

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH

(1) *CRL. REF.(H) NO.01 OF 2012*

State of Arunachal Pradesh

..... *Petitioner*

- *Vs* -

Khagen Brohmo

..... *Respondent.*

Advocate(s) for the petitioner :

Mr. I. Basar, Addl. P.P.

Advocate(s) for the respondent:

Mr. D. Lazi, Amicus Curiae.

(2) *CRL.A.(1) NO.01 OF 2012*

Sri Khagen Brahmo,

(presently in Jail custody)

S/O Late Kopal Brahmo(Scheduled Tribe),

Permanent Resident of Borpetta Road District,

District P.O. & P.S. Borpetta,

Assam.

..... *Appellant*

- *Vs* -

State of Arunachal Pradesh

..... *Respondent*

Advocate(s) for the appellant :

Mr. D. Lazi, Amicus Curiae.

Advocate(s) for the respondent:

Mr. I. Basar, Addl. P.P.

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS
THE HON'BLE MR. JUSTICE S.R. SEN

Date of hearing : **22.08.2012**

Date of delivery of

Judgment & order : **23.08.2012**

JUDGMENT & ORDER

(S.C. DAS, J)

This criminal reference, under Section (30)(i) of Assam Frontier(Administration of Justice Regulation) Act, 1945, made by learned Addl. District & Sessions Judge(First Track Court), Yupia, seeking confirmation of the conviction and sentence of accused, Khagen Brahmo under Section 302 of IPC in connection with Sessions Case No.570/2010(FTC), and the Criminal Appeal No.01(J) of 2012, filed by the convict-appellant Khagen Brahmo under Section 374 of Cr.P.C., challenging the judgment and order of conviction and sentence, dated 29.12.2011, passed by learned Addl. District & Sessions Judge(FTC), Yupia, in the case aforementioned, are heard together, and this single judgment shall govern both the cases.

2. Heard learned amicus curiae, Mr. D. Lazi for the convict-appellant, Khagen Brohmo and learned Addl. P.P., Mr. I. Basar for the State respondent.

3. Prosecution's case, in short, is that Anita Yukar, aged about 26 years, wife of informant, Yukar Macho(PW.1) was found lying dead in a drain, located at C-Sector, near Gandhi market. PW.1, husband of the deceased lodged an FIR with the Officer In-charge of Itanagar P.S. on 24.06.2008, at about 0930 hrs., alleging that, on the intervening night on 23.06.2008 and

24.06.2008, in between 2330 hrs. to 0100 hrs., at any time, his wife Anita was found missing from the house and, on search throughout the night, she could not be traced out. On the following morning, at about 0530 hrs., her dead body was found lying in a drain, located at C-Sector, Gandhi market. He further alleged that he strongly suspected that Khagen, the accused, might have committed murder of his wife since the accused threatened his wife on 23.06.2008 at about 2100 hrs. before some neighbourers and the accused was found absconding since after the incident.

3.1 Officer In-charge, Itanagar P.S., accordingly, registered the case and taken up investigation. The accused was arrested in course of investigation and was forwarded before the Court. On completion of investigation, charge sheet was submitted against the accused-appellant for commission for offence punishable under Section 302 of IPC.

3.2 In course of trial, learned Addl. District & Sessions Judge (FTC) framed charge against the accused for commission of offence punishable under Section 302 of IPC, to which the accused pleaded not guilty and claimed to be tried.

3.3 Prosecution, in course of trial, examined six witnesses namely, PW.1, Yukar Macho, husband of the deceased, PW.2, Smt. Janki Brahmo, sister of the deceased, PW.3, Lekon Dutta, an employee of SBI Branch and a witness to the seizure

list of a finger ring, PW.4, Kabak Talik, a witness of same seizure list, like PW.3, PW.5, Dr. K. Riba, who has conducted the postmortem examination over the dead body of the deceased and PW.6 is the I.O. of the case.

3.4 After recording of prosecution evidence was over, the accused was examined under Section 313 of Cr.P.C. and, thereafter, in course of defence evidence, the accused examined himself as DW.1.

3.5 In course of trial, prosecution proved the FIR lodged by PW.1, a seizure list of a finger ring and the seized materials, postmortem report and inquest report, etc. No documentary evidence adduced on behalf of the accused.

3.6 Defence case, so far ascertained from the cross-examination of the prosecution witnesses as well from the statement made by accused during examination under Section 313 of Cr.P.C. and the evidence adduced by the accused, is of a bare denial of the prosecution's case.

3.7 Learned Addl. District & Sessions Judge(FTC), considering the evidence on record, found the accused guilty of the charge framed against him and sentenced him to suffer RI for life and a fine of Rs.5,000/-(rupees five thousand), in default of payment of fine, to suffer further RI for three months.

3.8 After the judgment, learned Addl. District & Sessions Judge, made a reference under Section 30(i) of Assam Frontier (Administration of Justice Regulation) Act, 1945, seeking confirmation of the judgment and the accused also challenged the judgment, preferring appeal from jail.

4. Learned amicus curiae, Mr. Lazi has submitted that there is no iota of legal evidence to hold the accused guilty of murder. PWs.1 and 2 only made some statements, raising some suspicion that the accused might be guilty of committing murder but there is no iota of evidence at all to arrive at a finding that the accused committed the offence. He has, therefore, submitted that the judgment and order of conviction and sentence is based on surmise and conjecture and it is liable to be set aside and quashed.

5. Learned Addl. P.P., Mr. Basar, with his utmost fairness, has submitted that the case is based on circumstantial evidence since there is no direct evidence of murder. From the statement of PWs.1 and 2, a reasonable suspicion may be drawn against the accused that he might be involved in the offence, but to arrive at a conclusion that the accused committed the murder, learned Addl. P.P., has frankly admitted that the evidence on record cannot be said to be sufficient for arriving at such a conclusion.

6.1 We have meticulously gone through the evidence on record. PW.1 lodged the FIR. As already reproduced above, he simply stated that his wife was found missing on the intervening night of 23.06.2008 and 24.06.2008, at any time, during 2330 hrs. to 0100 hrs. from his residence and her dead body was found in the drain near Gandhi market. He alleged that the accused-Khagen Brahmo might have committed murder of his wife since on 23.06.2008, at about 2100 hrs., the accused threatened her. In his deposition, PW.1 stated that he, being a driver by profession, went out from his house on 18.06.2008 for Guwahati and he returned home on 23.08.2012. During that time his wife was at her parental home at Holony. On 23.06.2008, his wife also returned to his house from her parental home. They took dinner together and since he was tired, he went to bed and fell asleep. At that time, his wife was enjoying T.V. At about 2330 hrs., he woke up and found his wife missing. He searched for his wife with his sister-in-law but she was available nowhere. He also stated that the accused used to visit his house since his wife is also to be a 'Kochari' of Brahmo clan and the accused also belonged to the same clan. He warned the accused not to visit his house and his wife also warned the accused. His wife used to consider the accused as a brother. On the issue of visit of the accused he had quarrel with his wife. He further stated, on the night, when she was not found available in the house, he directly went to the house of the accused and

knocked the door and when the accused opened the door, he did not find his wife there. He locked the door of the accused from outside and went to Itanagar P.S. and informed about the missing of his wife. On the following morning when he found the dead body of his wife lying in the drain he again went to the police station and lodged the FIR. He also stated that on coming back he found the door of the accused was opened and the accused absconded. Dead body of his wife was found lying; the upper part inside the drain and the lower part over the drain. He found bloodstain through her mouth. He also found a finger ring near the dead body, which was seized by 'Darogababu'.

6.2 PW.2, the sister of the deceased, also used to reside in the neighbourhood. In her deposition, she stated that the accused admitted before the police, in her presence, that he had killed her sister. There was quarrel between her deceased sister and her brother-in-law on the issue of visiting of the accused to their house. She further stated, on the day of incident of murder of her sister, she met the accused on the way at about 4.30 pm, near the house of her sister, near Gandhi market while she was coming back from her duty. The accused told her that she should see that something is going on in the house of her sister. She did not attach any importance to the statement of the accused. At about 07.00, the accused visited her house and told her that he did not know what would happen with him on that night. On

hearing such statement of the accused, she went to the house of her sister and informed her about what accused-Khagen told her, but her sister and brother-in-law and another girl, present in their house, did not give any attention to her statement. Thereafter, she went back to her house and in the next morning she heard about the murder of her sister. She saw the dead body lying in the drain, having upper part inside the drain and the lower part over the drain. There were some marks on the neck of the dead body and blood oozing out of nose.

6.3 PWs.3 and 4 are simply witnesses of the seizure list of a ring, which is marked as Exbt. M.Ext-I. There is nothing material in their depositions.

6.4 PW.5, the autopsy surgeon, opined that the deceased died due to asphyxia as a result of drowning.

7. On going through the P.M. report, we find that there was bruise over right side and left side of the angle of mandible, which was looking like impression of fingers. Bruises were also present around the thyroid cartilage and there was muddy water in the mouth nostrils, larynx, trachea and both the lungs and pleurae. Dark muddy water was also found in the stomach with food materials. The postmortem report, therefore, suggests that the head of the deceased was forcefully drowned in the muddy water in the drain and, as a result, she died a homicidal death.

8. Admittedly, there is no direct evidence. From the evidence of PW.1, we find that the accused used to visit the house of the informant and deceased and, on that issue, there was quarrel between the deceased and PW.1. According to PW.1, he took dinner with his wife and, thereafter, he went to bed and his wife was enjoying T.V. Sometimes, thereafter, the deceased went out of her house. There is nothing more in the statement of PW.1. Practically, we find nothing incriminating in the evidence of PW.1 to raise finger against the accused. The statement of PW.2 also, as reproduced above, simply speaks of some suspicion about the movement of the accused on the previous evening of the night of murder. Such suspicious movement is, however, strong but cannot take the place of proof. We find no cogent material on record to hold the accused guilty of the charge. A presumption may be drawn only based on proved facts. There cannot be a presumption on imagination and simple hypothesis. In a case based on circumstantial evidence, the chain of circumstances should be completed with complete network of incriminating fact, leading to the only hypothesis of guilt of the accused. In the present case, only suspicious movement of the accused on the previous evening is brought on record from the mouth of PW.2. A finger ring, seized by I.O., was found near the dead body but it is not proved that the finger

ring belonged to the accused. No other circumstance is brought on record.

9. Under such circumstances, we find no legal evidence to sustain the order of conviction and sentence. The criminal reference, seeking confirmation of conviction and sentence, therefore, fails. The appeal filed by the accused is allowed. The judgment and order of conviction and sentence is set aside. The appellant be set at liberty at once.

10. Send back the L.C. records along with a copy of the judgment.

JUDGE

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