

:: IN THE COURT OF THE SESSIONS JUDGE, NALBARI ::

Present: Smti S. Bhuyan.
Session Judge,
Nalbari.

(Criminal Appeal Case No. 24/12)

**(Appeal against the Judgment & order dated 10/08/12
passed by learned CJM, Nalbari in connection with GR Case
No. 414/10, u/s-143/447/447/427 IPC)**

Md. Farmud Ali

S/O- Late Momat Ali

R/O-Vill-Malikuchi

P.S- Nalbari

Dist- Nalbari, Assam.Appellant

-Versus-

1. Tamij Ali

S/O- Late Kasim Ali

2. Tafajul Ali

3. Mahnur Ali

4. Nazrul Ali

5. Saiful Ali

Serial No. 2 to 5 are S/O- Tamij Ali

6. Md Ratul Ali

S/O-Unknown

All are vill- Samarkuchi

P.O.- Sanekuchi, P.S.-Ghograpar

District- Nalbari.

7. State of Assam.Respondents.

Advocates appeared:-

For the Appellant :- Mr. Abdul Majid, Advocate.

For the Respondent :- Mr. Dharendra Nath Barman, P.P.

Date of argument :- 10/06/2020

Date of judgment :- 25/06/2020

JUDGMENT

1. This is an appeal against the judgment and order of acquittal by the private party, the informant of the case. The instant appeal has been preferred by informant appellant Md. Farmud Ali u/s-372 Cr.P.C against the impugned judgment and order dated 10/08/12 passed by the then learned CJM, Nalbari in connection with G.R. Case No. 414/10 u/s-143/447/448/427 IPC whereby the learned CJM, Nalbari acquitted all the accused from the charges of section 143/447/448/427 IPC.

2. Fact leading to case is that appellant Farmud Ali live with his wife Sahijan Begum, daughter-in-law Manjuwara Begum (since deceased), children of Manjuwara Begum, his daughter Hasina Begum at ward no 2, Malikuchi Nalbari and at the time of incident Raju Ali, 2nd son of complainant was working as CRPF and posted at Allahabad and elder son Fazal Ali was working as 4th grade employee at Guwahati and living separately.

3. Appellant as complainant lodged ejahar before O/C, Nalbari PS on 07/05/10 alleging that on 26/02/10 during evening time Manjuwara Begum went outside for some works and she did not return back home. To that informant and his family members made search for her and that apart villagers also made search for her but was untraced. On 28/02/10 at about 7.30 am dead body of Manjuwara was recovered on a pond at Gandhi park. This news went to the village Samarkuchi, paternal house of deceased Manjuwara. After that relative of deceased Manjuwara came riding on tempo and bike and caused damaged to the property of informant, broken one bike and one bicycle and took away household goods. Getting the information about the incident police immediately came, police gave protection to him and his family and police took the children (son and daughter) of eldest daughter in law. On the death of Manjuwara one case was lodged at Nalbari police station with concocted story which was registered as Nalbari PS Case No. 97/10 and in that case police arrested informant, his wife, his another daughter in law Anju Begum and his daughter Hasina Begum. Thereafter, Raju Ali came on getting information. It

is further alleged that the dead body of Manjuwara was buried in the courtyard of informant on 28/02/10. Thereafter, police locked the room of informant house and bring the key. After getting bail, in the Nalbari PS Case No. 97/10 informant went to his house and found his house was locked. To that informant filed a petition and police replied the for the security reason they locked the room and on 06/05/10 at about 1 pm, o/c Nalbari PS handed over key of informant house to him and after unlocking the house, he found that valuable goods in his house were stolen. It is stated that accused named in the ejahar Tafazul Choudhury, Mahnur Ali, Nazrul Ali, Isaiful Ali @ Babu, Tamiz Ali, Ratul Ali on the date of recovery of dead body of Manjuwara attacked them, taken away listed goods in the ejahar from his house together with cash amount of Rs. 30,000/- and accused forcefully took away his grandchild Asma Begum 7 years and Rijul Ali who is 4 years 6 months.

4. O/C, Nalbari PS on receipt of ejahar registered Nalbari PS Case No. 192/10 u/s-143/447/448/380/427 IPC and started investigation. I/O of the case on completion of investigation submitted charge sheet against the accused persons u/s-143/447/448/380/427 IPC for trial of the accused persons.

5. The then learned CJM, Nalbari took cognizance of the case on receipt of the charge sheet, issued process to the accused to face trial. Learned trial court explain the particulars of offence u/s-143/447/448/427 IPC to the accused persons to which they pleaded not guilty and after hearing counsel, recording statement of the accused u/s-313 CrPC acquitted the accused persons from the charge of section 143/447/448/427 IPC.

6. I have heard learned PP as well as learned appellant counsel in the virtual court through VC. Learned appellant counsel placed his argument. Perused the evidence and material on record of the trial court, impugned judgment and order of the learned trial court to decide the appeal.

7. Learned appellant counsel made submission that it is the respondent who cause damage to the property of appellant and lodged case against them and learned trial court failed to appreciate the evidence on record and this is a case of conviction and not acquittal.

8. Now let me find out whether learned trial court rightly appreciate the evidence on record and whether learned trial court rightly delivered the judgment acquitting the accused persons.

9. PW-1 Maznur Ali deposed that on 26/02/10 at about 6.30 PM he came to know that daughter-in-law of appellant Manjuwara (since deceased) was missing and he himself with some other villagers tried to trace out her but they could not find her and on 28/02/10 dead body of Manjuwara was recovered from the pond of Gandhi park. Postmortem on the dead body was done on 28/02/10 and she was cremated at the courtyard of appellant forcibly. He further stated that house of informant was ransacked by the accused persons and accused persons left the house of informant at 10 PM on 28/02/10 and police seized some articles such as broken piece of glass, a broken VIP vide Ext-1. In cross stated he did not witness the incident.

10. PW-2 Imran Hussain deposed on 26/02/10 at about 6 PM he was busy with the searching of Manjuwara Begum who was untraced from evening. He further stated that on the same day at about 9 PM, accused Tafazul armed with three tempo vehicle came to the house of informant and ransacking the house hold properties. He stated that accused persons left the house of informant at 10 pm and he searched for Manjuwara till 2 AM and dead body of Manjuwara was recovered on 28/02/10, postmortem was done on the dead body on 28/02/10 and dead body was cremated on 28/02/10 at the compound of the informant. He further stated that a case was drawn against the present appellant and others for killing of Manjuwara and his grand parents, maternal uncle and mahi was arrested by police on 26/02/10.

11. PW-3 Md. Farmud Ali, informant in his evidence stated on 26/02/10, he along with deceased Manjuwara and other family members went to attend a feast and they returned back home and from that time Manjuwara was found missing. Thereafter, he along with Rafique made search for Manjuwara till 9.30 PM and on returning home, he found father of Manjuwara Tamij Ali, brother Mainul, Nazrul, Isaiful and Ratul Ali armed with lathi came to his house and they ransacking his house and household properties and Manjuwara was untraced and on the next day at 7.30 AM, dead body of Manjuwara Begum was found in the pond and accused persons came to place of occurrence and started hulla. He further stated that police locked the room belonged to Manjuwara and kept the key with them on 26/02/10 and the key was given to him by the police on 28/02/10. He admitted that police had given zimma of the children of Manjuwara to the accused persons. He further stated that he did not know about any tense relationship with Manjuawara and her husband Raju Ali. He further stated that he was in jail hajot till 06/05/10 in the case lodged by accused persons for murder of Manjuwara.

12. Evidence of PW-4 Firoj Ali is that on 26/02/10 at about 9.30 PM, accused persons came to the house of informant in a tempo and he noticed accused persons was ransacking the house of informant including the furniture, glass etc. and after two days of the occurrence dead body of Manjuwara was found in a pond and dead body was buried in the compound of informant.

13. PW-6, Phulendra Patgiri I/O of the case submitted that on 07/05/10, O/C Nalbari PS on receipt of ejahar from informant entrusted him with the investigation and he visited the place of occurrence, drawn sketch map of the place of occurrence, seized some articles and recorded statement of the witnesses and after completion of investigation laid down chargesheet against the accused persons u/s0143/447/448/427 IPC.

14. I have scrutinized the record. From the ejahar it is revealed that ejahar was lodged on 07/05/10 for an incident which was

occurred on 26/02/10 and 28/02/10 and from the record it is clear that informant and his family member were accused in the case lodged by the parental family of the deceased Manjuwara on her death and present informant was arrested in the Manjuwara murder case that was lodged by the family members of Manjuwara. In the ejahar informant alleged that accused persons had taken away some valuable items from his house on 26/02/10, ransacked his house on 26/02/10 and again on 28/02/10. On both the date appellant informant with his family members were present at their house except deceased Manjuwara who was untraced after return from feast as disclosed by PW-3 informant from the evening of 26/02/10. It is further revealed from the evidence on record that during investigation police did not find any ingredients of taking away of items from the house of informant as mentioned in the ejahar. PW-1, PW-2, PW-4 all says that they are searching Manjuwara on that day but they did not witness the incident.

15. It is further revealed from the record that deceased Manjuwara was missing on 26/02/10 and rigorous search was made but dead body was recovered on 28/02/10. PW-3 deposed police came to the place of occurrence on 28/02/10 and ejahar was lodged on 07/05/10 and from 26/02/10 to 28/02/10 he did not intimate the matter to police which caste doubt in the prosecution case. PW-1, 2 and 4 stated that incident of missing of Manjuwara took place on 26/02/10 and her dead body was recovered on 28/02/10. PW-1 admitted that he does not know who ransacked the household properties of informant. PW-3 stated he was present at the time of incident but PW-1 and 2 stated he was not present at the time of incident and PW-3 made contradictory statement.

16. Form the evidence of I/O it is clear that I/O visited the place of occurrence on 09/05/10 and seized some articles from the room which was locked by police and the key of the lock was handed over to informant by police on 07/05/10 and there is every possibility of breaking the articles in the locked room of the

informant when the key is present with the informant and statement of the PWs failed to bring on record any cogent, convincing reliable piece of evidence to hold accused respondents are guilty of committing the offence punishable u/s-143/447/448/427 IPC and I find that learned trial court rightly appreciate the evidence on record and rightly acquitted the accused from the prosecution charge of section 143/447/448/427 IPC.

17. In view of aforesaid discussion which I arrived at, I find that there is nothing to interfere with the judgment and order of acquittal passed by learned trial court dated 10/08/12 in GR Case No. 414/10 and accordingly impugned judgment & order dated 10/08/12 passed by the then learned CJM, Nalbari in connection with GR Case No. 414/10, u/s-143/447/448/427 IPC is hereby upheld.

18. In the light of above direction, appeal is dismissed. However, no costs.

19. Send the LCR to the learned trial court with a copy of judgment immediately.

Judgment delivered under hand and seal of this court on this 25th day of June, 2020 at Nalbari, District- Nalbari

(Smti S. Bhuyan)
Session Judge, Nalbari

Dictated and corrected by me.

(Smti. S. Bhuyan)
Session Judge, Nalbari

Typed by:
Biswajit Bhattacharjya
U.D.Assistant