

IN THE COURT OF THE SESSIONS JUDGE :: :: MORIGAON

*Present : Sri S. K. Poddar, AJS
Sessions Judge
Morigaon, Assam*

Sessions Case No. 178/2018 U/S 302 of IPC

[G. R. Case No. 314/2015]

State of Assam

-Vs-

Sri Bhagirath Nath @ Bhagi Nath
S/o Late Khagen Nath
R/o Village- Solmari, Nathgaon
P.O.- P.S. – Morigaon,
Assam Accused

APPEARANCE:

For the prosecution : Sri A. Kalam, P.P.
For the accused : Md. A. U. Siddique, Advocate. (Legal Aid Counsel)

Case committed by : Chief Judicial Magistrate, Morigaon.

Date of Commitment : 29.11.2018
Date of framing Charge : 06.02.2019
Dates of Evidence : 26.03.2019, 22.04.2019, 29.05.2019, 24.06.2019,
03.08.2019, 17.08.2019, 28.08.2019, 21.09.2019,
04.10.2019, 20.11.2019
Date of S/D : 16.12.2019
Date of Argument : 09.01.2020
Date of Judgment : 22.01.2020

J U D G M E N T

1. Prosecution case in brief is that on 24.08.2018, Sh. Dadu Nath and 33 other villagers lodged an FIR with the Officer-in-Charge, of Morigaon Police Station alleging inter-alia that on the previous day i.e. on 23.08.2018, the two accused persons named in the FIR after consuming liquor, in a planned manner committed murder of Smti. Prabhabati Devi, wife of accused Bhagi

Nath @ Bhagirath Nath by stabbing her and thrown her dead body in a pond of Hahsora filed. It is alleged that the incident took place with the direction of accused Sh. Giren Bordoloi, the Gaonburha of the locality.

2. On receipt of the FIR, Morigaon P.S. Case No. 406/2018 u/s 302 IPC was registered and investigated into. During investigation, accused Sri Bhagirath Nath @ Bhagi Nath was arrested and produced before the court for judicial custody. Upon completion of investigation, I.O. has submitted Charge-Sheet against the accused Sri Bhagirath Nath @ Bhagi Nath only to face trial U/S 302 of IPC.

3. Upon submission of Charge-Sheet, learned Chief Judicial Magistrate Morigaon, by complying with the provision of Section 209 Cr.P.C. has committed the case for trial before the Court of Sessions with the accused in Jail custody.

4. On receipt of the case record on commitment, my learned predecessor in office has framed the charge U/S 302 IPC against the above named accused person to which he pleaded not guilty. On that day, accused was also allowed to go on bail but he failed to furnish bail bond and faced the trial as UTP. During trial, prosecution has examined 11 witnesses including Medical Officers and the I.O.

5. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Accused declined to adduce evidence when he was called upon to enter into defence. Defence case is of total denial and false implication.

6. I have heard argument of learned P.P. Mr. A. Kalam and learned defence counsel Md. Riajuddin Ahmed and gone through the case record. I have considered the submission of both the sides.

POINT(S) FOR DETERMINATION :

7. (i) Whether on 23.08.2018, accused Bhogi Nath knowingly and intentionally committed the murder of his wife Prabhabati?

DISCUSSION, DECISION AND REASONS THEREOF:

8. PW-1 Sri Dadu Nath, the informant and son of the accused and the deceased in his evidence deposed that there were frequent quarrels between his parents in their house. His father used to drink alcohol and create nuisance in their house. Due to such quarrels, often he and his mother were forced out of the house. On the day of the incident, the accused came home under the influence of alcohol and chased him out of the house. On this, he went to the house of his elder sister Lilabati located nearby. That night he stayed in the house of his sister. In the morning, his sister telephoned his home to talk to his mother but the phone was not received. Then, one Bapukon, his neighbour and relative informed them that his mother was not at home. Thereupon, he went to his house. Some neighbouring people and his sister Lilabati also came there and searched for his mother but could not find her. At that time, his father had gone to the house of Gaonburha. In the meantime, Gaonburha had brought his father to the police station. After sometime they found the dead body of his mother in a pond in the midst of paddy field. He saw injuries on the dead body of his mother including injuries on eyes, head. On the day of the incident, when he went out of the house, his mother, father and old grandmother were present. His grandmother cannot hear and cannot walk. She stays on her bed. Later he came to know that on the day of the incident, his father had assaulted his mother and caused the injuries. Subsequently, he along with others lodged the ejarah. Ext. 1 is the FIR. Ext. 1 (1) is his signature thereon. In his cross-examination, PW 1 admitted that on the day of the incident he went out of his house at around 3:30 PM. He did not return home on that night. He denied the defence suggestions that he falsely stated that on the day of the incident, his father had chased him out of the house. He also denied that he deposed falsely on material aspects. PW 1 admitted that he had not seen his father assaulting the deceased on the day of the incident. He has not filed any case with the police regarding the nuisance created by his father. He denied that his father did not assault and kill the

deceased. He also denied that he did not see injuries on the body of his mother.

9. PW-2, Sh. Ajit Nath in his evidence deposed that frequent quarrels took place between the accused and his wife and that accused also used to take intoxicants. On the day of the incident also, he heard quarrel between them in their house but as he was recovering from illness, therefore, he did not pay much attention. On the next morning, he came to know that the wife of the accused was missing from the house and the villagers were searching for her. He heard that subsequently dead body of the deceased was found in a pond located near his house in the paddy field. In cross-examination, PW 2 stated that on the day of the incident, though he had heard the hue and cry in the house of the accused, he did not go there as he was lying unwell. He also did not go to the place from where the dead body was recovered at the time of its recovery. He denied the suggestion that he has falsely stated that there used to be frequent quarrels in the house of the accused between him and his wife.

10. PW-3, Smti. Gunemai Devi, mother of the accused, in her evidence deposed that on the day of the incident, she was in her house along with her son and daughter-in-law. On the next morning, she came to know that her daughter-in-law was not at home and later, the dead body of her daughter-in-law was found in another place. In cross-examination, she has stated that on the day of the incident, she did not hear any hue and cry in her house.

11. PW-4, Sri Mukul Nath, son-in-law of the deceased and accused in his evidence deposed that on the day of the incident, informant came to his place and stayed overnight. He keeps coming to his house like this. In the morning, they were informed by someone that his mother-in-law (wife of the accused) was not found at her house. Accordingly, he and the informant went to the house of the accused. After sometime, they found that wife of the accused was lying dead in a pond located near the house of the accused. On the night of the incident, his mother-in-law (deceased), father-in-law (accused) and mother of the accused (PW-3) were present in their house. In the mean

time, he came to know that accused had appeared before the police station. In cross-examination, he stated that his house is located about three miles from the house of the accused. He has visiting terms with his house. Prior to her death, the relationship between the accused and the deceased was good. He does not know as to how the deceased died. He denied the suggestion that he has falsely stated that the accused appeared before the police station as stated by him earlier. He admitted that when the accused could not find his wife in his house, he along with the Gaonburha came to the police station to inform.

12. PW-5, Smti. Gitamoni Devi in her evidence deposed that accused used to take liquor and commit harassment and torture upon his wife Prabhabati (since deceased). On the next morning, there was hue and cry in the village and subsequently, she came to know that the said Prabhabati Devi was lying dead near a pond in the village. She had gone that site but she came back without seeing the dead body. She heard that the deceased was found lying on her abdomen with her face down. She does not know whether the deceased had any injury. She also stated that she heard from the people that the accused had confessed that he had killed his wife. In cross-examination, she stated that her house is located at a distance from the house of the accused and it takes 7-8 minutes and the house of the accused is not audible from that of her. Her statement that the accused used to take liquor and torture his wife is based on what she has heard. She has visiting terms with the house of the accused but it is not frequent. She had not gone to the spot where the dead body of the deceased was stated to be lying. The deceased had not complained before her regarding any assault and torture upon her by the accused.

13. PW-6, Smti. Himadri Devi in her evidence deposed that from the co-villagers she heard that the accused after taking liquor had killed his wife and left her dead body somewhere. She along with others had come to the police station in connection with the incident where they were told by the police that the accused had confessed regarding the aforesaid incident. In cross-examination, she stated that she came to know about the incident on the next

day at about 2 PM and there was hue and cry in the village and there was also movement of police. House of the accused is located at one end of the village and her at another end and they are not audible from each other. She knew the deceased from before and had talking terms with her. She admitted that the deceased had not told her anything regarding commission of any torture upon her by the accused.

14. PW-7, Sh. Monoj Kumar Nath in his evidence deposed that on the date of the incident, he heard that wife of accused was missing from her house. Then he came to Solmari and saw many people searching for her but she could not be found. Later, some boys raised hue and cry and they went there and found the dead body of the deceased lying in a pond. In the meantime, the accused appeared before the police station. He came to know from public that the accused had killed his wife and threw her dead body in the pond. In cross-examination, he stated that on the date of the incident, he came to Solmari at about 7 - 8 AM. He used to visit the house of the deceased frequently. 4/5 days before the incident, the deceased and the accused had a quarrel but over this she had not lodged any case. He cannot say the exact time of recovery of the dead body of the deceased. He saw the dead body from very close only after the police and Magistrate came and it was lifted out of the pond. He denied the suggestion that he has falsely stated that he heard from the public that the accused had killed his wife, the deceased and threw her dead body in a pond.

15. PW-8, Dr. Bubul Saikia, the Medical Officer in his evidence deposed that on 24.08.2018, he conducted post-mortem examination on the dead body of Prabhabati Devi, female aged 50 years, in connection with Morigaon PS case No. 406/2018 u/s 302 IPC. Upon examination he found that rigor mortis present. Eyes and mouth closed. Mild bleeding was seen from mouth and nose. In his opinion the cause of death was cardio-respiratory failure due to drowning. He has proved the post-mortem report vide Ext. 2 and his signature thereon vide Ext. 2(1). The defence declined to cross-examine the

Medical Officer.

16. PW-9, Smti. Bharati Devi deposed in her evidence that accused is habituated to liquor and he also takes *Bhang*. He used to beat his wife from time to time. On the day of the incident, the young son of the accused came to her house and told her that his father - the accused was assaulting his mother and thereupon, she sent him to his elder sister's house. He was scared that he would also be assaulted. At that time it was evening but not completely dark. Thereupon, he went to his elder sister's house. On the next morning, upon seeing the people going towards the house of the accused, she also went there and there she came to know that the accused had killed his wife and that her dead body was lying in a pond located towards the back side of their house. On the night of the occurrence, in the house of the accused were present, his wife, his mother and himself. In cross-examination, she stated that her house is located about 15 houses from the house of the accused and they are located at opposite ends of the neighbourhood. On the day of the incident she was in her house. She did not state before the police that the accused used to beat his wife after taking liquor. She did not state before the police that - *On the day of the incident the young son of the accused came to her house and told her that his father - the accused was assaulting his mother and thereupon, she sent him to his elder sister's house. He was scared that he would also be assaulted. At that time it was evening but not completely dark. Thereupon, he went to his elder sister's house.* She stated that she had not seen any incident of assault by the accused. She had some occasional visiting terms with the house of the accused with his wife. She denied the suggestion that she had not heard that the accused had killed his wife and her dead body was lying in pond towards the back side of his house. She also denied the suggestion that she deposed falsely.

17. PW- 10, Sh. Anil Das, the Investigating Officer in his evidence deposed that during investigation of Morigaon PS case No. 406/2018 u/s 302/120(B) IPC he went to the place of occurrence, drew a sketch maps thereof. Ext. 3 and Ext. 4 are those sketch maps. Thereafter, he recovered the dead

body of Prabhavati Devi from a pond (*Pukhuri*), located in the field (*Pothar*). After recovering the dead body inquest was conducted upon it by Executive Magistrate S. Bhagawati. The body was sent for post-mortem examination. The accused was found in his house and he was interrogated and subsequently arrested and forwarded for remand. The statement of the accused was also recorded during investigation and in his statement, he confessed to killing of the deceased. Upon completion of investigation and finding sufficient material he submitted charge-sheet against the accused Bhagirath Nath u/s 302/201 IPC. He has exhibited the charge-sheet vide Ext. 5. In cross-examination, the Investigating Officer has stated that the ejahar dated 24.08.2018 was lodged in the police station at 9.30 AM. Prior to this ejahar, the accused had come to the police station along with local Gaonburha to inform regarding the missing of the wife of the accused. With regard to the same information GD entry was made, but he could not find the same in the case diary. During investigation, he found the dead body of the deceased floating on the pond. The dead body was lifted out of the pond by some local village boys. He had not recorded their statements. The Executive Magistrate had also accompanied him to the said place. He had taken some photographs of the dead body with his mobile phone camera, but he has not submitted such photographs in the case. During inquest by the Magistrate, he was present nearby. He had not seen injuries on the dead body of the deceased. During investigation, he did not record the statement of one Bindu Ram Nath who stays near the house of the accused. Several persons in the neighborhood were found to be reluctant to record their statements to him. He had not given them any written notice. He had not forwarded the accused before the Judicial Magistrate for recording confessional statement of the accused. He denied the suggestion that he has falsely stated that the accused had confessed in his statement before him about killing the deceased. He also denied the suggestion that he did not investigate the case properly and he submitted the charge-sheet without proper investigation.

18. PW-11, Smti. Sanghamitra Bhagawati the Circle Officer who conducted the inquest on the dead body of the deceased in her evidence

deposed that on 24.08.2018, while she was working as Circle Officer, Morigaon she was deputed to conduct inquest on the dead body of one Prabhabati Devi in connection with Morigaon PS case No. 406/2018 u/s 302 IPC. Accordingly, she conducted the said inquest. The dead body was found floating on a *Pukhuri* near a rice field located towards the back side of the house of the accused Bhagirath Nath. During the inquest, she found that the eyes were closed; some injury marks near mouth with some bleeding; no other injury marks were seen on the other parts of the body. She did not notice any other abnormality on the dead body. She has exhibited the Inquest Report vide Ext. 6. In cross-examination, she stated that the inquest report prepared by her indicated the date as 24.08.2018 at 12.30 PM at place Solmari. The case number indicated in the inquest report was based on the police requisition for the inquest. She denied that suggestion that she has incorrectly stated about the time of the inquest. She also denied the suggestion that she has incorrectly stated about having found the injuries near the mouth of the dead body with some bleeding. She does not remember as to which persons brought the floating dead body to the ground.

19. So far, the nature of death is concerned, from the evidence of PW-8, Dr. Bubul Saikia, the Medical Officer who conducted the Post-mortem examination on the dead body of Prabhabati Devi it appears that there was mild bleeding from the mouth and nose and the cause of death was cardio respiratory failure due to drowning. On looking at the Post-mortem report vide Ext. 2, it appears that there is no mention of any injury mark on the dead body and simply mentioned that injury as mentioned in Inquest Report. On looking at the Inquest Report vide Ext. 6 as proved by PW-11, Sh. S. Bhagabati, Executive magistrate, it appears that some injury marks were found on the mouth and neck and blood was seen there. There is no mentioned of any other injury. From the evidence of PW-1, the son o the deceased and informant of this case, PW-2, PW-4, PW-5, PW-9, PW-10 and PW-11, it appears that the dead body was recovered from a pond in the midst of paddy field. PW-10, the Investigating Officer, in his cross-examination admitted that at the time of

inquest he was present there and he has not seen any injury mark on the dead body of the deceased. However, PW-1 in his FIR stated that his mother was murdered by stabbing. In his evidence, PW-1 claimed that he found injury on the dead body of his mother on eyes and head. But the other witnesses remained silent regarding any injury mark on the dead boy. Thus, the evidence of PW-1 does not get any support either in the inquest report or in the Post-mortem report. So far, the injuries on the head, nose etc. on the dead body are concerned, the post mortem report clearly shows that deceased died due cardiac respiratory failure. However, as no water was detected on the abdomen, certainly, it cannot be stated that she died due to drowning while she was alive. Had she been fallen in the pond alive, certainly there would have some amount of water in her abdomen but same is absent in this case. As such, there is probability that she was thrown on the pond after causing her death. The Post-mortem report has failed to throw any light as to whether she died due to asphyxia and it is a case of only respiratory failure. Thus, the cause of death appears to be not clear.

20. In view of above, now looking at the evidence for determination, as to whether the death can be termed as homicidal and if so, whether the accused has any role in committing the death.

21. PW-1 in his evidence as narrated above, stated that his parents used to make frequent quarrels and on that night at about 3:30 PM, on arrival of his father in intoxication state, he left the house of stayed at his sister's house by leaving his parents and his grandmother i.e. PW-3 in the house. He categorically admitted that he did not return home for the night and came back only after knowing that his mother was not present in the house. PW 1 failed to disclose as to wherefrom he came to know that his mother was stabbed by his father.

22. From the evidence of other witnesses, it appears that they are hearsay witnesses and came to know on the next morning, during search of the deceased who was found missing from her house, about lying of the dead body

in the pond. PW-2 though deposed about regular quarrel between the deceased and the accused, but in his cross-examination he stated that on the date of the incident though he heard hue and cry but he did not go there. However, this fact was totally denied by PW-3, the grandmother of the informant and mother-in-law of the deceased. In her evidence, she stated that on the date of the incident, she was in her house along with the accused and the deceased, and only on the next morning she came to know that the deceased was missing from the house. In her cross-examination, she categorically admitted that she did not hear any hue and cry in her house. The defence has not raised any dispute to the fact that on the date of occurrence, the accused, his wife (deceased) and his mother were in the house.

23. PW-4, PW-5, PW-6, PW-7 and PW-9 in their evidence, simply stated about hearing the matter of missing of the deceased, searching for her and came to know about recovery of the dead body from the pond side. Admittedly, in this case, there is no eye witness to throw any light on the incident and that they have personally seen the accused making quarrel with the deceased on the fateful night or even in day time or even in carrying the dead body or the deceased to the pond. There is no evidence at all to show that how the dead body came to the pond.

24. During arguments, learned PP has submitted that the Court should draw a presumption on the available circumstances which speak against the accused as there was none other to cause the death of the deceased. Learned defence counsel however, vehemently objected stating that there is nothing on record to back the circumstances except that the deceased lived with the husband in the house. It is argued that in view of the evidence of PW-3 as led by the prosecution, clearly shows that on that night there was no quarrel. As such, this aspect along with doubtful cause of death particularly having no injury mark on the dead body clearly shows that nothing happened on that night to show any probability of assault and death by the accused.

25. Upon looking at the evidence as narrated herein before, it is clear that except the fact that the accused used to make quarrel with his wife, though is a circumstance but in the case in hand, the other links are missing to show the involvement of the accused most prominently the suspicious cause of death as mentioned herein before. Having no injury mark found on the dead body, clearly supports the evidence of PW-3 that on that night there was no quarrel in the house. The prosecution has failed to bring positive evidence against the accused showing his involvement in causing the death. Merely the fact that lived with the deceased in the same house and used to make frequent quarrel cannot be treated as strong circumstances in absence of any other materials showing his involvement in causing death. Evidence of I/O regarding confession of the accused during interrogation by police is not admissible u/s 25 of Evidence Act.

26. So from the above discussions, it appears that the prosecution case is full of doubt regarding nature of death and involvement of the accused with the alleged offence. As such accused Sri Bhagirath Nath @ Bhagi Nath is entitled for benefit of doubt.

27. Considering all above, I hold that prosecution has failed to prove the charge U/S 302 IPC or any other minor offence against the accused beyond all reasonable doubt. Accordingly, accused Sri Bhagirath Nath @ Bhagi Nath is acquitted from the charge U/S 302 IPC on benefit of doubt and set at liberty forthwith.

28. In view of the provisions of section 437A Cr.P.C and following the law laid down by Hon'ble Gauhati High Court in Abdul Malek @ Malek Ali –vs- State of Assam **2018 (5) GLT 272**, accused Sri Bhagirath Nath @ Bhagi Nath be released forthwith from Jail custody on execution of PR Bond of Rs. 5,000/- only with a condition that he shall appear before appellate court, if so required. This Bond shall remain in force for six months from the date of execution.

29. Considering the fact and circumstances of the case particularly doubtful nature of death, the matter is not referred to DLSA for granting compensation U/S 357 A Cr.P.C.

30. Send a copy of the judgment to learned District Magistrate, Morigaon U/S 365 Cr.P.C.

31. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the 22nd day of January, 2020 at Morigaon.

Sessions Judge
Morigaon

APPENDIX

1. Prosecution witnesses :

- P.W.1 - Sh. Dadu Nath (Informant)
- P.W.2 - Sh. Ajit Nath.
- P.W.3 - Smt. Gunemai Devi.
- P.W.4 - Sh. Mukul Nath.
- P.W.5 - Smti. Gitamoni Devi.
- P.W.6 - Smti. Himadri Devi.
- P.W.7 - Sh. Monoj Kumar Nath.
- P.W.8 - Dr. Bubul Saikia (MO)
- P.W.9 - Smti. Bharati Devi.
- P.W.10 - Sh. Anil Das (I/O)
- P.W.11 - Smti. Sanghamitra Bhagawati (CO)

2. Defence witnesses - Nil.

3. Court witnesses - Nil.

4. Exhibits by prosecution :

- Exbt. 1 - Ejahar.
- Exbt. 2 - Post-mortem report.
- Exbt. 3 & 4 - Sketch map.
- Exbt. 5 - Charge-Sheet
- Exbt. 6 - Inquest report.

Sessions Judge
Morigaon