

IN THE COURT OF THE ADDL. SESSIONS JUDGE-2(FTC), TINSUKIA.

Sessions case No. 25(T)2021

U/S. 305 I.P.C.

Present : **Sri B. Sutradhar, (AJS),**
Addl. Sessions Judge-2(FTC),
Tinsukia.

The State of Assam

-Vs-

Smt. Moloya @ Momi Chabukdhara ---Accused

Appeared :

For the State : Sri R.C Das, Ld. Addl. A.P.P,

For the accused: Smt. S. Sharma..... DLSA Advocate.

Date of evidence : 23.09.21, 06.10.21, 30.10.21,
02.02.22, 14.03.22.

Date of argument : 29.04.2022.

Date of judgment : **06.05.2022**

J U D G M E N T

1. The brief case of the Prosecution is that on 15.02.2020 the informant, Sri Jiba Kanta Chabukdhara lodged an ejahar before the O.C, Philobari P.S alleging that he got information from his sister-in-law, Smt. Momi Konwar on that day at 9 AM that his niece Smt. Dimpi Chabukdhara committed suicide. That after death of mother of Dimpi, his brother-in-law contracted 2nd marriage with Smt. Momi Konwar and since then the accused started physical and mental torture upon Dimpi. On getting sudden information of committal suicide, they suspect that a girl of 14 years old cannot commit suicide and the accused Smt. Momi Konwar killed her and tried to save her saying that she committed suicide. Hence, this case.
2. Receiving the FIR, the Philobari P.S. registered a case and investigated the matter and on completion of the investigation, charge sheet was submitted against the accused and forwarded her to face the trial.
3. On appearance before the Ld. Sub-Divisional Judicial Magistrate, (Sadar), Tinsukia, copies were furnished to the accused person U/S 207 Cr.P.C and committed the case to the Court of Sessions for trial. Accordingly the GR case no. 371/2020 was registered as

Sessions case no. 25(T)/2021 and transferred to this court for trial.

4. Upon receiving the record and appearance of the accused in this court and upon hearing both sides and considering the materials on record and after hearing both sides, charge U/S. 305 IPC was framed against the accused , particulars of which were read over and explained to the accused, to which she pleaded not guilty and claimed to be tried.

5. During trial, prosecution examined eight(8) witnesses and declined to adduce any other evidence. The accused was examined u/s 313 Cr.P.C and her plea is of total denial. I have heard argument put forth by the Id. Counsel for both the sides as well as gone through the entire materials available on record.

6. **Point for determination :-**

(i) Whether the accused on 15.02.2020 at Krishnapur Gaon, Philobari, Tinsukia have abetted her step daughter Smt. Dimpi @ Maina Chabukdhar(14 years), a person below the age of 18 years to commit suicide, and who accordingly committed suicide and thereby committed an offence punishable **U/s. 305 IPC?**

DISCUSSION, DECISION AND REASONS THEREOF:

7. PW.1, Sri Jiba Kanta Chabukdhara has deposed that she is the informant of this case. Accused is the 2nd wife of his younger brother. Dimpi Chabukdhara is his niece, the step daughter of the accused. The incident took place on 15.02.2020. At that time he was not present in his house. His wife, Smt. Junu Prova Chabukdhara informed him over phone that something happened with his niece. Receiving the message he rushed to the place of occurrence and found that his niece Dimpti was lying unconscious and blood was oozing from her nose. Then they immediately took her to Philobari Civil Hospital. His brother, Sri Rajani Chabukdhara died one month prior to the incident. The deceased used to tell them that her step mother was not providing her foods and necessary article and sometime subjected her with physical assault. The accused was not properly behaving with her and also did not like her. They told the deceased that she can stay in their house for few days, but she did not come. They suspected that the accused/step mother of the deceased killed her. Then he lodged an ejhar at the P.S. Ext. 1 is the ejahar, Ext. 1(1) is his signature.
8. In Cross-examination the PW.1 has stated that the distance between his house and the house

of the accused is about 20-25 meters. The house of the accused is surrounded by one Mina and one Upadhayay. He has not mentioned before police that the deceased used to tell them that her step mother was not providing her foods and necessary article and sometime subjected her with physical assault. The accused was not properly behaving with her and also did not like her. The step mother of the deceased married with his brother more than 10 years back and they were living together since then with the deceased and another son. Prior to the incident he met with the deceased 3/4 days back. He lodged the FIR on the basis of his suspicion. He has not seen the incident, so he could not say exactly that the accused killed the deceased.

9. He denies the suggestion that his suspicion is baseless.
10. PW.2, Smt. Sandhya Neog has deposed that she knows the informant, accused and also the deceased. They are her neighbours. Incident took place in the month of February, 2020. On the day of the incident, she went to a meeting by crossing the house of deceased, Dimpi. On hearing hue and cry, she entered the house of the deceased and saw that the deceased was lying unconscious and her step mother was massaging her feet. She also

saw that blood was oozing from her nose. When she asked about the incident, the step mother(accused) replied that she does not know anything and became nervous. The aunty of the deceased, namely, Smt. Junuprova Chabukdhora was present at the place of occurrence when she went to spot. She told that accused had killed the deceased. Hearing hue and cry and gathering of the people, the accused fled away alongwith her son. Thereafter the victim was shifted to hospital. She puts her signature on Ext. 2, Inquest report, where Ext. 2(1) is her signature.

11. In Cross-examination the PW.2 has stated that the house of one Debojit Chabukdhora (brother in law of the accused) is situated nearby the house of accused. In the house of Debojit Chabukdhora, his mother and wife alongwith his son resides. She has not mentioned before police that when she asked about the incident, the step mother(accused) replied that she does not know anything and became nervous. The aunty of the deceased, namely, Smt. Junuprova Chabukdhora was present at the place of occurrence when she went to spot. She told that accused had killed the deceased. Hearing hue and cry and gathering of the people, the accused fled away alongwith her son. She has no personal knowledge about the incident. So, she could not say

exactly how the deceased died.

12. PW.3, Smt. Junuprova Chabukdhora has deposed that the Informant is her husband. Accused is her sister-in-law. Deceased, Dimpi Chabukdhora is her niece. The incident took place on 15.02.20 at about 8:30 AM. On the day of incident, the deceased Dimpi came riding a bicycle and told her that her brother raised quarrel with her and she was assaulted and her step mother told that she will leave the house keeping her alone. Thereafter, the deceased left his house. After sometime, the brother of the deceased went to her house and informed her that the deceased Dimpi became senseless and lying inside the house. She rushed to the spot. She saw that the girl was lying unconscious and she saw a rope was hanging from the ceiling of the house. But there was no any rope on her neck. She immediately shifted the girl to the nearby hospital and doctor declared her dead.

13. There was bleeding from the nose and she also saw some blood on her knee. She asked the accused what had happened but she replied that she does not know anything. The domestic articles were lying hither and thither. She also saw one dao, two lathies and one table cloth. Police seized the said articles and taken her signature. Today she has

seen all the articles in the court. They suspect that the girl had been killed by the accused. M. Ext. 1 is one Dao, M. Ext. 2 is Bamboo stick, M. Ext. 3, is one torn cloth. Ext. 3 is the Seizure-list, Ext. 3(1) is her signature. Ext. 2 is the Inquest report, Ext. 2(2) is her signature.

14. In Cross-examination the PW.3 has stated that her house is situated at a distance of 100 meter from the place of occurrence. She has not personally seen any assault etc. caused by accused. So, she cannot say how the incident took place. Before she reached the spot, some people were already gathering.

15. She denies the suggestion that she has not stated before police that on the day of incident, the deceased Dimpri came riding a bicycle and told her that her brother raised quarrel with her and she was assaulted and her step mother told that she will leave the house keeping her alone. Thereafter, the deceased left her house. After sometime, the brother of the deceased went to her house and informed her that the deceased Dimpri became senseless and lying inside the house. She rushed to the spot. She saw that the girl was lying unconscious and she saw a rope was hanging from the ceiling of the house. But there was no any rope on her neck. She immediately shifted the girl to

the nearby hospital and doctor declared her dead. There was bleeding from the nose and she also saw some blood on her knee. She asked the accused what had happened but she replied that she does not know anything. The seized article can be found in every village houses.

16. She denies the suggestion that her suspicion regarding killing of the child by the accused is baseless.

17. PW.4 Smt. Putul Chabukdhora has deposed that the Informant is her step son. Accused is her daughter-in-law. Deceased, Dimpi Chabukdhora is her grand daughter. She could not recollect the date of incident. Hearing hue and cry, she rushed to the place of occurrence and saw the deceased in the lap of her step mother and she immediately called her aunty. She became unconscious and could not say what happened later on. Later, she came to know that the girl already died. Ext. 3 is the seizure-list, Ext. 3(2) is her signature.

18. In Cross-examination the PW.4 has stated that she does not know how the deceased died.

19. PW.5, Smt. Nirupoma Chabukdhora has deposed that she knows the informant, who is her brother in law. Deceased is her niece. The accused is

her sister in law. The incident took place more than one year back. One day her niece came to their home to have breakfast and returned home. Thereafter they heard hue and cry from the house of the accused and also saw people rushing towards the house of the accused. She saw the victim was lying dead on the floor with bleeding from her nose. She alongwith her sister-in-law took the victim to the bed but the accused fled away from the place of occurrence without saying anything. The deceased spent her night in her home and they provided her food all the time as she was not provided food by her step mother and she also suffered torture from the accused/step mother. Her elder brother-in-law informed the local police about the incident and police visited the place of occurrence. Police seize one bamboo, one dao and a torn cloth from the place of occurrence in her presence. M Ext. 1 is the Dao, M. Ext. 2 is bamboo stick, M. Ext. 3 is the torn cloth. Ext. 3 is the Seizure-list, Ext. 3(3) is her signature. Police took the dead body to the hospital.

20. In cross-examination the PW.5 has stated that when she reached the P.O. the villagers were already gathering there. She denies the suggestion that she has not stated before police that she alongwith her sister-in-law took the victim to the bed but the accused fled away from place of

occurrence without saying anything.

21. She denies the suggestion that she has not stated before police that the deceased spent her night in her home and they provided her food all the time as she was not provided food by her step mother and she also suffered torture from the accused/step mother. The M. Exhibits she had seen today are such common articles which are available in the houses of every persons in the village and even in her house. She denies the suggestion that she has deposed falsely.

22. PW.6, Sri Prafulla Chabukdhora has deposed that he knows the informant, who is his brother, Deceased is his niece. The accused is his sister-in-law. The incident took place more than one year back in morning time. At the time of incident, he went to rice mill. After return, he came to know from his son, Kaushik Chabukdhora that his niece was killed by the accused. Already, the victim was referred to hospital. He went to hospital and came to know that the victim was declared dead. The accused was torturing the victim. It was told that the accused killed the victim. Ext, 2 is the Inquest report and Ext. 2(3) is his signature on the Inquest report.

23. In Cross-examination the PW.5 has stated that he cannot say how the incident took place and how the victim died. He denies the suggestion that he has not stated before police that his son, Kaushik Chabukdhora told him that his niece was killed by the accused. He denies the suggestion that he has deposed falsely against the accused.
24. P.W.7, Dr. Nirod Kumar Borah has deposed that on 15.02.2020, he was working as Sr. Medical & Health Officer at Tinsukia Civil Hospital. On that day he performed Post mortem examination over the dead body of Dimpi Chabukdhora, 15 years, female in connection with Philobari P.S case 14/20 U/s. 302 IPC. The dead body was brought and identified by UBC, 330, Sri Manoj Moran and one Jiba Kanta Chabukdhora(relative of the deceased).
25. On examination of the dead body it was found to be a female body of average built, brown complexion with long hair, wearing a navy blue sweater and orange colour top and blue white pyjama, a red panty and a blood stained sanitary pad on vagina. Blood was found oozing from the vagina and stain of blood was present on both feet and pyjama. Rigor-mortis was present.

A ligature mark was present on front of the neck above thyroid cartilage. Size of the ligature

mark was 2 cm X 7 cm. Knot mark was present on the left side of the occiput. On examination of the ligature mark, the skin is found to be perchnantized. The cut section is pale and glistening. No other injury was found on the body.

On dissection of the Thorax the larynx and trachea were found to be congested. Both the lungs were congested. On dissection of the abdomen, the uterus was found to be of size - 4.5cm X 5 cm X 2.5 cm. On opening of the uterine cavity, the signs of oozing of blood from the wall with shading of superficial layers of mucous membrane was seen which is the normal finding of menstruation. On examination of the external genitalia, vagina is normal, Hymen is intact, vaginal canal is healthy and contains blood stained mucosa. Ovaries were found healthy. All other findings were normal.

Opinion :

In his opinion the death was due to asphyxia as a result of anti mortem hanging. Time since death was 6 to 12 hours. Ext. 4 is the Post Mortem report, Ext. 4(1) to Ext. is his signature.

26. In Cross-examination the PW.7 has stated that Except ligature mark present in front of the neck no other injuries were detected on the dead

body.

27. P.W.8, Shri Bikram Jeet Pegu has deposed that on 15/02/2020, he was working as Attach Officer at Phillobari P.S. On that day, the O.C. Phillobari P.S. after receiving the FIR lodged by Jibo Kt. Chabukdhara registered a case being Phillobari P.S. case no. 14/2020, u/s. 302 of IPC and entrusted the said case to him for investigation. Ext. 1 is the said FIR and Ext. 1(2) is the signature with endorsement of then O.C. Puheswar Das, which he knows. Accordingly, he took up the charge of investigation. The contents of the FIR is that the complainant stated that his niece Dimpi Chabukdhara, aged about 14 years was beaten by her step-mother to death and tried to convert the same to a suicidal case. Accordingly, he recorded the statement of the complainant at the P.S. Thereafter, he went to the P.O. with the complainant, which was the house of the accused at Krishnapur Gaon. There, he found the dead body of the deceased inside a room of the house. There were a gathering of people including Smt. Junu Prabha Chabukdhara, Smt. Sandhya Neog, Smt Putul Chabukdhara, Smt. Nirupama Chabukdhara, Sri Prafulla Chabukdhara and he recorded their statements. At the P.O. he found one "copi dao" (one dao with bamboo handle) length about 17 inch, one kutcha bamboo length about 2 ft. 7 inch, one piece of white cloth (chadar) with blood stains and he seized the same in presence of the witnesses vide Ext. 3 and Ext. 3(4) is

his signature. All the three materials were seized and marked as M.R. No. 02/2020. The said M.R. No. 02/2020 are appearing on all three seized articles. The seized materials are shown to the witness, who identified the same. He recorded the statements of those seizure witnesses. He prepared a sketch map of the place of occurrence vide Ext. 5 and Ext. 5(1) is his signature. He found the accused at the P.O., who was tied by the public and took her away to the P.S. and arrested her. The dead body was inspected at the P.O. in presence of Circle Officer, Doomdooma. Ext. 2 inquest report of the deceased. Thereafter, the dead body was sent for postmortem examination. He recorded the statement of the accused at the P.S., who confessed her guilt and formally arrested her.

28. On 16/02/2020, he forwarded the accused to the Court vide Ext. 6 and Ext. 6(1) is his signature. On 04/07/2020, he collected the postmortem report of the deceased. At the end, on the basis of the documents and statements, he filed the charge sheet against the accused u/s. 304/305 of IPC vide Ext. 7 and Ext. 7(1) is his signature.

29. In Cross-examination the PW.8 has stated that he visited the P.O. on 15/02/2020 at about 10.10 am. The witnesses Smt. Junu Prabha Chabukdhara, Smt. Sandhya Neog, Smt Putul

Chabukdhara, Smt. Nirupama Chabukdhara, Jibo Kt. Chabukdhara and Sri Prafulla Chabukdhara are the close relatives of the deceased. In Ext. 5, he has not mentioned about the number of rooms, doors, windows of the house of the accused, i.e the P.O. He has not specifically mentioned, in which room of the house, the occurrence took place. Though he has mentioned in his sketch map the house of Shri Mohim Borah and the house of Smti. Bina Borah as adjacent houses of the P.O., but they were not found on that day to record their statements. So, he failed to record their statements. Subsequently, he never tried to record their statements. He has not mentioned the specific measurement of the iron part and bamboo handle of the alleged dao in his seizure list. He has not sent the said dao for FSL examination; nor he had sent the blood stained clothes for FSL examination to prove as to whether the blood stains was of human or not.

30. PW5 Nirupama Chabukdhara did not state to him that the accused fled away from the P.O. and that the deceased spent her night in her home, being she was not provided foods by the accused mother.

31. He denies the suggestion that the accused did not confess his guilt before him and as such he has not made any prayer before the Court for recording the confessional statement of the accused.

32. It is a fact that he visited the P.O. for investigation only on 15/02/2020. He denies the suggestion that without proper investigation, he has filed the charge sheet against the accused.

33. Now on going through the above evidence on record, it appears that Prosecution side has examined eight witnesses including the M.O & I.O. The PW.1 is the informant of this case who stated that at that time he was not at his house and his wife informed him over telephone that something happened with his niece. He rushed to the spot and saw that his niece Dimpti was lying unconscious and blood was oozing from her nose. He also stated that the deceased used to tell them that her step mother was not providing her foods and necessary article and sometime subjected her with physical assault. They suspected that the accused/step mother of the deceased killed her. But in Cross-examination he clearly stated that step mother of the deceased married with his brother more than 10 years back and they were living together. He lodged the case on the basis of suspicion. It is clear from the evidence PW.1 that the case was lodged on suspicion and the accused is the step mother of the deceased.

34. PW.2, stated that on hearing hue and cry, she entered the house of the deceased and saw that the deceased was lying unconscious and her step mother was massaging her feet. She saw blood was oozing from her nose and accused replied that she does not know anything. Smt. Junuprova Chabukdhora was present at the spot and told that accused had killed the deceased. In Cross-examination the said witness stated that she has no personal knowledge about the incident and could not say exactly how the deceased died. Her evidence also failed to entangle the involvement of the accused with the case.

35. PW.3 stated that on the day of incident, deceased Dimpi told her that her brother raised quarrel and she was assaulted and her step mother told that she will leave the house keeping her alone. Thereafter, the brother of the deceased informed that deceased Dimpi became senseless and lying inside the house. She saw that the girl was lying unconscious and a rope was hanging from the ceiling. She immediately shifted the girl to nearby hospital and doctor declared her dead. There was bleeding from nose and knee. Accused replied that she does not know anything. One dao, two lathies and one table cloth was seen by her. In Cross-examination she stated that she cannot say

how the incident took place and before she reached the spot, some people were already gathering.

36. PW.4 stated that she rushed to the spot and saw the deceased in the lap of her step mother. She called her aunty and became senseless. She came to know that the girl already died. In Cross-examination she stated that she does not know how the deceased died.

37. PW.5 stated that she heard hue and cry from the house of the accused and she went to the spot. The victim was lying dead on the floor with bleeding from nose. Accused fled away from the place of occurrence without saying anything. All the time the deceased was not provided food by her step mother and she suffered tortured from the accused mother. In cross-examination she clearly stated that when she reached the place of occurrence, the villagers were already gathering there.

38. PW.6 stated that at the time of incident, he went to rice mill. After return, he came to know from his son that his niece was killed by the accused. The victim was referred to hospital and she was declared dead. The accused was torturing the victim and it was told that the accused killed the victim. In Cross-examination he stated that he

cannot say how the incident took place and how the victim died.

39. PW.7 and PW.8 are Medical and Investigating Officers of the case. PW.8, the Investigating Officer in his cross-examination clearly stated that he has not made any prayer before the Court for recording the confessional statement of the accused.

40. It appears from the evidence of PW.5 & PW.6 that though they stated that the accused was not providing food etc. and she was torturing the victim but mere this single line of evidence does not leads to the conclusion that the alleged death of the victim is by any conspiracy or direct commission of the offence by the accused.

41. On careful scrutiny of the entire evidence on record, it appears that the Prosecution has adduced evidence of eight witnesses but the entire evidence has miserably failed to depict a clear picture that the death of the victim is abetted or instigated by the accused. There is no single line of evidence that the said accused is involved in the incident of death of victim. Mere suspicion raised by the witnesses cannot be held sufficient evidence to convict a person in a offence of like nature and in that situation this Court have no

alternative but to hold that the Prosecution has failed to prove the case against the accused. Hence, I am of the opinion that the Prosecution has failed to prove the material ingredients of Section 305 of IPC against the accused, Smt. Molya @ Smt. Momi Chabukdhara. Accordingly, the accused is acquitted from the charge U/s. 305 of IPC and set her at liberty forthwith.

42. The accused is in custody, so, she be released forthwith on executing a PR Bond of Rs. 2,000/- as per Section 437(A) of Cr.P.C.

43. The seized article be destroyed in due course.

44. The case is disposed of on contest.

Given under my hand and seal of this Court on the 6th day of May, 2022.

Dictated and corrected by me.

(B. Sutradhar)
Addl. Sessions Judge-2(FTC),
Tinsukia.

(B. Sutradhar)
Addl. Sessions Judge-2(FTC),
Tinsukia.

APPENDIX

PROSECUTION WITNESSES :

PW.1, Sri Jiba Kanta Chabukdhara,
P.W.2, Smt. Sandhya Neog,
P.W.3, Smt. Junuprova Chabukdhora,
P.W.4, Smt. Putul Chabukdhora,
P.W.5, Smt. Nirupama Chabukdhara,
PW.6, Sri Prafulla Chabukdhora,
PW.7, Dr. Nirod Kumar Borah,
PW.8, Sri Bikram Jeet Pegu.

PROSECUTION EXHIBITS

Ext. 1 is the ejahar,
Ext. 2 is the Inquest Report,
Ext. 3 is the seizure list,
Ext. 4 is the Post Mortem Report,
P. Ext. 5 is the sketch map,
P. Ext. 6 is the Accused Forwarding,
P. Ext. 7 is the charge-sheet.

MATERIAL EXHIBITS

M Ext. 1 is the Dao,
M. Ext. 2 is bamboo stick,
M. Ext. 3 is the torn cloth.

(B. Sutradhar)
Addl. Sess. Judge- FTC-2,
Tinsukia.