

Heard Mr.B.Cherty, learned Amicus Curiae for the appellant and Mr.P.C.Gayan, learned P.P. for the State Respondent.

2. Vide judgment and order dated 08.05.2001 passed by the learned Sessions Judge, Dibrugarh in Sessions Case No.147/2000, the accused appellant stands convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life. Hence, the present appeal.

3. The appellant before us is a member of the Assam Tea Plantation Security Force and at the relevant time he was posted at Achabam Tea Estate under Namrup Tea Estate. Prosecution case is that, on 26.07.1999 at around 9 A.M. while the accused was on his Sentry Duty in the Tea Estate, he fired a shot with his service rifle killing his fellow security guard Raju Sarkar Sepoy No.4377. Raju was immediately removed to garden hospital where he was declared dead. Thereafter, the FIR was lodged naming the appellant as accused.

4. Dr.Girindhar Sharma(PW-4), is the Medical Officer of Achabam Tea Estate, who examined the injured immediately after the incident and found injury on the right lower occipital region and the Doctor found the injured dead. Postmortem was conducted by Dr. R.Chaliha (PW-3), who found as follows:-

\ A male deadbody of about 30 years wearing a shirt, ganji, long pant, half pants and boots. Eyes and mouth are closed. Natural orifices are healthy, rigor mortis was present in both upper and lower limbs.

Injuries:

1. An entry wound over the back of the neck on the right side in hairline measuring 4.2 c.m.

2. An exit wound over the left cheek on the maxilla measuring 4.3 c.m. Maxilla is fractured on the left side. There is fracture of the posterior cranial fossa on the right side the interior cranial fossa on the left side.

3. There is contusion of the left half of the brain.

Thoracic organs are healthy. Abdominal organs are healthy. Stomach contains rice.

Cranium and spinal Canal:

Skull described. Membranes are congested. There is contusion of the left half of the brain.\

In the opinion of the Doctor, the death was due to coma as a result of injuries described. The injuries are antemortem being caused by Rifle fire arm and are homicidal in nature and the injuries are sufficient to cause death of a person in ordinary course of nature.

5. We find that the medical evidence has not been challenged by way of cross-examination and the death of the deceased as a result of the gun shot injury has not been disputed before us.

6. Learned Amicus Curiae, however, tried to submit that as per the evidence of the witnesses the injury was on the head whereas the Doctor found injury on the neck. The head is situated over neck only and as such the statement of the witnesses that the injury was on the head does not take away the evidentiary value of medical evidence. The Doctor found entry wound over the back of the neck on the right side in hairline and an exit wound over the left cheek on the maxilla.

7. PW-4, PW-5 and PW-6 are all officers of the Tea Estate and they have deposed that they heard the sound of gun shot and when they came, they saw the deceased lying on the bunker with shot injury on his neck/head and the injured was thereafter removed to hospital. They have also found that the accused have been captured and kept confined by the fellow security guards. These witnesses have deposed about the incident of gun firing that took place at the time and place mentioned and in the above incident Raju Sarkar sustained gun shot injury and he succumbed to the said injury.

8. PW-1 Anil ChandraNath and PW-2 Raju Basumatary are colleagues of the accused and the deceased. They are members of the Assam Tea Plantation Security Force serving at Achabam Tea Estate. They have deposed that while they were in the barrack, on hearing the sound of firing shot, they came out and saw the accused holding the rifle and in the position of shooting. They also saw the deceased lying on the bunker with gun shot injury on his person. Both PW-1 and PW-2 along others captured the accused and kept him inside. Material Ext. 1 is the service rifle seized by the police during investigation. Learned trial Court arrived at the conclusion on the strength of the evidence of PW-1 and PW-2. PW-2 had seen the accused firing shot, whereas the PW1 did not see the actual firing. The consequence is very clear that the accused was armed and suddenly started firing, which injured the skull of the victim who was lying dead.

9. The accused has taken the plea of denial and failed to point out that he was unarmed and we hardly find any force in the above submission. We find that the accused was on Sentry duty and no one can be expected to perform sentry duty without firing arms.

10. The accused was apprehended immediately and even his name find place in the FIR lodged by the Manager of the Tea Garden. Hence, relying upon the testimony of PW-1 and PW-2 and the circumstances appears before us, it can safely be concluded that it was the accused appellant and none else, who fired the shot killing the deceased. The statement of PW-2 is corroborated by medical evidence that the deceased died as a result of gun shot injury.

10. In the result, we find no merit in this appeal. The appeal is dismissed.

Send down the record.

Fees of learned amicus curiae is fixed at Rs.2000/-.