

DISTRICT : GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. :- Sessions Case No. 197/2011.

G.R. Case No. 1380/2011.

U/S. 302 of IPC.



The State of Assam Prosecution.

Vs.

Sri Medhi Bhuyan. Accused.

Date of charge 28.03.2012.

Dates of evidence 16.05.2012, 04.08.2012,
21.09.2012, 20.12.2012,
31.08.2013.

Date of argument 30.11.2013.

Date of judgment and order 15.11.2013.

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APPEARANCES :-

For the prosecution Mr. N.P. Acharjee,
Public Prosecutor,
Golaghat.

AND

For the accused person Mr. M.K. Buragohain,
Advocate, Golaghat.

P R E S E N T :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT AND OORDER :

1. The facts of the prosecution case, in brief, is that on 2.10.2011, at around 8 P.M., when Sonai Karmakar was indulging alteration with his wife Smti. Lakhi Karmakar in their house hold compound, the accused Medhi Bhuyan of the same village came and assaulted Sonai Karmakar and dragged him towards the nearby deep pond and pushed him into the said pond causing him death by drowning.

2. The I/C of Kamarbandha Police Out Post on receipt of the written ejahar from Sri Nanda Karmakar on 3.10.2011, prepared the GDE No. 34, dated 3.10.2011 and forwarded the said ejahar to the O/C of Golaghat police station for registration of the case. Accordingly, the O/C of Golaghat police station registered the case vide Golaghat P.S. Case No. 675/2011 u/s 302 of IPC and investigated into the case. During investigation, police prepared the inquest report over the dead body of the deceased Sonai Karmakar and forwarded the dead body to Golaghat Civil Hospital for post mortem examination. After completion of investigation, the police submitted the charge sheet u/s 302 of IPC against the accused Medhi Bhuyan to face the trial.

3. As the case is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate , Golaghat committed the case to the Court of Sessions. Accordingly, the case came up before this Court for trial.

4. After hearing from both the sides and on perusal of the case record, the prima facie material for the offence u/s 302 of IPC was found against the accused person to frame the charge. Accordingly, the accused Medhi Bhuyan was charged u/s 302 of IPC and the contents of the charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

5. In order to prove the charge, the prosecution adduced the evidence of 7 witnesses. One witness has been examined as Court witness u/s 311 of Cr.P.C. After conclusion of the prosecution evidence, the accused person has been examined u/s 313 of Cr.P.C. The plea of the



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accused as found in his statement u/s 313 of Cr.P.C. is one of total denial. He declined to adduce defence evidence.

6. Heard argument of both the sides.
7. Now, the point for determination in this case is :-

“ Whether the accused person on 2.10.2011, at around 8 P.M., committed the murder by causing the death of Sonai Karmakar ?”

DISCUSSIONS, DECISION AND REASONS

THEREOF :

8. Let me discuss the evidence on record to see as to whether the prosecution is able to prove the above point.

9. P. W.1 Sri Nanda Karmakar is the informant in this case. He is the elder brother of deceased Sonai Karmakar. His house is situated at the distance of about two and half Nalls from the pond where Sonai Karmakar was fell and died by drowning . According to the evidence of P.W.1, about 7 months ago, one day at 7 P.M., Sonai Karmakar and his wife Smti. Lakhi Karmakar were indulging altercation between themselves in their court-yard. Then accused Medhi Bhuyan came and took Sonai Karmakar by holding his neck and fell him into the water. He did not see the incident. He was told about the incident by his mother Sakuni Karmakar (P.W.2). On the next day, the water of the pond pumped out by a water Pumping machine and dead body of Sonai Karmakar was fished out from there. Ext-1 is the ejahar lodged by him (P.W.1), upon which Ext-1(1) is his signature.

P.W.1 Nanda Karmakar has denied that on 2.10.2011, when his brother Sonai Karmakar indulging altercation with his wife Lakhi Karmakar (C.W.1), he went there to interfere them from doing so. Sonai Karmakar started to beat him and he fled away from there. P.W.1 has denied the suggestion that he was quarreling with his brother Sonai Karmakar after drinking liquor and he caused injury on the head of Sonai



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Karmakar by beating. P.W.1 has further denied the suggestion that when he was quarreling with his brother Sonai Karmakar, suddenly, Sonai Karmakar fell into the deep pond and then he proceeded to Kamarbandha police Out Post and there he got the ejahar (Ext-1) written from the police and he put his signature on it. Further, P.W.1 denied the suggestion that Sonai Karmakar was quarreling with him on the bank of the pond and Sonai Karmakar fell down into the pond.

10. From the aforesaid suggestions, it is found that the accused took the plea that P.W.1 Nanda Karmakar and Sonai Karmakar (since deceased) were quarreling between themselves on the bank of the pond and suddenly, Sonai Karmakar fell into the pond and died by drowning.

11. P.W. 2 Smti. Sakuni Karmakar is the mother of P.W.1 and deceased Sonai Karmakar. At the time of occurrence, she was in the court-yard. At that time, her son Sonai Karmakar was quarreling with his wife Smti. Lakhi Karmakar. Then accused Medhi Bhuyan entered into between them and caught hold Sonai Karmakar and dragged him and fell him down into the nearby pond. On the next morning, the dead body of her son Sonai Karmakar was found after pumping out of the water from the pond by a water pumping machine. Police took the dead body for post mortem examination and she performed cremation after receiving back the dead body of her son from the police.

In cross examination, P.W.2 has stated that at the time of incident, she was alone in her house and at that time, no male person was present there. P.W.2 denied the suggestion that Sonai Karmakar fell down into the pond in course of indulging quarrel with P.W.1 Nanda Karmakar. P.W.2 further denied the suggestion that she launched the case against the accused person on account of having previous grudge in connection with some landed properties.

12. P.W. 3 Sri Gunin Karmakar has deposed in evidence that on hearing hue and cry at the time of occurrence, he proceeded to the house of Sonai Karmakar (since deceased) and saw when the accused Medhi Bhuyan came out from the pond situated in front of the said house. P.W.3 was told by the people that Sonai karmakar was beaten by the accused



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Medhi Bhuyan and dragged him towards the pond. The public chased the accused Medhi Bhuyan. Sonai Karmakar died in the pond. On the next day, he (P.W.3) was not present when the dead body of Sonai Karmakar was fished out from the pond.

In cross examination, P.W.3 denied the suggestion that he accompanied with Sonai Karmakar, Nanda Karmakar after having liquor, raised hue and cry. P.W.3 further denied the suggestion that there was a quarrel-pit between Sonai Karmakar and Nanda Karmakar (P.W.1). Further, he denied the suggestion that there was an altercation between Sonai Karmakar and Nanda Karmakar and Sonai Karmakar fell down into the pond and died.

13. P.W.4 Smti. Nilu Karmakar has deposed in evidence that the deceased Sonai Karmakar was the elder brother of her husband. On the date of incident, there was an altercation between Sonai Karmakar and his wife Smti. Lakhi Karmakar. At that time, it was 'Durga Puja'. During the course of altercation between Sonai Karmakar and his wife Lakhi Karmakar, accused Medhi Bhuyan came and questioned Sonai Karmakar as to why he picked-up quarrel and accused Medhi Bhuyan scuffled with Sonai Karmakar and dragged Sonai Karmakar by holding his neck and fell him down into the pond. Thereafter, she (P.W.4) along with others searched Sonai Karmakar in the pond, but could not find out. On the next day, the water of the pond pumped out with a water pumping machine and found that the head of Sonai Karmakar engulfed into the mud. P.W.4 has been thoroughly cross examined by the defence, but nothing has been elicited from her which belied her evidence made in examination in chief.

14. P.W.5 Dr.(Mrs.) Nizara Devi on 3.10.2011 performed the post mortem examination over the dead body of the deceased Sonai Karmakar on police requisition at Kushal Konwar Civil Hospital, Golaghat in connection with Kamarbandha Police Out Post GDE No. 34, dated 3.10.2011 on being escorted and identified by UBC-450 Hafizuddin Ahmed and relative Hunubabu Karmakar and found the following -



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Dead body of a male, aged about 24 years, black complexion in black short hairs, mouth opened and eyes closed. Rigor mortis present.

Presence of mud and sand are found inside the oral cavity and nose. Mud found in the whole body.

Mud are also found in the finger nails.

Presence of multiple abrasions seen upto the elbow joint.

Blood stained frothy fluid seen on the cut surface of the lungs.

Other organs are healthy.

Drowning is ante mortem in nature.

After examination, the Doctor (P.W.5) has opined that the cause of death of the deceased was due to shock and asphyxia as a result of drowning sustained by the deceased. Ext-2 is the post mortem examination report, upon which Ext-2(1) is her signature. Ext-2(2) is the signature of Dr. Pulin Phukan, the then Superintendent of Kushal Konwar Civil Hospital, Golaghat. Ext-2(3) is the signature of the Joint Director of Health Services, Golaghat. Ext-3 and Ext-4 are the carbon copies of dead body forwarding challan and inquest report respectively, wherein, Ext-3(1) and Ext-4(1) are her signatures.

In cross examination, the Doctor, P.W.5 has stated that the abrasion found near the elbow joint, may be caused while a drowning person tried to escape himself from the deep water. P.W.5 has admitted that she did not preserve the viscera and kidney of the deceased for chemical examination. According to her opinion, this is a case of drowning.

15. The opinion given by the Doctor (P.W.5) is that the cause of death of the deceased was due to shock and asphyxia as a result of drowning sustained by the deceased. The said opinion of the Doctor, P.W.5 has not been challenged by the defence. Hence, it is proved that the deceased Sonai Karmakar died by drowning and it is not a case of suicide.



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16. P.W. 6 Smti. Deepali Karmakar has deposed in evidence that the deceased Sonai Karmakar is the younger brother of her husband. According to her deposition, about one year ago, one night of about 7 P.M., the occurrence took place. At the time of occurrence, there were four inmates in the place of incident, i.e. the deceased Sonai Karmakar, his wife Lakhi Karmakar, his mother Sakuni Karmaar and including herself. Only deceased Sonai Karmakar was present as male person in the place of incident. At the time of occurrence, there was a quarrel between Sonai Karmakar and his wife Lakhi Karmakar (C.W.1). At that time, accused Medhi Bhuyan came to the place of incident and asked Rs.20/- from Sonai Karmakar (since deceased). When Sonai Karmakar told the accused that he has no money, then the accused Medhi Bhuyan caught hold Sonai Karmakar by his neck and dragged him towards the pond and fell him down in the pond. Then she(P.W.6) raised hue and cry. The family members of the deceased searched the deceased in the pond, but could not find out. On the next day, Sonai Karmakar was found dead in the pond.

P.W.6 has been thoroughly cross examined by the learned counsel for the defence. But nothing has been elicited from her which belied her evidence.

17. From the evidence of P.W.1 Nanda Karmakar, P.W.2 Smti. Sakuni Karmakar, P.W.3 Sri Gunin Karmakar, P.W.4 Smti. Nilu Karmakar and P.W.6 Smti. Deepali Karmakar, we find that at the time of occurrence, there was an altercation between Sonai Karmakar and his wife Smti. Lakhi Karmakar in their court-yard. At that time, accused Medhi Bhuyan, who is the neighbour of Sonai Karmakar, went there. At the time of occurrence, Smti. Sakuni Karmakar (P.W.2) the mother of P.W.1 Nanda Karmakar and deceased Sonai Karmakar was present. P.W.3 Gunin Karmakar on hearing hue and cry, went there. He witnessed when the accused Medhi Bhuyan came out from the pond belonging the deceased Sonai Karmakar. P.W.3 was told by the people that accused Medhi Bhuyan dragged Sonai Karmakar to the said pond. The people chased the accused Medhi Bhuyan from there. From the evidence of



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P.W.3 Gunin Karmakar, we find that he was not present at the initial stage of the occurrence, but he saw when the accused person came out from the pond where dead body of Sonai Karmakar was found. P.W.4 Nilu Karmakar, who is the wife of younger brother of the deceased Sonai Karmakar is the neighbour. She saw the incident from begin to the end . P.W.6 Deepali Karmakar, who is the wife of the elder brother of the deceased Sonai Karmakar also an eye witness to the occurrence.

18. P.W.7 S.I. of police Sri Dambarudhar Borah is the Investigating Officer in this case. According to his evidence, on 3.10.2011, while he was working as I/C at Kamarbandha police Out Post, on that day, at around 2 P.M., he received a written ejahar from the informant Sri Nanda Karmakar (P.W.1) of Dulakharia village alleging that on the last day, at around 8 P.M., accused Medhi Bhuyan of the same village fell Sonai Karmakar into the pond situated near the house of said Sonai Karmakar, and in the result, Sonai Karmakar died. He (P.W.7) on receipt of the ejahar, prepared the GDE No. 34, dated 3.10.2011 and forwarded the said ejahar to the O/C of Golaghat police station for registration of the case. Accordingly, the O/C of Golaghat police station registered the case vide Golaghat P.S. Case No. 675/11 u/s 302 of IPC. Ext-1 is the said ejahar, upon which Ext-1(2) is his signature. Ext-1(3) is the signature of Sri Mukul Saikia, the then O/C of Golaghat Police station . Ext-5 is the printed FIR form filled up by Sri Mukul Saikia, the then O/C of Golaghat Police station, upon which Ext-5(1) is the signature of said Sri Mukul Saikia, the then O/C of Golaghat Police station. Ext-5(2) is the signature of informant Sri Nanda Karmakar. On the day of receiving the ejahar, he (P.W.7) proceeded to the place of incident and found the dead body of the deceased floating on the water. Thereafter, he prepared the inquest report over the dead body of the deceased after fishing it out from the water. He sent the dead body to the Civil Hospital, Golaghat for post mortem examination. The original post mortem report has been kept by the Doctor. Ext-3 is the carbon copy of the dead body forwarding challan, upon which Ext-3(1) is his signature. Ext-6 is the sketch map of the place of occurrence, upon which Ext-6(1) is his



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