

# SUPREME COURT OF INDIA

Mohibur Rahman

Vs.

State of Assam

(R.C.Lahoti and Brijesh Kumar JJ.)

21.08.2002

## JUDGMENT

### **R.C. Lahoti, J.**

1. The two accused-appellants have been held guilty of the offences punishable under Sections 302/34 and 201/34 of the IPC. Each of the accused-appellants has been sentenced to imprisonment for life and a fine of Rs. 2,000/-, in default to suffer R.I. for one year and seven years R.I. and a fine of Rs 500/- in default to suffer R.I. for three months respectively for the two offences. The substantive terms of imprisonment have been directed to run concurrently. The conviction and sentence as recorded by the trial Court have been upheld by the High Court.

2. There were in all seven accused persons put up for trial out of which five were acquitted by the trial Court and their acquittal has achieved finality. There is no eye witness to the crime. The conviction rests on circumstantial evidence. Without entering into very many details of the prosecution story and the nature of evidence coming through the mouth of several prosecution witnesses at the trial, it would suffice for our purpose, in the facts and circumstances of the case, to set out the circumstances which in the opinion of the High Court are incriminating and form such chain of incriminating circumstantial evidence as would fasten beyond reasonable doubt the finding of guilt against the accused-appellants. The circumstances are:-

- (i) The deceased Rahul was last seen in the company of the two accused-appellants;
- (ii) The deceased was having an affair with the sister-in-law of the accused Taijuddin which was not to the liking of the accused which had caused strained relationship between the deceased and the accused;
- (iii) The accused Taijuddin visited the house of the deceased Rahul after his disappearance and told the family members that Rahul might have eloped with his sister-in-law or might have been killed by ULFA;

(iv) The trunk of the body of the deceased, the severed head, the clothes and shoes of the deceased were recovered on being pointed out by the two accused-appellants.

3. It is well settled by a catena of decisions of this Court that in order to find conviction on circumstantial evidence each of the incriminating pieces of circumstantial evidence should be proved by cogent and reliable evidence and the Court should be satisfied that the proved pieces of circumstantial evidence taken together forge such a chain wherefrom no inference other than of guilt can be drawn against the accused person or, in other words, the proved pieces of circumstantial evidence should not be capable of being explained on any hypothesis other than the guilt of the accused. Based on these parameters we proceed to examine the evidence in the case.

4. As to last seen together, there is the sole testimony of Smt. Lilima Rajbongshi, PW6. According to her, she and the deceased Rahul were taking contract works in joint venture. She knew the deceased and his brother, the complainant who lodged the FIR. The accused persons were not known to her. On 24.1.1991 the witness had gone to the clinic of Dr. Chaban in connection with the illness of a cousin of hers. There Rahul came to collect some information from her. Having stayed in the chamber of Dr. Chaban for about 10-15 minutes she and Rahul left for Dhomdhoma bus stand. At about 5 p.m., the two accused Tajuddin and Mohibur Rahman came there and 'took away' Rahul by bus towards Nalbari Town. Thereafter she did not see Rahul. She heard that Rahul was murdered. She was confronted with her police statement wherein she had stated that she was in doctor's chamber at 7 p.m. This contradiction has been explained by the High Court observing that the witness was a village woman being examined after a long lapse of time and therefore there could be a lapse on her part in mentioning the exact timings but there was no reason to disbelieve her so far as the factum of the two accused persons having 'taken away' the deceased in her presence is concerned. However, here we may observe that during cross-examination the witness admitted that she could not say whether Rahul had any intention to go with the two accused persons, that is to say whether he willingly accompanied them or not. As such, from the statement of this witness no inference can be drawn if the two accused persons had used any force for taking away the deceased with them. The fact remains that it was day time when deceased left with the two accused. The deceased and the two accused went in a bus, i.e. a public transport. The place where the dead body of the deceased has been later found is at a distance of 30-40 kms. from the bus of Dhomdhoma. Keeping in view all these relevant factors together, all that can be safely held is that the deceased was seen by the witness leaving in the company of the two accused persons and that is the time when he was last seen. Later it was a rumour afloat that the deceased was killed by the two accused persons.

5. Md. Badrul Ali, PW3, cousin of missing Rahul, gave an information to the police on 5.2.1991 that Rahul was missing and his whereabouts were not known. On 6.2.1991 another information was given it was stated that Rahul was killed by the two accused persons as is being heard from some people. The names of the persons who said so and how it was known that they were the two accused persons who had killed Rahul is not revealed in the information. However, this is the information which has been treated as FIR and whereon the offences under Sections 302/201/34 IPC were registered and investigation commenced.

Taijuddin was arrested on 8.2.1991. He expressed his willingness to Probodh Chand Sen, PW12 the Sub-Inspector of Police to have the dead body of Rahul recovered. He took the police in the field of Bhogia Bill and pointed out two places where headless body of Rahul and the head were respectively buried and taken out on digging. As stated by Probodh Chand Sen the co-accused Mohibur Rahman was also present at the time when the places wherefrom the trunk of the body and the head of Rahul were buried and recovered were pointed out by accused Taijuddin. In our opinion, the presence of Mohibur Rahman is immaterial for two reasons. Firstly, according to Probodh Chand Sen, PW12. Mohibur Rahman was arrested on 18.2.1991. On 8.2.1991 he was not in custody and therefore the question of his being interrogated and his pointing out any place of recovery does not arise. Although B.K. Choudhary, PW11 who is an Executive Magistrate present on 8.2.1991 at the time of recovery has stated that the accused Taijuddin and Mohibur Rahman both were in custody-handcuffed, and both had pointed out the places of recovery but we have to ignore that statement in view of the categorical statement of the investigating officer Probodh Chand Sen, PW12 that the places of recovery were pointed out by accused Taijuddin only. The testimony of other Panch witnesses to the recovery is also to the same effect.

6. Similarly the clothes and the shoes allegedly worn by the deceased are also said to have been pointed out by accused Taijuddin and recovered but the evidence relating to such recovery shall have to be ignored as the clothes and the shoes have not been produced in the Court or identified by any one to say that they were belonging to the deceased. The dead body of Rahul when placed along with the head was of course identified by Md. Badrul Ali, PW3 as of deceased Rahul.

7. Two or three days after the disappearance of Rahul the accused Taijuddin came to Batibu Begum PW2, the mother of the deceased and Badrul Ali, PW3, the cousin of the deceased and told each of them that Rahul had eloped with Balijan Begam, the sister-in-law of the accused and that he was busy searching the two. What was told by accused Taijuddin to the mother and brother of the deceased cannot constitute evidence of motive for the crime allegedly committed by the accused Taijuddin. These prosecution witnesses have deposed to the accused Taijuddin having contacted them after the missing of Rahul and told them that Rahul had eloped with the sister-in-law of the accused. However, other than the statement of the accused said to have been made to these witnesses there is no evidence worth the name adduced by the prosecution to show that the deceased was carrying any affair with the sister-in-law of the accused or that he had eloped with her. What was told by the accused Taijuddin to the mother and brother of the deceased has been relied on by the prosecution as a false statement made by the accused to these witnesses so as to mislead them into thinking that the deceased was alive as having eloped with a girl. It cannot be held that the prosecution has succeeded in proving any motive for the crime.

8. Thus we are left with only three pieces of incriminating circumstantial evidence: (i) the deceased was last seen in the company of the accused persons; (ii) the accused Taijuddin contacted mother and brother of the missing person and gave a wrong reason for disappearance of the deceased and (iii) the dead body of the deceased cut into two pieces was recovered on the pointing out of the accused Taijuddin.

9. Dr. Ratan Ch. Das. PW13 performed post-mortem on the dead body of Mohd. Rahul Islam on 9.2.1991 at about 2.30 p.m. The dead body was in two parts. The head with the upper part of the neck was detached from the trunk at the level of cricoids cartilage by cut injury inflicted by sharp weapon. There was no other injury on the body. The death was caused by shock and haemorrhage due to cut injury. The entire body was decomposed. It was not possible to ascertain with any reasonable certainty the period which might have elapsed between the death and the post-mortem. However, in the opinion of Dr Ratan Ch. Das the death may have occurred 10 days before the date of post-mortem and looking to the state of decomposition the death must have been caused at least five days before the post-mortem.

10. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own he liability for the homicide. In the present case there is no such proximity of time and place. As already noted the death body has been recovered about 14 days after the date on which the deceased was last seen in the company of the accused. The distance between the two places is about 30-40 kms. The event of the two accused persons having departed with the deceased and thus last seen together (by Lilima Rajbongshi, PW6) does not bear such close proximity with the death of victim by reference to time or place. According to Dr. Ratan Ch. Das the death occurred 5 to 10 days before 9.2.1991. The medical evidence does not establish, and there is no other evidence available to hold, that the deceased had died on 24.1.1991 or soon thereafter. So far as the accused Mohibur Rahman is concerned this is the singular piece of circumstantial evidence available against him. We have already discussed evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable numbers of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal.

11. So far as the accused Taijuddin is concerned apart from his having been last seen in the company of the deceased there is evidence available to show that a day or two after disappearance of Rahul he contacted the relations of the deceased and instead of revealing to them how and where he had departed from the company of the deceased assigned an obviously false reason of the deceased being untraceable which reason was intended to set the mind of the relations thinking on different or imaginary tracks. The dead body cut into two pieces was recovered from two different places on the pointing out by the accused Taijuddin the places where the two pieces were lying buried and no one else could have ordinarily gathered the knowledge of the pieces of the dead body having been buried unless pointed out by the accused Taijuddin. It is true that the accused Taijuddin did not make any statement admissible under Section 27 of the Evidence Act nor the discovery of dead body

has been in consequence of information received from the accused. Had it been so probably the authorship of burial of dead body could have been attributed to the accused depending on the words in which the accused made the statement. Still recovery of the dead body on pointing out by the accused on the circumstances aforesaid leads to inference that the accused Taijuddin had the knowledge of the place where the dead body cut into two pieces was lying buried. These three circumstances taken together, namely, the deceased last seen in the company of the accused the accused giving a false explanation about the whereabouts of the deceased and the accused having knowledge of the dead body cut into two pieces (meaning thereby having died an unnatural death on being subjected to deadly violence) being buried coupled with the fact of failure on the part of the accused to offer any reasonable explanation of any of the said circumstances, is sufficient to fasten the liability of murder on the accused Taijuddin. But, at the same time it cannot be said that the accused Taijuddin has caused any evidence of the commission of that offence to disappear. His conviction under Section 201/34 cannot be sustained.

12. For the forgoing reasons, Criminal Appeal No. 550 of 2001 by the accused-appellant Mohibur Rahman is allowed. His conviction under Sections 302/34 and 201/34 IPC along with the sentences passed thereon is set aside. He is acquitted. He shall be released forthwith unless required to be detained in connection with any other offence. So far as the accused Taijuddin is concerned his conviction under Section 302/201/34 IPC is also set aside instead he is held guilty under Section 302 IPC. The sentence of imprisonment for life and a fine of Rs. 2000/-, in default of payment to suffer further R.I. for one year is maintained Criminal Appeal No. 551/2001 by Taijuddin thus stands partly allowed.

13. We have already discussed evidence as to recovery and held that he cannot be connected with any recovery. Merely because he was last seen with the deceased a few unascertainable numbers of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under Section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal. These three circumstances taken together, namely, the deceased last seen in the company of the accused the accused giving a false explanation about the whereabouts of the deceased and the accused having knowledge of the dead body cut into two pieces (meaning thereby having died an unnatural death on being subjected to deadly violence) being buried coupled with the fact of failure on the part of the accused to offer any reasonable explanation of any of the said circumstances, is sufficient to fasten the liability of murder on the accused Taijuddin. But, at the same time it cannot be said that the accused Taijuddin has caused any evidence of the commission of that offence to disappear. His conviction under Section 201/34 cannot be sustained.