

GAHC010009092012



**THE GAUHATI HIGH COURT AT GUWAHATI  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)  
PRINCIPAL SEAT AT GUWAHATI**

**CRIMINAL APPEAL NO. 213 of 2012**

Sri Raben Kalita,  
Son of Late Gurcharan Kalita,  
Resident of Chalantapara,  
P.S.- Jogighopa,  
District- Bongaigaon, Assam.

.....Appellant.

-Versus-

State of Assam,  
Represented by its Public Prosecutor.

.....Respondent.

Advocates for the appellant: Mr N Mahajan

Advocate for the respondent: Ms S Jahan, Addl. P.P.

**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Date of hearing : 18.09.2024.

Date of judgment : 18.09.2024

**JUDGEMENT AND ORDER (ORAL)**

This appeal is directed against the Judgment and order dated 11.09.2012, passed by the learned Additional Sessions Judge (FTC) Bongaigaon, in connection with Sessions Case No. 87 (J) of 2009, convicting Sri Raben Kalita under Section 304-B of the Indian Penal Code, 1860 (IPC, for short), and sentencing him to undergo Rigorous Imprisonment for 7 years.

2. Sri Raben Kalita will hereinafter be referred to as the appellant. Sri Bhubaneswar Mazumdar (hereinafter referred to as the informant), lodged the FIR on 16.12.2003, that the victim's (also referred to as Jonali or deceased) marriage was solemnized with the appellant in the Assamese month of Ahar. From the threshold of her marriage, the victim was subjected to cruelty as she failed to meet the illegal demand of dowry of the appellant

and his family members, including the appellant's elder brother Mahendra Kalita, uncle Jatin Mahanta and his wife Bina Mahanta. The victim's mother-in-law Kamala Kalita assaulted the victim and threatened to pour acid over the victim. The victim's uncle (Peha) had to pay Rs. 10,000/- as the victim was sent to him to fetch the money by the appellant and his family members. On the night of 15.12.2003, the appellant and his family members set ablaze the victim. An FIR relating to this incident was lodged by the informant, which was registered as Jogighopa PS Case No. 88 of 2003, under Section 304-B IPC. The Investigating Officer (IO, in short) embarked upon the investigation. He recorded the statements of the witnesses, prepared a sketch map and forwarded the victim's body for autopsy. On completion of investigation, the IO submitted charge sheet against the appellant, his uncle Jatin Mahanta, his mother Smt Kamala Kalita, and his sister Smt Minati Mahanta. On appearance of all the accused, copies were furnished and this case was committed to the learned Sessions Judge, which was finally transferred to the Court of the learned Additional Sessions Judge (FTC), for disposal. At the commencement of trial, a formal charge under Section 304-B/34 IPC was framed and read over and explained to the accused, who abjured their guilt and claimed innocence.

5. To substantiate its stance, the prosecution adduced the evidence of 10 witnesses and the defence cross-examined the witnesses to refute the charges.
6. On the incriminating evidence, projected by the prosecution witnesses, several questions were asked to the appellants and the tenor of the answers of the appellant and the other accused to the questions under Section 313 of the Code of Criminal Procedure, 1973, (CrPC, for short), depicts a plea of total denial. After assessing and scrutinizing the evidence, the appellant Raben Kalita was held guilty of offence under Section 304-B IPC, whereas the other accused were acquitted from the charges under Section 304-B IPC and set at liberty.

### **Submissions for the Appellant**

7. It is submitted on behalf of the appellant that there are no specific allegations against the appellant in the FIR. No domestic violence or strained relationship between the husband and wife has surfaced through the evidence of the witnesses.
8. On the contrary, there are allegations against the appellant's mother and brother-in-law, who have been acquitted from the charges under Section

304-B IPC. The evidence of the witness, PW-2 exonerates the appellant. The oral dying declaration of the victim made to the PW-2, reveals that the victim caught fire. PW-2 and PW-5 reveals that the victim stated before them that she caught fire from the burning candle in her bedroom.

9. It is further submitted that PW-1 has stated through his FIR and through his evidence-in-chief that the victim had suffered acid burns, whereas, on the contrary, the other witnesses have stated that the victim suffered burns from candle flame.

10. It is further submitted that PW-1 has admitted in his cross-examination that he is not an eyewitness. The neighbours who came to the rescue of the victim have categorically stated that the victim sustained burn injuries and not acid burns.

11. Learned counsel for the appellant has relied on the decision of Hon'ble Supreme Court in ***Nallam Veera Stayanandam and Others –Vs- Public Prosecutor, High Court of A.P.;*** reported in **(2004) 10 SCC 769.**

12. Learned counsel for the appellant has also relied on the decision of Hon'ble the Supreme Court in ***Charan Singh @ Charanjit Singh –Vs- The State of Uttarakhand,*** in Criminal Appeal No. 447 of 2012 (order dated

20<sup>th</sup> April, 2023) and the decision of this Court in **Budhua Mura –Vs- State of Assam;** reported in **2002 (2) GLT 103.**

### **Arguments by the prosecution**

13. Learned Additional Public Prosecutor has relied on the decision of Hon'ble the Supreme Court in **Kailash –vs- State of MP;** reported in **(2006) 12 SCC 667**, wherein it has been observed that-

*“10. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:*

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;*
- (b) such death should have occurred within 7 years of her marriage;*
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;*
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and*
- (e) to such cruelty or harassment the deceased should have been subjected soon before her death.”*

14. The learned Additional Public Prosecutor has further submitted that

although death was shown as accidental, yet in cases where domestic violence is prevalent in the household, accidental death cannot be dismissed as a condition of dowry death.

15. The learned Additional Public Prosecutor has then relied on the decision of Hon'ble the Supreme Court in ***Nallam Veera Stayanandam's case (supra)***, wherein it has been observed that even a harassed wife can get accidentally burned. The remaining part of the arguments submitted by the learned counsel for the appellant and the learned Additional Public Prosecutor will be discussed at the appropriate stage.

16. Now, the question that falls for consideration is that whether the learned trial Court has erred in convicting the appellant under Section 304-B IPC.

### **Discussions and Decision**

17. To decide this case in its proper perspective, the evidence is re-appreciated.

18. The informant, Sri Bhubaneswar Mazumdar, has deposed as PW-1 that

the marriage between the appellant and the deceased was solemnized about 6 years back (from 07.12.2009). About 3/4 months after their marriage, the appellant and his family members demanded dowry in the form of cash of Rs. 10,000/- and articles like gold etc. Jonali's uncle (Peha) provided Rs. 10,000/-, but peace did not prevail. About 8/9 months after their marriage, one night at about 10:00/11:00 pm, he received an information that the appellant and his mother sprinkled acid over Jonali and she has been taken to the Goalpara Civil Hospital. On the following morning, he went to the Civil Hospital, but Jonali had already passed away as a result of the acid burns. He then lodged the FIR and has proved the FIR as Exhibit-1 and his signature on the FIR as Exhibit-1(1).

19. It is apt to mention at this juncture that, the learned counsel for the appellant laid stress in his argument that this evidence of PW-1 has been contradicted by the evidence of the other witnesses. Even the evidence of the Medical Officer (MO, for short) reveals that Jonali died as a result of burn injuries and not as a result of acid burns. The MO Dr. Rahmat Ali Ahmed deposed as PW-10 that according to his opinion, death was *ante mortem* in nature and the victim had sustained 99.5% burns.

19.1. In his cross-examination, PW-1 has admitted that there was no dowry demand at the time of marriage between Jonali/deceased and the appellant. They were leading peaceful marital life without any differences. Jonali informed him that Rs. 10,000/- was demanded and her uncle helped her by paying Rs. 10,000/- to the appellant and his family members. He has also admitted that he has not written the FIR, Exhibit-1. He has affixed his signature on the FIR without reading the same. The FIR was written by another person. He mentioned in his cross-examination that at the time of the incident, the appellant and his family members broke open the door and took Jonali to the hospital. This evidence of PW-1 has not been supported by the evidence of other witnesses.

20. Sri Satyen Mazumdar deposed as PW-2 that on 15.12.2003, at about 10 pm, he heard a commotion from the appellant's house, which is located at a distance of about 300 metres. He went out and he noticed smoke billowing out of the appellant's house. He accompanied by his younger brother, Badal Mazumdar and Tarun Mazumdar, rushed to the spot and broke open the door. They noticed a burning candle and Raben's wife Jonali in flames. They brought out the victim to the courtyard and called an ambulance. He noticed that Jonali sustained burns on her chest and abdomen. On the following

morning, they received information that Jonali passed away. The Police came and seized the garments and sandals of the victim in his presence and he affixed his signature on the seizure list as Exhibit-2 (1) and Exhibit-3(1).

21. The learned counsel for the appellant laid stress in his argument that this witness was not declared as a hostile witness. Thus, the evidence of this witness extricates the appellant. He has testified in his cross-examination that at the time of the incident, the male members of the family were not present, which implies that the appellant was not present at the time of the incident. The door of the victim's room was latched from inside and all the windows were closed. They found the victim lying on the floor of the house and her clothes were burnt. Jonali was alive at that time and she informed him that she caught fire from the burning candle. At the time of the incident, the appellant was in Kaya Patty. It has also surfaced from the evidence that Jonali's father had already passed away prior to this incident and her mother was alive.

22. The learned Additional Public Prosecutor has emphasized through her argument that although the victim's oral dying declaration reveals that she caught fire accidentally from the candle, the prevailing cruelty in the

household has been reflected through the evidence of PW-1.

23. The learned Additional Public Prosecutor has further submitted that PW-1's evidence that the victim's uncle provided her Rs. 10,000/- to be paid to the appellant and his family members, has not been contradicted through the cross-examination of PW-1, vis-à-vis the cross-examination of the IO. It is further submitted that cruelty extended to the victim was in the proximate past. The victim died within 3/4 months of her marriage.

24. On the contrary, the learned counsel for the appellant laid stress in his argument that not a single witness has supported and corroborated the evidence of PW-1. Except the evidence-in-chief of PW-1, there is not a scintilla of evidence that the victim was subjected to cruelty by the appellant and his family members. The paradoxes play as the evidence-in-chief of the PW-1 is not similar to his cross-examination. He has contradicted his own testimony in his evidence-in-chief.

25. Reverting back to the evidence, Smt Champa Kalita has deposed as PW-3 that the informant is not known to her, but the deceased victim was known to her. The victim died as a result of burn injuries, which she sustained 4/5 months after her marriage, which was solemnized in the

Assamese month of Ahar, in the year 2003. The victim resides in the same locality. On the intervening night of the incident, she heard a commotion emanating from the appellant's house and she hurriedly rushed to the spot. She noticed villagers gathering at the place of occurrence (PO, for short). About 100 people were present and then Jonali was taken to the Goalpara Civil Hospital. On the following day, Jonali succumbed to her injuries. She further deposed that Jonali had a peaceful marital life and Jonali died as a result of burns, which she sustained from a candle. In her cross-examination, PW-3 has deposed that the appellant is a decorator by profession and he generally works till late at night. Jonali's parents, parents, brothers and sisters were alive at the time of the incident and they used to visit her prior to the incident. Jonali was brought out from her house by the villagers, who had to break open the door of her room. Jonali stated before the people present at the PO that she caught fire from a burning candle, while she was fast asleep.

26. In sync with the evidence of PW-3, Smt Anjali Kalita deposed as PW-4 that Jonali resides in their locality and her marriage was solemnized with the appellant. About 6 years back (from 20.12.2010), one night at about 11:00 pm, she heard a commotion emanating from the appellant's house. She

noticed some villagers taking Jonali to the hospital. She could not remember the type of the vehicle in which Jonali was taken to the hospital. PW-4 further deposed that Jonali had a peaceful marital life with the appellant. This witness was, however, declared a hostile witness, on the prayer by the prosecution. The prosecution was allowed to cross-examine its own witness, but the cross-examination of this witness by the prosecution is not noteworthy as the initial statement of this witness before the IO has not been affirmed by the IO, Sri Bhupendra Nath Das, who deposed as PW-9.

27. Close on the heels of the evidence of PWs-2, 3 and 4, Sri Tarun Mazumdar deposed as PW-5 that about 3/4 years back, one day, at about 11:00 pm, he heard a commotion emanating from the residence of the appellant and smoke billowing out of his house. The local people gathered at the PO and broke open the door. He noticed fire inside the room and he also noticed that Jonali's saree was in flames. He along with the villagers brought out the victim to the verandah. He noticed that the entire lower portion of the victim was burnt. He accompanied the victim to Goalpara Civil Hospital and he returned after the victim was admitted in the hospital. Jonali was able to speak and she informed them that she accidentally caught fire from the burning candle. To the queries by the Court, he replied that the victim and

the appellant had led a peaceful marital life. In his cross-examination, he testified that he could see the burning candle inside her room and the appellant was not present in his house at that time. The appellant arrived soon after the incident and he also went to the hospital. He was the matchmaker and he arranged the marriage between Jonali and the appellant. He also denied any demand of dowry by the appellant and his family members or any dispute between the appellant's family and the victim Jonali's family.

28. It is pertinent to mention at this juncture that Jonali's family members were not examined as witnesses. Except Jonali's uncle, her mother or brother or sister were not examined as witnesses. The investigating agency as well as the prosecutor ought to have made endeavours to produce the family members of the deceased as witnesses.

29. Learned counsel for the appellant has submitted that the evidence of PW-1 has not been substantiated and corroborated by the evidence of the other witnesses. The neighbours broke open the door and the victim was inside the room and the door was latched from inside.

30. The learned counsel for the appellant has relied on the decision of this

Court in **Budhua Mura's case (supra)**, wherein it has been observed that-

*"(24) Coupled with the above, we have to also bear in mind that when prosecution adduces two sets of witnesses, one contradicting the other, and the Court is not in a position to hold confidently as to which set of witnesses has told the truth, then, both sets of witnesses have to be discarded or, at least, the set of evidence, which goes in favour of the accused shall be adopted by the Court. Reference may be made to Harchand Sigh and Another –Vs- State of Haryana (AIR 1974 SC 344). Keeping in mind this salutary principle of criminal law in mind, when we revert to the case before us, we find that the evidence given by PW-2 not only projects Mangra Mura alone as assailant of the deceased Ashok but it rules out the possibility of the present appellant having shot the deceased with arrow or having helped Mangra in killing the deceased by shooting the latter with arrow. Viewed from this angle too, we have no option but to discard the evidence of PW-1, PW-4 and PW-5 as unsafe to place reliance upon."*

31. The appellant Budhua Mura was acquitted from charges under Sections 302/34 IPC.
32. I find force in the submission of the learned counsel for the appellant.
33. Now, reverting back to the evidence of the other witness, Satyen Mazumdar, who deposed as PW-2., has also not supported or corroborated the evidence of PW-1. He deposed that at the relevant time, he heard a commotion emanating from appellant's house, and he rushed to the spot and he noticed Jonali lying on the verandah with burn injuries. The co-villagers immediately took her to the hospital and she succumbed to her injuries. This witness was also declared as a hostile witness by the prosecution and the

prosecution was allowed to cross-examine its own witness, but the initial statement of this witness has not been affirmed by the cross-examination of the IO as per Section 145 of the Indian Evidence Act, 1872 (The Evidence Act, for short), vis-à-vis Section 162 of the CrPC.

34. In his cross-examination, PW-6 has also stated that when the villagers asked Jonali, how she caught fire, she replied that she accidentally caught fire from the burning candle.

35. Similarly, the evidence of PW-7, Sri Dulal Kalita and PW-8, Smt Jyotsna Kalita, also does not substantiate the evidence of PW-1 or the prosecution case. Both of them have deposed that on the fateful night, they heard a commotion emanating from the appellant's house and smoke billowing out from his house. They went to the PO and then returned from the PO. On the following day, they heard that the appellant's wife died as a result of burn injuries. To the queries by the Court, PW-7 answered that he heard that Jonali sustained burn injuries as a result of accidental fire from a burning candle.

35. The IO, Sri Bhupendra Nath Das, is the official witness and he conducted the investigation and recorded the statements of the witnesses

and seized some articles from the PO and arrested the appellant from his house, i.e., the PO. He forwarded the appellant to custody. The other accused named in the FIR were granted pre-arrest bail by this Court. He obtained the autopsy report and the supplementary Case Diary from the Police Station. Finally he submitted charge sheet against the accused and the appellant. He has proved the seizure list as Exhibit -2 and 3 and the sketch map as Exhibit-5, and the charge sheet as Exhibit-4 and his signature on the charge sheet as Exhibit-4 (1).

36. A close scrutiny of the evidence clearly reveals that except the evidence of PW-1, there is no incriminating evidence that the victim was subjected to cruelty by the appellant soon before her death. The death as stated by the witnesses, PW-2 to PW-8, happens to be accidental death, whereas, on the contrary, PW-1 stated that the victim's death was the result of acid burns, which is also contradictory to the evidence of the other witnesses as well as the evidence of the MO.

37. It is true that even accidental death can be considered as dowry death or unnatural death, but in this case, due to myriad of contradictions between the evidence of the witnesses, a benefit of doubt has to be extended to the

appellant.

38. I also find substance in the argument of the learned counsel for the appellant that the evidence as well as the FIR marked as Exhibit-1 reveals allegations against the appellant's mother and brother-in-law, but they have been acquitted from the charges under Section 304-B IPC.

39. Recapitulating the entire evidence, it is held that there is no direct allegation that the victim was subjected to cruelty by the appellant soon before her death to rope in the appellant of charges under Section 304-B IPC. No doubt, the victim has succumbed to her burn injuries only 3 or 4 months after her marriage, but as the evidence is fraught with contradictions, the appellant deserves a benefit of doubt.

40. It is thereby held that the prosecution failed to prove beyond a reasonable doubt that soon before her death, the deceased was subjected to cruelty or harassment by the appellant. The appellant is thereby acquitted from the charges under Section 304-B IPC, on benefit of doubt and is set at liberty forthwith, if not required in any other case.

41. The Criminal Appeal stands allowed.

42. However, keeping in view the provisions of Section 437-A Cr.P.C./481 BNSS, the accused appellant is directed to furnish a personal bond in the sum of Rs. 40,000/- and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months.

43. Send back the Trial Court Record.

**JUDGE**

**Comparing Assistant**