

(2008) 03 GAU CK 0015

Gauhati High Court

Case No: None

Ramesh Rongpi @ Rahang

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: March 18, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (2010) 1 GLR 599 : (2008) 3 GLT 58**Hon'ble Judges:** P.K. Musahary, J; Aftab H. Saikia, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

P.K. Musahary, J.

The prosecution tells its story thus: that on and from 4.8.1997, one Bina Kathar of Village No. 2 Tegheria under Khetri PS was missing from the village while he was returning home from the paddy field. The family members and the villagers were in search of Sri Bina Kathar. On 7.8.1997 while Mohan Kathar, son of Bina Kathar and few other villagers were in search of Bina Kathar from 5 a.m., accused Ramesh Rongpi @ Rahang was found concealing his presence in the jungle with a dao in his hand and when he was questioned by the searching party why he was staying there, the accused person fled away. Out of suspicion, the searching party led by Mohan Kathar, then searched the place in an around and found recent dumping of earth near that place. When searching party removed the earth, they recovered the dead body of Bina Kathar which was found buried there. Accordingly, Mohan Kathar informed police and lodged FIR. A crime being Khetri PS Case No. 150/97 (corresponding to GR. Case No. 3595/97) was registered and investigated the matter. On completion of usual investigation, police submitted the charge-sheet under Sections 302/201/34 IPC. The offence u/s 302 IPC being triable exclusively by the Court of Sessions, the learned Judicial Magistrate committed this case to the

Court of Sessions for trial.

On appearance of the accused persons and also considering the documents referred to in Section 173 CrPC charges under Sections 302/34/201 IPC were framed against accused Mohit Rongpi, Bhupen Rongpi and Ramesh Rongpi and discharged the other accused persons finding no materials against them. The offences were explained to the above accused persons to which they pleaded not guilty and claimed to stand the trial.

The prosecution examined as many as 12 witnesses and the defence did not examine any witness. The defence case is that of complete denial one.

During the course of trial, the prosecution exhibited the following documents:

Ext. 1 Post-mortem report

Ext. 2 Inquest report

Ext. 3 Dead body challan

Ext. 4 Command certificate

Ext. 5 Forwarding report

Ext. 6 Another post-mortem report

Ext. 7 Another inquest report

Ext. 8 Challan

Ext. 9 Command certificate

Ext. 10 Forwarding report

Ext. 11 Ejahar

Ext. 12 Seizure list

Ext. 13 Another seizure list

Ext. 14 Skethmap

Ext. 15 Another sketch map

Ext. 16 Statement of the accused Bhupen Rongpi u/s 161, Cr.P.C.

Ext. 17 Statement of the accused Ramesh Rahang u/s 161, Cr.P.C.

Ext. 18 Statement of the accused Mohit Rongpi u/s 161, Cr.P.C.

2. Heard Mr. N. Ahmed, learned Counsel for the appellant and also Mr. K.C. Mahanta, learned Additional Public Prosecutor, for the State respondent.

3. The deceased was not seen last with anybody before his death nor was there any eye-witness to the occurrence. The prosecution had to depend on the evidence of P.Ws. 3, 4, 5, 6, 7 and 8, who went out searching the deceased after he went missing since 4.8.1997. P.Ws. 3, 4 and 7 are the sons of the deceased Bina Kathar. P.Ws. 6 and 8 are cousin brother and son-in-law of the deceased, while PW6 is a man from the same locality. P.Ws. 3, 4, 6, 7 and 8 had been searching for the deceased from 5.8.1997 i.e. from the next day of deceased went missing on 4.8.1997. They continued their search on 6.8.1997. They again started their search from the early morning of 7.8.1997. They found accused Ramesh Rahang with a dao sitting at a hilly place with jungles and when they asked what he was doing over there, he instantly ran away. Suspicion arose in their mind and they went to the place where accused Ramesh was sitting. On searching the place, they found a new heap of earth on the spot. As they dug the heap, a hand of a man came into view. PW3 could identify the hand. On removing the earth they recovered the deceased's headless dead body. PW3 lodged the FIR and the police after registering a case came to the place of occurrence with a Magistrate who held the inquest upon the dead body. The severed head of the deceased was recovered by police at a place little away from the site where the dead body was found as was shown by the accused Bhupen Rongpi after a day of recovery of the dead body i. e. on 8.8.1997 from a service of stone under water. In the evidence of above PWs, the following material particulars are found:

(1) The residence of accused Ramesh is situated at a distance of about 1 km. from the residence of the deceased.

(2) The place where the dead body was found situates at a place 2 km. away from the residence of the deceased.

(3) The residence of accused Ramesh is to the north of the place where dead body of the deceased was found.

(4) The severed head was found at a distance of about 2 furlong from the site where the dead body was found.

(5) The place where accused Ramesh was hiding/waiting in ambush with a dao was at a distance of about 5/6 metres only from the place where the dead body was found.

(6) Accused Ramesh was hiding at a distance of about 33 feet from the road that leads to his residence.

(7) Police seized one dao, one spade and one "Banka" (bamboo pole used in carrying weight) from the site where the dead body was found.

4. PW-10, Sri Nandi Koibarta, I.O. stated that he made a GD Entry No. 187 dated 6.8.1997 regarding missing of the deceased and visited the place of occurrence. He brought 4 persons (other than the accused persons) as shown by the informant PW3

to police station for interrogation. He received the written FIR on the next date i.e. 7.8.1997, on the basis of which a case was registered. The headless deadbody of the deceased was recovered as shown by accused Mohit Rongpi. The dead body which was in a buried state was disinterred and the inquest was held upon the dead body by the Magistrate who accompanied him. Thereafter, on the next day i.e. 8.8.1997, the severed head of the deceased was recovered as shown by another accused Bhupen Rongpi in presence of a Magistrate from a channel, a little away from the site where the dead body was recovered. PW-3, son of the deceased identified the severed head to be that of his deceased father and an inquest was held on the said head also. Both the severed head and the dead body were sent to the Guwahati Medical College Hospital (GMC). The 1.0. (PW-10), in connection with the above case arrested several persons including the accused Ramesh, Bhupen and Mohit on 7.8.1997 and recorded their statements u/s 161, Cr. PC. In the said statements, the accused persons confessed their guilt.

5. The factum of recovery of headless dead body and the severed head of the deceased is not in dispute. So also the places of recovery of the said headless dead body and the severed head are also not in dispute.

6. The prosecution case, as evident from the record, is based on no evidence of any eye-witness but merely on the evidence which is circumstantial in nature. The prime circumstance in this case is that the accused was seen hiding himself in jungle near the place where the dead body was recovered after 3 (three) days of his being went missing. The conduct of the accused was found highly suspicious as he moved away from the said place without responding to the P.Ws. 3, 4, 6, 7 and 8. If the statements of these witnesses are taken as correct, the prosecution has to establish the link between the presence of the accused and his guilt. Such link could be established only if it is proved that the accused was last seen with the deceased or any incriminating weapon or article was/were found from his possession or there was an old animosity with the deceased or any motive for killing the deceased by the accused. In this case, there is no chain of events as would permit one to come to a reasonable conclusion that the accused had been present near the place of occurrence after committing the murder of the deceased. In fact, there is no chain of event--wherefrom it started, how it proceeded without being snapped and whereat it ended. Here, while searching for the missing person suddenly aforesaid PWs happened to see the accused nearby the place of occurrence in a suspicious manner. There is no evidence on record that these witnesses ever saw the accused moving with the deceased before he went missing on 4.8.1997. There is no incriminating circumstantial evidence worth the name pointing guilt against the accused.

7. The prosecution, although seized a dao, spade etc, from the site from where the headless dead body was recovered, it did not take the finger prints thereon to ascertain the person, who used them. The prosecution should have taken the finger

prints of the accused/appellant as it had a strong suspicion on him. There were other co-accused particularly namely, Sri Mohit Rongpi and Bhupen Rongpi, who as per evidence on record led the police to find out the headless dead body and severed head respectively, against whom also the prosecution filed charge-sheet and tried together after framing charges against them. The prosecution committed material irregularity in the investigation of the crime by not taking finger prints of the prime accused person and thereby closed its safe way to reaching the real culprit. The prosecution remained satisfied itself of the evidence of some interested witnesses about the presence of the accused/ appellant near the place of occurrence in the early morning which arouse strong suspicion on the accused/appellant.

8. The accused/appellant is an illiterate rustic cultivator from the same locality of the deceased. His being around the paddy field at around 5 p.m. is not at all unusual for the villagers. Similarly his passing through or being near the place of occurrence is also not at all to be considered as unusual. It was not unlikely that the accused/appellant happened to come across the place of occurrence just before the aforesaid PWs reached and tried to get himself out of an embarrassing situation out of fear. It is to be noted that the deceased went missing on 4.8.1997 and the accused/ appellant was found near the place of occurrence on 7.8.1997. According to the opinion of the doctor who conducted the autopsy on 9.8.1997 at 1.30 p.m., the approximate time since death is 5 to 7 days. So the murder of the deceased took place on 4th or 5th of August 1997 and not 7.8.1997. Normally, a culprit would try to keep himself away from the place of occurrence after commission of murder for obvious reason. It is not expected that a murderer would keep himself waiting near the place of occurrence for being seen by somebody leaving at the site the alleged incriminating dao, spade etc. The prosecution's story that the accused/ appellant came to the place of occurrence after couple of days by committing the murder and kept himself waiting for being seen by some people is as absurd as unbelievable for any prudent man.

9. In this case, the prosecution has acted upon its strong suspicion against the accused/appellant as he was found in a suspicious manner near the place of occurrence without any basis or strong chain of incriminating circumstantial evidence against him. In absence of any cogent and reliable evidence, it is difficult to appreciate and agree with the learned trial Court how the chainless simple circumstance like the presence of the accused/appellant near the place of occurrence could fasten him with the liability of guilt. The established law is that, suspicion however grave, cannot be a substitute for a proof and the Court should take utmost precaution in finding the accused guilty only on the basis of circumstantial evidence. This was so held in the case of [Anjilus Dungdung Vs. State of Jharkhand](#), and in the case of [Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh](#), . In another case of [Anil Kumar Singh v. State of Bihar](#) reported in (2003) 9 SCC 69, it asked the Court to be cautious and avoid the risk of allowing

mere suspicion, however, strong to take the place of truth. We find and hold that in this case, the learned trial Court failed to adhere to the aforesaid golden caution and allowed itself to be swayed away by the strong but baseless suspicion of the prosecution and recorded conviction against the accused/appellant while acquitting the other co-accused. Such conviction and sentence in our opinion cannot stand sustainable under the law.

10. As regards the recovery of headless dead body, the evidence of P.W. Nos. 3, 4, 6 and 7 are in contradiction with the evidence of PW10, the I.O., Sri Nandi Koibarta. According to these PWs, they first saw the accused/appellant in a suspicious manner and located the place where the dead body was buried. Without being shown by any of the accused persons, they removed the earth and found the dead body of the deceased and then informed the police. But according to the evidence of P W-10, after receiving the FIR, he proceeded to the place of occurrence on 7.8.1997 along with a Magistrate PW-11 and during investigation, he, as shown by the accused Mohit Rongpi got the headless dead body disinterred, which was in a buried state. He reiterated the same statement in his cross-examination. He categorically stated thus:

It is not true that on 7.8.1997 Mohit Rongpi did not take police or Magistrate to show the dead body; that he did not give any statement at that time and that I prepared the statement (Ext. 18) myself....

If the evidence of the I.O. is taken as true, the evidence of P.Ws. 3, 4, 6 and 7 are rendered to be false and not trustworthy. Then the very evidence of these witnesses that they saw the accused/appellant near the place of occurrence becomes doubtful and unreliable. Except the mere doubt on the accused/appellant as he was located near the place of occurrence, these witnesses had no cogent reason to believe that the accused/appellant was involved in the crime nor there was any incriminating circumstantial evidence against the accused as discussed earlier. In any view of the matter, on the basis of these circumstances, it is not possible to draw an irresistible conclusion, which is incompatible with innocence of the appellant so as to complete the chain. It is well settled that in a case of circumstantial evidence, the chain of circumstance must be complete and in case there is any missing link therein, the same cannot form the basis of conviction. For the foregoing reasons, we are of the opinion that the prosecution has failed to prove its case beyond any shadow of reasonable doubt.

11. As regard the recovery of severed head of the deceased, P.Ws. 3, 4, 5, 6, 7, 8 had deposed that it was recovered on 8.8.1997 as led and shown by the accused Bhupen Rongpi. The I.O. (PW-10) also corroborated the said evidence. The evidence on record is that accused Mohit and Bhupen helped the police in recovering the headless dead body and its severed head. The legal presumption of these two accused persons being involved in the killing of the deceased should be much higher than that could be presumed against the accused/appellant, who was not a

party to showing and recovery of the dead body and its severed head, but found merely present near the place of occurrence, may be, by chance, after 3 (three) days from the date the deceased went missing on 4.8.1997. Yet the learned trial Court has come to a conclusion that-

In absence of any proper explanation and considering the evidence of the witnesses namely, P.Ws. 3, 4, 5, 6, 7 and 8 clearly proves beyond reasonable doubt one thing that the accused Ramesh Rongpi participated in killing and concealing the dead body of Bina Kathar in such place." The learned trial Court came to this conclusion completely on misappreciation of evidence regarding recording of statement of accused Bhupen Rongpi (Ext. 16) u/s 161 Cr.P.C. It is clear from the deposition of PW-10, I.O. and Ext. 16 that the recovery of headless dead body and the recording of statement u/s 161 Cr.P.C. was done on the same date i.e. 7.8.1997. The severed head of the deceased, as per evidence of all the witnesses, was recovered on the next day i.e. 8.8.1997. The learned trial Court had mixed up and confused itself about this established fact and came to a wrong conclusion. In the criminal proceeding, the statement u/s 161 Cr.P.C. is not a valid piece of evidence but in the present case, the learned trial Court has bent itself upon the statement of the accused Mohit and Bhupen recorded u/s 161 Cr.P.C. in coming to the above conclusion holding the accused/appellant involved in the case. We cannot afford to indulge ourselves in such exercise but would like to point out what has transpired from Ext. 16, i.e. the statement of the accused Bhupen u/s 161 Cr.P.C. According to accused Bhupen's statement, the deceased fell down after he was being hit and when found that he was still alive, accused Mohit cut him into piece by dealing cut blow on his neck. Accused Mohit himself made a similar statement u/s 161 Cr.P.C. in Ext. 18. To quote the relevant portion:

I cut him into piece by dealing a single cut blow with my dao which was a bamboo handle. Bhupen took the severed head and threw it in a drain.

These facts were not proved by adducing sufficient evidence against the accused Mohit and Bhupen and accordingly, they were acquitted by the learned trial Court giving them the benefit of doubt but at the same time, the accused/appellant has been convicted and sentenced by the learned trial Court without giving him the same benefit of doubt although his guilt was not proved beyond reasonable doubt.

12. The Apex Court has been consistently holding that the circumstantial evidence from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive and complete in nature and there should be no gap left in the chain of evidence. We have already observed earlier that there is no such circumstantial evidence or chain of evidence proving the guilt of the accused/appellant either conclusively or beyond reasonable doubt. It would be appropriate to quote the findings of the learned trial Court below: "Under the circumstances and considering; the totality of the evidence on record what I find is that the circumstantial evidence appearing against accused Ramesh Rongpi is quite

indicative and sufficient to prove his guilt in killing Bina Kathar and concealing the dead body in order to cause disappearance of the offences. As such I find him guilty of the offence under Sections 302/201 IPC. Accordingly, I convict him under the said section of law. Finding no sufficient evidence to bring home the charge, the other two accused persons namely, Mohit and Bhupen are acquitted setting them at liberty forthwith.

We fail to understand as to how a trial Court could convict an accused under Sections 302/201, IPC on the basis of circumstantial evidence "quite indicative" or "sufficient" without looking for conclusive and complete proof and adhering to the cardinal law that the guilt must be proved beyond all shades of reasonable doubt.

13. The accepted principle in the administration of criminal justice is that if two views are possible on the basis of evidence on record, one pointing to guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. In this case, it is evident that the learned trial Court has adopted a view of innocence in respect of accused Mohit and Bhupen as the evidence against them appear, what is called to be "shaky" and acquitted them. From the evidence available on record, we find that the similar view of innocence could have been adopted in favour of the present accused/appellant also as no conclusive evidence has been adduced against him, reasonably pointing to his guilt. In our considered opinion, the evidence on record as against the accused Mohit and Bhupen who have been acquitted and the accused/ appellant Ramesh who has been convicted are on the same footing and standard and therefore, the accused/appellant should also get the similar treatment of being innocent and get acquitted, else a great miscarriage of justice would occasion from the conviction of an innocent person.

14. Even otherwise also, on consideration of evidence on record, we find that the circumstances relied upon for conviction of accused/appellant are found far from being fully established and beyond reasonable doubt. In view of the above position and reasons, we allow this appeal setting aside the impugned judgment dated 1.3.2002 and order acquittal of the accused/ appellant.

15. The accused/appellant be set at liberty forthwith, if his further custody is not required in connection with any other case. Send down the LCR forthwith.