

GAHC010052052020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./92/2020

SMTI PUSPA RANI DEY AND ANR

2: SRI RATAN DEY

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PUBLIC PROSECUTOR

2:SMTI. DIPALI DUTTA (INFORMANT)

Advocate for the Petitioner : MR. S BISWAS

Advocate for the Respondent : MS. B.BHUYAN(ADDL.PP, ASSAM)

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI

For the appellants : Mr. S Biswas, Advocate
For the State respondents : Ms. B. Bhuyan, Addl. Public Prosecutor, Assam.
Date of hearing : 21.07.2023.
Date of Judgment : 25.7.2023.

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, Judge)

Heard Mr. S. Biswas, learned counsel for the appellants and Ms. B. Bhuyan, learned Addl. Public Prosecutor for the State of Assam.

2] This is an appeal under Section 374(2) Cr.PC, challenging the Judgment dated 20.02.2020 passed by the Court of the Addl. Sessions Judge (FTC), Cachar, Silchar in Sessions Case No. 187/2012, convicting the appellants under Sections 302/34 IPC and sentencing them to undergo Rigorous Imprisonment for life with a fine of Rs. 10,000/- each, in default, Simple Imprisonment for 6 months, for killing Pinky Dey w/o Sh. Raju Bhushan Dey by poisoning her.

3] The prosecution case in brief is that the informant/Prosecution Witness No. 2(PW-2) submitted an FIR dated 06.05.2010 to the Officer-in-Charge, Dholai Police Station stating that his daughter had been poisoned by (1) her husband

Sh. Raju Bushan Dey (2) brother-in-law Sh. Ratan Dey (appellant) (3) Mother-in-law Pushpa Rani Dey (appellant), by forcibly administering her poison. In order to save her life, his daughter came to his residence and they took her to Silchar Medical College & Hospital. However, his daughter died. In pursuant to the FIR, Dholai PS case No. 86/2010 dated 06.05.2010 under Sections 304(B)/34 IPC was registered against the above three accused persons. After investigation of the case was completed, the Investigating Officer submitted a charge sheet against the husband, on finding a prima facie case against the husband of the deceased under Section 306 IPC. The Investigating Officer in his charge sheet however prayed for discharge of the appellants herein, who are the brother-in-law and mother-in-law of the deceased, on the ground that he could not find any evidence against them. However, the learned Trial Court thought it fit to proceed against the appellants herein and accordingly, charge was framed against all the three accused persons, including the two appellants herein under Section 306 IPC, vide Order dated 10.11.2014. Thereafter, vide Order dated 09.01.2015, charge under Sections 302/34 IPC was framed against all the three accused persons by the learned Trial Court. Subsequent to the above, 13 prosecution witnesses were examined by the learned Trial Court.

During the trial proceedings before the learned Trial Court, the husband of the deceased Sh. Raju Bhushan Dey expired. The learned Trial Court thereafter came to a finding that the two remaining accused i.e. the appellants herein, were guilty of the offence of having murdered Pinky Dey by poisoning her and accordingly convicted them under Sections 302/34 IPC and sentenced them accordingly.

4] The learned counsel for the appellant submits that though the evidence of

the Prosecution Witnesses No. 2, 3, 9 and 10 are to the effect that the deceased Pinky Dey had been administered poison forcibly by all the three accused persons, the evidence of the said witnesses had been contradicted, by confronting them with their statements made under Section 161 Cr.PC, which was subsequently confirmed by the Investigating Officer (I.O). As such, the evidence given by the prosecution witnesses, which was in contradiction to those parts of their statements made under Section 161 Cr.PC, was not admissible as evidence and could not have been made the basis for convicting the appellants under Sections 302/34 IPC.

5] The learned Addl. Public Prosecutor submits that it appears that the evidence given by PW-2, PW-3, PW-9 and PW-10 seems to have been contradicted, so far as the involvement of the appellants are concerned, with regard to the death of the deceased.

6] We have heard the learned counsels for the parties. The only evidence against the appellants showing their involvement in the crime is the evidence given by PW-2, PW-3, PW-9 and PW-10, which is to the effect that they heard Pinky Dey stating that her husband and the appellants had forcibly administered poison to her.

7] Out of the 13 (thirteen) witnesses examined by the learned Trial Court, PW-4, PW-6, PW-7, PW-8 and PW-11 had been declared hostile witnesses. PW-1 is the uncle of the deceased, while PW-2 is the mother of the deceased. PW-3 is the father of the deceased, while PW-5 was the doctor. PW-9 was the brother of the deceased, while PW-10 was the neighbour of the parents of the deceased.

PW-12 and PW-13 were the Investigating Officers of the case.

8] The evidence of PW-1 is to the effect that Raju Bhusan Dey, husband of the deceased Pinky Dey used to torture his wife. Further, once the husband had assaulted her and she sustained fracture injury on her leg, due to which she was admitted in Silchar Medical College & Hospital (SMCH). The reason for the assault was because marriage articles that were given at the time of marriage was not sufficient. Though they had gone to the SMCH, but they did not find any person from the house of the husband. On the following day an inquest was held over the dead body of Pinky Dey.

9] The evidence of PW-2 (mother of the deceased) and PW-3 (father of the deceased) is to the effect that on 06.05.2010 at around 11 a.m., their daughter came home in an auto-rickshaw and told them that her husband, brother-in-law and mother-in-law had forcibly administered poison to her and she asked that her life be saved. Accordingly, they took her to the hospital. However, their daughter died.

In the cross-examination of PW-2 & PW-3, they were confronted with their statements made under Section 161 Cr.P.C. to the police, wherein they had stated that Pinky's husband Raju Bhusan Dey had forcefully administered poison to their daughter, without making any allegation against the appellants. In addition to the above, PW-3 had also stated in his statement made under Section 161 Cr.P.C. that he did not blame the appellants for the incident as they lived in a separate house.

10] The evidence of PW-9 (brother of the deceased) and PW-10 (neighbour of the parents of the deceased) is to the effect that Pinky Dey came home on 06.05.2010 at about 11 a.m. in an auto-ricksaw and on hearing her cry, her mother, brother and some other persons came out of the house, wherein Pinky told them that her husband, brother-in-law and mother-in-law had forcefully administered poison. In order to save her, she was taken to SMCH, wherein she died on the same day.

In the cross-examination of PW-9 & PW-10 they were confronted with their statements made under Section 161 Cr.P.C, wherein they had stated that Raju Bhusan Dey was responsible for the death of the deceased by forcibly administered poison to her. They further stated in their statements made under Section 161 Cr.P.C. that the appellants Ratan Dey and Pushpa Rani Dey were not involved in the case, as they resided in a separate house.

11] The I.O. (PW-13), who had recorded the statements of PW-2, PW-3, PW-9 and PW-10 under Section 161 Cr.P.C. was also confronted with the evidence given by the said PW-3, PW-4, PW-9 & PW-10 and their statements made under Section 161 Cr.P.C. at the time of cross-examination. PW-13 stated in his cross-examination that PW-2, PW-3, PW-9 and PW-10 did not make any statement to him, to the effect that the deceased Pinky Dey had told them that her husband, brother-in-law and mother-in-law had administered poison to Pinky Dey. The exact words of PW-13 in his cross-examination with regard to the above issue is re-produced below as follows:

“PW 2 did not state before me that her victim daughter reported that accused Raju Dey and others forcibly administered poison.”

“PW 3 Kokil Dutta did not state before me that on the day of occurrence at about 11 am while he was at home hearing shouting he came out and his wife and son also came out and saw his deceased daughter to come out from an auto and she reported that her husband, mother in law and brother in law forcibly administered poison to her and she asked him (PW-3) to save her life and at that time he was not in proper dress and he had to arrange some money.”

“PW.9 Sri Kalpan Dutta did not state before me that on hearing cry of my deceased sister, neighbours and Rully Dey came at the spot. This witness also did not state to me that that the deceased told them that her husband, mother-in-law and brother-in-law administered poison to her.”

“.....P.W.10 did not state before me that Pinki Dey told her that her mother-in-law, brother-in-law and husband administered her poison.”

“PW 9 Kalpan Dutta did not state before me that accused persons administered poison to Pinky forcibly.

PW.9 stated before me that he suspected that the husband of the victim forcibly administered poison and accused Ratan Dey and Puspa Rani Dey were not involved with the incident as they were living separately.”

“I recorded the statement of PW 10 Ruly Dey on 9/5/10 at PO. PW 10 stated before me that that accused Ratan and Pusparani were not involved with the incident and they were living in separate house.”

12] The evidence of PW-5, who is the doctor, is to the effect that stomach wall of the deceased was congested and there was about 150ml brownish fluid emitting pungent smell, mucosa congested and patchy

hemorrhagic areas present at places.

PW-5 further stated that the following viscera was also preserved for clinical analysis at FSL, Guwahati in two Jars, which were specified as followed :

“Jar No.1 : Contains stomach with its content portion of liver with gall bladder, portio of lung, one kidney preserved i saturated solution of sodium choloride.

Jar No.2 : Contains sample of preservative S.S. of sodium choloride. I.O. is directed to collect and send to FSL within short period.”

The opinion of the doctor (PW-5) as to the cause of death was kept pending, till the report of chemical analysis from FSL, Guwahati was received.

13] The FSL Report dated 25.03.2011 with respect to the examination of of the two Jars sent for examination showed that the contents of the stomach of the deceased gave positive test for Organophosphorus Insecticide.

14] As stated earlier, PW-4, PW-6, PW-7, PW-8 and PW-11 had turned hostile and as such, there was no evidence given by them against the appellants.

15] As PW-2, PW-3, PW-9 and PW-10 were confronted with their statements made under Section 161 Cr.P.C., which were not in sync with their evidence recorded before the learned Trial Court, which was confirmed by the I.O, their evidence has been found to be contradicted by the appellants. In the case of ***V.K. Mishra & Anr. Vs. State of Uttarakhand & Anr.***, reported in **(2015) 9 SCC 588**, the Apex Court has held that a witness should be confronted with his

previous statement made before the Police under Section 161 Cr.PC, to contradict his statement at the time of recording of his evidence, to discredit the witness. Section 145 of the Indian Evidence Act, 1872 also provides that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Apex Court in **V.K. Mishra** (supra) further held that thereafter, when the Investigating Officer is examined in the Court, his admission should be drawn to the passage marked for the purpose of contradictions. In the case in hand, PW-2, PW-3, PW-9 and PW-10 have been confronted with their statements made to the police under Section 161 Cr.P.C. and the Investigating Officer has also been examined in Court, by drawing his attention to the contradictions in the statements of PW-2, PW-3, PW-9 and PW-10 made under Section 161 Cr.P.C. and their testimonies before the learned Trial Court.

16] As can be seen from the evidence given by prosecution witnesses Nos. 2, 3, 9 and 10, they had reported to have heard the deceased accuse her husband and the appellants in forcibly administering poison to her, due to which, she apparently passed away. However, the evidence given by them has been contradicted on the basis of their statement made under Section 161 CrPC during their cross examination. These contradictions have been proved by the case I.O (PW-13) at the time of his cross examination by the learned Trial Court. As such, in terms of the law laid down by the Supreme Court in **V.K. Mishra &**

Others Vs. State of Uttarakhand & Others (Supra), the allegations that the appellants had forcefully administered poison to the deceased cannot be said to have been proved, as the evidence given by PW-2, PW-3, PW-9 and PW-10 on this issue does not inspire the confidence of this Court.

17] The learned Trial Court has come to a finding that the evidence of PW-3, PW-4, PW-9 and PW-10, which is to the effect that they heard the deceased stating that she had been forcibly administered poison by her husband and the appellants amounted to a dying declaration. However, as stated earlier, the evidence of PW-3, PW-4, PW-9 and PW-10 have been contradicted. As such, it cannot be said that the deceased had made a dying declaration implicating the appellants, as the persons who had forcibly administered poison to her.

18] In that view of the matter, we hold that the learned Trial Court erred in coming to a finding that the deceased had made a dying declaration implicating the appellants, who forcibly administered poison to her. As there is no evidence to show the involvement of the appellants in the death of the deceased Pinky Dey, we hold that the appellants would have to be acquitted of the charge under Sections 302/34 IPC, as the prosecution has not been able to prove the guilt of the appellants beyond all reasonable doubt.

19] Accordingly, in view of the reasons stated above, the impugned Judgment dated 20.02.2020 passed by the Court of the Addl. Sessions Judge (FTC), Cachar, Silchar in Sessions Case No. 187/2012 is hereby set aside. The appellants should immediately be set free from judicial custody if they are in

judicial custody and if they are not wanted in any other criminal case. Bail bonds, if any, are accordingly discharged. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant