

(2023) 09 GAU CK 0014
In the Gauhati High Court
Case No : Criminal Appeal No. 113 Of 2022

Jakub Bhengra

APPELLANT

Vs

State Of Assam And Another.

RESPONDENT

Date of Decision : 12-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 107, 302, 306, 498A
Code Of Criminal Procedure, 1973 — Section 107, 313, 374(2)
Evidence Act, 1872 — Section 106, 113A

Citation : (2023) 09 GAU CK 0014

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : U.K. Barman, R. J. Baruah

Final Decision : Allowed

Judgement

1. Heard Mr. U.K. Barman, learned counsel for the appellant and Mr. M.P. Goswami, learned Addl. P.P. for the State respondent. None appears for the respondent No. 2.

2. In this appeal, under Section 374[2] of the Code of Criminal Procedure, 1973 the appellant, Sri Jakub Bhengra has challenged the correctness or otherwise of the judgment and order, dated 16.03.2022, passed by the learned Sessions Judge, Karbi Anglong, Diphu in Sessions Case No. 249/2017 [new] and 03/2016 [old]. It is to be noted here that vide impugned judgment and order, dated 16.03.2022, the learned Sessions Judge, Karbi Anglong, Diphu has convicted the appellant under Section 498[A]/306 of the IPC, and thereafter, sentenced him to suffer rigorous imprisonment for a period of 10 years and also to pay a fine of Rs. 5,000/- with default stipulation and also to suffer rigorous imprisonment for 3 years, under Section 498[A] of the IPC with a fine of Rs. 5,000/-with default stipulation.

3. The background fact, leading to filing of this appeal, is adumbrated herein below:-

"About four years back Smti Lbina, since deceased, elder sister of Willium Gonak (the informant of this case) of Kohora, Kaziranga of Golaghat, got married with one Jukub Bhengra (herein after appellant), of Japarajan village, Bokajan, and thereafter, lived together as husband and wife. They have a baby boy of one year old. Thereafter, on 13.08.2014, the informant came to know over phone that on the night of 12.08.2014, his elder sister had committed suicide. On receipt of the aforesaid information, his parents went to his sister's house and his mother reported him that she suspects that her daughter did not commit suicide and it was a case of murder. Next day he went to the house of the appellant at Japarajan village and took part in cremation of the dead body and on suspicion that his brother-in-law committed murder of his elder sister and thereafter, hanged her body on a bamboo tree, he lodged one FIR on 14.08.2014, with the officer-in-Charge, Bokajan P.S.

Upon the aforesaid FIR, the Officer In-Charge, Bokajan PS registered a case being Bokajan PS Case No. 101/2014, under Section 302 of the IPC and he investigated the same. During the course of investigation, he had visited the place of occurrence, examined the witnesses, drawn up sketch map of the place of occurrence and conducted inquest on the dead body and sent the same for post mortem examination. Thereafter, he had collected the post mortem report. He also caused arrest of the accused and forwarded him to the court. He then examined the witnesses and on completion of investigation he laid charge sheet against the accused/appellant to stand trial in the court under Sections 498[A]/306 of the IPC.

On commitment of the case the learned District Magistrate, Karbi Anglong, Diphu, who was the Sessions Judge of Karbi Anglong, Diphu before separation of judiciary, had framed charge against the accused/appellant under Sections 498[A]/306 of the IPC and read and explained over the same to the accused/appellant to which he pleaded not guilty and claimed to be tried. Thereafter, the learned District Magistrate/Sessions Judge, Karbi Anglong, Diphu had examined one witness. In the meantime, the District Judiciary in Karbi Anglong District stands separated and then case was also transferred to the court of learned Sessions Judge, Karbi Anglong. Thereafter, the learned Sessions Judge proceeded with the case and examined as many as 11 witnesses, including the M.O. and I.O. Thereafter, the learned Sessions Judge had examined the appellant under Section 313 of the Cr.P.C. and after hearing arguments of learned Advocate for both the parties, found the charges under Section 498[A]/306 of the IPC stands established and accordingly, convicted the appellant and sentenced him as aforesaid."

4. Being highly aggrieved the appellant approached this court by filing the present appeal and contended to allow the appeal by setting aside the impugned judgment and order of the learned Sessions Judge, Karbi Anglong, Diphu on the following grounds:-

[i] That, the learned trial court had failed to appreciate the evidence in proper

perspective and in view of the evidence brought on record, the charges so framed cannot be said to be proved beyond reasonable doubt and as such, the court ought to have extended the benefit of doubt to the appellant.

[ii] That, the learned court below had also failed to appreciate the fact that no direct evidence is available against the accused and convicted him only on assumption or presumption and the prosecution side had failed to prove the circumstance against the appellant.

[iii] That, there was no allegation of demand of dowry and the deceased was not subjected to any kind of cruelty and the learned court below had failed to take into account the same.

[iv] That, the learned court below had also failed to appreciate the evidence of the P.W.-1 and PW-5, which were self - contradictory. While P.W.-5 told P.W.-1 that his brother-in-law was having affairs with some other lady and for that reason there was frequent fighting between his brother-in-law and his elder sister, yet, P.W.-5 had not whispered any word to that effect, though, she had deposed that she heard about quarrel between her daughter and the appellant.

[v] That, the learned court below also failed to appreciate the fact that P.W.-6 who was an independent witness and neighbour of the deceased, who testified that the relationship between the accused and the deceased was cordial.

[vi] That, the learned court below also failed to appreciate the fact that there was no material like suicide note and as such, the presumption under Section 113A of the Indian Evidence Act is not available to the prosecution side and that the ingredients of the 498[A]/306 of the IPC had not been established.

5. It appears from the record that the death of the deceased women took place on 12.08.2014, at night hours and this factum has not been disputed by the appellant side. Now, it is to be seen as to how the death of the deceased took place and whether it was homicidal, suicidal or accidental in nature. The prosecution side has examined Doctor Ratul Talukdar as P.W.-8, who had conducted the autopsy on the dead body of the deceased. He testified that on 13.08.2014, he had conducted autopsy on the dead body of the deceased and found as under:-

[i] there was a ligature mark about half inch wide, found obliquely from the level of hyoid bone upwards and backwards which is non continuous, with the knot placed behind left ear. On dissection the floor of the ligature was parchmentized, there was ecchymosis of underlying muscle.

[ii] uterus was not gravid.

[iii] no other external injury was found.

Upon the above findings, he opined that the death was due to suicidal hanging leading to cardio respiratory failure. His report, Exhibit-3, is also consistent with his evidence. The appellant had not cross-examined this witness.

6. The prosecution side had also examined the Executive Magistrate, namely, Elded L. Faihrien as P.W.-11, who had conducted inquest on the dead boy of the deceased. His evidence reveals that on 13.08.2014, in the morning hours he got a request from the O/C of Bokajan PS for holding inquest on the dead body of a deceased woman, in connection with Bokajan PS GD Entry No. 308, dated 13.08.2014, and having reached the place of occurrence he found the dead body hanging on a bamboo tree and he found injury mark, partially encircling the neck with varying depth. He also found blood stain in left leg, supposed to be the result of injury. He also found blood and small amount of stool in the anus, after opening the cloth. He found bruises in the left side of the upper neck and also found some traces of hair and thread of the cloths, being struck up near a bamboo tree, which seems that the hanging appears to be not of her own. The manner, in which the rope was tied, seems to be different from the rope which was encircling the bamboo, from where it was suspended near the bottom. Thereafter, he had submitted his report -Exhibit-6, which appears to be consistent with his evidence. It is to be noted here that P.W.-11 had not been cross-examined.

7. The prosecution side has also examined SI Bipul Kr. Gogoi, who was, at the relevant point of time, serving as ASI of Bokajan PS as P.W.-10. His evidence reveals that on receipt of information about the commission of suicide by one woman from one Bhabani Medhi of Japarajan village, the Officer In-Charge of Bokajan PS recorded the GD Entry No. 308 dated 13.08.2014, and sent him to the place of occurrence and accordingly, he along with one Executive Magistrate reached the place of occurrence and found the dead body of one woman hanging from the bamboo tree on a plastic rope behind the house of the appellant. Then they have pulled down the dead body from the bamboo tree and found her already dead and he drew up the sketch map which is exhibited by the prosecution side as Exhibit-5, and examined the witnesses and sent the dead body of the deceased to the Diphu Civil Hospital for post mortem examination and brought the husband of the deceased, Jakub Bhangra to the police station and thereafter, he had handed over the Misc. Case Diary to the Officer In-Charge. His cross-examination reveals that he reached the place of occurrence at about 10.10 am and the people present there told him that the woman committed suicide, but, he could not recover any suicide note from the place of occurrence.

8. Thus, it appears from the evidence of the aforesaid three witnesses, especially from the evidence of the Doctor, who had conducted the post mortem examination on the dead body of the deceased, that the death of the deceased was suicidal in nature, caused by hanging, leading to cardio respiratory failure. It is to be noted here that the appellant side has not disputed the finding of the record of the Doctor. Though P.W.11 had testified that the hanging of the deceased appears to be not of her own, yet, there is no material to support such an assumption.

9. Now, it is to be seen under what circumstances the deceased had committed suicide. Admittedly, the Investigating Officer could not recover any suicide note of the deceased. And admittedly also, there was no demand of dowry and there was no evidence of subjecting the deceased to cruelty in order to fulfil such demand.

10. Mr. U.K. Barman, learned counsel for the appellant submits that though the learned court below had framed charge against the appellant under sections 306/498A IPC, and found the charge under section 306 IPC well established against the appellant and convicted and sentenced him under the said section, yet the allegation of abatement has not been substantiated by the evidence adduced by the prosecution side, and the presumption u/s 113A of the Evidence Act is not applicable herein this case, though the deceased woman had committed suicide within seven years of her marriage. Referring to a decision of Hon'ble Supreme Court in Heera Lal and Anr. vs. State of Rajasthan, reported in 2018 11 SCC 323, Mr. Barman further submits that Section 113A of the Indian Evidence Act requires three ingredients to be satisfied before it can be applied i.e.:-

- (i) that a women has committed suicide,
- (ii) such suicide has been committed within a period of seven years from the date of her marriage and
- (iii) the husband or his relatives, who are charged, had subjected her to cruelty,

And according to Mr. Barman these ingredients, have not been established herein this case, and the mere fact that there is finding of harassment; the same would also not lead to conclusion that there is abetment of suicide.

11. Referring to another decision of Hon'ble Supreme Court in Shivaji Chintappa Patil vs. State of Maharashtra, reported in 2021 2 SCC (Cri) 679, Mr. Barman submits that the Section 106 of the Evidence Act also cannot invoke as the initial burden of proving the case beyond reasonable doubt has not been established by the prosecution side. Further, referring to another decision of Hon'ble Supreme Court in Gurcharan Singh vs. State of Punjab, reported in 2020 10 SCC 200, Mr. Barman also submits that to prove the charge under section 306 IPC the prosecution side has to establish the ingredients of abetment under Section 107 of the IPC and also to establish mensrea, which the prosecution side herein this case had failed to establish. And therefore, Mr. Barman contended to acquit the accused as the prosecution side has failed to establish the case beyond all reasonable doubt.

12. On the other hand, Mr. M.P. Goswami, learned Addl. P.P. submits that the appellant had maintained illicit relationship with one lady for which there was frequent quarrel between him and the deceased and the said fact has been established by PW-5. Further, Mr. Goswami submits that on account of the illicit relationship of the appellant with one lady there was quarrel between the

appellant and the deceased and the same caused tremendous pressure upon the deceased and for which she had committed suicide and the said suicide took place within 2 years of the marriage and there is material to show that the appellant has abetted commission of suicide by the deceased and the learned Trial Court has rightly arrived at the finding. Therefore, Mr. Goswami contended to dismiss the petition by maintaining the decision of the learned Trial Court.

13. Before directing a discussion into the issues raised at the time of hearing, this court deemed it appropriate to understand the law relating to abatement of suicide. Section 306 IPC deals with abatement of suicide, which read as under:-

306. Abetment of suicide: - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

14. A bare perusal of the definition of section 306 IPC reveals that it comprises of following essential ingredients: -

- [i] That the person committed suicide;
- [ii] That such a commission of suicide by the consequence of abatement;
- [iii] That the abatement was made by the accused.

15. And such abatement is being one under Section 107 IPC. Section 107 IPC defines abatement as comprising:-

- [a] Instigation to commit the offence;
- [b] Engaging in conspiracy to commit the offence; and
- [c] Aiding the commission of an offence.

16. While dealing with the issue of instigation, Hon'ble Supreme Court in Ramesh Kumar vs. State of Chhattisgarh, reported in 2001 9 SCC 618, had discussion as to what conduct would amount to incitement or instigation so as to bring a case within the ambit of Section 306 IPC:-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

17. Again in Pawan Kumar vs. State of H.P., reported in (2017) 7 SCC 780,

Hon'ble Supreme Court has elaborated upon the expression abetment as under :-

"34. The word "abetment" has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element. Such a requirement can be perceived from the reading of Section 107 IPC"

18. Thus, having understood the law relating to abatement this court deemed it appropriate to have a glance at the evidence on the record. It is to be noted here that in order to discharge its burden; the prosecution side has examined as many as 11 witnesses. And out of 11 witnesses PW-1 William Gonak and PW-5 Manjali Gonok are the brother and mother of the deceased respectively. P.W.-2 Bhabani Medhi, P.W.-3 Putul Bora and PW-6 Makdali Ing are the neighbours of the appellant. P.W.-4 -Smti Munti Sangma is the elder sister of the appellant. Rest of the three witnesses are the M.O. and I.O. and the same have already been discussed in the foregoing para.

19. PW-1 - Shri William Gonak is the complainant of the case. He is the brother of the deceased women. His evidence reveals that the occurrence took place about 3/4 years back. And before 2 years of the occurrence, his elder sister Lbina Dhingra got married with the appellant and they were blessed with a son, who was one year old at the time of occurrence. His evidence also reveals that his mother told him that his brother in law/appellant Jakub Dhengra had illicit affairs with one lady and on that count the appellant had often picked up quarrel with his sister. His evidence also reveals that on the date of occurrence, the appellant had informed his mother, in the morning hours, over phone, that his sister had committed suicide. Then his father and mother went to the house of his brother in law and his mother told him, over phone, that they suspect that his sister was murdered. Thereafter, on the next day he went to the house of his brother-in-law and attended cremation, but he had not seen any wounds over the dead body of his sister and he also suspects that it was a case of murder. Then he lodged the ejahar - Exhibit-1 with the Police Station. Admittedly, this witness did not see the occurrence.

20. PW-5 is the mother of the deceased and her evidence reveals that in the year 2011, her daughter married off to Jakub Bhengra and after the marriage she heard that her daughter and the appellant often picked up quarrel. Then in the year 2014, she has been informed by the appellant's house that her daughter committed suicide. Then she along with her family members had visited the house of the appellant and found the dead body of her daughter in the courtyard of the appellant. The appellant then reported that the deceased committed suicide by hanging from a bamboo tree and as there was frequent quarrel between the appellant and the deceased. And she found hanging of the deceased

from the bamboo tree impossible, therefore, she suspects that she had been murdered and thereafter, hanged her body from a bamboo tree. It is elicited in her cross-examination that she only suspects that the deceased was murdered by the appellant and thereafter hanged her from the bamboo tree. Admittedly, she has not seen the deceased hanging from the bamboo tree.

21. Thus, it appears from the evidence of PW-1 and PW-5, that they only suspect that the deceased was murdered and thereafter hanged her from the bamboo tree. The reason of such suspicion, according to P.W.1, is the illicit relationship, allegedly maintained by the appellant with one lady and because of the same there were frequent quarrels between the deceased and the appellant. But, there was no direct evidence to substantiate such a suspicion of the PW-1. Admittedly P.W.-1 had heard about the same from his mother-PW-5. But, P.W.-5, in her evidence had not whispered any word to that effect. P.W.-5 only testified that there was frequent fight between the deceased and the appellant. Besides, the said piece of evidence also appears to be hearsay. Thus, the suspicion of P.W.-1 remained unsubstantiated. The prosecution side also could not establish that with whom the appellant had illicit affairs. Having not been substantiated, no evidentiary value could be attributed to such a hearsay piece of evidence. Further, the evidence of P.W.-5, regarding frequent quarrels between the deceased and the appellant stands negated by the evidence of P.W-6, who is the neighbour of the appellant. Be it mentioned here that this witness testified that the relationship between the deceased and the appellant was cordial. As this witness is the neighbour of the appellant, his evidence appears to be acceptable then the evidence of P.W.1 and 5.

22. Further, the evidence of P.W.-2 reveals that about 4 years back, at about 4 am in the morning; the appellant came to his house and reported that his wife is missing from his house. He then asked him to search her in the nearby places and after half an hour the appellant came to his house and reported that his wife had committed suicide. After sometime, he came to the place of occurrence and found the dead body of the deceased hanging from a bamboo tree. He also noticed the sign of dragging of the dead body at the place of occurrence. He also found a part of the clothes and hairs of the deceased struck up at the bamboo tree and having seen the same, suspicion arises in his mind that the deceased had not committed suicide and that she was murdered somewhere and dragged to the place of occurrence and thereafter caused the dead body hanging from a bamboo tree. Then he reported the matter to Bokajan PS out of suspicion and after sometime, police had arrived at the place of occurrence and reported the matter to the family members of the deceased and thereafter, the dead body was pulled down from the bamboo tree and then police seized the rope used in hanging the dead body. He also testified that the villagers told him that the accused, in planned manner, committed murder of the deceased, and thereafter, kept her hanging from the bamboo tree. It is elicited in his cross-examination that because of the height of the bamboo tree, suspicion arises in his mind about the factum of the committing suicide by the deceased. It is to be mentioned here

that P.W.2 is the neighbour of the appellant.

23. PW-3, Shri Putul Bora is another neighbour of the appellant. His evidence reveals that in the year 2014 at about 6.30 am in the morning on one day, while he was proceeding to the field, then some boys of his village informed him that the wife of the appellant had committed suicide. He then went there and found the dead body of the deceased hanging from a bamboo tree and also noticed some sign of dragging of dead body. He also met Bhabani Medhi at there and in the meantime the police arrived at the place of occurrence and pull down the dead body and seized the rope preparing seizure list- Exhibit-2. He also testified that the villagers told him that the accused, in planned manner, had committed murder of the deceased and thereafter kept her hanging from the bamboo tree. It is elicited in his cross-examination that the height of the bamboo tree was about 12 feet and the knot of the rope on the bamboo was above 1 and half feet from the neck of the deceased and the legs were hanging above half feet from the land.

24. Thus it appears that P.W.2 and P.W.3 are not the eye witness of the occurrence. By and large their evidences are hearsay. Though, they testified having heard from the villagers that the accused, in planned manner, committed murder of the deceased and thereafter kept her hanging from the bamboo tree, yet no villagers are examined and being hearsay, this piece of evidence cannot be relied upon. Besides, the I.O., who had prepared the sketch map, had not found such mark of dragging of dead body. There is no indication in the sketch map in this regard.

25. The evidence of PW-7 reveals that he came to know about the death of the deceased from the local people and he came to the place of occurrence and found the dead body of the deceased in the courtyard of the appellant and came to know that the deceased committed suicide by hanging from a bamboo tree. The evidence of this witness also cannot be relied upon being the same hearsay.

26. The evidence of P.W.-9 and PW-10, the investigating officers, and of P.W.11, the Executive Magistrate, who had held inquest on the dead body of the deceased had already been discussed in the foregoing para. Though P.W.-11 had testified that he had reached the place of occurrence he found the dead body hanging from the bamboo tree and found one injury mark partially encircling the neck with varying depth and also found blood stain over the left leg supposed to be the result of injury, and further found blood and small amount of stool in the anus after opening the clothes and bruises in the left side of the neck, yet, the same are not substantiated by the P.W.-8, who had conducted autopsy.

27. Thus, it appears that there is no direct evidence of subjecting the deceased to any sort of cruelty or any kind of torture by the appellant. Though PW-2 and PW-3 stated that they have noticed the sign of dragging of the dead body near the place of occurrence, yet, the sketch map so prepared by the IO [Pw10] Exhibit-5 and his evidence belied the same. The evidence of PW-1 and PW-5 that

there was frequent quarrel between the deceased and the appellant also belied by the evidence of P.W.-6, who is one of the neighbour of the appellant and the deceased by stating that the relationship between the appellant and the deceased was cordial. Moreover, their evidences are hearsay.

28. Thus, having adjudged the submissions, so advanced by learned counsel for both the parties, in the light of the evidence discussed herein above, I find sufficient force in the submission of Mr. Barman, learned counsel for the appellant. Admittedly, there is no allegation of subjecting the deceased to any kind of cruelty and though Pw1 and Pw5 testified on account of having illicit relationship, the appellant often picked up quarrel with the deceased, the same stands belied by the evidence of P.W.-6. Moreover, Pw1 heard about the same from his mother P.W.-5 and it appears that the evidence of P.W.-5 is also hearsay and without any materials to substantiate such hearsay evidence of P.W.-5 cannot be relied upon.

29. Thus, from the evidence, so discussed herein above, no ingredients of section 107 Cr.P.C. can be said to be satisfied with. There is also nothing on the record to suggest that the appellant had hatched a conspiracy to commit the offence and aided in commission of suicide. From the evidence so brought on record it cannot be said that the present one is a case where the accused had by his acts or omission or by a continued course of conduct created a circumstance that the deceased was left with no other option but to commit suicide. Nothing is also there on the record, so as to infer any instigation, caused by the appellant. Nothing is also brought on record and proved which can be said to be suggestive of consequences, not to speak of continuous conduct involving any mental element of the appellant.

30. Though Mr. Goswami, the learned Addl. P.P., submits that the circumstances are against the accused, yet, the same could not be established beyond any reasonable doubt. Thus, the prosecution side has failed to discharge its burden of establishing a complete chain of circumstances so as to establish the charges against the appellant beyond all reasonable doubt. Therefore, I am unable to record concurrence with his submissions.

31. On the other hand, I find sufficient force in the submissions, so advanced by Mr. Barman, learned counsel for the appellant and the ratio laid down in the case laws referred by him also strengthened his submission.

32. In the result I find sufficient merit in this appeal and accordingly, the same is allowed. The impugned judgment and order of conviction and sentence, having been found not justified and supported by materials on record, stands set aside and quashed. The appellant, if languishing in jail hazoot, shall be released forthwith. Send down the record of the learned court below with a copy of this judgment and order.