

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No 2
SONITPUR::TEZPUR

SESSION CASE NO. 44 of 2006
(under section 302 I.P.C)
(Arising out of G.R. Case No. 1963 of 2005)

State of Assam
-Vs-
Md Abdulla Sheikh Accused.

Present
Ms. A. Ajitsaria,
Addl Sessions Judge-2, Sonitpur, Tezpur

For the State: Sri Khemraj Adhikary, Learned Addl Public Prosecutor

For the accused: Sri Sadhan Das, Advocate

Date of Evidence: 12.6.2006, 2.1.2008, 19.3.2009, 27.5.2009,
29.3.2011, 6.3.2012, 21.6.2012,

Date of Hearing : 17.5.2014

Date of Judgment: 17.5.2014

J-U-D-G-M-E-N-T

1. The prosecution case in brief is that on 14.11.05, Smti Rina Sona filed an FIR before the Officer-in-Charge of Rangapara Police Station stating, inter alia, that on 13.11.05 when her sister-in-law was returning from a shop which she had visited after watching a movie in the Ghoriali Labour Club, she went missing and next morning her injured dead body was found in Block No.27 of the

garden. On the basis of the FIR, police registered Rangapara Police Station Case No. 313/05 under section 302 IPC. After due investigation, charge-sheet was submitted against two accused persons, namely, Sri Ganesh Tanti and Md Abdulla Sheikh under the said section of law.

2. Upon production of the accused persons, the relevant documents were furnished to the accused persons under Section 207 CrPC and as the offence is u/s 302/34 IPC, the case was committed to the Court of Sessions for trial.

3. After hearing both sides, and on perusal of the documents furnished u/s 173 of the Cr.P.C., formal charge u/s 302/34 IPC was framed, read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of the case the prosecution examined as many as 14 (fourteen) prosecution witnesses and defence examined none. The plea of defence is of total denial.

5. It is pertinent to place on record that prosecution evidence was closed on 21.6.2012 and the matter fixed for examination of the accused persons u/s 313 CrPC. When the matter stood thus, accused Ganesh Tanti continued to remain absent and subsequently proclamation was issued against the said accused. This Court after recording evidence and being satisfied with the report on proclamation, declared accused Ganesh Tanti as absconder and the case against the accused Ganesh Tanti was filed so that the trial in respect of accused Md Abdulla Sheikh could be concluded and the latter need not be made to suffer because of the co-accused.

6. Thereafter the accused Md Abdulla Sheikh was examined u/s 313 of the Cr.P.C. wherein he denied the accusation levelled against him.

POINTS FOR DETERMINATION

Whether the accused Md Abdulla Sheikh, in furtherance of common intention with, accused Ganesh Tanti (since declared absconder) committed murder by intentionally causing death of Smt Sulochana Sonar ?

6. I have carefully examined the evidence on record and heard arguments of both sides.

DISCUSSION, DECISION and REASONS THEREOF

7. PW 1, Dr Bhabani Bhuyan, Medical Officer deposed that he conducted post mortem examination on the dead body of Sulochana Sonar on 15.11.2005. PW 1 stated that he found the following injuries on the body of the deceased, namely (i) four penetrating stab injuries on the chest wall (ii) deep cut mark on the neck with laceration of trachea and oesophagus (iii) one cut mark on the abdomen PW 1 deposed that in his opinion the cause of death was due to lacerated injuries over the neck and chest wall. PW 1 exhibited the post mortem report as Ext. 1. The defence declined to cross examine PW 1.

8. PW 2, Etowa Lohar stated that he knew the accused Ganesh Tanti (absconder) but he did not know accused Md Abdulla Sheikh. PW 2 stated that one morning at about 9 o'clock, the Sardar of the Tea Estate, informed him that one girl had died in the garden and accordingly he went to the spot and saw that the deceased girl was Raju's sister. PW 2 declined having any knowledge of the persons who caused the death of Raju's sister or the cause of her death. In the cross examination, PW 2 stated that he was the Union Secretary of the Garden.

9. PW 3, Rina Tanti deposed that her sister Sulochana died in the garden after which she lodged the FIR. PW 3 In cross examination she stated that she did not know who killed her sister nor did she suspect anyone. She declined having knowledge of the

contents of the FIR or its scribe and stated that she did not use "Sonar" as her surname.

10. PW 4, Raju Tanti @ Sunar stated that deceased Sulochana was his sister. He stated that he had seen the dead body of her sister lying on the road at about 10 o'clock in the morning. PW 4 stated that there were injuries on the dead body. He declined having any knowledge of who killed his sister. In his cross examination he stated that Etowa Lohar (PW1) informed him about the death of his sister. He stated that he did not suspect anyone.

11. PW 5, Sanjib Bhumij deposed that he knew accused Ganesh Tanti (absconder) and that he did not recognise accused Md Abdulla Sheikh. PW 5 stated that there was a cinema show in the garden. He stated that after the first show, he had seen the accused Ganesh Tanti (absconder) with Sulochana and another boy. PW 5 stated that after watching the movie he returned home. On the next day he learnt that Sulochana had been murdered. He proved his statement recorded u/s 164 vide Ext 2. In cross examination, PW 5 admitted that he did not know who killed Sulochana and further stated that he did not suspect anyone.

12. PW 6, Sri Prakash Kishan stated that about three years back there was a cinema show in their garden. On that day Sulochana too had come to see the movie. On the next day, he got the information that dead body of Sulochana was found in Ghoriali Tea garden and on hearing the same he went to the spot and saw the dead body. About 20-25 people had gathered at the place of occurrence and Sushil, Shankar, Jiten Tanti were amongst them. PW 6 further stated that the security guard of the garden informed the Manager of the garden about the occurrence, who in turn informed the police. Thereafter police came to the place of occurrence and took away the dead body. He stated that Sulochana had gone to see cinema with one boy named Bhuban whom the police had interrogated. PW 6 stated that he came to know from Bhuban that on the previous night the accused persons and

Sulochana had watched movie with Bhuban. He further stated that the accused persons were not there at the place of occurrence. PW 6 stated that the police arrested accused Ganesh Tanti (absconder) and the latter confessed before the police that he along with accused Md Abdulla Sheikh had cut Sulochana.

In cross examination he admitted that when police interrogated Ganesh Tanti (absconder) he was not present. He stated that he did not know who killed Sulochana and how she was killed. He further admitted that it was on suspicion that police was informed about the involvement of the Ganesh Tanti (absconder) and Md Abdulla Sheikh.

13. PW 7, Jiten Tanti testified that deceased Sulochana, who was her cousin, too had gone to watch the cinema show organised in the garden. However, since she did not return, a search was carried out and her dead body was found in Block 27 of the garden. He stated that he had not seen who killed Sulochana but had heard people discuss that accused persons had committed the murder. PW 7 identified his signature in Ext 3 Seizure List. In cross examination, PW 7 stated that he had gone at the place of occurrence, in the noon, the next day. PW 7 admitted that he had not stated before the police that he had heard the public discuss that the accused had committed the murder.

He admitted that he had stated before the police that on 13.11.2005, in the evening, he along with Ganesh, Punam Thakur had consumed alcohol in his house and thereafter they had gone to the house of Sukra as there was Shraddha. From there, they went to see cinema and about 12 at night, he returned and came home and slept. He further admitted stating before the police that he did not know who murdered Sulochana. He admitted that they had only suspected the accused persons, that is, Ganesh Tanti (absconder) and Md Abdulla Sheikh.

14. PW 8, Bhuban Lohar (Matia) deposed that there was a cinema show in the garden and about a week thereafter he received the

information that her cousin Sulochana had died. PW 8 stated that on the day of the show accused Md Abdulla had offered to go to watch cinema together but PW 8 had declined the offer. PW 8 did not know how Sulochana died. In cross examination he stated that during the cinema show, the accused Ganesh Tanti (absconder) and Md Abdulla Sheikh had called him to have beetle nut. Sulochana was sitting at the back. PW 8 declined having any knowledge about what transpired later.

15. PW 9, Shankar Keot deposed that in the night when Sulochana died, there was a cinema show in the garden. PW 9 stated that after watching the cinema he returned home and on the next day he learnt that a dead body was lying in the Block 27 of their garden. PW 9 deposed that police had seized sandal (Mat Ext 1) vide Ext 3. In cross examination he stated that he did not know who murdered Sulochana and admitted that Ghoriali TE and Khendai were two separate tea estates. PW 9 further stated that Motibur Sharma, Manager of Ghoriali TE had informed the police about the occurrence.

16. PW 10, Sushil Rajak in his testimony stated that on the next day of the cinema show in the garden when he was proceeding to his workplace at about 6 o'clock he received information that a girl was lying dead in the garden. On coming to learn about the same, he proceeded to the place of occurrence and informed the Manager, who, in turn, informed the police. Thereafter the police and VDP Secretary, Sri Ramesh Kerketa arrived at the spot. In cross examination PW 10 stated that he did not know how Sulochana died.

17. PW 11, Krishna Kishan stated that on the next day of the cinema show in the garden, he came to know that Sulochana was lying dead in the garden. In cross examination PW 11 admitted that he had no knowledge as to with whom, Sulochana had gone to watch the cinema show. He stated that he had not stated before

the police that Sulochana had gone to watch the cinema show with the accused persons, that is, Ganesh Tanti (absconder) and Md Abdulla Sheikh.

18. PW 12, Sri Tularam Kal stated he assisted the police lift the dead body in the vehicle and signed on the Seizure List. In cross examination he admitted that he had no knowledge as to how Sulochana died.

19. PW 13, Sri Bishnu Dulakakaria and PW 14, Sri Member Chaigiya are the official witnesses who carried out the investigation and filed chargesheet.

Discussion, Decision and Reason thereof

20. From the evidence on record, it is apparent that the case at hand requires scrutiny from the point of existence of circumstantial evidence, in as much as, no eye witness has been produced by the prosecution.

21. As has been held by the Hon'ble Supreme Court in innumerable judgments, when a case rests on circumstantial evidence, such evidence must satisfy of quoted tests viz: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probabilities the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

22. It has been further held by the Hon'ble Supreme Court that where the entire case hinges on circumstantial evidence, great care must be taken in evaluating circumstantial evidence to ensure that the circumstances on which the prosecution relies are wholly consistent with the sole hypothesis of the guilt of the accused.

23. In the instant case, the only theory put forward by the prosecution is the theory of "last seen together". Ld Addl P.P. strenuously argued that PW 5 stated that he had seen Sulochana with accused Ganesh (absconder) and another person watch cinema and on the next day Sulochana was found dead. The contention of the Ld Addl P.P. is of no assistance to the prosecution in so far as the accused Md Abdulla Sheikh is concerned. None of the witnesses have categorically stated that they had last seen Sulochana with Md Abdulla Sheikh. In fact it has come on record that as many as 500-600 people had gathered to enjoy the cinema show in the garden and Sulochana too was one of them. PW 6 and PW 7 both stated that Sulochana too had gone to watch cinema. All the witnesses have deposed that they had neither seen the occurrence nor did they suspect anyone. PW 7 , admitted that the accused Md Abdulla Sheikh was so named only on suspicion. From Ext 1, post mortem report and the evidence of PW 1 it is apparent that fatal injuries were inflicted on the body of Sulochana which were the cause of her death. There is nothing on record to establish who caused those injuries and under what circumstances they were caused.

24. Thus from the materials on record, it can safely be concluded that the prosecution has failed to establish even a single circumstance, leave alone a chain of circumstances, leaving this Court to conclude that the prosecution has not been successful in establishing the guilt of the accused, Md Abdulla Sheikh beyond reasonable doubt. There is not a single circumstance which even remotely points to the guilt of the accused.

25. In view of the discussion herein before, it can be safely concluded that the prosecution has failed to bring home the charges against the accused.

26. In the result, I hold that accused, Md Abdulla Sheikh is not guilty of the offence charged with or any other minor offence and, as such, he is acquitted of the charges u/s 302/34 IPC and set at liberty.

27. Bail bond executed by the accused and surety are extended for next six months as per the provision of section 437A Cr.P.C.

28. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation u/s 357A Cr.P.C.

29. Send a copy of the order to Learned District Magistrate, Sonitpur u/s 365 Cr.P.C.

The judgment is signed, sealed and pronounced in open court, in the presence of both sides, on this the 17th day of May, 2014.

Additional Sessions Judge No. 2,
Sonitpur, Tezpur.

A N N E X U R E

1. Prosecution Witnesses:-

- P.W. 1:- Dr Bhabani Bhuyan
- P.W. 2:- Sri Etowa Lohar
- P.W. 3:- Smt Rina Tanti
- P.W. 4:- Sri Raju Tanti @ Sunar
- P.W. 5:- Sri Sanjib Bhumij
- P.W. 6 :- Sri Prakash Kishan
- P.W. 7:- Sri Jiten Tanti
- P.W. 8:-Sri Bhuban Lohar (Matia)
- P.W. 9:-Sri Shankar Keot
- P.W. 10:- Sri Sushil Rajak
- P.W. 11:-Sri Krishna Kishan
- P.W. 12:- Sri Tularam Kal
- P.W. 13:- Sri Bishnu Dulakakaria
- P.W. 14:- Sri Member Chaigiya

2. Defence Witnesses:- None

3. Court Witnesses:- None

4. Prosecution Exhibits:-

- Exbt. 1:- Post Mortem Report
- Exbt. 2:- Statement u/s 164 CrPC
- Exbt. 3 :- Seizure List
- Exbt. 4:- FIR
- Exbt. 5:- Dead Body Challan
- Exbt. 6:- Sketch Map
- Exbt. 7:- Charge Sheet

5. Material Exhibits:-

- M.Ext 1:- Hawaii Chappal

6. Defence Exhibits:-Nil

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