

**(2011) 09 GAU CK 0091**  
**In the Gauhati High Court**  
**Case No : Criminal Appeal (J) No. 25 of 2005**

Shri Lakhi Goswami

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision :** 01-09-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313  
Penal Code, 1860 (IPC) — Section 201, 302

**Citation :** (2012) 1 GLD 607

**Hon'ble Judges :** Madan B. Lokur, C.J.; B.D. Agarwal, J

**Bench :** Division Bench

**Advocate :** D.K. Chomal, Amicus curiae, for the Appellant; D. Das, Addl. P.P., Assam, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B.D. Agarwal, J.—The appellant herein is the husband of the deceased. He has been convicted under Sections 302 and 201 of the Indian Penal Code, vide impugned judgment dated 6.1.2005, passed by the then learned Sessions Judge, Dhemaji in Sessions Case No. 72 (DH) of 2004. On such conviction, the appellant has been sentenced to undergo imprisonment for life with fine of Rs. 1,000/- (Rupees one thousand) for the offence of murder, and in default, a sentence of further R.I. for 6 (six) months and another sentence of R.I. for 2 (two) years with fine of Rs. 1,000/- (Rupees one thousand) and in default, sentence for 3 (three)" months R.I. Both the sentences having been directed to run concurrently. Being aggrieved with the conviction and sentences, the convict has preferred this appeal. We have heard the argument of Shri D.K. Chomal, learned amicus curiae for the appellant and Shri D. Das, learned Addl. Public Prosecutor, Assam for the State respondent. We have also gone through the impugned judgment and the evidence proffered by the prosecution.

2. It may be mentioned herein that although a plea was taken by the accused during cross-examination of the prosecution, witnesses that on the relevant day

his wife had gone to Guwahati for treatment with their son neither the son was examined as defence witness nor any other documentary evidence of medical treatment of the deceased was produced in the Court.

3. On the other hand, the prosecution case is that since about 26.10.2003, Smti Munna Goswami, wife of the appellant was found missing and traceless from the village. Accordingly, 7 (seven) female persons belonging to local Manila Samity lodged a missing report at the police station. On the basis of the said information, a preliminary enquiry was held by the ASI, Shri Ratneswar Saikia and during interrogation of the accused, the fact of murder and burying of the dead body in the compound surfaced and accordingly, the police officer lodged a formal FIR on the same day i.e. on 5.11.2003, which came to be registered as Gogamukh P.S. 109 of 2003 under Sections 302/201 of the Indian Penal Code.

4. As a part of investigation, the dead body was exhumed from the back-courtyard of the accused. The postmortem of the dead body was held; statements of the witnesses were recorded; finally charge-sheet was submitted and the accused was tried for the aforesaid offences.

5. In order to establish the offences, the prosecution examined all together 13 (thirteen) witness. The witnesses includes as many as 6 (six) members of Manila Samity; daughter of the accused (PW 2); brother of accused and his wife being PWs 6 and 7; autopsy doctor; Executive Magistrate and investigating officer.

6. All the witnesses from the neighbourhood and the members of the Manila Samity, who are signatories of the missing report have deposed in the chorus and since they did not notice the wife of the accused moving around, they enquired from the accused about her whereabouts. To this, the accused replied that she had gone for medical treatment at Guwahati. However, the witnesses were not satisfied with this reply and they secretly enquired from the daughter of the accused, who did not support the-version of her father and instead told the ladies that her mother was missing. Accordingly, the missing report was submitted at the police station and thereafter accused was interrogated and on the basis of his confession, the dead body was recovered from the compound.

7. The aforesaid female witnesses have further deposed that after burying the dead body in the compound, the accused had planted a basil plant over that place to cover up the clandestine disposal of the dead body. Besides this, PWs 1 and 4 have also spoken about the illicit relation of the accused with a girl, who was staying in their house for the purpose of prosecuting studies. It is true that these witnesses did not speak about this incriminating evidence in their statement u/s 164, Cr.P.C. However, this omission becomes redundant since PWs 1 and 4 were not confronted about the allegation of illicit relationship during cross-examination.

8. PW 2 is the daughter of the accused, instead of defending her father; she has rather supported the prosecution. This witness has also somehow corroborated deposition of the other witnesses regarding illicit relationship with a girl who was

staying in their house and that the deceased was objecting to it. According to PW 2, in that regard her father used to beat her mother. This incriminating evidence i.e. the physical assault on the deceased and their frequent quarrels have also been deposed by PWs 4, 9, 10 and 11.

9. Instead of giving any suggestion to the aforesaid witnesses that they have falsely implicated the accused in the offence of murder, the accused took different pleas at different stages. According to PW 3, on being confronted the accused told her that his wife met with a natural death. However, while giving the statement u/s 313 of the Cr.P.C., the accused took a plea that when he reached home at 10-30 p.m. and he found his wife hanging from the roof of drawing room. As noted earlier, PWs 6 and 7 are the brother and sister-in-law of the accused. From their depositions also, it is apparent that they were not informed about the natural or unnatural death of the deceased. In other words, PWs 6 and 7 came to know about the incident only when the accused was arrested and when they met him in the Police Station, they were also told by the accused that when he returned home in the night, he found his wife's dead body lying on the bed. To say it differently, PWs 6 and 7, who are closely related to the accused were also told about the natural death of his wife. However, in the Section 313 statement an altogether different plea was taken, stating that the deceased was found hanging.

10. The prosecution story of murder is further corroborated by the autopsy findings and medical evidence. The doctor (PW 8) has categorically ruled out that the deceased had committed suicide. In this way, the findings and opinion of the autopsy doctor clearly indicates that the deceased was strangled to death.

11. The medical evidence is further reinforced by the inquest report, prepared by the Executive Magistrate (PW 12). This witness has deposed that the dead body of the deceased was wrapped with polythene. Had it been a natural death, there was no need to wrap the dead body in a polythene. Besides this, the Executive Magistrate has deposed that the neck of the deceased was tightly fastened with "chadar". This aspect negates the defence story of natural death. At the cost of repetition, we mention here that had it been a natural death, the relatives and the villagers would have been informed and there would have been no necessity for the accused to bury the dead body in his own compound clandestinely.

12. For the foregoing reasons, we hold that the learned Sessions Judge has rightly held that there are series of incriminating evidence, which are consistent with the guilt of the accused and inconsistent with his innocence. In our opinion also, the chain of incriminating circumstances is complete to hold that the accused had murdered his wife and then buried the dead body with an intention to disappear the evidence of murder to evade legal penalty. In the result, we hold that there is no merit in the appeal. Consequently, the appeal stands dismissed. The conviction and sentence are hereby affirmed.