

GAHC010275712023



2025:GAU-AS:2716-DB

**IN THE GAUHATI HIGH COURT**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL  
PRADESH)

**CRL APPEAL No. 458 OF 2023**

Hazrat Ali @ Hazarat Ali,  
Aged about 39 years,  
S/o- Late Ramjan Ali,  
R/o- Kasiarchar,  
P.S.- Pancharatna,  
Dist- Goalpara, Assam.

***.....Appellant***

***-Versus-***

**1.** The State of Assam  
Represented by the Public Prosecutor, Assam.

**2.** Salema Bibi  
W/o- Late Hazrat Ali  
R/o- Marupara Ward No. 9,  
P.S. Bilasipara, District- Dhubri,

Assam, PIN- 783348

.....**Respondents**

**:: BEFORE ::**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI  
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the Appellant : Mr. A. Ahmed, Advocate

For the Respondent : Ms. A. Begum, Addl. P.P., Assam

Date of Hearing : **26.11.2024**

Date of Judgment : **17.03.2024**

**JUDGMENT & ORDER (CAV)**

*Mridul Kumar Kalita, J*

**1.** Heard Mr. A. Ahmed, learned counsel for the appellant. Also heard Ms. A. Begum, learned Additional Public Prosecutor appearing for the state of Assam.

**2.** This Criminal Appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973, by the appellant, Hazrat Ali @ Hazarat Ali impugning the judgment

and order dated 21.11.2023 passed by the learned Additional Sessions Judge, Bilasipara, in Sessions Case No. 97/2014, whereby the appellant was convicted under Section 302 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for two months.

**3.** The facts relevant for adjudication of the instant appeal, in brief, are as follows: -

- i.** That on 26.06.2006, the informant Musstt. Salema Bibi had lodged an *ejhar* before the Officer-in-Charge of Bilasipara Police Station, *inter alia*, alleging that on 18.06.2006, the appellant called her husband away from home and, thereafter, in collusion with other accused persons named in the FIR (Total eight accused persons are named in the FIR) killed her husband and concealed his dead body at an unknown place. It is also stated in the FIR that, on 19.06.2006, the appellant came to the house of the informant and when the informant inquired about her husband, he told her that he had killed her husband and thereafter he fled away from the house. It is also stated in the FIR that the delay in lodging the FIR was caused as the informant was searching for her husband. On receipt of the aforesaid FIR, Bilasipara P.S. Case No. 164/2006 was registered under Sections 143/302/201

of the Indian Penal Code and investigation was initiated.

- ii.** The dead body of the husband of the first informant was found in the river Brahmaputra. During the course of the investigation, the Investigating Officer visited the place of occurrence, drew rough sketch map, recorded the statement of the witnesses and sent the dead body for post-mortem examination. He also got the statement of the informant recorded under Section 164 of the Code of Criminal Procedure, 1973. The appellant was also arrested and was remanded to judicial custody.
- iii.** On completion of the investigation, charge-sheet was laid against the present appellant and one Sahjahan Ali under Section 302/201/34 of the Indian Penal Code. The co-accused Sahjahan was shown as an absconder in the charge-sheet.
- iv.** As the attendance, of the co-accused, Sahjahan Ali, who was shown as an absconder in the charge-sheet could not be procured, the trial proceeded against the present appellant. After considering the materials available on record, the charges under Sections 143/302/201/34 of the Indian Penal Code were framed against the present appellant. When the said charges

were read over and explained to him, the appellant pleaded not guilty and claimed to be tried.

- v.** To bring home the charges against the appellant, the prosecution side examined as many as nine prosecution witnesses. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, during which he denied the truthfulness of the testimonies of the prosecution witnesses and pleaded his innocence. However, he declined to adduce any evidence in defence.
  - vi.** Ultimately, on completion of the trial, the Trial Court convicted and sentenced the appellant in the manner as described in paragraph No. 2 hereinabove.
- 4.** Before considering the submissions made by the learned counsel for both the sides, let us go through the evidence of the prosecution witnesses, which is available on record.
- 5.** The PW-1, Biswajit Ray, has deposed that he came to know about the death of the husband of the complainant from his mother and he did not know as to how the husband of the complainant died. His cross-examination was declined by the defence side.
- 6.** The PW-2, Baser Ali, also pleaded his ignorance about as to how the husband of the complainant had died. He came to know about the fact of the death of the husband of the

complainant when several persons gathered at the house of the complainant after the incident. During cross-examination, he has deposed that he does not know as to how the husband of the complainant died.

**7.** The PW-3, Moslem Sk., has deposed that he only heard about killing of the husband of the complainant by the appellant Hazrat Ali. However, he has no personal knowledge about the incident. During cross-examination, his testimony remained same as it was in his examination-in-chief.

**8.** The PW-4, Moidan Ali, has deposed that about seven to eight years ago, the complainant had informed him that the accused person came to her house and took her husband away with him and her husband did not return after going out with the accused person. He has deposed that after about three days, he came to know that the deceased was killed. The PW-4 has also deposed that after about 15 days, the dead body of the deceased was recovered near the bank of the Brahmaputra River.

**9.** During his cross-examination, the PW-4 has deposed that his house is situated about 40 kilometers away from the place where the dead body was recovered and he only saw simple injuries on the nose of the deceased. He also deposed that he does not know as to who killed the deceased. He has also deposed that the deceased was his brother. He has also deposed that he did not see his brother going out with the accused. He has also deposed that he came to know about

the incident from his sister-in-law. He denied the suggestions made to him by the defence side.

**10.** The PW-5, Harej Ali, has deposed that the incident had occurred about 9 to 10 years ago. He has also deposed that the informant's husband was killed by someone. He has also deposed that after the recovery of the dead body of the deceased, the inquest was done by the Magistrate and he had signed on the inquest report as a witness. During his cross-examination, the PW-5 has deposed that he did not see the paper on which he had put his signature.

**11.** The PW-6, Kadam Ali, has deposed that he did not know the complainant and the deceased. He has also deposed that he also did not know the accused. He has also deposed that he did not know about the incident as to how the Hazarat Ali died. His cross-examination was declined by the defence side.

**12.** The PW-7, Salema Bibi, has deposed that she is the wife of the deceased Hazarat Ali as well as informant of the case. She has deposed that the incident took place about 12 to 13 years ago. She has also deposed that the appellant owed money to her husband. She has further deposed that the appellant called her husband away from her house in order to return the money. However, her husband did not return home. She has further deposed that thereafter her relative made search for her husband but later on the dead body of her husband was found near the bank of the

Brahmaputra River at Shamdhora. Thereafter, she filed the *ejahar* at the Bilasipara Police Station.

**13.** During her cross-examination, the PW-7 has deposed that she could not remember after how many days she filed the *ejahar*. The PW-7 has further stated that it takes only 15-20 minutes from her house to reach Bilasipara Police Station. She has further deposed that the *ejahar* was written by some other person and the same was not read over to her, and, she cannot say what was written in the said *ejahar*. She has further deposed that she did not state before the Magistrate and Police that the accused called her husband away to give money. She has further deposed that she cannot say the date on which the appellant had borrowed the money from her husband. She has further deposed that she did not inform her neighbours about the appellant taking away her husband.

**14.** The PW-8, Dr. Putul Mahanta, who had performed the post-mortem of the dead body of deceased, has deposed that on 06.07.2006, he was working as HOD, Department of Forensic Medicine, Nalbari Medical College and Hospital and on that day, he performed the post-mortem examination of the dead body of the deceased in connection with Bilasipara P.S. Case No. 164/2006, under Sections 143/302/201 of the Indian Penal Code. He has deposed that during the post-mortem examination, he has found the following:

**External Appearance:-**

*Male dead body of average built of dark brown complexion dressed with light coloured full shirt, packed in a plastic sheet partially skeletonised soft tissues missing at places scalp missing. Both lower legs are skeletonised. Rigor mortis passed off. Muds and sand particle found at the rest of the body and wearing garments and various sized maggots scrolling all over the body.*

*Mark of ligature on neck dissection etc.- No ligature mark found.*

**Cranium and Spinal Canal:-**

**Scalp-** *As described.*

**Skull & Vertebrae-** *Healthy*

**Thorax-**

**Walls-** *Healthy; Pleurae-* *Decomposed; Larynx and trachea-* ***Mud particles found over decomposed mucosae;*** **Right lung-** *decomposed; Left lung-* *decomposed; pericardium-* *decomposed; Heart-* *empty and at the stage of decomposition; Vessels-* *Decomposed.*

**Abdomen-**

**Walls-** *healthy; peritoneum-* *decomposed; Mouth, pharynx, oesophagus-* *mucosae decomposed; Stomach & its contents-* *empty and decomposed; Small intestine and it's contents-* *contains digested food materials; Large intestine and it's contents-*

*contains gaseous and faecal matter; **Liver-** healthy; **Spleen-** healthy; **Kidneys-** both are decomposed; **Bladder-** decomposed; **Organs of generation- External & internal-** Prostate healthy and others decomposed.*

***Muscles, bones and joints-***

***Injury- Nil; Disease or deformity- Nil; Fracture- Nil; Dislocation- Nil***

In the opinion of the PW-8, the death was due to asphyxia resulting from drowning during life.

*Approximate time since death- 17 to 24 days.*

*The PW-8 exhibited the post-mortem report as Exhibit- 1 Ext. P-1/PW-8 wherein Ext.P-1(1) is his signature. Ext. P-1(2) is the signature of Dr. S.I Barbhuyan which is known to PW-8.His cross-examination was declined by the defence side.*

**15.** The PW-9, Sujal Hoque Sarkar, has deposed that he was posted at Bilasipara Police Station from 2001 to 2012. He has deposed that he knew Late Kamakhya prasad Roy, who was ASI at Bilasipara Police Station. He has further deposed that he worked as a LC at Bilasipara Police Station. He has further deposed that he knows about the handwriting and signature of Late Kamakhya Prasad Roy. He has further deposed that ASI, Late Kamakhya Prasad Roy made a prayer before the Court for recording statement of Salema under

Section 164 of the Code of Criminal Procedure. Exhibit-2 is the said prayer and Exhibit- P2(1) is the signature of Late Kamakhya prasad Roy. The PW-9 has further deposed that Exhibit-P-3 is the charge-sheet filed by Late Kamakhya prasad Roy and Exhibit- P3(1) is the signature of Late Kamakhya Prasad Roy, which he knew. During his cross-examination, the PW-9 has deposed that the charge-sheet was submitted on 29.07.2008.

**16.** The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 during which he denied the truthfulness of the testimony of the prosecution witnesses and also pleaded his innocence. The appellant, however, did not adduce any evidence in his defence.

**17.** Mr. A. Ahmed, the learned counsel for the appellant has submitted that in the instant case, there is no eye-witness and the case of prosecution is based mainly on circumstantial evidence. However, he submits that the chain of circumstances is not complete so as to arrive at conclusion of guilt of the present appellant. He has submitted that the Trial Court has mainly based its findings on the basis of last seen theory, as well as failure on the part of the appellant to give explanation under Section 106 of the Evidence Act, however, the Trial Court erred in not considering the fact that there is no corroborative evidence to support the last seen theory and to come to the conclusion of guilt of the present appellant.

**18.** The learned counsel for the appellant has submitted that in her testimony, PW-7 has not stated clearly as to on which date and at what time her husband was called by the appellant. He also submits that in the FIR which was lodged by the PW-7, though it is mentioned that the husband of PW-7 was called by the appellant on 18.06.2006 and that on the next date i.e., on 19.06.2006, the appellant came to her house and informed her that he had killed her husband. However, even then she did not lodge the FIR till 26.06.2006.

**19.** The learned counsel for the appellant submits that under such circumstances, lodging of FIR on 26.06.2006, i.e., after a gap of 7 days without there being any plausible explanation for the delayed lodging of the FIR, cast doubt on the veracity of the FIR. He further submits that even if the testimony of PW-7 is believed, the circumstances of last seen together does not by itself lead to the inference that it was the appellant who committed the crime. He submits that there must be something more which establishes the connectivity between the accused and the crime. However, in the instant case, there is no such material. He further submits that under such circumstances, mere non-explanation on the part of the appellant by itself does not lead to the proof of guilt against the appellant.

**20.** In support of his submission, the learned counsel for the appellant has cited following rulings:-

- (i) "*Kanhaiya Lal –Vs- State of Rajasthan*" reported in "(2014) 4 SCC 715".
- (ii) "*Reena Hazarika –Vs- State of Assam*" reported in "(2019) 13 SCC 289".
- (iii) "*Anjan Kumar Sarma and Ors. –Vs- State of Assam*", reported in (2017) 14 SCC 359".
- (iv) "*Sujit Biswas –Vs- State of Assam*", reported in "(2013) 12 SCC 406".
- (v) "*Anil Nath –Vs- State of Assam*", reported in "2018 (1) GLT 579".

**21.** On the other hand, Ms. A. Begum, learned Additional Public Prosecutor has submitted that conclusion of the guilt of the appellant has been arrived at by the Trial Court on the basis of the evidence available before it. The appellant was seen for the last time along with the deceased by the PW-7 and he has failed to explain as to what has happened to the deceased after he parted company with him. She submits the non-explanation of the fact that as to what has happened to the deceased after he went along with him is itself sufficient to arrive at the finding of the guilt of the appellant. She has submitted that even when the appellant was examined under Section 313 of Cr.P.C., he failed to give any explanation as to what has happened to the deceased after he went along with him. She has submitted that failure to give proper explanation can be regarded as an additional link of

circumstances which points towards the guilt of the appellant. She, therefore, submits that the finding of guilt arrived at by the Trial Court should not be disturbed and that the appeal is liable to be dismissed.

**22.** We have considered the submissions made by the learned counsel for both the sides. We have also gone through the materials available on record including the case record of Sessions Case No. 97/2014 which was requisitioned in connection with this case.

**23.** On perusal of the evidence on record, it is apparent that there is no eye-witness to the offence alleged in this case and the only incriminating evidence on record against the present petitioner is the testimony of PW-7 wherein she had stated that the appellant had called her husband away by saying that he would give him money back and, thereafter her husband did not return back home.

**24.** Though, in her testimony, PW-7 has not stated about the date and time when her husband was taken away by the appellant to pay back his money, however, in the FIR lodged by her, she has categorically mentioned that the appellant called her husband on 18.06.2006 and thereafter on 19.06.2006, he again came to the house of the PW-7 and informed her that he had killed her husband. In her testimony, the PW-7 has also stated that the police station is

about 15 to 20 minutes away from her house. Under such circumstances, even after knowing that her husband has been killed by the appellant on 19.06.2006 itself, the lodging of the FIR after seven days by her itself cast doubt about the veracity of the statement made in the FIR wherein she has mentioned that the appellant told her that he had killed her husband. In her testimony, the PW-7 has also deposed that she had not informed about the appellant telling her that he had killed her husband to any of her neighbours. The said conduct is also unnatural. Only PW-4, who is the brother of the deceased, had stated that the PW-7 has informed him regarding the appellant coming to her house. However, same has not been deposed in the testimony of PW-7 that she informed her brother-in-law regarding the appellant coming to her house.

**25.** Under such circumstances, the testimony of PW-7 remains uncorroborated and unreliable and merely on the uncorroborated testimony of PW-7, no adverse inference can be drawn against the appellant. In the case of **"Sujit Biswas – Vs- State of Assam"** (supra), the Apex Court has observed as follows

*"An adverse inference can be drawn against the accused only and only if the incriminating materials stand fully established, and the accused is not able to furnish any explanation for the said.*

*However, the accused has the right to remain silent and he cannot be forced to become a witness against himself.”*

**26.** The inference drawn by the Court have to be on the basis of established facts and not on conjectures. In the impugned judgment, the Trial Court had made an observation in paragraph No. 22 that the time gap between the period when the deceased was last seen with the accused and the recovery of the corpse of the deceased being quite proximate, the non-explanations by the accused of the circumstances under which the appellant had departed the company and with the deceased, his crucial circumstances which goes against him.

**27.** However, in the instant case, if we peruse the testimony of PW-4, he has deposed that the dead body of the deceased was recovered after 15 days in the bank of river Brahmaputra. Even if the testimony of PW-7 is believed that her husband was last seen with the appellant, the time gap of 15 days under no circumstances cannot be regarded as proximate enough to fix the liability of death of the deceased on the person with whom he was seen for the last time 15 days prior to the recovery of the dead body. Even, if the testimony of PW-7 is believed, the time gap of 15 days is not such a proximate time gap which would lead to the only and inescapable conclusion of the appellant being assailant,

inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the appellant.

**28.** It has been observed in the case of "***Reena Hazarika – Vs- State of Assam***" (supra) by the Apex Court that mere invocation of the last seen theory, sense the facts and evidence in the case will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a *prima facie* case. If the links in the chain of circumstances itself are not complete and the prosecution is unable to establish a *prima facie* case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused and benefit of doubt have to be given.

**29.** In "***Kanhaiya Lal –Vs- State of Rajasthan***" (supra), the Apex Court has observed that the circumstances 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. Mere non-explanation on the part of the appellant in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

**30.** In the instant case also, apart from the testimony of PW-7 wherein she deposed that her husband was taken away by the appellant for paying money to him, there is no other

material connect the offence with the present appellant. Testimony of PW-4 also shows that the dead body of the deceased was found after 15 days. Thus, there is also no proximity of recovery of the dead body from with that of the when the accused was last seen with the deceased.

**31.** The Trial Court had also erred in observing in paragraph No. 22 of the impugned judgment that the death of the deceased was homicidal. There is no evidence to that effect on record that the testimony of PW-8 i.e., the doctor who conducted the post-mortem examination of the deceased as well as the post-mortem examination report itself nowhere states that the death of the deceased was homicidal. There is no evidence on record to suggest that the death of the deceased was homicidal. The only finding was that the cause of death of the deceased was due to asphyxia from drowning, which may happen due to an accident or suicide or even homicide. However, there is no material to arrive at the conclusion that the death of the deceased was homicidal.

**32.** In ***Sharad Birdhi chand Sarda v. State of Maharashtra*** reported in ***(1984) 4 SCC 116*** this Court held as under:

*"153. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused ... they should not be explainable on*

*any other hypothesis except that the accused is guilty,*

*(3) the circumstances should be of a conclusive nature and tendency,*

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*(5) 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."*

**33.** In the instant case, there is no evidence on record to show that the death of the deceased was homicidal in nature. Moreover, apart from the testimony of PW-7, where she had stated that her husband was last seen with the appellant, there is no other corroborative evidence to establish connectivity between the crime and the present appellant.

**34.** As observed by the Apex Court in the judgment cited above, mere non-explanation on the part of the appellant in its by itself cannot lead to the proof of guilt against the present appellant.

**35.** In our considered opinion, the circumstances of this case and the chain of evidence adduced by the prosecution side are not so complete as not to leave any reasonable doubt or conclusion consistent with the innocence of the appellant. The evidence adduced by the prosecution side is not of such nature that in all human probability, it may be

concluded that the act must have been done by the appellant only. The other possibilities may not be ruled out in the present case.

**36.** In view of the discussions made above, it is not possible to sustain the impugned judgment of conviction of the appellant and sentence imposed on him.

**37.** This appeal is, therefore allowed, and the conviction and sentence imposed upon the appellant, namely, Hazrat Ali @ Hazarat Ali has is set aside and he is acquitted of the charge by giving benefit of doubt to him.

**38.** The appellant is directed to be released from custody forthwith unless required in connection with any other case.

**39.** Let the records of the Trial Court be sent back to the Trial Court along with a copy of this judgment.

**JUDGE**

**JUDGE**

**Comparing Assistant**