

GAHC010023402015



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

Case No. : CRL.A(J)/96/2015

LAKHINDRA @ LAKHINDAR ORANG

VERSUS

THE STATE OF ASSAM

2:SRI RATAN BARDHAN

S/O-LT. NANI GOPAL BARDHAN
R/O-DHEKIAJULI TOWN
W. NO.5
P.S.-DHEKIAJULI
DIST.-SONITPUR
ASSAM

Advocate for the Petitioner : MR. Z HUSSAIN, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE MANISH CHOUDHURY

Date of Hearing : 31.01.2019

Date of Judgment : 28.06.2023

JUDGMENT AND ORDER (CAV)

(M.R. Pathak, J)

1. Heard Mr. Zahangir Hussain, learned Amicus Curiae for the accused appellant and Mr. Makhan Phukan, learned Addl. Public Prosecutor, Assam, appearing for the State respondent. Respondent No.2, informant of the case did not appear in the matter inspite of service of notice of the case.

2. This criminal appeal from jail is filed by the accused appellant Lakhindra @ Lakhindar Orang, being aggrieved with the judgment of conviction and sentence dated 27.07.2015 passed by the learned Additional Sessions Judge No.2, Sonitpur, Tezpur in Sessions Case No. 32/2009, arising out of Dhekiajuli Police Station Case No. 08/2009 (corresponding to G.R. No. 45/2009), whereby the learned Trial Court convicted him under Sections 302/447 IPC and sentenced him to undergo Rigorous Imprisonment for Life and to pay fine of Rs. 3,000/- under Section 302 IPC, in default of payment of fine, to undergo Rigorous Imprisonment for 1 (one) month and further to undergo Simple Imprisonment for 3 (three) months under Section 447 IPC, where both the sentences to run concurrently.

3. The brief facts of the case is that on 08.01.2009 around 04:00 pm, the Officer-in-Charge of Dhekiajuli Police Station received a written FIR from the complainant Ratan Bardhan (PW.1) stating that while his father Noni Gopal Bardhan was sitting in a house without having any walls on it, the accused Lakhindar Topno/Orang, a resident of the same Ward caused grievous injuries on head and abdomen of his father by hacking and stabbing him with a 'Khukri' that he had brought with him and while undergoing treatment at 155 Base Army Hospital, Tezpur, his father said Noni Gopal Bardhan succumbed to the injuries sustained by him. As such the complainant

requested the police authority of Dhekiajuli Police Station to take necessary steps in that regard.

4. Said FIR of the complainant Ratan Bardhan (PW.1) was entered as G.D.Entry No. 172 dated 08.01.2009 of Dhekiajuli Police Station and recorded as Dhekiajuli Police Station Case No. 08/2009 under Sections 448/302 of the Indian Penal Code (Exhibit-1).

5. Prior to that on 08.01.2009 around 10:20 am Lakhindra Tapno, son of Late Somara Tapno, resident of Ward No.5, Krishna Nagar, Dhekiajuli came to the Dhekiajuli Police Station with a blood stained 'Khukri', putting it inside a case (sheath) and informed that because of previous issues he had hacked Noni Gopal Bardhan of the same Ward giving three cut blows on his head and two cut blows on his abdomen and thereby injured him and said Lakhindra Tapno surrendered in the said Police Station. Accordingly, the said 'Khukri' was seized from said Lakhindra Tapno in Dhekiajuli Police Station itself in presence of witnesses by preparing Memo (Material Exhibit-1) and Seizure List (Exhibit-4), entered the said information of Lakhindra Tapno/Orang as G D Entry No. 163 dated 08.01.2009 (Exhibit-5) in the record of said Police Station and kept him in police custody for necessary interrogation in the case.

6. Thereafter the Investigating Officer of the case along with Police personnel from Dhekiajuli Police Station reached the place of occurrence, the injured victim Noni Gopal Vardhan was taken to the Dhekiajuli Civil Hospital, for his treatment. On reaching the place of occurrence at Ward No.5 of Dhekiajuli Town, drawn its sketch map (Exhibit-6), recorded the statements of the witnesses acquainted with the facts of the case under Section 161 CrPC. On coming to know from the people at Noni Gopal's house that the victim was taken to Dhekiajuli Civil Hospital, police personnel of Dhekiajuli Police Station went there and came to know that he was referred to the Hospital at Tezpur. They reached the Army Hospital, Tezpur and found that said Noni Gopla Bardhan had succumbed to the injuries and then conducted the inquest on the person of the deceased there itself, in presence of witnesses preparing Inquest Report (Exhibit-2) and then on 08.01.2009 itself forwarded the dead body of the deceased to Kanaklata Civil Hospital, Tezpur for its Post Mortem Examination by preparing Dead Body Challan (Exhibit-7). Police arrested the accused Lakhindar/Lakhindra Orang on 09.01.2009 and produced him before Additional Chief Judicial Magistrate on 09.01.2009 itself. After obtaining the post-mortem report of the deceased dated 08.01.2009 (Exhibit-3) and on completion of the investigation, the Investigating Officer of the case, finding prima facie materials against the accused, submitted the charge sheet in said Dhekiajuli Police Station Case No. 08/2009 under Sections 448/302 IPC

on 15.02.2009 vide Charge Sheet No. 01/2009 (Exhibit-9).

7. As Section 302 IPC is exclusively triable by the Court of Session, the learned Additional Chief Judicial Magistrate, Tezpur, on 18.02.2009 committed the said G.R. Case No. 45/2009 arising out of said Dhekiajuli P S Case No. 08/2009 to the Court of learned Sessions Judge, Tezpur fixing the said matter on 27.02.2009 for appearance of the said accused before the Court of the Sessions Judge, Tezpur.

8. On receipt of the records of the said G.R. Case No. 45/2009, the same was registered as Sessions Case No. 32/2009 before the Court of learned Sessions Judge, Tezpur and by order dated 24.02.2009, the learned Sessions Judge, Tezpur transferred the said Sessions Case No. 32/2009 to the Court of learned Additional Sessions Judge, FTC, Tezpur, for its disposal.

9. On 17.03.2009, charges under Sections 448/320 IPC were framed against the accused, which were read over and explained to him, to which the accused pleaded not guilty and claimed to be tried and accordingly, trial of the case began.

10. By another order dated 17.03.2009, learned Additional Sessions Judge, FTC, Tezpur granted bail to the petitioner in said Sessions Case No. 32/2009 arising out of said Dhekiajuli P S Case No. 08/2009.

11. To prove the guilt of the accused, the prosecution examined 13 (thirteen) witnesses and they were cross-examined by the defence. Prosecution also exhibited the FIR, G. D. Entry, Inquest Report, Sketch Map, Post Mortem Report of the deceased, Seizure List, Material Exhibit and Charge Sheet etc. of the case.

12. After the closure of evidence of the prosecution witnesses, the learned Trial Court on 10.07.2015 recorded the statements of the accused under Section 313 CrPC. However, the defence did not adduce any evidence except cross examining the prosecution witnesses. In his reply to the accusations made by the prosecution, brought to his notice by the learned Trial Court, the accused denied all such allegations, claimed to be innocent, stated that he did not assault any one and that the witnesses deposed falsely.

13. It is seen that after the transfer of learned Additional Sessions Judge, FTC, Tezpur, learned Sessions Judge, Tezpur took over the trial of the said case and later by order dated 29.08.2013 transferred the said case to the learned Additional Sessions Judge No. 2, Sonitpur, Tezpur for disposal.

14. After recording of evidence of few prosecution witnesses and their cross-examination, the accused since 13.02.2014 did not appear before the Trial Court, remained absent without any steps inspite of issuing summons, orders of Bailable Warrant, orders of Non-Bailable Warrant and orders of Proclamation and Attachment. Even the wife of the deceased on many occasions submitted before the Trial Court that the accused at large was seen in the village regularly but he evaded arrest and avoided appearing before the Court. Later police arrested the accused and produced before the Trial Court on 25.05.2015 and since then he is in custody.

15. Mr. Hussain, learned Amicus Curiae, has urged before us that the prosecution failed to prove the case against the accused appellant beyond all reasonable doubt by failing to adduce clinching evidence regarding involvement of the appellant to the alleged crime and, as such, he submitted that the accused appellant should be acquitted in the said Sessions Case No. 32/2009. Mr. Hussain in support of his case relied on *Lakshmi Singh and Others Vs. State of Bihar* reported in (1976) 4SCC 395 and *Ishwar Singh Vs. State of U.P* reported (1976) 4 SCC 355.

16. However, learned Additional Public Prosecutor, Mr. Phukan, on the other hand, submitted that the prosecution on examining thirteen witnesses and on proving the exhibits including the material exhibit and the eye witnesses, more particularly PW.3 as well as other evidence could prove the guilt of the accused beyond all reasonable doubt and, as such, the impugned judgment and order of conviction dated 27.07.2015 passed against the accused appellant may not be interfered with. Mr. Phukan placed the judgments of the Hon'ble Apex Court in the cases of *State of Karnataka -Vs- K. Yappa Reddy*, reported in (1999) 8 SCC 715, *Chittar Lal -Vs- State of Rajasthan*, reported in (2003) 6 SCC 397 and *C. Muniappan -Vs- State of T.N.*, reported in (2010) 9 SCC 567 in support of his argument.

17. Let us discuss the prosecution witnesses in brief.

18. PW.1, Ratan Bardhan, son of the deceased Noni Gopal Bardhan deposed before the Trial Court that that deceased was his father and that he knew the accused Lakhindar Orang @ Topno. He deposed that at about 09:30 am on 08.01.2009, while he was sitting in his shop that was about 200 meters away from his house, one carpenter Atul Namo Das (PW.3) and his helper, who were doing wood works in their house, came running to his shop and informed him that Lakhindra had hacked his father. On receipt of said information, PW.1 immediately went to his house on a bicycle and the two carpenters too came with him. PW.1 deposed that while returning to his home he came across Lakhindar and saw a blood stained 'Khukri' in his hand.

When said PW.1 reached home, he found his father lying in injured condition inside their new house that had no walls. He deposed that with the help of those two carpenters, he lifted his father on a hand cart and took him to hospital and on the way to the hospital; his father was lifted on to a Maruti Car from the hand cart and was taken to Dhekiajuli Civil Hospital, where Doctor administered saline to his father and referred him to Tezpur Civil Hospital and that stage his father was able to speak. As he could not tolerate the pain, his father stated that to reach Tezpur Hospital it would take too much time and so, they took him to 155 Base Army Hospital. PW.1 deposed that as his father was a civilian, the hospital authority initially did not intend to provide him treatment, but as one Army Officer came and found his father in a grievously injured condition, admitted him in said Army Hospital for treatment, where his father died during treatment. PW.1 deposed that after the death of his father, he lodged the *ejahar* before the Police Station Exhibit-1 and he proved the same and also proved his signature on it. PW.1 deposed that before lodging the *ejahar* by him, it was his mother who informed Dhekiajuli Police Station over telephone and for that police first visited their house and then they came to the Army Hospital and conducted the inquest on the dead body of his father Noni Gopal Bardhan, during which he was present. PW.1 proved the Inquest Report of his father, Exhibit-2 and his signature on it. PW.1 deposed that it was Lakhindar who had caused death of his father by hacking him with a 'Khukri' (pruning knife).

During his cross-examination by the defence, PW.1 stated that at the time of the incident, he was not at home. He stated that a '*Kirtan*' (recital of religious hymns) was held in their house on the previous night of the incident and after the '*Kirtan*' was over, his brother Bhupen and his friend Biplab (PW.9) had gone for a walk and they came across the accused whereupon a commotion took place between the two parties, during which the accused slapped Biplab (PW.9). PW.1 stated that the accused came to their house later and when he went out of their house, the people who attended the '*Kirtan*' assaulted him (said Lakhindar) on the road. PW.1 stated that the incident took place on the following day, when the accused came to their house to seek apology to his father. PW.1 also stated that those two carpenters were the actual witnesses to the incident and that rest heard about the incident from them. PW.1 denied the suggestion that in his statement before police, he did not state that on his way to home, he came across Lakhindar with a blood stained '*Khukri*' in his hand. He also denied the suggestion that he had deposed falsely that he had seen a blood stained '*Khukri*' in the hand of Lakhindar. PW.1 stated that after his mother had made phone call to the Police, they came to their house

and questioned about the incident. PW.1 also stated that after the death his father, his dead body was taken from Army Hospital, Tezpur and his post mortem examination was performed and then his dead body was taken back to Dhekiajuli, whereupon he lodged a written *ejahar* before the Police Station around 07:00 pm. PW.1 reiterated that at the time of taking him to the Hospital his father was in a condition to speak and denied the suggestion that the carpenters did not come to his shop and that they did not inform him about the incident. PW.1 also denied that he did not see any blood stained '*Khukri*' in the hand of accused Lakhindar when he came across him on the way. PW.1 stated that his friend Dibya Jyoti Nath (PW.5) came to their house and wrote the *ejahar* and that the house of Dilip Dutta and Paritosh Banik were in the North of their house, house of Gouranga Sutradhar was in the South and West and house of Pradip Banik was in the East. PW.1 later stated that *Rastrabhasha Vidyapith* was there in the South. PW.1 did not remember whether the school was open or not and stated that there was no dispute with their neighbours and that after the incident people from their neighbours visited their house. PW.1 denied the suggestion that the accused did not assault his father in the manner as he had stated and also denied about concealing the truth.

19. PW.2, Smt. Maina Bardhan, wife of the deceased, deposed that she knew the accused Lakhindar and that the deceased Noni Gopal Bardhan was her husband. She deposed that on 08.01.2009 around 09:30 am, while she was getting inside the house, from outside the gate she saw Lakhindar talking with her husband and the topic of their discussion was the '*Kirtan*' that was held in their house on the previous night. PW.2 deposed that on the previous night of the incident, Lakhindar had a quarrel with a boy on the road near their house and he had assaulted that boy and then that boy came to their house and informed them that Lakhindar had assaulted him. PW.2 deposed that people who attended the '*Kirtan*' held in their house brought Lakhindar from the road and questioned him and as Lakhindar did not give any reply to them, they assaulted him and then she and her husband requested those people not to assault Lakhindar and then Lakhindar left their house. PW.2 deposed that while Lakhindar was talking to her husband she arrived there from the back side and in course of their conversation, Lakhindar asked her husband as to who amongst the persons attending the '*Kirtan*', assaulted him and her husband replied that he did not see as to who assaulted him and stated that if so required he will call them. PW.2 deposed that uttering a foul word, Lakhindar told her husband that he knew everything but did not want to disclose their names to him and saying so, the accused struck her

husband on his head with the dagger. PW.2 deposed that as her husband fell down, the accused inserted the dagger into the abdomen of her husband and twisted it. She deposed that as she was standing there, for a while she lost her sense, and on regaining it, she quickly left the place and deposed that at that time the two carpenters were working in their house. PW.2 deposed that she quickly left the place and the two carpenters looked towards her husband and she went to the house of a Police Officer nearby and made a phone call to the Police Station. PW.2 deposed that one of the carpenters was Atul Namo Das (PW.3) and that she did not remember the name of the other. PW.2 deposed that after her phone call police arrived around 01:00 pm. She also deposed that her husband was taken to Dhekiajuli Civil Hospital first and as proper treatment could not be provided to him in said Civil Hospital, he was referred to Tezpur Civil Hospital and that her husband was taken to the hospital in an unconscious condition and he was in dying state. PW.2 deposed that her husband died in Tezpur Military Hospital.

In her cross-examination by the defence, PW.2 stated that on the previous night, after the '*Kirtan*' was over, her son Bhupen had gone out with the boy she had mentioned earlier (during her examination-in-chief) and that the accused had an altercation with both of them. She stated that when those two boys returned they informed about the said altercation and the persons taking part in the '*Kirtan*' engaged in a fight with the accused. She stated that Police had questioned her about the incident and that on the following day of '*Kirtan*', while her husband was sitting in their house that was under construction, where the two carpenters were working, the accused came to their house in between 09:30 am to 10:00 am on that day and he sought apology from her husband relating to the incident that took place on the previous night. PW.2 stated that thereafter, the accused talked about the price of wood etc. She stated that in her statement before police she did not state about her husband talking to the accused and about her arrival there from the back side. She denied the suggestion that in course of conversation with her husband, the accused Lakhindra did not ask him the names of the persons who had assaulted him amongst those attended the '*Kirtan*' and also denied that her husband did not say, he did not see as to who amongst them assaulted him and that the accused did not say that he (Noni Gopal) knew everything, but he did not tell him and that the accused did not utter any foul word. She stated that the two carpenters, who were working in their house, attended the '*Kirtan*' held in their house on the previous night and they were their family carpenters. PW.2 denied that she was not present at the place of occurrence and that she did not see any incident. She stated that the name of the Police Officer was Saharia from whose residence she made the

phone call and that it was Saharia's wife who dialed the number for her, who was still alive. She denied that she had concealed the truth and also denied that on the following day of the 'Kirtan' the accused did not come to their house to seek apology and denied that then they all assaulted him. PW.2 denied the suggestion that the accused did not hit her husband with any dagger and also denied that in a scuffle between them the accused tried to defend him. She stated that at the time of the incident her two sons Ratan and Bhupen were not at home and that except herself and the two carpenters, no one was present at the time of the incident. PW.2 denied adducing of any false evidence today and also denied that she did not see any incident.

20. PW.3, Atal Ch. Namodas deposed that earlier he did not know the name of the accused and later he knew it. He deposed that he knew the deceased Noni Gopal Bardhan and that one day around 09:30 am a few months back, while he was doing carpentry work in the house of Noni Gopal Bardhan, the accused came there and said to Nani Gopal Bardha that he may be pardoned for the incident that occurred on the previous day and then the two of them went ahead talking along and they continued with their works. PW.3 deposed that on the previous night of the day of the incident a 'Kirtan' was held in the house of Noni Gopal that he attended and the accused came there just after the 'Kirtan' was over. He deposed that the accused had a quarrel with two boys there which he did not see and the two boys came to the place where the 'Kirtan' was held and they pointed towards the accused stating that he had assaulted them. He deposed that after the accused had left with Noni Gopal, another boy came to the place where they were working and then another boy also came there and in all, three boys came. PW.3 deposed that a little later he heard scream of Noni Gopal and turning around, he saw the 'Khukri' in the hand of the accused smeared with blood and thereafter, the accused dealt 2/3 cut blows on the head of Noni Gopal. PW.3 later clarified that Noni Gopal and the accused, conversing along, were proceeding towards another room of the newly constructed house of Noni Gopal and that they were working nearby. PW.3 deposed that being panicked; he ran shouting along to the shop of Ratan, son of Noni Gopal and told Ratan that his father had been assaulted. He deposed that then Ratan on his bicycle went to Police Station / to his house and that he followed him. On his arrival, said PW.3 saw Noni Gopal lying there and that his intestinal matter came out and he put his intestinal matter back into the abdomen and fastened his abdomen with a 'Gamocha' (bath towel) and took him to the hospital in a hand cart and from hospital, they came to Tezpur Army Hospital in a small vehicle at the Army Hospital, doctor declared Noni Gopal dead.

During his cross-examination said PW.3 stated that occasionally, he worked as carpenter in the house of Noni Gopal and whenever they required his service they use to inform him and he came to their house and that on the day of the incident he was making door frames. PW.3 stated that they had two houses and he was working in the third house and the new house was built in the South-East corner of the existing houses and a road goes by the East-West of their house and that their houses were situated facing south. PW.3 stated that he was working outside the new house and the accused was talking with Noni Gopal outside the house of the later. PW.3 stated that after seeking apology, the accused went ahead with Nani Gopal, talking along and then two boys came whose name he did not know, but stated that he would recognise them at sight. He stated that he used to see those two boys in Ward No. 5 and he never tried to know their names. He stated that he did not pointed out those two boys to the police and stated that those two boys were with the accused. He stated that he did not know the two boys who had beaten up the accused during the 'Kirtan' that was held on the previous night. He stated that he saw the three boys and Nani Gopal moving and that they were not sitting. PW.3 also stated that at that time he and Sanjib (PW.4) were working outside the house and that on hearing the scream when he turned around, he saw Noni lying there. He denied the suggestion that he did not tell police that turning round, he saw a 'Khukri' smeared with blood in the hand of the accused and that thereafter the accused had dealt 2/3 cut blows on Noni Gopal's head. He stated that the accused on his arrival met Noni Gopal outside the place, where they were working, but not in his house. He stated that he did not tell police that in the morning of the incident the accused came to the house of Noni Gopal with another boy (admitted). PW.3 also stated that he did not tell police that a little later, three boys came to Noni Gopal's house one by one and got involved in talking with Noni Gopal (admitted). He denied the suggestion that he told police that the accused, accompanied by another boy came to the house of Nani Gopal and that thereafter, three more boys came there one by one and got involved in talking and that when Noni Gopal had screamed, he turned round and saw the incident. He stated that the house Noni Gopal was about 200 meters away from the shop of his son Ratan. PW.3 stated that there were other families near the house of Noni Gopal, but he did not know their names. He stated that while returning from the shop of Ratan he saw that people from the neighbour gathered at the place of occurrence and that he did not know their names. He denied the suggestion that he did not see the incident and also denied that he did not see the accused hacking Noni Gopal in the head with a 'Khukri'. He denied the suggestion that he adduced false

evidence for the sake of the complainant as he regularly worked in their house. PW.3 stated that 3/4 days after the incident he made statement before police (admitted) and he denied the suggestion that as there was no eye-witness to the incident, he had falsely been made an eye-witness.

21. PW.4, Sanjib Paul deposed that at about 08:00 am on 08.01.2009 he went to the house of Noni Gopal Bardhan to work and at that time one boy by name Ram came to the house Noni Gopal and thereafter, Lakhindar Orang came there. PW.4 deposed that on 07.01.2009 a 'Kirtan' was held in the house Noni Gopal and at that time, the accused slapped one boy and on 08.01.2009, the accused came to the house of Noni Gopal and sought apology for the said incident. He deposed that they were working on the newly built house, where the walls were not raised. He deposed that Noni Gopal and Lakhindar were proceeding talking along and then Mahavir and Gobinda arrived there. PW.4 deposed that during the course of the conversation, Noni Gopal suddenly uttered a cry, thereafter, Gobinda, Mahabir and Ram ran away and Lakhindar dealt 2/3 cut blows on Noni Gopal's head and abdomen. Shouting, '*Mari Dile*', '*Mari Dile*' (he is being killed), they ran to Ratan, son of Nani Gopal and informed him about the incident and Ratan came on his bicycle before them and they followed him to the place of occurrence. He deposed that on their way, they came across Lakhindar who had a blood stained 'Khukri' in his hand and on their return to the house of Noni Gopal, people arrived there and they found intestinal matter came out from Noni Gopal and it was Atul Namo Das who put back the intestinal matter into the abdomen of Noni Gopal and fastened a 'Gamocha' around his abdomen. He also deposed that Ratan Bardhan, Atul Namo Das and he lifted Noni Gopal on a hand cart and took him to the hospital and finding a Maruti Van on the way, they put Noni Gopal in that van and took him to Dhekiajuli Hospital wherein Nani Gopal was referred to Tezpur Hospital. PW.4 deposed that he stayed back at Dhekiajuli and later he heard that Noni Gopal had expired.

During his cross-objection, PW.4 stated that house of Noni Gopal was in Ward No. 5 at Dhekiajuli Town and that he had been working as a helper to the carpenter in the house of Noni Gopal for last 1½ years. He stated that there were houses of families near the house Nani Gopal and he did not know their names. PW.4 stated that there were numbers of families in both sides of the house of Noni Gopal and that after the incident neighbours of Noni Gopal gathered at the place of occurrence. He stated that he did not see what happened on the previous day and that

earlier Noni Gopal had two houses and they were constructing the new house in the West. PW.4 stated that they were making door frames in the courtyard. He denied the fact that he did not state before police that they were working in the courtyard but stated that they were working in the house. He also denied the fact that he had deposed falsely that he was working in the courtyard. He stated that one of the two existing houses of Noni Gopal was in the East and the other was in the South and that a road passed by the eastern side of the house of Noni Gopal. PW.4 reiterated that when he was present there, the four boys mentioned above came and they sat on the plinth of the house on the eastern side and were talking to Noni Gopal and he knew those three boys besides Lakhindar. He denied the fact that he stated before police that Gobinda, Ram and Mahabir had come first and remained talking to Noni Gopal. He stated that from Noni Gopal Bardhan he heard about the incident that occurred on the previous night and that he did not state before police about the said fact that he had heard it from Noni Gopal Bardhan about the incident that occurred on the previous night (admitted). PW.4 stated that when Noni Gopal was talking to the boys, he was doing his work and that he did not take part in the conversation. He stated that Lakhindar came through the eastern gate and arrived there where they were working and that he did not hear what they were talking. PW.4 stated that when Noni Gopal was assaulted, besides Lakhindar, the other three boys were also present and that they were even present at the time when Noni Gopal screamed and they were working and that after Nani Gopal screamed, immediately those three boys ran away but Lakhindar stayed there. PW.4 stated that seeing disposition of Lakhindar they ran away from there and he denied the fact that he did not see Lakhindar assaulting Nani Gopal and also denied the fact that he did not state before police that when he ran to inform Ratan, son of Nani Gopal, he shouted 'Mari Dile', 'Mari Dile' (He is being killed) and that Ratan came on his bicycle before them; that while following him, they noticed a blood stained 'Khukri' in the hand of Lakhindar; that when they returned to the house of Noni Gopal, people had already gathered there and found intestinal matter of Noni Gopal came out; that Atul Namo Das had put back the intestinal matter into the abdomen of Nani Gopal and fastened a gamocha around Noni Gopal's abdomen; that Ratan, Atul Namo and he lifted Noni Gopal on a hand cart and took him to hospital; that finding a Maruti van on the way, they had put Noni Gopal in the van and took him to Dhekiajuli Hospital; that from Dhekiajuli Hospital, Noni Gopal was referred to Tezpur Hospital and that he stayed back at Dhekiajuli. He also denied the fact that he did not state before police that on the following day Lakhindar came to the house of Nani Gopal and sought apology for the incident that occurred on

the previous night; that Noni Gopal and Lakhindar talking along were proceeding to the new house that they were constructing; that the walls of the house were not raised; that Mahavir and Gobinda too had arrived there; that in course of the conversion, Nani Gopal had suddenly uttered a cry and then Gobinda, Ram and Mahabir ran away. PW.4 denied the fact that he did not see any incident; denied that as he was working in their family for long time, he was made an eye witness and that further denied that without seeing any incident he had deposed as an eye witness and denied the fact that he adduced false evidence.

22. PW.5, Dibya Jyoti Nath deposed before the Court that at about 08.01.2009 around 05:00 pm on the date of the incident, when he passed by the shop of the deceased he saw the shop closed and on his enquiry he came to know that Noni Gopal had died and then he went to his house to enquire about the matter and at that time, the dead body of Noni Gopal was brought home from Tezpur Civil Hospital. He deposed that Ratan Bardhan, son of the deceased asked him to write an *ejahar* whereupon he wrote the *ejahar* as per his words and after reading over the content of the *ejahar* to him, he put his signature on it and proved the *ejahar* Exhibit.1 and his signature on it as its scribe. PW.5 deposed that except the dead body he did not notice anything.

At that stage the said witness PW.5 was declared hostile by the prosecution.

After declaring PW.5 as hostile witness, on being asked by the prosecution said witness stated that he denied that he had stated before police that around 10:00 am on the day of the of the incident he heard that Lakhindar Orang with a 'Khukri' had cut co-villager Noni Gopal Bardhan, a resident of Ward No. 5 causing grievous injuries to him and that on receipt of said information, he came to have a look and saw intestinal matter of Noni Gopal came out and that he had also noticed grievous injury on his head. Said PW.5 denied the fact that that he had concealed those facts on that day for the sake of the accused.

During his cross examination by the defence said PW.5 stated that police did not record his statement and that he had gone to the house of the deceased in the evening and that by that time the dead body was brought back to home after Post Mortem Examination and that he wrote the *ejahar* as the son of the deceased asked him to write it and except that he did not know anything regarding the incident.

23. PW.6, Lakheswar Bhuyan the Autopsy Doctor deposed before the Trial Court that on

08.01.2009 he was working at Kanaklata Civil Hospital as Senior Medical and Health Officer and on that day he performed post mortem examination on the dead body of Noni Gopal Bardhan, a male of 42 years old, son of Sirendra Bardhan of Dhekiajuli Police Station, Ward No. 5 in connection with Dhekiajuli Police Station Case No. 8/2009 who was identified by Un-Armed Branch Constable 1327, Paresh Deka and Sri Ratan Bardhan and Sri Badal Sutradhar and he found the following:

Stout male dead body with presence of Rigor mortis present and the following injuries:-

- i) Stab wound over abdomen, 2" below the Xiphisternum measuring 1" x ½" and its depth going into the abdominal cavity.
- ii) Stab wound 1" above and ½" lateral to the umbilicus measuring 2" x 1" inch abdominal cavity depth and a large volume of Omentum coming out through the wound.
- iii) Stab wound over the abdomen on right side, 6" lateral to the midline and 1" above the level of umbilicus part of the small intestine, about 3" long coming out from through the wound.
- iv) Huge volume of blood present in abdominal cavity.
- v) One complete tear of small intestine one ft. from Ileocecal junction.
- vi) One partial tear of small intestine 1 ft and 4" from Ileocecal junction.
- vii) Another partial tear of small intestine 1 ft 6" from the Ileocecal junction.
- viii) One sharp incised wound in mid parietal region size measuring 4" x 1" x ½".
- ix) One sharp incised wound in occipital region measuring 3" x 1" x 1".
- x) One sharp incised wound in occipital region measuring 3" x ½" x 1".
- xi) Bones incised in the corresponding incised wound.
- xii) Subdural hematoma present.

Said autopsy doctor, the PW.6 found that all the injuries described above were ante-mortem in nature and he opined that the person died because of shock and haemorrhage as a result of the injuries sustained by him. PW.7 proved the post mortem examination report of the said deceased and his signature on it as well as the signature of the Joint Director of Health Services.

During his cross-examination said PW.6 autopsy doctor stated that the weapon used in causing the injury in the abdomen must be of ½ inch in size and that such injury cannot be caused by weapon of more than ½ inch in size.

24. PW.7, Bimal Ch.Deka was the Officer-in-Charge of Dhekiajuli Police Station and he deposed that on 08.01.2009 he was serving as the O/C of Dhekiajuli Police Station and on that day Lakhindar Orang appeared at the said Police Station with a 'Khukri' in his hand and stated that he came after causing injury to Noni Gopal Bardhan of Ward No. 5 of Dhekiajuli Town. PW.7 deposed that thereafter Sub-Inspector Mahendra Bora seized the said 'Khukri' and that he endorsed his signature in the said Seizure List, Exhibit.4 and identified his signature on it. PW.7 deposed that Material Exhibit.1 was the 'Khukri' that was seized through Exhibit.4.

During his cross-examination by the defence, said PW.7, the concerned Officer-in-Charge stated that he did not remember the time when Lakhindar Orang came to the Police Station and that the accused stated those things near the gate through which one enters the room of the Police Station. PW.7 stated that the accused stated that he caused injury to Noni Gopal Bardhan and the said 'Khukri' was seized and that he signed on the Seizure List on that day itself. He stated that in the portion marked as Exhibit. 'Ka' of the Exhibit.4, the name was written as Gopal Bardhan, where the word Noni was missing and below Mahendra Bora's Signature, the figure "8-1" was written and PW.7 denied the fact that the figure "9-1" was written and he stated that the portion in Exhibit."Ga" of Exhibit.4, it was mentioned that the 'Khukri' was along with its cover (sheath), but he did not see the cover with the Material Exhibit.1. He denied the fact that the accused Lakhindar Orang did not appear at the Police Station without any 'Khukri' and that said accused did not state that he came to the Police Station after causing injury to Noni Gopal Bardhan. PW.7 stated that on handing over any weapon at the Police Station, a Material Report Number use to be issued against the said weapon, but against the Material Exhibit No.1, M. R. No. was not mentioned. PW.7 denied the fact that as the Material Exhibit No.1 had no cover, it was not the same 'Khukri' that the accused had delivered. He also denied that he gave false evidence.

As the I.O. of the case expired, the Trial Court by order dated 24.06.2015 invoking the power under Section 311 CrPC recalled PWs.7 and 8, accordingly PW. 7 was re-examined and re-cross examined.

Said Bimal Ch. Deka PW.7 during his re-examination deposed that earlier on 20.01.2011 he deposed in that case and that on receipt of summons from the Court he came to depose again. PW.7 deposed that on 08.01.2009 he was the In-charge of Dhekiajuli Police Station and on that day Ratan Bardhan lodged an FIR that was registered as Dhekiajuli Police Station Case No.

8/2009 dated 08.01.2009 under Section 448/302 IPC and he endorsed the said matter to the Sub-Inspector of Police Mahendra Baruah for investigation, where Exhibit.1 was the FIR and he identified his signature on it. PW.7 also deposed that on 08.01.2009 at about 10:20 am the accused Lakhindra appeared himself in the Police Station along with a blood stained Khukri and surrendered in the Police Station confessing that he had assaulted Noni Gopal Bardhan by inflicting 3 'ghap' (assault) on the head and 2 on the stomach and it was recorded by him as G D Entry No. 163 dated 08.01.2009 and that Exhibit.5 was the said G D Entry extract and he proved the said G D Entry and his signature on it. PW.7 deposed that he knew the handwriting of Mahendra Baruah as he worked under him. PW.7 deposed that he saw the khukri in the Court and that the record revealed that the same had already been exhibited as Material Exhibit.1 vide Seizure List, Exhibit.4 that was signed by Mahendra Baruah, Exhibit.4(3). He also deposed that Sketch Map was prepared by Sub-Inspector Mahendra Baruah and he knew his handwriting as he was working under him. Said PW.7 proved the said Sketch Map, Exhibit.6 and also identified the Exhibit.6(1), signature of Sub-Inspector of Police Mahendra Baruah therein that he knew. PW.7 deposed that Inquest on the dead body of Noni Gopal Bardhan was conducted by ASI Tosheswar Baruah and he knew his handwriting as he was working under him and that the dead body of Noni Gopal Bardhan was forwarded for post mortem examination by said Tosheswar Baruah, ASI. He identified the dead body challan Exhibit.7 and the signature of Tosheswar Baruah, ASI Exhibit.7(1) therein, that he knew. PW.7 deposed that on completion of investigation of the case Sub-Inspector of Police Mahendra Barua Mahendra Baruah submitted the charge sheet, Exhibit.8 and he proved the signature of said S.I. Mahendra Baruah Exhibit.8(1) in the charge-sheet that he knew and also deposed that as per records, said Sub-Inspector of Police Mahendra Baruah expired.

During his re-cross examination by the defence, said PW.7 stated that the Material Exhibit.1 Khukri was seized in his presence by preparing the Seizure List that too in his presence and stated that it was correct that in Exhibit.4, Seizure List it was written that the Khukri was seized with cover, but he did not see the said cover in the Court. Said PW.7 also stated that in the Exhibit.4 Seizure List it was not written that the Khukri was covered with blood and that he was shown the statement recorded by Mahendra Baruah.

PW.7 also stated that he was shown the case diary containing the statement of Ratan Bardhan (PW.1) made under Section 161 CrPC which he read that was in the handwriting of S.I.

Mahendra Baruah (since deceased) that he recognized. PW.7 stated that from reading of said statement it was seen that in it Ratan Bardhan did not state that as to when he saw Lakhindra with a blood stained khukri in his hand.

PW.7 stated that he was shown the case diary containing the statement of Atul Namu Das, PW.3 recorded under Section 161 CrPC and that he read the same that was in the handwriting of S.I. Mahendra Baruah (since deceased), which he could recognize and from the reading of the said statement he saw that said Atul Namu Das, PW.3 in his statement did not state that *he turned and saw blood stained khukri in the hand of the accused.....and thereafter he gave 2/3 blows with that khukri*. PW.7 from the reading of said statement stated that it was recorded that Atul Namu Das stated that the accused gave blows on the head and stomach and that he (Atul Namu Das) did not use the word "*thereafter*". Said PW.7 also stated that the said witness (Atul Namu Das) did not state that *one after another three more boys came to the house of Nani Gopal and were talking* and also did not state *when Noni Gopal shouted, he (Atul Namu Das) saw the occurrence*.

PW.7 also stated that he was shown the case diary containing the statement of Sandip Paul, PW.4 recorded under Section 161 CrPC and that he read the same that was also in the handwriting of S.I. Mahendra Baruah (since deceased), which he could recognize. From reading of said statement he saw that in his said statement Sandip Paul, PW.4 stated that he was working inside the house and that the said witness also stated that Gobinda, Ram and Mahabir were there, talking with Noni Gopal, but the said witness PW.4 did not state that *he went to give information to Ratan, shouting 'Mari dile', 'Mari dile'; that Ratan went in front of them with the cycle and that they were behind him and that they saw a blood stained khukri in the hand of Lakhindar; that after the public came, they again went to the house of Nani Gopal and saw the nerves of his stomach came out; that Atul Namu Das put the nerves inside the stomach of Nani Gopal and tied it with a gamocha; that he along with Atul placed Noni Gopal in the thela and took him to Dhekiajuli Hospital and that on the way they got a Maruti car in which they took Nani Gopal to the Hospital and that on being referred from Dhekiajuli Hospital they took him to Tezpur hospital*. Said PW.7 also stated that the said witness PW.4 did not state that *Lakhindra came on the next date and sought pardon for the occurrence of the previous day* and further stated that said PW.4 also did not state that *while Lakhindra and Noni Gopal were walking towards the newly constructed house that was constructed by them where the walls of the*

house were not complete; that Mahabir and Gobinda came and that Lakhindra and Noni Gopal were talking and that suddenly Noni Gopal shouted and then Gobinda and Mahabir fled away.

PW.7 further stated that he was also shown the case diary containing the statement of Biplab Seal, PW.9 made under Section 161 CrPC that he read which was under the handwriting of S.I. Mahendra Baruah (since deceased), which he could recognize and from reading the said statement he saw that in his statement said Biplab Seal stated that out of three boys, one slapped him *but he did not say that Lakhindra had beaten him.* PW.7 also stated that the said witness PW.9 did not state that *he came to know from Bhupen that Lakhindra had cut Bhupen's father.*

25. PW.8, Tosheswar Baruah (wrongly written as *Kusheswar Baruah*, but said PW.8 signed his deposition as Tosheswar Baruah and even in the charge sheet of the case Exhibit.8 name of witnesses contained the name of ASI Tosheswar Baruah, verified from original) deposed that on 08.01.2009 he was working as an ASI of police at Dhekiajuli Police Station and on that day one person appeared at the Police Station with a blood stained 'Khukri' in his hand and said that he had come after hacking a person of Ward No. 5 and handed over the said blood stained 'Khukri' at the police station identifying himself as Lakhindar Orang. PW.8 deposed that he will be able to identify the 'Khukri' at sight and that Material Exhibit.1 is the said 'Khukri'. He deposed that Mahendra Bora prepared the Seizure List Exhibit.4 and he identified the said Seizure List Exhibit.4 and his signature on it. PW.8 also deposed that he conducted the inquest on the person of the deceased Noni Gopal Bardhan and identified the relevant Inquest Report Exhibit.2 with his signature on it.

During his cross examination by the defence said PW.8 stated that at the relevant time he was preparing a case diary inside the Police Station and he was not aware to whom the accused Lakhindar was telling those things and that on being told by Sub-Inspector of Police Mahendra Bora, he had put his signature on the Seizure List Exhibit.4 and that in the said Exhibit.4, it was written that the 'Khukri' had a cover. PW.8 stated that he did not see the cover of Material Exhibit.1 in the Court and that it had the cover when it was brought. He also stated that the 'Khukri' like Material Exhibit.1 was available in other families and that Material Exhibit.1 did not bear any special sign. PW.8 denied that man by name Lakhindar Orang did not hand over any 'Khukri' at the Police Station and also denied that Material Exhibit.1 was not the 'Khukri' that was seized in connection with the case. PW.8 further denied that he did not depose the truth and

stated that he held the inquest at Military Hospital, but he did not remember the time of the inquest. He also stated that in the inquest report, he mentioned that the witnesses revealed that the injuries had been caused because of being cut with a dao and that he did not mention anyone's name in the inquest (Exhibit.2) and that he sent the dead body of the deceased for Post Mortem Examination to ascertain the actual cause of death.

26. PW.9, Biplab Seal deposed that it was about two years since the death of Noni Gopal Bardhan and deposed that around 10:30 pm on 07.01.2009, he went to the house of Noni Gopal to perform a 'Kirtan' and after performing in the 'Kirtan' he came out with Bhupen son of Gopal and went to a shop and that three boys were standing there and one of them asked Bhupen what was his relation with Bhupen and then Bhupen replied that he was his elder brother. To that he told Bhupen that he was not his elder brother as both of them were of the same age and after a while, two of those three boys left and the boy who had asked Bhupen the question, slapped him near his ear and dealt a fist blow on his head due to which he got hit on a wall. PW.9 deposed that then the said boy told him to call all the person who were with him and thereafter the said boy, i.e., the accused, entered the house of Bhupen and that he followed him (the accused). PW.9 deposed that he informed the persons who were performing 'Kirtan' that Lakhindar, i.e., the accused had assaulted him and those persons asked Lakhindar as to why he had assaulted him but he did not reply and those persons pushed him (Lakhindar) out of the house. PW.9 deposed that he spent that night in the house Bhupen and went home on the following morning and around 11:00 am when he went to the shop, he heard from Bhupen that Lakhindar had killed his (Bhupen) father by hacking him with a 'Khukri'. PW.9 deposed that after sustaining injuries by Bhupen's father he was taken to Tezpur Hospital and that he succumbed to his injuries.

During his cross examination PW.9 stated that his house was about 1 Kilometer away from the house of Bhupen and that father of Bhupen was his uncle. He stated that at least 20 villagers attended the 'Kirtan' and he denied that in his statement before police, he did not state the name of the boy who had slapped and punched him as Lakhindar Orang and that he stated before police that he was one of the three boys. PW.9 denied the fact that Lakhindar did not assault him in any manner and he stated that on the following day he did not see the incident of hacking of Bhupen's father. He denied the fact that he did not state before police that he heard from Bhupen that Lakhindar had caused injuries to his father by hacking him with a 'Khukri' and

also denied the fact that on the following day of the incident Bhupen did not tell him that Lakhindar had hacked his father with a 'Khukri'. PW.9 denied the fact that he had adduced false evidence for the sake of his relative.

27. PW.10, Mukesh Bardhan, deposed before the Trial Court that he knew the accused Lakhindar Orang and that the deceased was his father and that on 08.01.2009 around 09:30 am, while his father was sitting in the house at that time, the accused came to their house and sought apology to his father for the fight that took place on the previous night in course of 'Kirtan' held in their house. He deposed that a little later, Mahabir, Ram and Gobinda Orang came to their house and at that time, the accused was talking to his father and a little later, the accused took out a 'Khukri' and with the same he dealt three blows on the head of his father and then his father fell down on the ground. PW.10 deposed that thereafter, he noticed that the accused stabbed his father on the abdomen with the 'Khukri' and out of fear he raised alarm. PW.10 deposed that his mother went out in a run and made phone call to police and after the incident, Mahabir, Ram, Gobinda Orang and the accused went away from their home. His father was taken to the Hospital in an injured condition and there he succumbed to his injuries.

Initially cross-examination of said witness PW.10 was adjourned on the prayer of the defence as there was no witness by name Mukesh Bardhan in the charge-sheet, but later the defence on 13.02.2014 cross-examined the said PW.10. (From the record it is seen that the charge sheet Exhibit-8 of the case contains the name of Mahesh Bardhan, son of Late Noni Gopal Bardhan as one of the prosecution witnesses)

During his cross-examination by the defence, PW.10 stated that on 30.04.2012, he deposed relating to the context of the case before the Court and stated that denied the fact that his age was recorded as 16 years in his examination-in-Chief. He stated that Ratan Bardhan was his elder brother and that he was 19 years of age as on that day and that his house was in Ward No. 5 of Dhekiajuli Town. He also stated that Manju and Badal came to the place of occurrence about 30 minutes after the occurrence and that Smt. Manju Sutradhar was informed about the occurrence when she came to the place of occurrence. He denied that he did not state the name of the accused and also denied that he did not disclose the identity of the accused before any witnesses. PW.10 stated that he was about 14 years at the time of incident and that he told before police that his age was 14 years and that Police recorded his statement in his house in his presence. He also stated that Haren was his brother and that his name was not Haren and he

denied the fact that he had falsely deposed that he witnessed the incident that the accused hacked his father with a khukri. PW.10 denied that he did not give statement before police and also denied that he falsely deposed that he gave statement before the police. He denied the suggestion that since he did not give his statement before police; his name was not incorporated in the charge-sheet as witness and denied the fact that because of his father he had deposed falsely.

28. PW.11, Smt. Arun Bala Banik deposed that both Lakhindra Orang and the deceased Noni Gopal Bardhan were her neighbours. She deposed that the incident took place about three years back and one day around 09:00 am, she heard a commotion in the house of Noni Gopal and though she was having tea at that time, she went there and on her arrival, she saw that Noni Gopal was lying in the courtyard and that his intestinal matter came out. She came to know from the people gathered there that Lakhindra had assaulted Noni Gopal and a hand cart was brought in which Noni Gopal was taken to the hospital and that Noni Gopal died later.

During her cross examination she stated that she did not see as to who had killed Noni Gopal.

29. PW.12, Smt. Manju Sutradhar deposed that she knew the accused who was her neighbour and she also knew the deceased Noni Gopal Bardhan. She deposed that the incident took place about three years back and one day around 09:30 am she heard a commotion in the house of Noni Gopal while she was taking tea and going there, she saw that Noni Gopal was lying where his intestinal matter came out. She deposed that she did not know who caused the incident and that she returned home after having a look at Noni Gopal and that subsequently Noni Gopal was taken to the hospital where he died.

During her cross examination she stated that she resided near the house of Noni Gopal and that she did not know who caused the incident and also stated that on hearing cry of someone, she went to the place of occurrence.

30. PW.13, Badal Sutradhar deposed before the Trial Court that he knew both the accused as well as the deceased Noni Gopal and that the incident took place in the year 2009. He deposed that while he was returning from town at about 09:30 pm, a person by name Jibon Banik informed him that the accused had hit Noni Gopal and then he along with Jibon went to Dhekiajuli Hospital where the nurse told them that Noni Gopal was taken to Tezpur. Then they took a Bus and came to Tezpur and went to Army Hospital. PW.13 deposed that they were there

for about ½ an hour and thereafter they were informed that Noni Gopal had died and then they went to the Civil Hospital along with all others where Post-Mortem was done and then all of them returned to their house.

During his cross examination said PW.13 stated that he did not witness the occurrence and heard about it from Jibon Banik and that Jibon Banik was alive, who lived near the house of Noni Gopal. He stated that police questioned him at Tezpur Civil Hospital and that he did not tell before police that Jibon had told him about the incident. He denied the suggestion that Jibon did not tell him that the accused had killed (*marile*) Noni Gopal.

31. It is seen that the accused, Lakhindra Orang, Lakhindar Orang, Lakhindra Tapno and Lakhindar Tapno is and one person.

32. From the evidence of PW.6, Dr. Lakheswar Bhuyan, the autopsy doctor, we have seen that the deceased sustained five abdominal injuries out of which three were stab wounds on his abdomen — (i) 2" below the Xiphisternum measuring 1" x ½" and its depth went into his abdominal cavity; (ii) 1" above and ½" lateral to the umbilicus measuring 2" x 1" abdominal cavity depth where a large volume of Omentum came out through the said wound, (iii) on his right side 6" lateral to the midline and 1" above the level of umbilicus, where part of the small intestine about 3" long came out from through the wound, (iv) one complete tear of small intestine one ft. from Ileocecal junction, (v) one partial tear of small intestine 1 ft and 4" from Ileocecal junction and (vi) huge volume of blood were present in his abdominal cavity. As per the evidence of said Autopsy Doctor the deceased, in addition to the above, also sustained four injuries on his head — (a) one sharp incised wound in mid parietal region measuring 4" x 1" x ½", (b) one sharp incised wound in occipital region measuring 3" x 1" x 1", (c) one sharp incised wound in occipital region measuring 3" x ½" x 1" and (d) bones were incised in the corresponding incised wound and there were presence of subdural hematoma. Said Autopsy Doctor clarified that all the injuries sustained by the deceased were ante-mortem in nature and the person died due to shock and haemorrhage as a result of the injuries sustained by him. The medical evidence led by the prosecution relating the deceased could not be demolished by the defence and those remain intact.

33. We have seen from the evidence led by the prosecution that on the previous night to the incident i.e., on the night of 07.01.2009 there was a *Kirtan* in the house of Noni Gopal Bardhan and that the accused was manhandled by some persons attending the said *Kirtan* and forced the

accused out of said *Kirtan* and from the house of the deceased. This evidence also remained intact.

34. From the reading of the evidence of the prosecution witnesses, it can be seen that both the carpenters, PWs. 3 and 4 as well as wife of the deceased PW.2 were present in the house of the deceased when the incident took place in the morning on 08.01.2009. The deposition of PW.2, Smti. Maina Bardhan that the accused came to their house in the morning and from her husband wanted to know who amongst the persons, attended the *Kirtan* last night in his house assaulted him (the accused) to which her husband replied that he did not see the persons who assaulted him and if so required, he would call them but being not satisfied with that reply, the accused again said that he (Noni Gopal) knew everything but did not tell him (the accused) and then, the accused gave dagger blow on the head of her husband and when her husband fell down, the accused stabbed in his abdomen and twisted it. We have seen that the defence neither during cross examination of said PW.2 could thwart the said evidence nor the accused in his statement under Section 313 CrPC replied the said query. However, the Court found that the PW.2 admitted in her cross examination that she did not state before police that while the accused was talking with her husband, she came to the said place from behind.

35. We have also seen from the deposition of the PW.3 and the re-cross examination of PW.7 that the defence failed to overturn the evidence of PW.3 that the accused gave blows on the head and stomach of the deceased during the incident on the morning on 08.01.2009 in the house of Noni Gopal Bardhan.

36. Mr. Hussain, learned Amicus Curiae for the appellant placed reliance on the judgment of the Hon'ble Apex Court in the case of *Lakshmi Singh and Others Vs. State of Bihar* reported in (1976) 4SCC 395 relating to blood stain where the Hon'ble Apex Court held that – *it is not necessary for the defence to prove its case with the same rigor as the prosecution is required to prove its case, and it is sufficient if the defence succeed throwing a reasonable doubt on the prosecution case which is sufficient to enable the Court in rejecting the prosecution version.* But from the reading the said case it can be seen that the prosecution therein failed to give explanation regarding the injuries sustained by the deceased where some of the witnesses made a clear statement that they did not see any injuries on the person of the deceased. But the same is not in the present case as most of the witnesses deposed regarding the injuries sustained by the deceased; therefore the said judgment of the Hon'ble Apex Court is not applicable in the

present case.

37. Mr. Hussain, placed another judgment of the Hon'ble Apex Court in the case of *Ishwar Singh Vs. State of U.P* reported (1976) 4 SCC 355, wherein the Hon'ble Apex Court observed that – *had the doctor seen the weapons seized from the accused persons it might have been possible for him to say which of them caused the injury, but the weapon seized were not shown to the doctor.* Mr. Hussain stated in the case in hand the Doctor was not shown the weapon seized in the case. From the cross objection of the Autopsy Doctor, PW.6 it can be seen that the said doctor stated that *the weapon used in causing the injury in the abdomen (of the deceased) must be of half inch in size and that such injury cannot be caused by weapon of more than half inch in size.* From the Material Exhibit-1 and the concerned seizure list Exhibit-4, it can be seen that the Khukri seized in the case was about 18" in length with handle and without handle but with cover it was 13.4" but the said Exhibit-4 did not specify the breadth of the weapon seized in the case that was submitted by the accused in the police station. The accused appellant in his 313 CrPC statement is totally silent with regard to handing over the said weapon to the police.

38. Mr. Phukan, learned Additional Public Prosecutor, relied on the judgment of the Hon'ble Apex Court in the case of *State of Karnataka -Vs- K. Yarappa Reddy*, reported in (1999) 8 SCC 715 wherein the said Hon'ble Apex Court have held that –

If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

39. Mr. Phukan in support of the case of the prosecution also relied on the case of *Chittar Lal -Vs- State of Rajasthan*, reported in (2003) 6 SCC 397 wherein the Hon'ble Supreme Court have held that –

Evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan [(2001) 6 SCC 296] mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a person whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW.3 was recorded on the same day of incident, immediately after the investigation process was set into motion. Therefore, the plea that PW 3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW 3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which has become locus classicus is Mohd. Sugul Esa Mamasan Rer Alalah v. R [AIR 1946 PC 3]. The Privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in Vadivelu Thevar v. State of Madras [AIR 1957 SC 614], Guli Chand v. State of Rajasthan [(1974) 3 SCC 698], Vahula Bhushan v. State of T.N. [1989 Supp (1) SCC 232], Jagdish Prasad v. State of M.P.[AIR 1994 SC 1251] and Kartik Malhar v. State of Bihar [AIR 1994 SC 1251].

40. In the case of *C. Muniappan -Vs- State of T.N.*, reported in (2010) 9 SCC 567 the Hon'ble Apex Court have held that:--

There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be

given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

41. Going through the judgments of the Hon'ble Apex Court placed by Mr. Phukan, learned Additional Public Prosecutor, noted above we found that they are applicable in the case in hand. We have seen that though the concerned I.O. of the case did not forward the Material Exhibit-1/Seizure List Exhibit-4 to the FSL for its examination relating to the blood stain in the Khukri handed over by the accused to police as well as in not showing of the said Khukri vis-a-viz the wounds and the injuries sustained by the deceased, for those counts the case of the prosecution simply cannot be set aside as the evidence of the wife of the deceased, PW.2, the Carpenter, PW.3, the medical evidence adduced by the Autopsy Doctor PW. 6 and the manhandling of the accused and forcing him out of the *Kirtan* on the previous night from the house of the deceased reflects all the ingredients of Section 300 IPC regarding the involvement of the accused appellant in the alleged crime including his motive.

42. After considering all the evidence of the prosecution witnesses as well as their cross examination as well as re-examination and re-cross-examination, the Court found that the prosecution proved the guilt of the accused beyond all reasonable doubt.

43. For the reasons above, we are in complete agreement with the view taken by the learned Trial Court.

44. Accordingly, the impugned judgment of conviction and sentence dated 22.01.2015, passed by the learned Additional Sessions Judge No.2, Sonitpur, Tezpur in Sessions Case No. 32/2009, arising out of Dhekiajuli Police Station Case No. 08/2009 (corresponding to G.R. No. 45/2009), does not call for any interference.

45. Resultantly, this criminal appeal stands dismissed.

46. Registry shall return the relevant records of Sessions Case No. 32/2009 to the Court of learned Additional Sessions Judge No.2, Sonitpur, Tezpur along with a copy of this order.

47. A copy of this order be also furnished to the accused appellant Sri Lakhindra @ Lakhindar Orang, Son of Late Jadab Ray, through the Superintendent, Central Jail, Tezpur.

48. We appreciate the service rendered by Mr. Zahangir Hussain, learned *Amicus Curie* for the appellant and Mr. Makhan Phukan, learned Additional Public Prosecutor, Assam in adjudicating the matter. We direct the Gauhati High Court Legal Services Authority to pay remuneration of Rs. 7,500/- to Mr. Zahangir Hussain, learned *Amicus Curiae* for his assistance rendered to the Court on raising a bill by him.

JUDGE

JUDGE

Comparing Assistant