

HEADING OF JUDGMENT IN SESSION CASE

IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Additional Session Judge, Bilasipara

Session Case No- 17 of 12

u/s 326/307/34 of IPC

STATE

Versus

1. Barek Muchulli
2. Saleman Muchulli
3. Ashuruddin
4. Asharab Ali
5. Abul Kalam Muchulli
6. Kuddus Ali Sk.

Accused persons.

(Committed by Sri N.S. Deori, then learned SDJM (M), Bilasipara in GR (BLP) case
No- 394/09 u/s 147/148/149/120(B)/326/307 IPC)

Advocate appeared:-

For the state:-Mr. T. Kr. Bhattacharya, Addl. PP

For the accused:-
1. Mr Mujahar Ali, Advocate
2. Mr H. R Mollah, Advocate.

Date of institution of the case :- 24-11-09

Date of commitment :- 05-01-12

Date of Framing charge :- 17-04-2012.

Date of prosecution evidence :- 16-01-14,31-03-14,16-01-14,02-06-14,
22-12-14,29-05-15,21-11-15,05-03-16,
21-09-16,13-12-16, 03-02-17.

Statement of accused recorded on :- 26-07-2017

Date of Argument :- 18-08-17

Judgment delivered :- 01-09-17

Hearing on the sentence :- 04-09-17

Sentence pronounced on :- 04-09-17

JUDGMENT

Prosecution Case

1. Prosecution case as unfurl from the ejahar is that on 23-11-09 at about 04.40 pm when Kurban Ali returning home from Bilasipara market riding on the bicycle of Shajahan Ali, accused persons who were already hiding in the place, on the village road near the river bank of dead Gauranga river on the south side of Hussainia Madrasa at the instigation of Sadek Ali and Abul Hussain restraining him pull down Kurban Ali from the cycle and driving out Shahjahan giving threatening, attacked Kurban with sharp weapon and caused several cut injury on the body of Kurban Ali and taken away Rs. 25,000/- from the pocket of Kurban Ali. To this effect Amzad Ali Bhuyan lodged ejahar.

Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from informant Amzad Ali Bhuyan registered a police case vide No Bilasipara police case No. 394/09 under Section 147/148/149/120(B)/379/326/506 IPC and SI P.N. Singh was entrusted to conduct the investigation of the case. In course of investigation I/O visited place of occurrence, recorded statement of witnesses, drawn sketch map of place of occurrence, recorded the dying declaration of the injured person and on being transferred he handed over the C.D. to the then OC Bilasipara and later part of the investigation was completed by another I.O. After completion of

investigation another IO SI Banojit Ujir submitted charge sheet against the accused person named herein above u/s 147/148/149/120(B)/326/307 IPC.

Committal

3. On receipt of the charge sheet, Learned SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused persons committed the case before the Court of Sessions, Dhubri for trial.

Charge

4. Learned Session Judge, Dhubri after hearing Ld. Counsel for both sides and perusal of material on record framed charges u/s 326/307/34 IPC against the accused persons Berek Muchulli, Saleman Muchulli, Ashuruddin, Asharab Ali, Abul Kalam Muchulli and Kuddus Ali Sk. and when charges were read over and explained to the accused persons they pleaded not guilty and claimed to be tried. Finally the case is made over to this court for trial by Ld. Session Judge Dhubri.

Trial

5. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 14 number of witnesses and M.O is examined as court witness and medical report of the injured as court exhibit and prosecution exhibited total 4 no of documents. PW- 1 Amzad Ali Bhuyan , PW-2 Kurban Ali Bhuyan, PW- 3 Ashad Ali , PW- 4 Aynal Hoque, PW-5 Monowar Hussain, PW-6 Abdul Berek Miah, PW-7 Nur Mohammad, PW-8 Abdul Goni, PW-9 Abdul Hanan, PW-10 Banojit Ujir, PW-11 Md. Saharuddin, PW-12 SI Paramananda Singha, PW-13 Abdul Rezzak, PW-14 Jaynal Abedin and CW-1 Dr. R.K. Mahato. Ext.1 Ejahar; Ext. 2 FIR report; Ext.3 injury report,(court exhibit); Ext 4 Chargesheet. After closure of the prosecution evidence, statement of the accused persons recorded u/s 313 Cr.P.C. Accused plea is denial, however declined to adduced evidence in support of the plea of denial.

6. **POINTS FOR DETERMINATION:-**

i) Whether accused persons on 23-11-09 at about 04.40 pm at village Kajaikata Pt. IV on the village road on the side of dead river Gauranga on the

south side of Hussainia Madrasa in furtherance of common intention voluntarily caused grievous hurt to Kurban Bhuyan by means of sharp cutting instrument which is an instrument for shooting or stabbing etc.?

ii) Whether accused persons on 23-11-09 at about 04.40 pm at village Kajaikata Pt. IV on the village road on the side of dead river Gauranga on the south side of Hussainia Madrasa in furtherance of common intention assaulted Kurban Bhuyan with such intention and under such circumstances that by that act they had caused the death of Kurban Bhuyan?

ARGUMENT

7. It has been argued by Ld. Addl. P.P though there is no other eye witness but PW-3, PW-13 and PW-14 rushed to the spot hearing hue and cry and PW-1 the informant lodged ejarah after hearing the incident from the victim and adduced evidence whatever he heard from injured and that is corroborated by the victim. He contended that informant and victim identified the accused persons before the court and victim is the eye witness and no other person were present when incident of assault on victim was took place and his companion run away from the place of occurrence to save his life when accused persons pulled out victim from the cycle and chased him to assault him. He further contented all the witnesses deposed that they have seen injury on the person of injured Kurban Ali Bhuyan when they rushed to the place of occurrence and hospital and injury caused to him is out of the incident and because of the seriousness of the injury Bilasipara SHC forwarded injured/victim to Dhubri Civil Hospital and evidence of M.O also corroborated the seriousness of the injury sustained by the injured Kurban Ali and victim specifically and categorically stated names of accused persons that they have committed incident and witness Kurban Ali Bhuyan corroborated whole of the prosecution case against the accused person and his evidence and evidence of other PWs reliable and evidence on record only proved guilty of the accused persons.

8. Refuting the same, Id. defence counsel contended, one incident on 23-11-09 at about 04.40 pm at Kajaikata took place and Kurban Ali sustained injury in the said incident but prosecution failed to establish beyond all reasonable doubt that said injuries to Kurban Ali were caused by accused persons and accused persons were not involved in the incident of assault of Kurban Ali. He submits

proper identification of the accused person not took place and identification of accused person was not possible as time was 04.40 pm and season was winter season and incident took place after mogrib namaj and same is evident from the evidence of PW-3 because he deposed while he was returned home after namaj, he met one cycle rider from whom he heard about taking place of some incident on Kurban. He contended that immediately after the incident ejahar was not lodged though victim was in a position to speak. He further submitted that victim was not serious as submitted by prosecution because victim himself in cross stated that he was in sense and informant also stated victim talked with him and had victim was in a serious condition, he could not speak as a person taking saline not allowed to speak, therefore, seriousness of the injury not proved and there appears two views, one is serious nature of injury and other is victim was able to speak after the incident and therefore, prosecution charges against accused not established beyond all reasonable doubt. Ld. Counsel argued victim not stated that he had disclosed the name of accused persons and only explained the occurrence to his son and explaining the occurrence to the son does not amount that he disclosed the name of the accused to his son and other witness. Therefore, evidence of other witness is not primary evidence and it is hearsay evidence which is not acceptable and reliable under the law. Ld. Counsel submitted independent witness of the locality not examined. Shahjahan was not called for examination and staff, teacher, student of the Kajaikata Madrassa were also not examined. Had there any incident took place near the Kajaikata madrassa, the staff and student of said school would have reach there and witness the incident hence, prosecution story is not believable, proper identification of the accused is not taken place. The evidence of the prosecution witnesses were doubtful as one case of rape was lodged by the accused Barek Muchulli against Kurban Ali Bhuyan and his son so this false case was filed. In support of his submission he placed on reliance certified copy of FIR, charge sheet of Bilasipara case no-366/09 u/s 493/420 and place on reliance "*Md Aminur Islam & Ors –vs–State of Assam (2016 (6) Gauhati Law Journal 617)*"; "*Jahan Lagun VS State of Assam (2012(6) Gauhati Law Journal (NOC) 699)*"; "*Suren Kalita & Anr VS State of Assam (2013(2) Gauhati Law Journal 176)*"; "*John Ali & Anr VS State of Assam (2015(1) Gauhati Law Journal 4)*"; "*Parimal Gowala & Ors VS State Of Tripura (2007(2) Gauhati Law Journal 445)*"; "*Md Islamuddin Vs State*

of Assam (2012(6) Gauhati law Journal 381)”; "Abdul Rashid Abdul Rahiman Patel & Ors VS State of Maharashtra (2007 ACR 926”

EVIDENCE

9. CW-1 Dr. R. K. Mahato is the medical officer. His evidence is that on 23-11-09 he examined one Kurban Bhuyan S/O Lt. Kashem Ali of village Sadhurchar, Kajaikata, PS- Bilasipara and on examination he found:- i. Right arm 2” X 1” X 1” bone deep, ii. Acre Mo clavicle right deltoid attachment severed, muscle hanging iii. Chop wound of dorsum of right hand 4 inches X transverse. All tendons of extensor digitorum severed fractured 3rd metacarpal bone of right hand iv. Chop wound of right forearm 2 nos. 2 inches X 1 inch X 1 inch. Muscle of flexor group severed v. Chop wound left leg. Muscle of anterior group severed. 4 inches X 2 inches X 1 inch. Fracture of tibia seen. Lateral group of muscle severed along with forehead nerve leading to foot group vi. Chop wound of left foot from lateral side 4 inches X 2 inches X 1 inch. Torsil bones wall severed. X-ray of left hand, left leg, left foot in plate No. R5395+96+97+98 shows fracture of 3rd Metacarpal right hand. Fracture of metacarpal right foot. Fracture of tibia of left leg and fracture of acromion process. All the injuries were repaired in Operation Theater under general anesthesia. Blood transmission was given. In his opinion all the injuries were grievous, fresh and caused by sharp weapons. **In cross** he deposed he did not left any medical examination of the injuries sustained by the victim and he did not find any head injury during his examination. He denied that he prepared the report of victim with his consultation.

10. PW-1 Amzad Ali Bhuyan is informant of this case. His evidence is that on the day of incident at about 4.30 pm his father was coming towards home with one Shahjahan riding on bicycle. At about 4.40 pm he got information over the phone that his father was beaten up by some miscreants at the side of Kajaikata Hussainin Madrassa. Accordingly he went there but came to know that his father was taken to Bilasipara hospital, so he went to Bilasipara hospital where he found his father with multiple injuries and under saline and because of the seriousness of the injury his father was referred to the Dhubri Hospital and his father was taken to Dhubri civil hospital and from his father he came to know that accused persons assaulted his father and caused injury on his body. He stated he lodged ejarah as per the incident narrated before him by his father. **In cross** he deposed he lodged

the ejahar after two hours of hearing of the incident from his father, found his father at Bilasipara hospital in injured condition and he found him fit and fine and he never saw his father in senseless condition anywhere, his father was released from Dhubri Civil Hospital after recovery. He deposed that he was informed about the incident over the phone by Abdul Malek, incident was occurred in the winter season and the darkness had already came down and he does not know whether his father was having money at the time of incident or not.

11. PW-2 Kurban Ali Bhuyan is the victim of this case. His evidence is that on the day of incident at about 4.30 to 05.00 pm he was coming towards his home from Bilasipara with one Shahjahan Ali and when they reached at the southern side of the Kajaikata Madrassa, accused persons who were waiting them in that place, forcefully took him down from the cycle without any reason and cut his left hand, left leg, shoulder and his head by a long dagger as a result he fell down on the ground and blood was oozing from his body and after hitting him accused persons snatched away ₹ 25000/- and left the place of occurrence. He shouted while accused persons were hitting him and hearing his hue and cry one Asad Ali came and took him to Bilasipara Hospital. His further evidence is that in the Bilasipara hospital he met his son and narrated incident to his son, he was shifted to Dhubri Civil Hospital as his condition was serious where he was treated near about 15/17 days and police and Magistrate came to Dhubri Civil Hospital and recorded his statement. **In cross** he deposed that at the time of incident one Shahjahan was present along with him. He deposed that his son lodged the case as per his instruction while he was undergone treatment at hospital. Police came at Bilasipara hospital and saw his injuries and one police personnel namely Sukur Ali escorted him to Dhubri Civil Hospital for further treatment. He deposed that prior to this incident some people had set fire in his house but the said matter was settled by the village people. He denied the suggestion that accused persons are not involved in this case, Shahjahan was not with him.

12. Evidence of PW-3 Ashad Ali is that on the day of incident at about 05.00 to 05.30 pm he met a cycle rider while he was coming towards his house after offering namaj and that cycle rider told him that Kurban Ali Bhuyan was killed by some miscreants. He rushed to the place of occurrence and found victim in injured state lying with profuse bleeding by the side of river Gaurang. He deposed that he along

with son in law of victim brought the victim from the river side and victim told them that he was assaulted but could not tell the name of the miscreants who assaulted him and victim was taken to Bilasipara hospital and police arrived at place of occurrence. **In cross** he deposed that he has not seen the incident. On being asked victim could not tell the names of the miscreants as he got fainted but told him that he had identified the miscreants.

13. Evidence of PW-4 Aynal Hoque is that on the day of incident at about 06.00 to 06.30 pm at Bilasipara Market he got phone call from Bilasipara SHC that some miscreants assaulted Kurban Ali. Hearing this he rushed to the Bilasipara SHC but he did not find victim there as victim was shifted to Dhubri Civil Hospital. His further evidence is that on the next day he visited Dhubri Civil hospital to meet victim and found several injuries on the body of the victim but he does not know who assaulted the victim. **In cross** he deposed that police did not record his statement.

14. Evidence of PW-5 Monowar Hussain, PW-7 Nur Mohammad and PW-8 Abdul Goni is that they heard that victim Kurban Ali was assaulted by some miscreants and victim Kurban Ali was medically treated for the said assault. They deposed that they do not know who had assaulted the Kurban Ali. **In their cross** PW-7 and PW-8 deposed that they don't know how the incident took place. However, PW-5 was not cross examined.

15. Evidence of PW-6 Abdul Barek Miah is that 4 years ago he heard that father of informant admitted at Dhubri Civil Hospital due to serious injury sustained by him. He met victim at Dhubri Civil Hospital and saw severe injuries on the body of the victim and those injuries were covered by bandage. His further evidence is that in presence of him one magistrate came and before whom victim narrated the incident and told names of the accused persons and after recording the statement of victim, Magistrate read over the contents of statement of the victim before them and in the said statement Magistrate took his signature. **In cross** he deposed that victim is his cousin brother and he did not see the occurrence.

16. Evidence of PW-9 Abdul Hanan is that incident took place on 23-11-09 during evening hour and when his father was going to the market accused persons attacked his father with dao etc. and caused grievous injury. Thereafter his father was taken to Dhubri Hospital for treatment and his father told him the name of the accused persons and his father sustained multiple injuries all over the his body. **In**

cross he stated that village people also call his father as Kurban Ali Dewani and informant is his brother and his father was in jail in connection with case filed by one Abdul Rashid and he has no knowledge about the said case and came to know about the present incident from his father on 30-11-09. He stated he did not witness the incident and accused Abdul Barek filed a case against his father.

17. PW-10 SI Banojit Ujir is one of the IO of this case. His evidence is that on 01-06-10 he was posted at Bilasipara police station as attach officer and OC Bilasipara PS entrusted him to investigate the present case and earlier to him Paramananda Singha investigated the case. He visited the house of the informant, recorded his statement, also recorded the statement of the injured Kurban Ali Bhuyan and went to search for the accused persons but did not find. On 05-6-10 he recorded the statement of Jaynal and Aynal Hoque and on 24-06-10 he arrested Abdul Kuddus, Asraf Ali and produced them before the court. On 22-06-10 he arrested Suleman Ali and produced him before the court and after completion of the investigation he submitted charge sheet Ext 4 against the accused persons showing accused Abdul Barek Muchulli as absconder. Ext 4 (1) is his signature. **In cross** he stated incident took place on 23-11-09 and ejahar was lodged on 24-11-09 and he do not know whether earlier IO visited the informant's house or not and on 29-5-10 he was entrusted to investigate the case and he submitted chargesheet based on the C.D. He denied that he did not recorded the statement of Aynal Hoque and Joynal Abedin. He stated he did not recorded statement of any person belonging to madrassa. He denied that statement of Kurban Ali Bhuyan was not recorded. No weapon of offence was seized. He stated statement of Amzad Ali Bhuyan was recorded by earlier IO and Amzad Ali did not stated in police statement that hearing incident from one Abdul Malek he visit place of occurrence.

18. Evidence of PW-11 Jaharuddin is that on the date of incident he was at his home and came to know that victim Kurban Ali Bhuyan was beaten up and he went to the place of occurrence but did not found injured at the place of occurrence and hearing that injured was taken to the hospital, he went to the Bilasipara hospital where in he came to know that injured was referred to the Dhubri Civil Hospital and he visited Dhubri Civil Hospital for 3 days but no conversation took place between him and injured and he saw several injury on Kurban Ali. Prosecution declared this witness as hostile.

19. PW-12 SI(UB) Paramananda Singha is IO of this case. He deposed that on 24-11-09 then O/C Bilasipara PS endorsed him the BLP PS Case no. 394/09 for investigation. Accordingly visited place of occurrence, recorded statement of witnesses, drawn sketch map of place of occurrence, recorded the dying declaration of the injured person and on being transferred he handed over the C.D. to the then OC Bilasipara and later part of the investigation was completed by another I.O. **In cross** he deposed that he did not seized any materials in connection with this case. He deposed that victim was shifted to Dhubri Civil Hospital.

20. Evidence of PW-13 Abdul Rezzak is that at the time of incident he was 500 hands far away from the place of occurrence and hearing hue and cry he rushed to the place of occurrence and found the victim Kurban Ali lying on the ground. Victim Kurban Ali told him that accused persons Soleman, Barek, Kuddus, Kalam, Asiruddin and Ashrab Ali assaulted him. His further evidence is that many people gathered at the place of occurrence and he took Kurban Ali to Bilasipara hospital and later on to Dhubri hospital. **In cross** he deposed victim Kurban Ali is his father in law. The incident took place after Magrib Namaz after sun set. He further deposed that neither he seen accused persons at the place of occurrence nor he seen the incident of assault

21. Evidence of PW-14 Jaynal Abedin is that incident took place about 8/9 years back after Magrib Namaz. On the day of incident hearing hue and cry at 500 hands distance from his house he rushed there and found victim lying on the ground. He further deposed that on the way to place of occurrence he saw all the accused persons running away with iron, rod, lathi etc. He deposed that on being asked Kurban Ali told him that accused persons assaulted him with lathi, iron rod etc. He deposed that he along with other people took the Kurban Ali to the Bilasipara Civil Hospital and later on Kurban Ali was shifted to Dhubri Civil Hospital. **In cross** he deposed that Kurban Ali is his uncle and also father in law in relation, he has not seen the assault and his younger brother was an accused in a case filed by accused Barek Ali in connection with the Barek Ali's daughter.

DISCUSSION, DECISION & REASON THEREOFF:-

22. I have scanned evidence on record both oral as well as exhibited documentary evidence and also perused statement of the accused persons recorded u/s 313 Cr.P.C. Plea of accused Asharab Ali, accused Abul Kalam, Saleman Muchulli, Abdul Kuddus Ali Sk. is total denial however they did not state anything in their defence. Accused Ashuruddin Muchulli stated in his 313 Cr.P.C statement that he lodged one rape case against one Aynal Hoque who was the nephew of Kurban Ali Bhuyan and in the said ejahar he also name Kurban Ali Bhuyan, one Amzad, Joynal, Johuruddin and Barek Master. Accused Abdul Barek Muchulli stated he lodged the case against the nephew of victim Kurban Ali Bhuyan therefore, they lodged false case against them. Now, let me see whether evidence on record able to bring home prosecution case against the accused persons or not.

23. It has been reveal from the argument of Ld. defence counsel as well as Ld. Addl. P.P. that on 23-11-09 one incident of assault and beating took place on Kurban Ali Bhuyan the victim of this case and Kurban Ali Bhuyan sustained injury in the said incident of assault.

24. In this case MO Dr. R. K. Mahato is examined as court witness. According to him on 23-11-09 he examined Kurban Ali Bhuyan S/O Lt. Kashem Ali and found i. Right arm 2" X 1" X 1" bone deep, ii. Acremo clavicles right deltoid attachment severed, muscle hanging iii. Chop wound of dorsum of right hand 4 inches X transverse. All tendons of extensor digitorum severed fractured 3rd metacarpal bone of right hand iv. Chop wound of right forearm 2 nos. 2 inches X 1 inch X 1 inch. Muscle of flexor group severed v. Chop wound left leg. Muscle of anterior group severed. 4 inches X 2 inches X 1 inch. Fracture of tibia seen. Lateral group of muscle severed along with forehead nerve leading to foot group vi. Chop wound of left foot from lateral side 4 inches X 2 inches X 1 inch. Torsil bones wall severed. X-ray of left hand, left leg, left foot in plate No. R5395+96+97+98 shows fracture of 3rd metacarpal right hand. Fracture of Metacarpal right foot. Fracture of tibia of left leg and fracture of cremoin process on Kurban Ali Bhuyan. All the injuries were repaired in operation theater under general anesthesia. Blood transmission was given. All the injuries were grievous, fresh and caused by sharp weapons. Medical report is exhibited as Ext-3.

25. During argument Ld. defence counsel contented that victim in his evidence stated that he had sustained injury on left side and he was hit with a

dagger but did not state who had used said dagger and medical report is that injured sustained injury on his right side. Thus, prosecution case is totally unbelievable and there appears two views and accused entitled benefit and place on reliance Islamuddin Vs State of Assam (2012(6) Gauhati law Journal 381)”; “Abdul Rashid Rahiman Patel & Ors VS State of Maharashtra (2007 ACR 926)”

26. I have scrutinized the evidence of the victim as well as the medical report of the injured (victim). It is the evidence of the victim/injured that on the day of incident at about 04.30. to 5.00 pm he was coming to his house from Bilasipara riding on Shahjahan’s bicycle and while proceeding towards his home, at the southern side of Kajaikata Madrasa on the side of dead Gauranga river on village road, accused persons who were waiting there, pull down him from the bicycle, chased Shahjahan and hit him on his different parts of the body with dagger, cut his left hand, left leg, shoulder and his head and he fell down. The reading of the first part of evidence of victim shown that injured stated before the court that accused hit his different parts of the body. And again specifically stated accused had cut his left hand, left leg, shoulder and his head. His injury report shown i.e the injury no. 4, 5 and 6 are on left side of his body, and all the injuries on the left side are cut injury. Injury on the left leg also shown that muscle of anterior group severed 4 inches X 2 inches X 1 inch size. Fracture of tibia seen. Lateral group of muscle severed along with forehead nerve leading to foot group and chop wound on left foot from lateral side 4 inches X 2 inches X 1 inch size. Torsil bones wall severed. Injured evidence shown all the accused persons involved in the assault of the injured. It is not the case of prosecution that only one person was involved in assaulting injured. There were 6 no of accused persons and all of them involved in the assault incident as per statement of the injured on his different parts of the body, therefore, it is not possible on the part of injured to specify who has caused which part of injury and this is not a major contradiction and not the case of two views coming from the evidence of injured with regard to the injury sustained by the injured.

27. Victim stated that he was attacked with dagger and knife. Medical report shows several chop injury on the body of Kurban caused by sharp cutting weapon. Dagger and knife were the sharp cutting injury. Therefore, there is no discrepancy from the evidence of the victim and other witness with that of the medical evidence

and hence decision relied by the Ld. defence counsel is not benefited to accused and decision relied by defence 'Abdul Rahiman Patel vs State of Maharashtra (2007) SCR 926' goes against the submission made by the Ld. defence counsel. In para 12 of the said decision, Hon'ble Apex Court held that evidence "*P.W. 7 is son of deceased Ismail. He stated that A-4 and A-10 assaulted deceased Ismail with sword on the head and A-1 and A-4 inflicted injuries with sword on the head of deceased Suleman. A-6 inflicted two blows with iron bar on the shoulder of this witness, whereas A-10 inflicted injury with sword on his shoulder. The evidence of this witness of inflicting sword injuries upon deceased Ismail, deceased Suleman and this witness is corroborated by medical evidence. His evidence in Court is consistent with statement made by him before the Police and supported by medical evidence. As such, we do not find any ground to disbelieve him*"

28. Here in the instant case, PW-2 before the police and before the court stated that accused person attacked him with dagger and he sustained several bodily injury. Other witnesses corroborated this fact that Kurban Ali sustained multiple severe injury and medical evidence also pointed Kurban Ali sustained several injury on his body which were caused by sharp cutting weapon. Thus, the submission of the Ld. defence counsel does not stand at all.

29. It is also argued by the Ld. defence counsel that as there is no report from the Bilasipara SHC, it is not proved that injured was taken to the Bilasipara hospital. He contended evidence of PW-1 is hearsay evidence and ext-1 is based on hearsay evidence so evidence of PW-1 and ext-1 upon which prosecution case is based is not admissible piece of evidence.

30. I have perused the evidence on record, medical report and also perused case diary to find out the fact whether injured was first taken to the Bilasipara hospital or not and then he was taken to the Dhubri Civil Hospital. On perusal of the C.D. it is seen that injured was first taken to the Bilasipara hospital. Thereafter, injured was shifted to the Dhubri Hospital because of the seriousness of the injury sustained by injured. It is the evidence of all the PWs that first injured was taken to Bilasipara Hospital, wherefrom he was shifted to Dhubri Civil Hospital for further treatment. Injury report itself shown that victim was admitted at Dhubri Civil hospital on 23-11-09 and discharged on 17-12-09. That means he is in hospital for 24 days as indoor patient to get treatment. As per the medical report, injury is

grievous in nature and caused by sharp cutting weapon. It is also evident from the evidence of the IO that because of the seriousness of the injury of the injured the IO of the case under the impression that victim may die due to the injury sustained so, he recorded statement of the injured at Dhubri Civil Hospital by SDM, Dhubri for future use as dying declaration during trial of the case. But the victim survived for that reason prosecution did not exhibit the same. However, on perusal of the case diary said statement of the victim injured found in case diary. This statement can be used as statement made by the victim during investigation before the IO for contradiction as well as for corroboration. Medical report alone with the oral testimonies of the PWs shown seriousness of the injury sustained by the victim injured Kurban Ali. Therefore, the submission of Ld. defence counsel that injured victim was not referred to the Dhubri Civil Hospital from the Bilasipara hospital and his injury was not serious does not carry any weight and same is devoid of merits and against the evidence on record.

31. PW-1 informant deposed that hearing the incident of attack on his father he went to the place of occurrence and at place of occurrence he came to know that his father was taken to the Bilasipara hospital. Accordingly, he went to the Bilasipara hospital and saw his father lying on the bed under saline and on being asked to his father his father told him that accused persons Abdul Berek Muchulli, Saleman Muchulli, Ashuruddin, Asharab Ali, Abul Kalam Muchulli & Abdul Kuddus hit his father with knife dagger on various part of his body and he seen serious injury on the body of his father. PW-2 the victim deposed at Bilasipara hospital he met his son and explained the fact of the incident vide Ext-1 ejahar and his condition was very serious so, he was shifted to Dhubri Civil Hospital from Bilasipara hospital and at Dhubri Civil Hospital, police and Magistrate came and he stated the incident before them. In his cross also he also stated his son lodged ejahar as per his instruction. The PW-1 claimed that he came to know about the incident from his father. PW-2 victim stated he narrated the incident to his son which was mentioned in Ext-1. Ext-1 is the ejahar. Ejahar was lodged by the PW-1 Amzad Ali Bhuyan as per the instruction of the victim. Explaining the incident covered whole fact and it has a wider meaning and that PW-1 get to know incident from the informant and name of the accused persons is fairly corroborated by the victim of the case. PW-1 made statement before the police and before the court

on oath what he had heard from the injured and what he had seen when he visit hospital. Therefore, evidence of PW-1 cannot be termed as hearsay evidence.

32. Section 60 of Evidence Act says "**Oral evidence must be direct.** – Oral evidence must, in all cases whatever, be direct; that is to say-

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;"

33. After careful reading of the section 60 it is crystal clear that PW-1 heard incident from the victim, get to know about the name of accused persons from the victim and victim explained the whole facts of the incident which is narrated in Ext-1 to his son, informant of the case and victim stated he narrated incident to his son. Therefore, the explaining part include fact of the incident as well as the person who had caused the incident and therefore, evidence of PW-1 is admissible under the law and same is reliable and acceptable piece of evidence and carries weight and ext-1 is based on actual facts of the incident as narrated by the injured and ext-1 is an admissible piece of document and prosecution case is based upon actual primary facts. Ejahar can be lodged by any person on any cognizable offence who saw it, who heard it. There is not bar imposed on lodging the ejahar by other person in the case of offence punishable u/s 326/307 I.P.C. by the statute.

34. Ld. Defence counsel made submission that evidence of other PWs are hearsay evidence and therefore they are not reliable piece of evidence.

35. I have perused the evidence on record. PW-2 stated that one Asad Ali came to the spot and help him to take him to the hospital along with other people. Asad Ali is examined as PW-3. Asad Ali deposed he went to the place of occurrence hearing the news from cycle rider that some miscreants beating Kurban and also heard cry of Kurban and on reaching place of occurrence he found victim Kurban

Ali in injured condition at the place of occurrence and he with other took victim to Bilasipara Hospital and from Bilasipara Hospital, victim was taken to Dhubri Civil Hospital and he saw several serious injury on the body of Kurban Ali. That Asad Ali came to place of occurrence and seen injury on the person of injured and taken injured to Hospital are all primary evidence and Asad Ali himself corroborated the same in the same line with victim's evidence. Therefore, it is established that evidence of PW-3 Asad Ali is not hearsay evidence. This witness stated before the court what he had saw and what he did.

36. PW- 2 victim stated that while he was undergoing treatment at Dhubri Civil Hospital, police and magistrate came and recorded his statement and he had narrated the facts to the police and magistrate. PW-6 deposed that hearing attack on Kurban Ali and hearing that he was admitted at Dhubri Civil Hospital, he went to see the victim Kurban at Dhubri Hospital and after meeting the victim at hospital he saw severe injuries on the body of Kurban Ali. It is his evidence that he was present at the hospital with victim when Magistrate came and recorded the statement of the injured victim and injured told about the incident and name of the accused person before the magistrate and after recording the statement Magistrate read out the content of the statement to the victim and him and magistrate also take his signature on the said statement. Thereafter he returned back to his home from the hospital

37. PW-12 is the IO of the case. He stated that he had recorded the statement of the victim at the hospital as dying declaration. On perusal of the CD it is seen that one statement of the injured was recorded by SDM, Dhubri on 30-11-09. Where in LTI of injured was taken along with signature of the witnesses. In the case in hand injured survived and this statement can be treated as statement of the victim at the time of investigation for the purpose of contradiction and corroboration. This facts again pointed seriousness of the injury sustained by the Kurban Ali. In the said statement also victim implicated the name of the accused persons and statement of PW-6 is corroborated by the injured. PW-6 made statement before the court what he had seen in the hospital with his own eye and what he had heard from the victim. Therefore, his evidence is not hearsay evidence. PW-4, PW-9 and hostile witness PW-11 stated they went to hospital and seen several injuries on the body of injured Kurban. These three PWs stated before

the court what they had seen on the body of the injured. PW-9 stated in cross he heard that accused person beaten his father from his father. PW-2 injured stated he narrated incident to his sons. PW-13 and PW-14 deposed that hearing hue and cry, they went to the place of occurrence and while going to the place of occurrence PW-14 saw accused were leaving place of occurrence armed with lathi, dagger etc. and both of them heard from injured Kurban that accused person beaten him. Therefore, there evidence before court is that what they seen and heard from the injured. These PWs also made similar statement before the police. The minor omission or commission in their statement is may be due to passing over of time which does not adversely affect the merit of the prosecution case. I find and hold that evidence of PW-4, PW-9, PW-13 and PW-14 to the fact that they saw several serious injury on the person of Kurban Ali is primary evidence and evidence of PW-14 that he saw accused persons going from the place of occurrence when they were going to the place of occurrence and PW-13 and PW-14 heard from victim that accused persons assaulted victim Kurban are all primary evidence. Though PW-9 is declared hostile but he admitted and stated that he went to Dhubri Hospital to meet Kurban Ali and saw several serious injury on the person of Kurabn Ali. The evidence of hostile witness not to be thrown out as a whole, it can be safely relied upon if corroborated by other piece of evidence. The part of PW-9 evidence that Kurban Ali sustained several serious injury on his body and he was hospitalized for getting treatment is corroborated by other PWs and therefore, this part of the evidence of PW-9 is relevant and admissible piece of evidence. Accordingly, submission of Id. defence counsel that evidence of all the PWs are hearsay evidence not accepted by me.

38. Ld. defence counsel made submission that prosecution by not examining the evidence of Shajahan create doubts in the prosecution case and only adduced the evidence of relative whose evidence is not acceptable. I have peruse the evidence of victim, PW-3, PW-13 and PW-14 and other PWs. According to victim when accused persons attacked him, Shajahan run away from the place of occurrence to save his life. According to PW-3, he came to the place of occurrence after coming to know from the cycle rider who had crossed him hurriedly that miscreant had killed one Kurban Ali Bhuyan and PW-3 rushed to the spot. When PW-3 reached place of occurrence he found only injured and no other person

However, seen some people on the other side of the river. PW-13 and PW-14 also reached place of occurrence hearing the hue and cry and found victim. But they also did not state that they found Shajahan at place of occurrence . On perusal of the C.D, I find that Shajahan did not state the name of the miscreant. As miscreant are unknown to him being they are not from his locality he could not identified them and he run away from the place of occurrence when miscreants pulled Kurban Ali from his cycle and attacked. That means Shahjahan did not witness the incident as a whole except seeing miscreants pulling down Kurban from his cycle. At the time of cross examination of PW-1 informant and PW-2 injured, defence put suggestion to them that Shahjahan was not present at place of occurrence when incident was taken place. During cross examination defence plea was that Shahjahan was not present at place of occurrence and he did not witness incident and accordingly cross examined the PW-1 and PW-2, therefore, at the time of argument this Shahjahan cannot be termed as material witness by the defence side when they took plea that he was not present at place of occurrence to witness the incident. Moreover, Ld. Defence counsel also argued that there was no eye witness. Under such circumstances Shahjahan is not a material witness and non-examination of the Shahjahan does not caused any prejudice to the accused persons and it is not the quantity of the evidence but the quality of the evidence which determines the fate of the prosecution case.

39. None of the witnesses stated that any member of the madrasa came and witness the incident. Victim injured also not stated that any teacher or student or employee of the madrasa came to the place of occurrence and witness the incident. During cross examination of the PWs, defence could not brought on record that any member of the madrassa were present and witness the incident. Incident was not taken place in front of the Madrassa. It was taken on village road on the side of dead river Gauranga which is on the south side of the Madrassa. Therefore, those person who were the student of the madrassa and were working at madrassa who did not witness the incident cannot be termed as vital and material witness. And when there is no person present at the place of occurrence to witness the incident, collection of the person to be shown as independent witness is not the rule of criminal jurisprudence. A person is said to be witness when he seen the incident, when he heard the incident, where he perceived the incident. Duty of the

IO is not to procure or pick independent witness who did not witness the incident. In the decision relied by the defence counsel on *Md Aminur Islam & Others vs State of Assam; Jahan Lagun VS State of Assam; Suren Kalita & ANOTHER –VS– State of Assam; John Ali & Anr VS State of Assam ; Parmial Gowala & Ors –VS– State of Tripura*, prosecution did not produce those witness who had witness the incident but in the case in hand there was no eye witness present at place of occurrence and all those who had visit place of occurrence after hearing hue and cry and those who visit victim at hospital were examined by the prosecution and therefore decision relied by the defence were not applicable in the case in hand

40. As per the statement of the PW-13 and PW-14 they being the nearby person of the place of occurrence of about 500 cubit distance away rushed to the place of occurrence hearing hue and cry. PW-13 and Pw-14 stated victim disclosed name of the accused person before them. Except putting suggestions, defence could not destabilized and falsified their evidence that they rushed to the place of occurrence hearing hue and cry, went to hospital, meet injured, seen injury on the body of the injured, having conversation with the victim and that victim disclose the name of the accused person before them and therefore, their evidence cannot be thrown out merely because they are relative.

41. The statement of PW-1 that he found his father in speaking condition and that injured at the time of incident could speak does not shows that two views are coming from the evidence on record as submitted by the learned defence counsel. All the PWs categorically stated injured Kurban Ali sustained serious injury and medical report also pointed that injured Kurban Ali sustained several chop injury and other body injury all over the body which are of grievous in nature. Therefore, in respect of the injury only one facts stated by all the PWs including injured Kurban Ali that injured Kurban sustained several serious injury on his body and submission of the learned defence counsel is devoid of any merits.

42. Learned counsel submits that incident took place after Magrib namaz and that means victim did not identified the accused as by the time of Magrib namaz it was under darkness and incident took place in the winter seasons and Pw-1 stated incident took place at 4.30 PM therefore, two views coming from the evidence on record in respect of the time of incident. He further argued one incident of attack

on Kurban Ali was taken place on the evening time of 23-11-09 but same was not caused by accused person.

43. It is the evidence of PWs and statement in ejahar that incident took place at evening time. Time stated in the ejahar is about 4.30PM. PW-1 and PW-2 stated incident was took place at about 4.30 PM. According to PW-1 he got information about the incident at 4.40 PM. PW-3 stated while he was returning home after namaz to his home at about 5/5.30 PM he meet one cycle rider coming hurriedly and told him that miscreants beaten Kurban Ali. Other PWs stated incident was took place during evening time. Thus, shown all the PWs deposed that incident was taken place during evening hour, not at night or during midday or at morning. All the PWs deposed one time of the incident. During summer days Magrib Namaz offers at 6 PM and during winter Magrib Namaz offer at 4.30PM, Isar Namaz offer at 8 PM. PW-3 was returning home after namaz at 5 to 5.30 PM not at 8 PM. That is after the incident. PW-3 did not state he returned after Isar Namaz. Ld. Defence counsel also argued that one incident on Kurban Ali took place in the evening. Therefore, no two views coming from the evidence of PWs about the time of taking of the incident. Evidence of PW-3 shown he clearly seen the cycle rider. Accused persons were known to injured and injured is also known to accused persons so identification was easily took place. PW-1 and Pw-2 (injured) identified the accused person before the court and they stated names of accused persons on the day of incident, when SDM Dhubri recorded statement of injured at Dhubri Hospital and when police recorded their statement and before the court. At 4.30 PM even in winter seasons total darkness not covered and still at that time objects were visible clearly. Moreover there was no cross from the side of accused that there was total darkness at the time of incident and victim did not identified the assailants. Thus, proper identification of accused person took place and submission of learned defence counsel is devoid of any merit.

44. Now, it is an established facts that on 23-11-09 victim Kurban Ali sustained multiple injuries on his body and those injuries according to medical report caused by sharp cutting weapon. Victim stated that accused persons used dagger and knife to caused injury on him. Dagger and knife is deadly sharp cutting weapon used as instrument for stabbing and cutting . By using dagger and knife a man can take person's life and therefore, these weapons are fall in the category of deadly

weapon. Victim stated he narrated incident to his son and others. Ocular evidence as well as medical report clearly shown that injury sustained by the victim Kurban Bhuyan is grievous in nature and caused by sharp cutting weapon. Victim categorically and specifically stated that injury caused to him were caused by accused persons which is fairly corroborated by other PWs. There is similarity in ocular and medical evidence which is also corroborated by other PWs. Evidence of injured and other PWs are trustworthy, derives confidence, are reliable and relevant piece of evidence.

45. Ld. counsel for the accused submitted that PW-1 and injured Kurban Ali lodged false case against the accused person out of the enmity as accused Barek lodged case of rape against the nephew of injured Kurban and against Kurban, his son and PW-4 and other and in support of his contention he submitted copy of FIR and charge sheet of Bilasipara PS case no 356/09 u/s 493/420 I.P.C by fristi.

46. I have perused the copy of FIR, charge sheet in the Bilasipara P S case no 356/09 u/s 493/420 I.P.C and also perused statement of the accused person recorded u/s 313 Cr.P.C.

47. Ejahar in Bilasipara PS case no 356/09 u/s 493/420 I.P.C was filed by one Meherjan Khatun not by accused Abdul Barek Muchulli and accused Ashuruddin as argued. It was alleged by Meherjan that Aynal Hoque with promise to marry her had sexual intercourse with her and when she conceived Aynal Hoque given her medicine and she miscarriage and other accused of her case trying to tie the nuptial knot of Aynal with daughter of Kurban Bhuyan and IO submitted chargesheet in said case against accused Aynal Hoque and for lack evidence not sent up the other accused for trial It was not the allegation of Meherjan of Bilasipara PS case no. 356/09 that either accused Kurban Bhuyan or Abdul Barek or Jaharuddin or Yusuf or Amzad Ali committed rape on her. Only allegation against Kurban Ali is that other accused of her case trying to tie the nuptial knot of Aynal with the daughter of Kurban Ali, the injured of this case. Therefore, the witnesses or informant or injured Kurban Ali of the present case has any intention to falsely implicated the accused person not come out from the reading of the ejahar of Bilasipara PS case no 356/09, rather it is pointed that as other wanted to tie the nuptial knot of Aynal with the daughter of Kurban Ali, there is a presence of mensrea of the present accused person to attack Kurban Ali and to cause his death. The plea taken by the

accused person categorically shown their criminal intention to assault Kurban Ali Bhuyan. Therefore, the plea and submission made by the Ld. defence counsel goes against the accused persons. The presence of guilty mind to attack the Kurban Bhuyan clearly visible from the material relied by the Ld. defence counsel. This Meherjan is the daughter of accused Abdul Barek and Ashuruddin is her brother. Thus their piece of document and version shown their criminal intention to attack Kurban.

48. All the accused persons having common intention participated in the act of assault on Kurban Ali Bhuyan and voluntarily causing grievous injury they were waiting at the place of occurrence for arrival of the Kurban to materialize the same. Thus, element of pre-set of mind as per section 34 I.P.C is clearly visible in the present case. The injury sustained by the PW-2 is grievous in nature caused by deadly sharp cutting weapon dagger which is an instrument of stabbing and cutting fulfill the ingredient of section 326 I.P.C. It is also coming out from the evidence on record that said injuries were caused to Kurban Ali by accused persons beyond all reasonable doubt. Accordingly I am constrained to hold that prosecution beyond all reasonable doubt fairly able to bring home charge u/s 326/34 I.P.C. against all the accused persons.

49. The injury sustained by the Kurban Bhuyan and medical report Ext 3 clearly pointed that he had sustained multiple grievous injury. Accused persons have not giving only one blow to Kurban. The several blows given to him shown that accused persons with intention to caused his death given such blow to him using deadly weapon such as dagger and long knife but it is his luck that he was save. At the time of his treatment doctor and police also suspected he will not survive and therefore his statement was recorded by Magistrate. The multiple injury sustained by the victim and weapon of offence used by the accused to cause injury on Kurban beyond all reasonable doubt shows that accused person's intention was to kill Kurban Ali Bhuyan and in that intention all of them attacked him and caused multiple bodily injury on Kurban. The conduct of the accused shown that there intention was not to cause only grievous injury but to kill him and when injured sustained several injury they leave him to die. Therefore, I find the presence of the ingredients of criminal intention to kill the Kurban Ali by the

accused and with that intention accused given several blows on Kurban Ali with deadly weapon dagger.

50. It is revealed from the evidence on record that informant was busy with his father treatment on the day of incident and on next day written ejahar was lodged. Case diary revealed that police was verbally informed on the day of incident but written ejahar was lodged on the next day of incident and after lodging the ejahar investigation started and police recorded statement of the witnesses. Evidence shown informant was at Dhubri Hospital with his injured father. Therefore delay of one day in lodging the written ejahar is not fatal for the prosecution case.

CONCLUSION

51. From the aforesaid analysis of the evidence on record, following points has been comes out:-

- i) Incident of assault took place on Kurban Ali on the evening time on 23-11-09 at about 4.30 PM at Kajaikata village road near the Mora Guaranga River of South side of the Kajaikata Madrassa School;
- ii) On the day of incident Kurban Ali was coming home riding on the cycle of Shahjahan and accused persons were hiding at place of occurrence pulled Kurban Ali from cycle, chased Shahjahan from the place of occurrence by giving him threatening to kill him, Shahjahan run away from the place of occurrence leaving Kurban at place of occurrence.
- iii) Accused persons attacked and hit Kurban Ali with long dagger an instrument used for stabbing and cutting on his different parts of body;
- iv) PW-3 went to the place of occurrence hearing hue and cry of victim and getting information from the cycle rider that miscreants killed Kurban Ali and on reaching the place of occurrence he saw Kurban Ali lying on road with severe multiple injuries on his body and he and other taken him to Bilasipara hospital where from Kurban was shifted to Dhubri Hospital;
- v) PW-1 went to place of occurrence after hearing incident of attack on his father but he did not found his father at place of occurrence and came to know that his father was taken to Bilasipara Hospital he went

- to Bilasipara Hospital where he finds his father Kurban Ali suffered with multiple injuries on his body and his father was shifted to Dhubri hospital and heard incident and accused's name from his father;
- vi) PW-4, PW-6, PW-9, PW-11 hearing incident of attack on the Kurban Ali and that he was taken to Bilasipara Hospital went to Bilasipara SHC but did not found Kurban at Bilasipara as Kurban Ali was shifted to Dhubri Hospital and at Dhubri hospital they visit and found Kurban Ali suffered with severe multiple injuries on his body. PW-9 came to know about the name of the accused persons from his father Kurban Ali. Before PW-6 victim stated incident to police and magistrate and disclose name of the accused persons;
 - vii) PW-13 and PW-14 reached place of occurrence hearing hue and cry of the Kurban Ali and found victim in injured condition with multiple injury on his body. PW-14 while going to the place of occurrence seen accused persons leaving the place of occurrence armed with lathi, dagger etc. Injured Kurban Ali told that accused persons attacked him with dagger;
 - viii) PW-12, IO recorded statement of the injured at Dhubri hospital by SDM Dhubri in presence of witness as injured sustained multiple bodily injury;
 - ix) Kurban Ali sustained chop injury and other multiple injury all over his body on right and left side;
 - x) Medical report shown Kurban Ali sustained several chop injury on his left and right side of the body which included left, foot, hand, arm etc which are grievous in nature and caused by sharp cutting instrument. Dagger is a sharp cutting weapon;
 - xi) It is the accused person who attacked the injured Kurban Ali and voluntarily caused multiple grievous injury with a dagger which is a sharp cutting deadly weapon with intention to kill him and with that intention accused caused several grievous injury on Kurban Ali.

52. From the foregoing discussion I come to my considerate finding that prosecution fairly able to establish its charge u/s 326/307/34 I.P.C against all the accused persons beyond all reasonable doubt and I hold accused persons guilty

of commission of offence u/s 326/307/34 I.P.C and they were convicted u/s 326/307 I.P.C. Bail bond of accused persons stands cancelled.

53. Considering the nature of the offence which accused persons have committed being they are matured person, they do not entitled benefit of Probation of Offender Act and under the provision of 360 Cr.P.C.

54. Accordingly I have heard accused persons on the point of sentence.

55. Accused persons pleaded mercy and their statement have been recorded in a separate sheet. Ld. Accused counsel prays for lesser punishment taking into lenient view against the accused persons. Ld. Defence counsel submits accused persons if sentenced to longer period their family will suffered. On scrutiny of the material on record. I find that six person by gherouing one unarmed person attack him brutally with a deadly weapon and leave him to die and therefore their conduct does not deserve any leniency and mercy from the court for their conduct and act of commission of offence.

56. Considering all aspect, taking into account the conduct of the accused and manner of commission of the offence by the convicted accused persons and nature of the offence which accused persons have committed I sentenced the accused person Berek Muchulli, Saleman Muchulli, Ashuruddin, Asharab Ali, Abul Kalam Muchulli and Kuddus Ali Sk. to undergo RI of 7 years and to pay fine of ₹ 15000/- i/d 1 ½ years RI each u/s 326 I.P.C and further sentenced to undergo RI of 7 years and to pay fine of ₹ 15000/- i/d years RI 1 ½ each u/s 307 I.P.C.

ORDER

57. Accused person Berek Muchulli, Saleman Muchulli, Ashuruddin, Asharab Ali, Abul Kalam Muchulli and Kuddus Ali Sk. Found guilty u/s 326/307/34 I.P.C and they are convicted and accused person Berek Muchulli, Saleman Muchulli, Ashuruddin, Asharab Ali, Abul Kalam Muchulli and Kuddus Ali Sk. Sentenced to undergo RI of 7 years and to pay fine of ₹ 15000/- i/d 1 ½ years RI each u/s 326 I.P.C and further sentenced to undergo RI of 7 years and to pay fine of ₹ 15000/- i/d 1 ½ years RI each u/s 307 I.P.C. The sentence will run consecutively. Period under detention is hereby set off. Surety stands discharged. Let furnish free copy

of judgment to convicted accused persons. Fine amount if paid be given to the injured victim Kurban Ali u/s 357 (b) Cr. P.C.

58. The convicted accused persons are told that they have right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of their own. Convicted accused persons are further informed that they are entitled free legal aid to prefer appeal before the Hon'ble High court.

59. Send copy of judgment to learned District Magistrate Dhubri u/s 365 Cr.P.C.

60. Send back the GR case record to the learned committal Court with a copy of the judgment.

61. Given under hand and seal of this Court on this 4th day of September 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer.

APENDIX

PROSECUTION WITNESS:-

PW- 1 Amzad Ali Bhuyan, informant;

PW-2 Kurban Ali Bhuyan, injured;

PW- 3 Asad Ali;

PW- 4 Aynal Haque;

PW- 5 Monowar Hussain;

PW- 6 Abdul Barek Miah;

PW- 7 Nur Mohammad;

PW- 8 Abdul Goni;

PW-9 Abdul Hannan;

PW-10 SI Banojit Uzir;

PW-11Jaharuddin;

PW-12 SI Paramananda Singha;

PW-13 Abdul Rezzak;

PW-14Jaynal Abedin

PROSECUTION EXHIBIT:-

Ext.1 Ejahar,

Ext.2 FIR form,

Ext.4 Charge sheet

DEFENCE WITNESS :- Nil

DEFENCE EXHIBITES :- NIL

COURT EXHIBITES :- Medical report as ext-3

COURT WITNESS :- CW-1 Doctor R. K. Mahato

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara