

(2013) 07 GAU CK 0015

Gauhati High Court

Case No: Criminal Appeal No. 103 (J) of 2009

Jagat Boro

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: July 23, 2013**Citation:** (2014) 1 GLD 30 : (2013) 4 GLT 501**Hon'ble Judges:** L.S. Jamir, J; Arun Chandra Upadhyay, J**Bench:** Division Bench**Advocate:** A. Das, Amicus Curiae, for the Appellant; B. Bhuyan, Addl. PP, for the Respondent

Judgement

Arun Chandra Upadhyay, J.

This appeal from jail is directed against the judgment-and-order dated 17th August, 2009 passed by the learned Additional Sessions Judge (Fast-track)-III at Kamrup in Sessions case No. 152(K)/2006, whereby accused Jagat Boro was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- and in default to undergo rigorous imprisonment for one year more. Prosecution case was set in motion with lodging of an FIR at Boko police station by Hikmat Ali (PW-1) of the said police station alleging that in the evening on 25.2.2004, Uttam Boro and Jagat Boro called on his brother Rashid Ali and took him with them. On the following day dead body of Rashid Ali was found at the Salhari pathar near Gosaipara. Later, PW-1 could learn that the duo had killed his brother Rashid Ali, and thereafter surrendered before the Boko police.

The dead body of the deceased was recovered from the jungle at the instance of the accused persons. A formal ejahar was lodged by Hikmat Ali at Boko police station. On the basis of the ejahar, Boko PS case No. 31/04 u/s 302 of the IPC was registered and the case endorsed to SI Mukul Kakati, for investigation. In course of the investigation, it was found that apart from those two accused, one Diganta Das was also involved in the murder of the deceased. All the three were forwarded to judicial custody, after arresting them. Post-mortem was carried out on the body of the

deceased and statements of witnesses were recorded. On completion of the investigation all the accused were sent for trial u/s 302 /34 of the IPC.

2. The case was committed to the Court of Sessions at Kamrup for trial by the learned Court below. During the pre-trial stage, accused Uttam Boro and Diganta Boro absconded: accordingly, they were declared absconder; however, on appearance of accused Jagat Boro, in due compliance of the procedures, formal charge under Sections 302 /34 of the IPC was framed against accused Jagat Boro. When the charges were read out and explained to accused Jagat Boro, he pleaded not guilty and demanded a trial.

3. Trial ensued. During trial, the prosecution examined as many as 10 witnesses and on completion of recording of the prosecution evidence, statement of the accused u/s 313 of the CrPC was recorded by the learned Sessions Judge. The stand of the accused was of total denial, however, the accused preferred not to adduce any evidence in defence. On completion of trial, the learned Sessions court convicted and sentenced accused Jagat Boro as aforesaid, giving rise to this appeal from jail.

4. Heard arguments advanced by Mrs. A. Das, learned amicus curiae for the accused/appellant as well as Mrs. B. Bhuyan, learned Additional Public Prosecutor.

5. In order to appreciate the respective arguments put forward by the learned counsel, we would like to depict herein below the core of the prosecution evidence:

6. We find the credentials of the prosecution witnesses as follows: PW 1 Hikmat Ali - complainant; PW 2 Rajat Ali, PW 4 Fakaruddin Ali and PW 5 Hasen Ali - neighbours; PW 3 Rahima Bibi - wife of the deceased; PW 6 Tarun Boro - a resident of Kathalmura village the place where all the accused persons and the deceased had drinking binge - PW 7 Lankeswar Rava and PW 8 Pramod Rava - residents of Faladubi village and Bhulagubi village, respectively they accompanied the deceased in the night of the date of occurrence; PW 9 Manoj Kr. Sinha - medical officer, and PW 10 Mukul Kakati - investigating officer.

7. Hikmat Ali (PW 1), the brother of deceased Rashid Ali and the first-informant, deposed that accused Uttam Boro, Jagat Boro and Diganta Rabha are known to him. According to him, deceased Rashid Ali was his younger brother. On 25.2.2004 at around 4.30 PM, when PW 1 was at home(after coming from the bazaar), accused Uttam Boro, Jagat Boro and a stranger suddenly came thereat and beckoned him out of the home. His brother never returned. The following day he could know that Uttam Boro, Jagat Boro had surrendered at Boko police station after killing his younger brother Rashid Ali.

The witness (PW-1) also deposed that after hearing the incident he rushed to the police station to find accused Uttam Boro, Jagat Boro present PW-1 followed the police to the spot to find the dead body of his brother Rashid Ali, lying at the Salbari fields and thereafter he lodged the ejahar.

8. Rajat Ali (PW 2) deposed that (Late) Rashid Ali alias Sallis is known to him and he was present at the spot when the police recovered the dead body of deceased Rashid Ali. PW 2 also proved his signature on the inquest report prepared by the police.

9. Rohima Bibi (PW 3), the wife of deceased Rashid Ali, deposed that accused Jagat Boro is known to her. She states: about 4 years back in one afternoon, Uttam Boro and Jagat Boro of Gohainpara took her husband from the road to somewhere. But her husband never returned, she later followed the villagers to the spot to find her husband's inert body lying on a spot between sal trees.

10. Fakuruddin Ali (PW 4) deposed that accused Jagat Boro and deceased Rashid Ali are known to him. He stated that around four years back one day he heard the death of Rashid Ali. PW 4 followed the villagers on the Mowing day to the spot to find the dead body of the victim lying between sal trees.

11. Hasen Ali (PW 5) deposed that accused Jagat Boro and deceased Rashid Ali are known to him. PW 5 stated that he was a witness to the inquest report of the dead body of the deceased.

12. Tarun Boro (PW 6) deposed that accused Jagat Boro, Uttam Boro and deceased Rashid Ali are known to him and that in the evening hours of the day of occurrence, Jagat Boro, Uttam Boro, Nongke Boro and deceased Rashid Ali came to his house to have drink and after having had drink they left his house at around 8 p.m. on that day. The following morning he came to know that Rashid Ali was killed and Jagat Boro and Uttam Boro had appeared at the police station, owning the responsibility for committing the crime.

13. Lankeswar Rava (PW 7) deposed that accused Jagat Boro, Uttam Boro and deceased Rashid Ali are known to him. According to PW-7 in the afternoon of the fateful day, Jagat Boro, Uttam Boro and deceased Rashid Ali came to his house to take him to the Tarun Boro's house at Kathalmari to have liquor. PW 7, after having had liquor with the accused and deceased together, left the place around 8 p.m. on that day for his house, while Jagat, Uttam, Sallis (Rashid) and Diganta left for somewhere else in the opposite direction. However, in the next morning PW-7 came to know from villagers that Rashid's dead body had been lying on a spot between sal trees.

14. Promud Rava (PW 8) deposed that both accused Jagat Boro and deceased Rashid Ali were known to him and that about 4-5 years back in the evening of a day, Jagat Boro, Uttam Boro and Salis had gone to the Tarun Boro's house to have liquor and after having had liquor thereat, he left the place for his house and Jagat, Uttam, Sallis (Rashid) and Diganta had gone away in the converse direction and on the following morning, he came to know that someone had killed Salis (Rashid).

15. Dr. Monuj Kr. Sinha (PW 9), who performed a post-mortem on the dead body of Rashid Ali, found the following injuries on the victim:

Injuries:

1. One contusion present over the neck in front size 6 c.m. x 3 c.m.
2. One contusion on left angle of mandible.
3. One abrasion present over right elbow joint 4 c.m. x 3 era in size.
4. Multiple contusion present over the chest size varying from 4 c.m. x 3 c.m. to 11 c.m. x 5 c.m.
5. Contusion present over sternum 7 c.m. x 3 c.m. in size.
6. Contusion present over the frontal area of the skull.
7. Fracture present over both side of the ribs No. 6, 7, 8 and 9th ribs.
8. Multiple contusion over the abdomen size varying from 7 c.m. x 5 c.m. to 2 c.m. x 1 c.m.

Scalp as described.

Skull and vertebrae health. Mambrane sub-dural hemorrhage present both side. Brain congested. Liver lacerated spleen health and pale, kidneys both healthy and pale. Bladder healthy and empty.

External and internal genetically all health.

Peritoneum lacerated. Cavity contains 100 ml blood. Mouth, fussing and Usufructs are healthy and pale. Stomach healthy and pale. Contains undigested rood material. Small intestine healthy and pale contains digested food material, large intestine healthy and pale contains gaseous and faucal matter. Flora (Lung Cover) lacerated. Davity contains 500 ml blood. Larynx and trachera healthy and pale. Right lung and left lung are lacerated. Pericardium and heart healthy. Disease and deformity not found.

In the opinion of the medic, the death was caused due to comatose resulted from head injuries and the wounds were ante-mortem, homicidal in nature caused by a blunt force impact.

The evidence of the doctor coupled with the ante mortem injuries sustained by the deceased makes it very clear that the deceased was brutally murdered by the assailants.

16. Mukul Kakoti (PW 10) deposed that on the basis of the aforesaid FIR and surrendering of the accused before the Boko police by confessing that the previous day that is 26.2.2004 at around 10 p.m. when they had assaulted Salis Ali alias Rashid the latter died and his dead body had been thrown into a jungle, he swung

into action, took the duo to the spot, identified the dead body as that of Rashid Ali with the help of the victim's elder brother Jamatula Ali, made inquest on the dead body, sketched the spot, seized a blue-coloured half-sleeve sporting-vest, examined witnesses, sent the body for a post-mortem, arrested accused Diganta Rabha, sent the trio to a Kamrup district court, initiated an investigation and on conclusion thereof, submitted a charge-sheet u/s 302 /34 IPC against the accused Uttam Boro, Jagat Boro and Diganta Rabha.

17. It would appear from the deposition of the prosecution witnesses that on the fateful day at around 4.30 PM, Uttam Boro, Jagat Boro and a stranger took out Rashid of his home. Soon thereafter, accused Jagat Boro and Diganta Rava and deceased Rashid Ali had gone to the house of Tarun Boro to have drink; having had drink at the latter's house, they left the place at around 8 p.m. on that day for somewhere, while Tarun Boro (PW 6) stayed at his home. The following morning the dead body of Rashid Ali was recovered between sal trees. Moreover, Uttam Boro and Jagat Boro came to the police station to inform the police regarding killing of the deceased by them. Therefore, it can be safely concluded that accused Uttam Boro, Jagat Boro, Diganta Rava and deceased Rashid Ali were "last-seen-together".

18. The following incriminating circumstances emerged against the accused:-

(1) From the evidence of PW 1 Hikmat Ali, it is found that in the afternoon of the fateful day, accused Jagat Boro and Uttam Boro went to the house of the deceased and took him out of the house, ostensibly for some important works.

(2) Thereafter, the accused persons took the deceased to the house of PW 7 Lankeswar Rava, so as to go together with him to the house of the PW 6 Tarun Boro, for drinking wine.

(3) PW 7 Lankeswar Rava has categorically stated that he, Jagat Boro, Uttam Boro and Rashid Ali went to the residence of Tarun Boro to drink liquor.

(4) From the evidence of PW 6, PW 7 and PW 8 it is apparent that on the night of the date of occurrence, accused Jagat Boro, Uttam Boro, Diganta Rava and deceased Rashid gathered in the house of Tarun Boro, for having liquor.

(5) At about 8 PM, PW 7 Lankeswar Rava, PW 8 Pramod Rava, deceased Rashid and the three accused persons came out of the residence of Tarun Boro.

(6) Out of these accused persons, PW 8, Pramod Rava also left them at a cross road, so as to go to his house.

(7) Thereafter, witness Lankeswar Rava, PW-7 deceased Rashid Ali and the three accused persons went along with the road and after some time PW-8, Pramod Rava also left those four persons at across road to go to his house.

(8) From the evidence of PW-8 Pramod Rava it is seen that three accused persons including Jagat Boro and the deceased went together along the road. This was the

place where the deceased was last seen with the three accused persons, thereafter, next morning the dead body was found in the Forest at the instance of the accused.

19. On reading the evidence of PW 7 and PW 8, it would appear that PW-6, PW 7 Lankeswar Rava and - Tarun Boro had stated the presence of the accused and the deceased at the relevant time. Next morning at about 8 AM accused Uttam Boro and Jagat Boro surrendered at Boko police station and disclosed that on the previous night at around 10 PM, they had killed Rashid Ali @ Salish and threw his dead body in the jungle. At about 9 AM the investigating officer went to the spot as per information given by the accused persons and recovered the dead body.

20. There were no eye witnesses to the occurrence. In order to base the conviction of an accused only on circumstantial evidence, the ratio laid down by the Hon"ble Supreme Court in [State of Goa Vs. Sanjay Thakran and Another](#), is also relevant. The Apex Court held: when the case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(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 a definite tendency unerringly pointing towards the guilt of the accused;

(3) The circumstances, cumulatively, should form a chain so complete as that there is no escape from the conclusion: within all human probabilities the crime had been committed by the accused, none else; and

(4) The circumstantial evidence in order to sustain conviction must be complete, incapable of giving explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the innocence.

21. It is a settled rule of criminal jurisprudence that suspicion, however grave it might be, cannot be substituted for a proof, and the courts shall take an utmost precaution in finding an accused guilty only on the basis of circumstantial evidence.

22. The circumstances of "last-seen-together" would normally be taken into consideration for finding the accused guilty of the offence charged only when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were seen together alive and when the deceased was found dead is so small that the possibility of any other person being seen accompanying the deceased could be completely ruled out. The time gap between the accused persons having been seen in company of the deceased and the detection of the crime would be of a material consideration to appreciate the evidence and place reliance on it.

23. The post-mortem report made by Dr. Monuj Kr. Sinha (PW 9), shows that the victim was murdered. He noticed as many as 8 injuries on the dead body which

included One contusion present over the neck in front size 6 c.m. x 3 c.m. One contusion on left angle of mandible one abrasion present over right elbow joint 4 c.m. x 3 c.m. in size. Multiple contusions present over the chest size varying from 4 c.m. x 3 c.m. to 11 c.m. x 5 c.m. Contusion present over sternums 7 c.m. x 3 c.m. in size. Contusion present over the frontal area of the skull. Fracture present over both side of the ribs No. 6, 7, 8 and 9th ribs. Multiple contusion over the abdomen size varying from 7 c.m. x 5 c.m. to 2 c.m. x 1 c.m. Membrane sub-dural hemorrhage present both side. Brain congested. Liver lacerated spleen healthy and pale. Peritoneum lacerated.

The doctor opined that death of that deceased had resulted from due to comatose resulted from head injuries and the wounds are ante-mortem, homicidal in nature, and were caused by blunt force impact

24. We have no doubt that homicidal death of the deceased had happened on the same night of his accompanying the accused persons. The dead body of the deceased was recovered in a forest on being told by the accused. It is apparent that victim was taken by the accused persons in order to murder him and he was in fact murdered very soon, thereafter. Now we have to deal with another vital question, can the accused feeling trial escape from the penal consequences of such murder.

25. The accused persons who were with the deceased have not given any explanation as to what happened to the victim, when he was in their company. Soon thereafter, the dead body of the deceased was discovered next morning in Sal-forest, at the instance of the accused persons. The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine, as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the power of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is applied, where it is not applicable, the offenders in serious offences would be the major beneficiaries, and the society would be the casualty.

26. When it is proved to the satisfaction of the court that deceased Rashid @ Salish was taken by the accused together with them, the accused alone knew what had happened to him until he was with them. If he was found murdered within a short while after the deceased was in the company of the accused, the permitted reasoning process would enable the court to draw the presumption that the accused have murdered him. Such inference can be disrupted if accused would tell the court what else had happened to the deceased at least until he was in their custody.

27. In [Chattar Singh and Another Vs. State of Haryana](#), the Apex Court held there is no doubt that conviction can be based solely on circumstantial evidence, but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

28. In [Hanumant Vs. The State of Madhya Pradesh](#), wherein it was observed thus:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

29. A reference may be made to a decision in [Sharad Birdhichand Sarda Vs. State of Maharashtra](#). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete. The conditions precedent in the words of the Apex Court is that before conviction could be based on circumstantial evidence, it must be fully established that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established; the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; the circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved; and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. These aspects were highlighted in [State of Rajasthan Vs. Raja Ram](#), [State of Haryana Vs. Jagbir Singh and Another](#), and [Kusuma Ankama Rao Vs. State of A.P.](#) (Criminal Appeal No. 185/2005 disposed of on 7.7.2008)

30. So far as the last seen together aspect is concerned it is necessary to take note of the following decisions of this court. In [State of U.P. Vs. Satish](#), it was noted as follows:

22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

In this case there is positive evidence that the deceased and the accused were last seen together by witnesses PWs. 7 and 8. Thereafter the dead body of the deceased was found in the Forest area with severe injuries.

31. In [Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh](#), it was noted as follows:

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration. (See also [Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir](#),

A similar view was also taken in [Jaswant Gir Vs. State of Punjab](#), and Kusuma Ankama Rao's case (supra).

32. In [Sahadevan @ Sagadevan Vs. State rep. by Inspector of Police](#), the Apex Court has held that that in a case of last-seen-together, it is obligatory on the part of the appellant to explain as to when and where he parted the company of the deceased. In the instant case, neither the appellant did take any plea regarding parting with the company of the deceased nor the accused came forward to explain as to how and in what manner his company i.e. the deceased, had to sustain the fatal injuries on his person and as to why his dead body was left in the Forest.

33. When the prosecution, based on reliable evidence, establishes that the deceased was last seen in the company of the appellant and was never seen alive thereafter, it is obligatory on the appellant to explain the circumstances in which the person and the appellant parted company. In the instant case the accused did not come forward to explain as to when and how he parted with the company of the deceased. Rather the accused surrendered in the police station and told the police that the dead body of the deceased was left by them in the forest.

34. The General Diary entry (No. 600) (Ext. 5), made on 26.2.2004, at about 8.25 p.m. in the morning, reads as follows:

Ext. 5

Sd/-Illegible

30.06.09.

Extract copy of Boko P.S. vide GDE No. 600 dated 26.02.2004.

8.25 AM

GDE No. 600

Receipt of information

Now, Shri uttam Boro, S/o Shri Raju Boro and Shri Jagat Boro, S/o Shri Lakheswar Boro, a resident of Gohainpara under Boko P.S. have appeared in the P.S. and verbally informed that around 10 AM on 25.02.2004 when they assaulted a man, Salis by name, the man died; that they thrown the body in the jungle. Accordingly both the accused were kept in the P.S. GD was made and an order was given to S.I. M. Kakati to take necessary action in regard to the matter after conducting an investigation.

Sd/-Akhyay Das, S.I.

Officer-in-Charge

Boko P.S.

26.02.2004.

35. PW 10, the investigating officer stated that in the morning on 26.2.2004, accused Uttam Boro and Jagat Boro surrendered at Boko police station stating that after killing Rashid Ali they had thrown the dead body of the deceased into a jungle. The evidence of conduct of the appellant in going to the police station immediately after the incident and giving report regarding leaving of the dead body in the forest is admissible u/s 8 of the Evidence Act. This position is not disputed. So also there is no dispute that inculpatory statement or the accused contained in Ex. 5 is inadmissible as being hit by Section 25 of the Evidence Act. In order to appreciate this aspect of the prosecution case it would be worthwhile to mention the rule laid down by the Apex Court in [Aghnoo Nagesia Vs. State of Bihar](#), It was held:

Sometimes a person lodging the first information report is charged with the very offence in connection with where the report was lodged by him. Such a contingency arises either - whether the first information report is confessional in nature, or, where the first information report is not confessional one but the investigation on the basis of such report reveals involvement of the person lodging the report.

36. When the report given by an accused contains statement both exculpatory and inculpatory, the contention that the portion of the statement excluding inculpatory portion is admissible, cannot be accepted as the test of severability is not approved by the Supreme Court in A. Nagisiaa v. Bihar State, (1st supra).

Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken single may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a

statement contains an admission of an offence not only that admission but also, even other admission of an incriminating fact contained in the Statement is part of the confession.

It was held:

We think that the separability test is misleading, and the entire confessional statement is hit by Section 25 and save and except as provided by Section 22 and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

37. In the instant case Ex. 5 contains confessional statement as well as admission of incriminating facts. Therefore, the said report Ex. 5 cannot be looked into for purposes of establishing the guilt of the accused. But, as stated above, the conduct of the appellant in going to the police station and act of surrendering before the police, is a strong circumstances against him.

38. In the present case, accused Jagat Boro together with the other accused accompanied the deceased on the evening of the occurrence. Thereafter the dead body of the deceased was found in the forest, meaning thereby that the time-gap - between the point of time when the accused and the deceased were seen alive together - is very small.

39. Another important aspect of the prosecution case is that PW 7 and PW 8 have stated that they had found accused Uttam Boro and the deceased at the house of Tarun Boro. The deceased went away with accused Jagat and two other accused persons from the cross road. The PW 4 Fakaruddin Ali stated about the blood-stained mark seen on the road from near the dead body of the deceased to the residence of accused Uttam Boro. Following the blood-stained mark with the police when P.W. 4 also entered the house of the accused, he saw floor and wall of the house of co-accused Uttam (absconder) stained with blood: this discovery of the blood stain mark on the road, floor and wall led to the conclusion that the deceased was brutally murdered by the accused.

40. On careful evaluation of the fact and circumstances as discussed above, we are of the view that the judgment of conviction as well as the sentence imposed by learned Sessions Judge, do not warrant any interference by us and consequently the appeal is dismissed.

41. For the assistance rendered by Ms. A. Das, learned amicus curiae, she is entitled to a remuneration, which is quantified at Rs. 4,500/- (Rupees four thousand and five hundred only), and to be paid by the State.

42. Before parting with the record of this case, in view of the provisions prescribed by Section 357 and 357-A Cr.P.C., coupled with the scheme prepared by the State Government, namely, "the Assam Victim Compensation Scheme, 2012," this Court is of the view that victim is entitled to get compensation for rehabilitation.

Consequently, it is hereby directed that in the event of realization of the amount fine of Rs. 10,000 (Ten Thousand Only) from the accused the amount shall be paid to the wife of the victim Mustt. Rahima Bibi and her children in equal share. Further, as an interim measure, an amount of Rs. 50,000/- shall be deposited by the State Government with the District Legal Services Authority of Kamrup, Assam within a period of two months from this date. The District Legal Services Authority, on receipt of the said money, shall make an inquiry in terms of the provision of the Assam Victim Compensation Scheme, 2012. Upon such enquiry the District Legal Services Authority shall do the needful in accordance with law to pay adequate compensation to the victims of the crime.

43. It is made clear that if the District Legal Services Authority, after due enquiry, arrive at the findings that the victim does not require any compensation then the said amount of Rs. 50,000/- shall refund without delay, in favour of the State Government. Send back the LCR along with a copy of this judgment.