



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 56 of 2024 with
Crl.A. No. 58 of 2024

Reserved on: 20.07.2026
Pronounced on: 16.10.2026
Uploaded on: 16.10.2026

Whether the operative part or full judgment is pronounced: Full Judgment

Crl.A. No. 56 of 2024

1. Shri. Abdul Okil
Aged about 43 years
S/o Shri. Abdul Jolil Sk,
R/o Pushkunipara,
PS: Phulbari, West Garo Hills,
Meghalaya
2. Shri. Jahanur Islam
Aged about 38 years
S/o Shri. Abdul Jolil Sk,
R/o Pushkunipara,
PS: Phulbari, West Garo Hills,
Meghalaya

...Convicts/Appellants

-Versus-

1. The State of Meghalaya
Represented by Chief Secretary
Government of Meghalaya

...Respondent

Crl.A. No. 58 of 2024

Shri. Abdul Kholil @ Kholil
Aged about 48 years,
Son of Late Bodiot Zaman,
Resident of Pushkunipara Village,
P.S Phulbari, West Garo Hills District,
Meghalaya

...Appellant/Accused



-Versus-

State of Meghalaya
Represented by the Commissioner and Secretary,
Department of Home (Police),
Government of Meghalaya,
Shillong

...Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

In Crl.A. No. 56 of 2024

For the Petitioner/Appellant(s) : Mr. S.P. Mahanta, Sr. Adv. with
Ms. S. Chettri, Adv.
Mr. M. Lyngdoh, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. PP.

In Crl.A. No. 58 of 2024

For the Petitioner/Appellant(s) : Mr. S.A. Sheikh, Adv.
Mr. A. Ahmed, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Mr. E.R. Chyne, Asst. PP.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT

Per W. Diengdoh, J.

1. These two criminal appeals arose from a common cause and with identical facts and circumstances, as such, it is deemed proper and convenient to pass a common judgment, which is done so herein.

2. The judgment and sentence dated 30.09.2024, whereby three



accused persons namely, Shri. Abdul Kholil & Khalil, Okil @ Abdul Okil and Shri. Jahanur Islam @ Sk were found guilty for offences punishable under Section 341/448/302/34 IPC and have been sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC as well as punishment of imprisonment of one year for the offence under Section 448/34 IPC and one month for the offence under Section 341/34 IPC together with fine of ₹ 25,000/- (Rupees Twenty Five Thousand) only, in case of default, to undergo an additional one year imprisonment for the offence under Section 302/34 IPC, is being assailed by the appellants in these two separate appeals.

3. The genesis of the case stems from an FIR dated 13.07.2016, lodged by one Shri. Sahadot Ali before the Office In-charge, Phulbari, West Garo Hills District, making an allegation against four persons, three of whom are the appellants herein, that they were involved in the grievous assault on the person of his brother-in-law Shri. Bodial Sk., which incident occurred on 12.07.2016 at about 08:00 am in a place called Kalithan Market (Pushkunipara), as a result of which his brother-in-law succumbed to his injuries at about 02:00 pm on the same day while on the way to a hospital.

4. The FIR was registered as Phulbari P.S. Case No. 25(7) of 2016 under Section 341/448/302/34 IPC and investigation was directed to be conducted. The Investigating Officer (I/O) after completion of his investigation has filed the charge sheet in which he has detailed the brief facts of the case as under:

“The prosecution story of the case is that on 13th July, 2016 the complainant Shri Sahadat Ali S/O Hashem Ali of Village Pushkunipara under Phulbari PS Dist. West Garo Hills Meghalaya, lodged a written FIR to the effect that on 12/7/2016 at about 8:00 Am while Shri Bodial Sk S/O Sajemuddin Sk of village



Borosangli Assam his brother in-law was proceeding to Kalithan market suddenly the accused persons namely Shri Kholil Sk, Shri Bashirul Sk, Okil Sk and Jahanur Sk obstructed his way and attacked him and anyhow he ran away to the relative house namely Islam Hoque of Pushkunipara out the accused persons followed him and assaulted him by lathi etc. Due to which he received head injuries and the accused persons fled away. The victim was brought to Phulbari CHC but after first aid he was referred for better treatment on 12/07/2016 but at about 2:00 Pm on the way to Hospital he expired. The dead body of the victim brought to PS for observing legal formalities.”

5. The Trial Court taking cognizance of the matter has accordingly framed charges under four head against three accused person who are the appellant herein, the charges being one under Section 341,448,302 along with Section 34 IPC. The prosecution then examined eight prosecution witnesses and exhibited as many as five documents. The alleged murder weapon was also produced in court as Exhibit-2. On evidence being duly recorded, the Court then noted the statement of the appellants respectively under Section 313 CrPC. The accused/appellants were then asked if they would like to adduced evidence on their part to which they replied on the positive and accordingly three defense witnesses were produced before the court, examined and discharged.

6. Finally, the Court after hearing the arguments of the respective parties has vide the impugned judgment and sentence imposed the punishment against them as aforementioned.

7. Mr. S.P. Mahanta, learned Sr. counsel along with Ms. S. Chettri, learned counsel for the appellant has submitted that the evidence recorded by the learned Trial Court has revealed that there is practically no credible



or cogent evidence to implicate the appellant Shri. Abdul Okil and the other appellant Shri. Jahanur Islam, as such the impugned judgment and sentence finding them guilty cannot be sustained.

8. While referring to the evidence of the prosecution witnesses, the learned Sr. Counsel has submitted that PW-1 who is the informant who has filed the FIR to set the investigation and the trial in motion is hearsay witness who did not even write the FIR himself but has stated that the FIR was written by another person who was not named or even examined in these proceedings. PW-1 has also admitted that he does not know the contents of the FIR as it was never explained to him. The FIR, therefore cannot be a true account about the incident alleged to have happened involving the abovementioned appellants.

9. As to the evidence of PW-2, PW-3 and PW-4, wherein they have stated that two persons entered the room where the deceased victim was assaulted by the abovementioned appellants, PW-2 and PW-3 has not specifically identified or named the appellants, while PW-4 has mentioned their names in her examination-in-chief, whereas in her cross-examination she has admitted that when the incident took place she did not witness the same as she was in the kitchen. This by itself would show that the evidence of this witness is not reliable.

10. Again, while referring to the evidence of PW-3 when in course of her deposition in court, she had identified the appellant Abdul Okil and appellant Jahanur Islam who were present in the dock, but she has reiterated that she did not see them at the place of occurrence. This dock identification without the process of Test Identification Parade (TIP) to corroborate the presence of both the appellants would only show that this witness is also unreliable as far as her testimony is concerned, submits the learned Sr. counsel.



11. The learned Sr. counsel has also submitted that the learned Trial Court has not properly appreciated the evidence in favour of the appellants inasmuch as from the statement of the abovenamed appellants recorded under Section 313 IPC as well as the evidence tendered on their behalf through DW-1 and DW-2 respectively, it is clear that the plea of alibi has been proved since the DWs have deposed in court that the appellants were with them involved in collections of pineapple's to be sold at the market. The fact that these two DWs were together with the appellants herein in the morning of the date when the incident allegedly happened, therefore it cannot be proved beyond reasonable doubt that it was the appellants who were involved in the alleged assault of the deceased victim.

12. Even with regard to the discovery and seizure of the alleged weapon of offence, the learned Sr. counsel has submitted that the learned Trial Court has failed to take into account the lack of FSL report to confirm whether the crime was actually committed by the appellants nor was any forensic report of the blood stained said to be found in the weapon filed or proved before the Trial Court.

13. Since the evidence against the appellants represented by the learned Sr. counsel is not adequate and foolproof to connect them to the alleged offence, there is also no proof of any common intention in the said commission of the crime. The conviction and sentence of the appellants herein is liable to be set aside and quash and prayer for the same is accordingly made herein, submits the learned Sr. counsel.

14. Mr. S.A. Sheik, learned counsel appearing for the appellant Abdul Kholil @ kholil, in Crl. Appeal No. 58 of 2024 on his part has raised a number of contentions while assailing the impugned judgment and sentence. The initial objection was to the delayed filing of the FIR, which, according to him, the alleged incident took place on 12.07.2016, whereas,



the FIR was actually filed on 13.07.2016, the delay was never explained by the informant.

15. The next contention of the learned counsel is that though the FIR was lodged belatedly, yet the role of the eye-witnesses has not been mentioned therein, coupled with the fact that none of the said eye-witnesses have filed the FIR.

16. As to the cause of death of the victim, the learned counsel has again submitted that the prosecution has failed to give a detailed account relating to the initial medical treatment given to the victim, right from the time he was said to have been brought to the Phulbari PHC till about 2.00 p.m. on the same day when it was apparent from the FIR that he was still alive till such time, his subsequently death can only be attributed to lack of adequate medical treatment for which the appellant cannot be faulted, submits the learned counsel.

17. It is also the submission of the learned counsel that when the TIP was conducted, only the appellant Abdul Kholil was subjected to the same and more so, the TIP was conducted in the presence of the IO as is evident from the testimony of PW-7. Therefore, the result of the TIP has no evidentiary value and the same cannot be taken into account as far as this appellant is concerned, submits the learned counsel.

18. The learned counsel has also questioned the veracity of the evidence of the alleged eye-witnesses that is, PW-2, PW-3 and PW-4 respectively, where in their statement under Section 161 CrPC they have stated that three persons were involved in the assault but only two out of these three persons were actually inside the house assaulting the victim. In their evidence in court these two witnesses have stated that two persons assaulted the victim with the stick, but the prosecution has failed to prove that it was the appellant who has hit the victim on the head. Even if the said



stick which was seized by the police, believed to have been the weapon used for the assault, since there is no FSL report in this regard, particularly fingerprints report to ascertain as to who among the accused persons has used the lathi, therefore there is no certainty that the alleged assault was inflicted by the said lathi. In fact, PW-2 in her cross-examination has admitted that she has not seen the beating by the accused persons, though she has admitted that she knows the appellant Abdul Kholil by name and face.

19. In view of the apparent contradictions in the evidence of the prosecution witnesses, the role of the appellant Abdul Kholil has not been specifically determined, the appellant is therefore entitled to benefit of doubt and may be acquitted as such, submits the learned counsel.

20. Mr. H. Kharmih, learned Addl. PP appearing for the State respondent in Criminal Appeal No. 56 of 2024, in his response has submitted that from the evidence what is seen is that PW-1 who is the complainant who has filed the FIR in his deposition in court has narrated the sequence of events of how the deceased victim was firstly attacked and assaulted by four persons (three of whom are the appellants in these two appeals), the assault happened at Khalitan Market and that the victim managed to escape and ran to his relative's place Islam Haque which is nearby. But out of the four, three persons pursued the victim and entered the house where they assaulted him with a lathi and fled away. This was seen by PW-2 who was one of the eye-witnesses when she also narrated the incident where she saw three to four persons running and chasing the deceased victim and one of the accused that is, the appellant Abdul Kholil also entered the room where he assaulted the victim with the pestle used for crushing rice, this witness also saw the victim being beaten by two persons whereupon she start shouting at them to stop beating but they did not



listened.

21. Similarly, PW-3 in her deposition has also stated that she saw the victim running and the appellant Abdul Kholil along with other three persons following him. When the victim entered the house of Islam Haque, the appellant Abdul Kholil and his son also entered the house and lock the door. From the window this witness saw that both the accused persons were beating the victim with a stick use for crushing rice. This witness also shouted at the assaulters to stop their beating but they did not listen. The evidence of PW-2 and PW-3 was corroborated by PW-4 who has also narrated the incident in the same manner as has been related by the PW-2 and PW-3.

22. The learned Addl. PP has also submitted that PW-6 who is the medical officer who has conducted the postmortem, in her examination-in-chief she has stated that the death of the victim was caused due to hemorrhage and shocked as a result of head injury caused by a heavy blunt object. The probable time of death is between 24-26 hours. All injuries are ante-mortem, which means such injuries were sustained before death occurred.

23. The learned Addl. PP went on to submit that from the evidence of the PW-7 who is the Magistrate who had conducted the TIP, one of the accused persons namely Abdul Kholil was identified in such TIP as one of the perpetrators.

24. On the evidence of the defense witnesses, the learned Addl. PP has submitted that DW-1 in his evidence, he has stated that on the date of the occurrence he was with appellant Abdul Okil at about 11:00 am when both of them went home together. However, this witness has not been able to say anything about the whereabouts of the said appellant prior to 11:00 am, when the incident is said to have taken place at 08:00 am. Similarly, DW-2



in his evidence has stated that on that fateful day he had hired the pickup of appellant Jahanur Islam at about 04:00 am and later they start the work from 10:00 am to 10:30 am selling pineapples at Chibanang market. This witness cannot ascertain the whereabouts of this appellant at about 08:00 am when the incident occurred. This would only show that the defence witnesses have not been able to establish the plea of alibi as regard the case of the appellants Abdul Okil and Jahanur Islam.

25. On the contention that common intention as far as the commission of the crime is concerned has not been established, the learned Addl. PP has submitted that for common intention to be manifested, it is not necessary that there must be a meeting of persons to hatch a plan, it can develop at the spur of the moment. The very act of the appellants in chasing after the victim after they have assaulted him at the market and their joint attacked and assault upon such victim would only demonstrate the fact that common intention to commit the crime has been proved. In this regard, the case of **State of Rajasthan v. Gurbachan Singh & Ors., (2022) 15 SCC 817**, para 17 and 18 has been cited to prove this point.

26. This Court has noted the contention and submission raised by the learned counsels for the respective parties. What is apparent is that from whatever has been stated in the FIR, upon investigation, the IO has filed the chargesheet, finding the information given by the informant/complainant well established, this, after he has examined the complainant, visited the place of occurrence, prepared the sketch map and seized the alleged murder weapon, which is said to be a lathi or an implement or pestle used to grind rice. The statement of the eye-witnesses was also recorded by the IO in course of his investigation. The deceased victim Bodial SK, according to the prosecution was assaulted by the three appellants herein along with a juvenile whose matter was taken up by the Juvenile Justice Board. The



offence said to have been committed by the appellants/accused comes under section 341/448/302/34 IPC.

27. The factum of the incident could be gathered, at the first instance from whatever has been stated in the FIR, the informant in his FIR has named four persons, the three appellants/accused herein, as well as another who was later found to be a juvenile, as those persons who have assaulted the deceased victim who was also the brother-in-law of the informant. The informant has also described the manner in which the deceased victim was firstly assaulted at Kalithan Market (Pushkunipara) at about 08:00 am on 12.07.2016 whereupon he was taken for treatment at Phulbari CHC, however, on being referred for better treatment elsewhere, on the way to Guwahati, he succumbed to his injuries at about 02:00 pm on the same day. The informant however was not an eye witness to the incident when in the cross-examination before the Trial Court as PW-1, he admitted that he has not seen the incident with his own eyes but has received information about the same from one villager. He has also admitted that the FIR was written down by one vendor of Phulbari but the same was not read out and explained to him. On its own, the deposition of the informant/PW-1 may not stand the scrutiny of law, since the said villager who has narrated the incident to him has not been brought to the witness box and also the person who has drafted the FIR was also not cited as a prosecution witness. However, from the evidence of the other witnesses, the factum of the incident and the involvement of the deceased victim has been confirmed. There appear to be no material contradiction as far as the narration of the incident made by the informant PW-1 and the other prosecution witness is concerned.

28. PW-2 in her evidence has narrated the sequence of events witnessed by her when she said that on the day of the incident at about 08:00



am she was in her kitchen when she looks outside, she saw one person running with three to four persons following him, she saw the first person entered the house of one Islam. She also saw the accused/appellant Abdul Kholil entered into the same room where the victim has entered and from her window, she saw the victim being beaten by the accused with a stick/pestle use for crushing rice. She also said that she saw the victim being beaten by two persons. In her cross-examination she has admitted that though she does not know the name of the victim she has clearly named appellant/accused Abdul Kholil as one of the two persons who ran after the victim. She did admit that she has not seen the beating by the accused persons as she was standing outside the house and the door was closed from inside.

29. PW-3 is also said to be another eye witness to the incident, when she too has stated in her deposition in court that on that day at 08:00 am while she was making tea in the kitchen, on hearing some noise from outside, she saw the deceased victim was running and appellant/accused Abdul Kholil along with three other persons were following him. This witness has also stated that the deceased victim entered the house of one Islam Haque and Abdul Kholil and his son also entered the house and locked the door. She further stated that she rushed to a certain spot to see what is happening and from the window of her house she saw the two accused person beating the victim with the stick used for crushing rice. Again, this witness went on to say that she and others shouted from outside to the accused persons to stop beating the victim, but they did not listen and only when they finished beating him, they opened the door and pushed the victim outside where he fell on the ground, after which the accused persons fled from the seen. In her cross examination, this witness has reiterated that *“It is not a fact that since I was standing outside the room as such I had not*



seen anything who was beaten and by whom.”, she also says that “It is not a fact that no such incident ever took place.”.

30. PW-4 in her deposition in court has corroborated whatever has been stated by PW-2 and PW-3 as far as the factual aspect of the incident is concerned and that she has further stated that *“The persons who assaulted the deceased are present in the court today and I can identify the accused who assaulted the deceased as Abdul Kholil, Okil and Jahanur...”*. In her cross-examination she has stated that *“It is not a fact that I have not witnessed the alleged incident.”*. It may be mentioned that PW-2 and PW-4 have also stated in their deposition that they were tenants in the house of Islam Haque.

31. PW-5 is the seizure witness in whose presence the rice grinding stick said to be the murder weapon was seized by the police from the place of occurrence. This witness has stated that on 12th at 10:30 am the police asked him to accompany them to the place of occurrence and on reaching there he saw a pool of blood near the door. The seized stick/pestle (P-Ext-2) which is used to crush rice traditionally is measured about 6-7 feet approximately. This witness has further identified the said wooden stick when it was produced in court on the day of his deposition.

32. PW-6 is the doctor who has conducted the postmortem on the deceased victim. In her evidence she has stated that at the relevant point of time she was posted as SDMO Tura and that on 12.07.2016, the dead body of (L) Bodial Sheikh was produced at the Civil Hospital morgue. On 12.07.2016 at 11:35 am she conducted the postmortem. This witness has observed the injuries on the dead body which are noted down in *“Sl. No. 4 (b) laceration on scalp on the mid line more on the right side of head 2. Laceration on the scalp on the left parietal region, fracture on the sagittal suture and coronal suture and fracture on the right parietal bone, subdural*



hemorrhage and sub arachnoid hemorrhage and other injuries” this witness has also stated that “During the post mortem, I observed that the death was caused due to hemorrhage and shock due to head injury caused by heavy blunt object”.

33. On an analysis of the evidence of the prosecution’s witnesses, particularly those of the said eye-witnesses and on an observation of what has been noted hereinabove, this Court is convinced that the deceased victim was indeed assaulted and as a result thereof, he later succumbed to his injuries. However, the Informant, who has deposed as PW-1, though in his FIR he has named four persons, including all the three appellants herein as the perpetrators who had assaulted his deceased brother-in-law at the market, he himself has not seen the incident, but was told about the same by one villager. This villager was never brought to Court as a witness, therefore, to say that the evidence of PW-1 is hearsay is correct.

34. The fact that the deceased victim was seen running from the said market to the house of Islam Haque cannot be denied as almost all the eye-witnesses, that is, PW-2, PW-3 and P-4 respectively have consistently stated in their deposition in Court that they have seen the victim being pursued by three or four persons to the house of Islam Haque. The actual assault which has later resulted in the death of the victim happened there.

35. Again, as to what took place at the house of Islam Haque, the recollection of the said eye-witnesses is that they saw the victim entered the room, thereafter, two persons ran after him and locked the door of the house. One of those persons have been identified as Abdul kholil (one of the appellants herein). The witnesses said they saw the two persons beating the victim with a lathi or pestle used for grinding rice. However, none of the said witnesses could say for sure as to who actually had used the said lathi, or in other words, who has dealt the crucial blow. Post mortem report



did indeed reveal that there were present a number of injuries and fracture and laceration on the scalp and right side of the head etc., and that the cause of death was due to hemorrhage and shock due to head injury caused by heavy blunt object. This will only fortify the fact that the deceased victim died a homicidal death.

36. This Court has reviewed the evidence of the said eye-witnesses to ascertain as to whether any of them has pinpoint the actual person or persons who has caused the fatal blow upon the deceased victim. One of the eye-witnesses has said two persons entered the room and started beating the victim with the lathi/pestle, another witness (PW-4) said three persons entered the room and assaulted the victim, however, no specific identification as to who amongst the appellants/accused persons was responsible for the ultimate death of the victim was ever made by the said witnesses. The name of one of the accused/appellants, that is, Abdul Kholil was brought out in course of evidence, when PW-2, PW-3 and even PW-4 has said that he was the one they saw at the scene.

37. A cumulative reading of the evidence of PW-2, PW-3 and PW-4 would however establish the fact that they witnessed the deceased victim running into the house of Ismal Haque and two or three persons following him into the room. All these witnesses have testified to the fact that they saw the victim being beaten by those persons who had followed him inside the room. PW-2 has also further stated that when they finished beating him, they opened the door and pushed the victim outside the house.

38. There cannot be a stronger thread than this, that the consistency of the evidence of the three eye-witnesses has squarely put the accused/appellants at the scene of the crime, that they saw them assaulting the deceased victim, as a result of which he sustained severe injuries and later succumbed to the same, proved by the post mortem report. This was



further fortified by the fact that even in the dock, all the three accused/appellants have been identified by the said eye-witnesses. Even if the result of the T.I.P is not taken into account, this part of the identification process cannot be ignored. It is said that identification in the dock, generally speaking, is to be given primacy over identification in T.I.P as the latter is considered to be corroborative evidence.

39. As has been pointed out none of the eye witnesses have seen who has actually dealt the fatal blow to render the deceased victim incapacitated to the extent that he later succumbed to his injuries. However, it is also proven that all the three eye witnesses have seen the victim running towards the house of Islam Haque and have also seen four persons pursuing him. Three of these persons were later identified as those who have taken part in the assault. There being no contradiction to this fact in the cross examination of the witnesses, it is therefore established that the assault upon the victim was a collective one. This act demonstrates common intention and acts done by several persons in furtherance of common intention comes under the purview of Section 34 IPC.

40. In a catena of judgments, the Supreme Court has time and again expounded on the object and purpose and intent of Section 34 IPC and it would be apt to cite one such judgments in this regard. In the case of **Ramesh Singh alias Photti v. State of A.P., (2004) 11 SCC 305**, the Supreme Court at para 12 of the same has observed as follows:

“12. To appreciate the arguments advanced on behalf of the appellants it is necessary to understand the object of incorporating Section 34 in the Indian Penal Code. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section



34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principle of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered from the manner in which the accused arrived at the scene and mounted the attack, the determination and concert with which the attack was made, and from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted.” (See Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra [AIR 1971 SC 885])

41. As to the importance of the weapon or implement said to have been used to inflict injuries upon the deceased victim, PW-5 has appeared before



the Court and testified that the police have recovered the rice grinding stick near the door at the place of occurrence in the midst of pool of blood. This recovery was made in his presence and as such, he has been cited as a seizure witness. The I/O as PW-8 in his cross examination has corroborated this statement by admitting that the stick was seized not from the possession of the accused persons but from the place of occurrence. It is also admitted that the said statement was not sent for FSL examination.

42. In answer to this contention that due to the absence of FSL report the case of the prosecution becomes weaken, this Court is referred to the case of **Doman Murmu v. State of Jharkhand, 2024 SCC Online Jhar 1646**, wherein at para 20, 20.1 and 20.2 was observed as follows:

“20. The learned counsel for the appellant also argued that the dagger which was recovered was not sent to FSL for examination.

20.1. This defect in investigation is not found fatal to the prosecution case because the prosecution case is based on direct evidence. In case of a direct evidence, the production of the weapon used in the commission of the crime and not sending the same to FSL for examination will not be fatal to prosecution case and no adverse inference can be drawn.

20.2. The Hon'ble Apex Court in the case of State of Punjab v. Hakam Singh, (2005) 7 SCC 408 at paragraph 13 has held as under:-

"13. It was also pointed out by learned counsel for the respondent that no firearms were recovered and no seizure has been made of empties. It would have been better if this was done and it would have corroborated the prosecution story. Seizure of the firearms and recovering the empties and sending them for examination by the ballistic expert would have only corroborated



the prosecution case but by not sending them to the ballistic expert in the present case is not fatal in view of the categorical testimony of PW 3 about the whole incident."

43. The appellants in their respective statements given before the Court confirming to the provision of Section 313 CrPC, when the court has put certain questions pointing to the incriminating evidence against them, all of them have denied any involvement in the commission of the crime and has instead raised the plea of alibi to say that they were not present at the place of occurrence on the said date. To support this contention three defense witnesses have been produced in Court to give their evidence. However, from a reading of the evidence of the said witnesses, examined as DW-1, DW-2 and DW-3, this Court has observed that though an attempt has been made to place the respective appellants at specific location on the said date, none of the witnesses have been able to locate the whereabouts of the three appellants at about 8:00 am or so, when the incident is said to have taken place. DW-1 has stated that Abdul Okil was with him at about 11:00 am, DW-2 has also stated that he was with Jahanur Islam at 4:00 am when he hired his pickup and then they were together at around 10:00 to 10:30 am and DW-3 has stated that he was with Abdul Kholil at the market place on Tuesday, but he never said anything about the time he was there. Therefore, in view of such inconclusive evidence no reliance can be place on such evidence.

44. On perusal of the impugned judgment and on appreciation of the evidence and materials on record, this Court find no infirmity in the impugned judgment and sentence. These two appeals being devoid of merits, the same are hereby dismissed as such.

45. Send back the Trial Court's records.

46. Let authenticated copy of this judgment be issued free of cost to



the respective appellants.

47. Also let copy of this judgment be issued upon the Superintendent, District Prisons and Correctional Home, West Garo Hills, Tura for necessary action.

48. Appeals disposed of.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge

Meghalaya
16.10.2026
"Tiprilynti-PS"



Verified

Digitally signed by: TIPRILYNTI KHARKONGOR
Signed On: 16-10-2026 20:30:56 IST