

IN THE COURT OF THE SESSIONS JUDGE,
UDALGURI, ASSAM

Present : Sri M. Kalita,
Sessions Judge,
Udalguri, Assam.

Reference : **Sessions Case No.9(I)**
2021.

Complainant : State
Vs

Accused : Bitu Sarkar

Charge : U/S 304 (B)/302 IPC

Date of hearing : 18.12.2021

Date of argument : 23.12.2021

Date of Judgment : 23.12.2021

For the State : Mr. A. Basumatary, P.P.

For the accused : Mr. T.C.Boro, Advocate.

J U D G M E N T

1. Brief fact of the prosecution case is that informant Radheshyam Rai lodged the FIR on 19.5.2020 alleging, inter-alia, that on 22.3.2020 at about 12 O'clock night accused persons caused death to the wife of accused Bitu Sarkar Namely, Bina Sarkar

by setting fire on her body after pouring Kerosene oil. On the next day i.e. on 23.12.2020 at wee hours the injured deceased was taken to GMCH by the accused without informing the informant. On being knowing about the incident the informant went to GMCH and saw the burn dead body of his daughter. He suspects that accused conspiringly killed his daughter. Due to lockdown delay caused in filling the FIR. So, the informant prayed for taking necessary action.

2. After receiving the FIR, O/C, Kalaigaon PS registered the case being Kalaigaon P.S. case No.46/2020 U/S 304 B/34 IPC and started investigation.

3. During the course of investigation, the Investigating Officer recorded the statement of witnesses, prepared the sketch map of the place of occurrence. Inquest was done at GMCH by Executive Magistrate. Thereafter, the post-mortem was conducted at GMCH. The accused Bitu Sarkar was arrested and he was remanded to the jail and on completion of investigation submitted the charge-sheet against the accused Bitu Sarkar U/S 304B IPC.

4. After appearance of accused, the learned court below committed the case by supplying the copies of all relevant documents to the accused. Thereafter, the case was taken up for trial by this court.

5. Considering the materials on record and the statement of witnesses and upon the hearing of learned counsels of both sides the charges were framed U/S 304B/302 IPC. Then the contents of charges were read over to the accused to which accused pleaded not guilty and claimed trial.

6. During the trial, the prosecution has examined only two witnesses including the informant to bring home the case.

The learned P.P. has verbally submitted that in view of the evidence of the informant and one independent witness, whose evidence is very much important for deciding the case there is no chance for improving the prosecution case by examining the remaining PWs.

I have gone through the case record including the evidence of informant and another independent witness.

So, considering the material on record, specifically the evidence of informant, I also find that

there will be no fruitful result if remaining PWs are examined in view of evidence of the informant. Hence the evidence is closed.

The examination of accused U/S 313 Cr.P.C. is dispensed with.

POINTS FOR DETERMINATION

6. The point for decision in this case are-
- (1) Whether the accused killed Bina Sarka by setting fire on her body for dowry within 7 years of her marriage?
 - (3) Whether the accused committed murder by intentionally causing the death of Bina Sarkar?

DECISIONS, DISCUSONS AND REASONS FOR DECISION

7. To arrive at a judicial decision, let me appreciate the evidence on record.

8. PW.1, informant Radheshyam Rai stated that accused Bitu Sarkar was his son-in-law. The deceased Bina Sarkar was his daughter who had got married with the accused in the year 2019. Initially there was cordial relationship between accused and his daughter. After 11 months during the lockdown period in the

year 2020 the occurrence took place. On the previous day of occurrence there was quarrel took place between the accused and deceased. At the time of occurrence his daughter got burn injury as fire engulfed on her body. He suspected that the accused set her on fire because the deceased did not sustain burn injury on her face and hand. On the next day he went to the residence of accused after getting information and at that time the victim had already been taken to GMCH Guwahati. Accused and his brother had taken the deceased to the GMCH. Then he went to GMCH but, the victim had already died before his arrival. After two months he lodged the FIR because the police refused to register the case for 2 months due to lockdown declared for COVID situation. Though he lodged the FIR on the date of occurrence but police did not register the case and asked him to go to the police station after 2 months. He has proved the FIR as Ext. 1. PW1 further stated that before the occurrence the accused never demanded money.

9. PW1 in his cross-examination has admitted that there was cordial relation between his son-in-law and daughter. As the accused and his family member did not inform him immediately after the occurrence so, he aggrieved with the conduct of the accused and hence, he lodged the FIR. He lodged the FIR after 2 months

on 19.5.2020. The residence of Haripad and Subhash Sarkar were situated adjacent to the residence of accused. At the time of occurrence accused was doing the business of beetle nut. He engaged some other labour also. He did not heard about the quarrel that broke out between his daughter and accused on the previous day.

10. PW2, Haripada Sarkar has stated that he knew both the accused and the deceased, who were his neighbour. Deceased Bina Sarkar was the daughter of informant. The victim had got married with the accused in the year 2019. After about 1 year from the date of marriage on one day at about 12 PM after hearing the alarm he went to the residence of accused and found both the victim and accused were sitting inside the house. After that incident he did not witness anything. He could not say how the fire engulfed the victim. When the victim was sitting with the accused then he saw the burn injury on her body. Victim also disclosed at that time that she did not anticipate such incident so she requested the accused to bring her to the hospital.

11. PW2 in his cross-examination has admitted that there was cordial relation between the accused and his wife before the incident. He did not hear anything regarding the quarrel between them.

12. Ld. counsel for accused submitted that there is no any evidence appears in any of the statement of witnesses that the accused caused torture to victim and demand of dowry and accused caused the death of an woman by burn injury or occurs otherwise then under normal circumstances within 7 years of her marriage and there is no evidence that soon before her death she was subjected to cruelty or harassment by her husband or any of the relatives of her husband in connection with demand of dowry. The FIR was lodged after two months of the incident which indicates that the contents of the FIR were concocted and afterthought.

13. A close scrutiny of the record, it appears that there is no any direct evidence to implicate accused in any of the aforesaid charge sections. It is true that otherwise the offence against married woman have been committed within the four corners of a house and normally direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. In the instant case, there is no any circumstance or chain of circumstances to implicate the accused in any of the alleged charges. The informant PW1 clearly stated in his cross-examination that he did not head about any quarrel that broke out between his daughter (victim) and the

accused on the previous day of occurrence. The other witness PW.2 also stated noting about any of the torture or cruelty caused to the deceased by the accused neither he could state any evidence that it is the accused who has set fire by pouring Kerosene oil upon the deceased. Rather PW2 admitted in his cross-examination that there was cordial relation between the accused and the deceased. That apart, the post-mortem report is also silent about any physical injury except burn injury on the body of the deceased. So, there is no such evidence appears to have been adduced by prosecution to implicate accused in any of the alleged charges. From the statement of aforesaid witnesses it cannot be stated that prosecution able to reveal the circumstances to infer the accused in any of the alleged charges.

14. There is no any evidence appears to be shown by prosecution that death has been caused by or in consequences or in act of the accused Bitu Sarkar or such act was done with intention or causing the death or it was done with the intention of causing such bodily injury. There is no any iota of evidence that the accused Bitu Sarkar knew to be likely to cause death or was sufficient in the ordinary course of nature to cause death or the accused caused by doing an act known to

him to be so imminently dangerous that it must or all probabilities caused in death of the deceased.

15. There is no any evidence that accused subjected deceased to cruelty with a demand of dowry. Secondly, there is no any iota of evidence that it is the accused person who caused cruelty or harassment in connection with demand of dowry. As such, the deceased died on self immolation, caused burn and bodily injury other than normal circumstances. There is no any evidence that cruelty and harassment caused to the deceased is shown to have been meted out to the woman soon before her death. There is no any evidence that the accused has committed the dowry death of a woman or soon before her death, the deceased had been subjected to cruelty or harassment in connection with any demand of dowry.

16. Under such circumstances, the case is decided on acquittal of accused.

ORDER

17. As the prosecution has failed to prove the case beyond reasonable doubt, so accused is acquitted and set at liberty.

18. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

19. Let a copy of the judgment be sent to the learned District Magistrate, Udalguri for his information as provided in section 365 Cr.P.C.

20. Let the case record be consigned to record room after completing the formalities.

21. Given under my hand and seal of this Court on this 23rd day of December, 2021, at Udalguri.

Dictated & Corrected by me

(M.Kalita)
Sessions Judge, Udalguri.

(M.Kalita)
Sessions Judge,
Udalguri.

APPENDIX

1. PROSECUTION WITNESSES :-

PW1 Rasheshyam Rai.

PW2 Haripada Sarkar

2. PROSECUTION EXHIBITS :-

1. Ext.1 FIR

3. DEFENCE WITNESS:- NIL

(M.Kalita)
Sessions Judge,
Udalguri.

