

GAHC010067442020



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

Case No. : Crl.A./142/2020

SIRLU ORANG AND 3 ORS

S/O- BIRSHA ORANG, R/O- TARA JAN BANGALI, P.O- UPPER PANBARI, P.S-
DHEKIAJULI, DIST- SONITPUR, ASSAM

2: KAMALA ORANG

D/O- LATE SUKHA ORANG

R/O- TARA JAN BANGALI

P.O- UPPER PANBARI

P.S- DHEKIAJULI

DIST- SONITPUR

ASSAM

3: HABU ORANG

S/O- LATE SUKHA ORANG

R/O- TARA JAN BANGALI

P.O- UPPER PANBARI

P.S- DHEKIAJULI

DIST- SONITPUR

ASSAM

4: LAKHINDER ORANG

S/O- BIRSHA ORANG

R/O- TARA JAN BANGALI

P.O- UPPER PANBARI

P.S- DHEKIAJULI

DIST- SONITPUR

ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:GOLAPI TOPNO
W/O- LATE JAITUN TOPNO
R/O- TARA JAN BANGALI
P.O- UPPER PANBARI
P.S- DHEKIAJULI
DIST- SONITPUR
ASSAM

Linked Case : **Crl.A./123/2020**

SRI BHANDAL ORANG
S/O- LATE KARNA ORANG
R/O- TARA JAN BANGALI
P.O- UPPER PANBARI
P.S- DHEKIAJULI
DIST- SONITPUR
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP
ASSAM

2:GOLAPI TOPNO
W/O- LATE JAITUN TOPNO
R/O- TARA JAN BANGALI
P.O- UPPER PANBARI
P.S- DHEKIAJULI
DIST- SONITPUR
ASSAM

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the appellants

: Mr. P. Katak. .

.... Advocate.

For the respondent no.1 : Ms. S. Jahan Additional PP, Assam.

Date of hearing : 09.06.2023

Date of Judgment : 23.06.2023

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. P. Kataki, learned counsel for the appellants in Crl.A. No.142/2020 and Crl.A. No.123/2020. Heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the respondent no.1.
2. The Crl.A. No.142/2020 has been filed four appellants, while Crl.A. No.123/2020 has been filed by the sole appellant against the same impugned judgment dated 12.02.2020 passed by the Court of the Additional Sessions Judge, Sonitpur, Tezpur in Sessions Case No.249/2016, by which the appellants have been convicted under Sections 302/149 IPC and sentenced to undergo imprisonment for life with a fine of Rs. 5,000/- each, in default to suffer rigorous imprisonment for 3 (three) months. They were also convicted under Section 148 of IPC and sentenced to undergo R.I. for 1 (one) year and to pay a fine of Rs.2000/- each, in default to suffer R.I. for three months. The sentences were to run concurrently.
3. The prosecution's case in brief is that an FIR dated 24.04.2013 was submitted by PW-2, to the effect that on 24.04.2013 at around 8 a.m., when P.W-2 and her husband were ploughing their land with a tractor, the appellants

along with to two other persons, namely Putu Majhi and Sri Mangra Orang attacked her husband with bows, arrows, daos and stick. As soon as her husband fell on the ground, the said persons hacked him to death with a dao. PW-2 also states that though they tried to hack her neck with a dao, she survived. Consequent to the FIR submitted by PW-2, Dhekiajuli P.S. Case No.147/2013 under Section 147/148/149/302/307 IPC was registered.

4. After investigation of the case by the Investigating Officer (IO), the case I.O found a *prima facie* case under Section 147/148/149/302 IPC against (i) Putu Orang @ Putu Majhi, (ii) Sirlu Orang (appellant) and Habu Orang (appellant). The charge-sheet also stated that as the appellants Kamala Orang, Lakhindar Orang and Mangra Orang could not be arrested, as no evidence of their connection with the case was found.

5. Subsequent to the filing of the charge-sheet, charges under Section 148 read with Section 149 IPC and Section 302 read with Section 149 IPC was framed against the accused (i) Putu Orang, (ii) Sirlu Orang and (iii) Habu Orang on 30.09.2016.

6. Thereafter, the trial proceedings started before the Trial Court. In the evidence adduced by PW-2, PW-2 stated that Putu Orang, Sirlu Orang, Habu Orang, Lakhindar Orang, Kamala Orang and Bhandal Orang had assaulted the husband of PW-2 which led to his death. Accordingly, in pursuant to the evidence adduced by PW-2, the learned Trial Court, in it's order dated 21.02.2017, held that in terms of Section 319 Cr.P.C., the persons mentioned by PW-2 in her evidence, should also be tried together with the original three

persons on whom charges had been framed. In the evidence adduced by PW-2, the name of Mangra Orang did not find mention and accordingly, he was never made an accused in the case.

7. Consequent to the order dated 21.02.2017 passed by the learned Trial Court, charge under Section 148/149 IPC, 149 IPC and 302/149 IPC was framed against (i) Putu Orang, (ii) Sirlu Orang (iii) Habu Orang, (iv) Kamala Orang, (v) Lakhindar Orang and (vi) Bhandal Orang.

8. The learned Trial Court recorded the evidence of 12 (twelve) prosecution witnesses in total. Thereafter, all the accused persons were examined under Section 313 Cr.P.C. Accused Putu Orang expired on 14.11.2019, i.e. before the proceedings before the learned Trial Court was completed.

9. The learned Trial Court passed the impugned judgment dated 12.02.2020 in Sessions Case No.149/2016, convicting the appellants under Section 148 Cr.P.C. and sentencing them to undergo R.I. for one year with a fine of Rs.2,000/- each, in default to suffer R.I. for another three months. They were also convicted under Section 302/149 IPC and sentenced to life imprisonment with a fine of Rs.5,000/- each, in default to suffer R.I. for three months.

10. The basic stand of the learned counsel for the appellants is that Section 149 IPC is not attracted to the case in hand. Further, as the assault with a dao had been done only by the accused Putu Orang, who had subsequently expired during trial, the finding by the learned Trial Court that the appellants were guilty of the offence under Section 302/149 IPC should be set aside.

11. The learned counsel for the appellants submits that the assault on the deceased by a dao had been done only by Putu Orang and as per the evidence of the Doctor (PW-1), the injuries sustained by the deceased could only relate to the use of the dao, inasmuch as, all the injuries on the dead person were cut injuries. The learned counsel for the appellants also submits that though the dao had apparently been surrendered by Putu Orang to the police, i.e. S.I. Dharanidhar Deka, the said dao was not exhibited before the learned Trial Court. He also submits that while the PW-2 has identified all the appellants by name as the persons who had assaulted her husband, the same is not corroborated by the evidence of PW-3 & PW-4. As such, the uncorroborated evidence of the PW-2 alone, in relation to the common object/intention to kill the deceased, could not be acted upon to convict the appellants, as she was not a reliable witness.

12. The learned Counsel for the appellants also submits that in terms of the judgment of the Apex Court in the case of ***Joseph vs. State, represented by it's Inspector of Police***, reported in ***(2018) 12 SCC 283***, the prosecution was to succeed in proving the existence of a common object amongst the accused persons, whether the appellants had acted in prosecution of the common object and whether they knew death was likely to be committed to bring home the provision to convict the appellants under Section 302 IPC with the aid of Section 149 IPC. The appellants' counsel submits that the prosecution did not succeed in proving the existence of a common object amongst the accused persons or that they knew death was likely to be committed. He accordingly submits that as Section 149 IPC is not attracted to the facts of this

case, the impugned judgment should be set aside and the appellants should be acquitted of the charges framed against them.

13. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that the evidence of PW-2 has been corroborated by the evidence of PW-3 & PW-4. She also submits that there was no contradiction of the evidence of PW-2 by the evidence adduced by the other witnesses. She also submits that if there was any supposed contradiction of the evidence of PW-2 by the evidence of the other witnesses, PW-2 was to have been confronted with her statement made under Section 161 Cr.P.C. The same was however not done. She further submits that even if the same had been done, then the police who had recorded the statement of the PW-2 would have to be confronted with regard to the correctness of the statement recorded by her under Section 161 Cr.P.C. In this regard, she has relied upon the judgment of the Apex Court in the case of ***V. K. Mishra & Another` vs State of Uttarakhand & Another***, reported in ***(2015) 9 SCC 588***, to show the manner in which a contradiction made by a witness in her evidence vis-à-vis the statement made under Section 161 Cr.PC, can be proved against the said witness.

14. The learned Additional Public Prosecutor submits that the evidence of the prosecution witnesses and the seizure of the weapons used by the appellants, i.e. bloodstained arrows, gulti (catapult) and dao shows that there was common object on the part of the appellants to kill the deceased and as such, there was no infirmity with the learned Trial Court having convicted the appellants under Section 302/149 IPC and Section 148 IPC. In support of her submission that the evidence adduced by the prosecution witnesses proved that

there was a common object on the part of the appellants to kill the deceased, she has relied upon the judgment of the Apex Court in the case of ***Mohinder Singh & Others vs State of Punjab***, reported in ***(2006) 10 SCC 418***.

15. We have heard the learned Counsels for the parties.

16. The evidence adduced by the witnesses show that the appellants were part of an unlawful assembly. However, the question to be decided is whether the offence committed was the common object of that unlawful assembly. Though the appellants' counsel has tried to show that the witnesses evidence did not prove that all the appellants were part of the unlawful assembly, we find that PW-2, i.e., the wife of the deceased had clearly identified and named the appellants as part of the group of persons who had attacked her deceased husband with a catapult and arrow, while Putu Orang had apparently attacked her husband with a dao.

17. The evidence of PW-2, i.e., the wife of the deceased is to the effect that on the said date, at about 7:30 am, when she along with her husband and others, including PW-3 and PW-4, went to their paddy field for ploughing the same with a tractor, Putu Orang, Sirlu Orang and Mangra Orang came from the side of the field. Then Kamala, Halu, Bhandal and Lakhinder came from the side of the road and attacked her husband. Putu Orang held a dao against the neck of PW-2 and as she hit him with a stick, the dao fell on the ground. Thereafter, she saw her husband being attacked by the six accused persons. She also states that thereafter she went to the Police station and filed an FIR. The Police found

the dead body of the husband and seized arrows from the place of occurrence. In her cross-examination, PW-2 has stated that she had earlier filed a case, i.e., CR No. 552/2004 in the court of the learned Judicial Magistrate First Class, Tezpur against the appellants. However, as she could not prove the case, the appellants were acquitted in the said case. She also states in her cross-examination that there was a pending case between the appellants and PW-2, i.e., T.S. No. 80/2014 in the Court of the learned Sadar Munsiff, Tezpur.

18. The evidence of PW-3 is that when they were ploughing the field, the accused Putu Orang came and assaulted the deceased with a gulti and a dao, causing injuries on his head, neck, chest, hand, legs etc while she was standing nearby. Thereafter accused Mangra Orang assaulted the deceased with a bow and arrow.

19. The evidence of PW-4 is that the accused persons came and the accused Putu assaulted his uncle by means of a dao. PW4 also states that he fled from the place of occurrence.

20. The evidence of PW-5 is that he saw the dead body of the deceased and also noticed an arrow hole on the dead body.

The evidence of PW-6, PW-7, PW-8 and PW-9 is all hearsay as they had only heard about the death of the deceased.

21. The evidence of PW-10, who is the Investigating Officer of the case is to the effect that he found cut injuries on the hand and back of the dead body.

Two of the fingers of the dead body had been severed. He also stated that the accused Putu Orang surrendered before the Police on 24.04.2013 and after due interrogation, he was arrested on 25.04.2013. Thereafter, he recorded the statement of the witnesses and handed over the case diary to the Officer-In-Charge, as he was subsequently transferred to another place.

22. The evidence of PW-11, who was also the Investigating Officer of the case, is to the effect that he visited the place of occurrence and recorded the statement of the Gaonburha and VDP Secretary and other witnesses. Though he could arrest Sirlu Orang, he could not find the other accused persons, namely, Lakhindar Orang, Kamala Orang, Habu Orang and Mangra Orang.

23. The evidence of PW-12, who is also the Investigating Officer of the case is that on being made the Investigating Officer, he found that the investigation had almost been completed by the earlier Investigating Officers and therefore, on the basis of the materials available in the case diary, he submitted the charge-sheet against Putu Orang, Sirlu Orang and Habu Orang under Sections 147/148/149/302 IPC.

24. The evidence of PW-1, who is the Doctor is that in his opinion, the cause of death was due to haemorrhagic shock sustained by the deceased, as a result of multiple grievous injuries over the body. The injuries were sufficient to cause the death of a person in the ordinary course of nature. He however, does not state the type of weapon that may have caused the injuries on the deceased, which are as follows:-

1. Sharp cut injury over right latero posterior aspect of skull and neck, 6" X 4" X 4" deep size. All vessels, muscles, and cervical vertebrae are cut across.
2. Sharp cut crush injury left elbow 10" X 4" X 4" with multiple fractures of left elbow joint.
3. Sharp cut injury right cheek 4" X 2" X 2" size with fracture of right maxilla bone.
4. Sharp cut injury right elbow 3" X 2" X 2" size muscles are cut both radius and ulna bones are fractures.
5. Sharp cut injury back of the left chest 5" X 3" X 3".
6. Multiple cut injuries right and left hands left cheek and left forearm, forehead left and middle.

The injuries noted by the Doctor does not show or prove that an arrow had flown from a bow, though the same implies that the injuries had been caused by a dao.

25. As can be seen from the evidence of the witnesses, the evidence of PW-2 is that the deceased had been assaulted by the appellants along with Putu Orang and Mangra Orang. However, Mangra Orang was not charge-sheeted by the Police. Further, the learned Trial Court had not passed any order directing trial of Mangra Orang in connection with the death of the deceased. The above being said, PW-3 and PW-4 had specifically mentioned Putu Orang as the person, who had assaulted the deceased with a dao and also stated that the accused Mangra Orang had assaulted the deceased with a bow and arrow. However, as stated earlier, Mangra Orang was never charge-sheeted nor was he

put on trial by the learned Trial Court.

26. On a careful perusal of the evidence, though it is seen that the appellants were a part of the unlawful assembly of persons, it does not appear to us that all the appellants were aware or had the knowledge that the deceased would be killed. The lack of common object on the part of the appellants, though being part of the assembly of persons, that their actions would cause the death of the deceased does not appear to be present in the facts of the case, though the same cannot be said with regard to the actions of Putu Orang.

27. To decide the question whether Section 149 IPC would be attracted in respect of the appellants, keeping in view the fact that the death of the deceased had been caused by a dao wielded by Putu Orang, it is necessary to refer to the judgments of the Apex Court made in relation to Section 149 IPC.

28. In the case of ***Joseph vs. State, represented by Inspector of Police***, reported in ***(2018) 12 SCC 283***, the Apex Court has held that to convict an accused under Section 302 IPC with the aid of Section 149 IPC, the prosecution must succeed in proving the existence of a common object amongst the accused persons and whether the accused persons acted in prosecution of the common object or that the accused persons knew that the act/offence was likely to be committed to accomplish the common object. The Apex Court in para 12 of the said judgment has relied upon the case of ***Rajendra Shantaram Todankar vs. State of Maharashtra***, reported in ***(2003) 2***

SCC 257, wherein it has been stated as follows:

“14. [Section 149](#) of the Indian Penal Code provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of [Section 149](#) vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the applicability of [Section 149](#) — either clause — is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of [Section 149](#) IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act.....’

29. In the case of ***Mohinder Singh & Ors. vs. State of Punjab***, reported in **(2006) 10 SCC 418**, the Apex Court has held that there are two clauses of [Section 149](#) IPC, which vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful

assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of commission of another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every members of the unlawful assembly.

The Apex Court in ***Mohinder Singh & Ors.*** (supra), had also held that the facts found in the above case clearly established the common object of the assembly because of the fact that two of the members of the assembly had carried the licensed guns.

30. In the case of ***V.K. Mishra & Anr. vs. State of Uttarakhand & Anr.***, reported in ***(2015) 9 SCC 588***, the Apex Court held that when a witness is sought to be contradicted with his previous statement, which has been reduced in writing under Section 145 of the Evidence Act, the attention of such witness must be called to those parts of it, which are to be used for the purpose of contradicting him. While recording the deposition of the witness, the learned Trial Court is to ensure that the part of the Police statement with which the witness is sought to be contradicted has to be brought to the notice of the

witness in his cross-examination. If the witness admits the part intended to contradict him, it stands proved. If he denies having made that part of the statement, his attention must be drawn to that statement and it must be mentioned in his deposition. Thereafter, when the Investigating Officer is examined in the Court, his attention should be drawn to the passage marked for the purpose of contradiction, who will then prove whether the witness had made such statement before him. If the witness is not confronted with the part of the statement with which the defence wanted to contradict him, then the Court cannot make use of the statement given to the Police, which is not proved in compliance with Section 145 of the Evidence Act. The same has been stated by the Hon'ble Apex Court in **V.K. Mishra & Anr.** (supra) in para 19 as follows:-

“19. Under [Section 145](#) of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about

the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with [Section 145](#) of Evidence Act that is, by drawing attention to the parts intended for contradiction.”

31. In the present case, the eye-witness to the assault on the deceased is the wife (PW-2), niece (PW-3) and nephew (PW-4). The learned Trial court has held that PW-4 cannot be relied upon as a star witness of the occurrence of the crime, as the evidence given by PW-4 in his cross-examination showed that PW-4 did not name the accused persons, while giving his statement to the police. However, in his evidence in the Court, he implicated the accused persons by name and as such, his evidence was kept out of consideration by the learned Trial Court. The conviction of the appellants was made only on the evidence of PW-2 and PW-3, who were the eye-witnesses.

32. The evidence of PW-1 (Doctor) and the evidence of PW-2 and PW-3 shows that the deceased had died due to multiple cut injuries over the body. As a dao, which is a heavy long knife was seen to have been the weapon used for hitting the deceased, it can be stated that the injuries had also been caused by the dao. PW-3 in her evidence has clearly stated that she saw the accused Putu Orang assaulting the deceased with a gulti (catapult) at first, though this is not borne out by the evidence given by the other witnesses. Thereafter, Putu Orang used a dao causing injuries on his head, neck, chest, hand, legs, etc. It is quite clear that catapult cannot cause cut injuries, while a dao can most certainly

cause cut injuries. The same being in consonance with the evidence of PW-1, the dao was one of the weapons, which had caused the injuries due to which the deceased died. PW-3 has not stated in her evidence that she had not seen any other appellant assaulting the deceased with a dao or any other weapon, except for Mangra Orang, who allegedly assaulted the deceased with a bow and arrow.

33. PW-4, who has not been considered as a star witness by the learned Trial Court, has stated that the accused Putu Orang is the only person, who had assaulted the deceased with a dao. He has also not mentioned the name of any other person, as having assaulted the deceased. The learned Trial Court in the impugned judgment has also reflected upon the contradictory statements made by PW-4 in his evidence and in his statement made before the Investigating Officer that after 1½ hours of ploughing one person had come to the place of occurrence and the other 5/6 persons, whose names he did not know also came. Thus, PW-4 did not name the accused persons in his statement to the Police, but implicated the accused persons in the Court. On the other hand, PW-2 states that all the appellants and accused persons had blocked her husband and attacked him with a gulti (catapult) and arrow. When her husband fell down, they assaulted her husband with a dao. However, there is no evidence to show that any other accused person had brought any other dao to the place of occurrence except for the accused Putu Orang, though PW-2 has stated that the accused persons had assaulted her deceased husband with a dao. In fact, PW-2 in her evidence, had stated that while ploughing the field, accused Putu Orang, Sirilu Orang and Mangra Orang had come from the side of the field and Putu Orang had held a dao against her neck. The other four accused however

appeared from the side of the pucca road separately. As such, the common object in relation to the unlawful assembly would only have been between Putu Orang, Sirlu Orang and Mangra Orang as they had come separately to the place of occurrence, with a dao being carried by Putu Orang. As Mangra Orang had not been made an accused in this case, the question of common object could have been in regard to Putu Orang and Sirlu Orang only, as they had come together. On the other hand, there is nothing to show that the other group who came from the side of the pucca road were aware that Putu Orang would bring a dao to the place of occurrence. The evidence of PW-3 states that the accused Putu Orang assaulted the deceased and thereafter Mangra Orang assaulted the deceased by means of a bow and arrow. Thus, as per the deposition of PW-3, the common object of killing the deceased and the knowledge that their actions would result in the death of the deceased can only be attributed to Putu Orang and Mangra Orang. There is no mention of Sirlu Orang.

34. In the evidence of PW-4, he has named only Putu Orang as the person, who had assaulted the deceased with a dao. PW-4 has not mentioned the name of any other accused-appellants in his evidence given before the learned Trial Court and as such, as per the evidence of PW-4, it is only Putu Orang, who was responsible for killing the deceased by his action, thereby implying that the other appellants were not aware that the action of Putu Orang would kill the deceased or that they had any knowledge of the likelihood of the killing of the deceased by means of a dao. However, there is a contradictory stand given by PW-4 with regard to the name of the accused being given in the evidence while the name of the accused person had not been mentioned in his statement under Section 161 Cr.PC. Be that as it may, a combined reading of the

depositions of the PW-2, PW-3 and PW-4 shows that it was only the accused Putu Orang, who had assaulted the deceased with a dao. Though an arrow and a gulti (catapult) had apparently been used for assaulting the deceased, the evidence of the Doctor and the medical report does not show that any injury had been caused by the gulti (catapult). The medical report and the Doctor's evidence show that the injuries sustained by the deceased are relatable to weapons that can inflict cuts on the body, like the dao. As Sirlu Orang had come along with Putu Orang, who was holding a dao, we are of the view that the prosecution has not been able to succeed in proving the existence of a common object amongst all the accused appellants to kill the deceased, except for Putu Orang and Sirlu Orang. There is nothing to show that the other appellants, except Sirlu Orang, were in the knowledge that Putu Orang would bring a dao and that murder was likely to be committed by Putu Orang, who had brought a dao. Thus, we are of the view that there is no infirmity with the impugned judgment passed by the learned Trial Court to convict Sirlu Orang under Section 302 IPC read with the aid of Section 149 IPC. However, the prosecution has failed to prove the guilt of the other appellants in respect to Section 302 IPC read with Section 149 IPC.

35. Thus, in terms of the judgment of the Apex Court in ***Joseph Vs. State*** (supra) and ***Rajendra Shantaram Todankar*** (supra), we are of the view that the members of the Assembly/Group who had apparently assaulted the deceased did not know that the appellant was likely to be assaulted and killed by a dao used by Putu Orang. As such, the other members of the Assembly/Group, except Sirlu Orang, did not have a common object or knowledge to kill the deceased, which had been done by Putu Orang, who was

the only person who had wielded the dao, as can be culled out from the evidence adduced by the learned Trial Court.

36. On considering the fact that the deceased had died and that all the appellants had also assaulted the deceased without the intention to kill but with the knowledge that their actions would result in the death of the deceased, we are of the view that the other appellants are guilty of having committed the offence of culpable homicide. The other appellants having assaulted the deceased with gulti (catapult) and arrows, were in the knowledge that their act was likely to cause death, but without any intention to cause death, or to cause such bodily injury as was likely to cause death. Accordingly, we are of the view that the other appellants actions, except for Sirlu Orang, come within the provisions of Part-II of Section 304 IPC and accordingly they are found guilty of the same. As they were a part of an unlawful assembly, Section 149 IPC would have to be read alongwith Part-II of Section 304 IPC.

37. In view of the reasons stated above, the appellants Kamala Orang, Habu Orang, Lakhinder Orang and Bhandal Orang are convicted under Section 304 Part-II read with Section 149 of the IPC and sentenced to undergo 10 years Rigorous Imprisonment, with a fine of Rs. 5,000/- each, in default to suffer Rigorous Imprisonment for another 3 months. The conviction and sentence under Section 148 IPC against the appellants is not being interfered with. The sentences shall run concurrently. Consequently, the impugned Judgment dated 12.02.2020 passed by the Addl. Sessions Judge, Sonitpur, Tezpur in Sessions Case No. 249/2016 is set aside/modified to the extent indicated above, only in respect to Kamala Orang, Habu Orang, Lakhinder Orang and Bhandal Orang.

38. The appeals are accordingly disposed of. The impugned judgment dated 12.02.2020 and the sentence awarded in respect of the appellant, Sirlu Orang is not being interfered with. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant