

Heard Mr.A.Rashid, learned Amicus Curiae for the appellant and Mr.B.Saikia, learned P.P., Assam for the State Respondent.

2. On 26.11.2000 one Smti Shila Orang, a middle-aged widow along with her daughter Smti Chandmani Orang, went to Dhekajuli Market. Though the daughter returned back, but the mother never came back home whereupon on the next day a search was made and said Chilla Orang was found dead at Namchuburi Panbari field. An FIR being lodged, the police started investigation and the dead body was sent for post mortem, which was conducted by Dr. K.N.Deka (PW-1). The doctor found as follows:-

\ A stout female body Rigor Mortis absent. Eye and mouth were closed. Bruise over the right parietal scalp 4\ x 2\ size.

On internal examination bruise over the right brain is ruptured. Right temporal lobe is contused with blood clots.

Other organs were healthy.

All the injuries were antemortem in nature.

There was fracture over the right parietal bone of the scalp.

In my opinion, the death was due to head injury.

The above injuries were sufficient to cause the death of the deceased.\

3. This is a case of single injury and the medical evidence has not been challenged by way of cross-examination and basing on the oral evidence the learned trial Court has rightly held this to be a case of homicidal death.

4. In this case, we find that there is no direct testimony i.e. eye witness who had seen the deceased being assaulted or killed. The entire prosecution case hinges on the circumstantial evidence.

5. PW-5 Ms. Chanmoni Orang, the teen aged daughter of the deceased, had accompanied the deceased on the fateful day. They went to Dhekajuli Market to purchase a Bullock, but the deal did not materialize and while they were returning back the accused followed them. The accused threatened and frightened her whereupon she returned home. However, the mother did not return and on the next day she went in search of her mother and found her lying dead in the field. This witness was cross-examined at length and some omissions as regards carrying of Rs.4,000/- for purchase of bullock etc. were brought on record. Carrying of money has nothing to do with the killing of the deceased and this is neither a case of murder for robbing the money nor a case of robbery and murder.

6. PW-2 Nansup Gore, is another co-villager. He has deposed that while he was returning from Dhekajuli market along with his son in a bicycle, he crossed the accused Sadhu and noticed that Sadhu was trying to catch hold of a woman. The accused was asking the woman to go along with him, but woman refused in spite of repeated requests of the accused. The witnesses thereafter returned home and on the next day he learnt about death of Shilla whereupon he informed the above incident to the Gaonbura, who informed the Police.

7. In the present case, we find the circumstances relied upon by the prosecution, have been established by cogent and reliable evidence and in the present case we find the following circumstances have been established:-

- (i) The deceased had gone to Dhekajuli Market along with PW-5 and the PW-5 returned back home;
- (ii) The deceased was a widow and the accused was trying to have her company;
- (iii) The accused was aggressive with the deceased and even pulled her by force;
- (iv) The accused forced the daughter of the deceased to leave her mother;

- (v) There were marks of violence on the private parts of the deceased;
- (vi) The accused was found hiding inside the field where from he was arrested ; and
- (vii) Post-crime conduct of the accused.

8. PW-6 Ram Jiban Orang has deposed that as he was returned from the market, the accused appellant came to him and exclaimed by holding his head \ What I have done, what I have done? Oh God, save me!\ and thereafter left the place. This witness also deposed that the appellant Sadhu was hiding himself in the field wherefrom he was apprehended. The arresting authority also confirmed that the accused was apprehended from the field while he was hiding there.

9. Ext.2 is the inquest report. The inquest was conducted by the police. The police found blood on the vagina and on the ground below. The police also found injury on the vagina, besides the injury on the head.

10. Ext-1 is the Postmortem report proved by the Doctor and the Doctor also found bleeding present in the vagina of the deceased. Although this is not a case of rape under Section 376 IPC the reasons for committing murder was the same. The above circumstances show the move, preparation and presence of the accused with the deceased just prior to the occurrence. The deceased was seen alive for the last time in the company of the accused. This circumstance was not explained by the accused. We find that all these questions were put to him under Section 313 Cr.P.C. and the accused gave a single reply \I am innocent\.

11. In the case of Sahadevan vs. State represented by the Inspector General of Police, Chennai, 2003 (1) SCC 534, it was held by the Apex Court that in case of last seen together it is obligatory on the part of the accused to explain as to when they parted company. From the evidence of PW-2 and PW-6, accused appellant was the person giving company with the deceased last seen alive. The accused did not explain as to when he parted the company of the deceased. Although the accused did not make any extra judicial confession before the PW-6, his conduct is very much relevant. Conduct of the accused while repenting his act was admittedly not a case of good act. The post-crime conduct supports and fully fits him with other circumstantial evidence against the accused which rest with only one conclusion that it was only the accused appellant who killed the deceased, the hypothesis of innocence is general. We, therefore, hold that the conviction and sentence of the accused appellant is in accordance with law and the present appeal is devoid of any merit. The appeal is accordingly dismissed.

Send down the record.

Fee of the learned amicus curiae is fixed at Rs.2000/- (Rupees two thousand) only.