
(2018) 06 GAU CK 0051
In the Gauhati High Court
Case No : Criminal Appeal No. 217 of 2016

Sri Bikash Nath

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 12-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 209, 313, 323, 374(2)
Indian Penal Code, 1860 — Section 34, 107, 302, 306, 498A
Indian Evidence Act, 1872 — Section 113A

Citation : (2018) 06 GAU CK 0051

Hon'ble Judges : AJIT BORTHAKUR, J

Bench : Single Bench

Advocate : A. Neog, B. Sarma

Final Decision : Partly Allowed

Judgement

1. Heard Mrs. A. Neog, learned counsel for the appellant. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam.

2.This is an appeal under Section 374(2) of the Cr.PC, preferred by the accusedappellant, namely, Bikash Nath, against the judgment and order, dated

05.04.2016, passed by the learned Addl. Sessions Judge, Golaghat, in Sessions Case No. 79/2012, whereby the accused-appellant has been convicted

under Section 306 of the IPC and sentenced to undergo rigorous imprisonment for 6 (six) years and to pay fine of Rs. 1,000/- (one thousand only), in

default, simple imprisonment for 2 (two) months under Section 306 of the IPC.

3.The appellant's case, precisely, is that one Podum Bora, S/o Late Maheswar Bora, vill. Pachim Kalakhowa, under Bokakhat P.S., had lodged an

FIR on 20.06.2011, with the Officer-in-Charge of Bokakhat P.S. alleging that 6 (six) months before, his daughter, Nikumoni Bora was enticed by the

appellant and started their conjugal life as husband and wife. However, on 19.06.2011,Â night, the appellant and two others of his family killed her and hanged her in an areca nut tree.Â

4. Based on the above FIR, Bokakhat P.S. Case No. 123/2011, dated 20.06.2011, under Sections 302//34 of the IPC was registered. The Officer-in-

Charge, SIÂ Sanjib Kr. Das endorsed the case to S.I. Anadi Das for investigation. In course of investigation, the I/O visited the place of occurrence

and drew up a sketch map thereof, examined witnesses, sent the corpse for postmortem examination and arrested the appellant. On his transfer, the

I/O handed over the case diary to the Officer-in-Charge. On completion of the investigation, SI Ajit Kumar Saikia laid a charge-sheet under Section

498-A of the IPC against the appellant and two others.Â Â Â Â

5. The committal Court initially took cognizance of the offence under Section 498-A of the IPC against the accused persons, namely, the appellant

Bikash Nath and Karuna Nath and accordingly framed charge under Sections 498 A/34 of the IPC vide order, dated 13.03.2012, passed in G.R. Case

No. 797/2011. Subsequently, the learned committal Court invoking Section 323 Cr.PC., after commencement of trial, took cognizance under Sections

302/34 of the IPC against the accused persons, namely, Bikash Nath and Karuna Nath and committed the case to the Court of Sessions under Section

209 of the Cr.PC. Thereafter, the case was registered as Sessions Case No. 79/2012 (corresponding to G.R. Case No. 797/2011) in the Court ofÂ

learned Sessions Judge, Golaghat. Upon consideration of the materials on the case records and hearing the learned counsel for both sides, the learned

Sessions Judge, Golaghat framed charges under Sections 306/34 of the IPC against accused Karuna Nath and Bikash Nath. The accused persons

pleaded not guilty and claimed to be tried, vide order, dated 04.08.2012. Thereafter, the case was made over to the court of learned Addl. Sessions

Judge, Golaghat for trial. In order to prove the charges, the prosecution examined as many as 14 witnesses, while the defence cross-examined them.

The case against the accused Karuna Nath abetted on his death vide order, dated 06.04.2015. On closing the evidence of the prosecution side, the

statement of the appellant was recorded under Section 313 Cr.PC, vide order, dated 09.02.2016. The appellant pleaded not guilty and declined to

adduce any evidence in defence. Thereafter, the learned Addl. Sessions Judge, on

appreciation of the evidence adduced by the prosecution and on hearing the arguments advanced by the learned counsel for both sides, convicted the appellant under Section 306 of the IPC and sentenced, as stated above.

6.I have gone through the evidence on record.

7.It may be mentioned that in order to prove the charge under Section 306 of the IPC, the prosecution must prove that the death was due to suicide

and the facts and circumstances must show that suicide was committed pursuant to instigation of some persons.

8.Coming to the impugned judgment, it appears that the learned Court below, having analyzed the evidence, including that of the autopsy surgeon,

presumed the appellant guilty of the charge basically from the perspective of his conduct, after the death of the deceased. The learned Court below

found that although there was no eye-witness to the alleged occurrence, but from the circumstantial evidence, it can be presumed that the appellant

had abated the commission of suicide of the deceased, whom he accepted as his wife. The learned Court below further found that the deceased was

about 19/20 years of age and, therefore, an inference can be drawn under Section 113-A of the Evidence Act that the appellant and no other

person committed the offence of abatement of suicide of the deceased, whom he accepted as wife and died only after six months of such acceptance.

The learned Court below observed that although there was no eye-witness to what the accused had actually did, but it appears from the evidence

that there was reasonable certainty that the appellant Bikash Nath instigated the deceased to commit suicide.

9.Perusal of the FIR vide Ext. 1 reveals that the cause of death of the deceased was suspected to be a case of murder by the appellant and his family

members. The allegations made in the said FIR has been supported by the informant/PW1, Podum Bora, the father of the deceased. From the

evidence of PW1, PW2, Bikash Bora, PW3, Ajit Saikia, PW4, Ranu Baruah, PW5, Mousumi Bora, PW6, Anima Bora and PW7, Beauti Saikia, it

appears that the deceased Nikumoni Bora eloped with the appellant in the year 2011 and both started living together as husband and wife, without

performing any form of marriage. Although, their evidence reveal that Nikumoni was subjected to mental cruelty, on demand of dowry in kind and

cash, however, from the evidence of the independent witnesses, namely, PW10, Robin Sarma and PW12, Paresh Ch. Sarma, who are neighbours to

the appellant, testified to the existence of conjugal relationship between the appellant and his deceased wife during the period of their relationship as

husband and wife. Therefore, there is no direct indication on evidence that Nikumoni was subjected to any form of cruelty.Â

10.Perusal of the evidence of PW11, Dr. Pranjal Kumar Bhattacharjee, theÂ doctor, who performed the postmortem examination on the body of the

deceased, held the opinion that the cause of death of Nikumoni was due to asphyxia as a result of hanging, vide Ext. 4, the postmortem report. The

defence declined to cross-examine the doctor, and as such, the finding of the doctor has remained unchallenged.Â Â

11.Be it mentioned here that instigation as understood in Section 107 of the IPC can be presumed in view of Section 113A of the Evidence Act.

Section 113A provides for a presumption to be arrived at regarding abatement of suicide by a married woman and certain criteria are also laid down

therein. The first criteria is that such suicide must have been committed within 7 (seven) years from the date of the victim's marriage. In the

explanation to Section 113A, it has also been indicated that for the purpose of the said Section, the expression â??crueltyâ? would have the same

meaning as in Section 498A IPC. In the instant case, however, as discussed above, there is no consistent and convincing reliable evidence to show

that the deceased, whom the appellant accepted as his wife, was subjected to cruelty by the appellant. On scrutiny of the evidence on record, this

Court is, however, of the considered opinion that the prosecution has laid circumstantial evidence, as a whole, to establish beyond reasonable doubt

that the appellant drove the woman to commit suicide, which the appellant has not rebutted by leading some evidence.

12.For the reasons, set forth above, this Court is of the considered opinion that there is no any sound ground to interfere in the impugned judgment and

order. However, to meet the ends of justice, the substantive sentence part is modified to rigorous imprisonment for 2 (two) years and 6 (six) months

only. No modification is ordered in respect of payment of fine amount and in default of fine, the period of simple imprisonment, imposed by the learned

Court below.Â

13. With the above modification in the sentence part, the appeal stands partly allowed.

14. Send back the LCR along with a copy of this judgment and order.