

**IN THE COURT OF ADDL. SESSIONS JUDGE (F.T.C.), NORTH
SALMARA, ABHAYAPURI**

Present: Shri P. Bora, A.J.S.

Addl. Sessions Judge (FTC)
North Salmara, Abhayapuri

Session Case No. 01(A)/2018

U/S 304(B)/302 I.P.C.

State of Assam

Vs

Idrish Ali Khan

Appearance

Sri Gautam Choudhury	-----	Ld. Addl. P.P. for the State.
Mr. S. Alom	-----	Ld. Defence Counsel
Charge framed on		27.02.18
Evidence recorded on	-----	09.08.18, 05.09.18, 06.10.18, 20.11.18, 22.01.19, 16.05.19
Argument heard on	-----	15.06.19
Judgment Pronounce on	-----	27.06.19

J U D G M E N T

1 The case for the prosecution in brief is that the informant Md. Asad Ali lodged an FIR before the officer-in-charge of Abhayapuri Police Station stating inter alia that about 5 years back his younger sister Sahida Khatun has entered into marriage with the accused Idrish Ali. After the marriage both of them were blessed with a child. It has been alleged that soon after the marriage the husband of his younger sister, the accused Idrish Ali used to torture and anguished his younger sister

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both mentally and physically on demand of dowry and about 15/20 days back his sister came and informed him that the accused person demanded Rs. 2,00,000/- from her and threatened her to kill on her failure to fetch the same from her paternal house. It has also been alleged that about 7 days back his younger sister over mobile phone bearing no. 8959440237, informed Sayed Ali, the brother in law of his younger sister that she was threatened by the accused to kill the younger sister of the informant on her failure to pay the said amount and on the next day morning at about 07:00 AM, the accused Idrish Ali informed that his wife, the younger sister of the informant had died by burning. Accordingly, the informant suspected that as they have failed to dish up the demand of dowry of the accused person, hence accused person after killing his younger sister burnt down his sister. Hence, the case.

2 After receiving the said FIR the officer-in-charge of Abhayapuri police station was pleased to register the same vide Abhayapuri P.S case No. 796/17. Police started the investigation of this case and after completion of the investigation, the investigating officer has submitted a charge sheet U/s 302 IPC against the accused person.

3 After complying the provision of section 207 Cr.P.C. the court below was pleased to commit the case along with the accused person. Accordingly the accused person appeared before court to face the trial. After perusing and considering all the relevant documents referred to u/s 173 Cr.P.C. and considering the submission put forwarded by the Ld. Addl. P.P. as well as Ld. Counsel for defence finding a prima facie case a formal charge u/s 304(B)/302 IPC framed against the accused person and the same on being read over and explained to the accused to which the accused person pleaded not guilty and claimed to be tried.

4. To bring home the charge against the accused person in this case the prosecution side has adduced and examined as many as 12 witnesses including the informant. The accused person was also

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examined U/S 313 Cr.P.C and on being so examined the accused declined to adduce evidence and narrated that false evidence has been adduced against him. The defence has also adduced and examined two defence witnesses in support of its case.

5.POINTS FOR DECISION:-

- 1) Whether the accused person on 28.11.2017, at about 06:30 A.M, committed dowry death by causing the death of Sahida Akter @ Sahida Khatun and there by committed an offence punishable U/S 304(B) IPC.
- 2) Whether the accused person on 28.11.2017 at about 06:30 A.M, committed murder intentionally by causing the death of Sahida Akter @ Sahida Khatun and thereby committed an offence punishable U/S 302 IPC.

6.DECISION AND REASONS FOR DECISION:-

I have gone carefully through the entire evidence of the record and considered the same. I have also heard and considered the argument put forwarded by the Ld. Addl. P. P. for the State as well as Ld. Counsel for defence.

7. In this case the prosecution side has examined the informant Md. Asad Ali as P.W.5 and exhibited the FIR vide Ext.1 and Ext.1(1) is the signature of P.W.5. In course of evidence PW-5 stated that in the year 2012 on a day his younger sister Sahida Khatun entered into marriage with the accused and after two years both of them were blessed with a child. PW-5 further stated that soon after the marriage the accused person used to torture and anguished his younger sister on demand of dowry and on 28.11.2017, the accused person burnt down his wife, the younger sister of PW-5. PW-5 also stated that prior to said incident the accused person demanded Rs. 2,00,000/- from his deceased younger sister. Although PW-5 stated that the accused person burnt down his sister on failure to pay the demand of Rs. 2,00,000/-, but PW-5 in course of cross examination clearly stated that he has not seen the accused person torturing his sister on demand of

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dowry as well as has not seen making any demand of Rs. 2,00,000/- from his sister. In course of cross examination PW-5 also stated that he did not know how the flame of fire burnt down his younger sister and only on suspicion he stated and filed this case against the accused person that the accused person burnt down and killed his younger sister. Thus, it appears that PW-5 himself clearly stated that he has lodged this case against the accused person only on suspicion.

8. In this case the prosecution side has examined Abdul Rezzak Ali as PW-1, who in course of evidence stated that about 5/6 months back his sister Sahida Khatun, the wife of the accused person has sought financial loan from him as the accused person was in need of money to open a shop, but he has failed to pay the same for want of money. PW-1 further stated that while he has failed to pay the money as sought for by his sister then the accused person rebuked and threatened his sister. It also reveals from the evidence of PW-1 that about 7/6 months back he came to know from the accused person over telephone that his sister has committed suicide by setting fire on her own and PW-1 suspected that the accused person has killed his sister by setting fire on her. Thus, it appears that like PW-5, PW-1 also suspected that the accused person killed his sister by setting fire on her sister. In course of cross examination PW-1 clearly stated that so far his knowledge is concerned his brother Asad Ali has lodged this case against the accused person only on suspicion.

9. The prosecution side has examined Md. Abdul Kayum Khan, Md. Taleb Ali Khan and Md. Abdul Khalek Khan as PW-2, PW-3 and PW-4 respectively. After perusing and considering the evidence of all the above named three witnesses, it appears that all the above named three witnesses, PW-2 and PW-3 are the neighbouring persons of the place of occurrence and as per evidence of all the above named three witnesses Sajida, the wife of the accused person has committed suicide by setting fire herself. PW-2 & PW-3, who are the neighbours of the matrimonial house of the deceased victim in course of cross examination clearly stated that neither the accused person nor any one

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of his family members demanded any kind of dowry from the deceased victim prior to the incident. Again as per evidence of PW-2, PW-3 and PW-4, the matrimonial relationship between the accused and his deceased wife prior to the incident was cordial and amiable. PW-2 and PW-3 in course of their evidence clearly stated that at the time of occurrence neither the accused person nor any members of his family were present in their house at the time of the occurrence.

10. The prosecution side has examined Md. Seken Ali, the father of the deceased victim as PW-6. In course of evidence although PW-6 stated that at the time of marriage as demanded by the accused his son in law, he has given a motorcycle to the accused but as he failed to pay Rs. 2,00,000/- as demanded by the accused hence the accused person has killed his daughter. But, in course of cross examination PW-6 clearly stated that the accused person never demanded any motorcycle or Rs. 2,00,000/- from him. Thus, the evidence of PW-6 appears to be self contradictory which definitely check and reduced the authenticity and credibility of the evidentiary value of PW-6.

11. PW-7 Musstt. Rezia Khatun, the mother of the deceased victim in course of evidence stated that the accused person used to torture her daughter after her marriage and although they have given a motorcycle to the accused but again the accused person demanded Rs. 2,00,000/- from them to open a shop and while they have failed to fulfill the said demand of the accused person, the accused person after killing her daughter burnt down her daughter. Although PW-7 stated that they have given a motorcycle to the accused but in course of evidence of PW-7 clearly stated that they have given the said motorcycle to the accused voluntarily as per their own will and the accused person never demanded Rs. 2,00,000/- from her. In course of cross examination PW-7 further stated that she herself did not know how her daughter was burnt down and she herself has not seen the accused person putting fire on her daughter.

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12. The prosecution side has examined Md. Kalimuddin and Md. Kuddus Ali as PW-8 and PW-9 respectively. After perusing and considering the evidence of both the above named two witnesses it appears that both the above named witnesses have only seen the dead body of the wife of the accused person and both of them are completely silent about the case of the prosecution as well as the involvement of the accused person in commission of the offence as alleged, rather in course of cross examination both PW-8 and PW-9 clearly stated that on the date of occurrence after the occurrence while they came to the house of the accused person they have not seen the accused person in his house and both of them did not know about the cause and reason of the death of the deceased wife of the accused person.

13. The prosecution side has examined Md. Sayed Ali as PW-10, who in course of evidence stated that the deceased victim Sahida Khatun is his sister in law and about 4 years back his father in law told him that the accused person has asked his father in law for some money. PW-10 further stated that about 11 months back on a day his sister in law Sahida Khatun over telephone sought financial loan from him but later on his sister in law has died by burning. But, PW-10 has failed on what occasion his father in law told him that the accused person asked his father in law for money and his sister in law asked him for money. That apart PW-10 in course of cross examination clearly stated that he did not know how his sister in law has burnt down by fire. PW-10 is completely silent about the involvement of the accused person in commission of the offence as alleged as well as completely silent about any kind of torture upon his sister in law by the accused on demand of money as alleged.

14. The prosecution side has examined two seizure witnesses namely Md. Mizanur Rahman and Md. Sanjay Rahman as PW-11 and PW-12 and exhibited the seizure list vide Ext. 2 and exhibited the signature of PW-11 and PW-12 vide Ext. 2(1) and Ext. 2(2) respectively. In this case although the prosecution side exhibited the seizure list vide

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Ext.2 whereby one empty green colour five liter gallon has been seized but the prosecution side has totally failed to prove the seizure as because both the seizure witnesses i.e. PW-11 and PW-12 in course of their evidence clearly stated that they have put their signatures on a white blank paper and while they put their signatures on Ext. 2 nothing was written on it. That apart, both the seizure witnesses also expressed their ignorance about the reason of putting their signatures on Ext.2 as both of them in course of their evidence clearly stated that they did not know as to why police personnel has taken their signatures on Ext. 2.

15. In this case after examining the accused person u/s 313 CrPC, the defence has adduced and examined two witnesses in support of its case.

16. It is reveled from the evidence of DW-1, Md. Ajahar Ali that he used to reside just adjacent to the house of the accused person and as per DW-1 the relationship between the accused and his wife was amiable and cordial. It also revealed from the evidence of DW-1 that about 1 year back on the date of occurrence in between 04:00 to 04:30 AM,he along with the accused person went for morning prayer at the Mosque and after finishing their morning prayer, the accused person has gone to open his shop which is situated at Baregarh Bazar and while he came to his house from the Mosque on his way he met the wife of the accused person Sahida who on being asked told him that she was preparing daily food in her kitchen. DW-1 further stated that after one hour while he heard hue and cry from the house of the accused person, he rushed to the house of the accused person and saw the wife of the accused person was burnt down and at that time there was no any person in the house of the accused person. DW-1 saw one Kayum and some other villagers who tried to extinguish the fire of the body of the wife of the accused person. Thereafter, DW-1 went to inform the accused who was at that time in his shop situated at Baregarh Bazar. In course of evidence DW-1 reiterated that at the time of occurrence the accused person was not present in his house, rather

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at that time he was at Baregarh Bazar and he himself after informing the accused about the incident bring the accused to his house. DW-1 further stated that the accused person is in no way involved with the incident of burning of his wife.

17. DW-2 Md. Khairuddin in course of evidence stated that on the date of occurrence at about 04:30 A.M, the accused person was with him along with others in the Mosque in the morning prayer and after completion of their morning prayer in the Mosque he along with the accused person went to Baregarh Bazar to open their shop. DW-2 further stated that after arriving at Baregarh Bazar both of them open their respective shop to run their business and at about 07:30 A.M, one Azahar Ali came and informed them about the incident of burning the wife of the accused. Thereafter, the accused person immediately rushed to his house and he after closing his shop went to the house of the accused person where he has seen the body of the wife of the accused person who was totally burnt down. DW-2 also stated that the house of the accused person is just adjacent to his house and the matrimonial relationship between the accused and his wife prior to the incident was amiable and cordial and prior to the incident he has not heard any quarrel and dissension between both of them. It also reveals from the evidence of DW-2 that he has not heard anything either from the deceased wife of the accused person or from her family members that the accused person has demanded any kind of dowry or used to torture the deceased wife of the accused person on demand of dowry and as per DW-2 the accused person is not at all responsible for the death of his deceased wife because his wife has died in a fire accident.

18. The above is the threadbare discussion of the evidence on record.

19. After perusing and considering the evidence on record in its entirety and considering the argument put forwarded by the learned counsel for the prosecution as well as defence it appears that in this case the prosecution side has failed to produce any solid and concrete

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evidence against the accused. After perusing and considering the FIR along with the evidence of PW-5, who is the informant of this case, it appears that the informant has lodged this case against the accused person only on suspicion that the accused person after killing his younger sister burnt down his younger sister as because in the FIR which was exhibited by the prosecution vide Ext. 1 it has been specifically cited that the informant suspected that the accused person after killing the victim burnt down her and PW-5, the informant in course of evidence also clearly stated that only on suspicion he stated that the accused person after killing his sister burnt down her and he has lodged this case against the accused person only on suspicion. It also appears that in this case the prosecution side has neither examined any eye witness to the occurrence as alleged nor bring any circumstantial evidence warranting the involvement of the accused person in commission of the offence as alleged. That apart as per evidence of PW-2, PW-3 and PW-4, the deceased victim has committed suicide by setting fire herself. Again like PW-5, PW-1 also suspected that the accused person after killing the deceased victim burnt down her. In this case although PW-1 stated that as the accused person demanded money from his sister hence his sister asked him for money but PW-1 has not only failed to disclose the amount of money as stated to be demanded by the accused from her sister for opening a shop but at the same time has also failed to disclose on what occasion the said money was demanded by the accused to his sister and when he came to know about the said demand. It also revealed from the evidence of PW-1 that the accused person never demanded any money from PW-1 directly. Again PW-5 in course of evidence stated that the accused person demanded Rs. 2,00,000/- from his deceased sister but in course of cross examination PW-5 clearly stated that he himself has not seen any incident of torturing his sister or demanding Rs. 2,00,000/- from his sister by the accused. PW-6 and PW-7, although in course of their evidence stated that the accused person demanded a motorcycle along with Rs. 2,00,000/- and as they have failed to fulfill

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the said demand of the accused person, their daughter was killed and burnt down by the accused person. But, in course of cross examination PW-6 and PW-7 clearly stated that the accused person never demanded any motorcycle and Rs. 2,00,000/- from them and PW-7 in course of cross examination clearly stated that she has given the motorcycle to the accused voluntarily which clearly goes against the version of PW-7 that the accused person demanded the motorcycle. That apart both PW-6 and PW-7 in course of their evidence clearly stated that they themselves have not seen the alleged fact of killing their daughter by the accused person, even PW-7 in course of her evidence clearly stated she did not know how her daughter was burnt down by fire. Again from the evidence of PW-8 and PW-9, who are totally silent about the case of the prosecution and the involvement of the accused person in commission of the offence as alleged, rather it is revealed from their evidence that at the time of occurrence the accused person was not present in his house and the matrimonial relationship between the accused and his wife prior to the incident was amiable and cordial. PW-10 in course of evidence although stated that he came to know from his father in law, who was examined the prosecution as PW-6, that the accused person asked his father in law for some amount of money, but the evidence of PW-6 that the accused person demanded Rs. 2,00,000/- from his father in law i.e. PW-6, appears to be contradictory to the oral testimony of PW-6, as in course of cross examination PW-6 clearly stated that neither the accused person demanded the motorcycle or Rs. 2,00,000/- from him, which definitely weaken and reduced the authenticity and credibility of evidence of PW-10. Again although PW-10, in course of evidence stated that the deceased victim, his sister in law over telephone asked him for some amount of money, but from the said evidence of PW-10, it cannot be inferred that his sister in law i.e. the deceased victim asked PW-10 for money on demand of her husband, the accused. During the course of cross examination PW-10 expressed his ignorance about the reason or cause of setting fire in the body of his sister in law and never

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implicated the accused involving the accused in commission of the offence as alleged. The prosecution side has examined two seizure witnesses to prove the fact of seizure of a empty plastic gallon by examining two seizure witnesses and exhibited the seizure list vide Ext.2. But, both the seizure witnesses PW-11 and PW-12, whose signatures has been exhibited vide Ext. 2 (1) and 2(3) respectively extend no any support to the prosecution to establish the fact of seizure and to prove seizure list. Again in this case after examining the accused person u/s 313 CrPC, two defence witnesses have been examined by the defence in support of its case vide DW-1 and DW-2. After perusing and considering the evidence of both the defence witnesses it appears that at the time of occurrence the accused person was not present in the place of occurrence, rather he was at that time in his shop which is situated at Baregarh Bazar. That plea taken by the defence has also inspire corroboration from the evidence of prosecution witnesses like PW-2, PW-3, PW-8 and PW-9, who in course of their evidence clearly stated that at the time of occurrence while they have gone to the place to the occurrence they have not seen the accused person in the place of occurrence. Again as per evidence of PW-2, PW-3 and PW-4, the deceased victim has committed suicide by setting fire on herself.

20. After perusing and considering the entire evidence on record of this case as adduced by the prosecution in support of its case, several sets and categories of witnesses appears, out of which as per one set of witnesses like PW-1, PW-5, the informant they only suspected that the accused person after killing the deceased victim burnt down her, as per another set of witnesses like PW-2, PW-3 and PW-4, the deceased victim has committed suicide by setting fire on her person, PW-6, PW-7 and PW-10 appears to be the witnesses as adduced by the prosecution in support of its case, whose evidence appears to be self contradictory which definitely minimize the credibility and authenticity of the evidentiary of such witnesses, PW-11 and PW-12 appears to be totally not helpful to the prosecution and lastly PW-8 and PW-9, including PW-2

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and PW-3, appears to be such kind of witnesses as examined by the prosecution in support of its case from whose evidence the defence extract and sucked its benefit to establish its case as PW-2, PW-3, PW-8 and PW-9 supported the plea taken by the defence that at the time of the occurrence the accused person was not present in the place of occurrence and in support of its plea the defence has adduced four defence witnesses and the above named two prosecution witnesses extended its support to the plea taken by defence to establish its case.

21. In this case as per FIR and evidence of the informant PW-5, who appears to be the elder brother of the deceased victim, this case arises against the accused person only on the suspicion casted upon the accused that as the demand of accused person for money was not fulfilled hence the accused person is suspected that after killing his wife he burnt down her body. But, mere suspicion cannot take the place of reality or fact unless and until such suspicion is transformed in to a reality or fact by forming/construct a concrete and solid devise or bridge of proof, the prosecution side has totally failed in this case. None of a any single independent witnesses as examined by the prosecution in support of its case supplements any fuel to strengthened the case of the prosecution. Even from the evidence the informant, who is the elder brother of the deceased victim and PW-6 and PW-7, the father and mother of the deceased victim, the prosecution side has failed to inspire any support to build up its case as alleged against the accused as from their evidence, the prosecution side have totally failed either to collect and accumulate any materials or evidence that the accused person in any way involved in commission of the offence as alleged. After perusing and considering the evidence on record no any inference can be drawn from the evidence of any single witness that the accused person is in any way involve in commission of the offence as alleged. That apart, from the evidence on record there is no any doubt that the cause of death of the deceased victim was due to burning, but in this case the prosecution side has totally failed to prove the fact that the deceased victim prior

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to her death was subjected to cruelty or harassment on demand of dowry either by the accused or by his family members, which is the essence and principal ingredient of the offence punishable u/s 304(B) IPC.

22. In the ultimate analyses on the light of above discussion it appears that in this case the prosecution side has failed to produce any single iota of evidence against the accused person which is sufficient to fasten the accused with the charges as alleged against him beyond all reasonable doubt. Thus, in this case the prosecution has not only failed to operate the switch of the prosecution case for ignition but could not even identify and point out the proper switch of the prosecution on the board itself and hence the court have no any alternative but to acquit the accused person from the charges as levelled against him.

23. I therefore acquit the accused person from the charges levelled against him. I also released the accused person from liberty of bail bond and set him at liberty.

Given under my hand and seal of this court on this 27th day of June/ 2019.

Dictated and corrected by me

Addl Sessions Judge (F.T.C)
North salmara, Abhayapuri

Addl. Sessions Judge(F.T.C)
North salmara, Abhayapuri

APPENDIX

1. Prosecution Exhibits

Exhibit 1	The FIR.
Exhibit 1(1)	The Signature of PW5.
Exhibit 2	The seizure list
Exhibit 2(1)	The signature of P.W.11
Exhibit 2(2)	The signature of P.W.12

2. Material Exhibit by prosecution

NIL

3. Defence Exhibits

NIL

4. Prosecution Witnesses

PW1	Md. Abdul Rezzak Ali
PW2	Md. Abdul Kayem Khan
PW3	Md. Taleb Ali Khan
PW4	Md. Abdul Khalek Khan
PW5	Md. Ashad Ali, the informant
P.W.6	Md. Send Ali
P.W.7	Musstt. Rejia Khatun
P.W.8	Md. Kolimuddin
P.W.9	Md. Kuddush Ali
P.W.10	Md. Sayed Ali
P.W.11	Md. Mizanur Rahman
P.W.12	Md. Sanjay Rahma

5. Defence Witnesses

DW.1	Md. Ajahar Ali
DW.2	Md. Khair Uddin

6. Court Witnesses

NIL

Addl. Sessions Judge (F.T.C)
North Salmara, Abhayapuri.
