
(2019) 11 GAU CK 0081
In the Gauhati High Court
Case No : Criminal Appeal No. 302 Of 2018

Pramod Boro And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106

Citation : (2019) 11 GAU CK 0081

Hon'ble Judges : Mir Alfaz Ali, J; S. Hukato Swu, J

Bench : Division Bench

Advocate : R Sarma

Final Decision : Allowed

Judgement

M.A. Ali, J

1. Heard learned counsel Dr. B.N. Gogoi for the appellant and learned Addl. P.P., Ms. B. Bhuyan for the respondent.

2. This appeal is directed against the judgment and order passed by the learned Addl. Sessions Judge, FTC, Kamrup (M) in Sessions Case No, 32 (K)/2013, by which, the learned Sessions Judge convicted the appellants under Section 302/34 IPC and sentenced them to imprisonment for life and fine of Rs. 10,000/- each with default stipulation.

3. The prosecution case was that the deceased Pinky Boro was married to the appellant Pramod Boro. During continuance of their marriage, Pramod Boro secretly married another lady, namely, Kanika Pathak and on the said issue of second marriage by the appellant Pramod Boro, there was family discord. The appellant Pramod Boro and his mother hatched a conspiracy to kill the deceased Pinky Boro and on 07.11.2012, as a part of their conspiracy, the appellant killed the deceased Pinky Boro and kept her body hanging from a battem of the roof.

The above facts were reported to the police by Haren Deka by filing an FIR (Ext.1). On the basis of the said FIR, police registered Sonapur P.S. Case No. 341/2012 under Section 120(B)/302/34 IPC and commenced investigation. During investigation, police recorded statement of the witnesses, prepared inquest report and send the body for postmortem examination. The postmortem examination of the body was conducted by Dr. Richa Pandey.

4. Dr. Richa Pandey (PW-11), who conducted the postmortem examination on the body of the deceased, found contusion of size 5cm x 4cm over anterolateral aspect of left deltoids, an oblique, non-continuous ligature mark of size 28cm x 1cm around the neck above the thyroid cartilages, high up in the neck. On dissection, the neck tissue underneath the ligature mark was pale glistening parchmantized surrounded by an area congestion. In the opinion of the doctor, death of the victim was caused due to asphyxia as a result of ante-mortem suicidal hanging and approximate time of death was 12 to 24 hours before the examination.

5. On completion of the investigation, charge sheet was laid against the appellants under Section 120(B)/302/34 IPC.

6. In course of trial, both the appellants denied their guilt. Prosecution examination 13 witnesses to bring home the guilt of the accused appellant. On completion of the prosecution evidence, the accused persons were examined under Section 313 CrPC, wherein both the accused persons pleaded innocence. The Accused Appellant Pramod Boro examined himself as defence witness. On appreciation of evidence, learned Sessions Judge convicted both the appellants under Section 302 IPC and awarded sentence as indicated above.

7. Dr. B.N. Gogoi, learned counsel for the appellants submits that the postmortem report and the evidence of the doctor clearly demonstrated that the death of the deceased was suicidal caused by asphyxia due to hanging. In view of the clear evidence of the doctor that the death was suicidal, the conviction and sentence of the appellants under Section 302 IPC is not sustainable.

8. Learned Addl. Public Prosecutor, Ms. B. Bhuiya contended that there was evidence of the victim being subjected to torture by the appellants and also other circumstances implicating the appellants in the commission of offence and therefore, the impugned judgment of conviction and sentence warrants no interference.

9. On our assessment of the evidence brought on record, we find that there was no direct evidence and the learned Sessions Judge convicted the appellants primarily relying on the circumstantial evidence on the basis of the oral testimony of PW-3, PW-4 and PW-5 as well as the evidence of PW-13, the Executive Magistrate, who conducted the inquest on the body of the victim. The learned Sessions Judge recorded the conviction of the appellant relying on the following circumstances:

(i) The death of the deceased was homicidal as a result of physical assault and strangulation.

(ii) The victim died in the house, where there was no other adult member except the victim and the appellant.

(iii) The appellant failed to give any explanation as to how or under what circumstances the death of the deceased was caused.

10. PW-3, the informant testified that the appellant Pramod Boro had an extra marital affair with one Kanika Pathak, whom he later on married and kept her in a different place. Whenever he wanted to bring Kanika to his house, quarrel took place between the appellant Pramod Boro and the victim. He further stated that on 07.11.2012, both the appellants killed the deceased Pinky and kept her body hanging in the bedroom. Having come to know about the occurrence from the mother of the deceased, he rushed to the place of occurrence and found the body of the deceased hanging. He also stated to have seen injuries on the thigh of the right leg of the deceased. During cross examination, he stated that he was not present at the time of occurrence.

11. PW-4 stated that having come to know about the occurrence from Debiram Boro, father of the appellant, he went to the place of occurrence and noticed the body of the deceased in hanging condition. He further deposed that having noticed the position of the body and the knot on the neck, he suspected that the death might not be as a result of hanging. PW-5 deposed that he was informed about the occurrence by one of her student. Having learnt about the occurrence, he came to the house of the deceased at about 9 AM and found the body of the deceased Pinky Boro in hanging condition. He also stated in the same tune with the PW-4, that having noticed the position of the deceased and all other things in the house, which were found tidy, he suspected that the death might not be suicidal.

12. PW-13, the Circle Officer, who prepared the inquest report, deposed that he found swelling in the eye portion (left side) with reddish mark. Injury in the neck portion on right side as well as on the back side of chest. He however, stated, that no ligature mark was detected. He also opined that it might not be a case of suicide and therefore recommended for investigation. Though, PW-13 stated that he did not notice any ligature mark, he found injury on the neck.

13. PW-1 deposed that although conjugal life of the accused Pramod Boro and the deceased Pinki Boro was running smoothly during first few years of their marriage, trouble started during the last couple of years due to extra marital relation of Pramod. He also stated that he heard quarrel in the house of the accused on 07.11.2012. He also stated to have heard deceased Pinki wailing and weeping since 3 PM onwards and on the next day, members of Pramod's family informed him that deceased Pinki died by hanging. This witness was however, declared hostile by the prosecution. During cross, however, nothing material could be elicited.

14. PW-2 also stated that having come to know about the occurrence, he came to the house of the accused, where he heard that Pinki Boro committed suicide. PW-6, PW-9 & PW- 10 pleaded ignorance about the cause of death. PW-7 stated that on the night of the occurrence, Pramod Boro was in his shop at Belguri and his wife, deceased alone was in the house. She also stated that in the morning, when the baby of the deceased was crying and there was no response from the deceased Pinki, she came out of the room and entered into the room of the deceased by breaking the door she found the victim hanging.

15. PW-8 stated that he was told by Debiram Boro that the deceased was killed by her husband and mother of the husband. Having come to know about the occurrence, he came to the house of the accused and found the deceased hanging by a rope from the ceiling. He also stated that all the articles in the house were found neatly arranged. Apparently, Debiram Boro was not examined in this case. Therefore, the first part of his testimony that he heard from Debiram Boro about killing of the deceased is apparently hearsay.

16. A dispassionate scrutiny of the evidence as enumerated above would show that as per the postmortem report and the testimony of the doctor, the death of the deceased was caused due to asphyxia as a result of suicidal hanging. The evidence of the doctor remained totally uncontroverted. Although, PW-13, the Executive Magistrate, who prepared the inquest report, expressed doubt as to the cause of death and stated that there was no ligature mark on the neck, his testimony appears to be self contradictory, inasmuch as, he also stated that there was injury on the neck of the deceased. Be that as it may, the opinion of the PW-13, that the death might not be caused by hanging does not carry any evidentiary value, inasmuch as, he is not an expert and more so, in view of the clear evidence of the doctor and the postmortem report that the death was suicidal. Although, there was also contusion over anterolateral aspect of left deltoids, there is no evidence on record to show that the death was caused because of such injury. There was absolutely no evidence that the death of the deceased was due to strangulation.

17. In view of the above clear evidence, the finding of the learned Sessions Judge that the death was homicidal by strangulation and physical assault appears to be against the evidence on record and palpably perverse. Having come to such a perverse finding, that the death was homicidal caused by strangulation, learned Sessions Judge observed, that the accused husband being the lone adult person remaining present with the deceased at the time of occurrence, owed an explanation, as to how the death was caused, and considered the failure of the appellants to provide any explanation, as an incriminating circumstance against the appellants. As indicated above, PW-7 clearly deposed that on the night of occurrence Pramod was not available in his house and he slept in the grocery shop at Belguri. Therefore, when evidently appellant Pramod was not available in the house with the deceased nor there was any evidence that mother of Pramod was in the same house with the deceased,

the finding of the learned trial court, that accused Pramod was with the deceased also appears to be against the evidence on record. When there was clear evidence, that the death was not homicidal and there was also no evidence to establish that the appellants were with the victim in the same house on the night of occurrence, the learned Sessions Judge was misdirected to take the view that the death of the deceased having taken place inside the house, where there was no other member except the appellants, they owed an explanation under Section 106 of the Evidence Act.

18. The fundamental of the criminal trial is that burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt and the accused has a right to keep silent. Section 106 of the Evidence Act provides that when certain facts are within the knowledge of a person, which may be an issue, burden lies on such person to prove that fact within his special knowledge. In the present case, when evidently, the death of the deceased was suicidal and not homicidal, there was no question of putting any burden on the appellant to explain as to how the homicidal death of the deceased was caused.

19. As we have already noticed that the evidence on record clearly established that the death of the deceased was suicidal, the conviction and sentence of the appellants under Section 302 IPC cannot be maintained. Accordingly, we set aside the conviction and sentence of the appellant and allowed the appeal. The appellants be released and set at liberty forthwith, if not required in any other case.

20. Send down the LCR.