

IN THE COURT OF THE SESSIONS JUDGE :: :: :: TINSUKIA

District: Tinsukia
Present: **Sri P.J. Saikia,**
Sessions Judge,
Tinsukia

Sessions Case No. 67 (T) of 2018

U/s 302 of the I.P.C.

The State of Assam Complainant.

-Versus -

Sri Amiya Bora

S/o- Sri Atul Bora @ Uma

R/o- Tingrai Asomiya Gaon

P.S- Digboi

District- Tinsukia, Assam Accused.

Appearance:

Sri A.K. Choubey,

Public Prosecutor For the State

Brijesh Mishra,

Advocate For the accused.

Date of Argument: 18/07/2019

Date of Judgment: 18/07/2019

J U D G M E N T

1. The case against the accused Amiya Bora was committed for trial by the Ld. Additional Chief Judicial Magistrate, Tinsukia on 21/06/2018.

PROSECUTION CASE

2. Anita Neog Baruah, the complainant of this case was a resident of Topoban at Rupai Siding. She had some other houses near her house, which were given on rent. The accused Amiya Bora and his wife Mina Thapa Bora were also staying in one of this houses as tenant under the complainant. On 26/04/2014, at about 9 am, Anita Neog Baruah had heard that Mina Thapa was shouting for help. Anita Neog Baruah immediately went to the house of Mina Thapa Bora and saw that she was engulfed by flames. Anita Neog Baruah has stated that the accused doused the fire by covering her with a quilt. Thereafter, Mina Thapa was immediately taken to the Doomdooma Civil Hospital in an Ambulance. Thereafter, she was referred to AMCH, Dibrugarh. On the next day, at about 1 pm, Mina Thapa had succumbed to her injuries.

3. Narrating the aforesaid facts, Anita Neog Baruah had lodged an ejahar before police.

POINT FOR DETERMINATION

4. The only point for determination in this trial, is as to whether the accused Amiya Bora had committed murder by causing death of Mina Thapa Bora?

DECISION AND REASONS THEREOF

5. In order to prove the case against the accused, the prosecution side has examined as many as seven witnesses. The defence plea is total denial. I have carefully gone through the evidence adduced by the prosecution side.

6. Out of seven witnesses, there are two witness namely Dil Bahadur Thapa and Indra Bahadur Thapa. I shall take up their evidences first. Dil Bahadur Thapa is the father of the deceased and Indra Bahadur Thapa is the brother in law of Dil Bahadur Thapa.

7. The witness Dil Bahadur Thapa has stated in his evidence that his daughter had eloped with the accused and since then he had stopped seeing his daughter. Dil Bahadur Thapa has stated that the complainant Anita Neog Baruah had informed him that his daughter was hospitalized at Dibrugarh. Therefore, he had gone to AMCH, Dibrugarh to see his daughter. The witness has stated that he had seen serious burn injuries over the body of her daughter. Dil Bahadur Thapa has stated that he had asked his daughter as to how she had sustained burn injuries and to that effect, his daughter reportedly told him that the accused had caused burn injuries to her.

8. The witness Indra Bahadur Thapa has stated in a similar manner like Dil Bahadur Thapa. He has stated in his evidence that when he had gone to AMCH, Dibrugarh to see Mina Thapa, she told him that the accused had burnt her.

9. Now, I shall take up the evidence of Anita Neog Baruah. She has stated in her evidence that she and the accused both doused the fire that had engulfed Mina Thapa. Anita Neog

Baruah has also stated that the accused did not accompany the deceased Mina Thapa to the hospital in the Ambulance, as because with the arrival of police, the accused Amiya Bora had run away. Anita Neog Baruah has stated that she was in the AMCH, Dibrugarh with Mina Thapa and in her presence, Mina Thapa told her father that her husband had caused burn injuries to her.

10. The witness Chiranjib Baruah is the son of Anita Neog Baruah. He has stated in his evidence that on the day of occurrence, he had heard the cries of Mina Thapa and accordingly went there along with his mother. Chiranjib Baruah has stated that they had immediately covered the Mina Thapa with a quilt and in that way, the fire was doused. Chiranjib Baruah has stated that one police man resided near that house and he had informed police about the occurrence. Chiranjib Baruah has stated that his mother Anita Neog Baruah had accompanied Mina Thapa to AMCH, Dibrugarh. Chiranjib Baruah has further disclosed that the accused Amiya Bora had married twice and on that issue, he had quarreled with his wife Mina Thapa.

11. The third prosecution witness Pondit Moran, a Police Officer. He has stated in his evidence that on 26/04/2014, he was attached to Borabari Outpost under Dibrugarh P.S. According to Pondit Moran, when Mina Thapa died at AMCH, Dibrugarh, the I/C of Borabari Outpost Sri Prasenjit Das had made a G.D. Entry No. 594 dated 26/04/2014. He has stated that he was directed by the I.C. to conduct the inquest upon the dead body of the deceased. Accordingly, he had conducted the inquest.

12. The fourth prosecution witness is Budheswar Baruah. He is the father in law of Anita Neog Baruah. He is a hearsay witness, because at the time of occurrence, he was not home.

13. The fifth prosecution witness is Chitrlekha Borah. She is the younger sister of the accused Amiya Bora. She has stated in her evidence that prior to her marriage, police had come to her house in search of her brother and from police she came to know that the wife of her elder brother had committed suicide. Chitrlekha Borah has stated that she had never seen the wife of her elder brother.

14. On scrupulous perusal of the prosecution evidence, I find that Anita Neog Baruah, Dil Bahadur Thapa and Indra Bahadur Thapa have supported the fact that Mina Thapa had disclosed before them that it was the accused, who had caused burn injuries to her.

15. In **Haikrujam Chaoba Singh v. State of Manipur** reported in 1999 AIR SCW p.4181 the Hon,ble Apex court held -----

para 3 : Any oral dying declaration, no doubt, can form the basis of conviction, though Court seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability.

16. In the case in hand, the prosecution side could not examine Dr. P. K. Gogoi, who had conducted the post mortem

examination upon the dead body of the deceased. The reason is that Dr. P. K. Gogoi was no more working in the Department of Forensic Medicine of AMCH, Dibrugarh. From the post mortem report available in the case record, it is seen that 90% of the body of the deceased sustained burn injuries. So, at this stage, whether the deceased was in a fit mental state to make a true dying declaration was doubtful. Under the circumstances, I have reasons to discard the dying declaration. In my considered opinion, the benefit of doubt must be given to the accused. Under the circumstances, I hereby hold that the prosecution has failed to prove the offence against the accused beyond all reasonable doubts.

ORDER

17. That being the position, the accused Amiya Bora is found not guilty of committing murder of Mina Thapa and accordingly the accused is acquitted from this case on benefit of doubt.

Given under my hand and seal of this Court on this 18th day of July, 2019.

(P.J. Saikia)

Sessions Judge

Tinsukia

Dictated & corrected by me.

Sessions Judge

Tinsukia

A P P E N D I X

PROSECUTION WITNESSES

1. PW1 - Smti Anita Neog Baruah
2. PW2 - Sri Chiranjib Baruah
3. PW3 - Smti Pondit Moran, ASI
4. PW4 - Sri Budheswar Baruah
5. PW5 - Smti Chitralkha Borah
6. PW6 - Sri Dil Bahadur Thapa
7. PW7 - Sri Indra Bahadur Thapa

PROSECUTION EXHIBITS

1. Ext.1- Inquest report

DEFENCE WITNESS

None.

Sessions Judge
Tinsukia