

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No.2

SONITPUR :: TEZPUR

Sessions Case No. 205 of 2010

Under section 306 I.P.C

(Arising out of G.R. Case No. 1557 of 2008)

State of Assam

-Vs-

Md. Jafar Ali Accused.

Present

Ms. A. Ajitsaria, AJS,
Addl. Sessions Judge No.2, Sonitpur, Tezpur

Date of Evidence : 15.07.11, 19.11.13, 15.2.14,
09.06.14,

28.7.14, 16.9.14, 20.11.14

Date of Hearing : 23.4.15

Accused absent on : 7.5.15

Date of Judgment : 8.5.15

For the State : Sri Khemraj Adhikary, Addl. Public Prosecutor.

For the accused : Sri Babul Borthakur

J U D G M E N T

1. The prosecution case, in a nutshell, is that on 12.9.2008 Md. Sakur Ali lodged an FIR before the Sootea Police Station stating inter alia, that about 4 years ago, he had given his sister, Nur Jahan Begum in marriage with Md. Jafar Ali. It has been further stated that out of the said wedlock, they had one female child. But, on 11.9.08, at about 11 Pm, there was altercation between Md. Jafar Ali and his sister Nur Jahan Begum pursuant to which he suspected that his sister either committed suicide or was made to commit suicide by hanging. The said FIR was registered as Sootea P.S Case No. 151/08.

2. After due investigation, charge-sheet was submitted against the accused person, namely, Md. Jafar Ali, under section 306 IPC.

3. The accused entered appearance and after observing necessary formalities, the offence being Sessions triable, was committed to the Court of Sessions for trial by the Ld Addl. Chief Judicial Magistrate, Sonitpur, Tezpur.

4. After hearing both sides and on perusal of the police report furnished u/s 173 of the CrPC, formal charge u/s 306 IPC was framed, read over and explained to the accused to

which he pleaded not guilty and claimed to be tried. Hence, this trial.

5. In support of the case, the prosecution examined ten witnesses and defence examined none. The plea of defence is of total denial.

6. After closure of the prosecution evidence, the accused persons were examined u/s 313 of the C.R.P.C.

POINTS FOR DETERMINATION

Whether the accused abetted the commission of suicide of Nur Jahan @ Noor Begum?

7. I have carefully examined the evidence on record and heard arguments of both sides.

DECISION AND REASONS THEREOF

8. PW 1, Md. Sakur Ali, sister of the deceased/ brother in law of the accused deposed that his sister Nur Jahan Begum was given in marriage to the accused about 7 years back and out of the said wedlock, they had one female child aged about 3 and half years. PW 1 stated that there were a love affair between the accused and Nur Jahan and thereafter, Nurjahan had eloped with the accused and later they were in marriage by the family members. PW 1 stated

that they lived happily as husband and wife for about one year and thereafter the accused started torturing Nurjahan mentally. PW 1 stated that when Nurjahan pregnant, she came to their house and her child was delivered in their house and thereafter she returned to the house of the accused and used to occasionally visit them. PW 1 stated that one week prior to her death, Nurjahan had gone to their house. PW 1 stated that he received information on the next day of occurrence that Nur Jahan had died in the house of the accused by hanging herself. PW 1 stated that Nurjahan died because of the torturing inflicted upon her by the accused. PW 1 stated that he lodged an FIR(Ext 1) in the police station, where he put his signature as Ext 1(1).

9. In cross-examination, PW 1 stated that the written was FIR by a person from Sootea, but he did not know his name. PW 1 stated that the accused was a businessman at the time of occurrence. PW 1 stated that the accused had seven brothers, four of them lived **nearby**. PW 1 stated that on the date of occurrence, the accused had taken rice in the house of his bou/sister in law and came home at late night. PW 1 stated that he did not know Jafiruddin and he had no knowledge about the case which was given by Jaffar against Nurjahan.

PW 1 stated that he knew that something had happened and the villagers had resolved it. PW 1 stated that he had no knowledge if there was any relation between Nur Jahan and

Jafiruddin and whether any case was given by the accused his Nurjahan. PW 1 stated on receiving the information, when he went to the house of accused, he came to know that the dead body was taken to the police station and there he came to know about the occurrence. PW 1 stated that he had only once earlier visited the house of accused at Sootea.

PW 1 denied that a case against Nurjahan for having an affair with another person was lodged and, as such, she committed suicide because she was ashamed in front of the society.

10. PW 2, Ismail Ali, brother of the accused stated that the deceased was his sister in law. PW 2 stated that it was Ramzan month, he ate food and went to pray in the mosque which was about 2 kms away and when he returned at about 11 pm; he heard people crying; he heard that his sister in law had committed suicide by hanging herself. PW 2 stated that he did not know where the accused was at the relevant time.

11. In cross-examination, PW 2 stated that he only heard about the incident.

12. PW 3, Shahjahan Ali, elder brother of the accused stated that at the relevant time, he was at Nagaon and he heard that the deceased had committed suicide by hanging

herself. PW 3 stated that co-villagers informed him over phone and on hearing about the incident he came to his brother's house and later he went to Koliabor to inform the parents of Nurjahan but he was beaten up by them. The prosecution declined to cross-examine of PW 3.

13. PW 4, Dr. Ranjan Kr. Das, deposed that on 12.9.2008, he performed the post mortem on the body of Nurjahan @ Noorjahan Begum and found the following:

"Rigor Mortis present, Eyes and mouth closed.

All the other structures are found healthy and normal.

Uterus was normal in size.

Vulva -Vagina was healthy

Viscera were sent for forensic laboratory examination (1)

Stomach and its contents (II) Right kidney (III) A piece of liver."

PW 4 opined that the cause of death could not be ascertained hence viscera were sent for forensic examination. PW 2 exhibited the post mortem report as Ext 2.

14. In cross-examination by the defence, PW 4 stated that since the cause of death could not be ascertained, the viscera were sent to the forensic laboratory for examination.

15. PW 5, Anuwara Begum, deposed that on the day of Roza, they had taken food and had slept, when the accused

came and woke them up and she gave the accused food to eat. PW 5 stated that the accused went back to his house and he saw that his wife was hanging, with a cloth/saree around her neck. PW 5 stated that the accused raised a hue and cry, she went to his house and saw the accused bring down his wife, thinking that she was alive. PW 5 stated that however they saw that she had already died and the accused laid his wife on a bamboo mattress.

16. In cross-examination, PW 5 stated that she had not seen the accused beat the deceased before the occurrence. PW 5 stated that the relationship between the accused and his wife was good. PW 5 stated that she could not say why the accused hung herself. PW 5 stated that she had not seen the occurrence.

17. PW 6, Sabiya Khatun, deposed that on hearing hue and cry created by Shahjahan's family that Jaffar's wife was dead, she went to the house of Jaffar/accused and saw his wife lying dead. PW 6 stated that she saw his wife's body lying on the bamboo mattress. PW 6 stated that on enquiry, the accused informed her that his wife had committed suicide by hanging herself. The prosecution declined to cross-examine of PW 6.

18. PW 7, Aftara Begum, deposed that it was a Roja day, they had food and slept, thereafter they heard crying voices and hue and cry at about 10 o'clock at night and so hearing, she went to the house of the accused. PW 7 stated that she saw the accused cry near the body of his wife which was lying on a bamboo mattress. PW 7 stated that the accused informed her that he had seen his wife hanging by a cloth and thinking her to be alive, he brought her down, but found her to be dead. The prosecution declined to cross-examine of PW 7.

19. PW 8, Sri Tirtha Sharma, deposed that on the date of occurrence he was informed by the villagers that Nurjahan had hung herself and that he ought to inform the police. PW 8 stated that he received the information at about 11-12 PM at night. PW 8 stated that on the next morning, he went to the house of the accused and saw the dead body of Nurjahan lying on a mat. PW 8 stated that he also saw saree hanging from a beam in the house. PW 7 stated that Saree (Material Exhibit 1) was seized by the police. PW 7 stated that police exhibited the Seizure List where he put his signature as Ext 4 (1). PW 8 stated that police was there at the place of occurrence. PW 8 stated that Magistrate conducted Inquest on the dead body of Noorjahan after which Ext 3, Inquest report was prepared, where he put his signature being Ext 3 (1).

20. PW 9, Babul Ali, deposed he heard that Nur Jahan had died of "phasi", because of hanging by rope. PW 9 deposed that he too went to see, police and Magistrate came to the house of the accused. PW 9 deposed that he saw Nur Jahan's body had been kept in the compound on the mat on the floor. PW 9 stated that Magistrate conducted Inquest on the dead body of Noorjahan after which Ext 3, Inquest report was prepared, where he put his signature being Ext 3(2).

21. In cross-examination, PW 9 stated that when police obtained his signature the paper was blank and he could not say what was written in Ext 3.

22. PW 10, Sri Jogesh Deb Goswami, deposed that on 12.9.2008 when he was posted as OC Sootea, he received phone call from VDP Secretary of Barbheti gaon informing that one woman died of hanging by neck in their village. PW 10 stated that immediately on receipt of information, he recorded GDE No. 225 dated 12.9.2008 and instructed ASI Pradip Das to go to the place of occurrence. PW 10 stated that SDC of Sootea Sri Ramen Sharma was also requested to go to the place of occurrence. PW 10 stated that the deceased was Nur Jahan Khatun. PW 10 stated that Magistrate conducted Inquest on the dead body of Nurjahan after which Ext 3, Inquest report was prepared, where he identified the signature of Executive Magistrate being Ext 3(3). PW 10 deposed that the dead body was sent for post mortem vide dead body challan(Ext 5). PW 10 stated that Sketch map(Ext

6) was prepared by ASI Pradip Das. PW 10 stated that one saree (Material Ext 1) was seized by ASI Pradip Das. PW 10 stated that Ext 4 was the Seizure List and he identified the signature of ASI Pradip Das being Ext 4 (2). PW 10 stated that on the same day at 2 PM Sukur Ali lodged an FIR (Ext 1) at Sootea PS in respect of the said occurrence and the same was registered as Sootea PS Case No. 151 of 2008 u/s 306 IPC. PW 10 stated that he took up the investigation of the case and visited the place of occurrence, recorded the statement of witnesses. PW 10 stated that he prepared sketch map (Ext 7). PW 10 stated that the viscera of the dead body was preserved by the doctor and the same was sent to FSL, later he collected the FSL report (Ext 9) which showed that no poison was found in the Ext No. TOX879A, TOX897B and TOX 879C. PW 10 stated that on completion of investigation he submitted chargesheet (Ext 8) against the accused, Jaffar Ali.

23. In cross-examination, PW 10 stated that the villagers had brought down the dead body and were looking at the dead body of Nur Jahan Khatun by bringing it down. PW 10 stated that Sukur did not state before him that Jafar telephoned and informed him about the death of Nur Jahan Khatun; that Jafar used to inflict mental cruelty. PW 10 stated that Anuwara Begum did not state before him that Jafar and Nur Jahan Khatun used to quarrel.

24. The accused is facing charge for abetting the commission of suicide by his wife (Nurjahan). PW 1, brother

of the deceased stated that the accused and his sister lived happily for about a year after their marriage, which was solemnised after they had eloped, thereafter the accused inflicted mental cruelty on his sister. Apart from the said statement of the informant/PW 1, none of the PWs have stated about cruelty being inflicted on the deceased by the accused. PW 2, PW 3, PW 5, PW 6, PW 7, PW 8 and PW 9 all deposed to the effect that they had heard that Nurjahan had committed suicide by hanging. There is nothing in the evidence of these witnesses which even remotely suggests that Nurjahan resorted to hanging herself because of the cruelty inflicted by the accused person.

25. Since the death occurred within 7 years of the marriage of the accused with that of Nurjahan, as stated by PW 1, presumption under section 113A of the Indian Evidence Act would be attracted only when it is shown that the woman committing suicide was subjected to cruelty by her husband or relatives.

26. Cruelty (as defined for the purpose of section 498 A IPC) means (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or cause grave injury or danger to life, limb or health (whether mental or physical) of woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on

account of failure by her or any person related to her to meet such demand.

27. In the instant case, there being no allegation of any demand, cruelty as envisaged under clause (b) is not attracted in the instant case. In the instant case there is nothing on record which establishes that the conduct of the accused with his wife was such that she was driven to commit suicide. And as already stated before, there is no evidence of infliction of either physical or mental cruelty by the accused upon his wife. PW 4 (MO) too did not detect any injury on the body of the deceased.

28. Again, neither of the three ingredients of abetment as envisaged u/s 107 IPC, that is, (i) instigation (ii) engaging in conspiracy for doing that thing and any act or omission pursuant to the said conspiracy (iii) intentionally aiding by any act or illegal omission, the doing of that thing, is available in the instant case.

29. Nothing adverse has been placed on record with regard to the relationship of the accused and Nurjahan. On the other hand, the defence has successfully confronted the IO with regard to the evidence of PW 1, brother of the deceased in whose deposition there are embellishments, which albeit does not find corroboration from any quarters. Again, it is on record that the accused after taking dinner in the house of PW 5 on the date of occurrence, came home to

find Nurjahan hanging and in an attempt to save her, thinking that she was alive, he brought her down, only to find her dead. No evidence of history of cruelty by the accused, either physical or mental has been brought on record by the prosecution, thereby miserably failing to prove the ingredients of abetment to suicide.

30. In view of the aforesaid discussion, it is held that the prosecution has failed to prove that the accused person abetted the commission of suicide by Nur Jahan Begum, beyond reasonable doubt, as such, he is acquitted of the charge u/s 306 IPC and set at liberty forthwith.

31. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation u/s 357A Cr.P.C.

32. Send a copy of the order to Learned District Magistrate, Sonitpur u/s 365 Cr.P.C.

The judgment is signed, sealed and pronounced in open court, in the presence of both sides, on this the 8th day of May, 2015.

Additional Sessions Judge No. 2,
Sonitpur, Tezpur.

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

- P.W. 1: Md. Sakur Ali
- P.W. 2: Ismail Ali
- P.W. 3: Shahjahan Ali
- P.W. 4: Dr. Ranjan Kr. Das
- P.W. 5: Anuwara Begum
- P.W.6: Sabiya Khatun
- P.W.7: Aftara Begum
- P.W.8: Sri Tirtha Sharma
- P.W.9: Md. Babul Ali
- P.W.10: Sri Jogesh Deb Goswami, 12 APBN

2. Witnesses for Defence : NIL

3. Court Witnesses : NIL

4. Prosecution Exhibits:

- Ext. 1: FIR
- Ext 2: P.M. Report
- Ext 3: Inquest Report
- Ext 4: Seizure List
- Ext 5: Dead body challan
- Ext 6 & 7: Sketch Map
- Ext 8: Charge sheet
- Ext 9: FSL Report

5. Defence Exhibits : NIL

6. Material Exhibits: Material Ext 1: One Saree

Addl. Sessions Judge No.2
Sonitpur, Tezpur