

GAHC010143382018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./252/2018

SRI DIPAK GOGOI
S/O RUDRESWAR GOGOI, VILL.KACHARI PATHAR GAON, P.S.
SILAPATHAR, DIST. DHEMAJI.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2:SRI TUNIRAM DOLEY
S/O LATE PADESWAR DOLEY
VILL. MEDHI PAMUA GAON
P.S. SILAPATHAR
DIST. DHEMAJI
PI

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./184/2018

NUMAL GOGOI
S/O SRI PUTUKAN GOGOI
R/O VILLAGE KACHARI PATHAR GAON
PS SILPATHAR
PO AKAJAN
DISTRICT DHEMAJI(ASSAM)

787110

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PO BURICHUTI
DISTRICT DHEMAJI (ASSAM)
787110

Advocate for : MR. M BISWAS
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

For appellants in Crl.A. 184/2018	: Mr. M. Biswas, Advocate.
For appellants in Crl.A. 252/2018	: Mr. A. Ahmed, Advocate.
For State respondent	: Ms. S.H. Bora, Addl. P.P.
For respondent no.2	: None.
Date of hearing	: 01.02.2024
Date of judgment	: 09.05.2024

JUDGMENT AND ORDER

(CAV)

(K.R.Surana, J)

Heard Mr. M. Biswas, learned counsel for the appellant in Crl. Appeal No. 184/2018 and Mr. A. Ahmed, learned counsel for the appellant in Crl. Appeal No. 252/2018. Also heard Ms. S.H. Bora, learned Addl. P.P. for the State.

There is no representation from the respondent no.2.

2) By filing these two separate appeals under section 374(2) Cr.P.C., the two appellants herein have assailed the judgment dated 25.04.2018, passed by the learned Sessions Judge, Dhemaji in Sessions Case No. 165 (DH)/2012, and sentence vide order dated 02.05.2018, thereby the appellants were convicted of committing offence punishable under section 302/34 and section 376(2)(g) IPC, and both were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/- (Rupees Five thousand only) each in default to undergo rigorous imprisonment for another 6 (six) months each under section 302 IPC. The appellants were also convicted for committing offence punishable under section 376(2)(g) IPC and both were sentenced to undergo rigorous imprisonment for 10 (ten) years and to pay fine of Rs.2,000/- each, in default to undergo rigorous imprisonment for 2 (two) months. Both sentences was ordered to run concurrently.

3) In this order the name of the deceased victim and the informant are masked and they are hereinafter referred to as 'X' and 'Y' respectively to avoid disclosure of their identity.

Prosecution case:

4) In brief, the prosecution case is that on 24.03.2012, 'Y' lodged an FIR with the Sisiborgaon Police Outpost under Silapathar P.S. alleging that on 23.03.2012 at about 7.00 p.m., the victim 'X' had gone missing while enjoying cultural programmes organized at Kulajan Tiniali to celebrate Ali Aye Ligang festival. On the following day, the Lot *Gaonbura* of Gelua Adarsha Gaon informed that a dead body was lying on the national highway at Gelua area. It was suspected that the victim 'X' was murdered. Accordingly, Silapathar P.S.

Case No. 88/2012 under section 302 IPC was registered.

5) On completion of investigation, charge-sheet no. 177/2012 dated 31.10.2012, was submitted in the case and the appellants were sent-up for trial. In the committal proceeding, the case was found exclusively triable by Court of Sessions. Accordingly, Sessions Case No. 165(DH)/2012 under section 376(2)(g)/302/34 was registered. On 21.12.2012, charges under section 376(2)(g) and 302/34 were read over and explained to the appellants. The appellants had denied the charges and claimed to be tried.

6) The prosecution had examined 17 (seventeen) PWs during trial, being Tuniram Doley (complainant) (PW-1); Prafulla Doley (PW-2); Umesh Pegu (PW-3); Smt. Jyotirekha Doley (PW-4); Binod Kuli (PW-5); Smt. Sabita Doley (PW-6); Sourav Doley (PW-7); Dibyadhar Kardong (PW-8); Manik Tamuli (PW-9); Dr. Paramananda Deuri (PW-10); Kandarpa Tamuly (PW-11); Babu Ali (PW-12); Rubul Ali (PW-13); Mustafa Ali (PW-14); Lila Kanta Chutia, I/O (PW-15); Bimal Konwar (Scientific Officer) (PW-16); and Smt. Renu Bora Handique (Scientific Officer) (PW-17) and exhibited the following, viz., ejahar (Ext.1); signatures of complainant –Tuniram Doley [Ext.1(1)]; inquest report (Ext.2); signature of witness-Tuniram Doley [Ext.2(1)]; seizure list (Ext.3); signatures of Tuniram Doley [Ext.3(1)]; seizure list (Ext.4); signature of Dibyadhar Kardong [Ext.4(1)]; signature of witness Babu Ali [Ext.4(2)]; seizure list (Ext.5); signature of Manik Tamuly [Ext.5(1)]; signature of Kandarpa Tamuly [Ext.5(2)]; post mortem report (Ext.6); signature of Dr. P.N. Deuri [Ext.6(1)]; signature of Dr. R.N. Pegu, Jt. Director of Health Services, Dhemaji [Ext.6(2)]; sketch map (Ext.7), signature of Lila Kt. Chutia, I.O. [Ext.7(1)]; charge-sheet (Ext.8); signature of Lila Kt. Chutia, I.O. [Ext.8(1)]; seized mobile (M. Ext.1); seized socks (M.Ext.2); and seized SIM card (M.Ext.3). The defence (i.e. appellants)

did not examine any witness.

7) The learned Trial Court, upon appreciating the evidence on record arrived at a conclusion that there was no eye witness in the case and that there were several circumstantial evidence which had all connected links in the chain, which was coupled with the evidence that the victim was last seen in the company of the appellants.

8) The circumstantial evidence appearing against the appellants were summarized by the learned trial Court as follows:-

“(1) On 23-03-2012 the victim/deceased along with PWs-6, PW-7 and others went to Kulajan to enjoy cultural function on the occasion of Aili-Aie-Ligang Festival.

(2) The witnesses PW-6 and PW-7 (in their evidence during trial) stated that while they were enjoying the function at the relevant time they saw the victim and the accused Dipak Gogoi going away from the place of function on a motorcycle.

(3) PW-5 was present at the function venue and he stated that he saw the victim/deceased going away from the function venue with accused Dipak Gogoi and Numal Gogoi on a motorcycle.

(4) PW-5 in his statement u/s 164 Cr.PC. stated that he gave his motor cycle to accused Dipak Gogoi.

(5) The dead body was found lying on the road in injured condition.

(6) As per inquest report injury marks were seen on back and head of the victim.

(7) PM report submitted by Medical Officer (PW-10) after examination of the victim/deceased shows that the cause of death was due to neurogenic shock following injury to the vital organ i.e. brain. The injuries were ante-mortem in nature and within 24 hours at the time of examination.

(8) As per report of PW17/scientific officer, examination of semen stain on the panty worn by the victim and vaginal swab gave positive test for human spermatozoa.

(9) PW-15/IO seized mobile sim card in the name of accused Dipak gogoi and collected call details and confirmed calls from his sim to the victim on her mobile vide Ext 3. IO also seized the motor cycle used by the accused persons on being led and shown by accused Numal Gogoi vide ext.4"

9) Accordingly, by holding that the appellants had failed to discharge their burden of proof as per section 106 of the Evidence Act, 1872. On the basis of evidence on record, the learned Trial Court had held that the appellants had fulfilled their carnal desire and then committed murder of the victim girl to wipe out the evidence. It was held that the prosecution has been able to prove the charges under section 302/34 IPC and section 376(2)(g) of the IPC beyond all reasonable doubt and accordingly, the appellants were convicted on the said charges and after sentence hearing, both the appellants were awarded sentence of rigorous imprisonment for life and to pay a fine of Rs.5,000/- (Rupees Five thousand only) each in default to suffer rigorous imprisonment for another 6 (six) months under section 302 IPC and both the accused persons were also sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.2,000/- (Rupees Two thousand only) each in default to suffer rigorous imprisonment for another 2 (two) months under section 376(2)(g) IPC. The substantive sentences were ordered to run concurrently.

Submissions:

10) While the learned counsel for the appellants had submitted that there was insufficient evidence to link the appellants with the alleged crime and that the last seen theory was negated by the prosecution witnesses and accordingly, it was submitted that there was absence of any evidence to sustain the conviction and the resultant sentence awarded to the appellants. In support

of their respective submissions, the learned counsel for both the appellants have respectively cited the following cases, viz., in CrI.A. 184/2018 - (i) *Chotkau v. State of Uttar Pradesh*, (2023) 6 SCC 742, (ii) *Criminal Trials Guidelines regarding Inadequacies and Deficiencies, In Re Vs. State of Andhra Pradesh & Ors.*, (2021) 10 SCC 598 (FB), (iii) *Nizam v. State of Rajasthan*, (2016) 1 SCC 550, (iv) *Kanhaiya Lal v. State of Rajasthan*, (2014) 4 SCC 715, (v) *State of Uttar Pradesh v. Mohd. Iqram & Anr.*, (2011) 8 SCC 80, (vi) *Rajiv Phukan & Anr. v. State of Assam*, 2009 (2) GLT 414 (FB). In CrI.A no. 252/2018 - (vii) *Indrajit Das v. The State of Tripura*, AIR 2023 SC 1239, (viii) *Rambraksh @ Jalim v. State of Chhatisgarh*, (2016) 12 SCC 251, (ix) *Kanhaiya Lal v. State of Rajasthan*, (2014) 4 SCC 715, (x) *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406, (xi) *Prithipal Singh & Ors. v. State of Punjab & Anr.*, (2012) 1 SCC 10, (xii) *Sunil Kumar Sammbhudayal Gupta v. State of Maharashtra*, (2010) 13 SCC 657, (xiii) *Arjun Marik & Ors. v. State of Bihar*, (1994) Supp (2) SCC 372, (xiv) *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SC 116, (xv) *Jiarul Hoque v. State of Assam & Anr.*, 2020 (2) GLT 151, (xvi) *Koli Trikam Jivraj and Ors. Vs. The State of Gujarat*, (1968) 0 Supreme (Guj) 3, (xvii) *Azizul Hoque Vs. The State of Assam*, (2023) 0 Supreme (Gau), 805, (xviii) *Sajjadanashin Sayed Md. B.E. Edr. (D) by Lrs. Vs. Musa Dadabhai Ummer & Ors.*, (2000) 3 SCC 350.

11) Per contra, the learned Addl. P.P. has made submissions to justify the conviction and the sentence awarded by the learned Trial Court. In support of her submissions, the learned Addl. P.P. has cited the case of *Ram Gopal v. State of Madhya Pradesh*, (2023) 0 Supreme(SC) 126.

Point of determination:

12) The only point of determination which arises for determination in this appeal is whether the evidence on record culled out a complete chain of

circumstances against the appellants to justify their conviction and sentence?

Discussion and decision:

13) For deciding the point of determination, the evidence available on record has been examined.

Evidence of the prosecution witnesses:

14) Before considering the submissions made by learned counsel for both the appellants and the learned Addl. P.P., it would be appropriate to go through the evidence, which is available on record.

15) The summary of evidence against Numal Gogoi, appellant in CrI.A. No. 184/2018, are as follows:-

- a. The PW nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 did not implicate the appellant. The PW-15 was the Investigating Officer of the case.
- b. PW-5 knows both the appellants. He saw both the appellants along with the deceased at the site of *Ali Aye Lingang* function and the victim had left the site of the function along with both the appellants in a motor bike. However, in his cross-examination by Numal Gogoi, PW-5 had stated that it is not a fact that he had not seen the appellant going out with the deceased girl on a motor bike on the day of incident. But in his cross-examination for Dipak Gogoi, PW-5 had incriminated the said appellant.

16) The summary of evidence against Dipak Gogoi, appellant in CrI.A. No. 252/2018, are as follows:-

- a. PW-1 is a hearsay witness. He was informed by his three daughters-

in- law that his victim daughter had left the place by saying that they need not look for her and they had also informed that the victim had told them that she had gone to get married to Dipak. In his cross-examination, he had stated that neither in the FIR nor in his statement before police he had stated whatever his daughters- in- law had told him.

- b. The PW nos. 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 did not implicate the appellant. The PW-15 was the Investigating Officer of the case.

17) PW-5 knows both the appellants. He saw both the appellants along with the deceased at the site of *Ali Aye Lingang* function and the girl left the site of function along with both the appellants in a motor bike. However, in his cross-examination by Dipak Gogoi, PW-5 had stated that at first Dipak and victim had gone somewhere on a motor bike but later, both returned. In his cross-examination for Dipak Gogoi, PW-5 had incriminated the said appellant by denying the suggestion that the victim had not gone with Dipak again on a motor bike.

18) PW-6 also knows the appellant Dipak Gogoi but don't know the appellant Numal Gogoi. He had stated that appellant Dipak called the victim 'X' away while they were watching the function. Thus PW-6 has not stated that the victim left with the appellants on two occasions.

Analysis of evidence of PW nos. 1, 6 and 7:

19) PW-1 is the father of the victim. PW-6 is the daughter-in-law of the complainant and wife of PW-7, who is the son of the complainant. The said PW nos. 1, 6 and 7 are not the eye witnesses to the incident of murder of the

victim 'X'. PW-1 is a hearsay witness. PW-1 had stated in his examination-in-chief that Sneha (*sic. should have been 'X'*) went to Kulajan to watch the *Ali Aye Lingang* festival with Anu Doley, Dipti Doley, Sourav Doley and Sabita Doley.

20) PW-1 had stated that 'X' had told Anu Doley, Dipti Doley, Sourav Doley and Sabita Doley not to look for her as she was going to marry Dipak Gogoi. The PW-1 had also admitted in his cross-examination that he had neither stated in his FIR nor did he tell the I.O. whatever his daughter-in-laws had told him. It appears to be very unusual that the four family members who were accompanying 'X', the victim, did not make any attempt either to stop the deceased from eloping or to immediately inform the complainant that 'X' had eloped with Dipak Gogoi to get married and would not be returning. Thus, the PW-6 does not state that her husband (PW-7) had seen the victim going out with the appellants.

21) The PW-7 had stated that he knows Dipak and 'X' was his elder sister. He had stated that the incident took place about three years ago. He had also stated in his examination-in-chief that he along with his wife (i.e. PW-6) and 'X' were watching *Ali Aye Lingang festival* at Kulajan and Dipak called away 'X' outside and that 'X', by telling them that she was going to marry Dipak, went away. Thus, the PW-7 had not named Numal Gogoi, the appellant in CrI.A. 184/2018 as a person with whom 'X' went away. Moreover, PW-7 also did not state how and when they had left the place. However, in her cross-examination, PW-6 had admitted that in her statement before the police she had not stated that Dipak had called 'X' away while she was watching the function.

22) PW-7 did not state in his examination-in-chief either that they had seen 'X' going out in the company of the appellants or that the deceased had gone out and came back with the appellants and then brought *chana*

(grams) for them to eat. However, PW-1, who is a hearsay witness had stated that after going out from the place of celebrations, the appellants and the deceased had returned back and had even gave *chana* (grams) to her four family members, including PW-6 and PW-7 to eat. Thus, the PW nos. 1, 6 and 7 did not state in their evidence that they had seen the appellants and the deceased going out from the place of celebrations on the second occasion.

23) Thus, the last seen theory of the deceased with the appellants is not found to be culled out from the evidence of PW nos. 1, 6 and 7. Accordingly, the evidence of PW nos. 1, 6 and 7 are not found to incriminate the two appellants in any manner whatsoever.

Analysis of evidence of PW-7:

24) PW-7 is the younger brother of the deceased. In his examination-in-chief, he had stated that he along with his wife and 'X', were watching function at Kulajan and Dipak called away 'X' outside. He had stated that 'X' by telling them that she was going to marry Dipak, 'X' went away, leaving us at the site of the function. He had stated that in the morning of the following day, finding her sister's dead body lying on the road, when people informed them, his father and others went to the place of occurrence and they found dead body of 'X' and his father had lodged a complaint at the police station and the police had recorded his statement during investigation.

25) His cross-examination is relevant and therefore, his cross-examination is extracted in verbatim:

“The function was held in Kulajan. It is not a fact that while making statement to the police, I didn't state that I had gone to watch the function. It is not a fact that while making statement to the police, I stated that I was at home. While making statement to the police, I stated that a person with the surname 'Das' had come to our house on the previous day of the incident; that he had stayed in our house in

the night; that he had differences with 'X' over some issue and that he had given 'X' Rs.150 (Rupees One hundred fifty) to drink tea etc. in the function. I stated to police that my elder sister had invited the person with the surname 'Das' to watch function in the evening. I also stated to police that another boy with the surname 'Das' from Panbari ghat had come to our house. I stated to police that another boy by the name Rahul Bora had told 'X' that he loved her and would marry her. I stated to police that I had a suspicion that the two boys with the surname 'Das' and the boy named Rahul Bora had killed 'X'. It is not a fact that Dipak had not called away 'X' from the site where function was going on. It is not a fact that I have adduced false evidence in the court today."

26) Thus, it is seen that while PW-7, the younger brother of the deceased had stated that he along with his wife (PW-6) and 'X' had gone to watch the program, PW-1, who is a hearsay witness, had stated that four family members, namely, Anu Doley, Dipti Doley, Sabita Doley and Sourav Doley went with 'X' to watch the programme, which appears to be an exaggeration.

27) The PW-7 has stated that he had suspicion that the two boys with the surname 'Das' of Panbari Ghat and the boy named Rahul Bora had killed 'X'. However, the prosecution is silent as to the nature of investigation against them.

Evidence of PW nos. 2, 3, 4, 8, 9 and 11 to 14:

28) None of these PW nos. 2 to 9 and 11 to 14 are eye witness to the murder of 'X', the deceased. They have not implicated the appellants by their evidence.

Evidence of PW-5:

29) PW-5 had stated in his examination-in-chief that he had seen the appellants with 'X' at the site of function and that she had left the site with the two appellants on a motorbike. However, in his cross-examination, he had stated that at first Dipak and 'X' had gone somewhere on a motorbike. Later, both had returned and he had denied the suggestion that after returning Dipak

did not go with the girl again. He had also denied that he did not tell the police that he had seen Dipak and Numal Gogoi going out with the deceased girl on a motorcycle.

30) However, the I.O. (PW-15), in his cross examination had stated that Binod Kuli did not state that he had seen 'X' going out with Dipak. Hence, the defence had brought out the contradiction regarding the statement of PW-5 that he had seen the deceased going out with the appellants. Thus, that part of the evidence of PW-5 is not reliable.

Evidence of PW-10, Senior Medical & Health Officer, who had conducted post mortem examination:

31) As per the evidence of the Doctor who had conducted post mortem examination of the dead body of the victim had recorded in connection with the external appearance of the dead body that the dead body was of a stout girl. Rigor mortis was present and an abrasion was present over the 8/9 joint on back. Whole face was stained with blood and clotted blood was also seen on the nose. In respect of Cranium and spinal canal, it was stated that a round shaped swelling of size 7 X 5 X 1 cm was present over occipital region. On dissection of the girl, clotted blood was seen and hematoma was also present. Both temporal part of right and left bluish was in colour with size 9 x 5 x 1/4 cm on the left side and 9 x 4 x 1/4 cm on the right side of the vertebrae. After dissection, tear of the membrane on occipital region underneath haematoma was present. On the occipital region the haematoma was present. Abrasion was present on the occipital region of the brain which corresponded to the haematoma. Clotted blood was seen on both hemisphere of brain. Organs of generation of the girl healthy, vaginal swab was taken and handed over to the escort i.e. I.O. No vaginal or extra injury was seen in the vagina, vaginal canal

was code. Viscera such as stomach, kidney, liver and vaginal swap and uterus was handed over to the I.O. In his opinion, the cause of death is due to neurogenic shock following injury to the vital organ i.e., brain. The injuries were ante-mortem in nature and within 24 hours at the time of examination. He had exhibited the Post-mortem report as Ext.6 his signature was exhibited as Ext.6(1). He had exhibited the signature of Dr. R.N. Pegu as Ext.6(2), who was the then Joint Director of Health Services, Dhemaji, whose signature was known to him. Death was within 24 hours from the time of examination.

32) Thus, from the evidence of PW-10 and the contents of post mortem report (Ext.6), there is no evidence of sexual assault on the victim.

Evidence of PW-15 i.e. the I.O.:

33) The I.O. did not disclose any material in his examination- in- chief which implicate the appellants in any manner. Thus, his only cross-examination was on the evidence given by Binod Kuli (PW-5), to which PW-15 replied that Binod Kuli did not state that he had seen 'X' going out with accused Dipak.

34) In his examination-in-chief, the PW-15 had stated that it is found in the investigation that the seized sim card belonged to Dipak Gogoi. In this regard, it is seen that as per the contents of the seizure list (Ext.3), the said sim card was seized from the appellant Dipak Gogoi. Therefore, there is no doubt that the said sim card belonged to the appellant, Dipak Gogoi. However, the said sim card was not seized from the site where the dead body was found. From the site of the dead body, another sim card was seized vide Ext.4. Therefore, the I.O. (PW-15) has not given any evidence that the sim card, which was seized vide Ext.4 and recovered from the site where dead body was found belong to Dipak Gogoi. Hence, the seizure of sim card belonging to appellant, Dipak Gogoi

cannot be said to have evidence regarding commission of any offence by him.

Evidence of PW-16:

35) PW-16 is the Senior Scientific Officer, Toxicology Division in the Directorate of Forensic Science. As per his FSL Report (Ext.7), no poison was found in Ext. no. Tox-242(a), Tox-242(b), Tox-242(c) and Tox-242(d), which were viscera he had examined. His signature was exhibited as Ext.7(1). Thus, there is nothing in the said report to implicate the appellants.

Evidence of PW-17:

36) PW-17 is the Scientific Officer, Serological Department at FSL, Khanapara. As per his FSL Report (Ext.8), Ext. no. Sero 2972/A and Sero 2972/B gave positive test for human spermatozoa. His signature was exhibited as Ext.8(1). However, there is nothing in his evidence to implicate the appellants.

Whether there is sufficiency of circumstantial evidence against the appellants:

37) The existence of circumstantial evidence against the appellants, as found by the learned Trial Court can be summarized as under:-

- a. It was not in dispute that the appellants were last seen with the victim.
- b. The victim died due to the injury sustained by the victim and the evidence of rape is also not in dispute.
- c. There is leading to discovery of the motorcycle used by the appellants and that there was clear evidence that as a consequence of information received from Numal Gogoi, the appellant in CrI.A. 252/2018, the motorcycle was recovered. At the time of revealing the information, the said appellant was in police custody.
- d. From the point when the appellants were last seen with the

deceased, there is no possibility of any other person meeting the deceased.

- e. Accordingly, it was held that the circumstances brought on record by the prosecution were consistent with the hypothesis of guilt of the appellants and they are of conclusive nature and they exclude every possibility hypothesis except the one that the appellants were involved in the commission of the alleged offence of rape and murder.

38) Accordingly, on the basis of evidence on record, it was held by the learned Trial Court that the appellants had committed gang rape within the meaning of section 376(2)(g) of the IPC. It was further held that the appellants to fulfill their carnal desire committed rape on the victim to wipe out the evidence killed her.

39) However, on the analysis of the evidence on record, it is noted that as per the post- mortem report (Ext.6), the post mortem examination was conducted on 02.15 pm on 24.03.2012, and the PW-10 had opined that death was within 24 hours. None of the PWs examined by the prosecution had given an approximate time when 'X' was seen leaving the programme venue with the appellants. The positive evidence of PW-1 in his examination- in- chief and of PW-5 in his cross-examination is to the effect that the appellants and the victim had left on the motorcycle and then returned to the programme. However, PW-5 had denied the suggestion that after returning Dipak, appellant in CrI.A. 252/2018 did not go out with the victim again on the motor-cycle. Thus, PW-5 does not implicate Numal Gogoi, going out with the victim on the second occasion.

40) Manik Tamuli (PW-9) is the seizure witness of a motorcycle. The seizure list was exhibited as Ext.5 and his signature was exhibited as Ext.5(1).

The said PW-9 had stated that a person named Prafulla Saikia had kept his motorcycle at his house. In his examination-in chief, he had stated that he does not know why the motorcycle was seized. The said Prafulla Saikia was not examined as PW. Moreover, the prosecution had also examined one Kandarpa Tamuli as PW-11, who was also a witness to the seizure of the motorcycle whose signature was exhibited as Ext.5(2). In his examination-in-chief, PW-11 had stated that he does not know why the motorcycle was seized. The I.O., namely, Lila Kt. Chutia (PW-15) had stated in his examination-in- chief that he had seized one motorcycle through Ext.5. The registration certificate and/or any document to show that the appellants were the owners of the seized motorcycle were not exhibited. None of the PWs have identified that the motorcycle that was seized vide Ext.5 was the motorcycle by which the appellants and the victim were going together for the second time. There is no evidence about the time when the motorcycle was left in the house of PW-9. Therefore, when there is no positive evidence by any PWs as to the reason why the motorcycle was seized, and the said seized motorcycle was also neither exhibited nor any evidence was led to establish that the seized motorcycle was the one that was used by the appellants to take 'X' away, the prosecution had failed to prove that the victim was last seen travelling with the appellants on the said seized motorcycle.

41) There is no evidence to show the distance between the place where the dead body was recovered from the place where *Ali Aye Lingang* festival was being celebrated. Thus, in the absence of disclosure of time when the appellants had purportedly left the place where *Ali Aye Lingang* festival was being celebrated, the finding by the learned Trial Court that the appellants were last seen with the deceased and that there is no possibility of any other person meeting the deceased is a presumptive finding.

42) As per the opinion of the doctor (PW-10), who had conducted the post mortem examination, the organs of generation of the girl was healthy and there was no vaginal or extra injury present in the vagina. The prosecution has failed to convincingly demonstrate how it was possible to sustain the theory of gang rape when the vagina did not have any external or internal injuries. The post-mortem report, sadly, is silent as to the status of hymen of the victim, which could have thrown some light.

43) The Scientific Officer, Serological Department at FSL, Khanapara was examined as PW-17. Although as per his FSL Report (Ext.8), Ext. no. Sero 2972/A and Sero 2972/B gave positive test for human spermatozoa, but the prosecution had failed to match the said specimen with the blood and/or DNA of the appellants. Thus, the Court is inclined to hold that there is nothing in the evidence of PW-17 to implicate the appellants.

44) The prosecution did not have the appellants examined by the doctor to find out that if there were any tell-tale signs of the appellants raping the victim like strains of blood or semen, marks of scratches, etc. on their body.

45) Thus, on the analysis of the evidence of PW-10 and the post-mortem report (Ext.6), there was no injury on/or in the periphery region of the private part of the victim.

46) The I.O. had seized one mobile SIM card, some broken parts of a G-Five mobile phone and a pair of chocolate colour socks vide seizure list (Ext.4). However, Babu Ali (PW-12), who was a seizure witness and whose signature was exhibited as Ext.4(1), had stated in his examination-in-chief as well as in his cross-examination that he did not get to see the seized item and what item was seized by the police. The I.O. had not sent the mobile and SIM

card for forensic analysis of its memory and/or contents. The call detail record of last few calls made by the deceased or received by the deceased, which was very vital because the PW nos. 1, 6 and 7 had stated that the victim told PW-6 and 7 that she was intended to run away with Dipak, appellant in CrI.A. 252/2018.

47) Moreover, the PW-7 had introduced the names of three other suspects. The names of those three persons are entered in the charge-sheet (Ext.6) as persons who were not sent up for trial. There is no statement in the charge-sheet regarding the said three non-charge-sheeted accused persons.

48) Thus, from the evidence of the PWs, the finding of the learned Trial Court that the circumstantial evidence brought on record by the prosecution were consistent with the hypothesis of guilt of the appellants and they are of conclusive nature and they exclude every possible hypothesis except the one that the appellants were involved in the commission of the alleged offences of rape and murder is not found sustainable on facts.

49) In light of the discussions above, the Court does not find that in this case the chain of circumstantial evidence is complete. The links of various chains of events are found to be disconnected. This is not a case where the circumstances from which inference as to the guilt of the appellants is drawn could not be proved beyond reasonable doubt. The point of determination is answered accordingly.

50) In the case of *Indrajit Das (supra)*, it was held by the Supreme Court of India to the effect that the basic links in the chain of circumstances starts with motive; then move on to last seen theory; recovery of medical evidence; expert opinion, if any; other additional link, if any. Such a chain has

not been established in this case in hand.

51) In the case of *Arjun Marik (supra)*, the Supreme Court of India has held that the conviction cannot be based only on the circumstance of last seen together. In the absence of evidence by the PWs about the time when the appellants were last seen together was not matched by the prosecution with the time of death of the victim. This was a relevant factor because of the positive evidence by PW-1 and PW-5 that the victim and the appellants had left together and came back and as per PW-1, the victim had given *chana* (grams) to her four family members to eat, who went with her to attend the function.

52) Therefore, the Court is of the considered opinion that the prosecution has not been able to make out a chain of circumstances beyond reasonable doubt and therefore, both the appellants are entitled to be given the benefit of doubt and they are thus, found entitled to be acquitted on being given the benefit of doubt. Accordingly, the appellants are both acquitted.

53) Resultantly, the appellants are entitled to be released forthwith, if not wanted in any other case.

54) Let the TCR be returned.

JUDGE

JUDGE

Comparing Assistant