

GAHC010136542017



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

**Case No. : CrI.A./300/2017**

RAIZUDDIN AHMED @ MD RIAZUDDIN SHEIKH and 9 ORS  
S/O JAMAL MIAH

2: MD. SAIZUDDIN AHMED @ MD. SAIZUDDIN SHEIKH  
S/O JAMAL MIAH

3: SHER ALI @ MD. SHER ALI  
S/O JAMAL MIAH

4: ABDUL HAI @ DILLAR  
S/O LATE SUBHAN ALI

5: TAHER ALI @ MD. TAHER ALI @ GUDU  
S/O SUBHAN ALI

6: SADEK ALI @ MD. SADEK ALI  
S/O LATE ALIMUDDIN

7: SAYED ALI @ MD. SYED ALI  
S/O LATE ALIMUDDIN

8: MD. USUB ALI @ MD. YOUSUF ALI  
S/O MD. ABDUL MALEK

9: ABDUS SALAM @ MD. ABDUL SALAM AHMED

S/O LATE SAMAD MUNCHI @ ABDUS SAMAD  
APPELLANT NO. 1 TO 9 ARE OF VILL. GOBINDAPUR CHALA  
P.O. GOBINDAPUR  
P.S. GOALPARA  
DIST. GOALPARA  
ASSAM.

10: MERAJUL ISLAM @ MD. MERAZUL ISLAM

S/O LATE MOTIOR RAHMAN  
VILL. KARBALA  
P.O. GOBINDAPUR  
P.S. GOALPARA  
DIST. GOALPARA  
ASSAM

VERSUS

THE STATE OF ASSAM and ANR

2:MD. NAZMUL HOQUE

S/O LATE ABDUR RASHID  
VILL. and P.O. GOBINDAPUR  
P.S. GOALPARA  
DIST. GOALPARA  
ASSAM  
PIN 78310

**Advocate for the Petitioner** : MR.A AHMED

**Advocate for the Respondent** : MR. M PHUKAN, ADDL. PP, ASSAM

Linked Case : CrI.A./318/2017

AMIR ALI and ANR  
S/O ABDUL HUSSAIN  
R/O GOVINDAPUR  
KARBALA  
P.S. and DIST. GOALPARA  
ASSAM.

2: SATTAR ALI

S/O MONSER ALI  
R/O GOVINDAPUR  
KARRBALA  
P.S. and DIST. GOALPARA

ASSAM.  
VERSUS

THE STATE OF ASSAM and ANR  
assam

2:MD. NAZMUL HOQUE

S/O LATE ABDUR RASHID  
R/O VILL. GOBINDAPUR  
P.O. and P.S. GOALPARA  
IN THE DIST. OF GOALPARA  
ASSAM.

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Advocate for : MRS.R B DEB

Advocate for : MR D TALUKDAR appearing for THE STATE OF ASSAM and ANR

## **BEFORE**

**HON'BLE MR. JUSTICE SUMAN SHYAM**  
**HON'BLE MR. JUSTICE MIR ALFAZ ALI**

Date of hearing : **25.02.2021.**

Date of judgment : **15 .03.2021.**

## **JUDGMENT AND ORDER (CAV)**

***(Suman Shyam, J)***

Heard Mr. H.R.A.Choudhury, learned senior counsel assisted by Mr. A. Ahmed, learned counsel appearing for the appellants in Crl. Appeal No.300/2017. We have also heard Mr. B. M. Choudhury, learned counsel appearing for the appellants in Crl. Appeal No.318/2017. Mr. M. Phukan, learned Additional Public Prosecutor, Assam, is present on behalf of the State in both the appeals. None has appeared for the informant.

2. The aforementioned appeals arise out of the judgment and order dated 16.06.2017 passed by the Court of learned Sessions Judge, Goalpara in connection with Sessions Case No.223/2012. There were 16 charge-sheeted accused persons out of which, one accused viz., Md. Abdus Sattar Ahmed died. The remaining 15 accused persons had faced trial. By the judgment and order dated 16.06.2017 passed by the learned Sessions Judge, Goalpara, the 10 appellants in Criminal Appeal No.300/2017 and the 2 appellants in Criminal Appeal No.318/2017 had been convicted under Sections 147/341/323/307/302 read with Section 149 of the Indian Penal Code. Accordingly, the learned Sessions Judge, Goalpara had sentenced the accused persons, viz., Yousuf , Raijuddin @ Raju, Saizuddin, Sher Ali, Amir Ali, Sattar Ali, Abdus Salam, Abdul Hai @ Dillar, Taher Ali @ Guddu, Mirazul, Sadek Ali & Sayed to suffer simple imprisonment for six months for the offence under Section 147 of IPC; to suffer simple imprisonment for one month for the offence under Section 341 of IPC; to suffer simple imprisonment for six months for the offence under Section 323 of IPC; to suffer rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default, to suffer simple imprisonment for a year for the offence under Section 302 of IPC and also to suffer rigorous imprisonment for three years and to pay a fine of Rs.3000/- each and in default, to suffer simple imprisonment for six months for the offence under Section 307 of IPC. All the sentences were to run concurrently. The accused persons were acquitted in respect of the charge under Section 326 of IPC.

3. The other three accused persons viz., Ramjan Ali, Lalchand Ali and Gole Rahman were, however, honourably acquitted from all the charges on the ground that the prosecution had failed to implicate them with the offences alleged.

4. The prosecution story, briefly stated, is to the effect that on 08.07.2008 at around 8.30 p.m. while the deceased Abdul Wahab was returning home from Karbala Bazar, riding a motorcycle, accompanied by five other persons, the accused persons had laid an ambush in a secluded place in the Gobindapur Rabhapara PWD road by tying three thick wires to a mango tree with an intention to kill the deceased. As soon as the deceased Abdul Wahab and his companions reached the place of occurrence in four motor bikes, the accused persons had pulled the wires causing the first bike to fall down and thereafter, launched a sudden attack on Abdul Wahab by means of deadly weapons such as sword, dao, axe, spear etc. Before attacking him with sharp weapons, one of the accused persons had also sprayed chilli power in the eyes of the victim. Due to the multiple injuries sustained on his person, Abdul Wahab died on the spot and Omar Ali, his son-in-law, also sustained grievous injuries.

5. On 10.07.2008 Md. Najmul Haque had lodged an ejahar before the Officer-in-Charge, Goalpara Police Station reporting the incident with a request to arrest the 13 accused persons including the appellants named therein. Based on the ejahar dated 10.07.2008, Goalpara P.S. Case No.210/08 was registered under Sections 147/341/325/326/307/302 of the IPC. The responsibility for carrying out the investigation in the aforesaid Police case was entrusted upon Inspector Saleh Uddin Ahmed. During the course of investigation, the I.O. had recorded the statements of several witnesses, seized some incriminating materials including the four bikes, dao, spear, lathi as well as the wearing apparels of the victim from the place of occurrence, collected the post-mortem report and thereafter, submitted charge-sheet.

6. Based on the charge-sheet submitted by the I.O. charge was framed against the 16 accused persons under Sections 147/341/326/307/ 323/302 read with Section 149 of the IPC and the same was read over and explained to them. Since the accused persons had pleaded not guilty and claimed to be tried, the matter went up for trial.

7. In order to bring home the charges, the prosecution side had examined as many as 18 witnesses, which includes five eye-witnesses. The defence case is one of total denial and they had examined two witnesses.

8. PW-1, Nazmul Haque, is the informant in this case and he has deposed that on 10.07.2008, he had lodged an ejahar (Ext-1) and Ext-1(1) is his signature. This witness has stated that deceased Abdul Wahab was his nephew and injured Omar Ali his grandson-in-law. He knew the accused persons by their names and faces and that the incident took place 7 ½ years ago at around 8.30 p.m. PW-1 has, however, stated that he was not present in the place of occurrence but when he heard commotion, he came out of his house and went to the place where he saw Wahab lying on the road in an injured state. He found that Wahab was dead. Police arrived about one hour after the incident, inspected the place of occurrence and took the dead body away for post-mortem examination. PW-1 has also deposed that he found Omar Ali (PW-14) lying in an injured state about 4/5 cubits away from the place where the dead body of Wahab was lying and he saw injuries on the legs and waist of Omar. The villagers took Omar to the hospital. Later on, one Ashad Ali present there had told him that the accused Raijuddin, Saijuddin, Sher Ali, Abdul Hai, Taher

Ali, Yusub Ali, Sattar Ali, Amir Ali, Abdul Salam, Samal Ali and Sadek Ali had caused injuries to Wahab and Omar by assaulting them on the road. After learning about the said incident he had lodged the ejahar on the next day. This witness has also stated that the ejahar got delayed as he was busy in Wahab's burial. During his cross-examination, the testimony of this witness could not be shaken by the defence side.

9. Since the prosecution story is primarily based on the testimony of five eye-witnesses viz., PWs-2, 7, 13, 14 and 15 and the conviction of the appellants is also on the basis of their evidence, let us first analyse the evidence adduced by the eye-witnesses.

10. PW-2, Nurnobi Islam, is an eye-witness in this case and he has deposed that on the date of the incident, at about 8.30 p.m., he was coming from Karbala Bazar on a motorcycle accompanied by five other persons. He was riding a motorcycle alone. Lutfur and Rafiqul were on one of the motorcycles whereas, Abbas and Abdul Wahab were in another motorcycle. Omar Ali was riding another motorcycle solo. PW-2 has stated that the motorcycle which Lutfur was riding with Rafiqul as his pillion rider, was ahead of all and as soon as they reached the Kali Crematorium near Rabhabasti on the PWD road, the motorcycle driven by Lutfur fell down after colliding with some wire. According to the PW-2, Abdul Wahab was riding the next motorcycle and he immediately stopped his bike by applying the brakes. The other motorcycles also stopped. At that time, the head lamp and the engines of the motorcycles were on. PW-2 has stated that the accused Yousuf Ali, Raijuddin, Sher Ali, Saijuddin, Mirajul, Sadek, Syed, Abdul Hai @ Dilla, Toher Ali @ Budu, Sattar, Abdul Sattar, Amir and Abdul

Salam came out from under the mango tree located beside the road and thereafter, Yousuf threw some water like substance on the face of Wahab. When Wahab covered his face, Raijuddin came and dealt a dao blow on Wahab's left hand and the hand got severed and fell on the ground. After that Raijuddin, Saijuddin and other accused persons started assaulting Abdul Wahab. PW-2 has further deposed that he had witnessed the entire incident in the flash of the headlamp of the motorcycle. Then the persons present there had raised commotion. At that time, Omar Ali (PW-14) moved ahead to resist the accused persons but the accused had assaulted him too and Omar (PW-14) sustained injuries. When the villagers came out, the accused persons fled the scene through the jungle. Thereafter, Wahab died on the spot. Later on, police came.

11. PW-7 i.e. Rafiqul Islam, who is another eye-witness to the incident, also stated that the incident occurred at around 8.00/8.30 p.m. when he was riding pillion on a motorbike with Lutfur Rahman. This witness has deposed that he was going from Karbala to Wahab's house at Gobindapur and the deceased was also riding another bike just behind theirs. Abbas Ali was on his pillion. Following him was Omar Ali's bike which he was riding alone. Behind him was Nurnobi's bike which was also without any pillion rider. As soon as they arrived at Rabha basti, then they found a rope like object on the road spreading from one side to another and his bike, which was ahead of the other three, fell down after colliding with the rope. Immediately, Abdul Wahab and others also stopped their bikes on the road but kept their headlamps on. At that time, accused Yousuf Ali arrived there and poured some water like substance on the face of Wahab. While Wahab was cleaning his face with his hand, Raijuddin came and

dealt dagger blow on the left wrist of Wahab and the hand got severed. Thereafter, stab blows were inflicted on several parts of the body of Wahab. This witness has deposed that accused Sher Ali gave a blow on the nape of Wahab and he could recognise accused Saijuddin, Raijuddin, Sher Ali and Younus. There were 7/8 other persons with them which he could not recognise. PW-7 has, however, categorically mentioned that all the accused persons had attacked Wahab and all of them were armed with daggers. This witness has also stated that when Omar Ali (PW-14) had moved ahead to stop them, 2/3 accused persons assaulted Omar Ali with daggers as a result of which, he had sustained injuries in the legs, right hand and waist. This witness has also stated that Rahela Khatun came out of the house of his brother-in-law. They also raised hue and cry. However, accused Yousuf, Sher Ali and Raijuddin were there till arrival of Rahela but others ran away from that place. When Rahela raised hue and cry accused Sher Ali stabbed her in the left side of abdomen with a dagger causing her to bleed and thereafter, ran away from the scene. After a while, police arrived there and at that time he was there at the place of occurrence.

12. PW-13, Abbas Ali, is also an eye-witness to the occurrence and he has similarly deposed that the incident took place on 08.07.2008 at around 7.30 p.m. At that time he, accompanied by deceased Abdul Wahab, Rafiqul, Nurnobi, Omar Ali and Lutfur Rahman were coming towards their home at Gobindapur from Karbala Bazar by riding motorcycles. PW-13 has stated that he was on the pillion in the second motorbike driven by Abdul Wahab (deceased) and Lutfur Rahman and Rafiqul were on the first bike. Omar Ali and Nurnobi were riding the next two bikes alone. The motor bikes were moving in tandem maintaining a gap of about 3/4 cubits. Suddenly the

bike driven by Lutfur Fell down near the Kali Mandir at Rabhapara, Gobindapur. Abdul Wahab immediately stopped his bike and then the rest of the bikes also stopped. Although the first motorcycle had fallen down, yet, its engine was still running and the headlamp was on. He then saw accused Yusuf, Raijuddin, Saijuddin, Sher Ali, Merajul, Amir, Abdul Sattar, Sadek, Sayed, Dilla, Abdul Hai, Guddu, Taher Ali and Abdul Sattar coming out from underneath the shrubs located to the east of the road and accused Yusuf threw some water like substance from a glass to the face of Abdul Wahab. As Wahab was trying to wipe his face, Raijuddin came there and dealt a dao blow in the left wrist of Abdul Wahab as a result of which, his hands got severed and fell down on the ground. Accused Saijuddin then caused injury near the forehead of Wahab with a "beki" dao as a result of which, the victim had received cut injuries. Accused Sher Ali had hacked Wahab on his neck with a dagger. When they started raising hue and cry the accused Abdul Sattar and Amir caught hold of him. Rest of the accused persons started striking Wahab by means of "beki" daos and daggers. When Omar Ali went forward to save his father-in-law, the accused Sadek, Sayed, Dilla and Guddu hacked him on his hands and legs with daggers. Omar sustained cut injuries in his right leg, right arm and waist. Hearing the sound of uproar, Rahela Khatun came to the place and on her arrival, save and except the three accused persons viz., Raijuddin, Sher Ali and Yusuf, the rest of the accused persons left the scene. When Rahela asked Sher Ali as why he has assaulted his brother, the later also stabbed Rahela on the left side of her abdomen with a dagger as a result of which Rahela received perforated injury in her abdomen. He then fled the scene after assaulting Rahela. PW-13 has also deposed that the severed hand of Abdul

Wahab was lying on the road. Police from Goalpara Police Station had arrived while he was in the place of occurrence and the police questioned him. Thereafter, a report on the dead body was prepared and the body was taken away. Later Nazmul lodged ejahar. PW-13 has stated that Ext-8 is his statement made before the Magistrate.

13. Another eye-witness in this case is PW-14, Omar Ali, who had received injuries in the incident. PW-14 is also the son-in-law of deceased Abdul Wahab. He has deposed that on the date of the incident, at around 8/8.30 p.m., he was going home riding a bike. After reaching Karbala Bazar he came across his father-in-law. At that time, Lutfur Rahman, Rafiqul Islam, Nurnobi and Abbas Ali were shopping. Seeing him, Abdul Wahab had called him and asked him to accompany them. After sometime, they started off. PW-14 has also deposed that Lutfur and Rafiqul were on the first bike while his father-in-law Abdul Wahab and Abbas Ali were in the second. He was alone in the 3<sup>rd</sup> bike and behind him was Nurnobi, who was riding alone. This witness has also categorically deposed that no sooner had they reached the Kali Mandir area near Gobindapur Rabhabasti, the bike driven by Lutfur Rahman fell down. Then everyone stopped when they saw accused Rajiuddin, Yusuf Ali, Sher Ali, Abdul Salam, Mirajul, Sadek, Saijuddin, Sayed, m Dilla, Guddu, Amir Ali and Abdul Sattar came out from beneath the bamboo grove armed with large size "beki" daos. Accused Yusuf threw water like substance from a glass to the face of Abdul Wahab. When Wahab started wiping his face with his left hand accused Rajiuddin dealt a blow on his left wrist with a "beki" dao as a result of which, his hand got severed and fell down on the

ground. Accused Sher Ali had hacked him on his back with a dagger. This witness has also stated that accused Saijuddin had hacked Wahab on his forehead with a "beki" dao. After that, the other accused persons also started hacking him repeatedly. Hearing the uproar when he proceeded forward, accused Abdul Sattar hacked him on his leg with a dagger. Sadek also dealt blows on his hands and legs and accused Dilla hacked him on his right wrist with a dao as a result of which, he had received cut injuries. Sadek again hacked him on his waist and right arm with a dao. According to this witness, Sadek, Sayed, Dilla and Guddu had assaulted him and he fell down on the ground and became unconscious. When he regained his senses in the Solace Hospital around 1.00 O'clock in the following day, he was referred to Gauhati Medical College Hospital (GMCH) at Guwahati. Later on, he could learn in the hospital that his father-in-law Abdul Wahab had passed away. PW-14 has also stated that his legs were plastered and after returning home the following day he went to Guwahati and visited Dr. U. C. Sarma at Arya Hospital when the doctor had put a new plaster by taking off the old one. PW-14 has also stated that he underwent treatment for one month in Al-Salam Hospital as an indoor patient and later on, the police interrogated him about 1 ½ months after the incident. His statement was also recorded before the Magistrate and Ext-9 is the aforesaid statement.

14. PW-15, Lutfur Rahman, is another eye-witness to the incident, who has given a similar version. PW-15 had also stated that he had seen in the flash light of the bikes that accused Raijuddin, Sher Ali, Saijuddin, Yusus Ali, Sadek Ali, Mirajul Haque, Abdul Salam, Abdul Sattar, Sayek Ali and Taher Ali coming out from the left side of the road and going towards Wahab. Yusuf Ali threw some water like substance from a glass to

the face of Abdul Wahab and when he started wiping his face, accused Raijuddin hacked on the wrist of Wahab severing his hand which fell on the ground. Accused Saijuddin then hacked Wahab on his forehead but the blow landed on the back side of the head. The rest of the accused persons assaulted Wahab repeatedly by means of daos and lathies etc. When Omar Ali came forward to save his father –in-law, accused Sayed, Sadek and Taher Ali assaulted him with daos and daggers as a result of which, Omar Ali fell down. When they raised hue and cry, the accused persons fled the scene. After that, Rahela Khatun arrived at the place of occurrence and he found accused Raijuddin, Sher Ali and Yusuf Ali there. When asked as to why they had assaulted her brother, accused Sher Ali stabbed Rahela with a dagger as a result of which she sustained injuries in her hands and near her chest and she fell down. This witness has stated that going close to Wahab he found that Wahab was dead. A lot of villagers had gathered therein. Police arrived at the place of occurrence after about half an hour and examined the dead body. Injured Omar was taken to the hospital but PW-15 has stated that he was not aware as to whether Rahela was taken to hospital or not. Later on, Nazmul (PW-1) had lodged the ejahar.

15. PW-18, Saleh Uddin Ahmed, who is the Investigating Officer in this case, has deposed that on 08.07.2008 he was on duty in Goalpara Police Station. At around 9.15 p.m. the Officer-in-Charge of the Police Station got the information that some unknown miscreants had stabbed Abdul Wahab of Gobindapur and left his dead body on the PWD road. Upon receipt of such information, the Officer-in-Charge made G.D. Entry No.338 dated 08.07.2008 and thereafter instructed him to proceed to the place of occurrence. The G.D. Entry was exhibited by the I.O. as Ext-13. PW-18

has stated that he, accompanied by the staff, then went to the place of occurrence which is the PWD road at Gobindapur and found a blood smeared male dead body lying supine with injuries on various parts. PW-18 has also deposed that he found one "beki" dao, lathi, spike and four motor bikes lying there. As soon as the police had reached the place of occurrence, one Nazmul Haque (PW-1), who was present there, identified the dead body to be of Abdul Wahab's. He then held inquest on the dead body upon its identification by Mallika Bewa i.e. the elder sister of the deceased. At that time, portion of Abdul Wahab's hand from the wrist to the finger tips was found there and accordingly, a separate inquest was held on it. PW-18 has also deposed that he had sent the dead body for post-mortem examination and seized other articles lying scattered in the place of occurrence through Ext-6 as well as Material Ext-1. PW-18 has categorically deposed that he had seized the four motorcycles which were lying at the place of occurrence vide seizure-list Ext-14 and later on handed over custody of the motorcycles to Nausad Ali (PW-4). On receipt of ejahar (Ext-1) from Nazmul Haque a Police case was registered and the charge of investigation in that case was handed over to him.

16. PW-18 has also deposed that he had examined the witnesses, the majority of whom were examined on the basis of the G.D. Entry. The statement of rest of the witnesses were recorded later. During his cross-examination, PW-18 has reiterated that on arriving at the the place of occurrence he found the dead body of Abdul Wahab and four nos. of bikes. The wrist of Abdul Wahab was found near his dead body. It was a dark night. So petromax light was arranged at the place of occurrence. The I.O. has also stated that he found the motor bikes in scattered engine off position but

did not find the owners of the seized bikes at the place of occurrence. He did not seize any document pertaining to the motorcycles nor did he collect registration certificates of the motorcycles. He has also denied of having collected blood stains or blood sample from the place of occurrence and from the wearing apparels of the deceased. During his cross-examination, the I.O. has admitted that he did not put page numbers or page index in the Case Diary. According to PW-18, the injured persons themselves got their medical treatments done. PW-18 also stated that he had examined witness Omar Ali on 22.07.2008 at Solace Hospital at Goalpara. Witness Abbas Ali, Nurnobi, Motiur Rahman, Lutfur Rahman, Rahela Khatun and Rafiqul Islam were examined under Section 164 Cr.P.C. on 19.07.2008.

17. PW-4, Naushad Ali, is a villager who had arrived at the place of occurrence when he heard commotion and saw that the dead body of Abdul Wahab was lying beside the road near Kali Cremation ground with the left hand of the wrist severed. He has deposed that the police later on arrived at the place of occurrence, held inquest on the dead body wherein he had put his signature. Similar is the version of PW-5, Hajrat Ali, who also went to the place of occurrence after hearing the commotion.

18. PW-6, Rahela Khatun, is the elder sister of deceased Abdul Wahab and she has deposed that on the day of occurrence upon hearing commotion on the road towards the north of her house where there was a Kali temple, she went there running and found that 3/4 bikes were there with their headlamps on. Reaching there, she found her brother Abdul Wahab lying on the road with his left hand cut upto the wrist.

Omar Ali was lying beside the road. She then raised hue and cry. People from the village gathered there. She found Nurul Nobil, Lutfur Rahman and Abbas there. They raised commotion. Accused Rajjuddin, Sher Ali and Yusuf were armed with daggers and Sher Ali attacked her with dagger as a result of which, she sustained cut injuries on her left hand and left side of the chest. Blood came out of the injuries and she became senseless. She was later admitted to the Civil Hospital on that night. She heard from Abbas Ali, Nurnobil and Lutfur that accused Saijuddin, Rajjuddin, Yusuf, Sadek, Sattar, Abdul Sattar, Amir Ali, Sayed Ali, Mirajul, Taher Ali, Abdul Hai and Abdul Salam had killed Wahab by hacking him with daggers and that they also caused injury to Omar Ali.

19. PW-8, Ajar Ali, is a co-villager, who had arrived at the place of occurrence after hearing hue and cry and saw the dead body of Wahab lying on the road with his left hand severed. PW-9, Abdul Mannaf, is another co-villager who had also deposed in similar line but was later declared as a hostile witness since he had denied any knowledge about the seizure of the dao from the place of occurrence and also the fact that his statement was recorded by the police.

20. PW-10, Sofiur Rahman, is a seizure witness and he has deposed to the effect that he is a signatory to seizure list Ext-7 by means of which, the police had seized a red half shirt, vest and a pair of long pants worn by the deceased.

21. The evidence of PW-11 does not appear to be of much significance since he had also arrived at the place of occurrence only after hearing hue and cry and later on found Wahab's dead body lying there.

22. PW-12, Dilip Basfor, is the person who had assisted Dr. A. K. Bora in conducting the post-mortem examination on the dead body of Abdul Wahab at the Goalpara Civil Hospital.

23. PW-16, Dr. Amit Krishna Bora, had conducted the post-mortem examination on the dead body of deceased Abdul Wahab and submitted post-mortem report Ext-11. As per the post-mortem report, the following injuries were found in the dead body :-

**“EXTERNAL APPEARANCE**

*Stout body. Rigor mortis present all four limbs.*

*Wound : Multiple and cut injuries seen over the whole body. Anterior portion.*

- 1) Over the head and face : i) Right frontal 3"x1"x ½ ".  
ii) Right cheek : 2" x 1" x ½ ".  
iii) Below the mandible : 3" x 1" x 1".
- 2) Right side of neck : 4" x 2" x 3".
- 3) Left chest, below the nipple : 4" x 3" x 1".
- 4) Right lower limb : i) compound fracture both bones.  
ii) cut injury over the chest 3" x 2" x 1".

**CRANIUM AND SPINAL CANAL.**

*Scalp, skull, vertebrae : Frontal part of forehead – injury seen with fracture in maxilla, mandible and frontal bone.*

*Membrane : Ruptured.*

*Brain and spinal cord : Haematoma seen at frontal lobe of cerebrum : 4" x 3" x 2" size extending to subdural space.*

**THORAX**

*Walls, ribs and cartilages : Cut injury over left chest and fracture of 4<sup>th</sup> and 5<sup>th</sup> ribs.*

*Lungs : Haematoma in the left side of lung.*

*Others : Healthy.*

**ABDOMEN**

*Healthy.*

**MUSCLES, BONES AND JOINTS**

- 1) Injury seen over the maxilla, mandible and frontal bone. Simple fracture.*
- 2) Comminuted fracture over the right limb, both bones.*
- 3) Amputated left hand at the wrist joint."*

According to the doctor, death was due to shock and haemorrhage caused by multiple injuries sustained by the victim which were homicidal and ante mortem in nature.

24. In their statements recorded under Section 313 Cr.P.C. the accused persons have denied all the circumstances put to them. The defence side had examined two witnesses viz., Md. Intaz Ali (PW-1) and Meherul Islam (DW-2).

25. DW-1, Intaz Ali, has deposed that on the day of the incident, one Meheru, accused Rajjuddin and Gule Rahman were present in his house in connection with the Karbala Weekly Market meeting. As there was insufficient participants, the meeting could not be held. In the meantime, time for namaj had started and therefore, he had proceeded to the mosque for performing namaj. After returning from namaj he heard about the death of Abdul Wahab at around 7.30 p.m.

26. Likewise, DW-2, Meherul Islam, had also stated that the meeting was not held on that day in the house of Intaz Ali since it was a rainy evening and there was insufficient participation. As the DW-1 went to attend namaj, he along with Gole Rahman and Raijudddin came from the house of Intaz Ali. While he was taking tea at the Karbala Market, he was informed about the murder of Abdul Wahab. During his cross-examination, DW-2 has admitted that accused Raijuddin, Saijuddin and Sher Ali are his nephews and accused Mirajul Islam is his brother.

27. By referring to the materials available on record, Mr. H. R. A. Choudhury, learned senior counsel appearing for the appellants in Criminal Appeal No.300/2017, submits that this is a case where the ejahar was lodged two days after the incident, that too, after consulting other persons. Therefore, it is apparent on the face of the record that the ejahar is nothing but an afterthought whereby the appellants have been designedly implicated. By pointing out the similarity in the testimony of all the eye-witnesses, Mr. Choudhury submits, their version follows a parrot like similarity, raising a serious doubt as to the veracity of the testimony of these witnesses. The learned senior counsel further submits that from the lapses in the investigation by the I.O., a serious doubt arises as to whether any of the eye-witnesses were at all present in the place of occurrence. Therefore, submits Mr. Choudhury, there is actually no eye-witness in this case.

28. By referring to the seizure-memo Ext-14 Mr. Choudhury submits that the ejahar was lodged on 10.07.2008 based on which Goalpara P.S. Case No.210/08 was registered. However, in Ext-14, by means of which the bikes were seized by the police

two days ago i.e. on 08.07.2008, the police case number has been indicated which goes to show that there has been manipulation of the Case Diary. By referring to the testimony of the I.O. (PW-18) wherein he has admitted that no pagination has been maintained in the Case Diary, Mr. Choudhury submits that the possibility of manipulation of the Case Diary, by inserting statements of the witnesses recorded subsequently, after consultation with others, cannot be ruled out in this case. He therefore, submits that the sanctity of the process of investigation has been compromised in this case due to failure on the part of the IO. to maintain a transparent procedure of investigation. The learned senior counsel for the appellants has also argued that no specific role has been ascribed to the accused persons so as to show their common object for the purpose of establishing charge under Section 149 IPC. On such count as well Mr. Choudhury submits that the impugned judgment and order dated 16.06.2017 is liable to be set aside by this Court.

29. In support of his aforesaid argument Mr. Choudhury has relied upon her following decisions :-

1. **(2016) 16 SCC 164 [ Kamta Yadav and others Vs. State of Bihar]**
2. **(2011)5 SCC 324 [ Kuldip Yadav and others Vs. State of Bihar]**
3. **(2007) 12 SCC 641 [ Dilawar Singh Vs. State of Delhi]**
4. **(2003)3 SCC 355 [Rajeevan and another Vs. State of Kerala].**

30. By referring to a decision of this Court rendered in the case of **Piyalal Barman Vs. The State** reported in **1970 CRI.L.J. 1599** Mr. Choudhury has further argued that, a

Case Diary, not maintained in conformity with Rule 188 of the Assam Police Manual, would create suspicion as regards the various stages of investigation and therefore, would have a vitiating affect not only on the investigation but also on the trial. On such ground the learned senior counsel prays for setting aside the conviction of the appellants and for setting them at liberty.

31. Mr. B. M. Choudhury, learned counsel representing the two appellants in Criminal Appeal No.318/2017, while adopting the above arguments has further argued that none of the eye-witnesses have named his clients viz. Amir Ali and Sattar Ali. Therefore, this is a case of no evidence against them. On such ground, the appellants' counsel prays for setting aside the impugned judgment and order dated 16.06.201 qua the appellant in Crl. Appeal No. 318/2017. In support of his above argument, Mr. B. M. Choudhury has also referred to the decision in the case of **Priyalal Barman** (supra) to submit that there are a number of lapses in the investigation in the Police case, raising suspicion as to the manner in which the I.O. has recorded the statements of the witnesses. Therefore, the benefit of doubt arising on account of such lapses must go in favour of the appellants/accused.

32. Mr. M. Phukan, learned Additional Public Prosecutor, Assam, on the other hand, has argued that the prosecution case is based on the testimony of as many as five eye-witnesses who have not only given vivid description of the occurrence but have also identified all the accused persons by describing the role played by them. The learned Addl. P.P. submits that according to the eye-witnesses account, all the accused persons were armed with lethal weapons and took part in the assault of the

deceased and his son-in-law Omar Ali. Although there are some minor discrepancies in the seizure-list, Mr. Phukan submits that in this case, the G.D. Entry made on 08.07.2008 was the basis of the investigation and therefore, the late receipt of ejahar would not have any relevant bearing in the outcome of the appeal. Mr. Phukan has also argued that the accused persons were hiding in the jungle in a secluded place with the sole object of killing the deceased and therefore, mere presence of the accused persons on the spot would be sufficient to charge them with the offence coming within the fold of Section 149 of the IPC. In support of his above arguments, Mr. Phukan has relied upon the following decisions :-

1. **1992 Supp(2) SCC 62 [Pradumansinh Kalubha Vs. State of Gujarat]**
2. **(1998)4 SCC 517 [Ram Bihari Yadav Vs. State of Bihar & Ors]**
3. **(2002)2 SCC 208 [Chandra Bihar Gautam and others vs. State of Bihar]**
4. **(2004) 4 SCC 205 [Charan Singh and others Vs. State of U.P.]**
5. **(2010)7 SCC 477 [Sikandar Singh and others vs. State of Bihar]**
6. **(2012) 9 SCC 532 [Gajoo Vs. State of Uttarakhand]**
7. **(2017)11 SCC 195 [Yogesh Singh Vs. Mahabeer Singh and others]**

33. We have considered the submissions advanced by learned counsel for both sides and have also gone through the materials available on record.

34. PWs-2, 7, 13, 14 and 15 were all travelling together in motorbikes along with the deceased person on the day of the occurrence and all of them had seen the incident from close quarters, in light of the headlamp of the motorcycles. PW-13 was pillion riding the motor bike driven by Wahab and , therefore, he had witnessed the occurrence from the closest point. This witness has not only identified all the accused

persons but has also implicated all of them in the commission of the crime. The testimony of the other eye witnesses viz. PWs-2, 7, 14 and 15, corroborates the version given by PW-13. These eye-witnesses have named all the accused persons by ascribing specific roles to them by narrating the manner in which the accused persons had attacked the deceased and had dealt fatal blows upon Wahab leading to his death. They have also stated about the fatal injuries inflicted upon Omar Ali. During their cross-examination, the testimony of these witnesses could not be shaken by the defence side.

35. Taking note of the evidence on record, the learned trial court was of the view that the testimony of the eye-witnesses i.e. PWs-2, 7, 13, 14 and 15 are reliable, more so, since the eye-witnesses account of PWs-2 and 13 were recorded by the police at the place of occurrence, immediately after the incident. The learned trial Court was also of the view that the evidence adduced by PWs-2, 7, 13, 14 and 15 has remained unshaken which goes to show that on 08.07.2008 at about 8.30 p.m. the accused persons had committed the crime. The relevant observations made by the learned trial Court is extracted herein below for ready reference :-

*“PW 18 is the Investigating Officer and at the very outset of his deposition he deposes that on 08-07-08 the information of the occurrence was reported over phone and to that effect there is GD Entry No.338 and as directed he with staff proceeded to the place of occurrence. In cross-examination he asserts that he arrived at the place of occurrence at about 09-30 pm. He has categorically deposed that many of the witnesses were examined by him on the strength of that GD Entry. The eye-witness PW 2 testifies that after the occurrence police came and interrogated him. Another eye-witness PW 13 in*

examination-in-chief deposes that while they were at the place of occurrence the police came from Goalpara Police Station inquested the dead body and interrogated him. Thus, it reveals that the Investigating Officer examined both eye-witnesses particularly PW 2 & PW 13 immediately after the occurrence. As the Investigating Officer examined eye-witnesses PW 2 and PW 13 immediately after the incident, in that case it is less possibility of false implication about the offenders. So, the testimony of PW 2, PW 7, PW 13, PW 14 and PW 15 cannot be discarded merely on this ground otherwise there will be a wrong message in this case.

The un-impeached evidence of PW 2, PW 7, PW 13, PW 14 and PW 15 clearly shows that on 08-07-08 at about 08-30 pm at Govindapur Rabhapara under Goalpara Police Station accused Yousuf, Raijuddin @ Raju, Saizuddin, Sher Ali, Amir Ali, Sattar Ali, Abdus Salam, Abdul Sattar (now deceased), Abdul Hai @ Dillar, Taher Ali @ Guddu, Mirazul, Sade kali and Sayed forming an unlawful assembly in prosecution of their common object committed rioting using force and violence, also with their common object wrongfully restrained Abdul Wahab (deceased), PW 2, PW 7, PW 13, PW 14 and PW 15 on their way, and intentionally with their common object intentionally committed murder of Abdul Wahab at the spot, and with their common object voluntarily caused hurt to Omar Ali (PW 14) and with their common object intentionally attempted to commit murder of PW 14 by brutal assaults. The above accused persons participated in the acts as stated hereinabove in prosecution after the common object of that unlawful assembly. The multiple injuries inflicted on the deceased & PW 14 by active participation of the accused persons clearly shows enough that the assembly had the intention to kill deceased Abdul Wahab and PW 14 – Omar Ali.

In view of the above, I am of the opinion that accused Yousuf, Raijuddin @ Raju, Saizuddin, Sher Ali, Amir Ali, Sattar Ali, Abdus Salam, Abdul Hai @ Dillar, Taher Ali @ Guddu, Mirazul, Sadek Ali & Sayed are found guilty for the offences punishable u/s 147/341/323/307/302 of IPC read with Section 149 of IPC and I

*convict them thereunder."*

36. From the testimony of the I.O. (PW-18) it is apparent that the investigation in this case had commenced on the basis of G.D. Entry No.338 which was received by the Officer-in-Charge of Goalpara Police Station soon after the incident had taken place. The ejahar in this case was lodged on 10.07.2008 i.e. two days after the incident. It also appears from the testimony of PW-2 that some discussion was held with the informant before the ejahar was lodged. However, PW-1 i.e. the informant had clarified that he did not consult with the parents of the victim or his family members before lodging the ejahar. The ejahar dated 10.07.2008 contains a footnote which mentions that there was delay in lodging the ejahar since the informant was busy with the treatment of injured Omar Ali and in performing obsequies of deceased Abdul Wahab. PW-1 has also stated in his deposition that there was delay of one day in lodging the ejahar since he was busy in Wahab's burial. However, there was no cross-examination of the PW-1 on this point. Therefore, this is not a case where there is unexplained delay in lodging the ejahar. Moreover, the informant was not present in the place of occurrence but he had reached there after the incident. The occurrence took place in presence of eye-witnesses. It is, therefore, natural that the informant would verify the true facts before lodging the ejahar, which might require some discussion. However, even in these circumstances, it would be the duty of the Court to examine the records and ascertain as to whether the ejahar is an after-thought or the delay is for genuine reasons.

37. It has also come out from the evidence available on record that the police was initially informed about the incident by a VDP member based on which a G.D.

Entry was made. The investigation had commenced immediately thereafter based on such G.D. Entry. There is no requirement in law to commence investigation only after receipt of written report and the Police can begin investigation in any case involving cognizable offence even on the basis of oral intimation. In such a case, the written ejahar received at a subsequent point of time can only be treated as a statement under Section 161 Cr.P.C.

38. In the case of **Animireddy Venkata Ramana and others vs. Public Prosecutor, High Court of Andhra Pradesh** reported in **(2008)5 SCC 368** the Hon'ble Supreme Court has observed that when an information is received by an Officer-in-Charge of a Police Station, he is expected to reach the place of occurrence as early as possible. It was not necessary for him to take such a step only on the basis of written First Information Report (FIR). It would be the duty of the State to protect the life of an injured and also an endeavour to be made on the part of a responsible Police Officer to reach the place of occurrence in a situation at the earliest.

39. Evidence available on record clearly establishes that on being instructed by the Officer-in-Charge of Goalpara Police Station on the basis of the G.D. entry, the I.O. i.e. PW-18 had reached the place of occurrence within an hour and he had not only recorded the statements of some of the witnesses present there but had also seized four motorbikes, some weapons and the wearing apparels of the deceased in presence of the seizure witnesses. Thereafter, the 'ejahar' (written report) was lodged. Situated thus, the subsequent written report or the so-called FIR, in the instant case shall be hit by Section 162 of the Cr.P.C. As such, the G.D. entry, on the basis of

which the investigation had commenced, would have to be construed as the FIR. Viewed from this angle also, the so-called FIR marked as Ext.-1 was of little consequence for punching any hole in the prosecution case.

40. By pointing out that the ejarah having been lodged on 10.07.2008 the I.O. could not have mentioned about the police case no. in the seizure-lists Ext-6 & 7, the learned counsel for the appellants have made an attempt to discredit the investigation with a view to dent the prosecution case. However, from the bulk of evidence available on record, we do not see any valid ground to doubt the fact that the I.O. had, in fact, seized the four motorbikes, weapons and the clothes of the victim. It may be so that after the registration of the Police case the I.O. had inserted the case number in the seizure-lists so as to keep the record straight, which could very well have been avoided by him but that alone would not be a ground to discredit the investigation in the P.S. case by ignoring the other cogent evidences available on record.

41. The next line of argument of the appellants' counsel is pertaining to the failure on the part of the I.O. to paginate the Case Diary and also to record the statement of all the witnesses without delay. It is no doubt correct that the Case Diary had not been paginated by the I.O. and we also find that there is some delay in recording the statements of vital witnesses such as PWs-6 and 14. However, it is also apparent from the evidence available on record that both these witnesses had suffered injuries requiring them to undergo medical treatment. Under the circumstances, it is possible that the I.O. was not in a position to record their statements immediately after the

incident. Such delay on the part of the I.O. in recording the statement of the witnesses would not, by itself, incur a fatal defect in the investigation, if the Court is otherwise satisfied that the evidence on record is sufficient to establish the charge brought against the accused beyond all reasonable doubt.

42. In the case of **Ram Bihari Yadav** (*supra*), the Hon'ble Supreme Court has observed that in a case where the record shows that the investigating officer has made a mess and/or had deliberately omitted to do what they ought to have done so as to bail out the appellant who was a member of the police force or for any other extraneous reasons, the interest of justice would demand such acts of omissions of the officer of the prosecution should not be taken in favour of the accused for that would amount to giving premium for the wrongs of the prosecution designedly committed to favour the accused. In such cases, the story of the prosecution would have to be examined de hors such omissions and contaminated conduct of the officials as otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party. This would obviously shake the confidence of the people not merely in the law enforcing agencies but also in administration of justice.

43. In another decision in the case of **Gajoo** (*supra*), the Hon'ble Supreme Court had quoted with approval the observations made in the case of **Dayal Singh Vs. State of Uttaranchal [(2012)8 SCC 263]** wherein, it was observed that in case of defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting the accused person solely on account of the

defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. It was also observed that the contaminated conduct of the official should not stand in the way of evaluating the evidence by the Court, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

44. In the present case, after a careful analysis of the evidence available on record, we are of the view that even though it can be said that there were some lapses on the part of the I.O. such as, delay in recording statement of the witnesses, his failure to collect medical evidence for the injuries sustained by PWs 6 & 14 and also to send the seized apparels for FSL report etc. yet, we are of the view that such lapses were not designed to reach any benefit to the accused persons in the trial. We are, therefore, of the opinion that regardless of the lapses by the I.O., there is sufficient evidence available on record to bring home the charges brought against the accused persons.

45. In the case of **Piyarilal Barman** (*supra*) relied upon by the appellants' counsel, the Division Bench of this Court, in the context of Case Diary prepared without pagination and in violation of Rule 188 of the Assam Police Manual, Part-V, has observed that although Case Diary is a very important document which has to be maintained faithfully and in a regular manner, the contents of the Case Diary cannot be treated as evidence in a trial but the Court is entitled to peruse the same under Section 172(2) of the Cr.P.C. so as to assist it during trial. This duty was incumbent upon a Public Prosecutor and almost always upon a Court trying a serious offence and

when the prosecution and defence are both inadequate, it will enable the Court to rise up to the occasion and discover for itself the material facts and circumstances from the Case Diary which can be brought to light through the witnesses examined so as to arrive at the truth in the interest of justice.

46. In the present case, having regard to the bulk of evidence available on record, more particularly the testimony of the eye-witnesses, we are of the view that the lapses in maintaining the Case Diary due to want of pagination would be of little consequences on the prosecution case.

47. The learned Trial Court has disbelieved the testimony of Pw-6 on the ground that no medical evidence could be produced by the prosecution side to prove her injury. Drawing support from such observation of the trial court, the appellants' counsel have argued that if the testimony of PW-6 is to be disbelieved then the creditworthiness of the testimony of the other eye-witnesses, viz., PWs-2, 7, 13, 14 and 15 would automatically stand impeached, in which event, there would be no evidence to sustain the conviction of the appellants in this case. We are unable to agree with such submission of the appellants' counsel for the following reasons. Firstly, we have already indicated that there is evidence on record to show that the injured persons got their medical treatment done privately and therefore, it is possible that the statement of the doctors who had treated PW-6 was not recorded and her medical records were also not collected by the I.O. at the relevant point of time. However, that by itself could not have been a ground to disbelieve the testimony of PW-6, in view of the ocular evidence available on record, more so, since the version

of PW-6 finds due corroboration from the testimony of three eye-witnesses viz., PWs-7, 13 and 15.

48. Secondly, PW 6 had evidently reached the place of occurrence after the incident took place and therefore, want of medical evidence to support her claim of having sustained injury cannot in any manner, shaken the eye-witnesses account who had seen the accused persons murder the victim from close distance under the light coming from the headlamp of the four motorbikes. There is cogent evidence on record to show that the accused persons viz., Raijuddin, Sher Ali, Saizuddin, Yusuf Ali, Sadek Ali, Mirajul Haque, Abdul Salam, Abdul Sattar, Sayed Ali and Taher Ali had attacked the deceased Abdul Wahab with sharp weapons in furtherance of a common object to kill him and inflicted fatal blows on the person of Abdul Wahab.

49. The next line of argument of the learned counsel for the appellants is to the effect that the witnesses have not ascribed specific roles to the accused persons and therefore, this is not a case where Section 149 of the IPC would be attracted. After going through the evidence of the eye-witnesses we are also unable to agree with the said contention of the appellants' counsel on this count as well. On the contrary, we find that the eye-witnesses have categorically mentioned that the accused persons have acted in tandem, towards a common object which is to assault the deceased Abdul Wahab.

50. In the case of **Chandra Bihari Gautam and others vs. State of Bihar** reported in **(2002)9 SCC 208** the Hon'ble Supreme Court had the occasion to deal with Section 149 of the I.P.C. pertaining to common object. In that case, an argument was

advanced to the effect that even if the occurrence is held to have taken place in the manner alleged by the prosecution and the accused persons were seen on the spot, they cannot be convicted and sentenced if the prosecution fails to establish the existence of a common object amongst the accused persons. Dealing with the above argument, the Apex Court had observed that Section 149 IPC has two parts. The first part deals with the commission of an offence by a member of an unlawful assembly in prosecution of the common object of that assembly and the second part deals with the liability of the members of the unlawful assembly who knew that an offence was likely to be committed in prosecution of the object for which they had assembled. It was further held that knowledge of the consequential action in furtherance of the initial common object is sufficient to attract the applicability of Section 149 for holding the members of the unlawful assembly guilty for the commission of the offence by any member of such assembly.

51. In the case of **Charan Singh and others** (*supra*), the Hon'ble Supreme Court has further observed that Section 149 of the IPC has its foundation on constructive liability which is the *sine qua non* for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149.

52. In the case of **Sikandar Singh & others** (*supra*), the Hon'ble Supreme Court has

observed as follows :

*“15. The provision has essentially two ingredients viz. (i) the commission of an offence by any member of an unlawful assembly and (ii) such offence must be committed in prosecution of the common object of the assembly or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object. Once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability for the offence committed by a member of such unlawful assembly under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object.”*

53. In the aforesaid decision it was further held that a “common object” does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The “common object” of an assembly is to be ascertained from the acts and language of the members composing it and also from a consideration of all the surrounding circumstances.

54. In the present case, as noticed above, the accused persons were found to have laid an ambush behind the bamboo bush, in a secluded place, that too, after nightfall. Evidence of the eye-witnesses has established that no sooner had the four

bikes, including the one in which the victim was travelling, had reached the particular spot i.e. near the Kali Mandir, the first bike was toppled by using barriers. Thereafter, one of the accused, viz., Yusuf Ali had thrown some liquid substance aimed at the deceased, which later on, was detected as chilli powder. After that, all the accused persons, who were hiding behind the bushes, had emerged armed with deadly weapons and assaulted the victim Abdul Wahab by inflicting fatal blows on his body and also injuring his son-in-law Omar Ali when the latter tried to resist the accused from attacking his father-in-law Abdul Wahab and thereafter disappeared in the jungle. Save and except Abdul Wahab, the unlawful assembly of the accused persons did not attack any other person nor did they indulge in any other activity. As a matter of fact, injured Omar Ali (PW-14) received injuries only because he had stepped forward to resist the accused persons from attacking his father-in-law Abdul Wahab. The above evidence leaves no room for doubt in our mind that the common object of the unlawful assembly was only to kill the deceased Abdul Wahab by inflicting fatal blows in his body. The nature of injuries appearing from the post-mortem report Ext-11 also corroborates the aforesaid position. Therefore, it is established that the accused persons had acted in an unlawful assembly with the common object to kill the deceased Abdul Wahab.

55. There is direct evidence in this case and all the eye-witnesses have witnessed the occurrence from close distance. Therefore, it is natural that their would be similarity in their testimony. However, that alone cannot be a ground to doubt the creditworthiness of the testimony of the eye-witnesses, more so, since there is no contradiction or inconsistencies in their version. Having regard to the facts and

circumstances of the case we are of the view that there was no scope for any person to be accidentally present in the scene of occurrence at such a secluded place, /that too after nightfall.

56. From a careful analysis of the evidence brought on record, we are of the view that the broad features of the case is eloquently supported by the versions of the eye-witnesses which is sufficient to conclude that the prosecution has succeeded in establishing the charge brought against 11 (eleven) accused (appellants) beyond reasonable doubt. Although the defence side has adduced evidence, the DW-1 & 2 could not even correctly mention the date and time of the incident. Therefore, their testimonies would be of no help to the defence side.

57. Having held as above, we are, however, of the view that the evidence available on record is insufficient to establish the charge brought against the accused/appellant No.2, Sattar Ali, in Criminal Appeal No.318/2017.

58. From a close scrutiny of the testimony of the eye-witnesses, we find that one Abdul Sattar was identified as a member of the unlawful assembly who had apparently died before commencement of trial. However, none of the witnesses have taken the name of "Sattar Ali". If that be so, there is serious doubt as regards the presence of the appellant No.2, Sattar Ali in the place of occurrence on the date on which the occurrence took place. The benefit of such doubt must go in favour of appellant No.2. The learned Additional Public Prosecutor, Mr. Phukan, has also fairly agreed to the same.

59. For the reasons stated herein before, we do not find any justifiable ground to

interfere with the impugned judgment and order dated 16.06.2017 passed by the learned Sessions Judge, Goalpara save and except the conviction of appellant No.2, Sattar Ali, in Criminal Appeal No.318/2017.

60. In the result Criminal Appeal No.300/2017 is held to be devoid of any merit and the same is accordingly dismissed.

61. In so far as the Criminal Appeal No.318/2017 is concerned, the conviction of the appellant No.2, viz., Sattar Ali, is hereby set aside. The said appellant is hereby acquitted and is set at liberty. We, however, affirm the conviction of appellant No.1 viz., Amir Ali.

62. The Criminal Appeal No.318/2017, therefore, stands partly allowed.

63. Appellant Sattar Ali be forthwith released from jail if his detention is not required in connection with any other case.

Send back the LCR.

**JUDGE**

**JUDGE**

*T U C/Sukhamay*

**Comparing Assistant**