them that his daughter cannot wear clothes properly and she used to remove her clothes in presence of others.

He said that he is not aware whether his daughter was taken to the LGBRIMH, Tezpur for treatment as outdoor patient. He is not aware that his daughter expressed before her husband that she was given in marriage against her will, that she had love affair with another boy and hence, she will not allow her husband to touch her.

He denied that he knew regarding affair of his daughter and hence he did not lodged FIR on the day of incident though he had been to the PS on that day, that on the instigation of his brother Rai Mohan Das he lodged the FIR after 5/6 days of incident, that he only suspected that the accused killed his daughter

At around 5.00 PM, they received the information and reached the house of accused at around 10/11 PM. Though they visited police station people did not allow them to see the dead body of his daughter. They reached the house of accused at night, and hence, did not enquire the incident from the neighboring people. He is convinced that accused killed his daughter because the dead body of his daughter not shown to him.

11. PW2 said that accused are his cousins in relation. The incident occurred on 20th May, 2017. In the month of March, 2017, his cousin Jitesh Sarkar got married with victim Mamoni Das Sarkar. After getting the news, he rushed to the house of Jitesh Sarkar. There he noticed the dead body of Mamoni Das Sarkar in the

bathroom. He noticed burn injury on the upper portion of the body of Mamoni Das Sarkar i.e. waist to head. Circle officer came to the place of occurrence and made inquest report at the spot, where he signed as a witness. Ext. 2 is the inquest report and Ext. 2(1) is his signature.

In his cross he stated that apart from stating that he stood as witness while preparing inquest report in presence of Circle Officer, he stated nothing before the police.

12. PW3 stated that she knows both accused and the victim. The incident occurred in the month of May, 2017. At around 3.00/3.30 PM she was watching TV. Accused Swapna Sarkar was also in her home. At that time one girl came to their house and informed Swapna that there got fire in the bathroom of Swapna. Hearing the commotion, villagers gathered in the house of accused and the people broke open the door of bathroom and there noticed that Mamoni Sarkar got burn inside the bathroom. Police arrived and recovered Mamoni. Later on, heard that Mamoni died.

In cross examination the PW3 said that she knows Mamoni since her marriage. Marriage was solemnized about three months back. She often used to visit the house of accused. Mamoni did not talk with others. She did not notice any kind of quarrel between the accused and victim. At the time of setting fire, the door of the bathroom was locked from inside. Villager broke the lock. At that time accused Jitesh was not at home. Jitesh used to sell tea at market. After seeing the dead body, she returned to her home. She never heard that the accused persons demanded dowry from the parents of Mamoni. Mamoni (victim) also never stated before her that accused used to torture her. She suspected that victim committed suicide.

13. PW4 stated that accused are his adjacent neighbor. The incident took place in the month of May'2017, probably on 20-05-2017 at around 3/4 PM. At that time she was in her home. Then she heard shouting coming from the house of accused she went to the house of the accused and noticed that there is nobody in the house. She went towards the backside of the house and noticed that some smoke coming out of the bathroom. She raised alarm, then people gathered. The

accused Swapna Baishya also came. The door of the bathroom was locked from inside. The villagers broke open the door of the bathroom and noticed the wife of accused Jitesh Sarkar burning. Out of fear she did not went ahead to see the body of the victim. Later on, the victim died. Three months prior to incident, marriage was solemnized between accused Jitesh and the victim socially. She attended their marriage.

During cross examination the PW4 said that why the victim committed suicide, she does not know. After marriage, both accused and victim stayed as husband and wife without any dispute. She never heard about quarrel taking place between the accused and the victim. The victim never stated before her regarding any torture mated out to her by the accused after marriage. At the time of incident, accused Swapna was in the house of Jhuma Bhumij and accused Jitesh was in the market.

14. PW5 stated that accused are his co-villagers. The incident took place about on 20-05-2017 at around 3/4 PM. At that time he was in his shop situated at Balipara centre. The accused Swapna Baishya over phone informed him that her sister-in-law(wife of accused Jitesh) committed suicide by pouring kerosene inside the bathroom. Immediately, he informed the police of Chariduar PS over phone. He was VDP Secretary of the village at that time. Later on he came to the place of occurrence. He came to know that the door of the bathroom was locked from inside and the villagers broke open the same. Police asked him to put a signature in a paper as VDP Secretary and he put his signature there. Ext. 3 is the seizure list.

During cross-examination the PW5 said that when he put his signature in Ext.3, it was blank. Police asked him to sign as he is the VDP Secretary.

15. PW6 said that he knows both accused and the victim, who is the wife of Jitesh Sarkar. On the day of incident, at around 3.30 PM one reported him over phone that a woman of their village died after pouring kerosene oil i.e. the wife of accused Jitesh Sarkar. Jitesh's sister Swapna was ward member of Panchayat. His house is about 2 ½ km away from the house of accused. After getting information, he immediately went to the house of accused. He noticed huge gathering and police.

He noticed that the wife of Jitesh Sarkar died after pouring kerosene oil inside the bathroom. Police took the dead body for post mortem examination. Police prepared a document. He signed in it. Ext.2 is the inquest report. He came to know that the victim died by pouring kerosene oil.

In cross-examination he said that he is the village headman of the village. When he reached the spot, he noticed the Circle Officer. The Circle Officer was preparing the document. He was asked to put signature in it as gaonburha(village headman). Apart from these, police did not asked him about the incident.

He did not state before police that reporter informed him over phone and came to spot. He heard from the neighbors of the victim's house that victim poured kerosene oil herself and set herself on fire. He further said that once he visited the house of accused earlier. Then when he asked for a glass of water from victim, she just stared at him and pretended not hearing him.

16. PW7, the investigating officer said that on 20-05-2017 he was posted at Chariduar PS as SI of police. On that day at around 3.00 PM one person informed the police over phone that one lady got burn injury in the house of Jitesh Sarkar. Accordingly, the matter was informed to all concerned and as per direction of the authority he along with team left for the place of occurrence. Immediately, the Magistrate and other police officials arrived at the place. The Magistrate conducted inquest of the dead body which was lying with burn injury inside the bathroom of the house. A UD case was registered. On 26-05-2017 an FIR lodged by one Indra mohan Das in connection with the incident. The same was registered and OC, directed him to conduct the investigation. Accordingly, he visited the place of occurrence, recorded the statement of the witnesses, seized one plastic jerkin, ashes and burn clothes and a piece of iron rod, drew the sketch map of the place of occurrence, collected the post-mortem examination report of dead body and also arrested the accused Jitesh Sarkar and Swapna Sarkar in connection with the case. After completion of investigation, finding material against the accused submitted charge sheet under Section 120-B/304-B/34 of IPC. Ext.3 is the seizure list. Ext.4 is the sketch map. Ext.5 is the dead body challan. Ext.6 is the certified copy of extract copy of Chariduar PS GD Entry No.565 dated 20-05-2017. Ext.7 is the charge sheet. Ext.8

is the post mortem report he collected during investigation. M.Ext.1 is seized Plastic Jerkin and M.Ext.2 is the seized iron rod.

During cross-examination, the IO stated that he visited the place of occurrence on the basis of GD Entry No 565 dated 20-05-2017. He does not know the name of the lady who gave the information over phone, based on which the GD Entry was made. He reached the place of occurrence at 3.55 PM. The dead body of victim lying inside the bathroom and the door of the bathroom was broken. The people assembled there informed that the incident took place at 3.30 PM. The victim already died prior to his arrival. When the inquest was prepared the dead body was kept at the courtyard of the house. After inquest, the dead body was forwarded to the hospital for conducting post mortem examination. As per sketch map, the place of occurrence is shown as bathroom. After arrival at the place of occurrence, he recorded the statement of witnesses namely Jitesh Sarkar, Rajen Medhi, Ashim Sarkar, Pijush Sarkar, Dilip Sarkar. The FIR was lodged after five days of incident. The informant submitted the FIR written by someone else, apparently. He has not asked the informant as to who wrote the FIR because already the same was registered by the OC, of the police station. He recorded the statement of informant on 26-05-2017, at the time of lodging the FIR. He has not recorded the statement of Rajmohan Sarkar. On the day of incident, the informant and other family members were available at the place of occurrence, but, he did not record their statement. He has not made any note in the MCD why, he did not record the statement of informant and his family member on the day of occurrence.

Informant stated before him that the accused used to harass his daughter occasionally. Informant did not state before him that accused Swapna used to rebuke his daughter alleging that his daughter cannot wash cloth or cook food. The informant did not state before him that after 10 days of marriage, his daughter was subjected to torture by the accused. The informant did not state before him that he sold landed property for the purpose of marriage of her daughter, i.e. prior to one month of marriage of his daughter. PW1 stated before him that prior to the incident his daughter visited them and narrated about the incident and they send back the victim after convincing her. PW1 did not stated before him specifically that 7 days prior to the incident, the victim was sent back by them after convincing her. The

witnesses whom he examined only suspected that the accused are involved with the death of victim. He has not sent the plastic jerkin (M.Ext.1) to the FSL for examination. He found the M.Ext.2 from inside the bathroom, probably the same is used for push out garbage.

He denied that he submitted the charge sheet only on suspicion, that the accused are not involved in the offence, that he has not conducted the investigation properly.

17. From the statements of the witnesses' examined by the prosecution, it is seen that on the day of occurrence both the accused were not in the house. The victim was alone in the house. The PW3 said that accused Swapna was also with her in her house. The PW4 said that hearing shouting she went to the house of the accused found that there is nobody inside the house. PW4 went towards the backside of the house and noticed smoke coming out of the bathroom. She raised alarm and people gathered and broke open the door of the bathroom which was locked from inside. The PW4 also said that on her raising alarm, the accused Swapna also came.

18. The IO of the case has seized a iron rod in connection with the incident. But it is not explained whether the same is connected with the incident. The post mortem report (Exhibit-8) do not suggest that other than burn injury any injury found during examination of the dead body.

19. The PW1 in cross examination said that at around 5.00 PM, they received the information and reached the house of accused at around 10/11 PM. Though they visited police station people did not allow them to see the dead body of his daughter. No such fact is apparent from the evidence of the PW7 (IO). Though the PW1 said that he could not found the dead body of his daughter in the house of the accused, it is mentioned otherwise in the FIR. From these it can be held that the informant was present when the inquest of the dead body was done and also accompanied to the police station at night. It is not clear why the informant failed to mention about the alleged harassment to the police. The FIR is lodged after 6 (six)

days of occurrence. It is not mentioned anywhere that for six consecutive days the informant has been threatened by the accused for not lodging the FIR. The PW1 tried to develop regarding the matter by saying that the victim had clearly mentioned about the alleged harassments to her mother and uncle, which the IO said that never disclosed before him.

In State of Andhra Pradesh Vs M Madhusudhan Rao reported in (2009)3 SCC(cri) 1123, the Hon'ble Supreme Court regarding delay in lodging FIR observed that –

“Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.”

20. The prosecution has not sent the plastic container so found in the bathroom for examination by forensic expert. No steps taken to ensure whether there is any link between the accused and the seized materials.

21. From the nature of allegations, it can be seen the charge sheet against the accused filed only on suspicion. There are catena of judgment of the Hon'ble Higher Court that suspicion however strong cannot take the place of proof.

In *Krishna Borua vs State of Assam (reported in 2015 (4) GLT 936* the Hon'ble Gauhati High Court observed as follows; “ 82. In view of what we have discussed herein before, we are of the opinion that though prosecution was successful in establishing a series of suspicion suggesting the involvement of the accused with the crime aforesaid, yet, such suspicion cannot take the place of proof because there is a gulf between proof and suspicion and unless such gulf is bridged

by legal evidence, court is not competent to convict the accused person of the offence she was charge with. "

29. In view of the above discussions and reasons it is held that prosecution has failed to prove the guilt of the accused beyond all reasonable. As such, the accused are acquitted and set at liberty forthwith.

30. The bail bond shall remain in force for six months from today.

Given under my Hand and Seal of this Court on this the **15th** day of **May, 2019.**

(R Baruah)
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur.

Dictated and corrected by me.

(R Baruah)
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur.

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

ANNEXURE

Witnesses examined by the prosecution:

- 1.PW1 – Sri Indra Mohan Das,
- 2.PW2 – Sri Ashim Sarkar,
- 3.PW3 – Smti Jharna Bhowmik,
- 4.PW4 – Smti Mamoni Sarkar @ Mitali,
- 5.PW5 – Sri Dilip Sarkar,
- 6.PW6 – Sri Rajen Medhi &
- 7.PW7 – Sri Dwijomoni Sarma.

Documents exhibited by the prosecution:

1. Ext. 1 : FIR,
2. Ext. 2 : Inquest report.
3. Ext. 3 : Seizure list,
4. Ext. 4 : Sketch map,
5. Ext. 5 : Dead body challan,
6. Ext. 6 : Certified copy of extract copy of Chariduar PS GD Entry No.565,
7. Ext. 7 : Charge sheet.
8. M Ext.1 : Plastic Jerkin &
9. M.Ext.2 : iron rod.

Documents exhibited by the Defence:

1. nil.

(R Baruah)
Addl. Sessions Judge (FTC),
Sonitpur, Tezpur.