

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No.2

SONITPUR :: TEZPUR

Sessions Case No.91 of 2008

Under section 302/120 B I.P.C
(Arising out of G.R. Case No. 1839 of 2005)

State of Assam

–Vs–

Md Muzaffar Ali.... Accused.

Present

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

Date of Evidence : 7.11.2008, 29.12.2008, 10.7.2009, 25.2.2010, 26.2.2015

Date of Hearing : 30.4.2015

Date of Judgment : 14.5.2015

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

For the accused : Sri Babul Borthakur, Advocate

J U D G M E N T

1. The prosecution case, in a nutshell, is that, Md. Abdul Ali lodged an FIR on 20.10.05 at Sootea Police Station stating, inter alia, that his son Jakir Hussain, aged about 30 years, died 46 days ago, leaving behind his wife Saleha Begum and 2 children. It was stated that sudden and unexpected death of Jakir made him and the villagers suspicious and subsequently he came to know from reliable source that Md. Muzaffar Ali of Biswanath Gowaltoli had assured Saleha of marrying her and made her believe that he could take her away as a wife only if her husband Jakir Hussain was killed by poison. Instigating thus, Saleha caused the death of her husband Jakir by feeding him with poison. It was stated that they came to know about the occurrence

much later and on coming to learn, he lodged the FIR. The same was registered as Sootea PS case No. 99 of 2005.

2. After due investigation, charge-sheet was submitted against the accused persons, namely, (i) Md Muzafar Ali and (ii) Saleha Begum, under section 302/120B 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 learned Judicial Magistrate First Class, Sonitpur, Tezpur.

4. After hearing both sides and on perusal of the police report furnished u/s 173 of the CrPC, formal charge (i) Md Muzzafar Ali and (ii) Saleha Begum, under section 302/120B IPC against Md Muzzafar Ali and under section 302 IPC against Saleha Begum was framed, read over and explained to the accused to which they pleaded not guilty and claimed to be tried. Hence, this trial. It is pertinent to place on record, that on 26.9.2014 the instant case was spilt-up in respect of the present accused person, as accused Saleha Begum stopped appearing. Hence, trial proceeded in respect of accused Md Muzaffar Ali and this judgment is being pronounced in respect of accused Md Muzaffar Ali.

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

6. After closure of the prosecution evidence, the accused person was examined u/s 313 of the CrPC.

POINTS FOR DETERMINATION

Whether the accused Muzzafar Ali conspired to kill Jakir Hussain, husband of accused Saleha Begum and in pursuance thereof supplied poison to Saleha, who subsequently made Jakir Hussain consume the poison, thereby intentionally and knowingly causing the his death ?

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

DECISION AND REASONS THEREOF

8. PW 1, Dr. Hiranjan Saikia deposed that on 22.10.2005, he conducted post mortem on the dead body of Jakir Hussain in connection with Sootea PS Case No. 99/05 and found that the same to be a male decomposed body with foul smell, whole body covered with mud and a distinct external injury mark. PW 1 stated that the cause of death could not be ascertained and hence body parts were preserved for FSL examination. PW 1 stated that the liver, stomach and kidney were preserved for FSL examination for ascertaining the cause of death. PW 1 exhibited the post mortem report as Ext 1. The defence declined to cross examine PW 1.

9. PW 2, Md. Abdul Ali deposed that accused Saleha Begum was his daughter-in-law and deceased Jakir Hussain, who died two and half years ago, was his son. PW 2 stated that they had not known about the cause of death of his son. However about 46 days after his death, accused Saleha stated that her previous husband was better; at least he provided her with food and clothing and they had two children and that the accused Muzaffar had not accepted her. PW 2 stated that suspecting something strange from Saleha's manners, he lodged FIR at Sootea police station. PW 2 stated that in course of investigation, the police disinterred the body of his son and inquest was held.

10. In cross examination PW2, Md. Abdul Ali deposed that he had lodged the FIR, two days after Saleha had begun telling around about the incident. PW2 stated that his son Jakir and his wife Saleha used to live separately, across the courtyard. PW2 stated that Muzaffar had married his daughter near their house and he used to visit his daughter occasionally. PW2 stated that he had no knowledge whether his son Jakir had taken dinner in his house on the night of the incident. PW2 denied having stated before the I.O. that when Saleha informed him that Jakir had become unconscious because of vomiting, he had responded by saying that Jakir had returned after drinking liquor and he ought to die if he so desires. PW2 admitted that he had stated before the police that around 4:30 hour, daughter-in-law raised a commotion saying that Jakir was senseless and on examining Jakir he realized that Jakir had

already died. Later in consultation with the villagers, he performed his last rites under the assumption that Jakir had died because of illness and drinking. PW2 stated that he did not know if, on the night of the incident Jakir in are drunken condition, had been lying in the courtyard and later he was lifted by Saleha and Jakir's mother gave him meal, after which he got choaked. PW2 denied that he had tortured Saleha with a view to grab Jakir's property.

11. PW 3, Mustt. Hazera Khatun stated that her son Jakir Hussain died 3 years back. PW 3 stated that they had thought that he had died of illness, but later when the accused Saleha stated that accused Muzaffar had killed Jakir Hussain by poisoning, they came to know about the same.

12. In the cross examination PW3, stated that she and Saleha shared the same courtyard. On the date of occurrence, Jakir had come around 8 P.M, on the date of occurrence the weather was bad and the courtyard being made of earth, it was slippery because of rain. PW3 denied that Jakir had taken his meal in the house of PW3 on the date of occurrence and that Jakir used to drink wine. PW3 stated that on the very day the police was informed and they had gone to the house of PW3 on the same night. PW3 stated that after 41st day of Jakir's death, Saleha was residing with her parents. PW3 denied they had lodged false cases to grab the property of their son.

13. PW 4, Md. Imam Hussain deposed that Sahela was her sister –in-law. PW 4 stated that on one occasion before his death, Jakir had told their mother that Sahela had developed an illicit relationship with Muzaffar and that Saleha threatened to teach Jakir a lesson. PW 4 stated that Jakir died on the 5th day after the threat.

14. In the cross examination PW4, Md. Eman Hussain stated that he did not know how Jakir died. PW4 stated that around 1 o'clock on the night of the incident Saleha told him about Jakir's death and he along with his other family members went to Jakir's house. PW 4 denied that Saleha had asked them to call a doctor but because of shortage of money he was not called. PW4 stated that Saleha herself had told the VDP secretary that Jakir had been killed by being made to consume fish smeared with "Furadon" (kind of poisonous manure). PW4 denied that false case was filed against Saleha so as to deprive her of her husband's property.

15. PW 5, Loknath Upadhaya deposed that at the relevant time, he had gone to the police station on being called by the O/C of the police station. At the police station, a male accused (Muzaffar Ali) stated that he had brought the female accused (Saleha) dry fish and some poisonous substances and that after preparing the same, Saleha had fed Jakir Hussain with the same.

16. In cross examination PW5, Loknath Upadhaya in his cross examination stated that at the relevant time there was 6/7 people in the police station. Sayed Ali had gone there before him and the women said all the things to the OC of the police station. PW5 stated that the male accused arrived a little later. PW5 further stated that he had no personal knowledge about the incident.

17. PW 6, Md. Sayed Ali deposed that at the relevant time, he had gone to Sootea Police Station along with Loknath Upadhaya (PW 5) and that when they were sitting there, the police were interrogating Muzaffar. PW 6 stated that they came to know that a woman named Saleha (Jakir's wife) had illicit relationship with Muzaffar; in furtherance of their common intention, they had procured rat-killer, mixed the same with fish chutney, fed the same to Jakir, leading to his death. PW 6 stated that after that, police disinterred the body of Jakir, they caught hold of Muzaffar, who disclosed about the same.

18. In the cross examination PW6 stated that Muzaffar was being interrogated inside the office room of the police station, there were about 5 police personnel and no outsider other than Loknath and PW6 was present. PW6 stated that police had not asked them anything about the incident and they were only asked to sign a paper, it was only after receiving the summons from the court that he came to know that he was a witness in the incident case.

19. PW 7, Mustt. Musida Khatun deposed that at the time of the death of her elder brother Jakir Hussain they had no idea about the cause of his death. Later, one day, Saleha Begum began speaking on her own and stated that she had committed a grave mistake, in as much as, she was better off earlier. PW 7 stated that Saleha began

speaking in the said manner since the 41st date of Jakir's death and then Jakir's dead body was disinterred because of such statements by Saleha.

20. In the cross examination, PW7 stated that she did not know how Zakir died and she had not heard Saleha speak in that particular manner.

21. PW 8, Md Anowar Hussain deposed that he came to know the name of the deceased to be, Jakir Hussain on the date of his death only. PW 8 stated that accused Muzafar's house was situated about 80 meters away from his house. One day at about 8.30 AM, he was at his resident when he heard some discussions among young women that the accused Muzafar had brought another woman for his marriage. PW 8 stated that on hearing the same, he went to the house of accused Muzafar but he did not find him in his house. PW 8 stated that accused Saleha was sitting in the courtyard with a veil on her face and speaking to 4-5 other women. On enquiry, accused Saleha informed PW 8 that there was lot to be disclosed but she was waiting to see whether accused Muzafar would marry her or not. PW 8 stated that he advised the other women not to talk any more with Saleha and he went away. PW 8 stated that at about 4 pm, he heard that nikah would be solemnized between accused Muzafar and accused Saleha and he again went to the house of the accused Muzafar. PW 8 stated that accused Muzafar was present in the house and everything was ready for performance of marriage. PW 8 stated that he then called co villagers namely Abdul Kalam, Jonab Ali, Ali Akbar and others and advised accused Muzafar to perform his marriage before a Kaji. PW 8 stated that on the next day both accused Muzafar and accused Saleha went to Kaji for performance of Nikah but since the villagers were not present, the Kaji refused to perform Nikah and both the accused returned home. PW 8 stated that then quarrel started between both the accused Muzafar and accused Saleha and Saleha threatened accused Muzafar that she had already killed her husband by administering poison brought by accused Muzafar so that their marriage could be performed and if accused Muzafar would not enter into wedlock with her , she would teach her a lesson. PW 8 stated that it was on such disclosure by accused Saleha that he came to know that accused Saleha had killed her previous husband with the aid of accused Muzafar. PW 8 stated that hearing the occurrence from the mouth of accused Saleha, both, accused Muzafar and accused Saleha were handed over to the police by the villagers.

22. In cross examination PW 8 stated that on 19.10.05 he called the police at about 7-8PM and accused was handed over to the police. PW 8 stated that FIR was lodged on 20.10.05. PW 8 stated that he got the FIR written through one person, whose name he had forgotten and he had put his signature on the FIR. PW 8 denied that he had not stated before the IO in the manner he had deposed in the Court. PW 8 stated that he did not know Saleha personally and he had stated in the manner stated by Saleha.

23. PW- 9, SI Deben Borah deposed that on 20.6.10 he was posted at Sootea PS. On that day Abdul Ali lodged an FIR (Ext 2) by putting his thumb impression. The same was registered as Sootea PS Case No. 99 of 2005 u/s 120 B/302 IPC and I took up the investigation of the case. PW 9 stated that during the course of investigation, he visited the place of occurrence, prepared sketch map (Ext 3) of the place of occurrence, recorded the statement of witnesses and arrested Saleha Khatun and Muzafar Ali. PW 9 stated that on the basis of the disclosure of the accused and the witnesses, dead body of Jakir @ Zakir Hussain, son of the informant, which was buried for about 46 days was disinterred. Inquest was conducted by Executive Magistrate Sri Jatin Borah and Ext 4, Inquest Report prepared. PW 9 stated that he sent the dead body for post mortem vide dead body challan being Ext 5. Doctor preserved the viscera of the dead body of Jakir Hussain and the same was sent for chemical examination to FSL, Kahilipara, Guwahati. Subsequently, FSL Report (Ext 6) of the examination of viscera was collected. PW 9 stated that on completion of investigation, he submitted chargesheet (Ext 7) against the two accused persons.

24. In cross examination, PW 9 stated that Ext 6 , FSL Report gave negative result for common poison. PW 9 stated that he had recorded the statement of about seven witnesses and all the witnesses stated before him that Jakir's death was caused by making him consume poison with fish. PW 9 stated that the occurrence took place before about 46 days of lodging of FIR. PW 9 stated that no explanation for delay in lodging FIR was written in the FIR. PW 9 stated that houses of the complainant, Iman Hussain, Akbar Ali, Shahjahan Ali were situated near the place of occurrence and houses of Abdul Ali and Loknath Upadhaya was situated about 150 meter and 1/2 km away (respectively) , from the place of occurrence. PW 9 stated Abdul Ali stated before him that *"about 40 days after the death of Jakir, his daughter had gone to Kualtoli and there she wanted to get married to Muzafar but because Muzafar declined to marry*

her; she had stated that she had killed her husband by giving him poison." PW 9 stated that Manuwara Hussain stated before her that *"she had stated to Muzaffar that if he did not marry her he would die or he would have to go to jail as she had killed her husband by giving poison as he had given her word"*. PW 9 stated that Md Anwar Hussain did not state before him that on receiving information about 4 PM that marriage would be performed in between accused Muzafar and Saleha, he went to the house of Muzafar.

25. In the instant case, accused Muzaffar Ali is facing charge of having entered into criminal conspiracy with accused Saleha Begum and pursuant to the same, having given her poison, who in turn administered the same on her husband Jakir Hussain and caused his death.

26. At the outset therefore, it is to be ascertained whether Jakir Hussain died of poisoning. PW 1, the Medical officer who carried out post mortem on the dead body of Jakir Hussain which, was disinterred after lodging of the FIR, not being able to ascertain the cause of death of Jakir Hussain, preserved the viscera for FSL examination. The FSL examination Report (Ext 6) gives negative report for any poison on the body of Jakir Hussain.

27. From the FSL report, it is seen that Jakir Hussain did not die of poisoning. It is to be noted that in the post mortem report, it is seen that PW 1 found "a distinct external injury mark". No allegation or evidence on record is available which hints at any injury sustained by the deceased before his death.

28. In so far as the charge of the accused persons having conspired is concerned, there is no evidence with regard to the same. Though PW 8 stated in his examination in chief that both the accused persons went to get married before the Kazi but since the villagers were not present, the marriage was not performed, however, the said PW 8 was successfully confronted by the defence in the cross examination. PW 2 and PW 3, parents of the deceased only stated that they had suspected that Saleha had poisoned their son, when Saleha began murmuring after the death of their son. As stated hereinabove, no trace of poisoning was found in the body of the Jakir. PW 4 and

PW 5 have stated that they heard the accused state about her alleged misdeeds in the police station. Hence their evidence is not of any relevance. PW 6 and PW 7 have not supported the case of the prosecution either.

Hence, in the ultimate analysis, it is seen that the prosecution has failed to prove either conspiracy or the involvement of accused Muzaffar in the death of Jakir.

29. In view of the discussion aforesaid, this Court holds that accused, Md Muzzafar Ali, is not guilty of the offence charged and, as such, he is acquitted of the charge u/s 302/120B and set at liberty forthwith.

30. 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.

31. 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 14th 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:Dr. Hiranjan Saikia
- P.W. 2:Md Abdul Ali
- P.W. 3:Mustt Hazara Khatoon
- P.W. 4:Md Iman Hussain
- P.W. 5:Sri Loknath Upadhaya
- P.W. 6:Md Sajid Ali
- P.W. 7:Mustt Murshida Khatoon
- P.W. 8:Md Anwar Ali
- P.W. 9:SI Deben Borah

2. Witnesses for Defence : NIL

3. Court Witnesses : NIL

4. Prosecution Exhibits:

- Ext. 1: Post Mortem Report
- Ext. 2: FIR
- Ext. 3: Sketch Map
- Ext. 4: Inquest Report
- Ext. 5: Dead Body Challan
- Ext. 6: FSL Report
- Ext. 7: Chargsheet

5. Defence Exhibits : NIL

6. Material Exhibits: NIL

Addl. Sessions Judge No.2
Sonitpur, Tezpur