

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 03 of 2020

Under section 302 of I.P.C.

(Arising out of G. R Case No. 1164/18)

State of Assam

-Vs-

1. Smti Dohari Bhakta..... Accused person.

**Present : Smti I. Barman, AJS
Sessions Judge,
Sonitpur, Tezpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. J. Borah, Legal Aid counsel.

Date of Argument : 11-02-2021

Date of Judgment : 11-02-2021

J U D G M E N T

1. A criminal investigation was set into notice with lodging of the FIR by Sri Sonu Bhakta (PW 1) father of the deceased on 21-08-2017 with the Incharge of Belsiri Out Post alleging that on that day, at around 4:00 AM, accused Dohari Bhakta killed her 8 months old daughter by pressing her neck and giving the baby in the lap of her husband she ran away.

2. On receipt of an FIR from Sonu Bhakta (PW 1), the father of the deceased, the Incharge of Belsiri Out Post entered the GDE No. 313/17 and forwarding the FIR to the Officer-in-charge of Missamari Police station, himself launched investigation of the case. Based on the FIR Missamari PS Case No. 91/17 u/s 302 of the IPC was registered. The Investigating Officer visited the

place of occurrence, examined the witnesses and on closure of the investigation laid charge sheet, against the accused Smti Dohari Bhakta u/s 302 of IPC.

3. On appearance of the accused person, the learned Sub-Divisional Judicial Magistrate, Sonitpur, Tezpur after furnishing the copies as required u/s 207 of Cr.P.C, committed the case to the Court of Session, being the offence u/s 302 of the IPC exclusively triable by the Court of Session. Accordingly, on appearance of the accused, before this Court, after hearing both parties, charge u/s 302 of the IPC was framed against the accused Smti Dohari Bhakta and particulars of the charge on being read over and explained to the accused person, she pleaded not guilty and claimed for trial.

4. To substantiate the case prosecution examined as many as 8 witnesses. In statement recorded u/s 313 Cr.P.C, the accused pleaded innocence and examined none.

5. I have heard the argument of the learned counsel of both sides and also have gone through the evidence on record.

6. The point to be determined in this case is as follows—

Whether accused Dohari Bhakta on 21-08-2017, at around 4:00 AM, at Pavmari under Missamari Police Station, committed murder by causing the death of her 8 months old daughter and thereby committed an offence punishable U/s 302 of the Indian Penal Code ?

7. In order to appreciate the argument advanced on behalf of both the sides, I would like to scrutinize the evidence on record for the purpose of adjudicating the charge against the accused.

8. PW 1 Sri Sonu Bhakta, the father of the deceased as well as wife of the accused, stated that at the time of the incident, the deceased child had been suffering from pneumonia and on the day of incident, his wife giving the child in his hand fled away. Finding the baby dead, he suspected that the accused killing the child fled away. Hence, he lodged the FIR against his accused wife but the child actually died due to pneumonia.

9. PW 2 Syamal Nayak, deposed that on the day of incident at around 12:00 PM coming home from work, he came to know that police came to the house of the accused regarding death of the deceased, the child of the accused herself.

10. The testimony of PW 3 Tintush Induwar is that on the day of incident at around 6:00 AM hearing hulla in the house of the accused, he rushed there and noticed the dead body of 8 months old child of the accused. At that time the husband of the accused was searching for his wife. He deposed that he knew well that at that time the child had been suffering from pneumonia. Lateron he came to know that the child died due to illness. He proved his signature in the inquest report, Ext.1.

11. PW 4 Abdul Salam, the VDP Secretary in his deposition, stated that he was informed by the husband of Dohari Bhakta that their child aged about 7/8 months died. Then, he had gone to the house of the accused and noticed the dead body of the child lying upon a bed. The husband of the accused and villagers told him that they did not know how the child died.

12. PW 5 Moniram Nayak, turned hostile. He did not know how the daughter of the accused died.

13. PW 6 Jalko Bhakta, testified that on the day after returning home, he heard that the child of the accused who had been suffering from illness died.

14. PW 7 Rajen Bhakta deposed that at the time incident, 9 months old daughter of the accused had been suffering from pneumonia for which the child died and on the death of the child, Dohari Bhakta fled away from home. Then on suspicion, Sonu Bhakta, the husband of the accused lodged the FIR.

15. PW 8 – Dr. Atul Kumar Kalita, the Medical Officer on 21-08-2017, conducted the post mortem on the dead body of Puspa Bhakta, 8 months old, D/O Sonu Bhakta of village Pavamari, Missamari police station, in reference to Belsiri OP GDE NO. 313/17 on being identified and escorted by UBC Jalilur Rahman and Sonu Bhakta and found the following:

A female deadbody of about 8 months of age wearing red white frock, black thread over the waist, lack hair, eyes and mouth were closed, complexion brown, rigor mortis present, froth seen from the nose and all other organs were healthy.

The doctor said that as the cause of death of the child could not be ascertained, hence the viscera of a piece of liver, stomach with its content and right kidney were preserved for forensic laboratory examination. He proved the post mortem report as Ext.2.

16. The alleged offence is murder of 8 months baby of the accused herself. The informant is none other than the father of the deceased. Though in the FIR, the informant alleged that his accused wife had killed her 8 months baby by pressing her neck and then giving the baby in his infront/husband's lap, she fled away but in evidence (PW 1) he stated that at the relevant time the child had been suffering from pneumonia and as on the date of incident his wife giving the child fled away, hence he suspected that committing murder of the child his wife ran away. Hence, on suspicion he lodged the FIR. He clearly stated that actually the child died due to pneumonia. PW 3 Tintush Induwar and PW 7 Rajen Bhakta also categorically stated that the child died due to pneumonia but on the death of the child when accused Dohari Bhakta fled away then her husband on suspicion lodged the FIR. PW 6 Jalko Bhakta also corroborated that the child died due to illness. PW 3, PW 6 and PW 7 all are neighbours. Other witnesses PW 2, PW 4 and PW 5 (hostile witness) did not know how the child died. Though PW 1, the informant in the FIR alleged that the accused pressed the neck of the child due to which the child died but the post mortem report shows no any mark of strangulation upon the neck of the child. The Medical Officer, PW 8 also opined that as he could not ascertain the cause of the death of the child, hence viscera was sent to FSL, the viscera report is not available in the case record.

The testimony of the PWs discussed above shows no iota of evidence that the accused had caused the death of the child. Though there is evidence of PWs that at the death of the child the accused fled away but in statement u/s 313 Cr.P.C. she stated that when the child died, she became nervous and

hence ran away. The possibility of being nervous seeing the senseless infant baby and then running away from home, cannot be ruled out.

17. From the above discussed evidence, rendered by the prosecution witnesses, no incriminating material could be found against the accused person. In order to hold a person guilty of a charge, prosecution is required to establish the case beyond all reasonable doubt by adducing cogent and substantive evidence. In this case, I find that the prosecution failed to adduce the substantive and cogent evidence inspiring confidence to conclusively hold that the accused person had caused the death of the deceased.

18. In the light of above discussion, I am constrained to hold that the prosecution case neither established nor consistent with the hypothesis of the guilt of the accused person and as such she cannot be held guilty.

19. In view of what has been discussed above, I am inclined to hold that the prosecution failed to prove the case beyond reasonable doubt. Accordingly, accused Dohari Bhakta is acquitted from the charge u/s 302 IPC and set her at liberty forthwith. The bail bond shall extended till next six months in view of section 437 A of Cr.PC.

20. Send back the GR case to the learned committal court.

21. Given under my Hand and Seal of this Court on this the **11th day of February, 2021.**

(I. Barman)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me.

(I. Barman)
SESSIONS JUDGE,
SONITPUR :: TEZPUR.

APPENDIX

Prosecution Witness

PW No.1	:-	Sri Sonu Bhakta, informant.
PW No.2	:-	Sri Syamal Nayak
PW No.3	:-	Sri Tintush Induwar
PW No.4	:-	Abdul Salam,
PW No.5	:-	Sri Moniram Nayak,
PW No. 6	:-	Sri Jalko Bhakta
PW No. 7	:-	Sri Rajen Bhakta,
PW No. 8	:-	Dr. Atul Kumar Kalita, M.O.

Documents proved by prosecution.

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| 1. | Exhibit No.1 | :- | Inquest report. |
| 2. | Exhibit No.2 | :- | Post mortem report. |

(I.Barman)
SESSIONS JUDGE
SONITPUR: TEZPUR