
(2016) 6 GauLJ 522 : (2016) 5 GauLT 1 : (2016) 5 NEJ 611

GAUHATI HIGH COURT

Case No: Criminal Appeal No. 171 (J) of 2014

Safiqul Islam @ Sofikul
Islam

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Oct. 26, 2016

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, Section 304B

Citation: (2016) 6 GauLJ 522 : (2016) 5 GauLT 1 : (2016) 5 NEJ 611

Hon'ble Judges: Mr. Ajit Singh, C.J. and Mr. Manojit Bhuyan, J.

Bench: Division Bench

Advocate: Mr. K. Das and Mr. S. Khound, Advocates, for the Appellant; Mr. M. Phukan, Learned Additional Public Prosecutor, Assam, for the Respondent

Final Decision: Allowed

Judgement

Ajit Singh, C.J. - The sole appellant Safiqul Islam has been convicted under Section 304B/302 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs. 10,000/- with default stipulation.

2. The victim of incident was Kulsum, aged 19 years.

3. According to the prosecution case, Kulsum was married to appellant just 28 days prior to the date of incident. And, on 17.6.2009, she was killed by him in his house for not bringing appropriate dowry. Uncle Suruj Miah (PW-1), Aunt Sayeda Begum (PW-7), father Kalu Miah (PW-8) and mother Joytan Nessa (PW-9) of Kulsum were informed by the brother of appellant that her condition was serious. They, therefore, went to the house of appellant and found her dead body there. They also found an injury on her forehead. Suruj Miah made the ejahar exhibit 5 at Police Station Barpeta. In the ejahar, he alleged that Kulsum was murdered in a planned manner by the appellant and his family members by torturing her, because their demand for dowry could not be fulfilled. Sub Inspector

Sahjahan Ali (PW-11) on receiving the ejahar immediately went to the place of occurrence and recorded the statement of witnesses. He was also accompanied by an Executive Magistrate, who prepared the inquest report exhibit 1 of the dead body. As per inquest report, but for one cut mark on the left side of face, no other injury was found. Sahjahan Ali then referred the dead body to Barpeta Civil Hospital for postmortem examination.

4. Dr. Surat Zaman (PW-10) conducted the postmortem examination on 17.6.2009 itself. He too, except for one old lacerated wound on the left side of face, did not find any other injury. The doctor in his postmortem examination report exhibit 3 opined that the injury was simple in nature and not sufficient to cause the death of Kulsum. He, however, preserved the viscera for chemical analysis, so that, cause of death could be ascertained. But even report dated 21.10.2010 of the Chemical Analyst confirmed that no poison was found. And yet the Investigating Officer Sahjahan Ali after investigation filed a charge sheet only against the appellant for his prosecution under Section 302 of the Indian Penal Code.

5. During trial, the appellant abjured his guilt and pleaded innocence. His defence was that Kulsum died due to helmenthiasis. But the trial court accepted the prosecution case and convicted and sentenced him as aforesaid. Aggrieved, the appellant has filed the present appeal.

6. After hearing the learned counsel for the appellant and learned Additional Public Prosecutor, we are of the considered view that the appeal deserves to be allowed. As seen above, Dr.Surat Zaman in his postmortem examination report has clearly mentioned that only one old lacerated wound was found on the left side of Kulsum's face which was simple in nature and certainly not sufficient to cause her death. In the inquest report also but for this injury, no other injury was found by the Executive Magistrate. Kulsum did not die due to poisoning etc. Also witnesses ½ Mukul Hussain (PW-2), Md. Rabiul Hussain (PW-3), Md. Hasen Ali (PW-4) have testified in one voice that during investigation, they had informed the police that Kulsum died due to helmenthiasis. These witnesses are neighbours of Kulsum and her father Kalu Miah has admitted in his cross examination that they knew about the death of Kulsum.

7. As regard the allegation of cruelty for demand of dowry, there is no consistency in the evidence of prosecution witnesses. Suruj Miah had made the ejahar against the appellant and his family members. He admits in his cross examination that ejahar was prepared by an Advocate on his instructions. In the ejahar, it is nowhere mentioned what was demanded in dowry. Though Suruj Miah has testified that appellant had demanded Rs. 5000/-, he did not mention this fact in his police case diary statement and also in the ejahar. He even does not say that Kulsum had ever told him that appellant was treating her with cruelty. Sayeda Begum (PW-7) is wife of Suruj Miah. She in her entire evidence has nowhere stated that appellant either made demand for dowry or treated Kulsum with cruelty. Had the appellant actually treated Kulsum with cruelty or demanded dowry,

Sayedada would have definitely been informed about this fact by her husband Suruj Miah. The evidence of both Suruj Miah and Sayedada Begum, therefore, does not inspire confidence and cannot be relied upon.

8. Kalu Miah has testified that appellant had asked for a bicycle or money for purchasing the same. But this fact he did not mention in his police case diary statement. He too in his entire evidence has nowhere alleged that Kulsum had ever complained to him of any cruelty by the appellant. Similar is the evidence of Joytan Nessa. She has nowhere alleged that Kulsum complained to her of any quarrel or ill-treatment against the appellant for any demand of dowry. According to her evidence Kulsum had asked her to pay the balance amount of Rs. 4000/-, but in her police case diary statement, she has not mentioned about payment of this amount. It is pertinent to note that both Kalu Miah and Joytan Nessa in their police case diary statement, have not alleged even a single word against the appellant that he ever demanded dowry or treated Kulsum with cruelty or that she had been killed by him.

9. On scanning the evidence of Suruj Miah (PW-1), Sayedada Begum (PW-7), Kalu Miah (PW-8) and Joytan Nessa (PW-9), we are of the view that they are not consistent regarding any demand of dowry by the appellant. In fact, they have not even deposed that appellant had ever treated Kulsum with cruelty for demand of dowry. Merely because Kulsum died within 28 days of her marriage and one old injury was found on the left side of her face, they suspected appellant was responsible for her death. But, in the absence of any evidence regarding homicidal or unnatural death of Kulsum, we find ourselves in complete disagreement with the finding of the trial court that appellant was the perpetrator of the crime. We, accordingly, set aside the conviction and sentence of the appellant and acquit him of the charges.

10. The appeal is allowed.