

IN THE COURT OF ADDL. SESSIONS JUDGE
SONITPUR :: TEZPUR

PRESENT: M.R. SHARMA
ADDL SESSIONS JUDGE
SONITPUR :: TEZPUR

SESSIONS CASE NO. 192 OF 2011
U/S 307 IPC

STATE OF ASSAM

- VERSUS -

Sri Kartik Gowala,
Son of Sunu Gowala,
Resident of Dhulapadung Tea Estate,
P.S. Rangapara,
Dist. Sonitpur

... accused person

Appearance

Sri H. F. Sedai Learned Addl. PP	:	For the State.
Mr. N.K. Misra, State Defence Counsel	:	For the accused person.
Date of evidence	:	15-03-2012, 28-09-12 12-11-12
Date of argument	:	21-12-12, 18-01-13
Date of judgment	:	19-01-2013

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19-1-13
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J U D G M E N T

1. The prosecution case in brief is that the informant Sri Vikey Rabha lodged an Ejahar before the Officer-in-charge of Dhekiajuli Police Station stating inter-alia that on 07-06-11 at about 6 pm, afternoon, the accused Kartik Gowala attempted to kill the complainant Lakhi Tanti by strangulating her with a rope in her neck.
2. On receipt of the Ejahar, the O/C, Rangapara Police Station, registered Rangapara Police Station Case No. 137/11 u/s 307 of IPC and after completion of investigation submitted charge-sheet against accused Kartik Gowala u/s 307 IPC.
3. During the whole trial, the accused Kartik Gowala was in jail Hajot. As the offence u/s 307 of IPC was exclusively triable by Court of Sessions, the case was committed to the Court of Sessions and subsequently transferred to this court for disposal. Inadvertently, charge was framed on 30th September against the accused wrongly by my predecessor, later on 21-12-12 charge was framed again u/s 307 of IPC against the accused Kartik Gowala by me which was read over and explained to the accused. to which, he pleaded not guilty and claimed to be tried.
4. In this case, the prosecution has examined 5 witnesses and the defence examined none. The plea of the defence is of total denial.
5. The statement of the accused person was also recorded u/s 313 Cr.P.C.
6. I have heard argument of learned counsel for both sides also carefully
7. done through the materials on record.

Point for determination is :

Whether the accused Kartik Gowala attempted to commit murder of Lakhi Tanti by strangulating her by rope in her neck ?

Delivered
19-1-13
Sessions Judge
Dhekiajuli

DECISION & REASONS THEREOF

8. To arrive at a just decision of the case, let me consider the evidence of the witnesses first.

9. PW 1 in this case is Smti. Lakhi Tanti and she in her evidence before this Court stated that she knows the accused Kartik Gowala and he is her neighbor. The incident took place in the year 2011. On the day of the incident, in the evening at about 5 pm, she was inside her room and was sitting in her bed. The accused Kartik Gowala came from the back side and with a rope tried to strangle her by the neck, as a result she could not speak out. Later on, she put her finger inside the rope and started shouting and then nearby people namely Gonesh, Sourav, Horo came and caught hold of the accused and took him and so she was saved. The next day she filed the Ejahar.

In her cross-examination, she says that who had written the Ejahar, she can not say and also states that the rope which was used has not been produced in the Court. She also says that she got some injury on her neck as a result of the strangulation. She denies the suggestion that she was not strangled by the accused with a rope. She also denies that she did not state before the police that on the day of the incident while she was sitting in her bed at about 5 pm, the incident did not take place. She also states that she has no enmity with the accused and the accused called her as "Pehi". They have also good relation between their families. She also states that the accused also helped sometimes in her work. No incident had occurred outside her quarter.

10. The next witness is PW 2 Sri Gonesh Tanti and in his evidence deposes that he knows both the accused and complainant. About one year back, at about 5 pm, he had just come home from his work and at that time he heard Lakhi Tanti shouting in her house and so he went there and later on he came to know that the

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accused Kartik Gowala had tried to strangulate her neck with a rope. He also says that Lakhi Tanti had also told him later on about the incident.

In his cross-examination, he says that he did not state before the police that he had heard about the shouting of the victim and had stopped for sometime in front of the house. He also deposes that when he had gone to the place of occurrence, Lakhi Tanti was inside the room. The persons who had gathered there had told him that the accused had tried to strangulate her with a rope. He also states that he did not remove the rope from the hand of the accused. He admits that he had asked about the incident to the victim later on. He also states that he can not say where the incident had taken place.

11. The 3rd witness is PW 3 Sri Jamini Tanti and in his evidence he deposed that both the accused and victim are known to him and on the day of the incident at about 4.30/ 5 pm, he was in his work, and while he came home, he saw a lot of people in front of the house of Lakhi Tanti. He came to know that accused had tried to strangulate Lakhi Tanti . He also says that he saw the accused at that place and the village people had confined him. Thereafter he along with some other persons took both the accused and victim to the office of the garden and informed the manager. Later on Lakhi Tanti filed the case.

In his cross-examination, he says that the Ejahar was written in the office of the garden and Lakhi Tanti put her signature there. The Ejahar was sent to the Police Station from the office of the garden. He also deposed that later on police had come to the place of occurrence and also called the victim to the Police Station. He also deposed that he did not see the accused and also he did not see the rope.

12. So far the evidence is discussed as it is, it is clear that ,except the victim Lakhi Tanti, other witnesses have not seen the incident. There is no eye witness of the incident and also the rope that was used was not seen or seized.

13. The next witness PW 4 is Dr. Dilli Ram Adhikari, as Senior Medical & Health Officer at Rangapara PHC and he in his evidence deposed that he examined

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Smti. Lakhi Tanti aged about 48 years, wife of Late Bhuban Tanti under Rangapara Police Station on being escorted and identified by Smti. Jamuna Bora, Woman Home Guard.

According to the medical officer, he found the following injuries:-

'One bruise on the anterior aspect of the neck extended from right sterno-mastoid to the left sterno-mastoid muscle measuring about 8' x 1/3 . No sign of injuries to the underlying bony structure " .

He also deposed that when he had examined the victim, the time and date was on 08-06-2011 at 2.10 pm. He also deposed that at the time of examination, the age of injury was 36 to 48 hours. He also found that the weapon which was used was blunt, and the nature of injury was simple. He also exhibited Ext 1 is the Medical Report and Ext 1(1) is his signature.

In his cross-examination, he mentioned that at the time of examination, there was no relation of the victim was present there for her identification except the Home Guard. He also deposed that he did not mention any other person except the Home Guard in his report on the day of examination. He also admits that he found bruise on the neck of the patient. He also says that there can be bruise by dashing against the bamboo wall, but not this type of bruise which was found in the neck of the victim, since the neck of the victim is a curved area. He also deposes that he did use the word 'curved' in his report, but he had written extended injury.

The next witness PW 5 is the I.O Sri. Atul Saikia. He in his evidence stated that on 08.06.11, he was attached officer at Rangapara Police Station and on receipt of an Ejahar by the O/C, he registered the case and then he had taken the charge of investigation . Accordingly, he went to the place of occurrence which is a quarter near a 'football field' . He made a sketch map of that place which is exhibited as Ext. 3 and also the victim was already taken to Rangapara PHC. He found the accused at the place of the incident, arrested him and took his statement there and forwarded him to the Court. He also deposed that during the time of investigation, he

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collected the medical report and finding sufficient materials u/s 307 IPC and submitted charge-sheet. He has exhibited Ext 4 , as the charge-sheet.

In his cross-examination he says that the incident took place on 07.06.11 and no information was received on that day. He also deposed that there is no mention of any name as to who had written the Ejahar and also thumb impression of the victim. Lakhi Tanti has not been identified by anyone.

He denies the suggestions that the complainant Lakhi Tanti did not filed the Ejahar.

He also deposed that he found the accused sitting in the 'Football Field' for watching the game.

He further deposed that on going to the place of occurrence, he recorded the evidence of Lakhi Tanti, Sourav Tanti and Gonesh Tanti.

He also admits that Lakhi Tanti did not admit to him that after coming from work she was sitting in her bed at the time of the incident and also at that time the accused had tried to kill her. The I.O. Also admits that there is no identification of the thumb impression of complainant Lakhi Tanti. He also denied to suggestion that the Ejahar was not filed by the complainant, but was by Manager of the garden.

This is all about the prosecution evidence.

15. The accused was also examined under the provision of 313 Cr.P.C and in his statement he stated that the whole allegation was false and he denies to adduce any defence evidence.

The offence that has been alleged against the accused is under 307 IPC. The ingredients of Section 307 IPC is attracted when any person does any act with such intention or knowledge, and under such circumstances, if such act would have caused death, the person would be guilty of murder. It is not necessary that there should be bodily injury, but an attempt with criminal intention, which goes to show that after such act was completed, the person would have died, Section 307 is attracted. If it is proved that there is an intention along with that there is any act or

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offence causing death, section 307 is attracted. In this case, the accused Kartik Gowala, as per the Ejahar has stated to have tried to strangulate the complainant Lakhi Tanti by putting a rope of her neck from the back side. Such an action if would have been completed, Lakhi Tanti would have died. The contents of Ejahar shows that the accused Kartik Gowala had committed an act which punishable to an offence u/s 307 IPC.

16. But the evidence so far discussed shows that none of the witnesses in the first place have corroborated each other. None of the witnesses have seen that the accused had tried to strangulate the victim Lakhi Tanti. Though, there are independent witness also. None of them have stated that they have seen the accused. The complainant herself has deviated from her allegation in the complaint and statement u/s 161 and 164 Cr.P.C. The rope with which she has alleged that the accused had committed an offence has not been seized by the police during investigation. All such facts do not prove commission of 307 IPC. Also, in one place she has stated that she had come home from her work and she was sitting in her bed. At another place she has stated that she was outside the room. Hence, her version is not reliable and can not be believed.

17. PW 3 Sri Jamini Tanti who has stated in his examination-in-chief before this court that at that time, he saw the accused committing the offence and the village people had confined the accused. But in his cross-examination he says that he did not see the accused and also the rope. Such witnesses are not reliable witnesses. The I.O. also says that he did not seize the rope and the doctor who had examined the victim, in his report stated that he found bruise on the neck of the patient which can be bruise by dashing against the bamboo wall. But, again he stated that he did not state in his report that the injury was a curved one. The doctor did not state as to whether such type of injury on the neck could have caused death of complainant. He had written extended injury which is not exhaustive.

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18. The witnesses nowhere in the evidence before this Court have stated that the accused Kartik Gowala had committed an act punishable u/s 307 IPC. The evidence of the doctor and the other witnesses deposed about the incident not bring sufficient evidence against the accused Kartik Gowala u/s 307 IPC.

19. The essential ingredients u/s 307 IPC as stated earlier is intention i.e. Mens-rea. The section 307 is to be attracted also requires that mens-rea is to be proved and if the mens-rea is not proved by the prosecution, it is difficult to contemplate that the accused had committed an offence u/s 307 IPC. The prosecution evidence shows that there is no mens-rea, and also an act on the part of the accused to attract the ingredients u/s 307 IPC. In this instant case, both have not been proved by the prosecution. Under the circumstances. I find that this is not a fit case that Section 307 IPC has been attracted against the accused Kartik Gowala and accordingly, he is to be given on benefit of doubt, and cannot be convicted. Accordingly, the accused is acquitted on benefit of doubt.

ORDER

20. Considering the discussions made above, I find that the prosecution has totally failed to prove the case against the accused Sri Kartik Gowala, so the accused Kartik Gowala is acquitted on benefit of doubt and set at liberty forthwith.

21. The judgment is given under my hand and seal of this Court on this day, the 19th day of January, 2013.

M.R.Sharma
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Dictated & corrected by me :-

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Typed by me : Chandrama Deka, Steno

APPENDIX

PROSECUTION WITNESS

1. Sri Laxhi Tanti (PW1)
2. Sri Gonesh Tanti (PW2)
3. Sri Jamini Tanti (PW3)
4. Dr. Dilli Ram Adhikari (PW4)
5. Sri Atul Saikia S.I (PW5)

LIST OF EXIHIBITS

- 1.Ext. 1(Medical Report)
- 2.Ext. 2 (Ejahaar)
- 3.Ext. 3 (Sketch map)
- 4.Ext. 4.(charge sheet)

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(M.R. Sharma)
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