

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**

**::::UDALGURI**

**Present : Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Sessions Case No. 06(U)/2015**

**U/S 306/304-B IPC**

**GR Case No. 1295/2014**

**State of Assam**

**-Vs-**

**Munindra Mazumdar.....Accused person.**

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. M.C. Narzary, Learned Advocate.

Date of Evidence : 17-03-15: 01-04-15: 16-06-15: 23-06-15.

Date of Arguments : 05-03-2020.

Date of Judgment : 19-03-2020.

**JUDGMENT**

1. The prosecution case in brief is that in the year 2010 deceased Munmi Saharia got married with accused Munindra Mazumdar. Soon after marriage, the accused started to torture the deceased in demand of dowry. On 16-11-2014, the deceased visited her parental home and told her parents about the torture upon her by the accused in demand of dowry. On the same day after lunch at about 02.00 pm, she returned back to her matrimonial. In the evening at 05 O Clock, the accused again tortured the deceased in demand of dowry, set fire on her by pouring kerosene oil on

her person and tried to murder her. Then the deceased was admitted in GMCH, Guwahati where on 03-12-2014, at about 08 pm she breathed her last while undergoing treatment. Hence, on 14-12-2014, the father of the deceased lodged FIR with the Officer-in-Charge of Harisinga P.S.

2. On the basis of the FIR, Harisinga P.S. Case No. 55/14 U/S 498-A/302/34 IPC was registered and after completion of investigation police had submitted charge sheet U/S 306 IPC, against the accused Munindra Mazumdar.
3. Learned Chief Judicial Magistrate, Udalguri after having complied with the provision U/S 207 Cr.P.C found that the offences U/S 306 I.P.C. is exclusively triable by the Court of Sessions and accordingly, committed the case to the Court of Sessions on 05-02-15.
4. In consideration of the submission of the learned counsel for both the parties and on evaluation of materials on record having found sufficient grounds for presuming that the accused person had committed offence U/S 306/304-B I.P.C., learned Sessions Judge framed charges there under and the ingredients of charges U/S 306/304-B I.P.C., were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge vide Order dated 04-01-2020, transferred the case to this court for disposal.
5. The prosecution in order to prove its case examined the following 11(eleven) witnesses.
  - PW1- Tilak Saharia.
  - PW2- Ram Chauhan.
  - PW3- Mrigen Das.
  - PW4- Ram Krishna Das.
  - PW5- Rangila Das.
  - PW6- Sashadhar Das.

PW7- Janki Das.

PW8- Ratneswari Saharia.

PW9- Moon Kataki.

PW10- Dr. Arpan Mazumdar.

PW11- S.I. Giridhar Sarmah.

6. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence case was of total denial and declined to adduce defence evidence.
7. In the light of the above facts and circumstances, the points for determination in the instant case are set up as follows:-
  - (I) Whether the accused abetted the commission of the suicide by Munmi Saharia setting on fire by pouring Kerosene oil whereby she succumbed to her injuries on 03-12-2014?
  - (II) Whether the accused setting fire by pouring oil on the person of Munmi Saharia subjecting her to cruelty or harassment on demand of dowry, which caused the death of victim Munmi Saharia, on 03-12-2014?

**DISCUSSION, DECISION AND REASON FOR DECISION:**

8. I have heard arguments placed by learned counsel for both sides and carefully appraised the evidence on record in its proper perspective.
9. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel I would like to discuss the evidence adduced by the prosecution.
10. PW1 is Tilak Saharia, he is the informant of the instant case. In his evidence PW1 had deposed that in the year 2010, his daughter was given in marriage to accused Munindra Mazumdar. Soon after the marriage the accused started to torture the daughter of the informant physically and mentally in demand of dowry. PW1 was informed about that by the

neighbours and his daughter. On the date of occurrence at about 5 pm the accused assaulted the daughter of the informant(PW1) and set fire on her after pouring kerosene oil. Later on the villagers took her to the hospital and informed PW1 about the incident. But his daughter breathed her last; therefore, PW1 lodged the FIR before the Police. Ext.-1 is the FIR. Ext.-1(1) is the signature of PW1. PW1 took custody of daughter of the deceased. Ext.-2 is the zimma nama. Ext.-2(1) is the signature of PW1. In cross-examination, PW1 had stated that his daughter did not die on the date of occurrence. She was taken to Guwahati by the accused for better treatment. At first she was taken to Tezpur, thereafter, she was taken to Guwahati. The accused was present in the hospital while deceased was undergoing treatment in the hospital. PW1 had denied the suggestion that his daughter committed suicide by setting fire on her by pouring kerosene oil.

11. PW2 is Sri Ram Chouhan. In his evidence PW2 had deposed that on the date of occurrence while he was returning home, on hearing hue and cry he went to the house of the accused and saw that the wife of the accused was burning with flame. A huge number of people gathered there. Thereafter, PW2 left away. In cross-examination, PW2 had stated that he did not know as to how the deceased caught fire.
12. PW3 is Mrigen Das. On the date of occurrence the wife of the accused caught fire. When he went there already fire was extinguished. In cross-examination, he stated that he did not know as to how fire caught.
13. PW4 is Sri Ramkrishna Das, who is the neighbor of the accused. PW4 had deposed that he had heard at his home that wife of the accused caught fire. In cross-examination of PW4 is declined by the defence.
14. PW5 is Sri Rangila Das. In her evidence PW5 had deposed that at the time of incident she was in her shop house. She heard that wife of the accused

had caught fire. In cross-examination, PW5 had revealed that she did not know as to how the incident had taken place.

15. PW6 is Sashadhar Das. PW6 had also heard from other people that wife of the accused was set ablaze. In cross-examination PW6 had revealed that he did not know as to how the wife of the accused caught fire.

16. PW7 is Janki Das. PW7 had also deposed that on the date of occurrence, the wife of the accused was set ablaze. In cross-examination, he revealed that he did not know as to how the incident happened.

17. The mother of the deceased had been examined as PW8. In her evidence PW8 Ratneswari Saharia had deposed that in the month of June 2009, her daughter deceased Munmi Saharia was given in marriage with the accused. The accused used to torture the deceased physically and mentally soon after their marriage. On the date of occurrence the accused set ablaze the deceased after pouring kerosene oil. PW8 had deposed that one Pranjal informed them that the accused set ablaze the deceased. Then immediately her husband went to the house of the accused. Later on, their daughter died. In cross-examination, PW8 had stated that her daughter informed her that accused used to torture her. The deceased also told her that she caught fire while she was cooking food. PW8 went to hospital to see her daughter alongwith another son-in-law Mun Katak. After eighteen days of the incident her daughter died. PW8 had stated that her son and the accused incurred expenditure of treatment of the deceased. According to PW8 on the date of occurrence quarrel took place between the accused and the deceased over the issue of purchase of chips.

18. PW9 is Mun Katak. In his evidence PW9 had deposed that on the date of occurrence deceased committed suicide by setting fire. PW9 knew that sometimes the accused and the deceased had quarreled. In cross-examination PW9 had stated that he went to hospital to see the deceased.

She was undergoing treatment in hospital for about 12-13 days. While the deceased stated about the incident before doctor and nurse, his mother-in-law(PW9) was not present at that time.

19. PW10 is Dr. Arpan Mazumdar. In his evidence PW10 had deposed that on 4.12.14, while he was working as Demonstrator in Department of Forensic Medicine, GMCH, he had performed post-mortem upon the dead body of Munmi Saharia Mazumdar, 27 years, female, W/o- Munindra Mazumdar, Vill.- Harisinga, under Harisinga P.S. The dead body was brought and identified by H.G. Kumud Rajbangshi, Munindra Mazumdar, husband of the deceased in reference to Bhangagarh P.S. GDE No. 59 dated 4.12.14. On examination, he found the following:-

EXTRANAL APPEARANCE:-

A female dead body of average built found covered with a bed sheet. Surgical bandage present all over the body except the face. Eyes and mouth are closed. Rigor-mortis is present and is fully developed.

Injuries:-

Burn injury present over the body as follows:-

- (1) Portion of face and neck.
- (2) Both upper limbs.
- (3) Front and back of chest wall.
- (4) Front and back of abdominal wall.
- (5) Both lower limbs.
- (6) Genitalia.

Epidermis of the burn are as peeled off at places. The burn areas are congested. Pus and unhealthy granulation tissues present over the burn areas at places. The burn injuries are epidermal to demo-epidermal in nature causing 95-98 % of the total body surface.

No ligature mark is detected around the neck.

PW10 had deposed in his opinion that death was due to septicemia following ante-mortem burn injuries sustained over the body as described. All the burn injuries were epidermal to demo-epidermal in nature causing

95-98 % of the total body surface area. Approximate time since death 12 to 24 hours. Ext.3 is my post-mortem report and Ext.3(1) is the signature of PW10. Cross-examination of PW10 had been declined by the defence.

20. PW11 is S.I. Giridhar Sarmah, I/O of the case. In his evidence PW11 had deposed that on receiving the FIR lodged by informant Tilak Saharia, O/C Harisinga P.S. registered a case and endorsed the same to PW11 for investigation. On 04-12-2014, PW11 visited the place of occurrence by recording GDE no. 66 dated 04-12-2014. He prepared sketch map of the place of occurrence and recorded statements of the witnesses. He also conducted inquest of dead body and sent the dead body for postmortem examination. Later on, he collected postmortem report. Ext.-4 is the sketch map. Ext.-4(1) is the signature of PW11. In cross-examination, PW11 had revealed that on 16-11-2014, the occurrence took place. The FIR was lodged on 04-12-2014. PW9 Mun Kataki stated before PW11 that deceased informed him that she herself set fire upon her.

21. On careful scrutiny of evidence on record it appears that there is no dispute that the deceased died as a result of burning. In this regard the ocular evidence is substantiated by PW10, the Medical Officer that upon postmortem examination of dead body of deceased he found burn injury present over body. In his opinion the death of the deceased was due to septicemia following ante-mortem burn injuries sustained over the body. All the injuries were epidermal to demo-epidermal in nature causing 95-98% of the total body surface area.

22. PW1 and PW8, the father and mother of the deceased respectively alleged in their evidence that the deceased was tortured physically and mentally by the accused. On the date of occurrence the accused pour kerosene oil over his deceased wife and set her ablaze. Though PW1 had deposed that the accused used to torture the deceased in demand of dowry but his evidence is not corroborated by any other prosecution witnesses including his wife,

PW8. Though PW8 had deposed that accused used to torture the deceased physically and mentally soon after their marriage but there is not a single whisper in her evidence that torture was meted out to the deceased in demand dowry. PW9, who is the brother-in-law of the deceased had not deposed anything that the accused used to torture the deceased in demand of dowry. According to him the deceased committed suicide by setting fire. PW2, PW3, PW4, PW5, PW6 and PW7 have not deposed anything in support of the prosecution case. they are the neighbours of the accused. Though neighbours are generally reluctant to adduce evidence against anyone of the neighbourhood, in the fear of developing inimical relationship but in the instant case even the brother-in-law of the deceased (PW9) and her own mother (PW8) have not deposed that she was subjected to torture by the accused in demand of dowry. Moreover, in cross-examination, PW8, mother of the deceased revealed that she was informed by the deceased that she caught fire while cooking food. The deceased died after eighteen days of the incident but in between no verbal or written information was given to the police in connection with the incident. It is only after death of the deceased a written FIR was lodged by her father against the accused. What transpires from the evidence of PW8 and PW9 that after the incident the deceased was able to speak. Hence, a timely information given to the police would have help to bring more light to the incident because in such a case statement of the victim made before authentic authority such as Doctor or Police could have been bring into record. In absence of any such statement of victim with regard to the incident and inconsistency in the evidence of material prosecution witnesses a reasonable doubt arises that the deceased was subjected to torture by the accused in demand of dowry.

23. On cumulative assessment of the evidence on record it appears that prosecution has failed to prove beyond all reasonable doubt that soon after marriage the accused started to torture the deceased in demand of dowry.

24. I have gone through the relevant provision of law relating to dowry death as enunciated in Section 304-B of the IPC which is read as under:

304-B. Dowry Death-

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation- For the purposes of this sub-Section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

25. With regard to the essential ingredients of Section 304-B IPC, the Hon'ble Supreme Court in the decision reported in **Kaliyaperumal and another Vs State of Tamil Nadu (2004) 9 SCC 157**, stated that "*.....In order to attract application of Section 304-B IPC, the essential ingredients are as follows:*

- (i) *The death of a woman should be caused by burn or bodily injury or otherwise than under a normal circumstance.*
- (ii) *Such a death should have occurred within seven years of her marriage.*
- (iii) *She must have been subjected to cruelty or harassment by her husband or any relative of her husband.*
- (iv) *Such cruelty or harassment should be for or in connection with demand for dowry.*

(v) *Such cruelty or harassment is shown to have been meted out to the women soon before her death."*

26. In the said Judgment the Hon'ble Supreme Court has also stated that *"Section 113-B of the Evidence Act" is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:*

*"113-B, Presumption as to dowry death- when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.*

*Explanation – For the purposes of this Section, "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."*

*The necessity for insertion of the two provisions has been amply analysed by the law commission of India in its Twenty – first Report dated 10-08-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a*

*presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:*

- (1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)*
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.*
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.*
- (4) Such cruelty or harassment was soon before her death."*

27. In view of the position of law as discussed in the above mentioned judgment of Hon'ble Supreme Court it appears that presumption under Section 113-B Evidence Act is relatable to the fact that the prosecution must first spell out the ingredients of the offence under Section 304 (B) and then only can a presumption arise. In the present case it is evident from the medical as well ocular evidence that the death of the victim was an unnatural one and had taken place within 7 years of the marriage but, there is no cogent and reliable evidence of the prosecution witnesses that soon before the death the deceased was subjected to torture by the accused in demand of dowry. Hence, the ingredients of cruelty or harassment in connection with demand for dowry and that such cruelty or harassment is meted out to the victim soon before her death have not been proved. Thus when the prosecution failed to establish all the ingredients of Section 304-B IPC, presumption under Section 113 B of Evidence Act about causing dowry death cannot be raised. The prosecution has also failed to prove that the accused abetted the commission of the suicide by Munmi Saharia and thereby committed an offence punishable U/S 306 I.P.C.

28. In view of above discussions it appears that the prosecution has failed to prove the charges leveled against the accused persons beyond all reasonable doubt.
29. Situated thus the points for determination are decided in the negative and against the prosecution.

**ORDER**

30. In the result the accused Munindra Mazumdar is found not guilty under Section 306/304(B) IPC, and acquitted of charges under Section 306/304(B) IPC, set with liberty forthwith.
31. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.
32. Send back the original case record of GR Case No. 1295/2014 to the court of learned Chief Judicial Magistrate, Udalguri, alongwith a copy of the Judgment, forthwith.
33. Judgment is signed, delivered and pronounced in the open court today the 19<sup>th</sup> day of March, 2020.

**Dictated and Corrected**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri.**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri.**

**IN THE COURT OF ADDL. SESSIONS JUDGE:.....UDALGURI.**  
**SESSIONS CASE NO. 06(U)/2015**  
**APPENDIX**

(A) Prosecution Exhibits:

- Ext.1 : FIR.  
Ext.2 : Zimmanama.  
Ext.3 : Post Mortem.  
Ext.4 : Sketch map.

(B) Materials Exhibits : Nil

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

- PW1- Tilak Saharia.  
PW2- Ram Chauhan.  
PW3- Mrigen Das.  
PW4- Ram Krishna Das.  
PW5- Rangila Das.  
PW6- Sashadhar Das.  
PW7- Janki Das.  
PW8- Ratneswari Saharia.  
PW9- Moon Kataki.  
PW10- Dr. Arpan Mazumdar.  
PW11- S.I. Giridhar Sarmah.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)  
Addl. Sessions Judge,  
Udalguri.