

DISTRICT : GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

Ref. :- Sessions Case No. 212/2011.

G.R. Case No. 36/2010.

U/S. 302/304(B)/201/34 of IPC.

The State of Assam Prosecution.

Vs.

Sri Sanjoy Mallah, &

Sri Bhola Mallah. Accused.

Date of charge 12.12.2012.

Dates of evidence 08.03.2013, 22.03.2013,
06.04.2013, 13.06.2013,
19.08.2013, 06.11.2013.

Date of argument 21.11.2013.

Date of judgment 21.11.2013.

APPEARANCES :-

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

AND

For the accused person Mr. N. Borah,
Legal Aid Counsel, Golaghat.

P R E S E N T :

SHRI T. LOHAR,
SESSIONS JUDGE,
GOLAGHAT.

JUDGMENT AND ORDER :

1. The prosecution case, as unfolded in the ejahar, in brief, is that accused Sanjoy Mallah married Smti. Sita Mallah about 2 years ago prior to the occurrence. After the marriage, accused Sanjoy Mallah and his brother Bhola Mallah used to torture her in connection with demanding of dowry. On 9.2.2010, the dead body of Sita Mallah found in a jungle situated at a distance of about 100 miters from the house of the accused persons.
2. The O/C of Borpathar police station on receipt of the written ejahar from the informant Sri Raju Sahani, the younger brother of the deceased on 11.2.2010, registered the case vide Borpathar P.S. Case No. 10/2010 u/s 304(B)/34 of IPC and investigated into the case. After completion of investigation, the police submitted the charge sheet u/s 302/201/34 of IPC against accused Sanjoy Mallah and Bhola Mallah to face the trial.
3. As the case is exclusively triable by the Court of Sessions, the learned Sub-Divisional Judicial Magistrate (M), Dhansiri, Sarupathar committed the case to the Court of Sessions. Accordingly, the case came up before this Court for trial.
4. Both the accused persons are UTPs in this case. Hence, the learned counsel Sri Nirod Borah from the penal of Legal Aid Counsel, Golaghat has been appointed to conduct the case of the accused persons on the defence side at the cost of DLSA, Golaghat.
5. After hearing from both the sides and on perusal of the case record, the prima facie material for the offence u/s 302/304(B)/201/34 of IPC were found against the accused Sanjoy Mallah and Bhola Mallah to proceed with. Accordingly, both the accused persons were charged u/s 302/304(B)/201/34 of IPC and the contents of the charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
6. The prosecution examined as many as 9 witnesses including the I.O. to prove the case. Both of the accused persons have been examined u/s 313 of Cr.P.C. No any incriminating evidence found in their statements as recorded u/s 313 of Cr.P.C.
7. Heard the learned counsels of both the sides.
8. The point for determination in this case is :-

“ Whether both of the accused persons on 9.2.2010, committed murder by causing the death of Smti. Sita Mallah and to cause disappeared the dead body of Sita Mallah in jungle in order to screen themselves from legal punishment ?”

DISCUSSIONS, DECISION AND REASONS

THEREOF :

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

10. P.W.1 Smti. Promila Gogoi has deposed in evidence that both of the accused persons are known to her. The deceased Sita Mallah was the wife of accused Sanjoy Mallah. One day, prior to the occurrence, at around 11 A.M., she went to the house of accused Sanjoy Mallah to enquire into his children for the purpose of providing Polio medicine. After about 10/15 minutes, accused Sanjoy Mallah came out from the house and stated to her that his wife had gone outside. Further, the accused Sanjoy Mallah has stated that he has no children. Then she (P.W.1) left the place. On the next day, she came to know that Sita Mallah died. But she did not know about the incident.

11. P.W.2 Sri Dhan Bahadur Mayo has deposed in evidence that he knew both the accused persons and the deceased Sita Mallah. The deceased Sita Mallah was the wife of accused Sanjoy Mallah. But he could not know how Sita Mallah died. Many people were gathered in the field where the dead body of Sita Mallah was found. Police arrived there. He did not see any injury over the dead body. Police performed the inquest over the dead body of the deceased. Ext-1 is the inquest report, upon which Ext-1(1) is his signature.

12. P.W.3 Sri Rikheswar Saikia has deposed in evidence that he knew both the accused persons and the deceased. The deceased Sita Mallah was the wife of accused Sanjoy Mallah. He could not say how Sita Mallah expired. Police took his signature on the inquest report. Ext-1 is the inquest report, upon which Ext-1(2) is his signature.

13. P.W.4 Sri Rameswar Mallah has deposed in evidence that the accused persons are known to him. The deceased Sita Mallah was the wife of accused Sanjoy Mallah. Sita Mallah died about two years ago. On the day of incident, when he was ready to go to Lekhapani, accused Sanjoy Mallah told

him that his wife Sita Mallah expired. On the next day, the dead body of deceased was found, He could not say how Sita Mallah expired.

14. P.W.5 Sri Raju Sahani has deposed in evidence that both the accused persons are known to him. The deceased Sita Mallah was his elder sister. She was married by accused Sanjoy Mallah in the year of 2008. Since then his elder sister was living with the accused person and she died in the house of the accused persons. He came to know about the incident in the evening on the day of incident. The neighbours of his brother-in-law told him that the dead body of his elder sister was found in the jungle. He was informed about the said incident over telephone by some unknown person. On the next day, when he went to the spot, he did not find the dead body of his elder sister Sita Mallah as the dead body of his elder sister has already been taken to Golaghat Civil Hospital for post mortem examination. He was told by the public over telephone that after taking lunch, Sita Mallah went for searching fire woods and at that time, accused Sanjoy Mallah went to the market for selling banana and accused Sanjoy Mallah followed her and killed her by throttling. Late on, accused Sanjoy Mallah stated that his wife fled away. Accused Sanjoy Mallah fled away when the villagers questioned him. He was apprehended by the village Head man. Thereafter, he lodged the ejahar with the police station. Ext-2 is the ejahar, upon which Ext-2(1) is his signature.

15. P.W. 6 Dr. Satyajit Duwarah on 11.2.2010 conducted the post mortem examination over the dead body of deceased Sita Mallah, aged about 26 years, female at Kushal Konwar Civil Hospital, Golaghat in connection with Borpathar P.S. Case No. 1/2010 on being escorted and identified by UBC-Babul Hatipura and relative of the deceased Bhola Mallah and found the following -

Dead body of a female person of about 26 years of age, long black hairs, eyes shut, foaming found inside the mouth. Rigor mortis present.

No sign of any external injury found over the dead body.

All other organs are found healthy.

After examination, the Doctor has given his opinion that no opinion could be given due to the death of the deceased, and hence, viscera are preserved and handed over to the police for forensic examination. The viscera are – (i) Stomach with its contents; (ii) Portion of liver and (iii) Right Kidney. Ext-4 is the post mortem examination report, upon which Ext-4(1) is his

signature. Ext-4(2) is the signature of Dr. M.C. Gogoi, the then Superintendent of Kushal Konwar Civil Hospital, Golaghat. Ext-4(3) is the signature of Dr. A.K. Sarmah, the Joint Director of Health Services, Golaghat.

16. P.W.7 Sri Monoram Gogoi has deposed in evidence that both the accused persons are known to him. The deceased Sita Mallah was the wife of accused Sanjoy Mallah. He saw the dead body of deceased Sita Mallah in the field belonging to him. Both of the accused persons were kept confinement by the local people for causing death of Sita Mallah. He (P.W.7) saw the dead body on the next day at around 6 A.M. when he was going to answer the call of nature. Police arrived at 4 P.M. Till then the dead body was lying there. Police seized one plastic rope, one scarf, a Kapi-dao and sandal that lying near the dead body of the deceased. Ext-3 is the seizure list, upon which Ext-3(1) is his signature.

17. P.W.8 Smti. Purabi Gogoi has deposed in evidence that the dead body of Sita Mallah was lying in the jungle. She could not say how Sita Mallah died.

18. P.W.9 S.I. of police Sri Prodig Kr. Dutta has deposed in evidence that on 5.3.2011, while he was working as O/C at Borpathar police station, on that day, he on being accompanied with Circle Inspector, Sarupathar went to the place of incident. The case has been investigated by S.I. of police Sri Ranjit Moran. He collected the forensic examination report and post mortem examination report during the investigation. After perusal of the case diary, he (P.W.9) satisfied that nothing has been remained for further investigation of the case, and accordingly, he submitted the charge sheet against both of the accused persons u/s 302/201/34 of IPC. Ext-5 is the charge sheet, upon which Ext-5(1) and Ext-5(2) are his signatures. Ext-6 is the dead body forwarding challan, upon which Ext-6(1) is the signature of earlier I.O. Ranjit Moran. Ext-7 is the sketch map of the place of occurrence, upon which Ext-7(1) is the signature of earlier I.O. Ranjit Moran. Ext-8 is the accused forwarding letter. Ext-9 is the forensic examination report. Ext-10 is the forwarding letter of Forensic Science Laboratory, Guwahati. Ext-11 is the printed FIR form filled up by earlier I.O. Ranjit Moran.

19. From the aforesaid evidence on record, it is found that Sita Mallah died and P.W.6 Dr. Satyajit Duwarah who had performed the post mortem examination over the dead body of the deceased Sita Mallah, did not find any sign of external injury on the dead body. Ext-9 the FSL report shows

that the Scientific Officer did not find any poison while examining the viscera. The Doctor (P.W.6) also did not find any cause of death of the deceased. Therefore, no opinion has been given by the Doctor (P.W.6).

20. From the evidence as discussed above, I find that there is no evidence to connect the accused persons in the incident. It is true that Sita Mallah died. But who has killed her and how she was killed has not been proved.

21. Considering all these facts, I find and hold that the prosecution has failed to prove the case against the accused Sanjoy Mallah and Bhola Mallah u/s 302/304(B)/201/34 of IPC beyond all reasonable doubt and in the result, I acquit them of the charges and set them at liberty.

22. The Superintendent of District Jail, Golaghat is directed to release the accused Sanjoy Mallah and Bhola Mallah from this case, if they are not wanted in any other case.

23. The judgment and order is pronounced in my open Court today in presence of accused persons, as well as, learned counsels of both the sides.

24. Send back the case record of G.R. Case No. 36/2010 to the learned original Court along with a copy of the judgment and order.

Given under my hand and seal of the Court on this the 21st day of November, 2013.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

APPENDIX :

WITNESSES FOR THE PROSECUTION :

1. P.W.1 - Smti. Pomila Gogoi.
2. P.W.2 - Sri Dhan Bahadur Mayo.
3. P.W.3 - Sri Rikheswar Saikia.
4. P.W.4 - Sri Rameswar Mallah.
5. P.W.5 - Sri Raju Sahani.
6. P.W.6 - Dr. Satyajit Duwarah, M.O.
7. P.W.7 - Sri Monoram Gogoi.
8. P.W.8 - Smti. Purabi Gogoi.
9. P.W.9 - Sri Prodip Kr. Dutta, I.O.

EXHIBITS FOR THE PROSECUTION :

1. Ext-1 - Inquest report.
2. Ext-2 - Ejahar.
3. Ext-3 - Seizure list.
4. Ext-4 - Post mortem examination report.
5. Ext-5 - Charge sheet.
6. Ext-6 - Dead body forwarding challan.
7. Ext-7 - Sketch map of the place of occurrence.
8. Ext-8 - Accused forwarding letter.
9. Ext-9 - FSL report.
10. Ext-10 - Forwarding letter of FSL report.
11. Ext-11 - Printed FIR form.

WITNESSES FOR THE DEFENCE :- NIL.

EXHIBITS FOR THE DEFENCE :- NIL.

Dictated & Corrected
by me.

(T. Lohar),
SESSIONS JUDGE,
GOLAGHAT.

Dictation taken & transcribed
by me:-S. Borpatra, Steno.