

DISTRICT : DHUBRI

IN THE COURT OF THE SESSIONS JUDGE, DHUBRI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Sessions Case No. 129 of 2009

U/S 147//148/302/354 IPC

Corresponding to G.R. (GPR) Case No. 132/2007

State of Assam

.....Complainant

Versus

1. Badsha Sheikh
2. Abdul Aziz
3. Ali Akbor Sheikh
4. Abdul Monnaf
5. Johirul Islam
6. Jel Hoque
7. Abu Bakkar Siddique
8. Abdul Sattar
9. Sekandar Ali

... Accused

(Learned Sub-Divisional Judicial Magistrate (S), Dhubri Shri S.I. Rahman committed the case)

Charge framed on : 24-05-2012

Evidence recorded on : 20-11-2015, 26-02-2016, 01-04-2016, 05-05-2016,
15-07-2016, 12-08-2016, 06-12-2016, 07-02-2017 and
08-03-2017

Statement recorded on : 12-05-2017

Arguments heard on : 29-05-2017, 08-06-2017

Judgment delivered on : 21-06-2017

Advocates who appeared in this case are:

Shri Maniruz Zaman, P.P. for the Prosecution

Shri N. I. Chaudhury, Advocate for the Defence

J U D G M E N T

1. This case was registered on 04-05-2007, at Gauripur Police Station, under Sections 147, 148, 326, 307, 354, 506, 302 of the Indian Penal Code, 1860 (in short "the IPC"), based on a First Information Report (in short "the FIR") filed by one Hosen Ali Sheikh against accused Abdul Aziz Sk., Sekandar Ali, Badsha SK., Jel Hoque Sk, Sattar Ali, Abu Bakkar Siddique, Johirul Sk. and Monnaf Ali.

2. The case of the prosecution, as stated in the FIR is that the informant and the accused are residents of the same village. They had a land dispute and a case was pending over the same in the Court of the learned Munsiff No.1 at Dhubri. The accused No.1 Abdul Aziz works in the Police Department and on several occasions, he had threatened the informant that he will do away with him and extorted money from him. On 04-05-2007, at 07:00 a.m., while the younger brother of the informant, named Osman Ali, was proceeding from his house towards the house of a relative, the accused waylaid him and the accused No.1 assaulted him by means of a dagger (a sharp cutting weapon). The other accused also assaulted him with the intent of killing him. As a result, blood started oozing from the mouth of Osman Ali and he shouted for help. Hearing his shouting, his wife and the wife of the informant rushed to the place of occurrence. The accused then indecently assaulted them too and they also sustained injuries. The wife of the informant sustained a fracture wound on her left hand. The accused threatened them that if they file any case, they will kill them. The nearby people shifted Osman Ali and the wives of the informant and Osman Ali, to the Gauripur hospital and they were undergoing treatment. Therefore, the informant filed the FIR instant of the instant case with the Gauripur Police Station.

3. Based on the FIR, the Officer Incharge of the Gauripur Police Station registered the case No.132/2007 for commission of offences under Sections 147/148/326/307/354/506 IPC against accused Abdul Aziz Sk., Sekandar Ali, Badsha

SK., Jel Hoque Sk, Sattar Ali, Abu Bakkar Siddique, Johirul Sk. and Monnaf Ali and investigated the case. As during treatment, Osman Ali succumbed to the injuries, Section 302 IPC was added to the case.

4. During the course of investigation, statements of several witnesses were recorded and after collecting the post-mortem report and injury report etc., and completion of investigation, the police submitted charge sheet for offences under Sections 147, 148, 326, 307, 354, 506, 302 IPC against accused Jahirul Hoque, Ali Akbar, Badsha Sk. and Abu Bakkar Siddique in the Court of the learned Chief Judicial Magistrate, Dhubri and did not charge sheet the other accused persons. The learned Chief Judicial Magistrate, Dhubri, transferred the case to the learned Sub-Divisional Judicial Magistrate (S), Dhubri Shri S.I. Rahman for disposal. As the offence under sections 302 IPC is exclusively triable by the Court of Sessions, after complying with the provisions of section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."), the learned Sub-Divisional Judicial Magistrate (S), Dhubri committed the case to this Court for trial. Hence this case.

5. During trial, the learned P.P. filed a petition praying for summoning the FIR named Abdul Aziz, Sekendar Ali, Sattar Ali, Jel Hoque and Monnaf Ali as accused and my learned predecessor allowed the said petition and summoned them as accused in the case. Challenging the said order, they approached the Hon'ble Gauhati High Court but, the Hon'ble High Court rejected their petition. Thereafter, they faced the trial. During trial, my learned predecessor framed charges under Sections 147, 148, 302, 354 IPC against the accused persons. When the contents of the charges were read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

6. The prosecution, in order to prove its case, examined as many as twenty witnesses. The accused did not examine any witness.

7. In their examination under section 313 Cr.P.C., the accused have denied the prosecution case and have stated that the allegations levelled against them are false and baseless.

8. The points for determination in this case are:-

I) Whether on 04-05-2007, at 07:00 a.m., at village- Dakhin Geramari, under Gauripur Police Station, by forming an unlawful assembly and in prosecution of

the common object of the said assembly to commit the murder of Osman Ali the accused committed rioting?

II) Whether on 04-05-2007, at 07:00 a.m., at village- Dakhin Geramari, under Gauripur Police Station, by forming an unlawful assembly and in prosecution of the common object of the said assembly to commit the murder of Osman Ali, the accused committed murder of Osman Ali by intentionally causing his death?

III) Whether on 04-05-2007, at 07:00 a.m., at village- Dakhin Geramari, under Gauripur Police Station, by forming an unlawful assembly and in prosecution of the common object of the said assembly to commit the murder of Osman Ali, the accused committed rioting and outraged the modesty of Suryabhan Bibi and Nobjan Bibi?

IV) If so, what punishment do they deserve?

DECISION AND REASONS THEREOF

9. I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsels for both the sides give my decision on the above points as follows:-

POINT NO. II

10. As while committing the murder of Osman Ali, the accused allegedly committed the other offences, the Point No. II, which is relating to the committing of the murder of Osman Ali by intentionally causing his death, is discussed and decided first.

11. PW-1 Md. Hasen Ali, the informant has deposed that on the day of the alleged occurrence, while his deceased brother Osman Ali was returning home from the house of his father-in-law, the accused surrounded him. He then cried for help and hearing his crying, he went to the place of occurrence to rescue him. His wife and the wife of Osman Ali also went to the place of occurrence. He saw from a distance of 8/10 meters that at the instance of the accused Abdul Aziz, the other accused were assaulting Osman Ali by means of sticks and split bamboo. When his wife Surjyabhan Bibi tried to prevent the accused, they assaulted her too, as a result of

which, she sustained fracture wound on her hand. The accused also tore out her clothes. In the assault, Osman Ali sustained severe injuries and he was shifted to the Dhubri Civil Hospital. From the Dhubri Civil Hospital, while he was shifted to the GMCH, Guwahati, on the way, he succumbed to the injuries. The accused also assaulted Nobijan Bibi.

12. In the cross-examination, he has stated that he does not remember what is written in the FIR. At that time of the occurrence, he was not present in his home. The incident occurred on a busy road. The incident occurred at about 07:00 a.m. He did not see any villagers at the place of occurrence. He told about the incident to Ajijur, Asiran and Jomiron. The incident occurred near the house of Phanindra Nath Roy. After the incident, they first took the deceased Osman to the house of Abed Ali and gave First-Aid. Thereafter, Osman was taken to the Gauripur Police Station. Nabi and Babu accompanied Osman to the Gauripur Police Station. The Gauripur Police shifted Osman to the Dhubri Civil Hospital. Next day, Osman Ali was referred to the GMCH and he was taken to the GMCH in an ambulance. He has denied the suggestion that the accused Abdul Aziz did not instigate the other accused to assault the deceased Osman Ali. He has stated that there was a culvert at the place of occurrence. He has denied the suggestion that at that time of the occurrence, the deceased Osman Ali was plying a bicycle and sustained the alleged injuries dashing against the said culvert. He has stated that after the incident, the deceased Osman Ali was in a position to talk and also talked to them. At the time of admission in the hospital, the doctor found the deceased in normal condition. He has denied the suggestion that the deceased Osman Ali died due to their negligence. He has also denied the suggestion that the accused are innocent.

13. PW-2 Nobijan Bibi, the wife of the deceased Osman Ali has deposed that on the day of occurrence, while Osman Ali was returning home from her parental home, the accused Abdul Aziz, Sekan, Bokkar, Badsha, Sattar, Jel Hoque, Johirul, Ali Akbor and Monnaf waylaid him and assaulted him. Hearing his cries, she went to the place of occurrence and saw that armed with sticks, Phala, Butam, the accused were assaulting the deceased. When she tried to save him, the accused assaulted her too. The accused also tore out her clothes. As a result of the assault, Osman Ali fell down on the ground. When her brother-in-law Hasen Ali and his wife arrived at the place of occurrence, the accused assaulted them too. Her sister-in-law sustained serious injuries on her hand and her first finger was fractured. Many people arrived at the

place of occurrence. Thereafter, they shifted Osman Ali to the Dhubri Civil Hospital. He was referred to the Barpeta Civil Hospital. But, on the way to the Barpeta Civil Hospital, he succumbed to his injuries.

14. In the cross-examination, she has stated that the incident occurred on a broad and busy road. She has denied the suggestion that it was raining at the time of the occurrence and no villagers came to the place of occurrence. She did not see any outsider at the place of occurrence. She knows Abed Ali. Abed Ali resides near the place of occurrence. Jalil and Tomser also reside near the place of occurrence. None of them came to the place of occurrence. Phanindra Nath Roy also resides near the place of occurrence. He did not come to see the incident. They did not tell the villagers about the incident. Jalil took her husband to the house of Abed Ali. She reached Abed Ali's house after 20 minutes of the occurrence. The inmates of the house of Abed Ali poured water on the head of her husband. Her husband was kept at the house of Abed Ali for half an hour. Ajijur and Nobibur took her husband to the hospital. Seeing the condition of her husband, she fainted. There is a culvert at the place of occurrence. Bicycle of her husband was found lying at the place of occurrence. She has denied the suggestion that dashing against the said culvert, her husband sustained the alleged injuries. She also sustained injuries, but she did not consult any Doctor. She has denied the suggestion that she and her sister-in-law Surjyabhan did not see the alleged occurrence. Her husband was not in a position to talk. She has denied the suggestion that after the alleged occurrence, her husband was in a position to walk. Her husband was surrounded by the accused persons. Two/three other persons were also present at the place of occurrence.

15. PW-3 Surjyabhan Bibi has deposed that while her brother-in-law was returning home from the house of his father-in-law, the accused assaulted him by means of bamboo stick, split bamboo, etc. Her brother-in-law then shouted for help. She, Nobijan Bibi and her husband went to the place of occurrence and saw the accused persons assaulting her brother-in-law. As a result of the assault, her brother-in-law sustained serious injuries. When she tried to intervene, the accused assaulted her too and she sustained fracture wound on her right hand. Thereafter, her brother-in-law was shifted to the Dhubri Civil Hospital and from there; he was taken to the GMCH, Guwahati. But, on the way to the GMCH, her brother-in-law succumbed to the injuries.

16. In the cross-examination, she has stated that at the time of the alleged incident, she was present in her house. The place of occurrence is situated at a distance of about 30/35 meters away from her house. Houses of Tomser, Jalil and Phanindra Roy are situated near the place of occurrence. Nobijan Bibi, Tosiron, Ajijul and Halima accompanied her to the place of occurrence. When they reached the house of Abed Ali, she saw that water was poured on the head of the deceased Osman Ali. She did not tell the villagers about the incident. Nabibor, Ajijur, and the sons of Osman Ali took Osman Ali to the hospital. After the incident, Osman was in a position to talk. Osman Ali did not talk to her but, he talked to other people. They did not have any previous enmity with the accused persons. She has denied the suggestion that she has deposed falsely. She has also denied the suggestions that the accused persons did not assault Osman Ali and Osman Ali dashed against the culvert due to failure of the break of his bicycle, fell down on the ground, sustained the alleged injuries and later on, succumbed to the injuries.

17. PW-5 Abed Ali has deposed that he knows the accused persons present in the Court. He also knows the deceased Osman. About 10/12 years ago, one day, at about 07:00/07:30 a.m., he heard a hue and cry on the Southern side of his house. He then went to the place of occurrence and saw that Osman was lying with injuries on the ground. He did not see who the perpetrator of the alleged occurrence was. He was declared hostile and prosecution cross-examined him.

18. In the cross-examination by the prosecution, he has denied the suggestion that the Investigating Officer examined him. He has also denied the suggestion that he told the Investigating Officer that the place of occurrence was clearly visible from the place where he was standing as there was no tree between the place of occurrence and his land and he had seen the accused Johirul, Ali Akbor, Badsha Sheikh, Abu Bakkar Siddique assaulting Osman.

19. In the cross-examination by defence, he has stated that when he reached the place of occurrence, he saw a gathering of students there and heard from them that Osman sustained injuries by falling from his bicycle on the culvert. Thereafter, he saw Osman getting up from the ground and proceeding towards his house. He knows the PW-1, PW-2 and PW-3 but he did not see them at the place of occurrence. After Osman sustained the injuries by falling from the bicycle, he took

Osman to his house. After 20 minutes of the alleged incident, the PW-1, PW-2 and PW-3 came to his house and took away Osman to their house. He has not given any statement to the police.

20. PW-6 Ajupa Bibi has deposed that she does not know the accused persons present in the Court, but in the same breath, she has deposed that accused persons are her neighbours. The deceased Osman was also her neighbour. At the relevant point of time, she was cooking food. Hearing a hue and cry, she went to the place of occurrence and saw that Osman was lying injured on the ground and some persons were surrounding him. She did not recognize those persons.

21. In the cross-examination, she has stated that she saw some school children at the place of occurrence. She heard that the deceased Osman sustained the injuries by dashing against the culvert. Osman was taken to their house. They gave him initial treatment at their house. Thereafter, the PW-1, PW-2 and PW-3 came to their house and took the deceased to their house.

22. PW-7 Eusuf Ali has deposed that he knows the accused and the deceased Osman. About eight/nine years ago, one day, at about 07:00 p.m., while he was proceeding towards the daily market, he saw a crowd at the place of occurrence. Out of curiosity, he went to the place of occurrence and saw that Osman Ali was lying injured on the ground and his bicycle was lying beside him. He did not see any injury on his body.

23. He was declared hostile and the prosecution cross-examined him. In the cross-examination by the prosecution, he has stated that the police have interrogated him. He has denied the suggestion that he told the Investigating Officer that he had seen the accused Jahirul, Ali Akbor, Badsha Sheik and Abu Bakkar Siddique assaulting Osman and Osman fainting as a result of the assault.

24. In the cross examination by the defence, he has stated that he saw some school children at the place of occurrence. He had heard that dashing against the culvert, the deceased Osman fell down from the bicycle and sustained the injuries. Thereafter, Osman was shifted to the hospital.

25. PW-8 Javed Ali has deposed that he knows the accused and the deceased Osman. On the day of the incident, when he reached his house, he saw that the deceased Osman was present in their house with injuries and the members of his family were pouring water on his head. The Defence declined to cross-examine him.

26. PW-9 Firoza Bibi has deposed that she knows the accused and the deceased Osman. At the time of the alleged incident, while she was working in her house, hearing a hue and cry; she went out and saw that the deceased Osman was brought to their house in injured condition. They poured water on the head of Osman. She does not know how the incident occurred.

27. In the cross-examination, she has stated that after Osman was brought to their house, the PW-1, PW-2 and PW-3 came to their house and took Osman to their house. They told her that they cannot say how the incident occurred.

28. PW-10 Halima Bibi has deposed that she knows the accused and the deceased Osman. At the time of the alleged incident, she was cooking meal in her house. When she went out from her house, she saw that Osman was lying injured near the culvert and one person was pouring water on his scalp.

29. In the cross-examination, she has stated that she saw some school children near the deceased Osman and when she asked them, they told her that Osman fell down from his bicycle and sustained the injuries.

30. PW-12 Amirul Islam has deposed that he knows the accused and the deceased. He did not see the alleged occurrence. He saw the deceased Osman lying injured near the culvert.

31. He was declared hostile and the prosecution was allowed to cross-examine him. In the cross-examination by the prosecution, he has stated that the police examined him. He has denied the suggestion that he has told the police that on 04-05-2007, at around 7 a.m., on the Panchayat road near his house, Johirul Hoque and Osman Ali had a heated altercation and Johirul Ali, Akbor, Badsa Sk and Abu Bakkar Siddique assaulted Osman and Osman sustained severe injuries.

32. In the cross-examination by the defence, he has stated that he had seen Osman falling from his bicycle and dashing his scalp against the culvert. He had seen Osman being taken to the house of Abed Ali. He had not heard about clash between the accused and the deceased.

33. PW-14 Dr. Samir Baidya has deposed that on 7-5-2007, at around 2:20 p.m., he had examined Musstt. Surjya Bibi on police requisition and found swelling and tenderness on her right hand. In his opinion, the injuries were simple, fresh and was caused by blunt object. Ext-1 is the injury report prepared by him and ext-1 (1) is his signature therein.

34. In the cross-examination, he has stated that one may sustain such injuries due to falling on hard surface.

35. PW-15 Dr. Kochir Ali Ahmed has deposed that on 7-5-2007, he examined Musstt. Nobijan Bibi. She reported about low back ache. The pain was due to trauma on back. She also complained of pain in the upper abdomen. The same resulted due to gastroesophageal reflux disease which is a natural disease. For the complaint of low back ache, necessary x-ray was taken and the findings were normal. In his opinion, the above mentioned injuries /ailments were simple in nature, two/three days old and were caused by blunt object. Ext-2 is the injury report prepared by him and ext-2 (1) is his signature therein.

36. In the cross-examination, he has stated that one may sustain such injuries due to falling on hard surface.

37. PW-16 Dr. Jitumoni Bezbaruah has deposed that on 06-05-2007, at around 12:00 noon, he conducted postmortem examination on the dead body of Osman Ali and found one depressed wound of ½ c.m. depth on the back side just below the left scapula and one 12 c.m. X 2 c.m bruise over the abdomen on left hypochondrium. Small intestine was ruptured at the side of the injury with blood in the peritoneum. The injuries were anti-mortem in nature. In his opinion the death was due to shock and hemorrhage as a result of the injuries (intestinal perforation) sustained by the deceased. Ext-3 is the postmortem report prepared by him and ext-3 (1) is his signature therein.

38. In the cross-examination, he has stated that one may sustain such injuries due to falling from a bicycle.

39. PW-20 Shri Manindra Nath Ray, the investigating officer of the case has deposed that during the course of investigation, he visited the place of occurrence, prepared a site plan and recorded the statements of the witnesses. He also seized a bicycle and a piece of timber vide ext-5 seizure list. He also seized a command certificate book for CL/EL, w.e.f. 09-01-2006, containing 144 pages, vide ext-7 seizure list. Inquest on the dead body was done by Executive Magistrate in his presence. Ext-8 is the said inquest report. After completion of investigation, he submitted the ext-9 charge sheet for offences under sections 147/148/326/307/354/506/302 IPC against accused Johirul Hoque, Ali Akbor, Badsha Sheikh and Abu Bakkar Siddique.

40. He has further deposed that the witness Abed Ali (PW-5) told him that the place of occurrence was clearly visible from the place where he was standing on his land as there was no tree in between the place of occurrence and his land. He had seen the accused Johirul Hoque, Ali Akbor, Badsha Sheikh and Abu Bakkar Siddique assaulting Osman. The witness Eusuf Ali (PW-7) told him that he saw the accused Johirul Hoque, Ali Akbor, Badsha Sheikh and Abu Bakkar Siddique assaulting Osman and Osman feinting as a result of the assault.

41. In the cross-examination, he has stated that the informant put his thumb impression in the FIR. He did not examine the scribe of the FIR. He did not examine the seized bicycle by any bicycle mechanic. There was a culvert at the place of occurrence. He had seen the culvert. The culvert was on the Dhubri-Gauripur road. There are some schools near the place of occurrence. The road was earthen road. There were many dwelling houses near the place of occurrence. He has not mentioned the names of all of those residents. He reached the place of occurrence at 11:00 a.m. He did not find any person there at that time. He had seized the bicycle from the place of occurrence. He did not examine Phanindra Ray. He did not meet Osman Ali. Osman Ali was first taken to the Gauripur Hospital and thereafter, he was shifted to the Dhubri Civil Hospital. He did not examine the Doctor who had treated Osman Ali at the Gauripur Hospital. He has not recorded who had taken Osman Ali to the Gauripur Hospital. Except Abed Ali and his wife, he did not examine any other member of the family of Abed Ali. He has examined only the widow of the deceased Osman Ali. He cannot say how many children he had got. The house of the deceased Osman Ali was situated at a distance of about 100 meters away from the place of occurrence. There is an E & D Department protection embankment at the place of occurrence and the deceased Osman Ali had to go to his house through the said embankment. He does not remember whether thunderstorm occurred in the previous night. He cannot say whether the witnesses he examined were relatives of the deceased or not. At the time of the said incident, the accused Abdul Aziz was working at the Gauripur Police Station. He has denied the suggestion that he did not investigate the case properly and have submitted a false charge sheet. He has denied the suggestion that the accused are not involved with the commission of the alleged offence.

42. PW-4 Smt. Pinky Roy, PW-11 Lal Man Ali, PW-13 Tomser Ali, PW-17 S.I. Taleb Ali Mondal, PW-18 S.I. Binod Barman, PW-19 Constable Afzal Hoque are not material witnesses of the case.

43. As can be seen from the above discussion, the PW-1, PW-2 and PW-3 are the only eye-witnesses of the alleged incident as they have deposed that they saw the alleged incident. They have deposed that hearing the cries of the deceased Osman Ali, they went to the place of occurrence and when they tried to save him from the clutches of the accused, the accused assaulted them too and they all sustained injuries. The PW-3 has deposed that she sustained fracture wound on the right hand and the PW-1 and PW-2 have corroborated her. But, the medical evidence does not support them. PW-14 Dr. Samir Baidya, the medical officer who had examined the PW-3 has deposed that he found only swelling and tenderness over her right hand. Further, though the PW-1 and PW-2 have deposed that they have also sustained injuries, there is no evidence to hold that the PW-1 had sustained any injury and the PW-2 only complained of back ache and pain in the upper abdomen. The same was diagnosed as gastro esophageal reflux which is a natural disease. Therefore, the PW-1 and PW-2 did not sustain any injury. Therefore, the testimony of the PW-1, PW-2 and PW-3 that hearing the cries of the deceased Osman Ali, they went to the place of occurrence and the accused assaulted them too, are false. Further, though the PW-1, PW-2 and PW-3 have deposed that after the alleged occurrence, the deceased Osman Ali was shifted to the Dhubri Civil Hospital and the doctors of the Dhubri Civil Hospital referred him to the GMCH, Guwahati, or to Barpeta Civil Hospital and on the way to the said hospitals, he succumbed to the injuries, they have categorically stated in the cross-examination that after the alleged occurrence, the deceased Osman Ali was taken to the house of Abed Ali and there, first aid was given to him. The PW-1 has deposed that he was not present when the first aid was given to the deceased in the house of Abed Ali. This proves that at the time of the alleged occurrence, the PW-1 was not present at the place of occurrence and he also did not go to the place of occurrence immediately after the incident. Had he been to the place of occurrence immediately after the alleged incident as he has deposed, then he would definitely have accompanied Osman Ali to the house of Abed Ali. Therefore, PW-1 has lied on oath before this Court. The PW-2 has also categorically stated in the cross-examination that after the occurrence, the villagers took the deceased Osman Ali to the house of Abed Ali and she went to the house of Abed Ali

after twenty minutes of the occurrence. Therefore, the PW-2 also did not go to the place of occurrence immediately after the occurrence as has been deposed by her. Otherwise, she would have also accompanied the deceased Osman Ali to the house of Abed Ali. Therefore, she is also not an eye witness of the alleged occurrence and has also lied on oath before this Court. The PW-3 has also categorically stated in the cross-examination that when she reached the house of Abed Ali, she saw that water was poured on the head of the deceased Osman Ali. Therefore, the PW-3 also did not go to the place of occurrence. Otherwise, she would have also accompanied the deceased Osman Ali to the house of Abed Ali. Therefore, PW-3 has also lied on oath before this Court. Therefore, based on the testimonies of PW-1, PW-2 and PW-3, the accused cannot be held guilty of committing the alleged offences.

44. PW-5 Abed Ali has deposed that hearing the hue and cry, he went to the place of occurrence and saw that the deceased Osman Ali was lying with injuries on the ground. He has stated in the cross-examination that Osman Ali fell down from the bicycle and sustained the alleged injuries. He did not see PW-1, PW-2 and PW-3 in the place of occurrence. He had taken the deceased Osman Ali to his house. After about twenty minutes of the alleged occurrence, the PW-1, PW-2 and PW-3 came to his house and took Osman Ali to their house. Therefore, PW-5 Abed Ali has not supported the prosecution case and he was declared hostile. But, by cross-examining him, the prosecution has failed to bring out anything based on which it can be said that he was not telling the truth. The PW-1, PW-2 and PW-3 have corroborated the PW-5 that after about twenty minutes of the alleged incident, they went to house of the PW-5 and took the deceased Osman Ali to their house. Thus, the PW-5 has proved that the PW-1, PW-2 and PW-3 did not see the alleged occurrence as they reached his house after about twenty minutes of the alleged incident.

45. PW-6, PW-7, PW-10 and PW-12 have deposed that they heard that the deceased Osman Ali fell down on from the bicycle and sustained the alleged injuries. Therefore, the accused persons cannot be held guilty of committing the alleged offences.

46. Further, though the case of the prosecution is that in prosecution of the common object to cause the death of the deceased Osman Ali, the accused assaulted Osman Ali and intentionally caused his death, it did not prove what the

common intention of the accused was to kill the deceased Osman Ali. Though, in the FIR, the informant has stated that they had land dispute with the accused Abdul Aziz, he did not prove the same by adducing any credible evidence. Therefore, even assuming while denying that the accused Abdul Aziz had land dispute with the deceased Osman Ali, there is no evidence to hold that the other accused had also some dispute with the deceased Osman Ali or they are related to the accused Abdul Aziz and hence, they also assaulted the deceased Osman Ali in prosecution of their common object and caused his death. Further, though the PW-1, PW-2 and PW-3 have deposed that all the nine accused persons surrounded the deceased Osman Ali and assaulted him by means of sticks and pieces of bamboo, PW-16 Dr. Jitumoni Bezbarua, the Medical Officer who had performed the post mortem examination on the dead body of Osman Ali has deposed that he found only two injuries on his body. One was a ½ c.m. depth depressed wound on the backside, just below the left scapula and the other was a 12 c.m. X 2 c.m. bruise on the left hypochondrium of the abdomen. Small intestine was ruptured at the side of the said injury with blood in the peritoneum. Dr. Bezbarua has stated in the cross examination that one may sustain such type of injuries due to falling from a bicycle. The depressed wound of ½ c.m. depth on the back side, just below the left scapula is a superficial wound and one may sustain such type of injury by dashing against any hard substance. Further, one may also sustain the bruise over abdomen due to falling from a bicycle or dashing against a hard substance. Had all the nine accused persons assaulted the deceased Osman Ali by means of sticks and pieces bamboo with intent to cause his death, Osman Ali would have sustained at least nine wounds, if not more and would have sustained more than nine wounds. Therefore, it cannot be held that all the nine accused persons assaulted the deceased Osman Ali by means of sticks and pieces of bamboo and caused one depressed wound of ½ c.m. depth on the back side, just below the left scapula and one bruise over the abdomen that caused his death. The deceased might have sustained the said wounds due to falling from the bicycle as has been opined by the PW-16.

47. Over and above this, as the PW-1, PW-2 and PW-3 have categorically stated in the cross-examination that after the alleged incident, the deceased Osman Ali was in a position to talk and he talked to them and other people and at the time of his admission in the hospital, Doctor found him in normal condition therefore, if the deceased had sustained the alleged injuries at the hands of the accused persons, he

would definitely have told about the same to the PW-1, PW-2, PW-3 and to the others and the Doctor. But, he did not tell about the same to the PW-1, PW-2, PW-3 and to the others and the Doctor as none of them deposed that the deceased Osman Ali told him or her that he sustained injuries at the hands of the accused and not due to falling from the bicycle.

48. Again, as the deceased was in a position to talk and also talked to the PW-1, PW-2, PW-3 and to others and as the PW-1, PW-2 and PW-3 have deposed that they took the deceased from the house of Abed Ali to their house, had the deceased sustained the alleged injuries at the hands of the accused and not due to falling from the bicycle, before going to the hospital for treatment, he would have lodged an FIR of the incident with the police, as after the alleged assault, he was in normal condition. But, he did not do so and subsequently, the PW-1 lodged the FIR of the case implicating eight persons with the allegation of assaulting the deceased Osman Ali and them. Therefore, the case of the prosecution is not believable. Because, if the deceased Osman Ali was assaulted by the accused, only one accused might have caused the bruise over the abdomen by means of a blunt object and as the deceased was found lying on the ground, he might have sustained the depressed wound on the backside due to falling or another accused might have caused the said wound. But, none of the prosecution witnesses has deposed who the assailant was/were and the informant has falsely implicated eight accused with the commission of the alleged offences. Further, the informant did not even depose the names of all the accused. Therefore, the prosecution case is very much doubtful and hence, the accused must, at least be given the benefits of the doubt.

49. Further, what was the common object of the unlawful assembly of the accused and whether the offence of murder was committed in prosecution of the common object or committed such an offence as the members of the unlawful assembly knew was likely to be committed in prosecution of the common object? The learned P.P. argued that the common object was to murder Osman Ali. On the contrary, the learned defence counsel argued that the accused did not commit the alleged offence at all, not to speak of assaulting the deceased Osman Ali in prosecution of the common object to murder him. The accused were allegedly armed with sticks and pieces of bamboo. Even assuming while denying the same to be true, the same does not show that the common object of the unlawful assembly was to murder the deceased Osman Ali. Had the common object of the unlawful assembly was to

murder the deceased Osman Ali, they would have carried some dangerous weapons. Further, if the accused assaulted the deceased Osman Ali with intent to cause his death, they could have and would have killed him then and there and would not have left him alive by inflicting only one or two wounds as stated above.

50. In view of the above discussion, I am constrained to hold that prosecution has failed to bring home the charges against the accused beyond all reasonable doubt and hence, the accused must, at least, be given the benefits of the doubt. The point No. II is decided accordingly.

POINT NOS. I & III

51. In view of the discussion made in the point No. II, the point Nos. I & III are also decided in the negative.

ORDER

52. In the result, from the facts and circumstances of the case and above discussion, I hold that the prosecution has failed to bring home the charges under Sections 147, 148, 302, 354 IPC against the accused Jahirul Hoque, Ali Akbar, Badsha Sk., Abu Bakkar Siddique, Abdul Aziz, Sekendar Ali, Sattar Ali, Jel Hoque and Monnaf Ali beyond all reasonable doubt. Hence, I acquit them giving them the benefits of the doubt. Their bail bonds stand cancelled. They are set at liberty forthwith.

53. Return the seized articles to the owner/person from whom the same were seized or destroy the same in due course of time.

54. Signed, sealed and delivered in the open Court on this the 21st day of June, 2017, at Dhubri.

(A. Chakravarty)

Sessions Judge, Dhubri

Dictated & corrected by me

(A. Chakravarty)

Sessions Judge, Dhubri

APPENDIX

1. PROSECUTION WITNESSES:

P.W.1 Md. Hasen Ali
PW-2 Musstt. Nobijan Bibi
PW-3 Musstt. Surjya Bhanu
PW-4 Smt. Pinky Roy
PW-5 Md. Abed Ali
PW-6 Musstt. Ajupa Bibi
PW-7 Md. Eusuf Ali
PW-8 Md. Jobed Ali
PW-9 Musstt. Firoza Bibi
PW-10 Musstt. Halima Bibi
PW-11 Md. Lal Man Sheikh
PW-12 Md. Amirul Islam
PW-13 Md. Tomser Ali
PW-14 Dr. Samir Baidya
PW-15 Dr. Kochir Ali Ahmed
PW-16 Dr. Jitumoni Bezbaruah
PW-17 S.I. Taleb Ali Mondal
PW-18 S.I. Binod Barman
PW-19 Constable Afzal Hoque
PW-20 S.I. Monindra Nath Ray

2. PROSECUTION EXHIBITS:

Exhibit-1	Inquest Report
Exhibit-2	Medical Report
Exhibit-3	Postmortem Report
Exhibit-4	F.I.R.
Exhibit-5	Seizure list
Exhibit-6	Site Plan
Exhibit-7	Seizure list
Exhibit-8	Inquest Report
Exhibit-9	Charge Sheet