

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIMINAL JAIL APPEAL NO. 1 OF 2018

1. Pukhrambam Joykumar @ Sahajahan Singh, aged about 61 years, Son of P. Shyamnagor Singh, resident of Sagolband Meino Leirak, Post Office and Police Station: Imphal, Imphal West District, Manipur.
2. Khangjrakpam Basanta Singh, aged about 61 years, Son of Late Kh. Ahanjao Singh, resident of Sagolband Meino Leirak, Post Office and Police Station: Imphal, Imphal West District, Manipur.
3. Pangeijam Ramanda Singh, aged about 63 years, Son of Late P. Ibotombi Singh, resident of Sagolband Salam Leikai, Post Office and Police Station: Imphal, Imphal West District, Manipur.
.....(now in Manipur Central Jail, Sajiwa)

.... Accused/Appellants

- Versus -

The State of Manipur represented by the Public Prosecutor, High Court of Manipur.

.... Respondent

B E F O R E

**HON'BLE THE CHIEF JUSTICE SIDDHARTH MRIDUL
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

For the petitioner : Mr. M. Gunedhor, Advocate

For the respondents: Mr. Samarjit Hawaibam, Public Prosecutor

Date of hearing : 27.02.2024

Date of Judgment &
Order : **14.06.2024**

JUDGMENT & ORDER
(CAV)

(Golmei Gaiphulshillu, J)

[1] Heard Mr. M. Gunedhor, learned counsel appearing for the appellants and Mr. Samarjit Hawaibam, learned PP appearing for the respondent.

[2] The present appeal has been instituted praying for setting aside the judgment and order of the Ld. Additional Sessions Judge (Fast Tract Court), Manipur dated 12.01.2018 passed in Session Trial No. 4/99/10/05/17 convicting the accused/appellants and the subsequent order of sentence passed by the same Court on 18.01.2018 convicting the accused/appellants for committing offences punishable under Section 302 of the Indian Penal Code read with Section 149 of the same code.

[3] The factual position which forms the background of the present appellants' plea are that on 23.06.1989 at around 04:30 p.m., one Polem Indrajit Singh filed a report with the Officer-in-Charge, Imphal Police Station, on being narrated by Nongmaithem Megha Singh (P.W. No. 4) who accompanied his son namely, Polem Satyajit Singh, stating that while he was returning home from his Khola near Khoyathong Tank at around 02:30 a.m. along with his friend (P.W. No. 4), some unknown persons numbering 8 to 12 assaulted him by using iron rods, sharp

weapons, clubs etc. causing serious bodily injuries to his son and he was evacuated to RIMS hospital (the then RMC hospital) with his local people at about 02:50 a.m., however succumbed to injury at about 03:30 a.m.

On the basis of the report filed, an FIR case No. 384(6) 89 Imphal Police Station was registered under Section 302 read with 34 IPC. However, no explanation was offered by the P.W. No. 4 for a long delay of about 14 (fourteen) hours to anyone, least of all the concerned Court.

[4] Some weapons of the crime were recovered under Section 27 of the Evidence Act, at the instance of accused/appellant No. 1 and another accused namely, P. Dhananjay Singh (now deceased) on 24.06.1989 and 29.06.1989 respectively. In connection with the incident, after arresting 8 (eight) accused persons, as remanded by the concerned Court; while they were in jail, a Test Identification Parade was conducted on 11.07.1989 by an Executive Magistrate (P.W. No. 15) during which one, Moba @ SanatombaSingh (now deceased) was identified by Nongmaithem Megha Singh (P.W. No. 4).

[5] After due investigation, a charge sheet was submitted to the Court of the then Ld. Chief Judicial Magistrate, Imphal and on receiving the same on 31.07.1998, the Ld. Magistrate committed the case to the Ld. Sessions Judge, Manipur East on

05.04.1999. However, surprisingly names of two accused persons namely, Rajen Singh and I. Nabachandra Singh who were arrested and detained in judicial custody, were found missing in the charge sheet without mentioning reason for their omission and they were also released on bail.

[6] The Ld. Sessions Judge, Manipur East framed charges against the 6 (six) accused persons under Section 302 IPC read with Section 149 of the same Code on 14.06.1999. The prosecution examined 36 (thirty six) witnesses. The specific defence case was that of false implication by pleading their innocence and of total denial of the allegation levelled against them.

 During the course of trial, 3 (three) accused persons namely, S. Bodo@Somorendro, R.K. Sanatomba Singh & P. Dhananjay Singh, died and accordingly they were dropped from the trial.

[7] Upon conclusion of the trial and after examining the accused/appellants under Section 313 of the CrPC, the trial was subsequently transferred to the Ld. Additional Session Judge (Fast Tract Court), Manipur East by the Ld. Sessions Judge, Imphal West. The Ld. Additional Session Judge (Fast Tract Court), Manipur East passed the judgment and order dated 12.01.2018 convicting the accused/appellants for committing the offences punishable under Section 302 of the IPC read with Section 149 of the same Code.

Subsequently, on 18.01.2018 an order was passed sentencing the 3 (three) accused/appellants to undergo imprisonment for life and also with a fine of Rs. 10,000/- (Rupees ten thousand) only.

[8] Being aggrieved by the judgment & order dated 12.01.2018 and sentence order dated 18.01.2018 of the Ld. Additional Session Judge (Fast Tract Court), Manipur East passed in Session Trial No. 4/99/10/05/17; the present appeal has been filed on the following grounds:

- (i) *The evidences, on which, the Ld. Judge had relied upon in convicting the accused/appellants are not at all sufficient, adequate, convincing and reliable and therefore, the order of conviction passed by the Ld. Judge is without basis.*
- (ii) *The Ld. Trial Court has erred in law in relying upon police report made during the investigation and also in the so called statements given to the police by the accused/appellants during investigation which are inadmissible in evidence.*
- (iii) *In all criminal trial commencement of investigation on the registration of First Information Report assumed considerable importance. Doubt of any degree in the manner of registration of the F.I.R. has an adverse impact on the initial presentation of allegations by the prosecution. In the instant case, the F.I.R. was lodged and registered at 4:30 p.m. of 23/06/1989 according to the document (F.I.R. Form Exbt. P/70) and the statement given by the maker of the F.I.R. (P.W. No. 1) who explained before the Court that he received the details of the incident from P.W. No. 4 only at about 4 p.m. of 23/06/1989 and thereafter, only he made a report with the Officer-in-Charge of Imphal P.S. He also stated that he did not go to the police station and he was not examined by any police officer in connection with the case. Thus, there is a delay of more than 14(fourteen) hours in the reporting the matter to the police which remains unexplained.*
- (iv) *The P.W. No. 4, who was the solitarily eye witness of the incident, did not inform or narrate about the incident till 3:00 p.m. to anybody while he was all along present in the hospital, at the place of occurrence and during the funeral of the deceased in the midst of the family members, relatives and friends of the deceased and the local people, in a most unnatural and surprising manner. There could not be any reason for withholding such vital information with himself for*

so long and as such, he was not only a non-trustworthy witness but also an unreliable person who acted in a strangely un natural manners.

- (v) The P.W. No. 35 and 36, who are the police officers gave a different version about the time of registration of the F.I.R. as 4:00 a.m. or 4:30 a.m. of 23/06/1989 while the same was clearly contradicted by Ext. P/70 as well as by the statements of P.W. No. 1 (maker of the F.I.R) and P.W. No. 4 (the alleged solitary eye witnesses). Thus, there is a clear contradiction about the initiation of launching the prosecution and the said contradiction was never explained by the prosecution which relied on both the theories.*
- (vi) The Ld. Judge has completely ignored to consider the aspect of the fabrication or manipulation of the F.I.R., which is the basis of the case as disclosed by both oral and documentary evidences on records (P.W. No. 1, 4, 35, 36 and the document Ext. P/70).*
- (vii) The investigation of the case was doubtful and suspicious, as 2 the (two) accused persons namely, Shri Rajen Singh and Shri I. Nabachandra Singh, were found mysteriously missing from the case though they were arrested, detained in both police and judicial custody and subsequently, released on bail.*
- (viii) According to P.W. No. 4, the night was dark, because of which, he had to escort the deceased with his half lamp which was slipped from his hand on the alleged attack of unknown persons.*
- (ix) The same witness, however, stated that he was at the gate of one R.K Bikomsana Singh while the unknown persons assaulted the deceased at a distance of about 55 ft. from him and that he could see the incident with the help of an electric bulb of 60/100W lighted on a nearby electric post. His said version is unbelievable as it would be humanly impossible to observe or identify the happenings from that kind of quality of light and distance.*
- (x) Nobody supported the version of the P.W. No. 4 whose statements are inconsistent at different parts and as such, no reliance can be made upon his statement.*
- (xi) No explanation was given by the prosecution as to why the P.W. No. 1, the father of the deceased, made no attempt to inform the police even after knowing about the death of his son in the early hour of the day, which is again quite unnatural and beyond human conduct.*
- (xii) As per the record of the case, no F.I.R. was registered till 4:30 p.m. on the day of the incident. However, the registration No.*

of the F.I.R. is found to have been mentioned in the documents like Seizure Memo, Inquest Report which was conducted in the morning of the day of the incident much prior to the registration of the F.I.R. As per the deposition of P.W. No. 36, a written report was received by the night duty officer of the Imphal Police Station being made by the father of the deceased. However, the F.I.R. as narrated by P.W. No. 4 was lodged only at about 4:30 p.m. after being narrated about the incident by the P.W. No. 4 to him at about 3:00 p.m. Such unexplained and confusing mystery vitiates the prosecution and as such, the impugned Judgement is liable to be set aside and quashed.

- (xiii) The Test Identification Parade conducted by the Executive Magistrate (P.W. No. 15) suffers from inherent illegalities and cannot be acted upon. Moreover, the P.W. No. 4 did not identify any of the accused/appellants during the course of the parade and the name of the person whom he allegedly identified was also wrong.*
- (xiv) The Test Identification Parade also cannot be relied upon as P.W. No. 4 had categorically stated before the Court that he will not be able to identify the person, whom he had identified in the Test Identification Parade if asked again to identify in the Court room.*
- (xv) The only suspicion of connecting the accused/appellant No. 1, P. Joykumar Singh with the alleged crime is that the P.W. No. 16 stated that the said appellant came to him on 22/6/1989 for settling peacefully and amicably with the deceased about the incident of slapping by the deceased on him. The only reason for suspecting the accused/appellant No. 1 was that he was slapped on the face by the deceased on Thangal Bazar Road on the previous day. In the absence of any other clinching evidence as to the Commission of the offence, no inference can be made from the mere fact that the accused/appellant No. 1 came to P.W. No. 16 for settling the matter of slapping him by the deceased peacefully and amicably.*
- (xvi) From the statement of P.W. No. 16, it only shows the peaceful intention and motive of Accused/Appellant No. 1 for a peaceful solution and there was no mention about any violent or revengeful motive or intention of the Accused/Appellant No. 1. The Ld. Judge has failed to consider the absence of criminal motive or intention on the part of accused/appellant and instead readily jumped on his mere surmise and imagination.*
- (xvii) It is in evidence that the deceased had quarreled with many other people on the previous days as he blocked the Thangal Bazar road for his black topping contract works and as such the possibility of committing the crime by any other of those persons quarreled with him was not ruled out.*

- (xviii) *The P.W. No. 16 stated before the Court that the accused/appellant No. 1 is of modest and humble nature and that he came in place. Therefore, the accused/appellant No. 1 could not be suspected as the author of the crime.*
- (xix) *The alleged statement of the accused/appellant No. 1 (Ext. P/13) recorded in presence of P.W. No. 9 and 13 cannot be made admissible as the same was given in police custody and as such no reliance can be placed on such inadmissible statements.*
- (xx) *The trial Judge has failed to see that the I.O. of the case purposefully hunted or searched for interested witnesses for witnessing the recording of the so called statement of the Accused/ Appellant No. 1 under section 27 Evidence Act. The I.O. fetched P.W. No. 9 who is a close relative of the deceased from YAC ground and subsequently his friend P.W. No. 13 from Yaikul for the purpose instead of looking for neutral person.*
- (xxi) *The alleged recovery of weapons at the instance of accused/appellant No. 1 was not supported by a set of witnesses and the prosecution also did not declare such witnesses as hostile. Thus, there are 2(two) different version as regards the alleged recovery of weapons which cannot stand together.*
- (xxii) *The so called recovery weapons at the instance of accused/appellant No. 1 cannot be acted upon as the place from where the alleged recovery was made was already known to the police before the alleged recovery.*
- (xxiii) *The place from where alleged recovery was made is an open space assessable to the public as the same lies just to the adjacent or nearby public thoroughfare lane. Therefore alleged recovery cannot be held as having made Under Section 27 of the Evidence Act.*
- (xxiv) *The weapon of crime allegedly recovered at the instance of the accused persons were not sealed as mandated by Law and as such the same cannot be used against any of the Accused Persons.*
- (xxv) *Expert Opinion, as regards the alleged seized articles did not support the prosecution case in any manner and instead it negated the prosecution theory about the articles connecting with the alleged crime. The seized material objects cannot be linked to the alleged crime.*
- (xxvi) *The Ld. Judge erred in Law in observing that the Court can form its own opinion even by ignoring the Expert Opinion. Judgment based on such observation shall not be allowed to stand as it would entirely disturb the settled principle of Law.*

- (xxvii) *The prosecution has miserably failed to prove the presence of any of these 3(three) Accused/ Appellants in the so called unlawful assembly and as such the Ld. Judge has erred in Law in holding about their being a member of unlawful assembly without any piece of evidence.*
- (xxviii) *The prosecution has also failed even to mention about any overt act committed by any of the Accused/Appellants in the alleged crime.*
- (xxix) *The Ld. Judge passed his Judgment on his own surmises and imaginary illusions by relying upon hypothecated versions of the prosecution which is not supported by any acceptable evidences.*
- (xxx) *On the basis of the evidence on records,the charged framed against the accused/appellants having not been proved, the impugned order of Conviction and Sentence against the accused/appellants are unwarranted and liable to be set aside.*
- xxxi) *There was no chain of circumstances created by the evidences on record and sequences of circumstances cannot form a complete chain. Therefore, the prosecution evidence should not be relied upon.*
- (xxxii) *The prosecution has failed to examine important witness who would have thrown light about the incident and failure of the prosecution to examine such relevant and material witnesses indicates prosecution had withhold important facts.*
- (xxxiii) *The Ld. Judge has wrongly observed the act of surrendering the Accused/Appellants to the police as their admission of guilt and forget that the Accused/Appellants only made themselves available to the police to clarify their innocence.*
- (xxxiv) *The manner of Investigation was malafide and it was conducted with the objective of framing the accused/appellants with a charge of murder and for not unearthing the truth. Conviction based on such malafide investigation is unwarranted in the eyes of law.*
- (xxxv) *The Ld. Judge in para No. 26 of his Judgment had wrongly observed that the prosecution could establish 11 (eleven) specific facts without reasonable basis and such findings are negated by the facts that:*
- a) *The deceased was last accompanied by P.W. No. 4 from his khola and the said witness withhold the information about the incident with himself for more than 14 (fourteen) hours in a most unnatural manner.*

- b) *The deceased is quarrelsome and therefore there was a high chance of probability that the deceased could develop enmity with many other people.*
- c) *The P.W. No. 4 stated that he himself and the deceased shouted and raised alarms during the assault. However, P.W. No. 17 who was taken bath nearby and any of the local residents did not support such version.*
- d) *The P.W. No. 16 stated that accused/appellant No. 1 came to him for a peaceful settlement with the deceased on 22/06/1989 and on being told by the said witnesses a police team along with himself went to the house of accused/appellant No. 1. In spite of this fact, the police examined P.W. No. 16 only on 06/07/1989 i.e. a delay of 14 (fourteen) days.*
- e) *The materials, like blood sample, clothes worn by the accused persons could not be related with the alleged incident as per the FSL report.*
- f) *The T.I. Parade is not admissible in the eyes of law as submitted in the ground No. XIV above.*

xxxvi) It is evident from the Judgment of the Ld. Judge that Court below had relied upon inadmissible evidences to the utter prejudice of the accused/appellants. The Court below had ignored the Principle that a criminal trial gets seriously tainted and becomes unfair in the event of the judgment of the Court is founded on inadmissible evidences.

(xxxvii) Upon a proper appreciation of evidence on record and correct assessment of the provisions of law, the Ld. Judge ought to have held that the prosecution has failed to bring home the allegations levelled against the accused/appellants and the prosecution case is an admixture of lies and improbabilities.

xxxviii) The prosecution evidence is unworthy of son of reasonable any credit and acceptance by a person prudence, but the Ld. Judge discussed the evidence in a very casual manner whereby, he left the material facts aside and included his own imagination leading to an awful judgement.

xxxix) The Ld. Judge has failed to see that the prosecution as set out in the Charge Sheet/Final report differs from the one disclosed by it during the trial. Thus, the prosecution story itself is not acceptable as there cannot be 2(two) stories about a single incident.

xl) The Ld. Judge passed the impugned Judgment of Conviction and Order of Sentence not on consideration of materials on record but on the basis on conjunctures and summarises. The

Judge simply forget that in a criminal case where the life and liberty of a person is involved courts should approach with the materials on record with the highest degree of caution.

- xli) The Court below has also failed to see that the prosecution was unable to prove the case beyond reasonable doubt and it ignored or overlooked the required degree of proof in a criminal case and accepted principles of Rule of Proof beyond reasonable doubt.*
- xlii) The Ld. Judge has completely misinterpreted the meaning and purpose of examination of the accused under Section 313 of Criminal Procedure Code thereby leading to a grave error of law.*
- xliii) The Ld. Judge has failed to provide the Accused/Appellants their opportunities to enter into their defence as provided mandatorily by Section 233 of Code of Criminal Procedure thereby causing a grave injustice to the Accused/Appellants.*
- xliv) The Ld. Judge has committed a gross error in making adverse finding against deceased Accused Persons who have already been dropped from the case. It was also ignored that the said deceased person went undefended in the remaining course of the trial after their death.*
- xlvi) The impugned Judgment of Conviction and Order of Sentence are otherwise bad in law and the same deserves to be set aside.*
- xlvi) The sentence was not called for under the facts and circumstances of the case.*

In the course of trial, the prosecution in support of their cases produced as many as 36 (thirty six) P.Ws. as the second I.O. Shri Sarojkumar died before the trial of the case, the P.W. No. 36 who was the O.C. of the P.S. and who handed over the case for investigation to the said I.O. after taking out the case from the first I.O. Shri Heli Mao who conducted the investigation of the case briefly, produced as many as 72 (seventy two) documents and articles and produced 10 (ten) material objects (M.O.).

[9] On perusal of the judgment and order of the Ld. Trial Court, it emerges that the Ld. Trial Court in the first part of its judgment starting from paragraph No. 11 to 24 discussed the case by narrating the fact about the solitary eyewitness of the instant case i.e. the P.W. No. 4 Shri N. Megha Singh and its concerned witnesses and the portions of paragraph 11 to 24 of the judgment are reproduced herein below for reference and analysis:

"11. On perusal of the testimonies of all the P.Ws., it is crystal clear that P.W. No. 4 is the person who accompanied with the deceased and also eye-witness to the said incident of assaulting and murder. Thus, first of all let me examine the testimonies of P.W. No.4. P.W. No.4, Nongmaithem Megha Singh has deposed that "about 10 years ago one day in the evening at about dusk while he was at his workshop his friend deceased Polem Satyajit alias Satyajit Kumar Singh of Polem Leikai came to his workshop and asked him to lend their half lamp and to help in his work of road repairing in front of Sani Thakur of Khoyathong Road. Accordingly, he along with Polem Satyajit alias Satyajit Kumar Singh went to his work-site with half-lamp which was already lighted up and he remained there up to late night of the same night. It is also in the oral testimony that after finishing the work the deceased Satyajit alias Satyajit Kumar Singh, one S.O. of PWD Department, himself, one Roller Driver and other labourers of Satyajit alias Satyajit Kumar Singh left the work-site and came to the KHOLLA of the labourers which was situated at the north-eastern corner of Thangmeiband Pukhri Achouba Mapal. They have had a meal at the Kholla and then after having the meal the said S.O. of PWD Manipur and the Roller Driver left the Kholla at first and after that he and deceased Satyajit alias Satyajit Kumar Singh left the Kholla. The deceased Satyajit alias Satyajit Kumar Singh asked him to drop him up to his house and accordingly, he along with Satyajit alias Satyajit Kumar Singh proceeded towards the house of Satyajit alias Satyajit Kumar Singh with his half lamp on Thangmeiband Polem Leikai road towards Lamphel on foot. When they reached near the south-western corner of the Thangmeiband Pukhri Achouba Mapal on Thangmelband Polem Leikai road he saw 2/3 persons came out from near the gate of R.K. BekomSana Singh. The said persons started to assault him and then another 2/3 persons were also came out from the north-western corner of the Khoyathong Pukhri Achouba Mapal. Then all the persons approaching towards Satyajit alias Satyajit Kumar Singh and surrounded the deceased Satyajit alias Satyajit Kumar Singh and they started to assault Satyajit Singh by iron rod, hard sticks etc. held by them. They caught hold of Satyajit alias Satyajit Kumar Singh and

assaulted him. When those persons assaulted Satyajit alias Satyajit Kumar Singh, he was near the gate of Bekomsanahal at the distance of about 10 ft. from the place where the said Satyajit alias Satyajit Kumar was assaulted. Before rushing towards the gate of Bekomsana the burning half lamp slipped away from his hand and fell on the ground when the said persons attacked him for the first time. And then the half lamp light went off as a result of falling and as a result of heating on the said half lantern its Chimney glass was broken, and the tank portion of the half-lantern was also landed. He did not leave the place of the occurrence and he also did not raise any alarm as he was asked not to leave from the place as well as not to raise any alarm by 2 of the persons who were guarding him. P.W. No.4 also deposes that while he was standing near the said gate the said Satyajit alias Satyajit Kumar Singh fought with 5 or 6 persons and the said fighting continued for some minutes and he saw the said Satyajit alias Satyajit Kumar Singh falling on the ground and while the said Satyajit alias Satyajit Kumar Singh was fighting with the said 5 or 6 persons. Satyajit alias Satyajit Kumar Singh raised alarm to the effect that he was being killed (HATLE, HATLE). While the said Satyajit alias Satyajit Kumar Singh was lying on the ground one of the said 5/6 persons hit him on his face with an iron rod (YOTCHEI). He saw the said Satyajit alias Satyajit Kumar Singh lying unconscious. Then he saw a Jeep coming there from Nagamapal road and then driven away after picking up those assailants/attackers from the said place along Thangmeiband Polem Leirak which leads to Goverdhan Achouba Road. As it was dark he could not see registration No. of the said Jeep. There was an electric post at the distance of only about 2/3 feet from the place of the said occurrence. At the relevant time there was a lighted electric bulb at that electric post and from the light coming from the said lighted bulb he could see the said occurrence. As soon as the said assailants/attackers left the place in the said Jeep he rushed to the place where the Satyajit alias Satyajit Kumar Singh was lying and Satyajit alias Satyajit Kumar Singh was found lying on his back and he also raised alarm saying "MEE HATLE, MEE HATLE". Then he picked up the said Satyajit alias Satyajit Kumar Singh and he saw that his face was injured and found with profuse bleeding and within a short time some persons of the locality gathered there. First of all he saw his mother/Smt. Nongmaithem Ongbi Tombi Devi coming there and some labourers also came there and after sometime Yambem Jadumani Singh also came there. The injured was taken to RMC (now RIMS) Hospital in a truck belonging to Polem Kumar Singh and he also accompanied with the injured to the Hospital. After about half an hour of their reaching the Hospital, the injured Satyajit alias Satyajit Kumar Singh succumbed to his injuries at the Casualty department of the hospital. The dead body was brought back on the next day after the completion of post mortem examination and other necessary formalities, and funeral ceremony was performed on the said next day. On the said next day at about 9 or 10 am police seized the said half lantern on his production. A seizure list was prepared by the police in connection with the seizure of the said half lantern and he put his signature on the seizure list. On the day of post mortem examination a police officer of Imphal P.S. seized one polyester full shirt having blood stain, 2) sample of blood on a paper, 3) sample of scalp hair under a

seizure memo prepared by the said police officer at RMC Forensic Science and Medical Department, Lamphel in his presence. P.W. No.4 has further stated that after about half a month from the date of the occurrence he was asked by the police to attend at the Jail Compound Imphal at about 9:30 A.M. for Identification of the accused persons. Accordingly he went to the Imphal Jail compound and he identified one person among the culprits as one who took part in assaulting the said Satyajit alias Satyajit Kumar Singh on the day of occurrence. The person who was identified is called R.K Sanayaima and the said person was identified by him in the third parade of test identification held in the Imphal Jail".

P.W. No.4 was well cross-examined by the Ld. counsel of the accused persons. I reproduced herewith the relevant portions of the statements of the PW No.4 made in his cross-examination:

"It is true that there is no mark of having been hit by a hard object or any mark of damage on the tanky of the half lamp which is produced and shown to me today. I was hit on my right arm by an object like stick resulting to falling down of the half lamp. I did not receive any notable injury as a result of the said blow though I felt pain on my right arm, Just before the attack myself and Satyajit alias Satyajit Kumar were walking at the parallel along the Polem Leikal road facing towards West. I was on the right side of Satyajit alias Satyajit Kumar that is on the side of the pond e.i. Pukhri Achouba). Immediately on being hit on my arm I ran towards the gate of R.K. Sanahal Becom after dropping the half lamp. 2 of the assailants ran after me I intended to take shelter in the house of Sanahal Becom but I could not do so as the entrance gate of Becomsana was found locked. Being helpless I stood just near the gate while the two persons ran after me came near me. They threatened me not to raise alarm or leave the place. Therefore, I stood near the gate all alone facing towards the north. The said 2 persons were standing at the distance of about 6/7 ft. from me. They were facing towards me and both of them were holding sticks. I do not see their face as there was no light on the place where I was standing. However, I could recognize their physical structures. One of them was of thin structure and another one is little healthy. I did not come across those 2 persons in the T.I. Parade held at the Jail after the occurrence. I did not aware of any possibility of being attacked by those 2 persons who were threatening me by holding sticks instead I kept on watching the fighting that took place on the road.

I cannot say whether the distance between the place where the fighting took place and that of the gate of Beconsana Singh is 55 ft. However it could be of that distance though I cannot say exactly as I had not measured the distance. The household of R.K. Becomsana Singh lies on the south of Khoyathong Polem Leikal road. The gate of the household was not erected just near the road. The gate existed by entering some distance from the road. There was barbed wire fencing all around Khuyathong Pukhri Achouba. I cannot say even approximately the area of the said pond. The said electric post was outside the said barbed wire fencing. It stood just near the fencing. I deny the suggestion that the said post was inside barbed wire fencing

and not outside. The bulb in the said electric post was a small one either of 100 or 60 watts.

The fighting between deceased Satyajit alias Satyajit Kumar Singh and those assailants took place in front of the said electric post. The post was behind the fighting area. The light was not sufficient enough to recognize the physical structures of the other assailants except the one whom I identified later on. The other reasons were also that the deceased was attacked by a number of persons and among them I could recognize the one whom I identified later on. The light was not sufficient enough to recognize the colour of the wearing apparels of the assailants and the weapons held by them. I cannot say whether the distance between electric post and the place of fighting would be more than 10 ft. as I had not measured the distance with any instrument of measurement.

I cannot either admit or deny the suggestion that I did not state to the police while I gave my statement as regards the raising of alarm "Mee Hatle, Mee Hatle"

I met the father of late Setyajit Singh in the morning of the following day. I cannot now remember whether he comes to the hospital or not. I also cannot now remember whether any family member of late Satyajit alias Satyajit Kumar Singh came to the hospital or not. However, I saw some of his relatives coming to the hospital. I did not accompany father of alias Satyajit Kumar Singh to the Police Station on the day. I narrated about the incident to the father of Satyajit Kumar Singh when I met him near the Khuyathong Pukhri Achouba on the following morning. When I was at the hospital some police personnel came to the hospital and pick me up. They took me to my house and made the seizure of the half lamp on my production."

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The testimonies of the P.W. No.4 regarding the assaulting of himself and the deceased. P. Satyajit alias Satyajit Kumar Singh in the early morning at about 2.30 a.m. of 23-6-1989 while they were returning home by some unknown persons and causing of death of Satyajit alias Satyajit Kumar Singh due to said assault, could not be shaken in the cross examination, rather more strengthen in the cross examination of P.W. No.4. The oral testimony of the P.W. No.4 has shown a clear picture for believing such incident to exist and considers its existence so probable that a prudent man ought, under the circumstances of this particular case, to act upon the supposition that it exists.

12. Now the question is whether the accused persons were involved in the said assaulting and murdering of the said P. Satyajit alias Satyajit Kumar Singh or not. The first person who gave some hints to the police about the link of the present accused persons was P.W. No. 16. Let us examine his testimonies.

P.W. No. 16 Nongmaithem Sidham Singh has deposed that about 11/12 years ago one day at about 2:30 pm. while he was remained at his home Shri Sahajan Singh along with one unknown person came to his house by a scooter and told him that he was assaulted by the deceased Satyajit alias Satyajit Kumar Singh who was doing a contract work of black topping between Khuyathong to Thangal Bazar, Gandhi Avenue Road and they also enquired the whereabouts of the Satyajit alias Satyajit Kumar Singh then he told them that Satyajit alias Satyajit Kumar Singh is the resident of Thangmeiband Polem Leikai. Then he along with Sahajan and his friend come out from his house for making an amicable settlement between Satyaji alias Satyajit Kumar Singh and Sahajan Singh at their work site but he could not bring an amicable settlement between them as he did not find the deceased Satyajit alias Satyajit Kumar Singh at his work site. Then the accused Sahajan Singh went along with his friend from there and he also left the said place for his home. On the next day in the morning he learnt that Polem Satyajit alias Satyajit Kumar Singh was assaulted by some unknown persons in the night and succumbed to his injuries at the RIMS, Lamphel and the dead body was lying in the RIMS Morgue. On the said next day he went to the house of the deceased Satyajit alias Satyajit Kumar Singh and at that time he found one police officer namely, Sarojkumar Sharma of Imphal P.S and he narrated to the said police officer Sarojkumar Sharma about the facts of coming of accused Pukrambam Sahajan (Joykumar Singh) on, the previous day seeking his help for settlement of dispute in between the said Satyajit alias Satyajit Kumar Singh and the said accused. Thereafter, the said police officer asked him to point out the house of the said accused. Then he along with the police officer went to Sagolband Meino Leirak and pointed the house of the said accused to the said police officer. When he and the said police officer entered into the ingkhol of the said accused they learnt that the said accused had not come back and that not available at his house. The said police officer and his companion police personnel looked around the said ingkhol of the accused and they found a jeep parking inside the garage. He also saw the said jeep parking inside a garage situated at the north eastern portion of the said ingkhol of the accused. He also saw blood stained marks on the side of the hood of the said jeep. The police officer also examined the said blood stained mark and then he seized the said jeep. At the time of the seizure of the said jeep some inmates of the house of the said accused including his father were present. Thereafter, he and the said police officer and his companion left the place with the seized vehicle (jeep).

13. *The prosecution story in order to link the present accused persons are that the deceased P. Satyajit alias Satyajit Kumar Singh was doing a contract work of black topping of the road from Khuyathong to Dharmasala, Thangal Bazar and while the work of black topping was going on, the deceased blocked the road one at Khoyathong and one at or near the Jalal Provision Store by using a rope in order to prevent the disturbance from the passersby and in order to do the work smoothly, and as a result of this, several problems were created by the passersby and on that very day the deceased slapped the accused No. 1, Joykumar Singh while he tried to enter to his shop through the blocked area. These facts are well supported by*

P.W. No.8, 16, 17 and 18. Thereafter, as per version of P.W. No. 16, the accused No.1, P. Joykumar Singh came to his house along with one of his friends and enquired about the whereabouts of deceased by telling him that the deceased assaulted him and then. P.W. 16 informed them that the deceased is a resident of Thangmeiband Polem Leikal P.W No. 16 is also the person to show the house of the accused No. 1, Joykumar Singh to the I.O. of the case and P.W. No. 16 clearly stated that on investigation by the police at the house of the accused, Joykumar Singh, where he was not available in his house on that day, found a JEEP in the Garage with blood stain in its hood. The said JEEP and the battery of the said JEEP were seized in presence of P.W. No.16 on production by the father of the accused, P.W. No.22 and other witnesses including photographers by preparing seizure memo [Ext. P-42]. P.W. No 4 who was the eye witness of the said incident has clearly stated that the assailants were evacuated in a JEEP and thus, the recovery of the said JEEP from the house of the accused, P. Joykumar Singh with blood stain in its hood is very much relevant with the involvement of the accused persons.

14. Further, P.W. No.36, the then Officer-in-Charge of the Imphal Police Station has deposed that on 24.6.89 at about 9.30 p.m. he received a reliable information over telephone from S. Lakhikanta Singh, advocate brother-in-law of accused P. Joykumar Singh stating that the accused persons, namely. P. Sahajahan Joykumar, K. Basanta, L. Nabachandra, P. Ramananda and Salam Bodo were ready to surrender to the Police and that he kept the said accused persons to the house of Salam Bodo Singh but the other two accused persons, namely, Moba Singh and Dhananjoy Singh did not want to surrender. Thereafter. I.O. of the case, Sajojkumar Sharma and the P.W. No.36 himself proceeded to the house of S. Bodo Singh and they found the said accused persons and accordingly, the accused persons were arrested.

15. Ld. counsel of the accused has contended regarding the surrender of the accused persons that the surrender of a citizen cannot be taken as admission of guilt because it is fact that the Police were looking for the persons basing on the incident of slapping the accused P. Joykumar on his face by the deceased on the previous day and immediately knowing about the visit of the Police the accused persons straight away went to the Police Station enquired about the reason for the Police to have suspicion on them being a law abiding citizen.

16. The suspicion for the involvement of the accused P. Joykumar Singh came to light only when P.W. No. 16 narrated the story of asking the whereabouts of the deceased by the said Joykumar Singh and then the I.O. of the case rushed to the house of the accused P. Joykumar Singh and in his house found a JEEP with blood stain in its hood but the investigating officer, at that relevant time, had no opportunity to know the other accused persons. However, all the accused persons were surrendered to the Police in connection with the present case and thus, it shows the relevance of the other accused persons to the crime.

17. P.W. No.36 has also stated that at the time of arrest of the said accused persons there was one bruise mark at the lower forehead of the right eyelid of the accused Ramananda Singh which was found

injured during the fighting with the deceased and as per his instruction the I.O. of the case had taken the said accused for treatment at the casualty department of RIMS. This fact is well supported by P.W. No. 33, Dr. Athokpam Rajendra Singh by stating that he examined one injured person namely, Pangoijam Ramananda Singh S/O P. Ibotombi Singh of Sagolband Salam Leikai as referred by the Police of Imphal P.S. when he was attached at casualty department of RIMS and he found the following injuries:

- 1. Lacerated wound- over the molar eminent right face. The size of the injury is 1/3" in length skin only.*
- 2. Lacerated wound V shape over the right lateral side of the nose just above the vestibule of the nose. Size is 1/3" X 1/4" in V shape.*
- 3. Abrasion over the bridge of the nose. The size of the wound is 1/4"X1/4" in area.*

P.W. No.33 has given his opinion that the nature of the wounds mentioned above are simple and the kind of weapon which inflicted the injury was blunt object. P.W. No.4 has deposed that the deceased fight with the assailants when they started to attack him. So, the injuries caused to the accused Ramananda Singh shows its relevancy for his involvement to the suld commission of crime.

18. Moreover, the accused No. 1. P. Joykumar Singh was examined and recorded his statement by the I.O. of the case under section 27 of the Indian Evidence Act during the course of investigation in presence of P. Ws.No. 9 and 13 and the accused, P. Joykumar Singh has admitted that he alongwith his friends assaulted the deceased with deadly weapons such as cane stick on handle of jeep and knife nearThangmeiband Pukhri AchoubaMapal and they immediately left the place of occurrence by a Jeep and that the weapons of crime used by them were kept concealed inside the clump of bamboo which was lying on the eastern side of his garage and he would be able to hand over the aforesaid weapons to the police. The said statement of accused, P. Joykumar Singh was recorded by the I.O. of the case in presence of P.Ws.No.9 and 13 and the same has been exhibited as Ext.P-13. On the basis of the statement of the deceased, P. Joykumar Singh, the Police personnel along with P.Ws. No. 9 and 13 proceeded to the house of the accused P. Joykumar Singh and on 24-3-1989 at about 3.10 p.m. (i) one iron handle of the Jeep. (ii) one cane stick and (iii) one knife were recovered at the instances of the accused P. Joykumar Singh under the north-western corner of the small bamboo groves about 3 feet from north western side of the garage, by preparing seizure memo by the I.O. of the case in presence of P.W. Nos. 9 and 13 and the said seizure memo is exhibited as Ext.P-14. At the time of producing the said crime weapons and seizure of the same were taken photographs by the Police photographer, P.W. No. 12 has well corroborated to the statements of seizure of JEEP and the weapons of crime at the instance of an accused by stating that he had taken photographs from different directions and the said photographs and its negatives were seized by the I.O. of the case from him by preparing seizure memo (Ext.P-21).

Exts. P-22, P-23, P-24, P-25 and 26 are the photographs of the garage and Jeep. Ext. P-32 is the photograph showing the place from where crime weapons were recovered and Ext.P.33 is the photograph showing the weapons of crime.

For better appreciation, I reproduced herewith the 'disclosure statements of accused P. Joykumar Singh.

"Confessional Statement of the accused Shri, Pukhrambam Joykumar Singh @Sahajahan Singh, 32 years, S/o P. Shyamnaagar Singh of Sagolband Meino Letrak, Imphal recorded in connection with FIR Case No. 384/6/89 IPS U/Ss 326/302/34 IPC recorded U/S 27 Evi. Act.

I was born and brought up at Sagolband Meino Leirak. Imphal. Yesterday, i.e. 23/6/89 at @ 9.30 p.m. I along with my friendsnamely P. Ramanda Singh of Sagolband Salam Leikal I. Nabachandra Singh of Sagolband Salam Leikal and Kh. BasantaSingh of Sagolband Meino Leirak were arrested by O/C IPS accompanied with S.I. H. Surajkumar Sharma of Imphal P.S.,I.O. of the case, FIR No. referred above. Also confessed you that in connection with the above mentioned case, the said Satyajit alias Satyajit Kumar Singh was murdered by me along with my friends so as to revenge the previous assault by him to me on 22/6/89 at about 11.30 a.m. at Khoyathong in front of Star auto works. On that day, the said Satyajit alias Satyajit Kumar Singh have assaulted me by slapping on my face on 22/6/89 at 11.30 in front of general public at Khoyathong in front of Star auto works. While I request him to allow me to enter on paddle upto my shop, when he was working as a contractor for repairing the road. Since that felt very much ashamed and plot to revenge to the alleged accused person. Thus I have contacted:

- (1) Khangjarakpam Basanta Singh, S/o Kh. Ahanjao Singh of Sagolband Meino Leirak, Imphal,
- (2) Pangeijam Ramananda Singh (34). S/o Ibotombi Singh of Salam Leikai.
- (3) Irom Nabachandra Singh (29) S/o Tombi Singh of Sagolband Salam Leikai,
- (4) One Kh. Rajen Singh of Naransena,
- (5) R.K. Moba Singh. S/o R.K. Budhisana of Uripok Ningthou jam Leikai, Imphal,
- (6) Salam Bodro Singh. S/o S. Achou Singh of Salam Leikui. Imphal,
- (7) Pukhrambam Dhananjay Singh, S/o (2) Ibochouba Singh of Uripok Huidrom Leikai.

and requested them to accompany with me and thus they were hired and brought in my jeep without regd. No. which was taken out from our garage. Then we have waited the said Satyajit alias Satyajit Kumar Singh of Thangmeiband Polem Leikai (contractor) running a contract work for metalling road (Kollas Thaba) of Khoyathong Road, Thangal Bazar, (who had assaulted me) from 8 p.m. of dt. 22/6/89 upto about of dt. 23/6/89 and when the said person and one of his friend was returning his home along with half lamp holding by his friend, we laid

an ambush at South Western corner of Khoyathong Pukhri Achouba Mapal and assaulted him by using sticks, jeep handle and a knife. The knife is held by me, the jeep handle is held by R.K. Moba Singh one Lichei (cane stick) was hold by one Ramanda Singh which is left at the spot). And another stick is held by Pukhrambam Dhananjay Singh of Uripok Haobam Dewan Leikai. During the assault, Ramananda Singh assaulted him first with his stick but the person escaped the blow and hold Ramananda and gave a hand blow on his right eye causing bleeding injury on lower portion. Then Bodro use his stick and hit him so hard and the Satyajit alias Satyajit Kumar release Ramananda and fell down on the floor. Then we all gathered and hit/beat him without weapons. Then I stab him on both his thigh 2/3 times. The said Satyajit alias Satyajit Kumar cried very loudly with agony. Then we all jump to our jeep and sped away from there towards west and then passing through Lalambung I drop R.K. Moba and his friend P. Dhananjay at the junction of Uripok Bachaspati Leirak. Then we four arrived at Meino Leirak at about 3 am of 23/6/89. Basanta, Naba and Bodro went to their respective houses. Rajen and myself remain at my residence. I wash my hands and the knife used in commission of the crime at my pond by using a piece of cloth from my jeep. Then in the early morning I along with Rajen went out from our house, sent Rajen upto Moirang bus parking. Before I went out from my residence. I wash the jeep which is used in the commission of such crime and all the incriminating weapon of the offence i.e., (1) the handle used by R.K. Moba, (2) Stick (cane stick) used by Bodroba Singh, (3) the knife used by me were found in the jeep. I wash them all and kept in the eastern side of the garage concealing near the bamboo plants there.

I can produce the same from where I kept concealed these incriminating articles, if I was allowed to go there."

The statements of the accused P. Dhananjay Singh were also recorded under section 27 of the Evidence Act. I reproduced herewith the disclosure statements of accused P. Dhananjay Singh:

"Confessional Statement of the accused Shri. Pukhrambam Dhananjay Singh@Bobi Singh (19) S/o (L) P. Ibotombi Singh of Uripok Haobam Dewan Leikai recorded U/S 27 Evi. Act.

My name is Pukhrambam Dhananjay Singh@Bobi Singh. I was born and brought up at Uripok Haobam Dewan Leikai, Imphal. On 22/6/89 at about 8/9 p.m. as I was being called by R.K. Moba Singh of Uripok Ningthoukhongjam Leikai for some work along with Pukhrambam Sajahajan@Joykumar Singh of Sagolband Meino Leirak along with other 5 persons in a jeep belongs to Sahajahan without any No. Thus, I have accompanied them and along with them I reached Khoyathong Pukhri Achouba Mapal and then they disclosed me that we are coming to beat one person and then Sahajahan point us the person who wore a Sport pant blue/black. I couldn't classified in the night who was working on the Khoyathong road along with other publics (Koilas Thaba Kangbuga) from the corner of Khoyathong Police (Traffic) Police point. Thus preparing ourselves by holding sticks etc., I pick up a wooden block (rounded club) and about 3^{1/2} ft. in length about

2/1^{1/2}inch dia, which was found lying near the BOROI plant on the South Western corner of the Khoyathong Pukhri Achouba Mapal and waited the person along with R.K Moba Singh who held one Iron Handle of the Jeep till the 2 am of dt. 23/6/89. Then the person who identified by Sahajan along with another person holding a half lamp came on the road situated on the Southern side of the Pukhri Achouba. Then as plan previously one of our colleague assaulted him and the other person who came along with the said person ran towards the southern gate, and the person whom we have assaulted hold one of our colleague. Then I assaulted him with my club which I hold. Then the others also hit him with their weapons. Then the person fell down flat on the ground. Then, I throw my club (wooden club) towards the roadside. I jumped up on the jeep which came towards us on the road which was driven by Sahajahan Singh. Then we fled away from the spot.

I could have point out the spot (where I throw the club on the said night after the commission of the crime) if I was allowed to go there at the spot where we have committed the crime."

19. *In order to find out whether the disclosure statements of accused P. Joykumar Singh and accused P. Dhananjay Singh are admissible or not under section 27 of the Evidence Act, we also need to discuss section 25 and 26 of the Evidence Act. Sections 25, 26 and 27 are, therefore, reproduced hereinbelow:*

"25. Confession to police officer not to be proved. No confession, made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him. No confession made by any person, whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

27. How much information received from accused may be proved. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

A bare reading of Section 25 makes it clear that this Section (Section 25) mandates that no confession, made to a police officer, shall be proved as against a person accused of an offence. Similarly, Section 26 provides that the confession, made by an accused person, while in the custody of a police officer, cannot be proved against him unless, of course, the confession is made in the immediate presence of a magistrate. Thus, while Section 25 completely bars confession of an accused person, made to a police officer, from being proved against the accused. Section 26 bars from being proved a confession made by

an accused person, to anyone whomsoever if the accused person was, at the time of making the confession, in the custody of the police, unless the confession has been made in the immediate presence of a magistrate. However, to the bar, so imposed by Sections 25 and 26, on the use of confession made by an accused person, Section 27 carves out an exception inasmuch as it provides that when, any fact is deposed to as discovered in consequence of information received from a person accused of any offence, while the accused person is in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Thus, Section 27 acts as proviso to Sections 25 and 26. A statement, which falls under Section 27 and is generally termed as 'disclosure statement' is allowed to be used on the basis of the view that when a fact is actually discovered in consequence of information given by an accused person, some guarantee is afforded that the disclosure statement was true. Thus, Section 27 permits limited use of the information, which an accused may have disclosed to the police, while he was in the custody of the police.

The Hon'ble Supreme Court in Amitsingh Bhikamsing Vs. State of Maharastra reported in AIR 2007 SC 676 has summarized the various requirements of section 27 of Evidence Act in para no.29 as follows:

"29. The various requirements of the section can be summed up as follows:

- (1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.*
- (2) The fact must have been discovered.*
- (3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.*
- (4) The persons giving the information must be accused of any offence.*
- (5) He must be in the custody of a police officer.*
- (6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.*
- (7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."*

Ld. counsel of the accused persons has contended about the recording of disclosure statements of the accused Joykumar Singh under section 27 of the Evidence Act that the said disclosure statements are very doubtful because the said two witnesses are from

Moirangkhom and Yaiskul where the place of occurrence lie at Khoyathong and residence of the accused Joykumar Singh is at Sagolband Meino Leirak and that the wife of the deceased is from Moirangkhom area who is also related with the wife of the deceased. It is also stated by the Ld. Counsel that the said seized articles were sent to the Director, Central Forensic Science Laboratory, Calcutta but the report has stated that it was not possible to opine whether the injuries were inflicted by the said seized articles. Ld.counsel also cited the case law reported in 2003 AIR SCW 2049 and (2003)5 SCC 499, reproduced above.

However, it is crystal clear from the oral evidences as well as documentary evidences that the weapons of crime mentioned in Ext.P-14 and Ext.P-15 were recovered from the instances of the accused P. Joykumar Singh and P. Dhananjoy Singh on the basis of their statements given under section 27 of the Evidence Act. Further there is catena of decisions of the Hon'ble Apex Court that statements of relative witnesses cannot be discarded at all. Further, the report of the experts clearly states that they were not in a position to give specific opinion since the sent seized articles were not sufficient for conducting test. Moreover, the opinion of expert is only a piece of evidence in arriving a conclusion which may take into account or reject it by the court. Therefore, upon relying to the observations made by the Hon'ble Apex Court and on persusal of the disclosure statements of accused persons namely, P. Joykumar Singh and P. Dhananjoy Singh reproduced above, the following portions of disclosure statements which also led to the recovery of that weapons of crime on the basis of the said disclosure statements in presence of independent witnesses, are admissible evidences.

For accused P. Joukumar Singh:

"Before I went out from my residence, I wash the Jeep which is used in the commission of such crime and all the incriminating weapon of the offence i.e., (1) the handle used by R.K. Moba. (2) Stick (cane stick) used by Bodroba Singh, (3) the knife used by me were found in the jeep. I wash them all and kept in the eastern side of the garage concealing near the bamboo plants there.

I can produce the same from where I kept concealed these incriminating articles, if I was allowed to go there."

For accused Dhananjoy Singh/now deceased):

"I could have point out the spot (where I throw the club on the said night after the commission of the crime) if I was allowed to go there at the spot where we have committed the crime."

The case laws cited by the Ld. counsel is not related with the present case.

20. Furthermore, a Test Identification parade was also conducted during the course of investigation and in that T.I. Parade the P.W. No.4, N. Megha Singh who was the eye witness to the said occurrence identified the accused. R.K. Sanatomba Singh who is no more now. The

said T.I. parade is vehemently challenged by the Ld. counsel of the accused. Ld. counsel of the accused persons has contended that the accused have stated that he was shown to the witness on 26-06-1999 at around 11.30 a.m. while he was at Imphal Police Station, the I.O. of the case was very much present inside the Jail premises all throughout the period of the parade, the Magistrate was not identified to the witness, the identified accused was different from the rest of the persons assembled in the parade, the particulars of the persons mixed up with the accused persons are not disclosed to the Magistrate who also failed to confirm whether they are of actually inmates of the Jail, the doors and windows of the room where the parade was held was found open earlier, the parade was held after 19 (nineteen) days and the delay of which was not explained and the more importantly the witness did not state about any specific act the identified accused in office act committed by the identified accused in the incident as well as reason for his remembering the particular accused while he failed to do so in respect of other accused person. Ld. counsel of the accused persons has cited the case law reported in 2011(3) GLT 755 which is reproduced above.

21. The Executive Magistrate who conducted T.I. Parade was examined as P.W. No.15 and he deposed that during his posting at Imphal West as Executive Magistrate he conducted T.I. Parade of accused persons in connection with F.I.R. Case No. 364/6/89 I.P.S. u/s 302/326/34 I.P.C. on 11-07-1989 vide Memo of SDO/SDM/I-W-I dated 10-07-1989. Accordingly he informed the concerned P.S. to direct witness, Shri Nongmaithem Megha Singh to present at the Central jail, Imphal on 11-07-1989. P.W. No.15 has further goes to say that he held T.I. Parade of the accused (1) Pukhrambam Joykumar Singh@Shahajahan Singh s/o Shyamnagar Singh of Sagolband Meino Leirak, Imphal, (2) Khangjarakpam Basanta Singh@Lulubi Singh s/o Ahanjan Singh of do. (3) Pangoljam Ramananda Singh s/o Ibotombi Singh of Sagolband Salam Leikai, Imphal, (4) Salam Bodro Singh & Somorendro Singh s/o Achou Singh of do. (5) R.K. Moba Singh Sanatomba Singh s/o Budhisana Singh of Uripok Ningthoukhongjam Leikai, Imphal (6) Pukhrambam Dhananjoy Singh@Bobi Singh s/o late Ibotombi Singh of Uripok Haobam Dewan Leikai and Khwairakpam Rajen Singh s/o Budhi Singh of Naranseina, P.S. Moirang. The above accused persons were in the Jail at the relevant time, and he also informed the Jail authority to produce the above mentioned under trial accused persons from their rooms/cell inside the Central jail premises. Shri Nongmaithem Megha Singh was also present on 11-07-1989 at Central jail compound. Imphal. The parade was conducted in three groups of U.Ts. At the beginning 4 (four) accused persons were mixed up with the first two groups with 20 U.Ts. and the remaining 3 accused persons were mixed among third group of 30 U.Ts. The accused Pukhrambam Joykumar Singh @ Shahajahan Singh and Khangirakpam Basanta Singh Lulubi Singh were mixed up with 20 U.T.Ps. The accused Pangoljam Ramananda Singh and Salam Budro Singh @ Somerendro Singh were mixed up with 20 U.T.Ps in the 2nd parade. The 1st and 2nd parades consist of 22 Persons including two accused persons each. They (U.T.Ps.) were almost the same size, physics, age and not distinct body marks. Before holding the T.I. parade the dress of the accused

persons were changed in a separate room inside the premises of the Central Jail, Imphal. The dress of the U.T.Ps were also changed in another room at the premises of the central Jail Imphal. He did not allow to see the said accused persons witness as well as the UT.Ps before conducting the T.I. Parade. Amongst the 7 accused persons, accused Postsangbam Joykumar @ Sahajahan Singh has got two marks, one near the right side of the forehead and another below the right side of the in mouth, Pangiojam Ramananda Singh has got 4 visible marks, one below the right eye, another near the right nose and other 2 marks on the forehead. R.K. Moba Sanatomba Singh has got 2 marks one near right elbow and another on the forehead. So the above U.T.Ps of their group were covered by a piece of small paper on the face of the mark along with accused persons having visible marks at the relevant time of the T.I. Parade. He prepared the list of UT.Ps in three separate sheets with the assistance of the Jail Staff. At the TI Parade the accused Moba Singh@Sanatomba Singh was identified by the witness, namely Nongmaithem Megha Singh. The remaining 6 accused persons were not identified by the witness, Nongmatthem Megha Singh.

P.W. No.15 was well cross examined and in his cross examination, he stated that he had given an opportunity to the identified accused for explaining about the reason of his identification by the witness and the accused replied that he was shown to the witness at the Imphal Police station on 26-6-89. P.W. No. 4 is the witness who identified accused R.K. Sanatomba Singh. Regarding the T.I. Parade, P.W. No. 4 has deposed that after about half a month from the date of the occurrence he was asked by the police to attend at the Jail Compound Imphal at about 9:30 A.M. for identification of the accused persons. Accordingly, he went to the Imphal Jail compound and he identified one person among the culprits as one who took part in assaulting the said Satyajit alias Satyajit Kumar Singh on the day of occurrence. The person who was identified is called R.K. Sanayaima and the said person was identified by him in the third parade of test identification Held in the Imphal Jail. In the cross examination P.W. No.4 denied the suggestions that he was taken to the Imphal P.S. on 26-6-89 by a Police Officer and one person was shown to him on that day and that the said Police Officer asked him to identify that person during the T.I. Parade. The assertion of the accused Sanatomba Singh of his being shown to the witness on 26-6-89 to the Imphal P.S. while he was in the police custody is hard to believe there are 6 other co-accused persons with him and why only him be shown to the P. W. No.4. Regarding the presence of the I.O. of the case on the day of conducting T.I. Parade. PW. No.4 has stated that he went to the Central Jail along with the I.O. of the case but the I.O. remained in open space of the Jail campus and thus, it shows that the I.O. was not present at the time of conducting the T.I. Parade. Furthermore, the presence of the Jailor who may be from Thangmeiband area or otherwise known to the witness is very much required for assisting the T.I. parade as part of his duty being a Jailor. Moreover, it is evident from the records that the T.I. Parade was conducted on 11-7-1989 that is after 17 days from the date of occurrence i.e. 23-6-1989 and the prosecution did not explain the delay. The evidence of T.I Parade is,

however, only another supporting piece of evidence. The observation made by the Hon'ble Gauhati High Court relied by the Ld. counsel of the accused persons is that conviction based on solitary evidence of T.I. Parade is not safe.

In the cross examination of P.W.No.4, the Ld.defence counsel has asked a particular plea as "I also deny the suggestion that the person whom identified in the TI parade was another person who happened to be in jail at the relevant time in another case". The suggestion made by the Ld. defence counsel to the P.W.No.4 clearly shows that the onus to prove that the accused identified at the TI parade was in the fall in another case. The accused persons have not led any oral defence witnesses which onus to prove lies on them. The non-production of defence witness strengthened the case of the prosecution.

22. During the course of investigation some clothes were also recovered from the house of the accused, Bodro Singh which was worn by him during the commission of crime, by preparing seizure memo and P.W. No.24 is one of the seizure witnesses. P.W. No.24 has deposed that he is the Editor of local News Paper "Kangleipaki Meira and he was a seizure witness at the time of seizing some clothes produced by accused Bodo Singh and his brother Debajit Singh by preparing seizure memo, Exts. P-45 and P-46. Ext. P-45 is the seizure memo for seizure of clothes produced by accused Bodo Singh and Ext. - 46 is the seizure memo prepared for seizure of clothes of accused P. Joykumar Singh produced by Salam Devendrajit Singh as the same were left by accused P. Joykumar Singh. P.W. No.25 was the Assistant Editor of local daily News Paper 'Kangleipaki Meira' and he was another witness to Ext. P 45. The witness admitted the seizure and his signature appearing at Ext. P-45 but, he was declared as hostile witness since the witness states that he cannot say whether Bodo Singh or Joykumar Singh were present at the time of seizure. P.W. No.26 is a seizure witness at the time of seizing of some clothes on production by the accused R.K. Moba @ Sanatomba Singh by the I.O. of the case in his presence and he put his signature to the seizure memo prepared by the I.O.,Ext.P-47.

Thus, because of that seizure of clothes of the accused Bodro Singh worn by him at the time of committing crime on production by himself is relevant to the involvement of the accused to the commission of crime. Further, seizure of the clothes won by accused Joykumar at the time of commission on production by the brother of accused Bodro Singh as left by accused Joykumar Singh is also very much relevant to the involvement of the accused P. Joykumar Singh to the commission of crime.

23. Now, let us discuss the first point raised by the Ld. counsel of the accused persons that the FIR was lodged after 14 hours and the prosecution did not explain such delay and renders the entire prosecution story more unsafe to rely upon. In this regard Ld. counsel has also cited the case laws reported in 2012 (2) GLT(SC) 5. Regarding

the object of lodging of FIR, the Hon'ble Supreme in Jai Prakash Singh Vs. State of Bihar [2012 (3) Scale 484] observed as follows in para 12:

"12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question."

Thus, if there is a delay in lodging the FIR, it loses the spontaneity; danger creeps in of the introduction of coloured advantage version, exaggerated account or concocted story as a result of large number of consultations/deliberations. However, in the present case the father of the deceased, P.W. No. 1 has stated in his report that his son was assaulted by 8 to 12 unknown persons on the night of 23-6-1989 at about 2 am. to 2.30 am and as a result of the said assault his son was declared dead at the Hospital. He did not name any person for assaulting to his son in his report and thus, the question of colouring the report/version for making involvement of any of the accused does not arise at all and thus, the question of doubt to the prosecution story for involving the accused persons will also not arise at all. In the case law cited by the Id. counsel, the Hon'ble Supreme Court has observed only to the extent that unexplained delay in lodging of FIR and circumstances under which ejahar was lodged cast doubt about prosecution story.

24. As per the post mortem report of the deceased it is evident that there were 20 external injuries to the body of the deceased and the Doctor who conducted the post mortem has opined that the cause of death in his opinion is due to head injuries fractures of skull bones and laceration of the brain. Injury No. (viii) and (ix) were produced by sharp weapon; injury No. (x) and (xi) were produced by pointed weapon and the rest of the injuries were produced by blunt weapon. The injuries are homicidal in nature and ante mortem in nature. Therefore, the seized iron handle of JEEP, cane stick, knife and wooden sticks/clubs are very much relevant with the said injuries which caused to the death of P. Satyajit alias Satyajit Kumar Singh.

[10] But, the Ld. Trial Court without giving any specific observation/decision on solitary eyewitness (direct evidence) jumped to the point of circumstantial evidence from Para No. 25

onwards of the judgment and order, the Ld. Trial Court started to take focus towards circumstantial evidence on the ground that the learned counsel for the accused person contended that the prosecution based their case on circumstantial evidence. The portion of the Ld. Trial Court's observation and narration are reproduced herein below:

"Thus, if there is a delay in lodging the FIR, it loses the advantage of spontaneity; danger creeps in of the introduction of coloured exaggerated account or concocted story as a result of large number of deliberations. However, in consultations the present case the father of the deceased, P.W. No. 1 has stated in his report that his son was assaulted by 12 unknown persons on the night of 23-6-1989 at about 2 am to 2.30 am unit as a result of the said assault his son was declared dead at the Hospital. He did not name any person for assaulting to his son in his report and thus The question of colouring the report/version for making involvement of any of the accused does not arise at all and thus, the question of doubt to the prosecution story for involving the accused persons will also not arise at all in the case law cited by the Ld. counsel, the Hon'ble Supreme Court has deserved only to the extent that unexplained delay in lodging of FIR and circumstances under which ejahar was lodged cast doubt about prosecution story.

24. *As per the post mortem report of the deceased it is evident that there were 20 external injuries to the body of the deceased and the Doctor who conducted the post mortem has opined that the cause of death in his opinion is due to head injuries- fractures of skull bones and laceration of the brain. Injury No. (viii) and (ix) were produced by sharp weapon, injury No. (ix) and (x) were produced by pointed weapon and the rest of the injuries were produced by blunt weapon. The injuries are homicidal in nature and ante mortem in nature. Therefore, the seized iron handle of JEEP, cane stick, knife and wooden sticks/clubs are very much relevant with the said injuries which caused to the death of P. Satyajit alias Satyajit Kumar Singh.*

25. *Learned of the accused persons, Shri Ch. Biomol Singh Advocate has contended that the prosecution based their case on circumstantial evidences and thus, the chain of circumstance must be complete but the prosecution has failed to link the chain of circumstance for involving the*

accused persons in the present case. Ld. counsel has relied to The case laws reported in (i) 2008(3) GLT 58, (ii) 2007 (4) GLT 905 and (iii) 2007 (3) GLT 384(supra).

26. It is settled principle of law that in the circumstantial evidence the chain of circumstance must be complete. In the light of the above appreciation of evidences, I am of the opinion that the prosecution has able to establish the following facts:

- (i) The deceased. P. Satyajit alias Satyajit Kumar Singh was doing a contract work of black topping of road on the Thangal Bazar from Khuyathong crossing to crossing point of Jallan Provision Store and while doing the said work the deceased blocked all kinds of vehicular traffics for executing his work properly and while doing so there were instances of quarrel between the deceased and users of the road.*
- (ii) There was a quarrel between the deceased and accused, P. Joykumar Singh on 22-06-1989 while the accused Joykumar was prevented by the deceased to enter to his Tyre Retreading shop and in that quarrel the deceased slapped to the accused P. Joykumar Singh.*
- (iii) On 22-06-1989 the accused. P. Joykumar Singh along with one of his friends came to the house of P.W. No. 16. N. Sidham Singh and enquired about the whereabouts of the deceased by narrating the story that he was slapped by the deceased and P.W. No. 16 informed to the accused Joykumar Singh that the deceased belonged to Thangmeiband Polem Leikai.*
- (iv) On 23-06-1989 at about 2.00 to 2.30 a.m. the deceased returned to his home from his work shed along with P.W No.4 who hold a half lamp and on their way some unknown persons attacked both of them by holding deadly weapons and left the place of occurrence in a JEEP and P. Satyajit alias Satyajit Kumar Singh succumbed to his injuries.*
- (v) On 23-06-1989, P.W. No. 16. N. Sidham Singh narrated the story of making enquiry by accused no. 1, Joykumar Singh whereabouts of the deceased. P. Satyajit alias Saryajit Kumar Singh, to the I.O. of the case and immediately the I.O. of the case along with P.W. No. 16 proceeded to*

the house of accused No. 1 at Sagolband Salam Leikai.

- (vi) The accused, Joykumar was not found in his house and on enquiry a Jeep with blood stain in its hood was found and the same was seized.*
- (vii) The accused persons were arrested by the Police on the night of 24-06-1989 on surrender.*
- (viii) During the course of investigation the statements of the accused persons, namely, (i) P. Joykumar Singh and (ii) P. Dhananjay Singh were recorded in presence of witnesses in which they disclosed about commission of the crime along with other accused persons and the weapons of crime used by them and for production of the same from the hiding place.*
- (ix) The weapons of crime were recovered from the hiding places at the instances of the accused Joykumar Singh and Dhananjay Singh.*
- (x) The clothes worn by the accused persons, namely S. Bodo Singh and P. Joykumar Singh at the time of commission of crime were seized in presence of witnesses from the house of accused Bodo Singh on production by the said accused Bodo Singh and his brother, Debendrajit Singh.*
- (xi) In the T.I. Parade the P.W. No.4 who was the eye witness to the scene of assaulting himself and the deceased identified one of the accused persons, namely, R.K Sanatomba Singh who is no more now.*

27. On the basis of the above discussions and arrived at decisions am not agreeable with the defence plea that the accused persons are innocent and not involved in the commission of crime and also not agreeable that the prosecution has totally failed to prove the present case of murder by the accused persons in prosecution of their common object which is attracted under section 149 IPC. The citations submitted by the Lat. Counsel of the accused person cannot help the defence plea and the facts contained therein are also distinguishable.

I am satisfied that the Prosecution has able to prove the prosecution case.

28. Thus, I am of the opinion that the prosecution has established the complete chain of circumstances for involvement of the accused persons in assaulting the deceased P. Satyajit alias Satyajit Kumar Singh by deadly weapons on 23-06-1989 at about 2.30 am. in prosecution of their common object in order to revenge for slapping the accused no. 1, P. Joykumar Singh by the deceased on 22.6.1989, thereby resulting the death of the said Satyajit alias Satyajit Kumar Singh and there is no missing link to the chain of circumstantial evidences.

It is a fact that the statements recorded under section 313 Cr.P.C. is not admissible under the law but it can be seen the nature of the accused persons. The accused Pukhrambam Joykumar Singh has admitted that he and his father were running a tyre retreat shop at Khuyathong Road Thangal Bazar about 21/22 years ago from today. The accused was examined on 9/2/2012 by the court under section 313 Cr.P.C. He also admitted that in front of his retreat shop one Nongmaithem Sidham Singh of Nagamapal Phougeisangbam, Imphal (witness No. 10) was running a firewood shop/stall along with his mother. But the accused Joykumar Singh has denied that he had well acquainted with the said Sidham Singh. The accused has stated that he does not know the said Sidham Singh. The accused has admitted that on or about 23.6.1989 a work of black topping between Khuyathong and Thangal Bazar was done.

On careful perusal of the statement recorded under section 313 Cr.P.C. there is reason to believe that he has not stated true facts regarding the acquaintance with P.W.No. 10 N. Sidham Singh but his statement strengthened about the work of black topping from Khuyathong to Thangal Bazar where he and his father were then running a tyre retreat shop in front of a firewood stall run by P.W. No. 10 N. Sidham Singh and his mother.

In the light of the foregoing observations, I am of the view that the prosecution has proved beyond reasonable doubt that on 23-06-1989 about 2 am to 2.30 am. the accused persons namely (i) Pukhrambam Joykumar Singh, (ii) Khangjarakpam Basanta Singh, (iii) Pangajam Ramananda Singh, (iv) Salam Bodro Singh/now deceased (v) R.K. Saratomba Singh now deceased) and (vi) Pukhrambam Dhananjoy Singh (now deceased) an unlawful assembly in prosecution of their common object for revenging of slapping the accused. P. Joykumar Singh by the deceased. P. Satyajit alias Satyajit Kumar Singh on 22-06-1989 assaulted the said P. Satyajit alias Satyajit Kumar Singh near the Thangmeiband Pukhri Achouba by using deadly weapons such as, iron handle of Jeep,

wooden sticks, wooden clubs and knife, thereby murdered the said Satyajit alias Satyajit Kumar Singh.

Situated thus, the present surviving accused persons, namely, (i) Pukhrambam Joykumar Singh of Sagolband Meino Leirak (ii) Khangjarakpam Basanta Singh of Sagolband Meino Leirak and (iii) Pongaijam Ramananda Singh of Sagolband Salam Leikai are hereby nuncted under section 302 of the Indian Penal Code read with section 149 of the same Code. The accused P. Joykumar is absent but his Counsel filed an application praying for dispense on the ground of illness by enclosing a phopto copy of the OPD registration card of RIMS hospital. In the absence of the said P. Joykumar Singh I have announced this order. The prayer for dispense cannot be treated as special circumstances for his known appearance. Last occasion also absent on the ground of illness and hence the prayer for dispensing with the personal appearance of the accused P. Joykumar Singh is hereby turned down. Issue non-bailable warrant against the accused P. Joykumar Singh. His personal bonds and surety bond are also hereby cancelled. The prosecution is to take step immediately through the S.P. Imphal West.

The two convicts are taken into the custody of the court and hence they are to hand over to the Superintendent, Manipur Central Jail, Sajiwa to serve sentence. At the same time, their personal bonds and surety bonds are also hereby cancelled from today. A police team of Imphal Police Station is requisitioned and handed over them to escort upto the Manipur Central Jail, Sajiwa. The Superintendent of Manipur Central Jail, Sajiwa is directed to produce the three convicts on 18.1.2018 at 11.00 a.m. for Sentence hearing. A copy of this order be sent to the S.P. Imphal West along with warrant of arrest of the accused P. Joykumar Singh to execute the same and produce on 18.01-2018 or before without fail.

Furnish a copy of this order to the two convicts and also to the Superintendent of Manipur Central Jail, Sajiwa for information and compliance of the order.

Announced in the Open court.

Signed and sealed of this Court on this 12th day of January 2018."

It has emerged that the Ld. Trial Court on appraisal of evidence came to the finding that –

"The prosecution has proved beyond reasonable doubt that on 23.06.1989 at about 2 a.m. to 2.30 a.m. the accused persons namely, (i) Pukhrambam Joykumar Singh, (ii) Khangjarakpam Basanta Singh, (iii) Pangoijam Ramananda Singh (iv) Salam Bodro Singh (now deceased) (v) R.K. Sanatomba Singh (now deceased) and (vi) Pukhrambam Dhananjoy Singh (now deceased) an unlawful assembly in prosecution of their common object for revenging of slapping the accused, P. Joykumar Singh by the deceased P. Satyajit alias Satyajit Kumar Singh on 22.06.1989 assaulted the said P. Satyajit alias Satyajit Kumar Singh near the Thangmeiband Pukhri Achouba by using deadly weapons such as, iron handle of jeep, wooden sticks, wooden clubs and knife, thereby murdered the said Satyajit alias Satyajit Kumar Singh."

Accordingly, the Ld. Trial Court convicted the surviving three accused persons i.e. (i) Pukhram Joykumar Singh, (ii) Khangjarakpam Basanta Singh and (iii) Pangoijam Ramananda Singh under Section 302 of the Indian Penal Code read with Section 149 of the same Code.

[11] The learned Counsel for the State respondent submits that the prosecution relied its case on both solitary eyewitness (direct evidence) as well as circumstantial evidence. The learned counsel for the appellant submits that he relied on the submissions made in the Trial Court as well as the grounds taken hereunder in the present jail appeal.

Both the learned counsel for the parties submit short written arguments in support of their cases and same are reproduced herein below:

Written argument (Defence Cas)

- "1. 23/6/1989 2:30 am - Date of occurrence
2. 23/6/1989-4.30 pm - FIR lodged by PW. 1
The maker himself says that he lodged the FIR at 4.30 pm.
3. 24/6/1989 - Accused surrendered (allegation)
Nothing on record goes to show that the accused surrendered on 24/6/1989.
PW 36 categorically stated that at about 9.30 pm on 24/6/1989 S. Lakhikanta gave the phone call. Thereafter accused surrendered.
PW 36 stated that, Joykumar, Ramananda, Basanta and Nabachandra were arrested from Uripok on surrender on 24/6/1989.
Page No.
If the surrender theory is to be believed then there cannot be discovery at the instance of the accused at 3.15 pm on 24/6/1989 u/s 27 IE Act.
Seizure memo page 331 = page 331
And if the seizure is to be believed then there is no surrender.
The I.O. (O/C) is not very sure when actually the accused were arrested. As such the I.O. (O/C) in fact has given wrong version in order to falsely implicate the appellants herein.
4. 29/6/1989 - Discovery made at the instance of Dhananjoy - Dhananjoy expired during TRIAL.

5. 14/06/1999 - Charge were framed under one head clubbing both the sections together 302/149.

The place of alleged assembly not mentioned and inflicting/ causing bodily injury by deadly weapons not mentioned in the charge. The place of occurrence is also not mentioned.

Charge was framed for killing Th. Seityajit not P. Seityajit @ Satyajit
(Charge is defective and suffers from inherent defects)
6. Confession of the main accused -
Hit by section 25 and 26 of IE Act

Ext. P-13 page 328-330

PW 33 - A Bebe is an interested witness not even a chance witness.
Confessional statement being given in the police custody is not admissible under section 25 of the IE Act.
7. Injury of Megha -

He himself said that there was no notable injury it needs to be established that the injury of Megha was caused by the member of unlawful assembly where the appellants were member.
8. *The evidence of PW 4 does not inspire confidence for the reason that in many instance he changes his version.*
9. **TEST IDENTIFICATION PERIOD:**
Only one person namely, R.K. Sanatomba identified but PW 4 failed to identify him on 29/7/2000 in the Court (on 29/7/2000 R.K. Sanatomba was present before the court)

R.K. Sanatomba expired during the Trial.
10. *Assuming that weapons discovered is admissible under section 27 of IE Act - the weapons so seized should be connected with the crime.*
i. The Serological report is in favour of the accused.

- ii. Where the materials were seized there was no blood stained on the weapons.
 - iii. Weapons were not sealed and packed at the time of seizure.
11. The PW.... has categorically stated that the weapons were handed over to the police by their family members in his presence. (the PW... was not declared hostile on his re-examination he again affirm his statement leading questions during re-examination by the prosecution not permitted and the same is inadmissible)
 12. PW 17 - L. Jadumani - the prosecution is relying on the statement of Judumani as regard to the incident on 22/6/1989 coming across some three young persons in angry mood who were assaulted by Seityajit and one of them was assaulted by Seityajit but the three persons were not the persons present in the Court. Jadumani did not hear any alarm even though he was awake. He did not see PW4 in the spot and did not accompany the deceased in the hospital.
 13. PW 18 - On cross the witness has stated that he heard it from somebody that Sahajan was assaulted by Seityajit. It is just hearsay. (As such no reliance can be given to both the witnesses so far the assault of Sahajahan or Seityajit is concerned).

The case of the prosecution—

On 23/6/1989 at around 2.30 am when PW 4 and deceased Seityajit while returning home they were assaulted by a group of 8/9 people using lethal weapons like heavy iron rods, sharp daggers clubs etc. causing serious multiple injuries after the assault they fled in a jeep which did not have any number marking both in front and behind (PW 4 however, stated he did not see the registration number as it was dark however, he again stated that there was light an electric bulb)

On 23/6/1989 the jeep was seized at 11.50 am there was blood stain in the hood - **jeep did not have registration no.** The accused surrendered on 24/06/1989 at around 9.30 pm. There was an injury mark a bruise on the face Ramananda. He was medically examined. On 24/6/1989 at 3.15 pm weapons were recovered at the instance of Joykumar u/s 27 of the IE Act and hence the case is established.

The prosecution is suspecting the accused as he was slapped by deceased on 22/6/1989 and further trying to prove the case only on the ground that the accused surrendered before the police. And as Joykumar was slapped he might have committed the crime. However, there is no clinching evidence.

The prosecution is also trying to prove that as the accused came for amicable settlement on 22/6/1989 with Sidham PW 16 the accused might have assaulted the deceased. And there is one eye

witness in the case namely, PW 4 who saw the occurrence and he himself was assaulted.

The prosecution is also suspecting the accused because a jeep was seized and there was small blood stains in the hood of jeep.

On these grounds the prosecution claimed that the case is established beyond all reasonable doubts.

A criminal case cannot be founded on mere surmises and conjectures assuming that the accused Joykumar was slapped by Seityajit on 22/6/1989 which is still denied by the appellant. However, taking into account of the deposition of PW 16 Sidham the appellant came for amicable settlement as such the ingredients of 'Mens Rea' is missing and as such no motive is established in the said case.

On the other hand the deceased is very quarrelsome and as such there are chances that somebody might have assaulted him.

As per the version of PW 4 some 8/9 persons attacked/assaulted Seityajit in the dark night even he was assaulted PW 4 is the only eye witness in the incident - this sole witness cannot be relied upon for the reason following reasons:

He withheld the information till 3 pm. Only thereafter FIR was filed at 4.30 pm on 23/6/1989 which is substantiated by PW 1 the maker of FIR as well as by SI Helio Mao PW 34 who had admitted that when the FIR was registered it was written as 4.30 pm and subsequently it was over written as 4.30 am.

If the FIR is to be treated having filed at 4.30 am then the FIR is ante dated because the same has been filed after seizure of the jeep and inquest. In that case no reliance can be put to the FIR having been registered and ante dated the same can be treated as false and fabricated.

As the I.O. Helio Mao has specifically mentioned that maker of the FIR was examined by him and he was accompanied by another person and on the other hand he had stated that subsequently the time 4.30 pm is subsequently changed to 4.30 am.

However, the maker of FIR PW 1 had categorically stated that it was filed only after he was informed by N. Megha PW- 4 at 3 pm on 23/6/1989.

And if the FIR is filed at 4.30 pm the delay is deliberate and the same is after thought and the same cannot be the basis of investigation.

A jeep was seized from the campus of Sri Joykumar. The jeep belongs to Akasini - it is alleged that there were 3 small blood stain in the jeep - the blood stain were sent for serological test-blood was found to be disintegrated. The investigation also made **no attempt to**

connect the jeep with the crime. It is also not proved that the said jeep was involved in the commission of said crime.

After seizure of the jeep FIR was filed at 4.30 pm mentioning that there was no registration number in the jeep: (However, PW 4 stated he could not see the registration number as it was dark). It only goes to show that FIR was filed after seizure of the jeep with fabricated story.

PW 36 had stated that u/s 27 of IE Act, the alleged crime weapons were recovered from the residence of appellant. However, the prosecution is not very clear when actually the accused were arrested. When the crime weapons were seized u/s 27 IE Act on 24/6/1989 at 3.15 the accused were not actually arrested. The I.O. OC (IPS) have categorically stated that they surrendered on 24/6/1989 after a phone call from S. Lakhikanta at 9.30 pm. In the event if seizure u/s 27 IE Act is to be believed then there is no surrender and if there were surrender the seizure u/s 27 IE Act is wrong and the same has to be discarded and not admissible. The prosecution story is with lots of major discrepancies and the same cannot be relied upon.

So far the injury of Ramanada (the bruise mark of Ramanada) is concerned the prosecution first need to establish the unlawful assembly of the appellants in the place of occurrence. The unlawful assembly is not established. No prosecution witnesses have led any evidence so far the unlawful assembly is concerned. The Unlawful assembly having not been proved the injury even if proved cannot be connected with the crime. The participation of all the appellants needs to be proved by cogent and clear evidence.

All the materials seized were sent for FSL but cannot be connected with the crime.

The circumstances placed by the prosecution is not established and proved.

1. Motive is not established.
2. Unlawful assembly not established.
3. Seized jeep not connected with the incident.
4. Seized weapons not connected with the crime.
5. TIP not substantive piece of evidence as the PW 4 failed to identify in the court.
6. Surrender (surrender does not amount to admission of guilt) even cannot be relied as the same is said to be done by the I.O. on 24/6/1989 after the arrest of the accused.
7. Seizure u/s 27 also cannot be relied if they have not been arrested on 24/6/1989 till 9.30 pm as the seizure is shown at 3.15 pm before the surrender.

Moreover, as per the version of PW 22 has stated that the items alleged to have been seized u/s 27 of the evidence Act were produced by his wife and daughter and alleged iron handle of the jeep

was collected from his workshop. As such, the seized materials u/s 27 is all not admissible and as such the prosecution version is not reliable.

So far the FSL report is concerned the result does not support the prosecution case. The weapons and other materials seized cannot be connected with the crime. And as such the prosecution has failed to establish the case beyond all reasonable doubts.

No incriminating questions and circumstances were put to the accused to explain the incriminating events the questions put under s. 313 does not even suggest that accused committed the crime. No PW/evidence collected/ placed had even remotely connected the appellants in the instant crime. As the chains are broken, the prosecution has miserably failed. So the accused are liable to be acquitted.

The question was not put to Ramananda giving him an opportunity to explain if the injury inflicted or caused in the particular crime.

No evidence witness had categorically proved that the said injury is caused in the commission of the crime.

No evidence had categorically proved that or led to prove that there was an unlawful assembly wherein the appellants were the members of the unlawful assembly.

Having not proved the unlawful assembly with the membership of the appellants the appellants cannot be linked with the crime. As such the prosecution has failed to establish the case.

Written argument on behalf of the Appellants:

1. *That, the case of the prosecution is that on 23-06-1989 at around 2:30 a.m. the incident took place. The prosecution examined 36 witness as prosecution witnesses and two witness deposed as court witness.*
2. *That, by impugned Judgment and order dated 12-01-2018, all the appellants have been convicted and punished to undergo sentence for life.*
3. *PW No. 4 namely N. Megha Singh is the one who accompanied the deceased on the ill-fated night. Apart from the PW No. 4 there were no other eye witness who witness the alleged incident. (Page No.103-114)*
4. *PW. No. 4 have not reported the incident to anyone except the father of the deceased who is PW No. 1. And PW No. 1 is the informant (Page No. 99-100)*

5. *The FIR was lodged by the PW No. 1 on being informed by PW No. 4 at around 3:00 p.m. on 23-06-1989 and the said FIR was registered at 4:30 p.m. on 23-06- 1989. (Page No. 99-100)*
6. *In the FIR the time of registration is 4:30 p.m. However, the same has been altered by over-writing as 4:30 a.m. PW No. 35 who was the 1st IO had categorically stated about the alteration in his cross examination. (Page No: 190.)*
7. *TIP was done on 11-07-1989 and on the 3rd round of the TIP. PW No. 4 identified one person but during his deposition he said that the said person is not present in the court room.*

The real and substantive evidence of the identity of the accused comes when witnesses give statement in the court, identifying the accused. But in the instant case identification has failed.

8. *That, it has come on evidence that PW No. 4 spent considerable amount of time with the police after he witnessed the commission of crime, however, he narrated the commission of crime only to PW No. 1 at around 3 PM on 23/06/89. Such information was not given to anyone including the police while he was in the hospital accompanying the deceased.*
9. *It is also in the evidence that PW No. 4, that he met two police officers at the Hospital, however, he didn't inform about the incident nor was asked by the police officers even though he was wearing blood stained shirts and pants. His blood stain shirt and pants were never seized by the police.*
10. *While PW No. 4 was in the Hospital he was picked up by the police personnel and took him to his house where the police seized the half lantern from his production but not the blood stain cloths he was wearing nor any question was asked in this regard by the police.*
11. *PW. 4's failure to make a report to the family members and to the police even though he was with the company of the police during the inquest, during the production of the half lantern, and during the examination of his injury allegedly caused when he tried to intervened during the commission of the crime tend to show that PW. 4 is not a reliable witness.*
12. *That, PW No. 17 Y. Jadumani Singh who had dinner together along with PW No. 4 and the deceased on the night at khola has stated that after having meal at khola he came back home and while he was about to take bath 2(two) labourer from the contract work informed him, that Seityajit have been assaulted by some unknown person.*
13. *PW 17 stays on the other side of the pond (northern side)and he did not hear any alarm, he also stated he did not see PW No. 4*

amongst the crowd where Seityajit was lying not even a single person from the crowd have been examined by the prosecution. He also stated that 3(three) young person were assaulted by the deceased the previous day when they were engaged in the contract work and they were in angry mood but during his deposition before the court he stated he cannot now remember the persons.

- 14. That, in the instant case there were 2(two) IOs, the 1st I.O. was PW No. 35 Heli Mao who was entrusted to investigate the matter on 23-06-1989. He has affirmed that the timing of the FIR was changed from 4:30 p.m. to 4:30 a.m. and even in the seizure alteration of timing was there.*
- 15. As per the version of PW No. 16 he visited the house of appellant along with SI Sarojkumar on the morning on 23-06-1989 and seized the jeep from the residence of the appellant No. 1. But the jeep does not belong to the appellant No. 1 and on the other hand the jeep surfaced for the first time in the FIR filed at 4:30 p.m. on 23-06-1989. It is also in the record that PW No. 1 have categorically stated that he was informed about the incident by PW No. 4 at around 3:00 p.m. on 23-06-1989, the filing of the FIR at 4:30 p.m. It is also evident from the fact that the FIR was not forwarded to the magistrate U/s 157 Cr.P.C on 23-06-1989. Had the FIR been filed at 4:30 am.the same ought to have been dispatch on the same day and moreover there is nothing to show when the FIR was actually dispatch from the police station. (Page No.1).*
- 16. Till the filing of FIR at 4:30 p.m. nobody was aware of the events stated in the FIR. Not even a single person who were present at the place of incident before the deceased was evacuated to the hospital were examined by the prosecution or made witness by the investigating agency as such it can be presumed that the FIR was filed after PW No. 16 and the 2nd I.O. visited the residence of the appellant No. 1 and as such the OE is after thought.*
- 17. There is also no explanation as to why SI Sarojkumar visited the house of deceased before he was entrusted to be the I.O. of the case and under what authority and direction he visited the house of the deceased and after his visit he was made the I.O. of the case on the same before noon on 23-06-1989.*
- 18. The alleged weapons collected during the investigation as well on the disclosure made by the appellant No. 1 cannot be connected with crime as per the FSL report.*
- 19. If the FIR had been filed at 4:30 p.m. then the seizure of the jeep is ante FIR including the other seizures made on 23-06-1989.*

20. *On the basis of the evidence produced by the prosecution there are major discrepancies and the chain of events of the crime is not complete and the prosecution has miserably failed to prove the case beyond all reasonable doubts as such the appellants are liable to be acquitted and set at liberty forthwith.*

Written Submission on behalf of the State:

1. *The brief fact of the case is that on 23.6.1989 the complainant P. Indrajit Singh, S/O (Late) P. Ibohal Singh of Thangmeiband Polem Leikai, Imphal West lodged a written report to the Imphal Police Station stating that on 23.06.1989 at about 2.30 a.m. while his son Polem Satyajitkumar @ Satyajit Singh was returning home with his friend Nongmaithem Megha Singh from their "Kholla" (work shed) about 8 to 12 unknown young men who came out of the dark just near the south western corner of Khuyathong Pukhri Achouba Mapal assaulted his son by using deadly weapons like iron rod, sharp weapons and clubs etc. causing profuse bleeding injuries on the face, forehead, nose and skull etc. The culprits escaped in a numberless jeep. His son was hospitalized at the RMC hospital where he succumbed to his injuries and was declared dead at 3.30 am. The case was registered as FIR No. 384 (6)89 IPS, U/s 302 r/w 34 IPC and investigated by the Imphal Police Station.*
2. *Upon investigation it was found that the accused persons had committed the crime in prosecution of the common object to beat the said Satyajit (deceased victim) in revenge to a previous assault by the deceased to the main accused Sahajahan. The fatal blow was made by the accused R.K. Sanatomba @ Moba who held the iron handle thereby causing fracture on the skull, forehead and nasal bones which caused the death of the victim. The accused Sahajahan admitted that he had stabbed on both legs of the victim. Accused S. Bodro Singh admitted that he had assaulted the victim with a bold headed cane stick. Accused Dhananjoy Singh used a wooden club and admitted he assaulted the victim. Accused Basanta admitted to have threatened the eyewitness Megha Singh not to struggle or shout. Accused Ramananda made his first assault to the victim by holding him down and gave hard blows on his face. (Paper Book page 209-210)*
3. *The weapons of offence were found to be as follows as noted in page 337 to 339 and 384 of the Paper Book:*
 - (i) *One electroplated solid iron rod (commonly known as handle) having two bents at right angle its one end; the other being a hollow device with an average diameter of 1.95 cm. This type of rod is commonly used for starting the engine of a vehicle.*
 - (ii) *One cane stick measuring 78.5 cm in length. It is club shaped at one end.*

- (iii) One sharp knife the pointed blade measuring 13.7 cm in length.
- (iv) A long piece of wood measuring 87.5 cm in length.

The said weapons of offence were recovered u/s 27 of the Indian Evidence Act at the instance of the accused Sahajahan.

4. After completion of the investigation the following 6 (six) accused were sent up for trial:

- (i) P. Joykumar Singh
- (ii) Th. Basanta Singh
- (iii) P.Ramananda Singh
- (iv) S. Bidro Singh
- (v) R.K, Sanatomba
- (vi) A.Dhananjoy Singh

The accused persons at Sl. No. (i) to (iii) have been convicted to undergo sentence for life. The accused persons at Sl. No. (iv) to (vi) died during the Course of the trial.

5. The following dates and events may please be taken note of

(1)	23.06.1989 at 2.30 a.m.	Date of incident. Thereafter at 3.30 am. Seityajit (the victim) was declared dead at RMC Hospital
(2)	24.06.1989 at 3.15. pm	Accused persons surrendered and crime weapons were recovered at the instance of accused persons in presence of witnesses U/s 27 Evidence Act
(3)	31.07.1998	Charge sheet received by the CJM Imphal
(4)	05.04.1999	Case committed by the CJM to the Ld. Sessions Judge, Imphal West
(5)	14.06.1999	Charge framed u/s 302 read with S.149 IPC against 6 accused persons
(6)	12.01.2018	Judgment announced convicting 3 accused persons (i) P.Joykumar @ Sahajahan (ii) Kh.Basanta Singh (iii) P. Ramananda Singh
(7)	18.01.2018	Sentence order passed. The three accused sentenced to life and fine of Rs. 10,000/- each
(8)	26.02.2018	Cril. Jail Appeal No. 1 of 2018 filed by the accused.

6. The victim was a Regular football player of NISA (Paper Book p. 147) and was a National Football Goalkeeper (Paper Book P.92). Although a professional Footballer, he had no regular job and at the relevant time the victim was carrying out work of Black topping of the Road between Khoyathong and Thangal Bazar as a contractor. The road was blocked to carry out the black topping

and there was an incident of argument between the deceased and the accused Sahajan arguing about the way and the deceased had slapped the accused in the heat of the moment. It is in the evidence that the said accused had approached one Sidham Singh (PW 16) for an amicable settlement between the deceased and the said accused. The deceased was the lone son of his family and the fateful incident happened only a few meters from his residence.

7. *That after appreciating all the evidence on record the Ld. Addl. Sessions Judge came to the conclusion that the chain of circumstances has been fully proved by the prosecution to establish the following facts: (Paper Book page 276, part of the Judgment)*
 - (i) *That the deceased P.Satyajit @ Satyajit Kumar Singh was doing a contract work of black topping of road on the Thangal Bazar from Khuyathong crossing to crossing point of Jallan Provision Store and while doing the said work the deceased blocked all kinds of vehicular traffic for for executing his work properly and while doing so there were instances of quarrel between the deceased and users of the road.*
 - (ii) *There was a quarrel between the deceased and accused P. Joykumar Singh on 22.06.1989 while the accused Joykumar was prevented by the deceased to enter into his tyre retreading shop and in that quarrel the deceased slapped the accused P. Joykumar Singh.*
 - (iii) *On 22.06.1989 the accused Joykumar Singh along with one of his friend came to the house of PW No. 16 N.Sidham Singh and enquired about the whereabouts of deceased by narrating the story that he was slapped by the deceased and PW 16 informed the accused Joykumar Singh that the deceased belong to Thangmeiband Polem Leikai.*
 - (iv) *On 23.06.1989 at about 2 a.m. to 2.30 a.m. the deceased returned home from his work shed along with PW No.4 who was holding a Half lamp and on their way some unknown persons attacked both of them by holding deadly weapons and the said assailants left the place of occurrence in a Jeep and P. Satyajit @ Satyajit Kumar Singh succumbed to his injuries.*
 - (v) *On 23.06.1989 PW No. 16 N. Sidham Singh narrated the story of making enquiry by accused No.1 Joykumar Singh whereabouts of the deceased P. Satyajit Singh to the I.O. of the case and immediately the I.O. of the along with PW No. 16 proceeded to the house of the accused. The accused Joykumar was not found at his house and on enquiry a Jeep with blood stains in its hood was found and the same was seized.*

- (vi) *The accused persons were arrested by the Police in the night of 24.06.1989 on surrender.*
 - (vii) *During the course of investigation the statements of the accused persons, namely, (i) P. Joykumar Singh and (ii) P. Dhananjay Singh were recorded in presence of witnesses in which they disclosed about the commission of the crime along with other accused persons and the weapons of crime used by them and for production of the same from the hiding place.*
 - (viii) *The weapons of crime were recovered from the hiding places at the instances of accused Joykumar Singh and Dhananjay Singh.*
 - (ix) *The clothes worn by the accused persons, namely, S. Bodo Singh and P. Joykumar Singh at the time of the commission of the crime were seized in presence of witnesses from the house of the accused Bodo Singh on production by the said accused Bodo Singh and his brother Debendrajit Singh.*
 - (x) *In the T.I parade PW No. 4 who was the eye witness to the scene of assault identified one of the accused persons, namely R.K. Sanatomba Singh.*
8. *For coming to the conclusion that the prosecution has proved the guilt of the accused persons beyond reasonable doubt the Ld. Trial court took note of testimonies, documentary and material evidence as follows:*
- (i) *(page 255 to 260 of Paper Book, part of the judgment) "The testimonies of PW No. 4 regarding the assaulting of himself and the deceased P. Satyajit alias Satyajit Kumar Singh in the early morning at about 2.30 a.m. of 23.06.1989 while they were returning home by some unknown persons and causing of death of Satyajit alias Satyajit Kumar Singh due to the said assault could not be shaken in the cross examination rather more strengthen the cross examination of PW No.4. The oral testimony of PW No.4 has shown a clear picture for believing such incident to exist and considers its existence so probable that a prudent man ought, under the circumstances of this particular case, to act upon the supposition that it exists." (page 260 Paper Book).*
 - (ii) *The deposition of PW No. 16 Nongmaithem Sidham Singh that he was approached by the accused P. Joykumar Singh for amicable settlement of the quarrel between him and the deceased. (Paper Book Page 260 to 262)*

- (iii) *The deposition of PW 36, the then Officer-in-Charge of Imphal P.S. at the time of arrest of the said accused persons there was a bruise mark at the lower forehead of the right eyelid of the accused Ramananda Singh which was found injured during the fight with the deceased. (Paper Book page 263)*
- (iv) *The statement of the accused P. Joykumar Singh during investigation wherein he admitted that he along with his friends assaulted the deceased with deadly weapons such as cane stick, iron handle of Jeep and knife and that they immediately left the place of occurrence in a Jeep. (Paper Book page 263-264)*
- (v) *The Statement of the accused P. Joykumar during investigation wherein he stated that he held the knife, R.K. Moba Singh held the Jeep handle, one cane stick was held by Ramananda and another stick by Pukhrambam Dhananjoy, that Ramananda Singh assaulted the deceased first with his stick but the person escaped the blow and Ramananda gave a hand blow on his right eye causing bleeding injury on lower portion. Then Bodo used his stick and hit him so hard that the deceased fell down. That Joykumar stabbed the deceased on both his thigh 2/3 times. (Paper Book page 265)*
- (vi) *In the Test Identification parade PW No. 4 N. Megha Singh who was the eyewitness identified the accused R.K. Sanatomba Singh. (Paper Book Page 270)*
- (vii) *Regarding the FIR it has been noted that the father of the deceased stated in his report that his son was assaulted by some 8 to 12 unknown persons in the night of 23.6.1989 at about 2 a.m. to 2.30 a.m. and as a result of the said assault his son was declared dead at the Hospital. He did not name any person for assaulting his son in his report and thus the question of colouring the report/version for involving any of the accused does not arise. (Paper Book page 275)*
- (viii) *As per the Post Mortem Examination report the deceased suffered 20 external injuries. The Doctor who conducted the Post Mortem Examination opined that the injuries are homicidal in nature. The cause of death has been due to head injuries, fracture of the skull bones and laceration of the brain. (Page 275 Paper Book)*

9. *The Ld. Trial Court also took note of the following decisions: Yogesh Singh vs Mahabeer Singh (Criminal Appeal No. 1482 of 2013) wherein the Hon'ble Supreme Court at Para 29 held that minor discrepancies are not to be given undue emphasis and evidence is to be considered from the point of view of trustworthiness. Another case being Shankar vs State of Karnataka AIR 2011SC2302 at para 17 wherein it was held that in criminal case, normal discrepancies are bound to occur in depositions of witnesses due to normal errors of observation namely errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. (Page 222 of Paper Book)*
10. *The Ld. Trial Court has rightly convicted the accused persons and the judgment and sentence deserves to be upheld in the interest of Justice.*

Perused the rival contentions made in the written arguments of the parties. As the Ld. Trial Court heard both the learned counsels presenting their respective arguments and thereafter, the Ld. Trial Court passed the impugned order, we would not go and discuss in details of the rival contentions but, we will decide the case giving due emphasis to the judgment of the Ld. Trial Court by relying on our analysis, assessment and reasoning arrived at after discussing the materials placed before us and the statements of the P.Ws. of which, which will be placed herein below.

In the light of these materials, we shall now have to examine the statements/depositions of the witnesses produced before the Court as to whether the State respondent proved their case beyond reasonable doubt that the accused committed the crime resulting to the death of the deceased Seityajit Singh and whether the appellants claimed of their innocence in the present

case and whether there is ground for setting aside the judgment and order dated 12.01.2018 of the Ld. Trial Court and for just decision as to find out the above mentioned proposition of law. We will now go into the depositions of the witnesses. We will do our analysis of the depositions and give our reasonings on the depositions of the statements of the witnesses and we will rely upon it while deciding the case.

The Ld. Trial Court did discuss the solitary eyewitness as well as circumstantial evidence though the Ld. Trial Court finally disposed of the case by convicting the accused on circumstantial evidences and the Ld. PP also in his submission submitted that the prosecution relied on both solitary eyewitness (direct evidence) as well as on circumstantial evidences.

[12] In the circumstances for just decisions, this Court, as a first appellate Court, need to re-examine the entire evidences on the facts as well as the law points giving due consideration to the findings arrived at by the Ld. Trial Court, as this Court needs to re-appreciate, re-analyse, re-assess and re-reasoning of the evidences placed before us, as it is intrinsic in **(2007) 4 SCC 415 [Chandrappa V. State of Karnataka]**, the Hon'ble Supreme Court observed –

"(1) *An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

- (2) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of facts and of law.*
- (3) *Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
- (4) *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*
- (5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

[13] For easy reference, we extracted the complaint petition (original ejahar) made by the complainant the father of the deceased to the OC, Imphal Police Station (Ext.P-1) herein below:

"To

*The Officer-in-charge,
Imphal Police Station – Imphal*

Subject: Report of assault and murder.

Sir,

With due respect and honour I beg to state the following few lines for favour of your kind and necessary stringent action.

That on the night of 23.06.89 at about 2.30 am about 8 to 12 (eight to twelve) unknown persons suddenly came out of the dark on the road near the South western side of Khoyathong Pukhri Achouba of Polem Leikai, Thangmeiband Imphal and had physically assaulted my son P. Satyajit Kumar Singh alias Satyajit aged about 36 yrs with lethal

weapons like heavy iron rods, sharp daggers, clubs etc. causing serious multiple injuries to the face, nose, forehead, skull, both legs etc. all with profuse bleeding while he was returning home from his so called Khollah which stands on the Eastern side of the said Pukhri achouba along with one nongmaithem Megha Singh aged about 37 yrs S/o N. Birsing of Khoyathong Pukhri achouba Mapal. During the said attack and assault, Megha was also beaten and threatened with life if shouted or struggled.

After the attack, the culprits and murderers escaped in a jeep which did not have any number marking both in front and behind or rear.

My son was then rushed to the RMC Hospital with the help of local people at about 2.50 am and there he was declared dead at 3.30 am.

In this connection, I as a broken hunted father of my only son humbly request your goodself to take appropriate stringent action by arresting the cold blooded murderers and their conspirators for immediate necessary action.

Thanking you,

Yours' faithfully,

Sd/-

*(P. INDRAJIT SINGH)
S/o (Late) P. Ibohal Singh 56 yrs.
Thangmeiband Polem Leikai
P.O. Imphal, Manipur*

*Dated, Imphal,
The 23rd June, 1989"*

[14] The prosecution produced as many as 36 (thirtysix) witnesses in support of their case and exhibited as many as 72 (seventy two) documents and articles, 10 (ten) material objects the oral evidences of the prosecution witnesses are reproduced, re-analysed, re-assessed and re-reasoning of the deposition of the witnesses, we will do our analysis of the depositions and give our reasonings on the depositions of the statements of the witnesses

and we will rely upon it while deciding the case and the same are reproduced herein below.

Now, the question arises as to whether the decision of the Ld. Trial Court after taking into consideration of the materials placed before him convicted the accused under Section 302 & 149 IPC was the decision made as per the provision of law or not.

ORAL EVIDENCE ON RECORD:

We shall now look into the deposition of P.W. No. 1 (Polem Indrajit Singh) and we shall also analyse the statement and reassess with our reasoning. In his deposition, he has deposed as under:

Statement of P.W. No. 1:

"I know the deceased Satyajit Singh. He is my son. He was killed by some unknown person about 10 years ago.

2. *On 23.06.1989 in the night at about 2 A.M. while I was in the bed one unknown person came to our house and he awoken our family members by calling Iteima, Iteima. At that time, I was not fully sleep as I was suffering from diabetis. The door was opened by my daughter. The unknown boy stated that he was coming from the Kholla of my deceased so Satyajit Singh. He further stated that Tamo Satyajit Singh was lying on the road near the south-western side of the Koyathong Pukhri Achouba Mapal with bleeding injuries as assaulted by some unknown persons. On getting the said information my daughter Kh. Bobo Devi rushed immediately to the place of the occurrence. The behavior of my daughter Bobo Devi is like that of man/boy. So we called her a Bobo. By that time there was no male member in our house except myself. The family members present at that time were my daughter Bobo Devi and other 5 sisters of Bobo Devi, my wife and my daughter-in-law Smt. Chaoba Devi wife of late Satyajit Singh.*

3. *After a few minutes I also went to the place of occurrence but I did not find my son Satyajit Singh in the said place of occurrence. The distance between the place of the occurrence and my house is about 3 electric posts. On my enquiry I came to know that my deceased son Satyajit Singh was taken to R.M.C. Hospital by a Tata Truck belonging to one Kumar Singh who is my relative. I left the place of occurrence and went to my home for taking my bicycle. I went to*

the RMC Hospital by my cycle. On the way to RMC I met my daughter Kumari Bobo Devi at Thangmeiband Thingel near the house of Ex-Commissioner of Imphal Municipality Shri L. Biramani Singh and she told me that my deceased son Satyajit Singh was no more. On getting the said shocking news I came back to my house without going to the RIMS Hospital. At about 1 p.m. of the said day he was brought to our house after examination of the post mortem and cremation was performed according to our custom. **At about 3 p.m. of the said day Shri Nongmaithem Megha Singh (P.W. No. 4) told me that the deceased Satyajit Singh was assaulted by unknown persons numbering about 10 to 12 at the south-western side of the Thangmeiband Khoyathong Pukhri Achouba Mapal with deadly weapon like daos, iron rods, sticks, club etc. As a result of their assault my son Satyajit Singh got bleeding injuries on head, face, legs and eyes. He was lying on the floor with bleeding injuries. He further stated that he was also assaulted and threatened his life by the accused persons if he made any alarm about the occurrence.**

4. **On getting the said information I lodged a written report to the O/C, Imphal Police Station about the occurrence. The said written report was written by one boy of our locality at my home but I do not know the name of the person who wrote the said written report due to the lapse of time. The said report was written by the said person on my dictation. I did not go to the police station at the time of the lodging the said complaint petition to the police station. I sent one person to the police station along with my written report. Ext.P/1 is the said written report and Ext.P/1 is my signature on the said Ext.P/1.**

5. *I deny the suggestion that my son was a quarrelsome one but he was a courageous man. I deny the suggestion that my said report marked Ext.P/1 is a fabricated document."*

Our analysis, observation and reasoning -

As seen in the above deposition, the witness, in his examination-in-chief, deposed that at about 3.00 pm of the said day i.e. 23.06.1989 (emphasis given), Shri N. Megha Singh (P.W. No. 4) informed him about the assault meted out to his son (the deceased) by unknown persons numbering about 10 – 12, as a **result of the assault**, his son got bleeding injuries on his head, face, legs and eyes. On getting information from the said N. Megha Singh (P.W. No. 4/solitary eyewitness), at 3:00 p.m., he lodged a report/complaint to the O.C. Imphal Police Station about the

occurrence at 4:00 p.m. and the said report was written by one boy of his locality at his home and further said that he could not remember the name of the said boy due to lapse of time. The said report was written on his dictation. Further, it is stated that he did not go to the police station at the time of lodging the said complaint. But, he sent a person to the police station to file the said complaint. This statement is contradictory to the statement of P.W. No. 35 who was the first I.O. of the case. The P.W. No. 35 stated in his deposition before the Court that the complainant (the present witness) was physically present before him when the complainant (the present witness) came to file the complaint in the police station and he recorded the statement of the complainant.

For the sake of brevity and to save time, only operative portion of the statement of the P.W. No. 2, Shri Polem Shyamkumar Singh & P.W. No. 3, Soibam Dhaneshwor Singh are reproduced herein below as they are the inquest witnesses:

P.W. No. 2 Shri Polem Shyamkumar Singh who was the witness of the said inquest made by the police officer on the dead body—

P.W. No. 2 has deposed that on 23-06-89 at about 7:30 A.M. while he was remained in his house he learnt that Shri Satyajit alias Satyaji Kumar Singh, his relative was killed by some unknown persons at the southern-western side of Khoyathong Pukhri Achouba and removed to the RMC (RIMS), Lamphel. On hearing the shock news he along with some people of his Leikal went to RMC and he found the deceased Satyajit alias Satyaji Kumar Singh was lying on a stretcher covered with a cloth at the dirty room of Casualty Department, RMC. P.W. No.2 Further goes to say that with the permission of the police personnel who were present there he removed the cloth and he found his left eye ball was absent. One police officer whose name was Helli

Mao held inquest of the dead body Satyajit alias Satyajit Kumar Singh. The said police officer removed the cover and found that 1) his left eye ball was absent, 2) bleeding injury on the nose. 3) one injury mark on the right forehead, 2 cut injury marks on the knee and one cut injury on the left thigh. The said police officer prepared inquest report. The details of the injuries were noted down by the said police officer in the said inquest report and he put his signature on the said inquest report after knowing the full contents of it.

Our analysis, observation and reasoning -

The witness in his statement stated that he was the witness of the inquest made by the police over the dead body of the deceased in that, he mentioned 7.30 a.m. of 23.06.1989 i.e. before the registration of the FIR and before the arrest of the accused.

P.W. No. 3 Soibam Dhaneshwor Singh who was the witness of the said inquest made by the police officer on the dead body—

"P.W. No. 3 has deposed that on 24-6-89 at about 7 a.m. he learnt that Satyajit alias Satyajit Kumar Singh was killed by some unknown persons at the south western side of Khoyathong Pukhri Achouba Mapal and removed to RMC Hospital and on getting the said news he along with some her persons of Polem Leikai went to the RMC and they found that the dead body of Satyajit alias Satyajit Kumar Singh was lying on a stretcher covered with a cloth at the dirty room of Casualty, RMC. At that time some police personnel of Imphal P.S. led by S.I. Helli Mao came there and he called him to become a witness of the inquest over the dead body was identified by one Ranjit Singh of his Leikai. The said police S.I. Helli Mao conducted the inquest over the dead body of Satyajit alias Satyajit Kumar Singh. The said police Officer removed the cloth and they found that the dead body was lying on the stretcher, stretching his head towards east and leg towards the west. He found the injury marks on the dead body of Satyajit alias Satyajit Kumar Singh-1) left eyebrow was absent. 2) bleeding injury on the nose. 3) right injury on the right forehead. 4) 2 cut injuries on the right knee and one injury on the left thigh. The said Heli Mao prepared an inquest report and he put his signature on the said inquest report after knowing the full contents of it."

Our analysis, observation and reasoning -

In the above statement, the witness stated that he was the witness of the inquest made by the police over the dead body of the deceased in that, he mentioned 7.00 a.m. of 24.06.1989 i.e. before the registration of the FIR and before the arrest of the accused.

[15] We shall now look into the evidence of P.W. No. 4 (the solitary eyewitness). The examination-in-chief as well as cross examination of P.W. No. 4 is reproduced here under:

Statement of P.W. No. 4 namely, Nongmaithem Megha Singh on 27.07.2000:

*"I know the deceased Polem Seitrajit Singh of Thangmeiband Polem Leikai who was killed by some persons about 10 years ago. I and my father have been running a work-shop in the front portion of our house at Khoyathong Pukhri Achouba on the southern side of the said Pukhri under the name and style of Panthoibi Iron & Steel Works. About 10 years ago one day in the evening at about dusk while I was at my workshop my friend deceased Polem Seitrajit Singh of Polem Leikai came to our work-shop and asked me to lend our half lamp and to help him in his work of road repairing in front of Sunny Thakur on khoyathong Road. Accordingly, I along with Polem Seitrajit Singh went to his work-site with our half-lamp which was already lighted up and I remained there upto late night of the same night. **After finishing his work myself, the deceased Seitrajit Singh, one S.O. of PWD Department, one Roller Driver and other labourers of Seitrajit Singh left the work-site and came to the KHOLLA of the labourers which was situated at the north-eastern corner of Thangmeiband Pukhri Achouba Mapal. We have had a meal at the Kholla and then after having the meal the said S.O. of the PWD Manipur and the Roller Driver left the Kholla.** The deceased Seitrajit Singh asked me to drop him upto his house. Accordingly, I along with Seitrajit Singh proceeded towards his house with my half lamp on Thangmeiband Polem Leikai road towards Lamphel on fact. When we reached near the south-western corner of the Thangmeiband Pukhri Achouba Mapal on Thangmeiband Polem Leikai road I saw 2/3 persons came out from near the gate of R.K. Bikom Sana Singh. The said persons started to assault me and another 2/3 persons were also came out from the north-western corner of the Khoyathong Pukhri Achouba Mapal. Then all the persons approaching towards Seitrajit Singh and surrounded the deceased Seitrajit Singh and they started to assault Seitrajit Singh by iron rod. Hard sticks etc. held by them. **They caught***

hold of Seitrajit Singh and assaulted him. When those persons assaulted Seitrajit Singh I was near the gate of Becomsanahal at the distance of about 10 ft. from the place where the said Seitrajit was assaulted. Before rushing towards the gate of Becomsana the burning half lamp slipped away from my hand and fell on the ground when the said persons attacked me for the first time. And then the half lamp light went off as a result of falling. As a result of heating on the said half lantern its Chemney glass was broken, and the tanky portion of the half lantern was also lented. I did not leave the place of the occurrence and I also did not raise any alarm as I was asked not to leave from the place as well as not raise any alarm by 2 of the persons who were guarding me.

While I was standing near the above said gate as I stated above the said Seitrajit Singh fought with 5 or 6 person. The said Seitrajit Singh falling on the ground while the said Seitrajit Singh was fighting with the said 5 or 6 persons, he raised alarm to the effect that he was being killed (HATLE, HATLE). While the said Seitrajit Singh was lying on the ground one of the said 5/6 persons hit him on his face with an iron rod (YOTCHEI). I saw the said Seitrajit Singh lying unconscious. Then I saw a jeep coming there from Nagamapal road and then I saw the jeep driving away after picking up those assailants / attackers. I saw the said jeep driving away from the said place along Thangmeiband Polem Leirak which leads to Goverdhon Achoba Road. As it was dark I could not see registration No. of the said jeep. There was an electric post at the distance of only about 2/3 feet from the place of the said occurrence. At the relevant time, there was a lighted electric bulb at that electric post and from the light coming from the said lighted bulb I could see the said occurrence.

As soon as the said assailants/attackers left the place in the said jeep I rushed to the place where the Seitrajit Singh was lying. He was found lying only his back and I also raised alarm saying "MEE HATLE, MEE HATLE". Then I picked up the said Seitrajit Singh and I saw that his face was injured and found with profuse bleeding. Within a short time some persons of the locality gathered there. First of all I saw my mother/Smt. Nongmaithem Ongbi Tombi Devi coming there. Some labourers also came there. After sometime, Yambem Jadumani Singh also came there. The injured was taken to RMC (now RIMS) Hospital in a truck belonging to Polem Kumar Singh. I also accompanied the injured to the Hospital. So far, I remember I myself, the said Jadumani Singh and some labourers went to the hospital along with the injured. After about half an hour of our reaching the hospital, the injured Seitrajit Singh succumbed to his injuries at the casualty department of the hospital. The dead body was brought back on the next day after the completion of post mortem examination and other necessary formalities, and funeral ceremony was performed on the said next day. On the said next day at about 9 or 10 a.m. police seized the said half lantern on my production. I came to know that the said half lantern had been taken into our house by family members while I was at the hospital. A seizure list was prepared by the police in connection with the seizure of the half lantern and I put my signature on the seizure list. Ext.P/3 is the

said seizure list for seizing of one half lamp. Ext.P/3/1 is my signature. **I cannot say with certainty that the half lantern which is produced now and shown to me is the very half lantern seized by the police due to lapse of time.** On the day of post mortem examination a police officer of Imphal P.S. seized one polyester full shirt having blood stain, 2) sample of blood on a paper, 3) Sample of scalp hair under a seizure memo prepared by the said police officer at RMC Forensic Science and Medical Department, Lamphel in my presence. Ext.P/ is the said seizure memo prepared by the said police officer and Ext. P/4/1 is my signature appearing on Ext. P/4.

I was examined by the I.O. of this case in connection with the occurrence. At that time, I stated to the said police officer that I will be able to identify the culprits if shown to me. After about half a month from the date of the occurrence I was asked by the police to attend at the jail compound Imphal at about 9.30 A.M. for identification of the accused persons. Accordingly, I went to the Imphal Jail Compound and I identified one person among the culprits –as one who took part in assaulting the said Seitrajit Singh on the day of occurrence. The person who was identified by me is called R.K. Sanayaima and the said person was identified by me in the third parade of test identification held in the Imphal Jail. I came to know the name of the person R.K. Sanayaima after the said test identification parade. The said TI Parade was held in the three groups of the UTPs of different person. The first and the 2nd groups of TI Parade consisting of about 20 persons in each group. The third group was of about 30 persons. I may or may not be able to identify the person whom I identified in the said TI Parade due to lapse of time. However, the said accused is not present today. None of the three accused persons who are present today in the Court is the one whom I identified in the said TI Parade. I do not know if any Magistrate was present at the time of holding the TI Parade. However, I put my signature on some paper in the jail.

On 29.07.2000 :

I can identify the papers prepared by one officer at the jail compound if shown to me. Ext.P/5 is the T.I. Parade form for the identification of accused Shri Joykumar Singh. Ext.P/5/1 is my signature. Ext.P/6/ is the TI Parade form for identification of the accused Kh. Basanta Singh. Ext.P/6/1 is my signature Ext.P/7 is the TI Parade form for identification of accused Ramananda Singh. Ext.P/7/1 is my signature. Ext.P/8 is the TI Parade form for the identification of the accused Salam Somorendro Singh. Ext.P/8/1 is my signature. Ext.P/9 is the TI Parade form for the identification of the accused R.K. Sanatomba Singh and alias R.K. Moba Singh. Ext.P/9/1 is my signature. Ext.P/10 is the TI Parade form for the identification of the accused Dhananjay Singh. Ext.P/10/1 is my signature. Ext.P/11 is the TI Parade form for the identification of accused Khuraijam Rajen Singh. Ext.P/11/1 is my signature. **I cannot now identify the said person whom I identified at the time of TI Parade held at Imphal Central Jail. At the time of making the said identification I was informed by one person inside the said jail that the person whom I identified in the TI**

Parade was one of the accused who took part in the said assault made to the deceased Seitrajit Singh. I have not seen him before the day of the occurrence and I saw him for the first time at the time of occurrence. I saw the said person for the 2nd time at the time of holding the TI Parade.

I cannot identify the seized articles i.e. one shirt, scalp hairs an piece of paper having blood stain due to lapse of time.

Xxxxx the defence counsel.

I am a little older than the deceased Seitrajit Singh. We belonged to the same Leikai. Though I was a little older than him we used to address us by our names. I am not related to him. My house and that of the deceased Seitrajit Singh's house was intervened by about 3 or 4 houses. I know father of late Seitrajit Singh who was addressed as Pabung by me. He also knows me both by name and face. He used to call me by my name whenever we met each other. I also know all his family members. I was not married at that time. At that time the deceased was doing a contract work of the Government. However, I do not know whether he was a contractor of the Government or not. When doing the said work the deceased closed some portions of the road for preventing the passersby disturbing the progress of the work.

The deceased a person of good physique and well built. I do not know whether the deceased was violent and quarrelsome whenever he was disturbed by other persons. I do not know whether there were many instances of quarreling with the said Seitrajit Singh and other persons for his closing the road on his own for execution of contract work. I also do not know whether such instances took place on the previous day of the occurrence or on the same day.

*My workshop was located at Nagamapal road. I was running the scoter workshop all alone. My workshop opens in the early morning and closes at about 5 or 6 p.m. in the evening. I knew that the deceased was during the said contract work from before the day of the occurrence. That day was the first time when Seitrajit Singh came to my shop for hiring my half lamp. I accompanied my half lamp for the reasons that my help may be required for repairing at the refueling of the half lamp. I cannot say the time of the completion of that night's work as I had no watch at that time however I can say that the night was very late. I did not participate in the manual works of the said contract work and I also did not have any interest in the said work. I remained at the work site handling my half lamp all alone. I was not paid any amount of money by the deceased for my doing so. I did not visit the Kholla of his labour on any other previous occasions and that night was the first time of my visiting the same. We had pork curry on that night. None of us had alcoholic drinks on the night. ***I also cannot say even approximately the time when I myself and Seitrajit Singh returned from the Kholla towards his house. I cannot now remember any one of those persons who took dinner inside the said kholla on the said night. I will not be able to identify any one****

of those persons even if they are shown to me now. I accompanied Seitrajit Singh even after crossing my house on his request as I was having my half lamp which was burning. The night was dark one and as such he wanted me with my half lamp upto his house. The half lamp was refueled at the work site or the night the light was still on when it was dropped from my hand on being attacked by those assailants.

It is true that there is no mark of having been hit by a hard object on any mark of damage on the tanky of the half lamp which is produced and shown to me today. I was hit on my right arm by an object like stick resulting to falling down on the said half lamp. I did not receive any notable injury as a result of the said blow though I felt pain on my right arm. Just before the attack myself and Seitrajit Singh were walking at the parallel along with the Polem Leikai road facing towards west. I was on the right side of Seitrajit that is on the side of pond (Pukhri Achouba). Immediately on being hit on my arm I ran towards the gate of R.K. Sanahal Becom but I could not do so as the entrance gate of Becomesana was found locked. Being helpless I stood just near the gate while the two persons ran after me came near me. They threatened me not to raise alarm or leave the place. Therefore, I stood near the gate all alone facing towards the north. The said 2 persons were standing at the distance of about 6/7 ft. from me. They were facing towards me and both of them were holding sticks. **I do not see their face as there was no light on the place where I was standing. However, I could recognize their physical structures. One of them was of thin structure and another one a little healthy. I did not come across those 2 persons in the TI Parade held at the Jail after the occurrence.** I did not aware of any possibility of being attacked by 2 persons who were threatening me by holding sticks instead I kept on watching the fighting that took place on the road.

I cannot say whether the distance between the place where the fighting took place and that of the gate of Becomsana Singh is 55 ft. However it could be of that distance though I cannot say exactly as I had not measured the distance. The household of RK Becomsana Singh lies on the sought of Khoyathon Polem Leikai road. The gate of the household was not erected just near the road. The gate existed by entering some distance from the road. There were berbed wire fencings all around Khoyathong Pukhri Achouba. I cannot say even approximately the area of the said pond. The said electric post was outside the said berbed wire fencing. It stood just near the fencing. I deny the suggestion that the said post was inside berbed wire fencing and not outside. The bulb in the said electric post was a small one either of 100 or 60 watts.

The fighting between the deceased Seitrajit Singh and those assailants took place in front of the said electric post. **The post was behind the fighting area. The light was not sufficient enough to recognize the physical structures of the other assailants except the one whom I identified later one. The other reason was also that the deceased was attacked by a number of persons and among them I could recognize the one who I identified later on.**

The later was not sufficient enough to recognize the colours, of the wearing apparels of the assailants and the weapons held by them. I cannot say whether the assailants and the weapons held by them. I cannot say whether the distance between electric post and the place of fighting would be more than 10 ft. as I had not measured the distance with any instrument of measurement.

I cannot either admit or deny the suggestion that I did not state to the police while I gave my statement as regards the raising of alarming "Mee Hatle, Mee Hatle".

My shirt and pant were also stained with bloods of Seitrajit Singh when I hold of him at the place of occurrence after running away of the assailants. The police did not seize my said wearing apparels. I also did not produce the same to the police afterwards. The distance between the place of occurrence and my house would be within 100 ft. There are rows of hoses on the southern side of the Polem Leikai road. The house of occurrence on the southwestern side. I cannot say the distance in terms of feet or yards or meters.

None of the family members of deceased Seitrajit Singh came out to the place of occurrence till the time of evacuating the injured to the hospital. It would be more than half an hour from the time I raised alarm till the time of lifting the injured to the tata truck. I did not go to the house of Seitrajit Singh on the night to inform his family members about the incident. I wore the same apparels when I accompanied the injured to the hospital. After post mortem examination of the dead body we took the body for funeral on the same day. It was in the afternoon that we took out the body from the hospital after the post mortem examination. I was present in the hospital all alone till the completion of the post mortem examination. I did not ask any person gathered at the place of occurrence before lifting the injured to the hospital for getting information about the occurrence to the family members of Seitrajit Singh. 2 police officers came to the hospital and made seizures of the wearing apparels, hair etc. of the deceased. I did not change the blood stained shirt and pant which I wore on the day.

I attended the funeral of the deceased till the end. I cannot read and write English. The seizure memo Ext. P/3 was written in English and as such, I could read the same. I cannot now remember whether the contents of the said seizure was read over to me by the I.O. or not due to lapse of time.

*I met the father of late Seitrajit Singh in the morning of the following day. I cannot now remember whether he came to the hospital or not. I also cannot now remember whether any family members of late Seitrajit Singh came to the hospital or not. However, I saw some of his relatives coming to the hospital. I did not accompany father of Seitrajit Singh to the police station on the following day. **I narrated about the incident to the father of Seitrajit Singh when I met him near the Khoyathong Pukhri Achouba on the following morning.** When I was at the hospital some police personnel came to*

the seizure of the half lamp on my production. I did not return to the hospital thereafter. I did not narrate about the incident narration about the incident to any other person except to the father of the deceased. My narration about the incident to the father of the deceased could have been heard by some other persons who were near him. However, I did not specifically narrated about the incident to any else besides the father of the deceased. I cannot now remember whether I gave any detailed statement about the case to the I.O. of the case. But I still remember some police personnel were present at the time of my narration about the incident to the father of Seitrajit Singh on that morning. But I cannot say whether my narrations were reduced into writing by the said police personnel or not. **I never visited the Imphal P.S. in c/w the case.** I got the information that some persons were arrested in c/w the case and that they were detailed in police custody at Imphal P.S.

I deny the suggestion that I was taken to the Imphal P.S. on 26.06.89 by a police office and one person was shown to me on that day. I also deny the suggestion that the said police officer asked me to identify that person during the TI parade.

I was called by some personnel to come to the Imphal Central Jail for identifying some persons in a TI Parade. I cannot now remember whether they had given me any paper requiring my attendance in the jail. I was taken to Imphal Central Jail in the police jeep. I was the only one taken by the police for the said parade. It was at about 10/10.30 a.m. in the morning when I was taken to the jail. After reaching jail premises I was asked to sit inside the jail in an open space. I found 2/3 persons accompanied by the I.O. of this case till the time of my sitting in the said open space inside the jail premises.

I know the I.O. of the case. I heard that he is from Bamon Leikai area. I do not know his name and other particulars. The said I.O. was the very officer who seized the half lamp and other articles at hospital. I myself and the I.O. of the case remained sitting in the said open space for about half an hour and thereafter one jail official came out and called me inside another enclosure. The said jail official was the jailor of the Imphal Central Jail and I know him from before. He is a resident of Thangmeiband Sinam Leikai. I was taken inside a room by the jailor where I found about 20 persons. The said jailor was all alone present in the said room when the TI Parade was held. I do not know if there was a Magistrate in the said room. A Magistrate could be present there at that time and also during the entire course of the period. I cannot remember whether the said room has got windows. However, there was a door of the said room. I also cannot say whether the said door was kept closed or opened during the course of TI Parade. When I entered the room I found about 20 person standing inside the same in a circle. They were not wearing same type of dress of same colour. Their faces were patched with pieces of white paper on their faces. The said paper pieces were affixed on the faces of those persons at different portion on their face. Some of them were having such white patches on forehead, some on their cheeks, some on their chin. Such white patches were not fixed on similar portions of the paces of

those persons. The places of fixing white papers were different from persons to persons. I was asked to go round incircle near these standing persons to identify the assailants whom I saw on the night of the occurrence. Those persons in the parade were of different structures and physical structures. But those persons were generally of similar built. I agree with the suggestion that the said person was slightly different from the rest of those who paraded with him in physical built and structure. I found the I.O. of the case at present at the place where we sat together before the parade I came out after identifying the said person.

The jailor asked me to identify the assailant in the said TI Parade. Nobody except the jailor told me for the identification of the said assailant. The person who told me the name the identified personas Sanayaima was also the jailor himself. It took quite sometime in the completion of the TI Parade. The Parade was conducted three times separately. In the first and 2nd parades, I could not identify any of the assailants. It is the 3rd parade that I identified that person whose name given as Sanayaima by the jailor. I came to know the name of said person only after the said TI Parade.

Just after identifying the said person by me he was asked to turn around and separated from the other persons. Thereafter, I was asked to go out of the room. I identified the said person only once. And after my identification no second parade was held. I cannot now remember whether I was asked the reason for my identification of the said person or not by any official present inside the room. I deny the suggestion that I identified that person at the instance of the I.O. and the jailor and that they were determined to make me identify any of the assailants in the 1st and 2nd parades. I also deny the suggestion that I.O. and the jailor had pointed the said person to me before my identification.

The deceased was a football player of NISA which is a local club of Thangmeiband area. I do not know whether the said jailor is also an active member of NISA. I do not know whether they had close friends during the life time of Seitrajit Singh. I also deny the suggestion that the said jailor was taking much interest in the case as the deceased happened to be one of this close associates.

I deny the suggestion that I did not accompany Seitrajit Singh on the night of the occurrence. I also deny the suggestion that I did not see any occurrence on that night. I deny the suggestion that Ext.P/3 is a fabricated document and my signature was obtained much after the date and time indicated in the same. I deny the suggestion that I was made a witness in the identification parade as threatened by the I.O. o the case. I also deny the suggestion that the I.O. threatened me for implicating me as the person who killed Seitrajit if I refused to oblige him as I happened to be the last man seen together with the deceased. I also deny the suggestion that the person whom I identified in the TI Parade was another person who happened to be in jail at the relevant time in other case. I also deny the suggestion that I am giving false evidence at the instance of the family members of the deceased

who accompanied me to this Court on that day of my giving evidence day before yesterday and I also deny the suggestion that the police are also threatening me to give false evidence. I attended before this Court on day before yesterday as asked by the family members of the deceased.

To the Court :

After the seizure the said half lantern at my house by the police on the said following day of the occurrence I went back to the hospital. When I went to the hospital for the 2nd time the said blood stained shirt, scalp hair and blood samples etc. seized in my presence but I cannot say whether the said seizure are made either at the morgue of the said hospital or at the casualty department, within sometime of the said seizure the dead body was brought to the house of the deceased. On the said following day I was picked up by police personnel from the casualty department and then I was taken to my house where the said seizure of the half lantern was made. My statement in the cross-examination to the effect that I was at the hospital all along with the dead body throughout the day of the next following day till the taking of the dead body to his house is not wholly correct. I gave the above said incorrect statement due to lapse of time.

Xxx by the d/counsel.

After making the seizure of the half lamp the police party who picked me up from the hospital went back. I returned to the hospital with the Leikai people again. I cannot say any of those persons who accompanied me to the hospital due to lapse of time. I deny the suggestion that due to lapse of time I cannot remember the incident and its consequent happenings clear now. I also deny the suggestion that my statement given this Court are on my surmises. It is also not a fact that Ext.P/4 is a fabricated document and that my signature was obtained later on the said paper by the I.O. of R.O. & A.C.

Our analysis, observation and reasoning–

On perusal of the deposition as reproduced above, we found the following important and reliable statements in his deposition contrary to the prosecution story and the same are highlighted and blackened in the above statements.

- (i) After finishing his work myself, the deceased Seitrajit Singh, one S.O. of PWD Department, one Roller Driver and other labourers of Seitrajit Singh left the work-site and came to the KHOLLA of the labourers which was situated at the north-eastern corner of Thangmeiband Pukhri Achouba Mapal. We have had a meal at the Kholla and then after having the meal the said S.O. of the PWD Manipur and the Roller Driver left the Kholla.***
- (ii) They caught hold of Seitrajit Singh and assaulted him. When those persons assaulted Seitrajit Singh I was near the gate of Becomsanahal at the distance of about 10 ft. from the place***

where the said Seitrajit was assaulted. Before rushing towards the gate of Becomsana the burning half lamp slipped away from my hand and fell on the ground when the said persons attacked me for the first time. And then the half lamp light went off as a result of falling. As a result of heating on the said half lantern its Chemney glass was broken, and the tanky portion of the half lantern was also lented. I did not leave the place of the occurrence and I also did not raise any alarm as I was asked not to leave from the place as well as not raise any alarm by 2 of the persons who were guarding me.

- (iii) While I was standing near the above said gate as I stated above the said Seitrajit Singh fought with 5 or 6 person. The said Seitrajit Singh falling on the ground while the said Seitrajit Singh was fighting with the said 5 or 6 persons, he raised alarm to the effect that he was being killed (HATLE, HATLE). While the said Seitrajit Singh was lying on the ground one of the said 5/6 persons hit him on his face with an iron rod (YOTCHEI). I saw the said Seitrajit Singh lying unconscious. Then I saw a jeep coming there from Nagamapal road and then I saw the jeep driving away after picking up those assailants / attackers. I saw the said jeep driving away from the said place along Thangmeiband Polem Leirak which leads to Goverdhon Achoba Road. As it was dark I could not see registration No. of the said jeep. There was an electric post at the distance of only about 2/3 feet from the place of the said occurrence. At the relevant time, there was a lighted electric bulb at that electric post and from the light coming from the said lighted bulb I could see the said occurrence.*
- (iv) He was found lying only his back and I also raised alarm saying "MEE HATLE, MEE HATLE". Then I picked up the said Seitrajit Singh and I saw that his face was injured and found with profuse bleeding. Within a short time some persons of the locality gathered there. First of all I saw my mother/Smt. Nongmaithem Ongbi Tombi Devi coming there. Some labourers also came there. After sometime, Yambem Jadumani Singh also came there. The injured was taken to RMC (now RIMS) Hospital in a truck belonging to Polem Kumar Singh. I also accompanied the injured to the Hospital.*
- (v) I cannot say with certainty that the half lantern which is produced now and shown to me is the very half lantern seized by the police due to lapse of time.*
- (vi) I was examined by the I.O. of this case in connection with the occurrence. At that time, I stated to the said police officer that I will be able to identify the culprits if shown to me. After about half a month from the date of the occurrence I was asked by the police to attend at the jail compound Imphal at about 9.30 A.M. for identification of the accused persons. Accordingly, I went to the Imphal Jail Compound and I identified one person among the culprits –as one who*

took part in assaulting the said Seitrajit Singh on the day of occurrence. The person who was identified by me is called R.K. Sanayaima and the said person was identified by me in the third parade of test identification held in the Imphal Jail. I came to know the name of the person R.K. Sanayaima after the said test identification parade. The said TI Parade was held in the three groups of the UTPs of different person. The first and the 2nd groups of TI Parade consisting of about 20 persons in each group. The third group was of about 30 persons. I may or may not be able to identify the person whom I identified in the said TI Parade due to lapse of time. However, the said accused is not present today. None of the three accused persons who are present today in the Court is the one whom I identified in the said TI Parade. I do not know if any Magistrate was present at the time of holding the TI Parade.

- (vii) I cannot now identify the said person whom I identified at the time of TI Parade held at Imphal Central Jail. At the time of making the said identification I was informed by one person inside the said jail that the person whom I identified in the TI Parade was one of the accused who took part in the said assault made to the deceased Seitrajit Singh. I have not seen him before the day of the occurrence and I saw him for the first time at the time of occurrence. I saw the said person for the 2nd time at the time of holding the TI Parade.***
- (viii) I also cannot say even approximately the time when I myself and Seitrajit Singh returned from the Kholla towards his house. I cannot now remember any one of those persons who took dinner inside the said kholla on the said night. I will not be able to identify any one of those persons even if they are shown to me now.***
- (ix) I do not see their face as there was no light on the place where I was standing. However, I could recognize their physical structures. One of them was of thin structure and another one a little healthy. I did not come across those 2 persons in the TI Parade held at the Jail after the occurrence.***
- (x) The post was behind the fighting area. The light was not sufficient enough to recognize the physical structures of the other assailants except the one whom I identified later one. The other reason was also that the deceased was attacked by a number of persons and among them I could recognize the one who I identified later on. The later was not sufficient enough to recognize the colours, of the wearing apparels of the assailants and the weapons held by them. I cannot say whether the assailants and the weapons held by them. I cannot say whether the distance between electric post and the place of fighting would be more than 10 ft. as I had not measured the distance with any instrument of measurement.***
- (xi) None of the family members of deceased Seitrajit Singh came out to the place of occurrence till the time of evacuating the injured to the hospital. It would be more than half an hour***

from the time I raised alarm till the time of lifting the injured to the tata truck. I did not go to the house of Seitrajit Singh on the night to inform his family members about the incident. I wore the same apparels when I accompanied the injured to the hospital. After post mortem examination of the dead body we took the body for funeral on the same day. It was in the afternoon that we took out the body from the hospital after the post mortem examination. I was present in the hospital all alone till the completion of the post mortem examination. I did not ask any person gathered at the place of occurrence before lifting the injured to the hospital for getting information about the occurrence to the family members of Seitrajit Singh. 2 police officers came to the hospital and made seizures of the wearing apparels, hair etc. of the deceased. I did not change the blood stained shirt and pant which I wore on the day.

(xii) I narrated about the incident to the father of Seitrajit Singh when I met him near the Khoyathong Pukhri Achouba on the following morning.

(xiii) I never visited the Imphal P.S. in c/w the case.

(xiv) The jailor asked me to identify the assailant in the said TI Parade. Nobody except the jailor told me for the identification of the said assailant. The person who told me the name the identified person as Sanayaima was also the jailor himself. It took quite sometime in the completion of the TI Parade. The Parade was conducted three times separately. In the first and 2nd parades, I could not identify any of the assailants. It in the 3rd parade that I identified that person whose name given as Sanayaima by the jailor. I came to know the name of said person only after the said TI Parade.

In the above statement, the witness in his examination-in-chief stated that he identified one person among the culprits during the T.I. Parade and the name of the said culprit was RK. Sanayaima (the accused expired during the course of trial). He further mentioned that he came to know the name of the said culprit as RK Sanayaima during the identification period as told to him by the I.O. of the case. Further, it is also stated that he may or may not be able to identify the person whom he identified due to lapse of time. On the day of giving his statement before the Court, he further said that none of the accused, who were in the dock, was the one whom he identified during the T.I. Parade. **On**

his further examination, the witness failed to mention the name of RK Sanayaima whom he identified during the T.I. Parade for identification of the accused. The witness further deposed that he cannot now identify the said person whom he identified at the time of T.I. Parade held at Imphal Central Jail. The witness stated in the first part of his statement that he along with the deceased were at the Khola along with one S.O. of P.W.D., one roller driver and other labourer. But, in the later part of his examination, the witness stated that he cannot remember any one of those persons who took dinner inside the said Khola and he will not be able to identify any one of those persons even if they are shown to me. **The discrepancies and contradictory shown in his statement is to be taken seriously as he is the solitary eyewitness.**

[16] On perusal of the above reproduced portion of the statement, it has been seen and emerged that the witness identified one accused namely, RK Sanayaima Singh in the **T.I. Parade even though as per the prosecution story during the TI Parade all the accused were put up from amongst other people but the witness even failed to identify the two persons who guarded him throughout during the time of the said occurrence** and the witness said that he will not be able to identify the said person whom he had identified in the T.I. Parade if asked again to identify in the Court room. The witness did not identify the accused who were in the dock saying that they are not the persons he identified during the T.I. Parade, after going through the above statement, we found a lot of discrepancies, contradictory and find it unreliable.

On perusal of the overall evidences particularly from the solitary eyewitness testimony, it has emerged that the witness himself is found to be not wholly reliable and on top of that, he failed to identify the only accused identified in the T.I. Parade. The Ld. Trial Court, while discussing the case in regard to the solitary eyewitness, stated/opined that the version of the P.W. No. 4 is well supported by P.W. No. 8, 16, 17 & 18. For the sake of brevity and to save time, we rely on the statements of these witnesses which are going to be reproduced herein below. But, on careful perusal of the statements of the above mentioned witnesses, we find no corroboration let alone supporting the version of the present witness i.e. P.W. No. 4, instead their version goes against the witness contradicting their statements with each other, hence considered unreliable.

In addition to that, the prosecution also failed to produce/examine some of the most important witnesses, for example, woman pan vendor, roller driver, labourers who can throw light on the statement of the present witness due to non-production of these persons as witnesses before the Court to corroborate the testimonies of the P.W. No. 4, this lacuna could not be cured the defect made by the P.W. No. 4. The lacuna created by the statement of the present witness in support of the prosecution case, these lacuna remain, creating doubt to the statement of the

present witness. Accordingly, the prosecution failed to prove the case on the single eyewitness which could be convicted the accused on the direct evidence. On top of that, since the solitary eyewitness as well as the witnesses No. 8, 16, 17 & 18 failed to identify the accused in the Court, the prosecution failed to prove their case on the solitary eyewitness (direct evidence) which could otherwise convict the accused on the direct evidence. In the light of these, we are of the opinion that the P.W. No. 4 (the solitary eyewitness) and witnesses mentioned above cannot be regarded as **reliable witnesses**.

In this regard, we rely on the Hon'ble Supreme Court's observation made in **Anil Phukan v. State of Assam [(1993) 3 SCC 282]**:

"3. This case primarily hinges on the testimony of a single eyewitness Ajoy PW 3. Indeed, conviction can be based on the testimony of a single eyewitness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of PW 3 Ajoy."

Mention is made here that the P.W. No. 13 who came face to face with the two accused namely, (i) P. Joykumar Singh and (ii) P. Dhananjay Singh. While recording the statement under Section 27 Evidence Act, in the Police Station and inspite of witnessing the recording of the statement and subsequently, seen the seizure of some of the seized articles failed to identify the said two accused in the Court while giving their statements(**P.W. No. 13**).

Mention is made here that the P.W. No. 9 who came face to face with the accused namely, P. Joykumar Singh. While recording the statement under Section 27 Evidence Act, in the Police Station and inspite of witnessing the recording of the statement and subsequently seen the seizure of some of the seized articles failed to identify the said accused in the Court while giving his statement(**P.W. No. 9**).

The P.W. No. 24 who is a seizure witness on the seizure of clothing of the accused Salam Bodo Singh on production by the accused Salam Bodo Singh but, he stated that he cannot identify the said long pant jean in grey colour due to lapse of time. Even though the witness stated that he knows the accused Salam Bodo Singh, he did not identify the accused in the Court (**P.W. No. 24**).

The P.W. No. 17 inspite of coming close contact with the said 3 (three) youths, one of whom was assaulted by the deceased, the witness did not identify the accused who were present in the Court when he was giving his statement as to whether the said 3 (three) youths were amongst the accused present in the Dock or not **(P.W. No. 17)**.

The P.W. No. 18 inspite of knowing both the accused Shahajahan and the deceased in his statement, the witness failed to identify the accused in the Dock **(P.W. No. 18)**.

Mention is also made here that the two witnesses who were the witnesses for the recording of confessional statement under Section 27 of Evidence Act of the accused P. Dhananjay Singh were also not produced as P.Ws. to support, identify the accused and prove the statement of the P.W. No. 4 (solitary eyewitness) before the Court.

The Hon'ble Supreme Court in series of judgments observes that Dock Identification is the most reliable evidences and in this regard, the Hon'ble Supreme Court in series of cases observed on -

Dock Identification is a conclusive and substantive evidence:

The Hon'ble Supreme Court, in **Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1]**, observed that –

255. These judgments make it abundantly clear that even where there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631:

"16. As was observed by this Court in *Matru v. State of U.P.*, (1971) 2 SCC 75, identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See ***Santokh Singh v. Izhar Hussain*, (1973) 2 SCC 406**) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is

subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See **Kanta Prashad v. Delhi Admn. AIR 1958 SC 350, Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340, Budhsen v. State of U.P., (1970) 2 SCC 128 and Rameshwar Singh v. State of J&K, (1971) 2 SCC 715.**)

Harbajan Singh v. State of J&K, (1975) 4 SCC 480

"19. Though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held:

4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in *Jadunath Singh v. State of U.P., (1970) 3 SCC 518*, absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant."

Malkhan Singh v. State of M.P., (2003) 5 SCC 746

"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused

person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

258. The learned Solicitor General submitted that, even otherwise, an adverse inference ought to be drawn against the appellants for their refusal to join the TIP. This view has found favour time and again by this Court. It is pertinent to note that it is dock identification which is a substantive piece of evidence. Therefore even where no TIP is conducted no prejudice can be caused to the case of the prosecution.

259. In *Mullagiri Vajram v. State of A.P.*, 1993 Supp (2) SCC 198, it was held that though the accused was seen by the witness in custody, any infirmity in TIP will not affect the outcome of the case, since the depositions of the witnesses in court were reliable and could sustain a conviction. The photo identification and TIP are only aides in the investigation and does not form substantive evidence. The substantive evidence is the evidence in the court on oath.

Matru v. State of U.P., (1971) 2 SCC 75

"17. Identification tests, it may be pointed out, do not constitute substantive evidence. Such tests are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines."

Santokh Singh v. Izhar Hussain, (1973) 2 SCC 406

"12. Such identification is not substantive evidence and it can only be used as corroborative of the statement in court....."

Kanta Prashad v. Delhi Admn. AIR 1958 SC 350

"3. It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in court..."

Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340

"6. It is also true that the substantive evidence is the statement in court; but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding....."

Budhsen v. State of U.P., (1970) 2 SCC 128

"7. Now, facts which establish the identity of an accused person are relevant under Section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court. Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognise as having been concerned in the crime. They do not constitute substantive evidence. These parades are of the essentially governed by Section 162, Criminal Procedure Code. It is for this reason that the identification parades in this case seem to have been held under the supervision of a Magistrate. Keeping in view the purpose of identification parades the Magistrates holding them are expected to take all possible precautions to eliminate any suspicion of unfairness and to reduce the chance of testimonial error. They must, therefore, take intelligent interest in the proceedings, bearing in mind two considerations: (1) that the life and liberty of an accused may depend on their vigilance and caution and (ii)

that justice should be done in the identification. Those proceeding should not make it impossible for the identifiers who, after all, have, as a rule, only fleeting glimpses of the person they are supposed to identify. Generally speaking, the Magistrate must make a note of every objection raised by an accused at the time of identification and the steps taken by them to ensure fairness to the accused, so that the court which is to judge the value of the identification evidence may take them into consideration in the appreciation of that evidence. The power to identify, it may be kept in view, varies according to the power of observation and memory of the person identifying and each case depends on its own facts, but there are two factors which seem to be of basic importance in the evaluation of identification. The persons required to identify an accused should have had no opportunity of seeing him after the commission of the crime and before identification and secondly that no mistakes are made by them or the mistakes made are negligible. The identification to be of value should also be held without much delay. The number of persons mixed up with the accused should be reasonably large and their bearing and general appearance not glaringly dissimilar. The evidence as to identification deserves, therefore, to be subjected to a close and careful scrutiny by the Court.

Rameshwar Singh v. State of J&K, (1971) 2 SCC 715

"5. Before dealing with the evidence relating to identification of the appellant it may be remembered that the substantive evidence of a witness is his evidence in Court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards are effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned who was a stranger to the accused because in that event the chances of his memory fading are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is thus and thus alone that justice and fairplay can be assured both to the accused and to the prosecution. The identification during police investigation, it may be recalled, is not substantive evidence in law and it can only be used for corroborating or contradicting evidence of the witness concerned as given in Court. The identification proceedings, therefore, must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in Court of the identifying witness.

Jadunath Singh v. State of U.P., (1970) 3 SCC 518

"14. In *Kanta Prasad v. Delhi Administration* a point was made regarding non-holding of test identification parade by the police and this Court observed:

"As for the test identification parade, it is true that no test identification parade was held. The appellants were known to the police officials who had deposed against the appellants and the only persons who did not know them before were the persons who gave evidence of association, to which the High Court did not attach much importance. It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification would be a matter for the Courts of fact and it is not for this Court to reassess the evidence unless exceptional grounds were established necessitating such a course." 15. It seems to us that it has been clearly laid down by this Court, in *Parkash Chand Sogani v. State of Rajasthan*, that the absence of test identification in all cases is not fatal and if the accused person is well-known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case. It seems to us that if there is any doubt in the matter the prosecution should hold an identification parade specially if an accused says that the alleged eyewitnesses did not know him previously. It may be that there is no express provision in the Code of Criminal Procedure enabling an accused to insist on identification parade but if the accused does make an application and that application is turned down and it transpires during the course of the trial that the witnesses did not know the accused previously, as pointed out above the prosecution will. Unless there is some other evidence, run the risk of losing the case on this point."

Mullagiri Vajram v. State of A.P., 1993 Supp (2) SCC 198

"3. We have gone through the judgment of the lower courts and have perused the record and have considered the arguments advanced by learned counsel for the parties. The High Court has considered the prosecution evidence in detail and has placed reliance on the statements of PWs 1, 2, 3 and 4 as eyewitnesses of the incident. The High Court has placed implicit reliance on the testimony of PW 2 who was a clerk working in the panchayat office of Ramaraogudem and had accompanied the deceased in an autorickshaw and had seen the incident. We find no infirmity in the statement of PW 2 and the High Court has rightly placed reliance on his evidence."

Relying on the facts and circumstances made above and relying on the observations made by the Hon'ble Supreme Court(supra), we are of the view that the prosecution failed to prove their case on solitary eyewitness (direct evidence).

[17] **Statement of P.W. No. 5:**

About 11 years ago, one day I the morning while I was at my home I learnt that Shri Satyajit Singh of our Leikai was assaulted by some unknown persons on the Polem Leikai Road at or near the south western corner of the Khoyathong Thangmeiband Pukhri Achouba Mapal in the night when he came back to his house from his kholla and that he was taken to the RMC hospital Lamphel on the same night. On getting the said news I went to the place of occurrence at about 6 a.m. and I found some people of our Leikai were present at or near the place of occurrence. When I was standing near the place of occurrence along with other Leikai people, a police party led by one police officer came at the spot. The said police officer made an inquiry about the occurrence. The said police officer seized one half lamp on production by Nongmaithem Megha Singh by preparing a seizure memo in my presence and my signature of the other Leikai people at about 9 a.m. I put my signature on the said seizure memo preparing the said police officer after knowing the full contents of it. The said half lamp was produced by Shri Megha Singh and handed over the same half lamp to the police by Nongmaithem Megha Singh. The Chemni (glass of the half lamp) was found broken and its tanky portion had a depression mark. Ext. P-3 is the said seizure memo prepared by the said police officer bearing my signature Ext. P-3/2. I can identify the said half lamp seized by the police if shown to me. The witness identify the said half lamp. It is marked as M.O. – 1. The house cum work shop of Nongmaithem Megha Singh is situated on the south eastern corner of the Thangmeiband/Khoyathong Pukhri Achouba Mapal which is intervened by a road in between the house of S. Megha Singh and the said Pukhri. The distance between the place of occurrence and the house of Sorokhaibam Megha Singh is within the 100 feet.

Xxxxxxx by the Id. Counsel for the accused persons.

I deny the suggestion that no half lamp was seized on production by Megha Singh in my presence. I also deny the suggestion that I have never signed on the said seizure memo Ext. P-3. I also deny the suggestion that I am giving false evidence before the court today. I also deny that I never visited to the place of occurrence.

Statement of P.W. No. 6:

*About 11 years ago **one day in the morning** while I was remained in my house I heard from my family members that Shri Satyajit Singh of our relative was assaulted by some persons on the Polem Leikai Road at or near south western corner of the Thangmeiband/Khoyathong Pukhri Achouba Mapal in the night when he came back to his house from his work site and then he was taken to the R.M.C. Lamphel for his medical treatment. On getting the said information I went to the said place of occurrence and I found some people of our locality were collected at or near the place of occurrence. After a while a police party led by S.I. Heli Mao of Imphal P.S. came to the place of occurrence. He made an inquiry about the occurrence. The said police officer seized blood stain sticks, wooden sticks in two pieces and another short stick, some blood stain earth mixed with pabbles by preparing a seizure memo on the place of occurrence. I put my signature on the said seizure memo prepared by the said Helli Mao after knowing the full contents of it. Ext. P/12 is the said seizure memo prepared by the said police officer bearing my signature Ext. P-B/1. I can identify the said seized sticks if shown to me. Ext. M.O. – 2 is the short stick measuring about 5 or 6 inches in length. M.O.-3 is the broken sticks measuring about 22 inches in length. M.O.-4 is the broken stick measuring about 3^{1/2} feet in length. After seizure of the Ext. M.O.-2 to 4 the said police officer also seized one half lamp at the place of occurrence on production by N. Megha Singh. On the same day at about 12 noon the injured Satyajit Singh expired at the hospital and he was brought back to his home at about 12 noon.*

I deny the suggestion that I never went to the place of occurrence and further that I never saw the inquiry made by the S.I. Heli Mao at the place of occurrence I also deny that the said Heli Mao SI never seized blood stain stick, wooden stick and another short stick and some blood stain earth mixed with pabbles in my presence. I also deny that I never signed on the seizure memo after knowing the contents of it. I also deny the suggestion that none of the Ext. M.O.-2 to 4 were seized in my presence. I also deny the suggestion that the seizure memo Ext. P-12 is a forged and fabricated document. I also deny the suggestion that I never saw the seizure of any half lamp by the police. It is true that in my statement given to the police u/s 161 Cr.P.C. I did not state that I saw the seizure of any half lamp by the police.

Our analysis, observation and reasoning–

The witness, in his statement, states that “one day in the morning” and “the police came to the place of occurrence and seized blood stain sticks, wooden sticks in two pieces and another short stick, some blood stain earth mixed with pabbles by

preparing a seizure memo on the place of occurrence." "The said police officer also seized one half lamp at the place of occurrence on production by N. Megha Singh. On the same day at about 12 noon the injured Satyajit Singh expired at the hospital and he was brought back to his home at about 12 noon."

Mention is made here that the ejahar was lodged by the P.W. No. 1, the father of the deceased to the police at 4:00 p.m. on 23.06.1989. But, the police visited the place of occurrence and started to seize the seized articles by preparing seizure memo with seizure witnesses in the morning of the same day.

[19] **Statement of P.W. No. 7:**

*I know the deceased Seityajit Singh of Thangmeiband Polem Leikai. One day about 11 years ago while I was at home I learnt that Shri Seityajit Singh was assaulted by some unknown persons while he return at his home in the night at or near the Thangmeiband Pukhri Achouba Mapal and the said Seityajit Singh was removed to the RIMS for his treatment. On getting the said information I went to the said place of the occurrence. While I and some youths of our Leikai were standing near the place of occurrence a police party led by one police officer namey Heli Mao of Imphal PS. **The said police officer made the spot enquiry in our presence and he seized 1) one blood stained paper, 2) blood stained earth mixed with stones, 3) 2 pieces of sticks with blood stained of 5 ft. and half inch long, 4) half broken wooden stick length about 3 1/2 ft. with the blood stained, 5) one piece of broken wooden stick about 22 inches long with wooden handle of about 6 inches long under the seizure memo prepared by the said police officer in my presence and in the presence of Magha Banna Singh and other youths of our Leikai. I put my signature on the said seizure memo prepared by S.I. Heli Mao after knowing the full contents of it.***

On the same day one half lamp was also seized by the said police officer on production by Shri Megha Singh under a seizure memo prepared by the said police officer. I put my signature on the seizure memo for seizing half lamp after knowing the full contents of it. I can identify the above mentioned seized articles is shown to me and the seizure memo prepared by the said police officer. Ext. P/12 is the seizure memo prepared by the said police officer. Ext. P/12 is the seizure memo for the seizure of 1) blood stained paper, 2) blood stained earth mixed with stones, 2 pieces of

sticks with blood stained, 4) half broken wooden stick, and one piece of broken wooden stick. Ext. P/12 is my signature. Ext. P/3 is the seizure memo for the seizure of one half lamp bearing my signature Ext. P/3/3.

I cannot identify the half lantern show to me now which is already marked as Ext. M.O. 1 is the said half lantern seized by the police in my presence due to lapse of time. Ext. M.O.2 is the short ooden stick. Ext. M.O. 3 is the broken wooden stick of 22 inches in length. Ext. M.O. 4 is the broken stick of 3 ft and half inch in length. Ext. M.O. 5 is the wooden stick five feet in length. Ext. M.O. 6 is the wooden stick having wooden handle.

On the same day at about noon I went to the RMC Casualty along with some Leikai villagers and I find dead body of Seityajit Singh was lying on the stretcher in front of the RMC Casualty and S.I. Heli Mao was also present near the dead body of Polem Seityajit Singh. The dead body of Seityait Singh was removed to the RMC morgue for post mortem examination by the said police officer. We also followed the dead body up to the RMC morgue. **At the morgue the said police officer seized one dirty brown polyester full shirt torn over the shirt within blood stained, sample of blood on filter paper and samle of skull hair on production by the said police offier. I put my signature on the said seizure memo after knowing the full contents of it. I can identify the said seizure memo if shown to me. Ext. P/4 is the said seizure memo for the seizure of the aove mentioned articles. Ext. P/4/2 is my signature. I can identify the above mentioned seized articles if shown to me. Ext. P/7 is the sample of blood on a piece of paper.**

Xxxxxx by the defence counsel.

The Leikai situated around Khoyathong Pukhri Achouba is known as Polem Leikai. My house lies on the southern side of the said Pukhri Achouba. **My house and the place of occurrence from where the sticks, blood stained earth were seized is intervened by the ingkhol of R.K. Bekomsana. I received the information about the death of the said Seityajit Singh at about 4 A.M. while I was at my house. I reached the place of occurrence at about 4.30 a.m. when I reached the spot I found the father of the said Seityajit already present at the spot. I cannot now remember the particulars and identifies of those leikai people who were found assembled at the spot. The police party came to the spot at about 8 or 9 a.m. Before the arial of the police I went to the hospital to see the condition of the said Seityajit Singh. At the time of my visit at the hospital dead body of Seityajit Singh was lying at the Casualty Department of the RIMS Hospital, Imphal after seeing his condition I again came back to the spot. When I reached the spot in the morning for the first time I fond the two broken pieces of sticks at the gate of R.K. Bekomsana Singh. The said blood stained earth and the stone were also found at the said spot i.e. near the gate of R.K. Becomsana. The stick Ext. M.O. 5 was found lying on the norther side of Polem Leikai Road on a vacant portion. The distance between the gate of R.K. B. Comsana and Khoyathong Pukhri Achouba will be about 15/20 feet. It is true that there was a**

berbed wire fecing all around the said Pukhri Achouba but there were some broken pieces of the berbed wires at some places.

I did not hear any alarm on the previous night i.e. the night of the occurrence.The dead body of P. Seityajit Singh was taken to RIMS Morgue from the Casualty Department at around 12 noon. At about 2.30 or 3 p.m. the dead body was taken from the morgue and brought to our Leikai for funeral and other religious rites.

I deny the suggestion that I did not visit the place of occurrence on the said day at any time. I also deny the suggestion that I was not present at the time of making seizure of the Ext. MO 2 to M.O. 6. I also deny the suggestion that I put signatures on the seizure memos at Ext. P/12 Ext. P/3 and Ext. P/4 without knowing its contest and also on a must later date on the asking of the police officers. I also deny the suggestion that the distance between the gate of R.K. Becomsana and that of the Khoyathong Pukhri Achouba is around 50 feet. I deny the suggestion that I do not know the location where the occurrence took place. I deny the suggestion that I am giving false evidence as tutored by the prosecution.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) The said police officer made the spot enquiry in our presence and he seized 1) one blood stained paper, 2) blood stained earth mixed with stones, 3) 2 pieces of sticks with blood stained of 5 ft. and half inch long, 4) half broken wooden stick length about 3 1/2 ft. with the blood stained, 5) one piece of broken wooden stick about 22 inches long with wooden handle of about 6 inches long under the seizure memo prepared by the said police officer in my presence and in the presence of Magha Banna Singh and other youths of our Leikai.***
- (ii) On the same day one half lamp was also seized by the said police officer on production by Shri Megha Singh under a seizure memo prepared by the said police officer. I put my signature on the seizure memo for seizing half lamp after knowing the full contents of it.***
- (iii) I cannot identify the half lantern show to me now which is already marked as Ext. M.O. 1 is the said half lantern seized by the police in my presence due to lapse of time.***
- (iv) At the morgue the said police officer seized one dirty brown polyester full shirt torn over the shirt within blood stained,***

sample of blood on filter paper and samle of skull hair on production by the said police officer. I put my signature on the said seizure memo after knowing the full contents of it. I can identify the said seizure memo if shown to me. Ext. P/4 is the said seizure memo for the seizure of the aove mentioned articles. Ext. P/4/2 is my signature. I can identify the above mentioned seized articles if shown to me. Ext. P/7 is the sample of blood on a piece of paper.

- (v) ***My house and the place of occurrence from where the sticks, blood stained earth were seized is intervened by the ingkhol of R.K. Bekomsana. I received the information about the death of the said Seityajit Singh at about 4 A.M. while I was at my house. I reached the place of occurrence at about 4.30 a.m. when I reached the spot I found the father of the said Seityajit already present at the spot. I cannot now remember the particulars and identities of those leikai people who were found assembled at the spot. The police party came to the spot at about 8 or 9 a.m. Before the arrival of the police I went to the hospital to see the condition of the said Seityajit Singh. At the time of my visit at the hospital dead body of Seityajit Singh was lying at the Casualty Department of the RIMS Hospital, Imphal***
- (vi) ***The said blood stained earth and the stone were also found at the said spot i.e. near the gate of R.K. Becomsana. The stick Ext. M.O. 5 was found lying on the norther side of Polem Leikai Road on a vacant portion. The distance between the gate of R.K. B. Comsana and Khoyathong Pukhri Achouba will be about 15/20 feet. It is true that there was a berbed wire fecing all around the said Pukhri Achouba but there were some broken pieces of the berbed wires at some places.***
- (vii) ***I did not hear any alarm on the previous night i.e. the night of the occurrence.***

On perusal of the above reproduced portion of the statement of the witness, it is seen and has emerged that the witness was the seizure witness for the above mentioned seized materials and the half lantern which was seized on production by the P.W. No. 4 but, he failed to identify the said half lantern. He was also a seizure witness for the seizure of one dirty brown polyster full shirt torn over the shirt within blood stained, sample of blood on filter paper and samle of skull hair on production by the

said police officer at hospital morgue. In spite of his house and the place of occurrence were intervened only by one ingkhol, he did not hear any alarm on the previous night i.e. the night of occurrence in spite of raising alarm "Mee Hatle Mee Hatle" raised by the deceased and P.W. No. 4 (solitary eyewitness) and stated that the police party came to the spot at about 8.00a.m. or 9.00 a.m. that shows the police already visited the place and started to seize the articles i.e. before lodging of the original ejahar and in spite of his house very close to the place of occurrence, he did not hear any alarm on the previous night as per the prosecution story the deceased as well as P.W. No. 4 raised alarm "Mee Hatle, Mee Hatle".

[20] **Statement of P.W. No. 8:**

I know the deceased Seityajit Singh of Thangmeiband Polem Leikai as he is my brother-in-law. Smt. Omita alias Chaobi Devi is the wife of Seityajit Singh. Smt. Omita alias Chaobi is my sister. The deceased Seityajit Singh was a well known football player as well as a Government contractor during his life time. He was killed by some persons for about 11 years ago.

*About 11 years ago he took a contract work of black topping from the PWD, Manipur from Khoyathong to Dharmasala, Thangal Bazar, I also helped him in the said contract work, **while the work of black topping was going on we got the road one at Khoyathong and one at or near the Jalal Provision store by using a rope in order to prevent the disturbance from the passersby and in order to do the work smoothly, and as a result of this several problems were created by the passers-by. Some persons trying to enter forcibly and someone asked me politely to enter in the said road. At the relevant time I was in front of the Jalal Provision Store and my brother-in-law Shri Seityajit Singh was at the Khoyathong side on the day while the work of black topping was going. It was about 4.30 p.m. of that day. Some argumatic persons threatened me. So I was compelled to proceed to Khoyathong to talk with my brother-in-law Seityajit Singh whether I was to permit to enter the person in the said area, when I was just reaching at or near the Star Auto work which was situated to the northern side of the road, I saw***

some people were gathering there. On my reaching I enquired about it. At that time one labour told me that one person was slapped on his head by my brother-in-law Shri Seityajit Singh. But I did not find my brother-in-law Seityajit Singh and the person who was slapped by my brother-in-law at that place. So I left the said place and came back to my duty place. While I was objecting the other passers-by to enter in the working area some persons threatened me. Then I again went towards the khoyathong to make a report to my brother-in-law Seityajit Singh. But at that time also I did not find my brother-in-law Seityajit Singh at khoyathong. At that time I met one TombaSingh roller driver of P. W. D. who was engaged in the said contract work by my brother-in-law and he told me that one Sidam Singh and the person who was slapped by my brother-in-law came there and searched my brother-in-law Shri Seityajit Singh.

It was about 5.30 p.m. Then I came back to my duty place in front of the Jalal Provision, Thangal bazar, we stopped our work at about 11 p.m. on that day and then I came to my home on that day.

In the early morning at about 4 a.m. I received a telephone from Thangmeiband to the effect that my brother-in-law Seityajit Singh was assaulted by some youths and he was taken to the hospital. On getting the said information I went to the residence of Shri Seityajit Singh and I got the information that my brother-in-law died at the hospital.

xxx by the defence counsel.

*I cannot say whether my deceased brother-in-law Seityajit Singh was a registered Govt. contractor. I also do not know whether the said contract work was allotted to my said brother-in-law by the PWD in his name or not. The distance between Jalal Provision Store where I stood blocking the road and the traffic point of Khoyathong will be about half a kilometer. **There are rows of shops and other business establishments on both sides of the said road i.e. both on eastern and western side. There is a post office and some banks in between the said portion of the Thangal Bazar road. The said road is one of the busy roads of the Imphal bazar area. We blocked the said road by rope on both ends at the said points which I mentioned in my examination-in-chief.*** I was told by the said Seityajit Singh that he obtained permission for blocking the said road from the competent authority. However I did not possess the said permission with me while I was blocking the passers-by from entering into the said portion of the road. I deny the suggestion that there was no written permission from any authority for our blocking the public road during those pick business hour of the day, and further that we blocked the road on hour on causing much disturbance to the general public did not know whether my deceased brother-in-law had similar problems which I faced on my side from the passers-by public. I cannot say whether my deceased brother-in-law had quarrels with many passers-by as he blocked the road forcibly without authority.

The caller who woke me in the early morning on the nextday was my sister Chaobi Levi wife of my deceased brother-in-law Seityajit Singh. I alone went to the house of my brother-in-law to enquire about the matter. I went to the house of my brother-in-law directly instead of visiting to my injured brother-in-law at Hospital. It was only after I reached the house of my brother-in-law that I heard the news of his death. I deny the suggestion that I am false evidence.

Our analysis, observation and reasoning -

On perusal of the above statement of the witness, we found a lot of reliable statements contradictory to the prosecution story and in his deposition as highlighted and blackened in the above statements, it is seen that the deceased while working i.e. the black topping, the deceased used to block the road from Khoyathong to Jalal Provision, a lot of disturbances created to the passersby and even quarrelling as well as slapping incidence were occurred. It is further mentioned that the brother-in-law of the witness (deceased) was a quarrellsome.

- (i) While the work of black topping was going on we got the road one at Khoyathong and one at or near the Jalal Provision store by using a rope in order to prevent the disturbance from the passersby and in order to do the work smoothly, and as a result of this several problems were created by the passersby. Some persons trying to enter forcibly and someone asked me politely to enter in the said road. At the relevant time I was in front of the Jalal Provision Store and my brother-in-law Shri Seityajit Singh was at the Khoyathong side on the day while the work of black topping was going. It was about 4.30 p.m. of that day. Some argumatic persons threatened me.***
- (ii) I saw some people were gathering there. On my reaching I enquired about it. At that time one labour told me that one person was slapped on his head by my brother-in-law Shri Seityajit Singh. But I did not find my brother-in-law Seityajit Singh and the person who was slapped by my brother-in-law at that place. So I left the said place and came back to my duty place. While I was objecting the other passers-by to enter in the working area some persons threatened me. Then I again went towards the khoyathong to make a report***

to my brother-in-law Seityajit Singh. But at that time also I did not find my brother-in-law Seityajit Singh at khoyathong. At that time I met one TombaSingh roller driver of P. W. D. who was engaged in the said contract work by my brother-in-law and he told me that one Sidam Singh and the person who was slapped by my brother-in-law came there and searched my brother-in-law Siri Seityajit Singh.

(iii) There are rows of shops and other business establishments on both sides of the said road i.e. both on eastern and western side. There is a post office and some banks in between the said portion of the Thangal Bazar road. The said road is one of the busy roads of the Imphal bazar area. We blocked the said road by rope on both ends at the said points which I mentioned in my examination-in-chief.

The statement of the witness as highlighted above shows that while the work of black topping was carried out by the deceased, several problems were created by passersby and tried to forcibly enter the road of the black topping. It was also seen from his statement that there was a slapping incident i.e. his brother-in-law slapped someone and further, it is seen that one, Sidham Singh and the person who was slapped by the deceased searched for the deceased.

[21] Statement of P.W. No. 9:

I know S.I. Sarojkumar Sharma of Brahmapur Thangapat Mapal, Imphal. He is no more. About 10 years ago one day in the morning at about 10 am while I was at Yaiskul Athletic Club Ground in front of the Kalimai Hotel along with my friend namely Kshetrimayum Ronikanta Singh of Yaiskul, SI Sorojkumar Sharma of Imphal P.S. asked us to become a witness in connection with a case relating to the death of Seityajit Singh of Thangmeiband Polem Lekai. As asked by SI Sarojkumar Sharma I and my friend Rohinikanta Singh went to the Imphal P.S. along with SI Sarojkumar Sharma. We reached at Imphal P.S. and we entered into the police station and we were sitting on chairs inside the police station. While we were sitting in the Imphal P.S. SI Sarojkumar Sharma took out one accused person from the police lock-up. The face of the said person was covered with a towel. The cloth was removed by SI Sarojkumar Sharma and then the said person was examined by SI Sarojkumar Sharma. I came to know the name of that person was Joykumar Singh of Sagolband as he disclosed his identity to the police. He also stated that about 10 years ago one day in the night he along with

his friends numbering about 4/5/6 persons whose names I cannot now remember, assaulted Seityajit Singh with deadly weapons such as cane stick, iron handle of jeep and knife near the Thangmeiband Pukhri Achouba Mapal, and that they immediately left the place of occurrence by a jeep the weapons of the crime such as iron handle of the jeep, cane stick and knife held by them, which were used by them at the commission of the crime, were kept concealed inside the clumb of bamboo which was lying in the eastern side of his garage. He further stated that he would be able to point out the hidden place of weapons and would be able to hand over the aforesaid weapons to the police. SI Sarojkumar Sharma recorded the statement of the accused Joykumar Singh in my presence and in the presence of my friend Ronikanta Singh. I and my friend Ronikanta Singh put our signature son the statement of the accused recorded by SI Sarojkumar Sharma as asked by Sarojkumar Sharma.

After that I along with a police party led by SI Sarojkumar Sharma, the accused Joykumar Singh and my friend Ronikanta Singh went to the house of the accused Joykumar Singh at Sagolband in a police jeep. When we reached at the said place the accused Joykumar Singh pointed his finger at the hidden place of weapons and then he took out one iron handle of a vehicle, one knife and one cane stick having bold head and handed over the aforesaid weapons of crime to SI Sarojkumar Sharma. SI Sarojkumar Sharma seized the above mentioned weapons of crime on production by the accused Joykumar Singh by prepairing a seizure memo at the spot. I put my signature on the said seizure memo after knowing the full contents of it. At the relevant time a photographer took some photographs in connection with the recovery of the aforesaid weapons. I can identify the statement of the accused recorded by SI Sarojkumar Sharma if shown to me. Expt. P/13 is the statement of the accused Joykumar Sing. Ext. P/13/1 is my signature. The relevant portion of the statement given by the accused Joykumar Singh is marked as Ext. P/13/2.

Ext. P/14 is the seizure memo prepared by SI Sarojkumar Sharma in connection with the seizure of one cane stick, having bold head, one iron handle of the jeep and one knife (heijrang). Ext. P/41/1 is my signature. I can identify the aforesaid three weapons if shown to me. The weapons are produced before the Court with sealed cover (with the permission of the Court sealed cover of the said 3 weapons are opened and shown to the witness). The witness identified that the three weapons are the said weapons which were seized by the SI Sarojkumar Sharma on production by accused Joykumar Singh. Ext. M.O. 8 is the can stick having bold head. Ext. M.O.9 is the handle of the vehicle and Ext. M.O.10 is the knife (Heijrang). **I cannot identify the said accused Joykumar Singh due to lapse of time.**

On 29.01.2001 (Continuation)

I am a permanent residence of Moirangkhom Bokul Makhong which stituates just near the bank of Imphal River. Late Sarojkumar Sharma the I.O. of the case was also a permanent resident of Brahmapur Nahabam which lies on the adjacent bank

of Imphal River. As he was a resident of my neighbouring Leikai I knew him since my childhood.

Smt. Chaobi Devi the wife of deceased Seityajit Singh is from Bokul Makhong. She is a Brahamani of the surname of Aribam. She is related to me as my daughter. She is daughter of my cousin brother. Her parental house lies on the southern side of my house and intervened by 2 other ingkhols. The occasion of which I acted as a witness was the first time in my life to act as such. There were many other Leikai people at the YAC Ground when SI Saroj came there for asking us to act as a witness in the present case. Those Leikai people were preparing for a Mela (Exhibition) at the said ground. S.I. Saroj did not ask any of these persons gathered at the said ground for becoming witness in the present case. He specially asked me and my friend Ronikanta Singh who happened to be standing with me at the relevant time to act as a witness. He was accompanied by some police personnel who came on a police jeep. The said YAC ground is located on the western bank of Imphal River just in front of MSRTC compound and kalimai temple. The said ground all the person standing thereon are not visible from Indo-Burma road or from Kalimai Hotel as the view is obstructed by an elevated long earthen bund. At the relevant time, I was standing on the said elevated earthen bund. He came to the said ground from the northern side on foot by leaving the vehicle on Indo-Burma Road. I do not know from which direction the vehicle came.

By that time the present building of the Imphal P.S. was not existed. In its place there was a wooden structure having tin roof police station. I cannot now remember how many rooms were there in the said police station. I also cannot remember in which room we were seated in the police station. I also cannot now remember if there were any other police personnel or members of the public present in the said room where we were seated. I do not know on which portion of the building the lock-up room was located. I cannot remember whether there were any other persons besides those which I named in my examination i.e. police personnel or members of the public at the time or recording the statement of the person who was taken out from by SI Saroj sentence by sentence after questioning him. The answer of that person to one question on the I.O. was recorded by the I.O. I do not know whether the said statement was recorded in English or in Manipuri. Due to lapse of time I cannot now remember whom between myself and my friend Ronikanta put signature first on the said recorded statement. The statement was not read out by the I.O. to us. I also did not read the same on my own. I just put my signature on the said statement as asked by the I.O. The place for subscribing my signature was also indicated to us by the I.O. I also do not remember who else besides myself and Ronikanta put signatures on the said statement. We remained at the police station for about half an hour. Thereafter we proceeded towards the house of the accused which I mentioned in my examination-in-chief. There were 2 or 3 police personnel beside SI Saroj when we went to the house of the accused. Besides, the said police personnel I myself, my friend Ronikanta and the accused person were in the same jeep.

The house of the accused lies on the eastern side of the Meino Leirak. There was a byelane running from Meino Leirak to the house of the accused. I cannot say whether the said byeland connects Sagolband Salam Leikai running through the easternmost portion of the Ingkhol of the accused. I also cannot say whether the said byeland is used by the inhabitants of both Sagolband Salam Leikai and Sagolband Meino Leirak. So far I remember there was a main structure (house) and a garage in the said Ingkhol of the accused. But I cannot say whether the said house was of wooden structure or RCC building. The garage lies on the northern portion of the ingkhol. I cannot remember as to whether there were another structures i.e. one big eastern (mamang sangoi) and one two storied northern outhouse in the said Ingkhol of the accused. The said Ingkhol was a big one having an approximate breadth of 70 ft. and a length of about 200 ft. I did not enter into any room of the said house or garage on that day.

There were many other Leikai People during the period of our remaining there in the said house. I cannot now remember where the document Ext. P/14 was prepared. The witness again clarified that he had already stated in his examination that the said document was prepared at the spot. We remained at the house of the accused for about half an hour. I put my signature on the said document first. After I put my signature my friend Ronikanta also put signature on the said paper I do not know whether any other person also put his signature on the said document. I did not see any other person putting signature on the said document along with myself and my friend Ronikanta. On seeing the said document today I came to know that there was another witness by the name of S. Rajen Singh who put his signature on the said document. I do not know the said Rajen Singh. I also did not see him signing on the said document on the aforesaid day at the house of the accused. I cannot now remember whether the content of Ext.P/14 was read over to me on that day or not.

I deny the suggestion I was asked to be a witness in the case as specifically picked up by the I.O. as happened to be a relative of the deceased. I deny the suggestion that the show called statement at Ext. P/13 was not given or delivered by the accused Joykumar on any day. I further deny the suggestion that Ext. P/13 is a fabricated document.

I deny the suggestion that I did not visit the house of the accused on any and that of seizure was made either at the instance of the accused or at his pointing. I deny the suggestion that Ext. M.O. 8,9 and 10 were not seized from the house of the accused or from any portion of his Ingkhol. It is also not a fact that Ext. P/14 is a fabricated document. I deny the suggestion that I am giving false evidence.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) *At about 10 am while I was at Yaiskul Athletic Club Ground in front of the Kalimai Hotel along with my friend namely Kshetrimayum Ronikanta Singh of Yaiskul, SI Sorojkumar Sharma of Imphal P.S. asked us to become a witness in connection with a case relating to the death of Seityajit Singh of Thangmeiband Polem Lekai. As asked by SI Sorojkumar Sharma I and my friend Rohinikanta Singh went to the Imphal P.S. along with SI Sorojkumar Sharma. We reached at Imphal P.S. and we entered into the police station and we were sitting on chairs inside the police station. While we were sitting in the Imphal P.S. SI Sorojkumar Sharma took out one accused person from the police lock-up. The face of the said person was covered with a towel. The cloth was removed by SI Sorojkumar Sharma and then the said person was examined by SI Sorojkumar Sharma. I came to know the name of that person was Joykumar Singh of Sagolband as he disclosed his identity to the police. He also stated that about 10 years ago one day in the night he along with his friends numbering about 4/5/6 persons whose names I cannot now remember, assaulted Seityajit Singh with deadly weapons such as cane stick, iron handle of jeep and knife near the Thangmeiband Pukhri Achouba Mapal, and that they immediately left the place of occurrence by a jeep the weapons of the crime such as iron handle of the jeep, cane stick and knife held by them, which were used by them at the commission of the crime, were kept concealed inside the clump of bamboo which was lying in the eastern side of his garage. He further stated that he would be able to point out the hidden place of weapons and would be able to hand over the aforesaid weapons to the police. SI Sorojkumar Sharma recorded the statement of the accused Joykumar Singh in my presence and in the presence of my friend Ronikanta Singh. I and my friend Ronikanta Singh put our signature on the statement of the accused recorded by SI Sorojkumar Sharma as asked by Sorojkumar Sharma.*
- (ii) *I cannot identify the said accused Joykumar Singh due to lapse of time.*

On 29.01.2001 (Continuation)

- (iii) *I am a permanent residence of Moirangkhom Bokul Makhong which stituates just near the bank of Imphal River. Late Sorojkumar Sharma the I.O. of the case was also a permanent resident of Brahmapur Nahabam which lies on the adjacent bank of Imphal River. As he was a resident of my neighbouring Leikai I knew him since my childhood.*

Smt. Chaobi Devi the wife of deceased Seityajit Singh is from Bokul Makhong. She is a Brahmani of the surname of Aribam. She is related to me as my daughter. She is daughter of my cousin brother. Her parental house lies on the southern side of my house and intervened by 2 other ingkhols. The occasion of which I acted as a witness

was the first time in my life to act as such. There were many other Leikai people at the YAC Ground when SI Saroj came there for asking us to act as a witness in the present case. Those Leikai people were preparing for a Mela (Exhibition) at the said ground. S.I. Saroj did not ask any of these persons gathered at the said ground for becoming witness in the present case. He specially asked me and my friend Ronikanta Singh who happened to be standing with me at the relevant time to act as a witness. He was accompanied by some police personnel who came on a police jeep.

(iv) I do not know whether the said statement was recorded in English or in Manipuri. Due to lapse of time I cannot now remember whom between myself and my friend Ronikanta put signature first on the said recorded statement. The statement was not read out by the I.O. to us. I also did not read the same on my own. I just put my signature on the said statement as asked by the I.O. The place for subscribing my signature was also indicated to us by the I.O.

Mention is made here that the present witness who came face to face with the accused namely, P. Joykumar Singh, while recording the statement under Section 27 Evidence Act, in the Police Station and inspite of witnessing the recording of the statement and subsequently, seen the seizure of some of the seized articles failed to identify the said two accused in the Court while giving their statements.

As stated above, the present witness is from Bramhapur Thangapat Mapal (not periphery area of the place of occurrence) and he along with his friend namely, Ksh. Ronikanta Singh of Yaiskul were called and asked to become witnesses. Further, in his above statement, it was also stated that the SI, Sorojkumar Sharma took out one accused person from the police lock-up and examined the said person in front of them and thereafter, he came to know the name of the said person was

Joykumar Singh of Sagolband and further stated that in front of them and police, the accused Joykumar Singh pointed his finger at the hidden place and took out one iron handle of the vehicle, one knife and one cane stick and the same were seized in front of them. Further, it was stated that the I.O. of the case was a permanent resident of Brahmapur Nahabam Leikai his neighbouring Leikai and he knew the I.O. since his childhood. Further, it was in his statement that Smt. Chaoba Devi, the wife of the deceased from Bokul Makhong and she is related to him as she is daughter of his cousin brother and house of the deceased wife and his are intervened by two other ingkhols.

Further, it was stated that the said recorded statement of the accused was not read out to him and his friend and he did not read the same on his own.

As observed above, we find the present witness not reliable and not trustworthy. For this, we rely on the Hon'ble Supreme Court's judgment in **Anil Phukan V. State of Assam [(1993) 3 SCC 282](supra)**.

[22] For the sake of brevity and to save time, only operative portion of the statement of the P.W. No. 10, 11 & 12 are reproduced herein below.

Statement of P.W. No. 10:

P.W. No. 10 has deposed that he is serving as Additional Professor in Forensic Medical Department, Regional Institute of Medical Sciences, Imphal and on 23-06-1989 at 11:15 am, he conducted post

mortem examination on a dead body of one Polem Satyajit alias Satyajit Kumar Singh, 36 years S/o P. Indrajit Singh of Khoyathong Polem Leikai in connection with FIR Case No. 384(6)89 Imphal P.S. u/s 302/34 IPC in RMC Morgue, Imphal. The dead body was identified to him by one SI P. Helli Mao of Imphal P.S. and one relative, P. Dorendrakumar Singh.

On examination of the dead body, he found the following.

EXTERNAL APPEARANCE:-

- 1) *The dead body having good physic, fair nutrition right eye black face deformed, rigor mortis present all over the body, post mortem staining present on back.*

EXTERNAL INJURIES:

- i) *Incise looking wound 2.5 x 1cm. x 1cm scalp deep on temporal area. 3.5cm. above left eye-brow and 7 on from mid-line.*
- ii) *Incise looking wound 5.5 x 0.8 cm. bone deep on right side forehead, one cm. from mid-line and 1.5 cm, above eye brow. It is horizontally placed.*
- iii) *Multiple abraded contusion and multiple laceration on right temporal area in an area of 19 x 8 cm. skull deep over face with committed fractures on both maxillary and nasal bones*
- iv) *Contused swelling on right temporo-prietal area.*
- v) *Contusion 13 x 2 cm obliquely placed on right side back 4 cm. from mid-line and 25 cm, below the tip of should*
- vi) *Abraded contusion 5 x 1 cm. over mid-line back over 7 the cervical spine*
- vii) *Multiple abraded contusion 9 x 6 cm. over right side outer aspect of chest 6 cm. below posterior axillary fold.*
- viii) *Incise injury 7 x 3 cm. muscle deep, obliquely placed front and outer aspect of right thigh 63 cm, above heel Tailing of the wound present at left lower portion of the wound.*
- ix) *Incise injury 4.5 cm. x 1 cm. subcutaneous deep in front of right thigh 61 cm. above heel.*
- x) *Stab injury 3 x 1.5 cm. on outer aspect of left thigh 7.2 cm above heel. The margin is irregular, direction of force is left to right and upwards.*
- xi) *Stab injury 1.8 x 0.7 cm. on outer aspect of left thigh 8.5cm below injury No. (x).*
- xii) *Abraded contusion 7 x 2 cm, in front and inner aspect of right forearm 1 cm above wrist.*
- xiii) *Multiple abrasions in an area of 10 x 5 cm. on back of right hand.*
- xiv) *Multiple abraded contusion 3 x 1.5 cm. on outer aspect of right arm 19 cm. below tip of shoulder.*
- xv) *Abraded contusion 3 x 2cm on top of right shoulder.*
- xvi) *Lacerated wound 4.x 0.5 cm. muscle deep over left palmand adjoining finger claft between ring and little finger.*
- xvii) *Abraded contusion 21 x 3cm on outer aspect of left cum*

- xviii) *Abraded contusion 3.5 cm. x 0.8 cm. on outer aspect of leftside chest 18 cm. below anterior axillary fold.*
- xix) *Multiple abraded contusion 7 x 5cm in front of left knee.*
- xx) *Abraded contusion 2 x 1.5cm inner aspect of left food.*

INTERNAL APPEARANCE.

A. Head, Neck and Spinal column:

- a) Scalp: as described in the external injuries above.*
- b) Skull: Fracture of right parietal, both temporal and frontal bones, depressed communitied fractures on baitmaxilla and nasal bones. Middle and anterior cranial Jossae also fractured.*
- c) Meninges and vessels: Ruptured subdural and subarachnoid heamorrhages present*
- d) Brain: - Lacerated arid contused over right temporal and both frontal lobes, weight of the brain 1400 gms.*
- e) Vertebrae and Spinal bones: No abnormality dictated.*
- f) Orbital, aural, and nasal cavities: As described in the external injuries above.*
- g) Mouth, tongue, pharynx, larynx and other neckstructures: No abnormality dictated.*

B. Thorax and Abdomen: No abnormality detected.

C. Muscles, Bones and Joints: As described above.

Opinion:-

The cause of death in his opinion is due to head injuries factures of skull bones and laceration of the brain, Injury No. (viii) and (ix) were produced by sharp weapon: injury No. (x) and (xi) were produced by pointed weapon and the rest of the injuries were produced by blunt weapon. The injuries are homicidal in nature and ante mortem in nature. The time since death is 4 to 12 hours. The age of the injuries i.e. survival period fresh.

Our analysis, observation and reasoning -

As per the above statement, the doctor who conducted the post mortem examination on the dead body of the deceased, the injuries are homicidal in nature and ante mortem in nature as such, the cause of death is un-natural one. In spite of this finding given by the doctor, the prosecution failed to connect the injuries, the assault meted out to the deceased with the accused.

State of P.W. No. 11:

P.W. No. 11 has deposed that on 01-07-1989 S.I. Sarojkumar Sharma, who is no more, seized one photo copy enlarged appearing the picture of the scene of crime and one photo copy (enlarged) taken at the RMC Morgue along with the negatives of its photographs on production by Naorem Chandramani Singh the then Police Photographer of Imphal S.P. Office under seizure memo dt. 01-07-1989 prepared by S.I. Sarojkumar Sharma. He and Md. Hafijur Rahaman put their signatures on the said seizure memo prepared S.I. Sarojkumar Sharma. P.W. No. 11 identified the said seizure memo and photographs along with negatives.

Statement of P.W. No. 12:

P.W. No. 12 has deposed that since 1984 he has been working as a Photographer at the photo Section of Imphal District Police, Imphal at the Photo section of the office of the S.P., Imphal West. One day in the Morning of 1989 he went to the Sagolband Meino Leirak along with SI Sarojkumar Sharma who is no more and he took photographs of the jeep smeared with blood on the hoods near the back side of the said jeep on the advice of S.I. Sarajkumar Sharma in different angles in connection with FIR Case No. 384/6/89I.P.S. u/s 302/326/34 I.P.C. On the next day of his taking photographs of the above mentioned jeep he also went to Sagolband Meino Leirak along with S.I. Sarojkumar Sharma and his party and one accused person for recovery of the weapons at the instance of the said persons and he took some photographs of the place of the recovery of weapons of the crime at the instance of the accused on the direction of S.I. Sarojkumar Sharma. The place of the recovery of weapon is near the garage of the accused inside the plank of bamboo. The accused took out one iron handle of a jeep, one cane stick having bold head and a knife from the midst of the bamboos. At the police station he took out photo prints and developed the negatives of the said photo prints. The said photo prints and the negatives were seized by St. Sarojkumar Sharma at the office of the photo Section, Imphal District Police, Imphal on 01-07-1989 at 2:40 p.m. on his production under a seizure memo prepared by S.I. Sarojkumar Sharma in the presence of 2 witnesses, namely Md. Hifjur Rahaman and one Nabachandra Singh. He put his signature on the said seizure memo for receiving a copy of the seizure list prepared by SI Sarojkumar Sharma.

[23] Statement of witness No. 13:

About 10 years ago one day in the morning around 10 a.m. while I was standing on the earthen bath at Yaskul Athletic Club just in front of Kalimai Hotel along with my friend namely Bebe Sharma alias Chandrakumar Sharma of Yaiskul, one person in civil dress came towards us and talked with Shri Bebe @ Chadrakumar Sharma and then he asked Bebe Sharma to go to the I.P.S. Accordingly I along with Bebe Sharma alias Chandrakumar Sharma and unknown civil dress person went to

the Imphal P.S. on reaching at Imphal PS. We were sitting on the chair inside the Imphal P.S. I came to know at Imphal P.S. that the unknown civilian person who asked Bebe sharma to go to the Imphal P.S. was a police officer of Impahl P.S. When we were sitting inside the room at Imphal P.S. the said police officer brought one person before us. The face of that person was covered with a towel. The said police officer examined the said person brought before us. He disclosed that the weapons such as iron handle of a jeep, cane stick, knife etc. used by them at the time of commission of the crime were kept concealed inside the clump of bamboos which was lying in the eastern side of his garage he further stated that he would be able to point out the hidden place of the weapons and will be able to and over the said weapons of crime to the plice. The statement of the said person was rerecorded by the said police officer in my presence and in the presence of Bebe Sharma put our signatures on the recorded statement of the said person after knowing the contents of it. The person who stated to the police was also signed on the said statement recorded by the police.

After a few minues a police party of Imphal P.S. led by the said police officer went to the house of the said person at Sagolband Meino Leirak in a police jeep. My friend Bebe @ Chandrakumar Sharma, myself and the person who gave statement to the said police officer also accompanied with the said police party. When we reached at the said place the said person pointed his finger at the concealing place of the weapons of crime stated above and he took out one iron handle of vehicle, one knife and one cane stick and handed over the said weapons of crime to the said police officer. The said police officer seized the said weapons of crime by reparing a seizure memo at the spot on PRODUCTION BY THE SAID PERSON. I put my signature on the said seizure memo prepared by the said police officer after knowing the full contents of it. Ext. P/13/2 is the relevant portion of the statement of the said person recorded by the said police officer at Imphal P.S. in my presence and in the presene of Bebe Sharma. Ext. P/13/3 is mysignaure. Ext. P/14 is the seizure list for seizure of the one irn handl of the jeep, one cane stick and one knife on production by the said person. Ext. P/14/2 is my signature. I can identify the said weapons of crime if shown to me. The witness identifies the knife and cane stick. Ext. M.O. 8 is the cane stick and Ext. M.O. 10 is the knife but I cannot identify the said iron handle of a jeep due to lapse of time.

Xxxxxxx by the defence counsel.

It is true that I do not know the police officer who came in fornt of Kalimai hotel where I was standing with my friend Aribam Bebe Sharma. It is also true that the said police officer never asked me to go to Imphal P.S. with him. I was going on the said day to the Imphal P.S. only on the direction of my friend Aribam Bebe Sharma. It is also true that I never heard anything about the talking between the said police officer and the said Aribam Bebe Sharma. I do not know on the said day whether the said police officer was coming on foot or not. However we proceeded to thepolice station on foot on that day. After reaching at the police station I and my friend Aribam Bebe Sharma sat ina room.

When we first entered into the said room we did not find any person inside it. I have no knowledge from which direction the said accused was brought to the room. The said statement of the accused recorded when the police officer interrogated him. I was not knowing while the statement was being recorded, in which language the said statement was being recorded. However after recording the statement the contents were read over in our presence and hearing I myself did not read the contents of the said statement and I put my signature without reading it. But after hearing the contents being read over. I also do not remember who else besides myself, Aribam Bebe Sharma and the unknown person put signatures on the said statement I cannot say how long I remained at the police station. Thereafter I myself, police officer, Aribam Bebe Sharma, unknown person who gave statement to the police and one or two police constables proceeded towards the house of the accused person. It is also true that I never read the contents of the seizure memo, i.e. Ext. P/4. However, I know in what connection the seizure memo was prepared. I myself and my friend Aribam Bebe Sharma put our respective signature on the said seizure memo. But however I do not know who puts the signature first.

I deny the suggestion that the so called statement Ext. P/13 was never recorded or delivered by the accused on that day and further that Ext. P/13 is a false and fabricated one. I also deny the suggestion that I did not sit at the house of the accused on the said day or on any other day and that no seizure was made at the pointing of the accused or at his instance. I deny the suggestion that Ext. M.O. 8, 9 and 10 were not seized from the house of the accused or from any portion of his ingkhol. I also deny the suggestion that Ext. P/14 is a false and fabricated document. It is also true that cane stick, handle of a jeep and knife of such type may be commonly available in every house. There were many other persons during the period of our remaining at the house of the accused. I cannot say how long we remained at the house of the accused. I have no knowledge as to who else but signature on the seizure memo after me and my friend Bebe Sharma. I deny the suggestion that I do not identify Ext. M.O. 9 and M.O. 10.

I cannot now remember if the said house where I and my friend along with police person and the said accused went was one having gate or not. The said club of bamboo (wapal) was on the eastern side of the house of the accused. I have no knowledge if the same road leads to Salam Leikai. I do not know whether the said road connects with Salam Leikai road or not.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) About 10 years ago one day in the morning around 10 a.m. while I was standing on the earthen bath at Yaskul Athletic Club just in front of Kalimai Hotel along with my friend namely Bebe Sharma alias Chandrakumar Sharma of Yaiskul, one person in civil dress came towards us and talked with Shri Bebe @ Chandrakumar Sharma and then he asked Bebe Sharma to go to the I.P.S. Accordingly I along with Bebe Sharma alias Chandrakumar Sharma and unknown civil dress person went to the Imphal P.S. on reaching at Imphal PS. We were sitting on the chair inside the Imphal P.S. I came to know at Imphal P.S. that the unknown civilian person who asked Bebe Sharma to go to the Imphal P.S. was a police officer of Imphal P.S. When we were sitting inside the room at Imphal P.S. the said police officer brought one person before us. The face of that person was covered with a towel. The said police officer examined the said person brought before us. He disclosed that the weapons such as iron handle of a jeep, cane stick, knife etc. used by them at the time of commission of the crime were kept concealed inside the clump of bamboos which was lying in the eastern side of his garage he further stated that he would be able to point out the hidden place of the weapons and will be able to hand over the said weapons of crime to the police. The statement of the said person was recorded by the said police officer in my presence and in the presence of Bebe Sharma put our signatures on the recorded statement of the said person after knowing the contents of it. The person who stated to the police was also signed on the said statement recorded by the police.*
- (ii) I have no knowledge from which direction the said accused was brought to the room. The said statement of the accused recorded when the police officer interrogated him. I was not knowing while the statement were being recorded, in which language the said statement being recorded. However after recording the statement the contents were read over in our presence and hearing I myself did not read the contents of the said statement and I put my signature without reading it. But after hearing the contents being read over.*
- (iii) It is also true that I never read the contents of the seizure memo, i.e. Ext. P/4. However, I know in what connection the seizure memo was prepared. I myself and my friend Aribam Bebe Sharma put our respective signature on the said seizure memo. But however I do not know who puts the signature first.*

Mention is made here that the present witness who came face to face with the accused namely, P. Joykumar Singh, while recording the statement under Section 27 Evidence Act, in the Police Station and in spite of witnessing the recording of the

statement and subsequently seen the seizure of some of the seized articles failed to identify the said accused in the Court while giving his statement. The witness said that there was no local people were with them but only himself his friend Bebe Sharma and the police. This shows that the I.O. of the case intentionally made the present witness and the said Bebe Sharma as the present witness was the close friend of Bebe Sharma and Bebe Sharma was the close relative of the deceased's wife. Therefore, we find that these two witnesses are the interested witnesses. Of the two witnesses for 27 Evidence Act for the accused Shahajahan, their statements were contradictory to each other. The present witness said that the contents of the recorded statements read over in their presence. But, P.W. No. 4 said that the contents were not read over to them.

In spite of the present witness and P.W. No. 9 were the witnesses to the confessional statement of the accused Shahajahan, their statements were contradictory to each other. Hence, not reliable.

[24] The P.W. No. 14 who identified the dead body of the deceased and witness of the inquest made over the dead body of the deceased by the police-

Statement of P.W. No. 14:

P.W. No. 14 has deposed that one day about 11 years ago while he remained in his house he learnt that Satyajit alias Satyajit Kumar Singh was assaulted by some unknown persons and on getting the said information along with one Leikai people went to RIMS Casualty, Lamphelpat and they found the injured Satyajit alias Satyajit

Kumar Singh was lying on a stretcher unconscious. The said Satyajit alias Satyajit Kumar was giving medical treatment by the Doctor of the RIMS Casualty and after a while the doctor of RIMS Casualty declared the said Satyajit alias Satyajit Kumar Singh had died. The dead body of Satyajit alias Satyajit Kumar Singh was removed to the temporary morgue which was situated near the cycle shed of RIMS and covered with a white cloth. After a while a police party of Imphal P.S. led by one S.I. came there and he removed the cloth and conducted inquest over the dead body of Satyajit alias Satyajit Kumar Singh. He found injuries marked on the dead body of Satyajit alias Satyajit Kumar Singh. 1) left eye brow, was hented, 2) bleeding injury on the nose. 3) injury on the right forehead and injury on the right knee etc. The said police officer prepared an inquest report at the spot. He and one Soibam Dhaneshwor Singh put their signatures on the inquest report prepared by the said police officer after knowing the full contents of it.

[25]

Statement of P.W. No. 15:

Now I am working as Deputy Resident Commissioner, Manipur Bhawan, Guwahati. In the year 1989 I was posted as Sub-Deputy Collector/Executive Magistrate, Imphal West Central. I know Shri B. Achouba Sharma who was working as S.D.O./SDM, Imphal West-I, while I was working as Sub-Deputy Collector/Executive Magistrate, Imphal West Central.

During my posting at Imphal West as Executive Magistrate I conducted T.I. Parade of accused persons in connection with FIR Case No. 384(6)89 I.P.S. u/s 302/326/34 IPC on 11.7.1989 vide Memo of SDO/SDM/I-W-I dated 10.7.1989. Accordingly, I informed the concerned P.S. to direct witness Shri Nongmaithem Megha Singh to present at the Central Jail, Imphal on 11.7.89. I held T.I. Parade of the accused (1) Pukhrambam Joykumar Singh@Sahajahan Singh s/o Shyamnagar Singh of Sagolband Meino Leirak, Imphal, (2) Khangjarakpam Basanta Singh Lulubi Singh s/o Ahanjao Singh of do, (3) Pangoijam Ramananda Singh s/o Ibotombi Singh of Sagolband Salam Leikai, Imphal, (4) Salam Bodro Singh@ Somorendro Singh s/o Achou Singh of do, (5) R.K. Moba Singh@Sanatomba Singh s/o Budhisana Singh of Uripok Ningthoukhongjam Leikai, Imphal, (6) Pukhrambam Dhananjoy Singh@Bobi Singh s/o late Ibotombi Singh of Uripok Haobam Dewan Leikai and Khwairakpam Rajen Singh s/o Budhi Singh of Naranseina, P.S. Moirang. The above accused persons were in the jail at the relevant time, and I also informed the jail authority to produce the above mentioned under trial accused person from their rooms/cell inside the Central Jail premises. Shri Nongmaithem Megha Singh was also present on 11.7.1989 at Central Jail compound Imphal. The parade was conducted in three groups of U.Ts. the beginning 4 (four) accused persons were mixed up with the first two groups with 20 U.Ts. and the remaining 3 accused person were mixed among third group of 30 U.Ts. The accused Pukhrambam Joykumar Singh @ Sahajahan Singh and Khangjarakpam Basanta Singh @ Lulubi Singh were mixed with 20 U.T.Ps. The accused Pangoijam Ramananda Singh and Salam Budro Singh@Somorendro Singh were mixed up with 20 U.T.Ps in the 2nd parade. The 1st and 2nd Parade consists of 22 persons

including two accused person each. They (U.T.Ps.) were almost the same size, physics and age not distinct body marks. Before holding the T.I. Parade the dress of the accused persons were changed in a separate room inside the premises of the Central Jail, Imphal. The dress of the U.T.Ps. were also changed in another room at the premises of the Central Jail, Imphal. I do not allow to see the said accused persons by the witnesses as well as the U.T.Ps. before conducting the T.I. Parade.

Amongst the 7 accused persons, accused Potsangbam Joykumar @ Sahajahan Singh has got two marks, one near the right side of the forehead and another below the right side of the mouth, Pangoijam Ramananda Singh has got 4 visible mark, one below the right eye, another near the right nose and other 2 mark on the forehead, R.K. Moba @ Sanatomba Singh has got 2 marks one near right elbow and another on the forehead so the above U.T.Ps. of their group were covered by a piece of small paper on the face of the marks along with accused persons having visible marks at the relevant time of the T.I. Parade. I prepared the list of U.T.Ps. in three separate sheets with the assistance of the jail staff.

At the T.I. Parade the accused Moba Singh @ Sanatomba Singh was identified by the witness namely Nongmaithem Megha Singh. The remaining 6 accused persons were not identified by the witness Nongmaithem Megha Singh. I prepared a brief report of the said T.I. Parade in the prescribed form and I recorded the statement of the accused as well as the witness in the prescribed form. I also obtained the signature of the accused persons in the separate forms and also obtained the signature of Megha Singh of the 7th prescribed T.I. Parade form prepared by me.

After conducting the T.I. Parade at the premises of the Central Jail, Imphal, I also prepared a Memorandum of the said T.I. Parade on 12.7.89 at my office, and a copy of the said memorandum being No. SDC/IW(C)/TIP/89 dt. 12.7.89 was sent to the Sub-Divisional Officer/SDM, I.W.-I along with the relevant papers i.e. 7 T.I. Parade forms for 7 accused persons namely Pukhrambam Joykumar @ Sahajahan Singh, Khangjarakapam Basanta @ Lulubi Singh, Pangoijam Ramananda Singh, Salam Bodro @ Somorendro Singh, R.K. Moba Singh @ Sanatomba Singh, Pukhram Dhananjay @ Bobi Singh and Khwairakpam Rajen Singh; and the list of U.T.Ps in 3 sheets for doing necessary action and for onward submission to the concerned P.S. I can identify the said T.I. Parade Memos prepared by me in the prescribed for the above mentioned 7 accused persons if shown to me. Ext. P/5 is the memo of T.I. Parade prepared by me for the T.I. Parade of the accused Pukhrambam Joykumar Sing @ Sahajahan Singh Ext. P/5/1 is the signature of witness Megha Singh, Ext. P/5/2 is my signature. Ext. P/5/3 is the signature of accused Joykumar Singh. Ext. P/6 is the memorandum of the T.I. Parade for the accused Khangjarakpam Basanta @ Lulubi Singh prepared by me. Ext. P/6/1 is the signature of witness Megha Singh. Ext. P/6/2 is my signature as well as initial. Ext.P/6/3 is the signature of Basanta Singh. Ext. P/7 is the memo of T.I. Parade prepared by me for the accused Ramananda

Singh. Ext. P/7/1 is the signature of witness Megha Singh. Ext. P/7/2 is my signature as well as initial. Ext. P/7/3 is the signature of Ramananda Singh (accused).

Ext. P/8 is the memo of the T.I. Parade prepared by me for the accused Salam Bodro Singh. Ext. P/8/1 is the signature of witness Megha Singh. Ext. P/8/2 is my signature as well as initial. Ext. P/8/3 is the signature of accused Salam Bodro@Somorendro Singh. Ext. P/9 is the memo of the T.I. Parade prepared by me for the accused R.K. Moba @ Sanatomba Singh. Ext. P/9/1 is the signature of witness Megha Singh. Ext. P/9/2 is my signature as well as initial. Ext. P/9/3 is the signature of accused R.K. Moba @ Sanatomba Singh. The accused R.K. Moba @ Sanatomba Singh was identified by the accused N. Megha Singh. The same was mentioned in the para No. 8 of this Memorandum (Ext. P/9). Ext. P/10 is the memorandum of TI Parade prepared by me for the accused P. Dhananjay Singh. Ext. P/10/1 is the signature of witness N. Megha Singh. Ext. P/10/2 is my signature as well as initial. Ext. P/10/3 is the signature of the accused Dhananjay Singh. Ext. P/11 is the memo of T.I. Parade prepared by me for the accused Kh. Rajen Singh. Ext. P/11/1 is the signature of witness Megha Singh. Ext. P/11/2 is my signature as well as signature. Ext. P/11/3 is the signature of accused Rajen Singh.

Ext. P/36 is the copy of the memorandum of T.I. Parade prepared on 12.7.1989 sent to the S.D.M. ImphalWest vide my office memo No. SDC/I.W©/TIP/89 dt. 12.7.1989. Ext/ P/36/1 is my initial. Ext. P/37 is the list of U.T.Ps. for the first parade consisting of 20 persons of U.T.I. The names of U.T.Ps are mentioned in Ext. P/37. Ext. P/37/1 is my initial. Ext. P/38/ is the list of U.T.Ps (for the 2nd phase) consisting of 20 U.T.Ps. The name of the U.T.Ps were mentioned in Ext. P/38. Ext. P/36/1 is my initial. Ext. P/39 is the list of U.T.Ps for the 3rd phase consisting of 30 Nos. of U.T.Ps. The names of the U.T.Ps were mentioned in Ext. P/39. Ext. P/39/1 is my initial. Ext. P/40 is the order of the S.D.M., I.W., B. Achou Sharma. I know the initial and signature of Achou Sharma. Ext. P/40/1 is the initial of B. Achou Singh the then SDM, IW-I. Ext. P/41 is the letter sent by Achou Sharma the then SDM, IW-I addressed to the officer-in-charge of Imphal P.S. Ext. P/41/1 is the initial of B. Achou Sharma, the then SDM, IW-I.

Xxxx by the defence counsel.

I reached the premises of the Imphal Central Jail at about 10.30 A.M. on the same day.

On 15.6 2001 (continuation)

I alone went to the Jail for conducting the parade. I cannot now remember whether any official intimation regarding the parade was made to the jail authority or not. I do not find the witness when I reached Jail. I met some jail officials in the jail premises on reaching there. I did not see the investigating officer of the case in the jail premises. It took 2 or 2½ hours in making arrangement for the parade. The parade started at about 2 pm. and concluded at 4 pm. The parade

was conducted inside the jail campus in a room. The said room has got some windows and doors. All the said doors and windows were found opened earlier but the same were closed on my direction at the time of conducting the parade. There was no man when I entered inside the said room. I was informed by the jail officials before the parade about the presence of the witness in the jail premises.

The corresponding case numbers for the under trial prisoners who were mixed with the suspended persons were not furnished to me by the jail authority. The jail authority informed me that the said persons are all U.I.T.Ps. I also did not make demand about such details. I cannot now remember of the Manipur Central Jail. I saw the witness for the first time when he entered the room where the parade was conducted after making all arrangements of the parade. He was identified to me by one official of the jail. 1 or 2 jail officials assisted me in conducting the said parade. Before the parade the witness stated to me that he went to Imphal P.S. before coming to the jail on that day and he has been within the jail premises from 10.50 am. All the entries made in Ext. P/9 are all made in my own hand writings.

I cannot now remember whether the identified person was man having peculiar physical structure i.e. in height and body or physics. I have no coment to the suggestion that it will not be possible to find 30 persons of similar structure of the identified man either in jail or in a school, a college or in an office immediately. The identified person was mixed up with other 30 U.T.Ps. list who were made to stand in a semilccircle inside the room. The U.T.Ps were in different dress i.e. half shirt, full shirt, T-shirt. The accused persons were also made to change his cloth inside the room.

I cannot remember now long the witness took in identifying the accused. I did not repeat the parade after the identification of the accused, and the parade was concluded just after the identification was made. After the identification the accused was given an opportunity of having his say about the reasons of his identification by the witness. **The accused stated to me that he was shown to the witness at the Imphal Police Station on 26.6.89 at around 11.30 a.m. Ext. P/9 was prepared during the process of the parade. Ext. P/5 to Ext.P/11 were prepared by me during the course of the parade in respect of each individuals who were mixed up with the U.T.Ps.** The time of the parade for all the suspected persons are however given as 2 p.m. I deny the suggestion that Ext/ P/5 to Ext. P/11 were prepared at my office later on. I deny the suggestion that the investigating officer of this case was physically present at the time of holding the parade at the jail premises.

Our analysis, observation and reasoning–

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) ***At the T.I. Parade the accused Moba Singh @ Sanatomba Singh was identified by the witness namely Nongmaithem Megha Singh. The remaining 6 accused persons were not identified by the witness Nongmaithem Megha Singh. I prepared a brief report of the said T.I. Parade in the prescribed form and I recorded the statement of the accused as well as the witness in the prescribed form. I also obtained the signature of the accused persons in the separate forms and also obtained the signature of Megha Singh of the 7th prescribed T.I. Parade form prepared by me.***
- (ii) ***I cannot now remember whether the identified person was man having peculiar physical structure i.e. in height and body or physics. I have no coment to the suggestion that it will not be possible to find 30 persons of similar structure of the identified man either in jail or in a school, a college or in an office immediately.***
- (iii) ***The accused stated to me that he was shown to the witness at the Imphal Police Station on 26.6.89 at around 11.30 a.m. Ext. P/9 was prepared during the process of the parade. Ext. P/5 to Ext.P/11 were prepared by me during the course of the parade in respect of each individuals who were mixed up with the U.T.Ps.***

Exhibit P. 36:

IN THE COURT OF EXECUTIVE MAGISTRATE/IMPHAL -
WEST(CENTRAL).

Ref:-FIR Case No.384(6)/89/I.P.S. U/S 302/326/34-1.P.C.

State of Manipur

-Vs-

1. Pukhrambam Joykumar Singh @Sahajahan Singh S/o Shyamnagar Singh of Sagolband Meino Leirak, Imphal.
2. Khangjarakpam Basanta Singh @Lulubi Singh s/o Ahanjao Singh of -do-
3. Pangoijam Ramananda Singh s/o Ibotombi Singh of Sagolband Salam Leikai, Imphal.
4. Salam Bodro Singh@ Somorendro Singh s/o Achou Singh of -do-

5. *R.K.Moba Singh Sanatomba Singh s/o Budhisana Singh of Uripok Ningthoukhongjam Loikai, Imphal.*
6. *Pukhrambam Dhananjoy Singh Bobi Singh s/o late Ibotombi Singh of Uripok Haobam Dewan Leikai.*
7. *Khwairakpam Rajen Singh s/o Budhisana Naranseina, Moirang.*

MEMORANDUM

Imphal, the 12th July, 1989

No. SDC/IW(C)/TIP/89:-In pursuance of orders of SDM/Imphal- West of dated 10th July, 1989 vide his Memo No.SDO/IW-I/FIR/384(6)89/IPS, a test identification period (TIP) was conducted on 11-7-89 between 2:00 p.m. 4.00 p.m. in connection with an F.I.R. Case No.384(6)89 of Imphal Police Station (IPS) in the premises of Manipur Central Jail, Imphal. 7(seven) accused persons namely 1) Pukhrambam Joykumar Singh Sahajahan Singh s/o Shyamnagar Singh of Sagolband Meinc Leirak, Imphal, 2) Khangjarakpam Basanta Singh Lulubi Singh s/o Ahanjao Singh of -do-, 3) Pangoiyam Ramananda Singh s/o Ibotombi Singh of Sagolband Salam Leikai, Imphal, 4) Salam Bodro Singh Somorendro Singh s/o Achou Singh of -do-, 5) R.K.Moba Singh Sanatomba Singh s/o Budhisana Singh of Uripok Ningthoukhongjam Leikai, Imphal, 6) Pukhrambam Dhanan Joy Singh@Bobi Singh @/00ulateilbotombi Singh of Uripok Haobam Dewan Leikai, and 7) Khwairakpam Rajen Singh s/o Budlid Singh of Naranseina, P.S.Moirang, were produced for identification by 1(one) witness namely Nongmaithem Megha Singh s/o Bir Singh of Khuyathong Polem Leikai, Imphal.

The period was conducted in 3(three) groups of Rach 4(four) accused persons were mixed up with the first 2(two) groups of 20(twenty) U.T.B.each. The remaining 30 accused persons were mixed amongst the third group of 30- (thirty) U.T.S.

Among the 7(seven) accused persons 1) Shri Potsangbam Joykumar Sahajahan has got 2(two) marks, one near the right side of the forehead and another below the right of the mouth, 2) Pangoiyam Ramananda Singh has got 4(four) visible marks one below the right eye, another near the right nose and other two marks on the forehead, 3) R.K.Moba @Sanatomba has got 2(two) marks one near right elbow and another one on the forehead. Hence all the U.T. S. of their groups were covered by a piece of small papers on the place of marks along with the accused persons having visible marks.

All the required detail information in the prescribed form are enclosed herewith.

(H.Goshwami)
Sub-Deputy Collector, Imphal-West(C).

From the statement of the witness, it emerged that he cannot remember whether the identified person was a man having peculiar physical structure i.e. his height and body or physics and it is also seen that the accused stated to him that the accused was shown to the witness at Imphal Police Station on 26.06.89, i.e. before the T.I. Parade thereby creating doubt as to whether the Police had shown the accused to the witness to enable the witness to identify the accused during the T.I. Parade. The witness did not identify the identified accused in the Court.

[26] **Statement of P.W. No. 16:**

I am a resident of Nagamapal PhougeisangbamLeikai, Imphal. I know the deceased Seityajit Singh of Thangmeiband Polem Leikai. Seityajit Singh was my co-villager. I know the accused Sahajan Singh now present before the Court. (The witness points to the accused Pukhrambam Bijoykumar Singh and identifies him as the accused Sahajan). We used to call him as Sahajan and I know him very closely. About 11/12 years ago I was running a firewood stall at Khuyathong Road at Thangal Bazar opposite to P.W.D. old gate. I know the accused Pukhrambam Sahajan Singh s/o Shyamnagor Singh of Sagolband Meino Leirak as he and his father running a tyre retreating shop in front of my firewood stall at Khuyathong Road Thangal Bazar, Imphal.

*About 11/12 years ago one day at about 2.30 p.m. while I was remained at my home **Shri Sahajan Singh along with one unknown person come to our house by a scooter and he told me that he was assaulted by the deceased Seityajit Singh, who was doing a contract work of black topping between Khoyathong to Thangal Bazar, Gandhi Avenue Road. They also enquired the whereabouts of the Seityajit Singh then I told them he is the resident of Thangmeiband Polem Leikai, then I along with Sahajan and his friend came out from my house for making an amicable settlement between Seityajit Singh and Sahajan Singh at their worksite. I couldnot bring on amicable settlement between them as I did not find the deceased Seityajit Singh at his work-site. Then the accused Sahajan Singh went alone with his friend from there and I also left the said place for my home.***

On the next day in the morning, I learnt that Polem Seityajit Singh was assaulted by some unknown persons in the night and succumbed to his injuries of the RIMS, Lamphel and the dead body was lying in the RIMS morgue. On the said next day I went to the house of

the deceased Seityajit Singh. At that time I found one police officer namely Sarojkumar Sharma, of Imphal P.S. I narrated to the said police officer Sarojkumar Sharma about the facts of coming of accused Pukhramban Sahajan (Joykumar Singh) on the previous day seeking my help for settlement of dispute in between the said Seityajit Singh and the said accused. Thereafter, the said police officer asked me to point out the house of the said accused. Then I along with the police officer went to Sagolband Meino Leirak and I pointed the house of the said accused to the said police officer. When I and the said police officer entered into the ingkhol of the said accused we learnt that the said accused had not come back and that he was not available at his house. The said police officer and his companion police personnel looked around the said ingkhol of the accused and they found a jeep parking inside the garage. I also saw the said jeep parking inside a garrage situated at the north-eastern portion of the said ingkhol of the accused. I also saw blood stained marks on the side of the hood of the said jeep. The police officer also examined the said blood stained mark and then he seized the said jeep. At the time of the seizure of the said jeep some inmates of the house of the said accused including his father were present. Thereafter I and the said police officer and his companion left the place with the seized vehicle (Jeep). The police officer went away towards the police station and I was brought at Khuyathong.

xxxxxx by the defence counsel.

I am a summoned witness.

(Continuation)

My firewood shop normally opens at about 6.30 a.m. and closes at about 6 pm. My mother used to managed and run the said shop. I also sometime helped my mother in the business. I was not present at the shop on that particular date as my mother was handling the shop on that particular day. On the said day I remained at my house all alone. It is true that Thangal Bazar road which is also known as Khoyathong road is one of the busiest road in the Imphal Town. There are rows of shops, business establishment, post office, banks and other private and government offices on both sides of the said road. It is also true that the deceased late Sytajit Singh was doing/ executing a contract work for metalling/black topping the road from Khoyathong to Dharma Shala along the said Thangal Bazar road. I do not know as to whether the said Sytajit Singh blocked the road on both ends one at Khaythong point and another near the Jalal provisions Store for preventing the public from entering to the said portion of the road. As I remained at my house I do not have knowledge of the same. I have been knowing the accused Sahajan Singh or about 10 years prior to the said incident. I know him as a modest and humble type of man. The deceased Sytajit Singh was a resident of my Leikai and I know him since his childhood. He was a regular football player of NISA which is the local football team of Thangmeiband Kendra. He was a well built and healthy person. I do not know as to whether the said Satyajit Singh was a short temper and quarrelsome person. On the said particular day I remained all through at my house

till the time of the coming of the accused Sahajahan. I did not hear anything about any incident taken place at anywhere involving late Sytajit and the said accused. Myself and my wife were present at my house when Sahajahan came to me. My wife did not hear about the conversation that took place between myself and the said accused, However, I narrated about the purpose of the Sahajahan, visit to me to my wife later on my wife is still living with me. **The said Sahajan came to me only for seeking my help in settling his quarrel/dispute with the said Sytajit amicably and peacefully. After returning from the worksite of Sytajal Singh I did not make any attempt to meet the said Sytajit Singh on that day.**

The house of late Sytajit Singh lies to the adjacent west from my house. I heard about the death of Sytajit Singh at about 5.30 a.m. of the next morning. Immediately from receiving the information I went to his house. When I reached the house S.I. Sorojkumar was already found present in the said house. I know the said Police officer Sorojkumar Sharma from before I also found many Leikai people and relatives of late Sytajit Singh already present there. I narrated to those persons gathered at the house about the visit of Sahajan Singh to me on the previous day. I have also told them that Sahajan came for an amicable settlement with Sytajit with my help.

There are many shops around the Khoyathong Traffic point. Late Sytajit Singh was a popular person who is well known by the general public of Thangmeiband, Khoyathong area. As the matter did not concern me I did not make any enquiry to ascertain as to whether there was any altercation or quarrel between late Sytajit Singh and the accused Sahajan on that particular day. Nobody also informed me about the fact.

None besides me from the public accompanied S.I. Sarojkumar Sharma and police team to the house of the accused, Sahajahan Singh at Sagolband Meino Leirak. It was at about 9.30/10 a.m. that we reached the house of the accused Sahajan at Sagolband. It is true that there is a public path just near the outhouse of the accused Sahajan which leads to Sagolband Salam Leikai. The blood stain mark which I mentioned in my in chief appearing on the left side hood of the jeep was at the lower portion. It was the blood stain mark was on the left side of the jeep and the same was also sighted by the said police officer SI Sarojkumar Sharma. A document was prepared by the said Police Officer for the seizure of the said jeep at the spot. However I was not asked by the said Police Officer to be a witness for the seizure of the Jeep I cannot now remember who are those persons signed on the said paper. I did not see any other blood stain mark on the whole jeep except the one which I stated above. The accused, Sahajan mentioned the name of Sytajit Singh as a person with whom he had a quarrel on the day when he came to me at my house. When I gave my statement to the police I stated that the accused mentioned the name of Sytajit Singh when I referred to the person with whom he had a quarrel. I did not state to the police that Sahajan Singh stated to me that he was assaulted by one contractor who had beard and moustache who was presently

doing contract at Khoyathong to Thangal Bazar road. I cannot say as to why the police described the said person as above and by mentioning the name which I stated so at the time of my giving to the police. I cannot say as to how the police recorded the portion marked X-1 to X-1 as my statement recorded under section 161 Cr.P.C.

I cannot say how many brothers and sisters were of late Sytajit Singh. One of his elder sisters is living as my neighbour as she married to a person of my neighbouring house. One of his younger sister also is living as my neighbour as married to the family. Both the said sisters of late Sytajit Singh are married to persons of same family.

I deny the suggestion that the accused Sahajahan never came to my house and informed about any quarrel between himself and late Sytajit or anybody else. I also deny that the said accused did not ask for sought for my help in settling any quarrel involving himself, I also deny that the whole case was fabricated and concocted by the police with the active assistance of the family members of late Sytajit Singh and our Leikai people including myself merely on surmises, I deny the suggestion that I did not visit the house of Sahajahan with the police team and that I did not see the actual seizure any jeep from the house of Sahajahan I also deny that I did not see any blood stain mark on any portion of the jeep as stated by me in my statement, I also deny that I am giving false evidence is requested by the family members of late Sytajit Singh including his two sisters who are living together with me as adjacent neighbours. I am giving deny the suggestion that I depose falsely. I also deny the suggestion that I came to this court today as requested by the said two sisters of late Sytajit Singh.

The statement of the witness that the accused/appellant No. 1, Mr. P. Joykumar Singh came to his house for settling peacefully and amicably with the deceased about the incident of slapping by the deceased on him cannot be taken as related to the present crime as no inference can be made from the mere fact that the accused/appellant No. 1 came to his house for settling the matter of slapping him by the deceased peacefully and amicably and in his own statement, it only shows the peaceful intention of motive of accused No. 1 for the peaceful solution as the witness did not mention that there was any violent or revengeful motive or intention of the accused/appellant No. 1 as the witness failed to establish the criminal motive or intention on the part of the accused/appellant.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and of which are reproduced herein below:

- (i) ***Shri Sahajan Singh along with one unknown person come to our house by a scooter and he told me that he was assaulted by the deceased seityajit singh, who was doing a contract work of black topping between Khoyathong to Thangal Bazar, Gandhi Avenue Road. They also enquired the whereabouts of the Seityajit Singh then I told them he is the resident of Thangmeiband Polem Leikai, then I along with Sahajan and his friend came out from my house for making an amicable settlement between Seityajit Singh and Sahajan Singh at their worksite. I couldnot bring on amicable settlement between them as I did not find the deceased Seityajit Singh at his work-site. Then the accused Sahajan Singh went alone with his friend from there and I also left the said place for my home.***
- (ii) ***I narrated to the said police officer SarojkumarSharma about the facts of coming of accused Pukhramban Sahajan (Joykumar Singh) on the previous day seeking my help for settlement of dispute in between the said Seityajit Singh and the said accused. Thereafter, the said police officer asked me to point out the house of the said accused. Then I along with the police officer went to Sagolband Meino Leirak and I pointed the house of the saidaccused to the said police officer. When I and the said police officer entered into the ingkhol of the said accused we learnt that the said accused had not come back and that he was not available at his house. The said police officer and his companion police personnel looked around the said ingkhol of the accused and they found a jeep parking inside the garage. I also saw the said jeep parking inside a garrage situated at the north-eastern portionof the said ingkhol of the accused. I also saw blood stained marks on the side of the hood of the said jeep. The police officer also examined the said blood stained mark and then he seized the said jeep. At the time of the seizure of the said jeep some inmates of the house of the said accused including his father were present. Thereafter I and the said police officer and his companion left the place with the seized vehicle(Jeep). The police officer went away towards the police station and I was brought at Khuyathong.***
- (iii) ***one of the busiest road in the Imphal Town. There are rows of shops, business establishment, post office, banks and other private and government officeson both sides of the said road.***

- (iv) **I have been knowing the accused Sahajan Singh or about 10 years prior to the said incident. I know him as a modest and humble type of man.**

The said Sahajan came to me only for seeking my help in settling his quarrel/dispute with the said Sytajit amicably and peacefully. After returning from the worksite of Sytajal Singh I did not make any attempt to meet the said Sytajit Singh on that day.

- (v) ***The house of late Sytajit Singh lies to the adjacent west from my house. I heard about the death of Sytajit Singh at about 5.30 a.m. of the next morning. Immediately from receiving the information I went to his house. When I reached the house S.I. Sorojkumar was already found present in the said house. I know the said Police officer Sorojkumar Sharma from before I also found many Leikai people and relatives of late Sytajit Singh already present there. I narrated to those persons gathered at the house about the visit of Sahajan Singh to me on the previous day. I have also told them that Sahajan came for an amicable settlement with Sytajit with my help.***

- (vi) ***The accused, Sahajan mentioned the name of Sytajit Singh as a person with whom he had a quarrel on the day when he came to me at my house. When I gave my statement to the police I stated that the accused mentioned the name of Sytajit Singh when I referred to the person with whom he had a quarrel. I did not state to the police that Sahajan Singh stated to me that he was assaulted by one contractor who had beard and moustache who was presently doing contract at Khoyathong to Thangal Bazar road. I cannot say as to why the police described the said person as above and by mentioning the name which I stated so at the time of my giving to the police. I cannot say as to how the police recorded the portion marked X-1 to X-1 as my statement recorded under section 161 Cr.P.C.***

- (vii) **I cannot say how many brothers and sisters were of late Sytajit Singh. One of his elder sisters is living as my neighbour as she married to a person of my neighbouring house. One of his younger sister also is living as my neighbour as married to the family. Both the said sisters of late Sytajit Singh are married to persons of same family.**

The witness was the one who narrated about the accused with one of his friends coming to his house for settlement of the incidence of slapping by the deceased to the accused Shahajahan Singh. The witness narrated to the future I.O. of the case Shri Sorojkumar Sharma about the fact of coming of the

accused P. Shahajahan on the previous day, seeking his help for settlement of the dispute in between the accused and the deceased. Just after hearing the narration, it has emerged and seen that the said police officer Sarojkumar took the witness for pointing out the house of the accused and at the house of the accused the police officer seized a jeep parking inside the garage without knowing anything as to whether the said jeep was used in the commission of the crime or not and not at the pointing of anyone and the police started investigation pointing **suspicion** towards the accused Shahajahan. In this regard, we rely on the Hon'ble Supreme Court's judgment passed in **(1994) Supp (3) SCC 463** in which, the Hon'ble Supreme Court observed at para No. 10 that –

Suspicion is no substitute of proof:

The Hon'ble Supreme Court, in **Jagga Singh v. State of Punjab [1994 (3) SCC 463]**, observed that-

"10. The aforesaid is all that is on record which the prosecution relied upon to fasten the guilt on the appellant. According to us, the aforesaid material only points the needle of suspicion towards the appellant and nothing more. Suspicion, however, is no substitute for proof, and in criminal law the prosecution has to prove the guilt beyond reasonable doubt. The offence alleged in the present case being murder, which visits the perpetrator of the crime with the minimum sentence is imprisonment for life, a court of law would be justified in demanding full satisfaction before the lethality of Section 302 can be used against anyone. The materials on record in the present case do not have so much of cutting-edge as to penetrate the fortress of innocence built round an accused in our criminal jurisprudence."

As per the prosecution story, the investigation started when the father of the deceased (P.W. No. 1) lodged the original ejahar at 4.00 p.m. But, it has emerged that as per the statement

of the present witness, the investigation and the seizure of the articles already started in the morning when the present witness disclosed the above fact to the said police officer (the investigation of the case started from the narration of the present witness to the said police officer) i.e. on suspicion, on the sole ground that the accused was slapped by the deceased and the police, even before registration of the original ejahar, started the investigation and started seizing the materials as such, according to us, the aforesaid facts only points the needle of suspicion towards the appellant and nothing more. The present witness supported the version of P.W. No. 8 to the fact that the road where the black topping was executed by the deceased was one of the busiest road in Imphal town and it has rows of shops, business establishments, post office, banks and other private and Government offices on both sides of the said road. The witness further stated that the police recorded some of the portion which he did not say during the course of giving his statement to the police. Further, it was stated that the said accused Shahajahan came to him for seeking his help in settling the quarrel/dispute with the said Satyajit the deceased amicably and peacefully. This is the only statement related to the deceased with the accused as such, the suspicion as to whether the accused will have the motive to take revenge/kill the accused cannot be drawn.

[27]

Statement of witness No. 17:

*I know the deceased Polem Seityajit Singh, about 12 years and the deceased Seityajit Singh did a contract work for black topping on the road between Khoyathong to Gandhi Avenue, Thangal Bazar. During the period of the said contract work deceased Seityajit Singh remained at the work-site and I was at the Betanyard Chingmeirong for preparing the premix. One day at about 1 p.m. of 20 years ago I came to the khoyathong work-site for taking sum of 400/- from the deceased Seityajit Singh for purchasing the Diesel oil. I found Seityajit Singh at khoyathong at work-site and when I asked him to give a sum of Rs. 400/- for taking diesel oil. **The deceased Seityajit Singh went to his home for taking money by my vehicle Sujuki. Then I went towards a woman vendor who was running her vendor inside the waiting shed situated at the road side of Khoyathong road for having Pan. When I reached near the said woman vendor I found 3 young persons standing near the said woman vendor in angry mood. On seeing their angry mood I asked them what happened. On my enquiry the woman told me that deceased Seityajit Singh assaulted to one person among them. I told the said 3 persons not to angry (emphasis given).** At that time deceased Seityajit Singh came to the place and I took a sum of Rs.400/- from the deceased Seityajit Singh and when went to north A.O.C., Imphal for taking diesel oil and then I went to Betanyard, Chingmeirong with the diesel oil. At about 2 A.M. (night) of the same day I come back at Khoyathong at our working place. When I reached at our work-site at Khoyathong the work of black topping was almost finished on that day. Then I along with the deceased Seityajit Singh, driver of the roller and tabler machine, S.O. and the labourers came to our kholla situated. north-eastern side of Khoyathong Pukhri Achouba Mapal, and we took our meals at the said kholla after having meal at our kholla I myself, driver of the Roller and pebbler Machin and S.O. of P.W.D. who looked the work of our contract work left the said Kholla for our respective home. The deceased Seityajit Singh and Nongmaithem Megha Singh were remained at the said kholla when we left the said place, while I was to bath at my courtyard 2 labourers of our contract work come to my house and they told me that Seityajit Singh was assaulted by unknown person.*

After giving the said information the said 2 labourers left my house without any loss of time I along with my younger brother Tomba Singh went to the Thangmeiband Pukhri Achouba Mapal, when I reached at Thangmeiband Pukhri Achouba Mapal I found Seityajit Singh lying on the road with pool of blood near the southeastern side of Khoyathong Pukhri Achouba Mapal. At that moment I found some Leikai people were present there. The injured Seityajit Singh was taken to the RIMS hospital immediately by Tata Truck belonging to Polem Mill. I did not accompany with them after taking my vehicle from my house I went to the RIMS Hospital, Lamphel, when I reached at hospital I learnt that Seityajit Singh was no more.

xxxxxxx by the defence counsel.

The Khoyathong ThangalBazar Road was blocked by deceased Seityajit Singh one at Khoyathong Traffic point and another near Jalan Provision Store. The general public were not allowed to enter into the said road while the work at for black topping was going on. Many persons however insisted for allowing them to enter inside the said blocked portion of the road.

Late Seityajit Singh was a hot tampered person reacted to provocations easily by his nature. The said Pan Vendor from where I took Pan was run by Smt. Kamini Devi. She was from our locality. She died about 2 years back. I cannot now remember those labourers who gave me information regarding the injury sustained by late Seityajit Singh on that night. When I reached the place where Seityajit Singh laid injured I found about 30 or 40 persons already assembled there. I do not know whether M. Megha Singh was amongst those persons assembled at that time or not. I had no talk with the said Nongmaithem Megha Singh after the incident of Seityajit's sustained injuries. The work shed of the said Seityajit Singh was located on the eastern side of the Khoyathong Pukhri Achouba just near the main road. After having dinner I proceeded towards my house on the road lying to the adjacent north of the khayathong Pukhri Achouba. My house lies on the northern side of the said Khoyathong Pukhri Achouba. I did not hear any alarm about anything raised by anybody on that night. I cannot now remember any of those three persons who were found standing near the said Pan shop of Kamini Devi on that day. I will not also be able to identify those persons now due to lapse of time. I deny the suggestion that I am giving false evidence at the instance of the family members of late Seityajit Singh.

Our analysis, observation and reasoning–

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) The deceased Seityajit Singh went to his home for taking money by my vehicle Sujuki. Then I went towards a woman vendor who was running her vendor inside the waiting shed situated at the road side of Khoyathong road for having Pan. When I reached near the said woman vendor I found 3 young persons standing near the said woman vendor in angry mood. On seeing their angry mood I asked them what happened. On my enquiry the woman told me that deceased Seityajit Singh assaulted to one person among them. I told the said 3 persons not to angry (emphasis given).***
- (ii) The Khoyathong Thangal Bazar Road was blocked by deceased Seityajit Singh one at Khoyathong Traffic point and another near Jalan Provision Store. The general public were not allowed to enter into the said road while the work***

at for black topping was going on. Many persons however insisted for allowing them to enter inside the said blocked portion of the road.

- (iii) Late Seityajit Singh was a hot tampered person reacted to provocations easily by his nature. The said Pan Vendor from where I took Pan was run by Smt. Kamini Devi. She was from our locality. She died about 2 years back. I cannot now remember those labourers who gave me information regarding the injury sustained by late Seityajit Singh on that night.***
- (iv) After having dinner I proceeded towards my house on the road lying to the adjacent north of the khayathong Pukhri Achouba. My house lies on the northern side of the said Khoyathong Pukhri Achouba. I did not hear any alarm about anything raised by anybody on that night. I cannot now remember any of those three persons who were found standing near the said Pan shop of Kamini Devi on that day. I will not also be able to identify those persons now due to lapse of time.***

It is seen and has emerged that the witness while waiting for the deceased, he went towards the women vendor for having pan when reached near the women vendor, he found three young persons standing near the vendor in angry mood and when enquired, the women told him that the deceased assaulted one of them. This is one of the incidents as per the prosecution story that because of the said black topping, a lot of problems were created, no-one clarified that the present incident is the incident of slapping by the deceased to the accused and further, the witness stated that the deceased was the hot tamper person, reacted to provocation easily by his nature. The prosecution failed to produce the said women vendor who was the witness of the assault made by the deceased to one of the persons among the three. The prosecution

should produce and examine the said women vendor to throw light as to whether the said assault was to the same accused person or not. The witness further stated that he cannot remember the said three persons who were found standing near the said pandukan and further stated that he will not be able to identify the persons due to lapse of time (even though he met the said three persons, he could not identify from amongst the accused in the Court). He also stated that in spite of having his house near the said place of occurrence; he did not hear the alarm raised by anybody on that night. But, as per the prosecution story, the witness No. 4 as well as the deceased raised alarm by shouting "Mee Hatle, Mee Hatle". The witness supported the statement of P.W. No. 8 and P.W. No. 16 to the fact that the road, where the work of black topping was executed, was the busiest road in Imphal.

In spite of coming close contact with the said 3 (three) youths, one of whom was assaulted by the deceased. The witness did not identify the accused who were in the Dock when he was giving his statement as to whether the said 3 (three) youths were amongst the accused present in the Dock or not.

[28] **Statement of witness No. 18:**

I was running a shop at Khoyathong before 12/13 years ago. I know the deceased Seityajit Singh of Thangmeiband Polem Leikai and Shyamnagor Singh of Sagolband and his son Sahajan Singh they run a shop of Tyre Retreating at Khoyathong, Thangal Bazar under the name and style of P. Shyamagor Tyre Retreat workshop. About 12/13 years ago one day in the morning at about 11/12 A.M. while I was playing Ludu in front of the a Scooter workshop of Shri Tomba Singh a long

*with my friends (I cannot remember who are my friends playing the Ludu) we saw some persons were gathering on the Khoyathong Bridge at Thangal Bazar near the cremation ground. Immediately on seeing the said crowd we rushed towards the said place. **When we reached at the spot found the deceased Seityajit Singh and Shri Sahajan Singh. On my enquiry I came to know that Shri Sahajan Singh was assaulted by the deceased Seityajit Singh. On getting the said information we left the said place.***

x x x x by the defence counsel.

*I know Seityajit Singh from before that day. He was a man of good physics. At the relevant time he was executing a contract work of laying metals on the Thangal Bazar Road. For the execution of the said work Seityajit Singh blocked the road at the mouth of Thangal Bazar Khayathong Road near the Khoyathong Traffic point. **The Khoyathong Thangal Bazar Road one of the business road of the Imphal Town and there are rows of shops and business establishments, post office, banks etc. on both sides of the road. I cannot say there were several instances of quarrelling with the said Seityajit Singh and the general Public when public were not allowed to enter inside the said road as blocked by him. I also do not know as to whether such instances were taking place many times on such days of blocking the roads. I agree that Setyajit Singh was a quarrelsome person who came easily provoked.***

I myself did not see the actual quarrelling between Seityajit Singh and Sahajan Singh. I cannot now remember who was the person who gave me information about the said quarrel. I deny the suggestion that there was no quarrel between Seityajit Singh and Sahajan Singh on any day. I deny the suggestion that I am deposing falsely on the request of the relatives of the deceased Seityajit Singh.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) **When we reached at the spot found the deceased Seityajit Singh and Shri Sahajan Singh. On my enquiry I came to know that Shri Sahajan Singh was assaulted by the deceased Seityajit Singh. On getting the said information we left the said place.***
- (ii) **The Khoyathong Thangal Bazar Road 1st one of the business road of the Imphal Town and there are rows of shops and business establishments, post office, banks etc. on both sides of the road. I cannot say there were several***

instances of quarrelling with the said Seityajit Singh and the general Public when public were not allowed to enter inside the said road as blocked by him. I also do not know as to whether such instances were taking place many times on such days of blocking the roads. I agree that Setyajit Singh was a quarrelsome person who came easily provoked.

(iii) I myself did not see the actual quarrelling between Seityajit Singh and Sahajan Singh. I cannot now remember who was the person who gave me information about the said quarrel. I deny the suggestion that there was no quarrel between Seityajit Singh and Sahajan Singh on any day. I deny the suggestion that I am deposing falsely on the request of the relatives of the deceased Seityajit Singh.

The witness supported the version of the P.W. No. 8, 16 and 17 to the fact that the road, where the work of black topping was executed, was the busiest road in Imphal. The witness came to know that the accused Shahajahan Singh was assaulted by the deceased but, further stated that he himself did not see the actual quarrelling between Satyajit Singh and Shahajahan Singh and he cannot remember the person who gave information about the said quarrel.

In spite of knowing both the accused Shahajahan and the deceased in his statement, the witness failed to identify the accused in the Dock.

[29] For the sake of brevity and to save time, only operative portion of the statements of the P.W. No. 19, 20 & 21 are reproduced herein below:

Statement of P.W. No.19:

P.W. No. 19 has deposed that about 14/15 years ago one day in the morning at about 4 a.m. he along with S.I. Heli Mao of Imphal P.S. and since police constables went to the Thangmeiband Khoyathong Pukhri Achouba Mapal for taking photographs of the place of the occurrence in c/w FIR Case No. 384(6)89 IPS u/s 302/326. 34 IPC as asked by the I.O. of this case namely Helli Mao and they found a pool of blood on the ground and one wooden broken stick into two parts on the road to the southeast corner of the Khoyathong Pukhri Achouba Mapal. On the instruction of the S.I. Heli Mao he took a photograph of the place of the occurrence. The place of occurrence was identified by one person at the spot. After that he along with S.I. Heli Mao and some police personnel went to the RMC morgue and on reaching at the RMC morgue we found the dead body of Shri Polem Satyajit alias Satyajit Kumar Singh lying on a stretcher at RMC morgue, Lamphal. He had taken the photographs of the deceased Satyajit alias Satyajit Kumar Singh on the instruction of the S.I. Helli Mao and he took the prints of the said photographs of the place of occurrence and dead body of Satyajit alias Satyajit Kumar Singh and the said photographs and negative were seized by SI Surajkumar Sharma who is no more under a seizure memo dt. 01-07-1989 on his production in presence of witnesses. Md. Hifjur Rahaman and A. Tomba Singh ASI of I.P.S. and he put his signature on the seizure memo for receiving copy of the said seizure memo prepared by S.I. H. Sarojkumar Sharma.

Statement of P.W. No. 20:

P.W. No. 20 has deposed that on 01-07-1989 at 2 p.m. SI Sarojkumar Sharma seized 8 different photographs taken at different angles during the seizure of jeep and 2 different photographs taken at different angles during the seizure of the weapon of crime along with the negative of the above mentioned photographs on production by Shri Khamba Singh Photographer of Photo Section of S.P. Office, Imphal under a seizure memo prepared by S.I. Sarojkumar Sharma at Photo Section, Imphal and he put his signature on the said seizure memo after knowing the full contents of it as asked by S.I. Sarojkumar Sharma.

Statement of P.W. No. 21:

P.W. No. 21 has deposed that while he was attached to the photo section, Imphal District Police as constable, one day at afternoon SI Sarojkumar Sharma who is no more seized 2 enlarged photographs with its negatives on production by Naorem Chandramani Singh under a seizure memo dated 1-7-89 in his presence and he put his signature on the said seizure memo prepared by S.I. H. Sarojkumar Sharma after knowing the full contents of it. P.W. No. 21 has also deposed that on the same day after the seizure of above photographs S.I. Sarojkumar Sharma of Imphal P.S. seized 5 different photographs showing the picture of the jeep and others and 2 photographs showing picture of the recovery of weapons of crime on production by photographer Khamba Singh of Photo section of Imphal District Police under a seizure memo dt. 01-07-1989 and he also put his signature on the said seizure memo after knowing the full contents of it.

Statement of P.W. No. 22 (father of the accused):

*The accused Pukhrambam Sahajan@Joykumar Singh is my son. I was running a tyre retreat shop at Thangal Bazar on the eastern side of the Khoyathogn Road. **About 13 years ago, one day at about noon a police party led by one police officer came to our house and he said police officer conducted search of my house. During the search they did not find my son Shahajan @ Joykumar Singh. Later on, they produced one battery from the room of my sister-in-law namely Akashini Devi. On that day the said police officer seized one battery and one jeep from our outhouse by preparing a seizure memo for the seizure of the battery and jeep. I subscribed my signature on the two seizure memos and asked by the said police officer. Ext. P/42 is the seizure memo for the seizure of jeep. Ext. P/42/1 is my signature. Ext. P/43 is the seizure memo for the seizure of battery. Ext. P/43/1 is my signature, sister-in-law Akashini Devi is in the zimadar of the said jeep and she is no more. At the time of seizing the said jeep Shri Pukhrambam Kunjakeshore was recorded in the papers and documents in respect of he said jeep. He died 10 years ago at the time of the said seizure. My said elder brother died in 1982.***

Xxxxxx by the defence counsel.

Sagolband Meino Leirak runs from north to south. There are rows of houses on both sides of Meino Leirak. My house is connected to Meino Leirak by a small lane. My house is the last house of Meino Leirak and my adjacent northern house belonged to another Leikai namely Salam Leikai. The said lane coming from Meino Leirak upto my house cuts through the eastern portion of my ingkhol and the same leads to Sagolband Salam Leikai Road. The villagers of both the Leikais used the said lane for going to and fro in between the said 2 Leikais.

My residential house is of Asamese type i.e tin roof and mud plastered walling. The same is facing towards east. There are 3 structures in between my ingkhol. One is our eastern outhouse and another on the orther outhouse.

The said northern outhouse is two outhouse is having wall on 3 sides except the western side. The said lane runs on the eastern side of the said outhouse. The said jeep which was seized by the police was kept on the eastern outhouse. The ground floor of the norther outhouse is used as my workshops for retreating tyrers. I installed machines of the said tyre works in the said northern outhouse.

There was no close garage within our ingkhol at any time.

*After about 3/4 days of the seizure of the said jeep the police one day came to my house taking my son Joykumar Singh with handcapped on his hands. My son was crying when he was taken from the police jeep at my courtyard and on seeing his condition his sisters were crying. To his sisters my son told that he was innocent and he had no false. **The police officer who led the police team thereafter***

asked my wife and daughters to bring out any knife and sticks to my arrested son in future. Accordingly, my wife and children took out knives and sticks from inside my house and handed the same over to the police. Some of police teams also took out iron rods and handle of the jeep which were kept inside my workshop. After collecting the said items police put them the same together and the same were taken to a place just near the said lane running on the eastern portion of my ingkhol. My son was thereafter made to sit on the said spot and after making him sit there the police personnel put those items collectively in his front. Thereafter, a police photographer who was in civil uniform and came together with the police team took photographs of my son for about ¾ times. There was no civilian except the cameraman in the police team that visited my house along with my son.

On 15.11.2002 (Continuation)

It is true that my house is not the last house of Meno Leirak. It is true that Sagolband Meino Leirak coming from the main road i.e. New Cachar Road leading upto Kwakeithel. It is also true that land coming from Meino Leirak upto my house is not a busy road. It is not true that my statement in my cross-examination that there was no close garage within our ingkhol at any time is false. I deny the suggestion that the police officer who came to our house along with my son Joykumar Singh and never asked my wife and daughter to bring out any knife and sticks available in our house stating that the same would be useful to my arrested son in future. I also deny the suggestion that my wife and children never took out knife and stick from inside my house and handed over the same to the police and that some police team never took out iron rods and handle of the jeep which were kept inside my workshop. I also deny the suggestion that my statement in my cross-examination that after collecting the said items police put the same together and the same were taken to a place just near the said land running on the eastern portion of my ingkhol..... There was no civilian except the camera man in the police team that visited my house along with my son are false.

I deny the suggestion that a police officer of Imphal P.S. had seized one iron handle of a jeep, one knife and one cane stick on production by my son Joykumar Singh.

Our analysis, observation and reasoning -

We found some revelation contrary to the prosecution story and unreliable statement in his deposition as highlighted and blacked in the above statement as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) ***About 13 years ago, one day at about noon a police party led by one police officer came to our house and he said police officer conducted search of my house. During the search they did not find my son Shahajan @ Joykumar Singh. Later on, they produced one battery from the room of my sister-in-lawnamely Akashini Devi. On that day the said police officer seized one battery and one jeep from our outhouse by preparing a seizure memo for the seizure of the battery and jeep. I subscribed my signature on the two seizure memos and asked by the said police officer. Ext. P/42 is the seizure memo for the seizure of jeep. Ext. P/42/1 is my signature. Ext. P/43 is the seizure memo for the seizure of battery. Ext. P/43/1 is my signature my sister-in-law Akashini Devi is in the zimadar of the said jeep and she is no more. At the time of seizing the said jeep Shri Pukhrambam Kunjakeshore was recorded in the papers and documents in respect of the said jeep. He died 10 years ago at the time of the said seizure. My said elder brother died in 1982.***
- (ii) ***The police officer who led the police team thereafter asked my wife and dauhters to bring out any knife and sticks to my arrested son in future. Accordingly, my wife and children took out knives and sticks from inside my house and handed the same over to the police. Some of police teams also took out iron rods and handle of the jeep which were kept inside my workshop. After collecting the said items police put them the same together and the same were taken to a place just near the said lane running on the eastern portion of my ingkhol. My son was thereafter made to sit on the said spot and after making him sit there the police personnel put those items collectively in his front. Thereafter, a police photographer who was in civil uniform and came together with the police team took photographs of my son for aobut $\frac{3}{4}$ times. There was no civilian except the cameraman in the police team that visited my house along with my son.***

The present witness is the father of the accused Shahajahan, in his statement, he stated that the police searched for his son Shahajahan at his residence but, his son was not at home during that time and seized one battery and one jeep from their house and he was asked to put his signature on the seizure memo. During the said search, the police team asked his wife and daughters to bring out any knife and sticks to have his son in future (to check). Accordingly, his wife and children took knife and

sticks from his house and handed over to the police. The police team also took out iron rod, handle of the jeep which were kept inside his workshop and after collecting the said items, the police put the same at the place on the eastern portion of his ingkhol. Thereafter, his son was made to sit on the spot and the police put those items collectively in his front and took photographs and also stated that there was no civilian except the said cameraman.

[31] **Statement of P.W. No. 23:**

*About 13 years ago one day at about noon while I was working in the Oil Mill situated to the western side of Khoyathong Pukhri Achouba Mapal I saw a police party led by one police officer came to the place of occurrence of this case i.e. to the south-western corner of the Khoyathong Pukhri Achouba Mapal on the Polem Leikai Leirak, Thangmeiband along with the person whose face was covered by a cloth. The police party along with the person whose face was covered a cloth made a search by looking at or near the north-eastern corner of the Thangmeiband Pukhri Achouba Mapal on the southern side of the road of Polem Leikai Leirak. **At the relevant time I went out from inside the mills and stood near on the varendah of the said mill and looked towards them. After a while the person whose face was covered picked up a wooden stick (cheitup) from inside the said nullah from amongst KABOKANG. The police officer prepared a seizure memo and I put my signature on the seizure memo as a witness. I myself did not read the contents of the said seizure memo. I am coming to the Court today to depose about the said seizure of the said wooden stick as the said seizure was made in my presence.** Ext. P/44 is the seizure memo prepared by the said police officer and Ext. P/44/1 is my signature. Ext. M.O. 15 is the said wooden stick seized by the police.*

Xxxxxx by the defence counsel.

It is true that the road of Polem Leikai Leirak is a busy road, and that many passers-by are going to and fro in day time. I was working in the said mill for about 3/4 years by that time. Sometimes I spent night in the said mill, if there was a work. It is true that on that particular day I was not in the mill in the night.

I deny the suggestion that at the relevant time I never went out from inside the mill and that I was not standing on the varendah of the said mill. I also deny the suggestion that on the said day I was not looking forward towards the said party. It is also denied that I never

saw any police party led by one police officer come to the alleged place of occurrence. It is also denied that the police party along with a person who covered his face with a cloth never came to the alleged place of occurrence and that they never made search nearby the aforesaid area. I also deny the suggestion that the said person with his face covered never picked any wooden stick from inside the nullah, and that the police officer never seized any wooden stick in my presence under a seizure memo. I also deny the suggestion that Ext. P/44 is a forged and fabricated document. I deny the suggestion that I put my signature on a blank paper. I deny the suggestion that many persons of the locality gathered at the time of the said seizures. So far I remember only a few women were present at that time. It is true that I did not put any identification mark on the said wooden stick at the time of the said seizure. It is true that a wooden stick of the type of wooden stick marked Ext. M.O. 5 may be available in most of the household. I have no knowledge if any other person put his signature on the said seizure memo. I deny the suggestion that I am giving false evidence.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

(i) At the relevant time I went out from inside the mills and stood near on the varendah of the said mill and looked towards them. After a while the person whose face was covered picked up a wooden stick (cheitup) from inside the said nullah from amongst KABOKANG. The police officer prepared a seizure memo and I put my signature on the seizure memo as a witness. I myself did not read the contents of the said seizure memo. I am coming to the Court today to depose about the said seizure of the said wooden stick as the said seizure was made in my presence.

The witness is a seizure witness of the seizure of one wooden stick as picked up by a person whose face was covered inside a nullah from amongst Kabokang. The police prepared a seizure memo and he was made a seizure witness. He stated that he did not read the contents of the seizure memo. The witness did not mince a word to the fact that the seized stick was the weapon of offence used by the accused thereby creating doubt and we

observe that the present accused failed to connect with the seized articles with the commission of the crime and to connect with the accused.

[32] **Statement of S.W. 24:**

*I have been working as Editor of local newspaper Kangleipaki Meira since 1982. In the year 1989 the office building of the said Kangleipaki Meira was at Sagolband Salam Leikai, Imphal at the rented house of Salam Rajen Singh. Now the said office is at Keishamthong Bazar, Imphal. I know Shri Kh. Ranjit Singh of Yumnam Huidrom Khunjaao village. He was also working as Joint Editor of the local newspaper Kangleipaki Meira in the year 1989. Sometimes in the year 1989 at about 10/11 A.M. while I was working with Kh. Ranjit Singh Joint Editor of our news Kangleipaki Meira, in front of our press office a police party led by one police officer namely S.I. Sarojkumar Sharma of Imphal P.S. came there along with Salam Bodo Singh and other civilians by a vehicle and the said vehicle was stopped in front of our press. I know Bodo Singh before that day as his house was situated at the Western side of our press building. S.I. Sarojkumar Sharma was no more. S.I. Sarojkumar Sharma asked Bodo Singh and other civilians who got down from the said jeep. **Accordingly persons i.e. Salam Bodo Singh and other civilians got down from the vehicle. S.I. Sarojkumar Sharma asked both us (myself and Kh. Ranjit Singh) to witness the seizure of clothings worn by the two accused persons at the time of commission of the crime i.e. in connection with the death of Seityajit Singh. S.I. Sarojkumar Sharma seized one Blue Jin pant with blood like stain and one grey colour full shirt on production by Salam Bodo Singh in my presence and in the presence of Ranjit Singh under a seizure memo dt. 28.6.89 at about 11.15 a.m.**Ext. P/45 is the seizure memo prepared by SI Sarojkumar Sharma for the seizure of one Jin pant and one grey colour full shirt on production by Salam Bodo Singh. I and Ranjit Singh put our signatures on the said seizure memo prepared by SI Sarojkumar Sharma. Ext. P/45/1 is my signature. **The said articles i.e. one blue Jin pant and one grey colour full shirt were brought by the accused Bodo Singh along with SI Sarojkumar Sharma and other police personnel near to our press office. Due to lapse of time I cannot identify the said long pant Jin and grey colour full shirt.***

On the same day another newly washed long pant dark-grey in colour and one full shirt white-blue and grey colour polyster shirt were seized by SI Sarojkumar Sharma under a seizure memo dt. 28.6.89 at about 11.30 a.m. on production by Salam Debajit Singh in the instance of Bodo Singh and another civilian person in my presence. I put my signature on the said seizure memo as asked by SI Sarojkumar Sharma. Ext. P/46 is the said seizure memo and Ext. P/46/1 is my signature. Due to lapse

of time I cannot identify the said articles. The said Bodo is not present in the Court today. The said Bodo Singh is no more.

xxxxx by the defence counsel.

The said house of Salam Bodo Singh and our said press lies in the same ingkhol. It is true that there are many houses in and around the house of said Salam Bodo Singh. I cannot now say as to who else other than myself and the said Ranjit were present at the time of the said seizure. I deny the suggestion that no long pant and full shirt was seized at the instance or on production by the said Salam Bodo Singh. I also deny the suggestion that the said Sarojkumar never seized any long pant or shirt on production by Salam Deven. I also deny the suggestion that Ext. P/45 and P/46 are fabricated documents. I deny the suggestion that I am giving false evidence.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) Accordingly persons i.e. Salam Bodo Singh and other civilians got down from the vehicle. S.I. Sarojkumar Sharma asked both us (myself and Kh. Ranjit Singh) to witness the seizure of clothings worn by the two accused persons at the time of commission of the crime i.e. in connection with the death of Seityajit Singh. S.I. Sarojkumar Sharma seized one Blue Jin pant with blood like stain and one grey colour full shirt on production by Salam Bodo Singh in my presence and in the presence of Ranjit Singh under a seizure memo dt. 28.6.89 at about 11.15 a.m.***
- (ii) The said articles i.e. one blue Jin pant and one grey colour full shirt were brought by the accused Bodo Singh along with SI Sarojkumar Sharma and other police personnel near to our press office. Due to lapse of time I cannot identify the said long pant Jin and grey colour full shirt.***
- (iii) On the same day another newly washed long pant dark-grey in colour and one full shirt white-blue and grey colour polyster shirt were seized by SI Sarojkumar Sharma under a seizure memo dt. 28.6.89 at about 11.30 a.m. on production by Salam Debajit Singh in the instance of Bodo Singh and another civilian person in my presence. I put my signature on the said seizure memo as asked by SI Sarojkumar Sharma. Ext. P/46 is the said seizure memo and Ext. P/46/1 is my signature. Due to lapse of time I cannot identify the said articles. The said Bodo is not present in the Court today. The said Bodo Singh is no more.***

The witness is a seizure witness for the seizure of clothing of the accused Salam Bodo Singh on production by the accused Salam Bodo Singh but, he stated that he cannot identify the said long pant jean in grey colour due to lapse of time. Even though the witness stated that he knows the accused Salam Bodo Singh, he did not identify the accused in the Court.

[33] **Statement of P.W. No. 25:**

Now I am working as Assistant Librarian to the Gauhati High Court, Imphal Bench. In the year 1989 I was working as Joint Editor of Manipur Local Newspaper Kangleipakki Meira. I know Shri Shyamjai Singh was a Joint Editor of Manipur Local weekly newspaper Kangleipakki Meira in the year 1989. One day in the month of June 1989 while I along with Shyamjai Singh, Editor of our Press standing in front of our Press, a police party led by SI Sarojkumar Sharma came by a vehicle and he asked me and Shyamjai Singh to witness a seizure of some articles from the house of Salam Bodo Singh, whose house was situated in the western of our Press. I myself and Shyamjai Singh along with the police party went to the house of Bodo Singh. On reaching to the house of Bodo Singh, SI Sarojkumar Sharma seized one long pant Jin and one full shirt from the house of Bodo Singh under a seizure memo dt 28.06.89. I put my signature on the said seizure memo as asked by the said Sarojkumar Sharma. Ext. P/45 is the said seizure memo prepared by SI Sarojkumar Sharma. Ext. P/45 is my signature. As per seizure memo Ext. P/45 the said articles were seized on production by accused Bodo Singh. However, I cannot say if Bodo Singh and accused Joykumar Singh were present at the time of the said seizure or not.

At this stage the Id. PP prays the Court for allowing the witness to declare as a hostile as the witness resiled from his previous statement. The prayer is allowed.

I deny the suggestion that on the said day of the seizure of long pant and T-Shirt the accused Bodo Singh and the accused Joykumar @ Sahajahan Singh were also accompanied with the police party and that on that day SI Sarojkumar Sharma seized one blue Jin long pant and one grey colour full shirt on production by Shri Bodo Singh from his house. (The attention of the witness is drawn to the relevant portion of the statement recorded u/s 161

CrPC which is marked X to X for identification. The portion marked X to X is read over to the witness.) The witness states that I do not know my statement in my examination in-chief that however I cannot how say or not" is false.

Xxxxxxx by the defence counsel.

I deny the suggestion that I myself and Shyamjai Singh never accompanied with the police party led by SI Sarojkumar Sharma to the house of Salam Bodo Singh. I also deny the suggestion that I never entered the house of the said Bodo Singh. I deny the suggestion that SI Sarojkumar Sharma never seized one long pant and one full shirt from the house of the said Bodo Singh in our presence. It is true that my signature was obtained by the said Sarojkumar Sharma on blank paper as asked to do so. I also do not know as to who put signature on the said blank paper other than me.

[34]

Statement of S.W. No. 26:

I know the accused R.K. Sanatomba Singh of Ningthoujam Leikai. Now he is sitting in the dock. About 13 years ago one day in the afternoon at about 2 p.m. while I was living at my house I learnt that some police persons were coming to the house of the accused R.K. Sanatomba Singh of Uripok Ningthoujam Leikai. On getting the said information I along with Romen Singh of Uripok Ningthoujam Leikai went to the house of R.K. Sanatomba Singh. On that I found some leikai along with the police party and the accused R.K. Sanatomba at their house. On the same day one police officer seized 2/3 clothes from the house of R.K. Sanatomba Singh under a seizure memo prepared by the said police officer. On that day I and my friend Romen Singh put our signatures on the said seizure memo as asked by the said police officer. Ext. P/47 is the said seizure memo prepared by one police officer on that day at the house of R.K. Sanatomba Singh @ Moba Singh. Ext. P/47/1 is my signature.

XXXX by the defence counsel.

*I deny the suggestion that I did not go to the house of the said Moba Singh on the said day. I also deny the suggestion that no article was seized on the said day. **It is true that the said seized articles were not shown to me. I cannot say definitely if anything was written on the said paper on which I and the said Romen Singh put our signature. I deny the suggestion that Ext. P/47 is a false and fabricated one and that my signature at Ext. P/47/1 was also put on blank paper as asked by the police on that day.***

Our analysis, observation and reasoning–

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) ***It is true that the said seized articles were not shown to me. I cannot say definitely if anything was written on the said paper on which I and the said Romen Singh put our signature. I deny the suggestion that Ext. P/47 is a false and fabricated one and that my signature at Ext. P/47/1 was also put on blank paper as asked by the police on that day.***

Even though the witness identified one of the accused Shri RK Sanatomba (now expired), the witness is only the seizure witness and he is neither the eyewitness nor the person who knows about the occurrence and he happens to be the seizure witness of the seizure of the wearing apparel as requested by the police, but the witness stated that the seized articles were not shown to him and further said that he cannot say definitely if anything was written on the said paper, on which, he and his friend Romen Singh put their signatures.

[35] **Statement of S.W. No. 27:**

I know the accused R.K. Sanatomba Singh @ Moba Singh of our Leikai and he is now sitting in the dock. About 13 years ago one day at about 2 p.m. while I was on Uripok Ningthoukhongjam Leikai Road I saw some police persons entered into the ingkhol of accused RK Sanatomba @ Moba Singh. After a few minutes I also entered to the house/ingkhol of R.K. Sanabtomba @ Moba Singh. When I entered to the courtyard of the house of RK Sanatomba Singh I found some Leikai people including R.K. Sanatomba Singh and some police persons were also present in the courtyard of accused Sanatomba Singh. On that one police officer seized wearing clothes of the accused Moba Singh. I put my signature on a paper as asked by the said police Officer. I do not know from whose possession the said clothes were seized by the police. And I also do not know whether the said paper on which I put

my signature was a written or not. Ext. P/47 is the paper on which I put my signature. Ext. P/47/2 is my signature.

(At this stage the Id. P.P. prays the Court for allowing him to declare the witness as a hostile as the witness resiles from his previous statement recorded u/s 161 Cr.P.C and to allow him to put the leading questions in the nature of cross examination. The prayer is allowed).

It is not a fact that what I stated in my examination that I do not know whether the said Ext. P/47 is a written or not is false. I also deny the suggestion that SI Sarojkumar Sharma the I.O of this case seized one white cotton Paiyama stained with blood being found was properly and one nylon T-shirt on production by the accused R.K. Moba @ RK Sanatomba Singh on 27.7.89 at about 2 p.m. I also deny the suggestion that I am giving false evidence in order to save the accused Moba Singh and others from this case as they belong to our Leikai. I also deny the suggestion that I and Premjit Singh put our signatures on the seizure memo prepared by SI Sarojkumar Sharma after knowing the full contents of it. I also deny the suggestion that appearing accused RK Sanatomba Singh also put his signature on the said seizure memo on that day.

*(The attention of the witness is drawn to the relevant portion of the statement recorded u/s 161 Cr.P.C which is marked **XI to XI** for identification) The portion marked XI to XI is read over and explained to the witness.*

The witness states that I do not know as to how and why the police recorded which is marked XI to XI as my statement.

XXX by the defence counsel.

I deny the suggestion that I never went to the ingkhol of RK Sanatomba @ Moba Singh. I also deny the suggestion that I never saw the accused R.K. Sanatomba Singh and police party were present in the courtyard of R.K. Sanatomba Singh. I also deny the suggestion that the police never seized the wearing cloths of Moba and that I was never stated by the police that the alleged seized clothes was of R.K. Moba Singh. I deny the suggestion that Ext. P/47 is a false and fabricated one and that my signature at Ext. P/47/2 was also obtained by the police on a blank paper.

Our analysis, observation and reasoning -

The witness is a seizure witness for the seizure of wearing cloths of accused Moba and the witness identified the accused RK Sanatomba @ Moba Singh. But, the witness was declared hostile. In his statement, the witness stated that he did

not know in whose possession the said wearing cloths were seized by the police. Further the witness stated that he did not know whether the said paper on which he put his signature was a written or not.

[36] For the sake of brevity and to save time, only operative portion of the statement of the P.W. No. 28, 29, 30, 31 & 32 are reproduced herein below:

Statement of P.W. No. 28:

P.W. No. 28 has deposed that he know the accused persons now present in the Court and they are Sahajan Singh his younger brother-in-law, Ramananda Singh, Basanta Singh. The accused Bodo Singh is his younger her but he is no more. P.W. 28 further goes to say that he know Shri Srokhaibam Lakhikanta Singh, Advocate and he is his brother-in-laws. He know nothing about this case except he learnt that the accused Salam Bodo Singh, Pukhrambam Joykumar@Sahajan Singh. Khwairakpam Basanta Singh and Pangoijam Ramanamda Singh were arrested by the police in c/w FIR No. 384(6)89 I.P.S. u/s 302/34/326 IPC.[This witness was declared as hostile witness and cross examined by the Ld.PP.]

The witness was declared hostile.

Statement of P.W. No. 29:

P.W. No. 29 has deposed that about 12 years ago one day at about 9 A.M. he met a police party of Imphal P.S. on the road at Salam Leikai near the Saikhom Kollup. They asked him to enter to the house Singh at Sagolband Meino Leirak for making arrest of one person from the house of Basanta Singh. One police officer who led the said police party obtained his signature on the blank paper stating that they came to search one person to the house of accused Basanta Singh. The said signature was seen on the said paper at the gate of Basanta Singh. After obtaining his signature on the said blank paper they entered to the house of Basanta Singh however he did not accompany with them on that day upto the house of accused Basanta Singh. [This witness is also declared as hostile witness and cross examined by the Id. PP.]

The witness was declared hostile.

Statement of P.W. No. 30:

P.W. No. 30 has deposed that about 13/14 years ago one day in the morning at about 10 A.M. while he came out from his home for going to his personal work he found a police party led by Inspector Tomba Singh the then O/C of Imphal P.S. at his gate. Tomba Singh asked him to put his signature on the blank paper accordingly he put his signature on 2/3 blank papers and except this he knows nothing about this case. [This witness is also declared as hostile witness.]

The witness was declared hostile.

Statement of P.W. No. 31:

P.W. No. 31 has deposed that about 13/14 years ago one day in the day time when he returned at his house from his private work he found same police personnel and one police officer among the said police party asked him to put his signature for coming to his house and accordingly he put his signature on the blank paper near his gate. [This witness is also declared as hostile witness.]

The witness was declared hostile.

Statement of P.W. No. 32:

P.W. No. 32 has deposed that about 12/13 years ago at about 11:30A.M. While he was standing on his gate some police personnel including the K. Tomba Singh and Sorojkumar Sharma entered to the house of Pukhrambam Joykumar Singh. After a while a police personnel came out from the house of accused Sahajan Singh and they asked him to put his signature on a paper and accordingly he put his signature on a paper. He does not know for what purpose they obtained his signature on that day. [This witness is also declared as hostile witness.]

The witness was declared hostile.

[37] **Statement of P.W. No. 33:**

In the year 1989 I was serving as Medical Officer in the Casualty Department RMC. Now I took voluntarily retirement from my service. On 23.6.89 I examined one injured person namely Pangoljam Ramanhanda Singh s/o P. Ibetombi Singh of Sagolband Salam Leikai as referred by the Police of Imphal P.S.

I joined my service as Medical officer in the Casualty Department, RIMS in the year 1981. I passed my MBBS Degree in Guwahati University in the year 1979 and I took my Post Degree DID (Bio Chemistry) from RIMS under the Manipur University. The above mentioned injured person Ramanand Singh was examined by me when I was attached to the Casualty Department RIMS, Imphal.

On my examination, I found the following injuries:-

- 1. Lacerated wound over the mollar eminent right face. The size of the injury is 1/3" in length skim only.*
- 2. Lacerated wound V shape over the right lateral side of the nose just above the vestibule of the nose. Size is 1/3" x 1/4" in V shape.*
- 3. Abrasion over the bridge of the nose. The size of the wound is 1/4"x 1/4" in area.*

The nature of the wounds mentioned above are simple. The kind of weapon which inflicted the injury was blunt object. At the time of the examination the patient is fully conscious. No history of normal. The wound deprivement was done and the patient was discharged from the hospital on that day. The age of the injury was 24 hours. Due to lapse of time I cannot remember whether the injured was already examined before referring the patient to the hospital in C/w FIR No. 384(6)99 1ps u/s 326,382,34 IPC. One injury report form mentioning the name of the patient Pangambam Ramananda Singh which was submitted to the Casualty Department and I prepared the injury report of the injured person Ramananda Singh on the said over leaf of the injury form furnished by the police. The injured Ramananda Singh was identified by one police personal namely Suresh Singh of I.P.S. Ext. P/51 is the injury report from furnished by the I.O. of the Ext. P/52 is the injury report prepared by me on the overleaf of Ext. P/51 Ext. P/52 is my signature with office seal.

Xxxxx by the Id/d.

Exhibit P. 51—

INJURY REPORT FORM

From

The O.C. Imphal P.S.

To

The M.O. Incharge R.M.C. Hospital Imphal

FIR No. 384 (6) 89 IPS u/s 326/302/34 IPC.

Sir,

I have the honour to request the favour of your examination of Mr./Mrs. Pangoijam Ramananda Singh (32) s/o P. Ibotombi Singh of Sagolband Salam Leikai, Imphal sent to the Hospital, Manipur on the 25.06.1989.

Please fill up the column on the reverse of this letter and return it to me with such remarks you may consider necessary to show clearly your opinion of cause of hurt.

All that is presently known of the cause is as follows:

- (i) *Bruise marks (around on the lower portion) of right eye (as he same has been caused due to the assault in c/w the case).*

Our analysis, observation and reasoning -

The prosecution failed to prove that the injury was sustained/related with the said occurrence i.e. the assault and subsequent death of the deceased and failed to connect with the present injury to the said crime and failed to connect the occurrence with the accused.

[38] Statement of P.W. No. 34:

In the year 1989 I was serving as Medical Officer in the Casualty of Old District Hospital, Imphal. In the year 1979, I joint in the Manipur Health Service and I passed my MBBS degree in the year 1979 from Sambhalpur University, Orissa. And I took my Post Degree, General Surgery from RIMS under the Manipur University in the year 1997. Now I took voluntary retirement from my service in the year 2000 in the month of December 2000. While I was serving as Medical Officer in the Casualty of Old District Hospital, Imphal on 23.6.89 one person injured person namely Nongmaithem Megha Singh S/O N. Bira Singh of Thangmeiband Polem Leikai was brought by one police Officer namely Heli Mao I.O of FIR Case No. 384(6)89 IPC u/s 302/326/34 IPC for medical examination of the said person. The said SI Heli Mao also submitted an injury report form to me. I examined the said Megha Singh as indentified by one N. Priyobarta Singh.

On my examination I found an injury of bruise over the left upper arm. The size of the injury was 2" x2". The nature of the injury was simple and caused by blunt object. On that day itself I cannot prepare the injury report. On the next day i.e. 24.6.89 I prepared injury report of the said injured person namely Megha Singh in the injury report form submitted by the I.O of this case Heli Mao. Ext. P/53 is the injury report submitted by SI Heli Mao. Ext. P/53A is the injury report form prepared by me on the overleaf of Ext. P/53. Ext.P/53/A/1 is my initial with office seal. The said injury report form was collected by one police officer from my office.

XXXX by the d/c.

No time for the examination of the said injured person was mentioned in my report. I do not know the said N. Priyobarta Singh who identified the injury person. I deny the suggestion N. Megha Singh was never brought to the District Hospital, Imphal on 23.6.89 for examination.

Exhibit P. 53:

INJURY REPORT FORM

From

The O.C. Imphal P.S.

To

The M.O. Incharge District Hospital Imphal

Case FIR No. 384 (6) 89 IPS u/s 326/302/34 IPC.

Sir,

I have the honour to request the favour of your examination of Mr./Mrs. Nongmaithem Megha Singh (37) s/o N. Bira Singh of Thangmeiband Polem Leikai, Imphal sent to the Hospital, Manipur on the 23.06.1989.

Please fill up the column on the reverse of this letter and return it to me with such remarks you may consider necessary to show clearly your opinion of cause of hurt.

All that is presently known of the cause is as follows:

Complain pain in the left upper arms.

Our analysis, observation and reasoning -

It is only the statement of the present witness that says the injury sustained on Shri N. Megha Singh (P.W. No. 4) was simple and caused by blunt object. But, the prosecution failed to prove the injury was caused during the course of the said occurrence and caused by the accused.

Now I am working as Officer in charge of Kangpokpi P.S. In the year 1989 I was posted to Imphal as S.I. In the year 2001 I got the promotion to the rank of inspector. While I was attached to the Imphal P.S., I took up the investigation of FIR NO. 384(6)89 I.P.S. u/s 302/326/34 I.P.C. as endorsed the same by the O/C of Imphal F.S. The case was registered by SI Nashir Ahamad, who was the Night officer in-charge of Imphal P.S. as Inspector Tamba Singh the then O/C of I.P.S. was at his residence on the night of 23.6.89.

*The fact of the case was that **the complainant P. Indrajit Singh lodged a written report to the O/C, Imphal P.S. to the effect that on the night of 23.6.89 at about 2 a.m. to 2.30 a.m.** his son Seityajit Singh was assaulted by unknown persons numbering about 8 to 12 with the weapon of heavy iron rod, sharp dagger, club etc. on the road near the south-western side of Khoyathong Pukhri Achouba at Polem Leikaj, Thangmeiband while he returned to his home from his Khola with Megha Singh, as a result of the assault Seityajit Singh got serious bleeding injuries on face, nose forehead, skull both legs etc. It is also stated that Megha Singh was also beaten by the said unknown persons and also threatened his life if shouted or struggled with them. His son Seityajit Singh was taken to the RMC hospital now (RIMS) for treated by the local people and there he was declared death. **On receipt of the said written report SI M. Nashir Ahamed who was the Night Officer in-charge of Imphal P.S. registered a case being FIR No. 384(6)89 I.P.S. u/s 302/326/34 I.P.C. Ext. P/1 is the Original Ejahar lodged by Polem Indrajit Singh.***

The original ejahar was lodged on 23.6.89 at about 4.30 a.m. After endorsement of the above mentioned FIR Case I immediately along with some police personnel of Imphal P.S. went to Thangmeiband Khoyathong Pukhri Achouba Mapal. At about 4.40 a.m. of the same day I reached at the place of the occurrence, and I found some people were assembling near the place of the occurrence.

I inspected the place of the occurrence and I found pool of blood on the ground of the road and some articles near Khuyathong Pukhri Achouba Mapal on the southern-western side of the said khoyathong Pukhri Achouba Mapal and some articles i.e. 2 pieces of sticks, smeared with blood measuring about 5 ft. long, half broken wooden stick having blood stains measuring 3¹/₂ ft, a piece of broken wooden stick measuring about 22 inches long with wooden handle of about 6 inches long were also found lying at the place of the occurrence. While inspection of the place of occurrence was going on, one person namely Nongmaithem Megha Singh produced one half lantern/ patromax with broken chimney at the place of the occurrence stating that the said half lantern/patromax was carrying by him at the time of the crime by the culprits and one culprit kicked on him with a stick and that the same half lantern/patromax sleeve and fell down on the ground. I seized the said half lantern/ patromax with the broken chimney on production by Nongmaithem Megha Singh under a seizure memo dt. 23.6.89 at about 5.10 a.m. of 23.6.89 in

the presence of witnesses namely Sorensangbam Ibomcha Singh and Chongtham Sunilkumar Singh, I also obtained the signatures of the witnesses namely Ibomcha Singh and Sunil Kumar Singh after read over and explained the contents of it. I also obtained the signature of Megha Singh on the said seizure memo. Ext. P/3 is the seizure memo for the seizure of one patrolmax/ half lantern. Ext. P/3/1 is the signature of N. Megha Singh and Ext. F/3/2 and P/3/3 are the signatures of S. Ibomcha Singh and Ch. Sunil Kumar Singh. Ext. P/3/4 is my signature.

Then I also seized one food stained paper, and blood stained with earth mixed with stone/pebbles and 2 pieces of the stick smeared with blood measuring about 5 ft. ½ inch long, broken wooden stick measuring about 22 inches long with wooden handle about 6 inch long, a piece of the broken wooden piece- measuring 3 ½ ft. with blood stain on the top from the spot in the presence of witnesses namely Chongtham Sunilkumar Singh and Polem Meghabarna Singh under a seizure memo dt. 23.6.89 at about 5.30 a.m. I obtained the signature of witnesses namely Ch. Sunilkumar Singh and P. Meghabarna Singh after read over and explained the contents of it. Ext. P/12 is the seizure memo for the seizure of the above mentioned articles, Ext. P/12/3 and F/12/2 1 are the signatures of Sunilkumar and Meghabarna Singh. Ext. P/12/3 is my initial. I also prepared sketch map of the place of occurrence with index as pointed out by the informant. Ext. P/54 is the sketch map of the place of the occurrence, Ext. 1/54/1 is my signature. Ext. P/55 is the index of the sketch map Ext. 1/54. Ext. 2/55/1 is my signature.

At about 8 a.m. of the same day I left the place of the occurrence for RMC hospital and I reached the RMC hospital (RIMS), Imphal at about 8.10 a.m. of the same day. When I reached at the RMC hospital/RIMS I found the dead body of Seityajit Singh was lying on a stretcher on the temporary morgue of RMC hospital (RIMS). The dead body was identified by one Longjam Rajen Singh. I conducted inquest over the dead body of Seityajit Singh in the presence of T. Shyamkumar Singh and Soibam Dhaneswar Singh.

The dead body found lying on the stretcher morgue of RMC hospital with the head towards the east and the leg towards the West. The dead body was covered with one reddish brown chader having blood stain on his head, one dirty white polyester full shirt having blood stain which covered from chest to naval and one sky blue half shirt with blood from naval to ankle. Both the hands and legs are found stretch.

When I removed the clothes I found the face is facing me towards the north and the left eye brow is found absent, and the injury mark is found on the nose bridge, one cut mark on the right forehead and right eye is found swelling with disfiguration, mouth is found half opened having mostage and bear with blood stain. The deceased is wearing one blue spot half pant with white string having blood stain. 2 cut injury marks measuring about 4"xhalf" oval shape and about 2"x 1/2" in oval shape, scratch mark is seen on the right knee, 2 cut injury marks is seen on the left thigh measuring 1"x" in oval shape and about 1/4" x 1/8" and scratch mark with bleeding on left knee over-the

turned of the dead body 2 abrasion mark about 5" long and 1/4" in multiple scratch mark is seen over the outer side of the right angle. I prepared inquest report at the RMC temporary morgue Lamphelpat on 23.6.69 at about 8.10 a.m. in presence of the witnesses namely Shyamkumar Singh and Dhaneswar Singh. I obtained the signatures of the witnesses on the said inquest report after read over and explained the contents of the Inquest report. Ext. 1/2 is the inquest report prepared by me. Ext.1/2/1 and P/2/2 are the signatures of witnesses Shyamkumar and S. Dhaneswar Singh, Ext.P/2/3 is the signature of Identifier namely Longjam Rajen Singh. Ext. P/2/4 is my initial. Then the dead body was taken to the Forensic Science medicine department i.e. RIMS morgue for post mortem examination.

I submitted requisition necessary papers to the concerned Doctor of the RMC morgue for the post mortem examination of the dead body of Seityajit Singh. The dead body of Seityajit Singh was examined by Dr. H. Nabachandra Singh. After the post mortem examination is over I also seized one dirty white polyester full shirt torn in the arm of the shirt having blood stain, sample of blood on filter paper and sample of skull hair on production by Dr. H. Nabachandra Singh Asst. Professor of Forensic Medicine Department, RMC Imphal under a seizure memo dt.23.6.89 at about 12.15 p.m. in presence of witnesses namely Ch. Shantikumar and N. Megha Singh, I also obtained the signatures of the witnesses namely Ch. Shantikumar and N. Megha Singh on the seizure memo after read over and explained the contents of it. Dr. Nabachandra Singh also put his signature on the said seizure memo for obtaining a copy of the said seizure memo. Ext. P/4 is the said seizure memo and Ext. P/4/2 and P/4/1 are the signatures of witnesses namely Shantikumar and N. Megha Singh respectively. Ext. P/4/3 is my signature. Ext. P/4/4 is the signature of Dr. Nabachandra Singh Asst. Professor of Forensic Medicine Department, Imphal.

On 12.1.2004 (Continuation)

At about 12.30 p.m. of 23.6.89 the dead body of Seityajit Singh was handed over to the relatives of Seityajit Singh after the post mortem examination. At about 1.19 p.m. of the same day I left the RIMS morgue, Lamphel along with Nongmaithem Megha Singh for District Hospital, Imphal for medical examination of Nongmaithem Megha Singh as he stated that he got injury while he intervened the occurrences on that night. At about 1.15 p.m. of the same day I reached District Hospital, Imphal and I submitted injury report in respect of Nongmaithem Megha Singh for his medical examination. On that day Nongmaithem Megha Singh was examined by the doctor who was on duty at the District Hospital at the relevant time. On that day I did not collect the medical examination report as he advised me to collect the medical examination after some days. Then I left District Hospital, Imphal for Imphal P.3. Ext. P/56 in the challan for the dead body is sent to the doctor for Seityajit examination which is prepared by me. Ext. P/56/1 is my signature. Ext. P/584 is the injury report for examination of Nongmaithem Megha Singh which is prepared by me. Ext.2/53/1 is my signature. The said injury report form Ext. P/53-A was collected by my next I.O. SI. Soroj Kumar Sharma who is no more.

During the course of the investigation I examined Polem Indrajit Singh, Sorenshangbam Ibomcha Singh, Chongtham Sunilkumar Singh, Polem Meghabarna, Polem Shyamkumar, Soibam Dhaneshwor Singh, Nongmaithem Megha Singh on the same day i.e. 23.6.89 I handed over the case record to SI Sarojkumar Sharma for further investigation as he endorsed the same to Sarojkumar Sharma by the then Inspector K.Tomba Singh. I can identify the seized articles if shown to me.

Continuation of examination-in-chief of P.W. No. 35 P. Heli on fresh oath on 27.03.2004.

Ext. M.O.1 is the half lamp/patromax. The seized wooden stick are shown to me. Ex. M.O.2 is the broken short wooden stick 5" in length. Ex. M.O.3 is the broken stick about 22 inches in length. Ex. M.O.4. is the broken stock about 1 and half ft. in length. Ext. M.O. 12 is the blood stained paper and blood stained earth mixed with small stones.

Xxxxxx by the d/c.

I was physically present at the police station at the time of lodging the original ejahar. I cannot now say if the informat came alone to the police station for filing the ejahar or he was accompanied by any other person or persons. I do not know if the original ejahar was brought prepared by the informant or the same was prepared at the police station on that day. I examined the informant personally at the police station just after lodging the ejahar. As per FIR form the FIR form was forwarded to the court of C.J.M. Imphal on 24.06.89. It is true that there is an over writing in the Memo No. of the FIR Form changing the figure '2' or '4'. It is true that time for the dispatch of the police team from the police station to the spot is not written in the FIR form in the relevant column though the date was noted. It is true that the date and time of the report as regards the occurrence was entered as 23.06.89 at 4.30 p.m. in the relevant column of the FIR form. The spot of the occurrence was identified to me by the informat himself.

It is true that in both the date and hour of the seizure in respect of the seizure of patromax under Ext. P/3 there are overwriting changes the original writings to new ones. The said overwritings were done by me. In respect of the seizure list at Ext. P/12 also there are overwritings substituting the original writings by new ones as regards the time of seizure. It is also true that the original writings 'P.M.' was subsequently changed to 'A.M.' Myself and my police team reached the spot at 4:30 a.m. on that day. As soon as myself and my police team reached the spot Megha Singh produced the patromax to me and immediately I made the seizure of the same under Ext.P/3. The broken pieces of the sticks and blood stained paper i.e. Ext. M.O.2, 3 and 4 were found scattered at the particular place at the spot. It is true that I did not mention of indicate the spot from where the aforesaid articles were found or scattered in the sketch map at Ext. P/54 which was prepared by me.

I prepared the said sketch map Ext. P/54 after the spot was identified by the informant with the assistance of the other Leikai people found present there. I used measuring device/instrument while preparing Ext. P/54. The electric lamp post which existed on the south-western corner of Khoyathong Pukhri Achouba was inside the berbed wired fencing erected all around the Pukhri. The distance between the spot of the occurrence and the gate of R.K.B. Com Sana Singh is 55 ft. exactly. I cannot now remember if there are buildings or structures on the western side of the entrance of RK B. Com Sana Singh's gate. I did not measure the length between the southern edge of Khoyathong Polem Leikai road and the gate of RK B. Com Sana while preparing Ext. P/54. Similarly, I also did not measure the width of the Khoyathong Polem Leikai at the time of preparation of Ext. P/54. I also did not measure the distance between the electric post and the place of occurrence.

I deny the suggestion that FIR of the case was fabricated and the narrations made therein were concocted subsequently. I also deny the suggestion that the FIR form and the seizure memos prepared by me were all fabricated by manipulating facts subsequently. I deny the suggestion that I did not examine the informant and that I also did not visit the spot and further that I did not make any seizures in the investigation of the case. I do not agree with the suggestion that the entire prosecution case was fabricated and manipulated by the informant and other interested persons without any material basis."

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

(i) The complainant P. Indrajit Singh lodged a written report to the O/C, Imphal P.S. to the effect that on the night of 23.6.89 at about 2 a.m. to 2.30 a.m.

(ii) On receipt of the said written report SI M. Nashir Ahamed who was the Night Officer-in-charge of Imphal P.S. registered a case being FIR No. 384(6)89 I.P.S. u/s 302/326/34 I.P.C. Ext. P/1 is the Original Ejahar lodged by Polem Indrajit Singh.

(ii) The original ejahar was lodged on 23.6.89 at about 4.30 a.m. After endorsement of the above mentioned FIR Case I immediately along with some police personnel of Imphal P.S. went to Thangmeiband Khoyathong Pukhri Achouba Mapal. At about 4.40 a.m. of the same day I reached at the place of the occurrence, and I found some people were assembling near the place of the occurrence.

(iii) *I inspected the place of the occurrence and I found pool of blood on the ground of the road and some articles near Khuyathong Pukhri Achouba Mapal on the southern-western side of the said khoyathong Pukhri Achouba Mapal and some articles i.e. 2 pieces of sticks, smeared with blood measuring about 5 ft. long, half broken wooden stick having blood stains measuring 3¹/₂ft, a piece of broken wooden stick measuring about 22inches long with wooden handle of about 6inches long were also found lying at the place of the occurrence. While inspection of the place of occurrence was going on, one person namely Nongmaithem Megha Singh produced one half lantern/ patromax with broken chimney at the place of the occurrence stating that the said half lantern/patromax was carrying by him at the time of the crime by the culprits and one culprit kicked on him with a stick and that the same half lantern/patromax slipped and fell down on the ground. I seized the said half lantern/ patromax with the broken chimney on production by Nongmaithem Megha Singh under a seizure memo dt.23.6.89 at about 5.10 a.m. of 23.6.89.*

(iv) *During the course of the investigation I examined Polem Indrajit Singh, Sorenshangbam Ibomcha Singh, Chongtham Sunilkumar Singh, Polem Meghabarna, Polem Shyamkumar, Soibam Dhaneshwor Singh, Nongmaithem Megha Singh on the same day i.e. 23.6.89 I handed over the case record to SI Sarojkumar Sharma for further investigation as he endorsed the same to Sarojkumar Sharma by the then Inspector K.Tomba Singh. I can identify the seized articles if shown to me.*

(v) *I was physically present at the police station at the time of lodging the original ejahar. I cannot now say if the informant came alone to the police station for filing the ejahar or he was accompanied by any other person or persons. I do not know if the original ejahar was brought prepared by the informant or the same was prepared at the police station on that day. I examined the informant personally at the police station just after lodging the ejahar.*

(vi) *It is true that there is an over writing in the Memo No. of the FIR Form changing the figure '2' or '4'. It is true that time for the dispatch of the police team from the police station to the spot is not written in the FIR form in the relevant column though the date was noted. It is true that the date and time of the report as regards the occurrence was entered as 23.06.89 at 4.30 p.m. in the relevant column of the FIR form. The spot of the occurrence was identified to me by the informant himself.*

(vii) *It is true that in both the date and hour of the seizure in respect of the seizure of patromax under Ext. P/3 there are overwriting changes the original writings to new ones. The said overwritings were done by me. In respect of the seizure list at Ext. P/12 also there are overwritings substituting the original writings by new ones as regards the time of seizure. It is also true that the original writings 'P.M.' was subsequently changed to 'A.M.'*

Contradictory to the present witness's statement which are highlighted at (i), (ii) and (iv), the complainant P.W. No. 1, the father of the deceased in his statement as highlighted/reproduced above, stated that he did not go to the police station to file the complaint but, he sent a person instead to file the complaint. In spite of this contradictory statement of P.W. No. 1, the prosecution neither contradicts nor proves that the version of the complainant is wrong. As such, the question of meeting the complainant at the police station and recording the statement of the P.W. No. 1 by the I.O. is doubtful and suspicious. The statement of the I.O. that original ejahar was lodged at 04:30 a.m. is contradictory to the statement of P.W. No. 1 that after the P.W. No. 4 narrated about the assault meted to his son by unidentified person at 03:00 p.m. thereafter, he asked a boy of his locality to write the original ejahar on his dictation and sent a person to lodge the original ejahar to the Imphal Police Station. Accordingly, he lodged the complaint at 04:00 p.m. and the police registered FIR at 04:30 p.m. It is admitted in the witness statement that some of the seized articles mentioned in his statement were seized even before the lodging of original ejahar. Accordingly, his version that he was physically present at the time of lodging the original ejahar is also doubtful; examination of the complainant personally by him is also doubtful thereby creating suspicion of the witness's statement. It

has also emerged that the memo number of the FIR form was changed from the figure 2 to 4. Further, the witness stated that it is true that time for dispatch of the police team from the police station to the spot is not written in the FIR form. It is also stated that the time of report as regards, the occurrence was entered as 23.06.89 at 04:30 p.m. in the relevant column of the FIR form but, later on he overwrote as 04:30 a.m. It is also admitted by the witness that the date and hour of seizure in respect of seizure of patromax in the original writings are changed by overwriting in the new one and the same was done by him. Further, the seizure of Ext. P-12 (to see) was also made overwriting substituting the original writing by a new one and further, stated that the original writings P.M. was subsequently changed to A.M.

In the above statement, the witness stated that the complainant P. Indrajit Singh, father of the deceased, lodged a written report to the O.C. Impal P.S. on 23.06.1989 at about 04.30 a.m. and as endorsed the case to him, he immediately along with some police personnel to Thangmeiband Pukhri Achouba Mapal. On reaching there, he found some articles i.e. two pieces of sticks smeared with blood measuring of about 5 ft. long, half broken wooden stick having blood stain measuring 3 and half feet, a piece of wooden stick measuring about 22 inches along with wooden handle of about 6 inches long were found and also stated that one

Nongmaithem Megha Singh produced one half lantern patromax with broken chimney and seized the same in the presence of witnesses Sorensangbam Ibomcha Singh and Chongtham Sunil Singh and other materials as mentioned in his statement highlighted above. He examined some witnesses on the same day and the case record was handed over to Sarojkumar Sharma as endorsed to him by the then Inspector K. Tomba Singh.

[40] **Statement of witness of P.W. No. 36:**

Now I am working as Sub-Divisional Police Officer of Moreh. In the year, 1989 I was the O/C of Imphal P.S. and got promotion to the post of Dy. S.P., in the year 1996. FIR Case No.284(6)89 I.P.S. u/s 302/326,34IPC was registered by SI Md. Nasir Ahamad on 23.6.89 at about 4 a.m. as he was the night Duty Officer in-Charge of I.P.S. and he endorsed the same to SI P. HeliMao for investigation. I am well acquainted with the fact of this case. On the same day i.e. 23.6.89 in the before noon I endorsed this FIR Case to SI H.Sarojkumar Sharma for Investigation, SI Sarojkumar is no more, I know the hand writing and signatures of SI Sarojkumar Sharma as he was working with me in the Imphal P. S. during his life time. As per my direction SI Heli Mao handed over case record to SI Sarojkumar Sharma and SI Sarojkumar Sharma investigated the present case under my supervision and he submitted charge sheet against the accused persons namely Pukhrambam Joykumar @ Shahajahan Singh s/o P. Shyamnagor of Sagolband Meino Leirak, Khangjarakpam Basanta Singh @Lalubi s/o Kh. Ahanjao Singh of Sagolband Salam Leikai, Salam Bodo Singh@Somorendro Singh s/o Achou Singh of Sagolband Meino loirak, R.K.Sanatonba @Ngoba Singh s/o RK Budhisana Singh of Uripok Ningthoukhongjam Leikai and Pukhrambam Dhananjoy Singh @Boby Singh s/o Ibotombi Singh of Uripok Haobam Dewan Leikai, to the Court for trial through me.

*During the course of the investigation sometimes I accompanied with SI Sarojkumar Sharma. During the course of investigation I along with Sarojkumar conducted house search of the house of accused persons as we received reliable information that the above mentioned accused persons were involved in the present case. **On 24.6.89 at about 9.30p.m.**received a reliable information on telephone from Shri S. Lakhikanta Singh, advocate, brother-in-law of the accused Pukhrambam Joykumar@Sahajahan Singh stating that the accused person namely P. Sahajahan @Joykumar Singh of Meino Leirak, Khangrakpam Basanta Singh of Meino Leirak, Irom Nabachandra Singh of Sagolband Salam Leikai, Pangoijam Samananda*

*Singh of Sagolband Salam Leikai, Salam Bodo Singh of Sagolband Salam Leikai were ready to surrender to police. That he had kept the above named accused persons to the house of Salam Bodo Singh of Sagolband Salam Leikai but the 2 accused persons namely Moba Singh of Uripok Ningthoukhongjam Leikai and Dhananjay Singh of Uripok Haobam Dewan Leikai did not want to surrender to the police. On getting the said information a police party led by me and SI Sarojkumar Sharma left I.P.S. at about 9.45 p.m. for Sagolband Salam Leikai. We reached at the house of Salam Bodo Singh of Sagolband Salam Leikai and we found the accused persons namely P. Sahajahan @ Joykumar s/o Shyamnagar Singh of Sagolband Meino Leirak, Khangrakpam Basanta Singh s/o Ahanjao Singh of Sagolband Salam Leikai, Pangoljam Ramananda Singh s/o Ibotombi Singh of Sagolband Salam Leikai, Irom Nabachandra Singh s/o Ibotombi Singh of Sagolband Salam Leikai were found inside the house of Salam Bodo Singh of Sagolband Salam Leikai but the co-accused Salam Bodo Singh was not found in his house along with accused persons as he fled away from his house just before the arrival of our police. But his father told us that he would produce his son Bodo Singh to the police station as soon as possible. All the accused persons were arrested from the house of Bodo Singh. **One bruise mark found at the lower forehead of the right eyelid of the accused Ramananda Singh which was found injured during the fighting with the deceased Seityajit Singh.** Then I gave instructions to SI Sarojkumar Sharma the I.O. of this case to proceed to RIMS hospital Lamphelpat for treatment of the injured accused Ramananda Singh.*

We took the precaution at the time of the arrest of the above mentioned 4 accused persons by covering their face with clothes as they were required for conducting TI Parade. The arrested accused persons except the injured Ramananda Singh were taken to I.P.S. by my party, and the 3 accused persons were kept in the police lock-up of I.P.S.

During the course of the investigation SI Srojkumar interrogated the accused persons one by one. During his examination of the accused persons the accused Pukhrambam Sahajahan @Joykumar Singh admitted that he committed the crime with other 4 accused persons and the weapon of crime used at the time of the commission of the crime such as cane stick, iron handle of the jeep and knife were kept concealed inside a clump of bampoo near north eastern corner of the house near the garrage of accused Sahajahan at Sagolband Meino Leirak. He further stated that he would be able to find out the said concealing place of the weapon of crime and will be able to hand over the said weapon to the I.O. of this case. SI Sarojkumar Sharma recorded the statement of the accused P. Joykumar @Sahajahan in a separate sheet u/s 27 of Indian Evidence Act. The recorded statement of P. Joykumar @Sahajahan Singh is shown to me, which was already marked as Ext.P/13. The hand writing of this Ext.P/13 is the hand writing of SI Sarojkumar Sharma. Ext. P/13/4 is the initial of Ext.P/13/5 and P/13/6 are the signature of accused P. Joykumar Singh appearing on Ext. P/13.

SI Sarojkumar also recorded the statement of the accused Dhananjay Singh u/s 27 of the Indian Evidence Act. The recorded statement of accused Dhananjay Singh is shown to me. The hand writing of this statement is in the hand writing of Sarojkumar Sharma. Ext. P/53 is the recorded statement of accused Dhananjay Singh recorded u/s 27 Indian Evidence Act. Ext. P/53/1 is the initial of SI Sarojkumar Sharma. Ext. P/53/2 & P/53/3 are the signatures of accused Dhananjay Singh. Ext. P/53/4 and P/53/5 are the signatures of the witnesses namely Md. Ali of Jiribam Babupara a/p Khamnam Bazar Soyam Leirak and Md. Ibrahim s/o Maharuddin of Jiribam Babupara a/p Khamnam Soyam Leirak respectively.

SI Sarojkumar Sharma seized one iron handle of jeep length about 35" in length, one cane stick having bold head 3 ½ ft., one knife (Heijarang), total length about 10^{1/2}" including the wooden handle seized at the instance of the accused Pukhrabam Joykumar @ Sahajahan Singh, near the north-eastern corner of the garrage from the clumb of bamboos. Ext. P/14 is the seizure memo for the seizure of the above 3 articles. Ext. P/14/4 is the initial of SI Sarojkumar Sharma. Ext. P/14/5 is the signature of accused, Joykumar Singh, Ext. P/14/1 and P/14/2, P/14/3 are the signatures of the witnesses namely Bebe Sharma, Ronikanta Sharma and S. Rajen Singh. Ext. P/15 is the post mortem report collected by SI Sarojkumar Sharma during course of investigation. Ext. P/44 is the seizure list for the seizure of one wooden club (Singjangkhok) at the instance of the accused Dhananjay @ Bobi Singh in presence of witnesses namely Ibrahim of Jiribam Babupara, Md. Ali of Jiribam Babupara and Bobi Singh. Ext. P/44/2 is the signature and initial of SI. Sarojkumar Sharma. Ext. P/44/1 is the signature of Bobi Singh. Ext. P/44/3 and P/44/4 are the signatures of witnesses namely Ibrahim and Md. Ali. Ext. P/44/5 is the signature of the accused Dhananjay Singh.

S.I. Sarojkumar Sharma also prepared rough sketch map for the place of the discovery of incriminating articles with index. Ext. P/54 is the sketch map of the place of the incriminating articles at the instance of accused with index. Ext. P/54/1 is the initial of SI Sarojkumar Sharma.

During the course of investigation SI Sarojkumar seized different photographs with its negatives on production by photographer Khamba Singh under seizure memo dt. 1.7.89 at 2.40 p.m. at the photo section, Imphal District Police, in presence of witnesses namely Md. Hifjur Rahaman and N. Nabachandra Singh. Ext. P/21 is the seizure list for the seizure of the photographs and its negatives. Ext. P/21/3 is the signature of SI Sarojkumar Sharma. Ext. P/21/4 & P/21/2 are the signatures of the witnesses namely Hifjur Rahaman & Nabachandra Singh. Ext. P/21/1 is the signature of Khamba Singh.

During the course of the investigation SI Sarojkumar Sharma took necessary steps for conducting the T.I. Parade of the accused persons namely Joykumar @ Sahajahan, Basanta Singh, Ramananda Singh, Bodo Singh, R. K. Moba Singh, Dhananjay Singh and Rajen Singh. During this period he collected the result as well as necessary

documents from the Executive Magistrate, Imphal West Central. Ext.P/5, P/6, P/7, P/8, P/9, P/10 and P/11 are the prescribed forms used at the time of the identification parade of the accused persons namely Joykumar Singh, Basanta Singh, Ramananda Singh, Bodo Singh, R.K. Moba Singh, Dhananjoy Singh and Rajen Singh. As per report the accused Moba@ Sanatomba Singh was identified by the witness Nongmaithem Megha Singh. Ext.P/36 is the memorandum prepared by the Executive Magistrate, Imphal West Central after conducting the TI parade of the accused persons. Ext.P/37, Ext.P/38,P/39, are the list of the UTs prisoners. Ext.P/40 is the copy of the order passed by the Sub-Divisional Magistrate, Imphal West-I for conducting the TI parade and the same was entrusted to the SOC, Executive Magistrate, Imphal West Central for conducting the TI Parade. Ext. P/41 is the letter of the Sub-Divisional Magistrate, I.W. sent to the O/C, Imphal P. S. enclosing with the relevant papers and documents for conducting T.I. Parades of the accused persons. Ext. P/42 is the seizure memo prepared by SI Sarojkumar Sharma for the seizure of the one right hand drive jeep, dark green (Ureng colour) without registration No, from the garrage of P. Shyamnagor Singh on production by Pukhrambem Shyamnagor Singh. SI Sarojkumar Sharma seized the said jeep in presence of the witnesses namely Ibopishak Singh and S. Rajen Singh respectively. Ext. 1/42/3 and F/42/2 are the signatures of witnesses Ibopishak Singh and S. Rajen Singh. Ext.P/42/4 is the Initial of SI H.Sarojkumar Sharma. Ext. /42/1 is the signature of Shyamnagor Singh. It is stated in the said seizure list that 3 small blood stain were found on the back side of lower portion of the jeep hood. Ext. P/43 is the search list prepared by SI Sarojkumar Sharma for conducting of the house search of the house of Shyamnagor Singh. During the course of house search of the house of Shyamnagor Singh SI Sarojkumar Sharma found one twelve volt battery inside the room of Smt. Akasini Devi mother of the accused Sahajahan Singh and the same was seized under the said search list prepared by SI H. Sarojkumar Sharma, Ext. P/ 42/4 is the initial and signature of SI Sarojkumar Sharma. Ext. P/43/1 is the signature of Shyamnagor Singh. Ext./43/3 and F/43/2 are the signatures of witnesses Ibopishak Singh and S.Rajen Singh respectively.

On 7.6.2004 (Continuation)

S.I. Sarojkumar Sharma seized the said jeep as it was involved in the commission of the crime in the accused persons. At the time of the seizure of the said vehicle there was no battery in the said jeep as it was already removed and the said battery was also seized/e room occupied by Smt. Akashini Devi in the house of Shyamnagor Singh. The said jeep was given in a zima of the owner and the same is not produced before the court by the zimadar of the said jeep.

One blue Zin Pant with blood stain and onegrey colour full shirt owned by the accused Bodo Singh @Somorendro Singh were seized by SI Sarojkumar Sharma on 28.6.89 on production by Salam Bodo Singh @Somorendro Singh at the residence of the accused Salam Bodo Singh in presence of witnesses namely, Wangkhemcha Shyamjai and Kh. Ranjit Singh. Ext. P/45 is the said seizure memo prepared by SI

Sorojkumar Sharma for the seizure of one blue zin pant and one grey colour full shirt. Ext. P/45/1 and P/45/2 are the signatures of witnesses namely Shyamjai Singh and Ranjit Singh respectively. Ext./45/3 is the initial of SI Sorojkumar Sharma. Ext.P/45/4 is the signature of the accused Somorendro Singh.

On 28.6.89 SI Sorojkumar Sharma seized one newly washed longpant darkgrey in colour (terrywool), one full shirt white blue and grey mixed colour polyster shirt on production by Salam Devendrajit Singh the elder brother of the accused Bodo & Somorendro Singh in the presence of witnesses namely Wangkhemcha Shyamjai and A. Imocha Singh of Sagolband Meino Lelrak at the residence of the accused S. Bodo @ Somorendro Singh. The said long pant and full shirt were worn by the accused Joykumar Singh at the time of the commission of the crime and the same were left at the house of Bodo Somorendro Singh by the accused Joykumar Singh. The above articles were seized by SI Sorojkumar Sharma at the distance of the accused Joykumar Singh on production by Devendrajit Singh. Ext. P/46 is the seizure memo dt. 28.6.89 for the seizure of the longpant and full shirt. Ext. P/46/1 and Ext. 246/2 are the signatures of the witnesses namely Shyamjai Singh and Ibomcha Singh respectively. Ext. P/46/3 is the initial of SI Sorojkumar Sharma. Ext. P/46/4 is the signature of Devendrajit Singh. Ext. P/46/5 is the signature of the accused Joykumar Singh.

On 27.6.89 at about 2 p.m. SI Sorojkumar Sarma seized one white cotton Pajma stained with blood being found washed after commission of the crime by the sister of accused Moba @RK Sanatomba Singh and one nylon T-shirt red and whitein colour on different faces onproduction by the accused Moba@RK Sanatomba in presence of witnesses namely Moirangthem Romen Singh of Uripok Ningthoukhongjam Leikai and Kairenpaibam Premjit Singh of do. Ext. P/47 is the seizure list prepared by SI Sorojkumar Sharma for the seizure of one white cotton Pajma and one nylon full shirt. Ext. P/47/2 and P/47/1 are the signatures of Romen Singh and Premjit Singh respectively. Ext. P/47/3 is the initial of SI Sorojkumar Sharma. Ext. P/47/4 is the signature of accused RK Sanatomba Singh.

On 28.6.89 at about 11.30 a.m. SI Sorojkumar Sharma seized one full polyster/shirt and one black terrywool longpant on production by Pangoijam Ramananda Singh in the presence of witness namely Salam Debendrajit Singh of Sagolband Salam Leikai and Atom Inaomacha Singh of Sagolband Meino Leirak. Ext.P/48 is the said seizure list prepared by SI Sorojkumar Sharma which was already marked as Y. Ext. P/48/1 and P/48/2 are the signatures of witnesses namely Debendrajit Singh and A. Ibomcha Singh respectively. Ext. P/48/3 is initial of SI Sorojkumar Sharma. Ext. P/29/4 is the signature of the accused Ramananda Singh. On 28.6.39 at about 11.48 a.m. SI Sorojkumar Sharma seized one half T-shirt (nylon) and one terrywool longpant blue black in colour on production by Khangjarakpam Basanta@ Lalubi in the presence of witnesses A. Ingocha Singh of Sagolband Meino Leirak and Salam Debendrajit Singh of Sagolband Salam Leikai. Ext. P/49 is the seizure list prepared by SI Sorojkumar

Sharma for the seizure of one half T-Shirt and one Terrywool longpant which was marked Y-1. Ext.P/49/2 and P/49/1 are the signatures of witnesses namely A. Ingocha Singh and S. Debendrajit Singh. Ext. P/49/3 is the initial of SI Sorojkumar Sharma. Ext.P/49/4 is the signature of Basanta Singh. Ext. 2/50 is the search list prepared by SI Sorojkumar Sarma. Ext. 2/50/4 is the initial of SI Sorojkumar Sharma. Ext. P/51 is the injury report form prepared by SI Sorojkumar Sarma. It is the hand writing of SI Sorojkumar Sharma.

On 28.6.89 at about 12.40 p.m. SI Sorojkumar seized one - shirt yellow incolour and one blue colour zin pant on production by P.Bobi @ Dhananjoy Singh under a seizure memo in presence of witnesses namely Boyai and Rabi Singh. It is the hand writing of SISOrojkumar Sharma. Ext.P/57 in the seizure list prepared by SI Sorojkumar for the seizure of one T-shirt and one blue colour zin pant. Ext. P/57/1 is the signature and initial of SI Sorojkumar Sarma.

A document is shown to me. It is the search list prepared by SI Sorojkumar Sarma for conducting the house search of the house of accused RK Moba @ RK Sanatomba Singh, Ext. P/58 is the search list prepared by SI Sorojkumar Sarma. Ext. P/58/1 is the signature of SI Sorojkumar Sarma. A rough document is shown to me. It is the sketch map of the place of the recovery of the incriminating articles prepared by SI Sorojkumar Sarma with index. Ext. P/59 is the sketch map of the place of the discovery of weapon u/s 27 of Indian Evidence Act, Ext. P/59/1 is the initial of SI Sorojkumar Sarma. Ext. P/60/ is the index of the sketch map Ext. P/89. Ext.P/60/1 is the initial of SISOrojkumar Sarma.

During the course of the investigation as mentioned in the case diary the following articles were sent to the Director of Central Forensic Science laboratory, 30 Gorachand Road, Calcutta for examination **in order to ascertain whether the stains of clothes blood/is human blood or not. The articles:- 1) sample of blood of the deceased Seityajit Singh, 2) blood stained stones, earth, paper mark containing the blood, 7 brown glasses, 2 large pieces of broken wooden stick, 3 small pieces of wooden sticks, white Pajma, long pant, 3 small cut pieces of the hoot of the jeep marked E1, E2 and E3 respectively other cut pieces of the hoot marked stained with blood, one iron handle of jeep marked as F, one cane stick with tempering hole marked F2, one knife with wooden handle bearing small areas of Faint brown stems marked F3, one wooden club stained with blood marked as G, one photostat copy of PM examination marked as H, 2 photographs marked as 1(A) and 1(B) respectively.** And he also received the expert report with opinion from the Expert, Director, Central Forensic Science Laboratory along with the serological examination report. **As per opinion of the Expert i.e. filter paper cutting marked A, one stone marked 8(1), stone 8(2), stone 8(3), earth 8(4), paper cutting (5), broken wooden B(13), broken wooden piece marked B(14), broken wooden piece marked (15), broken wood piece marked 8(16), cut piece of the hoot marked E1, cut pieces of hoot E2, cut pieces of hoot marked E. The above articles are marked as Sl. No.7 to 20. The item No. S1.No.7 to 13 excluding Sl. No. 14 noted above are stained with**

human blood. The blood stains on the item No.14,18,19 and 20 are disintegrated and their origin cannot be determined.Ext. P/61 is the instruction of standardised form for forwarding the exhibits prepared by SI Sorojkumar Sarma in 3 sheets. Ext. P/61/1 is the initial of SI Sorojkumar Sarma. Ext. P/62 is the letter forwarding letter sent to the Serologist and chemical examiner, Govt. of India, Calcutta.

I know the initial and signature of ASI Pradeep Police. Ext. P/682/1 and P/62/2 are the initials of Pradeep Singh the then SP, Imphal. Ext. P/63 is the forwarding letter forwarded by the Director, Central Forensic Science and Laboratory, Govt. India, Calcutta to the SP, Imphal along with the expert examination report. Ext. P/68 is the intimation given to the SP, Imphal District for forwarding exhibits to the serologist and Chemical Examiner in a sheet. Ext. P/65 is the letter forwarded to the Supdt. of Police, Imphal District from the Director, Central Forensic Science Laboratory, Calcutta enclosing the report of Serologist. Ext. P/66 is the report of Serologis and Chemical examiner in one sheet. Ext. P/67 is the letter forwarded to the SP, Imphal District from Director, Central Forensic Science Laboratory, Govt. of India, Calcutta enclosing the examination report for the exhibits F to 1 cane stick, Ext. marked F3 the sharp knife and Ext. marked Ga long piece of wood. Ext. P/68 is the result for the examination of the exhibits marked F1, F2, F3 and Fg respectively. Ext. F1 is the one electroflacted solid iron rod commonly known as handle.

Ext. P/69 is the charge sheet. Ext. P/69/1 is my initial. Ext. P/69/2, Ext. P/69/3, Ext. P/69/4, Ext. P/69/5, Ext. P/69/6, Ext. P/69/7 and Ext. P/69/8 are the initials of SI H. Sorojkumar Sarma on Ext. 2/69. Ext. P/70 is the FIR form. Ext. P/70/1 is the signature of Hashif Ahamed for registration of the case. Ext. P/70/2 is my initial for re-endorsement of this case to SI H. Sorojkumar Sharma for Investigation. Ext. P/71 is the extract copy of the order passed by SDM, IW for fixing the date for conducting TI Parade and copy to O/C, Imphal P.S. Ext. P/72 is the zima order passed by the Court of CJM, Imphal on 21.9.89 for giving the said jeep into the custody of Akishini Devi, Ext. P/1 in the O.E.

During the course of the investigation SI Sorojkumar examined a large No. of witnesses including the witnesses Romen Singh, Debendrajit, Kala Singh, Rajen Singh, Kh. Deben Singh, S. Ibopishak Singh and Shyamnagar Singh father of the accused, Joykumar Singh. The statement of Khangjarakpan Deven Singh which is marked X5 to X5 is shown to me. It is hand writing of SI Sorojkumar arms recorded the statement of Khangjarakpan Devendro Singh u/s 161 Cr.P.C. Ext. P/73 is the statement of Khangjarakpan Devendro Singh. The statement of Ibopishak Singh which is marked X6 to X6 is shown to me. It is the recorded statement of Singh recorded by SI Sorojkumar. Ext. P/74 is the statement of S. Ibopishak Singh.

Ext. P/75 is the portion marked X3 to S3 of the statement of Kaka Singh (PW 29) recorded by SI Sorojkumar Sarma. Ext. P/76 is the portion marked X4 to X4 of the statement of S. Rajen Singh (P.W. 30) proceeded by SI Sorojkumar Sarma. Ext. P/77 is the portion marked X1 to X1 of the statement of Moirangthem Romen Singh (P.W. 27)

recorded by SI Sorojkumar Sarma. Ext.P/78 is the portion marked X to X of the statement of Kairenpaibam Premjit Singh (P.W.26) recorded by SI Sorojkumar Sarma. Ext. P/79 is the portion marked X2 to X2 of the statement of Debendrajit Singh recoded by SI Sorojkumar Sarma. Ex is the portion marked X- to X- of the statement of Khuraijam Ranjit Singh recorded by SI Sorojkumar Sarma.

xxxxxx by the d/c.

It is true that I was not present at the time of registration of the FIR Case No. 384 (6)89 I. P. S.

On 7.6.04(Continuation)

I was a football player before joining my service. It is true that the deceased namely Seityajit Singh was also a football player of NISA. NISA is a local club of the locality of the said Seityajit Singh. I had no any knowledge if the deceased was working as a contractor forreppairing the roads from khoyathong upto the crossing near Jalal. This fact I came to know after the occurrence during the investigation of the case.

I deny the suggestion that one of the listed witness of this case namely Irom Nabachandra Singh s/o I.Ibotombi Singh of SagolbandSalam Leikai was arrested on suspicion inc/w the present case and that he was detained in the police custody for a period of 4 or 5 days. It is true that one Khuraijam Rajen Singh was also arrested in c/w thepresent case as one of the accused and that he was remanded to custody. I have no any knowledge by which Court the said accused was released on bail. The said Khuraijam Rajen was not charge sheeted apparently on not finding sufficient evidence as against him. I have no any personal knowledge if the concerned I.O.of this case filed any application toany court praying for discharging the said Rajen Singh.I deny the suggestion that this case was not properly investigated by the I.O. It is true that both Heli Mao and Sarojkumar Sharma were the Sub-Inspector of police at the time of investigation of this case but former was senior to the latter. I have no any knowledge if the accused Ramananda Singh is a blacksmiit or not. I deny the suggestion that I never found one bruise mark at the lower forehead of the right eye lid of the accused Ramananda Singh and that the said injury was not caused during fighting with the deceased Seityajit Singh, I deny the suggestion that during the interrogation of the accused Pukhrambam Sahajahan@ Joykumar Singh he never admitted the commission of the offence and that he never gave statement about the concealment of weapons such as cane stick, ironhandle of jeep and knife inside a clumb of bamboos near eastern corner of his house. I deny the suggestion that there was no any garrage near the north eastern corner of the accused Sahajan at Sagolband Meino Leirak at the relevant time. I deny the suggestion that the said jeep was not seized from the garrage of the said Sahajahan and that it was seized from the eastern outhouse of the said accused.

I deny the suggestion that here is any road /way near the ingkhol of the said accused Sahajahan connecting Salam Leikai and Meino Leirak.

*I was present at the time of seizure of cane stick iron handle of the jeep and knife at the instance of the accused Sahajahan from his ingkhol. I deny the suggestion that no weapon of offence was sized at the instance of the accused Sahajahan in my presence. **I was not present at the time of seizure of any articles at the instance of other accused. I have no any knowledge as to how A. Bebe Sharma and Kshetrimayum Ronikanta were made witnesses in respect of seizure of articles at the instance of the accused P. Joykumar Singh.** I also deny the suggestion that no statement of any of the accused persons was recorded u/s 27 of Indian Evidence Act.*

I deny the suggestion that the said witnesses namely A. Bebe Sarma is a fictitious person.

*I deny the suggestion that the I.O. of the case took many signatures of the accused P. Joykumar Singh while he was in police custody and further that Ext.P/13 was manufactured by the I.O. of the case on such a blank paper containing she signature of the accused Joykumar Singh. **I was not present when the I.O. of the case recorded the statement of accused Dhananjoy Singh u/s 27 of Indian Evidence Act.** I deny the suggestion that accused Dhananjoy Singh never gave any statement u/s 27 of Indian Evidence Act. I also deny the suggestion that accused P. Dhananjoy Singh was made to sign on many blank papers while he was in police custody. It is not a fact that Ext. P/53 is a fabricated document. I deny the suggestion that there was no bamboo grow on the north-eastern corner of any garrage in the ingkhol of P. Shyamnagar Singh. I deny the suggestion that Ext.1/14 is a fabricated document. I deny the suggestion that no seizure of Singjangkhok was made at the instance of accused Dhananjoy. I also deny the suggestion that the signatures of accused Dhananjoy were obtained by the I.O. while he in police custody.*

I deny the suggestion that Ext.P/44 is also a fabricated document. I deny the suggestion that sketch map at Ext. 1/54 is not relevant to the actual location of the ingkhol compound of P. Shyamnagar Singh.

I deny the suggestion that Ext.1/54 was prepared by the I.O. without visiting the spot. I deny the suggestion that photographs seized under Ext.P/21 were not corresponding any place within the ingkhol of P. Shyamnagar Singh.

I deny the suggestion that the I.O. took all the steps for conducting T.I.Parade. I deny the suggestion that TIParade was not done properly according to law. I deny the suggestion that no jeep was seized by the I.O. on production by P. Shyamnagar Singh. I deny the suggestion that Ext.P/42 is also a fabricated document. I also deny the suggestion that no blood stain was found on any portion of the jeep. I deny the suggestion that Smt. Akashini Devi was not mother of

accused, Joykumar Singh. I also deny the suggestion that no search was made by SI Sorojkumar Sharma in the house of Shyamnagar and that no battery was seized from the room of P. Akashini Devi. I also deny the suggestion that Ext. P/43 is a fabricated document and that all the signatures on Ext. P/43 were all obtained at Imphal P.S.

It is not a fact that SI Sorojkumar Sarma did not seize one blue zin pant with blood stain and grey colour full shirt of accused Bodo Singh on 26.6.89 on production by Salam Bodo Singh. I also deny the suggestion that Ext. P/45 is a fabricated document. I deny the suggestion that on 28.6.89 SI Sorojkumar Sarma did not seize one newly washed longpant dark grey in colour (terrywool), one full shirt white blue and grey mixed colour polyster shirt on production by Salam Devendra Singh the elder brother of accused Bodo@ Somorendro Singh in the presence of accused namely Wangkhemcha Shyamjai and A.Imocha Singh of Sagolband Meino Leirak at the residence of the accused S. Bodo @Somerendro Singh. I also further deny the suggestion that the said longpant and full shirt were worned by the accused Joykumar Singh at the time of the commission of the crime, and the same were left at the house of Bodo@Somorendro by the accused Joykumar Singh.

I also deny the suggestion that the above articles were not seized by SI Sorojkumar Sarma at the instance of the accused Joykumar Singh on production by Devendrajit Singh. I also deny the suggestion that Ext.P/46 is a fabricated document, and that the signature of the accused Joykumar Singh at Ext.P/46/5 was obtained on the blank papers. It is not a fact that on 27.6.89 at about 2 p.m. SI Sorojkumar Sarma did not seize one white cotton Pajjma stained with blood being found washed after commission of the crime by the sister of accused Moba@Sanatomba and one nylon T-Shirt red & white in colour on different faces on prosecution by the accused Moba RK Sanatomba in presence of witnesses namely M. Romen Singh of Uripok and Kairenphaibam Premjit Singh. I deny the suggestion that Ext.P/47 is a fabricated document.I deny the suggestion that Ext.1/47/4 was obtained by the I.O. of the case on the blank paper before manufacturing the said document; I deny the suggestion on 28.6.89 at about 11.30 a.m. SI Sorojkumar Sarma did not seize one polyster full shirt and one black terrywool longpant on production by Pangoiyam Ramananda Singh in presence of witnesses namely Salam Debendrajiti Singh of Sagolband Salam Leikai and Inaomacha Singh of Sagolband Meino Leirak. I also deny the suggestion that Ext.P/48 isa fabricated document.

I deny the suggestion that the signatures at Ext.P/45/1 and P/48/2 were obtained on the blank papers, by the I.O. of the case. It is not a fact that the signature of P. Ranananda Singh at Ext.P/48/4 was also obtained on the blank paper by the I.O.of the case while the said accused was in police custody. I deny the suggestion that on 28.6.89 at about 11.48 a.m. SI Sorojkumar did not seize one half T-shirt(nylon) and one terrywool longpant blue black in colour on production by Khangjarakpam Basanta @Lalhari in the presence of witnesses A.Ingocha Singh of Sagolband Meino Leirak and Salam Debendrajiti

Singh of Sagalband salam Leikai. I also deny the suggestion that Ext.P/49 is also a fabricated document. I deny the suggestion the signature of witness namely A. Ingocha Singh & S. Debendrajit Singh were obtained on the blank papers of the case. I also deny the suggestion that Exhibits P/49/1 & 1/49/2 were/obtained on the blank papers. I deny the suggestion that on 28.6.89 at about 12.40 p.m. SI Sorojkumar did not seize one T Shirt yellow in colour and one blue colour zin pant on production by P. Bobi Dhananjay Singh under a seizure memo in presence of witnesses namely Boyai and Rokcy Singh. I deny the suggestion that Ext. P/57 is a fabricated document.

I deny the suggestion that SI Sorojkumar Sarma never conducted searched at the house of accused RK. Moba@Sanatomba Singh. I deny the suggestion that Ext.1/56 is also a fabricated document. I deny the suggestion that Ext. P/59 is not corresponding to any place within the house of accused RK Moba @Sanatomba Singh. I deny the suggestion that the accused persons were innocent and there was no material or prima facie case against any of them. I deny the suggestion that a portion of statement at ext.1/73 was not given by Khangjarkpam Debendro Singh to the I.O. of the case. I also deny the suggestion that Ext.P/74 was not stated by S. Ibopishak to the I.O.of the case. I deny the suggestion that P.W.29 Kaka Singh did not state the portion of the statement at Ext.P/75 to the I.O. of the case. I deny the suggestion that I.W.SO S. Rajen did not state the statement at Ext. P/76 to the I.O. of the case. I also deny the suggestion that P.W.27 M. Romen Singh did not state the portion of statement at Ext.P/77 to the I.O. of the case. I deny the suggestion that P.W.26 K. Premjit Singh did not state the portion of the statement Ext.P/89 to the I.O.of the case. I also deny the suggestion that Kh. Ranjit Singh did not state the portion of the statement at Ext.P/80 to the I.O.of the case. I deny the suggestion I am giving false statement. I deny the suggestion that the accused persons were wrongly implicated in the case.

To The Court:- I can identify the seized knife, cane stick having bold at the end and/handle of the jeep is shown to me. Ext.M.O. 8 is the cane stick and Ext.M.O. 9 is the iron handle of the jeep and Ext.M.O.10 is ta knife seized by the SI Sorojkumar Singh in the presence of accused P. Joykumar Singh.

x x x x by the d/c.

I deny the suggestion that Exts. M.O.8,9 and 10 were not seized by the SI Sorojkumar Sarma at the instance of accused P. Joykumar Singh.

Our analysis, observation and reasoning -

We found reliable statements contradictory to the prosecution story as well as the narration and finding arrived at by the Ld. Trial Court, and the same are reproduced herein below:

- (i) ***On 24.6.89 at about 9.30p.m.***
- (ii) ***One bruise mark found at the lower forehead of the right eyelid of the accused Ramananda Singh which was found injured during the fighting with the deceased Seityajit Singh.***
- (iii) ***During the course of the investigation SI Srojkumar interrogated the accused persons one by one. During his examination of the accused persons the accused Pukhrambam Sahajahan @Joykumar Singh admitted that he committed the crime with other 4 accused persons and the weapon of crime used at the time of the commission of the crime such as cane stick, iron handle of the jeep and knife were kept concealed inside a clump of bambboo near north eastern corner of the house near the garrage of accused Sahajahan at Sagolband Meino Leirak. He further stated that he would be able to find out the said concealing place of the weapon of crime and will be able to hand over the said weapon to the I.O. of this case. SI Sarojkumar Sharma recorded the statement of the accused P. Joykumar @Sahajahan in a separate sheet u/s 27 of Indian Evidence Act. The recorded statement of P. Joykumar @Sahajahan Singh is shown to me, which was already marked as Ext.P/13.***
- (iv) ***In order to ascertain whether the stains of clothes blood/is human blood or not. The articles:- 1) sample of blood of the deceased Seityajit Singh, 2) blood stained stones, earth,paper mark containing the blood, 7 brown glasses, 2 large pieces of broken wooden stick, 3 small pieces of wooden sticks, white Paijma, long pant, 3 small cut pieces of the hoot of the jeep marked E1, E2 and E3 respectively other cut pieces of the hoot marked stained with blood, one iron handle of jeep marked as F,one cane stick with tempering hole marked F2, one knife with wooden handle bearing small areas of Faint brown stems marked F3, one wooden club stained with blood marked as G, one photostat copy of PM examination marked as H, 2 photographs marked as 1(A) and 1(B) respectively.***
- (v) ***As per opinion of the Expert i.e. filter paper cutting marked A, one stone marked B(1), stone B(2), stone B(3), earth B(4), paper cutting (5),broken wooden B(13), broken wooden piece marked B(14), broken wooden piece marked (15), broken wood piece marked B(16),cut piece of the hoot marked E1, cut pieces of hoot E2,cut pieces of hoot marked E. The above articles are marked as Sl. No.7 to 20. The item No. Sl.No.7 to 13 excluding Sl. No. 14 noted above are stained with human blood. The blood stains on the item No.14,18,19 and 20 are disintegrated and their origin cannot be determined.***
- (vi) ***It is true that I was not present at the time of registration of the FIR Case No. 384 (6)89 I. P. S.***

(vii) I deny the suggestion that one of the listed witness of this case namely Irom Nabachandra Singh s/o I.Ibotombi Singh of SagolbandSalam Leikai was arrested on suspicion inc/w the present case and that he was detained in the police custody for a period of 4 or 5 days. It is true that one Khuraijam Rajen Singh was also arrested in c/w thepresent case as one of the accused and that he was remanded to custody. I have no any knowledge by which Court the said accused was released on bail. The said Khuraijam Rajen was not charge sheeted apparently on not finding sufficient evidence as against him. I have no any personal knowledge if the concerned I.O.of this case filed any application toany court praying for discharging the said Rajen Singh.

(viii) I was not present at the time of seizure of any articles at the instance of other accused. I have no any knowledge as to how A. Bebe Sharma and Kshetrimayum Ronikanta were made witnesses in respect of seizure of articles at the instance of the accused P. Joykumar Singh.

(ix) I was not present when the I.O. of the case recorded the statement of accused Dhananjoy Singh u/s 27 of Indian Evidence Act.

In the above statement, the witness stated that the seized articles i.e. the jeep, one battery, one polyester full shirt having blood stain, sample of blood on a paper, sample of scalp hair, 2 pieces of stick, smeared with blood measurer 5 feet long, half broken wooden stick having blood stains measuring 3 ½ ft., a piece of broken wooden stick measuring about 22 inches long with wooden handel of about 3 inches long, half lantern with broken chimneywere sent to the Central Forensic Science Laboratory, 30 Gorachand Road, Kolkata for examination in order to ascertain whether the stains of blood is human blood or not. But, further, it was stated that the blood stains on the Item No. 14, 18, 19 and 20 are disintegrated and their origin cannot be determined. In his

cross examination, the witness stated that one Kh. Rajen Singh was also arrested in connection with the present case as one of the accused and was also remanded in custody. Further, it was stated that Kh. Rajen Singh was not chargesheeted due to lack of evidence against him, and further stated that he had no knowledge if the I.O. filed any application to any Court praying for discharging the said Kh. Rajen Singh. Further, it was stated that he had no any knowledge as to how A. Bebe Sharma and Kh. Ronikanta Singh were made witnesses in respect of seizure of the articles at the instance of Shri P. Joykumar Singh.

On perusal of the statement of P.W. No. 36, it is seen and ascertained that the confessional statement under Section 27 of Evidence Act were recorded from the 2 (two) accused i.e. the accused P. Shahajahan @ Joykumar Singh and the accused P. Dhananjay Singh and consequent upon that, from their pointing the following seizure were made on the pointing of accused Shahajahan, one cane stick, one iron handle of jeep and knife were seized and from Dhananjay Singh one wooden club (singjangkhok) at the instance of P. Dhananjay Singh. The witnesses for the confessional statement as well as consequent seizure mentioned above of Shahajahan Singh were Bebe Sharma, Ronikanta and Rajen Singh and for P. Dhananjay Singh @ Bobby Singh in the presence of witness namely, Ibrahim of Jiribam Babupara and Md.

Ali of Jiribam Babupara and Ibobi Singh. The prosecution examined the witnesses for the confessional statement and consequent seizure of seized articles mentioned above for accused Shahajahan Singh were examined. However, the witnesses for the confessional statement for P. Dhananjoy Singh were not examined and produced as witnesses in the Court to identify the accused and to prove the confessional statement of the accused.

Further, we extracted the Exhibit P/13 as follows:

Exhibit P. 13:

Confessional statement of the accused Shri Pukhrambam Joykumar Singh @ Sahajahan Singh 32 yrs, s/o P. Shyamnagar Singh of Sagolband Meino Leirak Imphal recorded in c/w FIR case No. 384 (6) 89 IPS u/s 326/302/34 IPC recorded u/s 27 of Evidence Act.

I was born and brought up at Sagolband Meino Leirak Imphal, yesterday i.e. 23.06.89 at @ 9.50 pm I along with my friends namely, P. Ramananda Singh of Sagolband Salam Leikai, I. Nabachandra Singh of do, Kh. Basanta Singh of Sagolband Meino Leirak were arrested by O/C IPS accompanied with SI H. Sorojkumar Sharma of Imphal PS i/c with the Case FIR No. referred above. Also I confessed you that in c/w the above mentioned case, the said Seityajit Singh was murdered by as to revenge the previous assault by him to me on 22.6.89 at about 11.30 am at Khoyathong in front of Star Auto Works that the said Seityajit Singh have assaulted me by slaping on my face on 22.06.89 at @ 11.30 in front of general public at Khoyathong in front of the Star Auto Works while I request him to allow to enter on paddle upto my shop where he was working as a contractor for repairing the road, I felt very much ashame and play to revenge to the alleged accused person. Thus I have contracted -

- (i) Khangjarakpam Basanta Singh s/o Kh. Ahanjao Singh of Sagoland Meino Leirak, Imphal.*
- (ii) Pangoijam Ramananda Singh (34) s/o Ibotombi Singh of Salam Leikai.*
- (iii) Irom Nabachandra Singh (29) s/o Tombi Singh of Sagolband Salam Leikai.*
- (iv) One Kh. Rajen Singh of Naransena.*
- (v) RK. Moba Singh s/o RK Budhisana of Uripok Ningthoujam Leikai, Imphal.*
- (vi) Salam Bodo Singh s/o S. Achou Singh of Salam Leikai, Imphal.*
- (vii) Pukhrambam Dhananjoy Singh s/o Late Ibochouba Singh of Uripok Huidrom Leikai.*

and requested them to accompany with and thus, they were hired and brought in my jeep without regd. No. which was taken out from our garage. Then we have waited the said Seityajit Singh of Thangmeiband Polem Leikai (Contractor) remaining the contract work for metalling road at Khoyathong Road, Imphal Bazar who have assaulted me) from 8 pm of dt. 22.06.89 upto about 2 am of dt. 23.06.89 and when the said peson and one of his friends was returning his home along with half lamp holding by his friend. We had an ambush at south western of Khoyathong Pukhri Achouba Mapal and assaulted by using sticks, jeep handle and a knife. The knife is held by me, the jeep handle is held by RK. Moba Singh, one cane stick was held by S. Bodo Singh of Salam Leikai, another one by Ramananda Singh (which is left at the spot). And another stick is held by Pukhrambam Dhananjay Singh of Uripok Haobam Dewan Leikai. During the assault Ramananda Singh assaulted him 1st with his stick but the person escaped the blow and held Ramananda and gave a hard blow on his rt. eye causing bleeding injury on lower portion. Then Bodo used his stick and hit him so hard and Seityajit release Ramananda and fell down on the floor. Then we all gathered and hit him with our weapons. Then I stab him on both thigh 2/3 times. The said Seityajit cried very loudly with agony. Then, we all jump to our jeep and sped away from there towards west and then passing through Lalambung. I drop RK Mobi & his friend P. Dhananjay at the junction of Uripok Bachaspati Leirak. Then we four arrived at Meino Leirak at about 3 AM of 23.06.89. Basanta, Naba & Bodro went to their respective houses. Rajen and myself remain at my residence. I wash my hands and the knife used in commission of the crime at my pond by using piece of cloth from my jeep. Then, in the early morning I along with Rajen Singh went out from our house sent Rajen upto Moirang bus parking. Before I went out from my residence, I wash the jeep which is used in the commission of such crime and had found all the incriminating weapons of the offence (i) the handle used by RK Moba (ii) Stick (cane stick) used by RK Moba Singh (iii) the knife used by me were found in the jeep. I wash them all and kept in the eastern side of the garage concealing near the bamboo plants.

I can produce the same from where I kept concealed there incriminating articles. I was allowed to go there.

Confesstional statement of accused P. Dhananjay

Singh is reproduced herein below:

"My name is Pukhrambam Dhananjay Singh @ Bobi Singh. I was born and brought up at Uripok Haobam Dewan Leikai, Imphal. On 22/6/89 at about 8/9 p.m. I was being called by R.K. Moba Singh of Uripok Ningthoukhongjam Leikai for some work along with Pukhrambam Sahajahan @ Joykumar Siongh of Sagolband Meino Leirak along with other 5 persons in a jeep belongs to Sahajahan without any No. Thus, I have accompanied them and along with them I reached Khoyathong Pukhri Achouba Mapal and then they disclosed me that we are coming to beat one person and then Sahajahan point us

the person who wore a Sport pant blue/black. I couldn't classify in the night who was working on the Khoyathong road along with other public (Koilas Thaba Kangbuga) from the corner of Khoyathong Police (Traffic) Police point. Thus preparing ourselves by holding sticks etc. I pick up a woden block (rounded club) and about 3^{1/2} ft. in length about 2/ ½ inch dia, which was found lying near the BOROI plant on the South Western corner of the Khoyathong Pukhri Achouba Mapal and waited the person along with R.K. Moba Singh who held one iron handle of the jeep till the 2 a.m. of dt. 23/6/89. Then the person who identified by Sahajahan along with another person holding a half lamp came to the road situated on the Southern side of the Pukhri Achouba. Then as plan previously one of our colleague assaulted him and the other person who came alongwith the said person ran towards the southern gate and the person whom who have assaulted hodl one of our colleague. Then I assaulted him with my club which, I hodl. Then, the others also hit him with their weaons. Then, the person fell down flat on the ground. Then, I throw my club (wooden club) towards the roadside. I jumped up on the jeep which came towards us on the road which was driven b y Sahajahan Singh. Then, we fled away from the spot.

[41] Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the Trial Court committed any error in holding the appellants herein guilty of the offences punishable under Section 302/149 IPC.

For consideration of this and for deciding the case as to whether the prosecution proves their case against the accused under Sectin 302/149 IPC to convict the accused or not and the Ld. Trial Court while deciding the case commits error in facts and in law, we rely upon the deposition of the witnesses, our analysis, assessment and reasoning highlighted and reproduced above. We have also taken into consideration the rival contentions and written arguments filed in support of their cases with the citations submitted therewith.

[42] To the rival submissions canvassed on either side, we must look into the relevant findings recorded by the Ld. Trial Court.

We are now relying on the relevant portions of the judgment of Ld. Trial Court reproduced hereinabove.

The Ld. Trial Court after appreciation of evidences gave an opinion that the prosecution has been able to establish the following facts:

"26. It is settled principle of law that in the circumstantial evidence the chain of circumstance must be complete. In the light of the above appreciation of evidences, I am of the opinion that the prosecution has been able to establish the following facts:

- (i) The deceased. P. Satyajit alias Satyajit Kumar Singh was doing a contract work of black topping of road on the Thangal Bazar from Khuyathong crossing to crossing point of Jallan Provision Store and while doing the said work the deceased blocked all kinds of vehicular traffics for executing his work properly and while doing so there were instances of quarrel between the deceased and users of the road.*
- (ii) There was a quarrel between the deceased and accused, P. Joykumar Singh on 22-06-1989 while the accused Joykumar was prevented by the deceased to enter to his Tyre Retreading shop and in that quarrel the deceased slapped to the accused P. Joykumar Singh.*
- (iii) On 22-06-1989 the accused. P. Joykumar Singh along with one of his friends came to the house of P.W. No. 16. N. Sidham Singh and enquired about the whereabouts of the deceased by narrating the story that he was slapped by the deceased and P.W. No. 16 informed to the accused Joykumar Singh that the deceased belonged to Thangmeiband Polem Leikai.*
- (iv) On 23-06-1989 at about 2.00 to 2.30 a.m. the deceased return to his home from his work shed along with P.W. No.4 who hold a half lamp and on their way some unknown persons attacked both of them by holding deadly weapons and left the place of occurrence in a JEEP and P. Satyajit alias Satyajit Kumar Singh succumbed to his injuries.*
- (v) On 23-06-1989, P.W. No. 16. N. Sidham Singh narrated the story of making enquiry by accused no. 1, Joykumar Singh whereabouts of the deceased. P. Satyajit alias*

Saryajit Kumar Singh, to the I.O. of the case and immediately the I.O. of the case along with P.W. No. 16 proceeded to the house of accused No. 1 at Sagolband Salam Leikai.

- (vi) The accused, Joykumar was not found in his house amid on enquiry a Jeep with blood stain in its hood was found and the same was seized.*
- (vii) The accused persons were arrested by the Police on the night of 24-06-1989 on surrender.*
- (viii) During the course of investigation the statements of the accused persons, namely, (i) P. Joykumar Singh and (ii) P. Dhananjoy Singh were recorded in presence of witnesses in which they disclosed about commission of the crime along with other accused persons and the weapons of crime used by them and for production of the same from the hiding place.*
- (ix) The weapons of crime were recovered from the hiding places at the instances of the accused Joykumar Singh and Dhananjoy Singh.*
- (x) The clothes worn by the accused persons, namely S. Bodo Singh and P. Joykumar Singh at the time of commission of crime were seized in presence of witnesses from the house of accused Bodo Singh on production by the said accused Bodo Singh and his brother, Debendrajit Singh.*
- (xi) In the T.I. Parade the P.W. No.4 who was the eye witness to the scene of assaulting himself and the decensed identified one of the accused persons, namely, R.K. Sanatomba Singh who is no more now."*

The above mentioned opinion formed by the Ld. Trial Court are negated by the facts of the case, assessment, analysis and reasonings made above of the depositions of the statements of the P.Ws. by us and on the basis of the series of discrepancies, contradictories and unreliable in the statements of the witnesses and the materials placed before us and the above 11 (eleven) specific facts from which the opinion of the Ld. Trial Court are negated by the following:

- a) *The deceased was last accompanied by P.W. No. 4 from his khola and the said witness withhold the information about the incident with himself for more than 14 (fourteen) hours in a most unnatural manner.*
- b) *The deceased is quarrelsome and therefore there was a high chance of probability that the deceased could develop enmity with many other people.*
- c) *The P.W. No. 4 stated that he himself and the deceased shouted and raised alarms during the assault. However, P.W. No. 17 who was taking bath nearby and any of the local residents did not support such version.*
- d) *The P.W. No. 16 stated that Accused/ Appellant No. 1 came to him for a peaceful settlement with the deceased on 22/06/1989 and on being told by the said witnesses a police team along with himself went to the house of Accused/Appellant No. 1. In spite of this fact, the police examined P.W. No. 16 only on 06/07/1989 i.e. a delay of 14 (fourteen) days.*
- e) *The materials, like blood sample, clothes worn by the Accused Persons could not be related with the alleged incident as per the FSL report.*
- f) *The T.I. Parade is not admissible in the eyes of law as submitted in the ground No. XIV above.*

Since the Ld. Trial Court convicted the accused under circumstantial evidence, we are of the view that the prosecution failed to establish chains of circumstances to make out the guilt of the accused and the Hon'ble Supreme Court in **2023 SCC online SC 746**(paragraph No. 17) observed that :

"17. This is a case based on circumstantial evidence. It is trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the inviminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence.

[43] Further, the P.W. No. 4 in his statement stated that he was all alone in the hospital till the completion of the post mortem. But, in his earlier statement, he stated that one Y. Jadumani Singh and some labourers came and went to the hospital and also stated that the injured deceased was taken to RMC Hospital in a truck belonging to Polem Kumar Singh. The volume of discrepancies shown in the statement of the witness who is the sole eyewitness and one of the most important prosecution witness on whose reliability of the volume of his statement the guilt of the accused in the commission of crime can be proved, the discrepancies as highlighted above is too much that we considered the statement of the witness not reliable and the quality of his statement is too low. Not only the present witness, the 36 (thirty six) witnesses including the present witness produced and relied upon by the prosecution cannot be reliable on the basis of our assessment, analysis and reasonings as reproduced and highlighted above and having taken these factors into account, we do not think/consider for the interest of justice in spite of large number of witnesses produced and relied upon by the prosecution to back its contention that the conviction of the accused by the Ld. Trial Court is to be upheld and to set aside the present jail appeal. In this

regard, we rely upon the Hon'ble Supreme Court's observation made in –

Quality of the evidence:

The Hon'ble Supreme Court, in **Gulbar Sarbar Vs. State of Bihar [(2014) 3 SCC 401]** at para No. 19, observed that -

"19. In the matter of appreciation of evidence of witness, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witness is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eyewitness, if the same inspires confidence."

[44] The Ld. Trial Court regarding the statements recorded under Section 313 of Cr.P.C. observed as thus-

"It is a fact that the statements recorded under Section 313 Cr.P.C. is not admissible under the law but it can be seen the nature of the accused persons. The accused Pukhrambam Joykumar Singh has admitted that he and his father were running as tyre retreat shop at Khoyathong Road, Thangal Bazar about 21/22 years ago from today. The accused was examined on 9/2/2012 by the court under Section 313 Cr.P.C. He also admitted that in front of his retreat shop one Nongmaithem Sidham Singh of Nagamapal Phougeisangbam, Imphal (witness No. 10 was running a firewood shop/stall along with his mother. But the accused Joykumar Singh has denied that he had well acquainted with the said Sidham Singh. The accused had stated that he does not know the said Sidham Singh. The accused has admitted that on or about 23.6.1989 a work of black topping between Khoyathong and Thangal Bazar was done.

On careful perusal of the statement recorded under Section 313 Cr.P.C. there is reason to believe that he has not stated true facts regarding the acquaintance with P.W. No. 10 Sidham Singh but his statement strengthened about the work of black topping from

Khoyathong to Thangal Bazar where he and his father were then running a tyre retreat shop in front of a firewood stall run by P.W. No. 10 N. Sidham Singh and his mother."

Discharge of Section 106 of the Evidence Act by the accused

The Hon'ble Supreme Court, in **State of Punjab V. Kewal Krishan [(2023) SCC online SC 746]** Para No. 17 and 22 observed that –

"17. This is a case based on circumstantial evidence. It is trite law that to convict an accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(so relied upon must be of a definite tendency unerringly pointing towards accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent within his guilt and consistency with his innocence.

*22. The argument that the accused has failed to discharge his burden under section 106 of the Evidence Act and, therefore, his conviction was justified is misconceived. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of providing the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, I believed, will sustain a conviction, or which makes out a prima facie case, the question arises of considering facts of which the burden of proof would lie upon the accused.(See:**Shivaji Chintappa Patil v. State of Maharashtra, (2021) 5 SCC 626**).Here as we have discussed above, firstly, the incriminating circumstances were not proved beyond reasonable doubt and, secondly, they do not form a chain so complete from which it could be inferred with a degree of certainty that is the accused and no one else who, within all human probability, committed the crime. In these circumstances, there was no occasion to place burden on the accused with the aid of section 106 of the Evidence Act to prove his innocence or to disclose that he parted company of the deceased before his murder."*

[45] So far as the issue of 302 IPC is concerned, there are two aspects i.e. direct evidence and circumstantial evidence and whether the prosecution is applying direct evidence in their case or circumstantial evidence.

During the course of hearing, the learned State counsel submitted that the prosecution has relied on both direct as well as circumstantial evidence. As the P.W. No. 4 was the sole eyewitness of the occurrence, as such, the prosecution relying on P.W. No. 4 on the aspect of direct evidence as the accused No. 4 is the solitary eyewitness. The P.W. No. 4 was with the deceased Satyajit Singh's work place to his Khola and till the assault to the deceased by unidentified persons till his death in the hospital.

[46] Thus, from the oral evidence of the P.W. No. 4, it is seen that he is the solitary eyewitness of the incident and did not inform or narrate about the incident till 03.00 pm to anybody while he was all alone present in the hospital, at the place of occurrence and during the funeral of the deceased in the midst of the family members, relatives and friends of the deceased and local people (unnatural and surprising manner). It is also seen that the witness, who was with the deceased from the said Khola of the deceased at the work place to the place of occurrence till the death of the deceased as per his statement, stated that he was at the gate of one RK. Bicommesana while the unknown person assaulted the deceased at the distance of 55 ft. from him and he could see the incidence with the help of an electric bulb of 60/100W lighted on the nearby electric post. This statement is unbelievable, as it would be humanly impossible to observe or identify the happening from that kind of quality of light and distance.

[47] The claims made by this witness that he himself as well as the deceased shouted and raised alarms during the assault meted out to the deceased by the unknown assailants. However, the prosecution did not produce even a single witness to support the claims made by the present witness. His version is not even supported by P.W. No. 7 whose house is nearby the place of occurrence that he did not hear any alarm as narrated by the P.W. No. 4 that the deceased as well as himself raised alarm "MEE HATLE MEE HATLE".

[48] **Mention is made here that FIR was lodged on 23.06.1989, chargesheet was submitted 31.07.1998, case was committed to the Sessions Court on 05.04.1999, charge framed on 14.06.1999 under Section 302/149, judgment announced on 12.01.2018.**

[49] On perusal of the FIR copy as well as the statements of P.W. No. 35 and P.W. No. 36 (SDPO), it was mentioned that the ejhar was lodged at about 4.30 a.m. of 23.06.1989 and the complaint was made by the father of deceased (P.W. No. 1) at 4.00 a.m. But, on perusal of the statement of P.W. No. 1, it is seen that the father of deceased (P.W. No. 1) lodged the complaint to the police at about 4.00 p.m. as narrated to him about the incident by P.W. No. 4, Shri N. Megha Singh who was the sole eye witness and who was with his deceased son till his death at 3.00 p.m. and this

fact is also reflected in the first line of para No. 2 of the impugned judgment.

This discrepancy is not discussed and clarified by the Ld. Trial Court as well as the I.O. (P.W. No. 35.) and the O.C. (P.W. No. 36).

[50] It is also a fact that in the instant case, there is an eyewitness i.e. P.W. No. 4, Shri N. Megha Singh, who was with the deceased, had dinner together, went out of the Kholla after having dinner together and the assault was made when they went together and who saw the assault meted out to the deceased by unknown persons. The P.W. No. 4, Shri N. Megha Singh during T.I. Parade, identified one person namely, R.K. Sanayaima Singh, but did not identify even a single accused while giving his statement in the Court.

These facts are not considered in the judgment and order of the Ld. Trial Court while analyzing the instant case, as it is settled principle of law that even if the eye witnesses did not go through T.I. Parade (if T.I. Parade is not conducted). The Dock Identification, identification of the accused by the witnesses in the Court, is more valuable, relevant and reliable. In the instant case, the P.W. No. 4 who is the sole eyewitness in his statement before the Court stated that due to lapse of time, he may not be able to identify the said accused he identified at the T.I. Parade even if

shown to him again due to lapse of time and further stated that the accused, who were in the Dock, were not the one he identified during T.I. Parade and some of the portion is reproduced herein below:

"I cannot now identify the said person whom I identified at the time of TI Parade held at Imphal Central Jail. At the time of making the said identification I was informed by one person inside the said jail that the person whom I identified in the TI Parade was one Sanayaima. The person whom I identified in the TI Parade was one of the accused who took part in the said assault made to the deceased Seitrajit Singh. I have not seen him before the day of occurrence. I saw the said person for the 2nd time at the time of holding the TI Parade."

[51] P.W. No. 16 is the only person who identified the accused Shahajahan, but, he is not the person who saw the incident, not the eyewitness but, only the person who narrated to the police that the accused Shahajahan with one unknown person came to his house by a scooter and told him that the accused Shahajahan was assaulted by the deceased inquired whereabouts the deceased and he told the accused and his friend that the deceased is a resident of Thangmeiband Polem Leikai and the accused and his friend told him that they came to his house for making amicable settlement between them but, he could not bring about an amicable settlement as he did not find the deceased at his work site. In the circumstances, his identification of the accused in the Dock is not reliable in connection with the commission of crime. Some of the witnesses identified the accused in the Dock are the

father, sister and relative of the accused Shahajahan who were declared hostile witnesses.

[52] The Ld. Trial Court, while convicting the accused on the circumstantial evidences at Para No. 25 of its judgment, stated that -

"Learned of the accused persons, Shri Ch. Biomol Singh, Advocate has contended that the prosecution based their case on circumstantial evidences and thus, the chain of circumstance must be complete but the prosecution has failed to link the chain of circumstance for involving the accused persons in the present case. Ld. Counsel has relied to the case laws reported in (i) 2008 (3) GLT 58, (ii) 2007 (4) GLT 905 and (iii) 2007 (3) GLT (supra)."

[53] The Hon'ble Supreme Court in the catena of cases elaborated about the Circumstantial evidence-

The Hon'ble Supreme Court, in **Hanumant & Ors. Vs.**

State of M.P. [(1952) 2 SCC 71], observed that –

"11. Assuming that the accused Nargundkar had taken the tenders to his house, the prosecution, in order to bring the guilt home to the accused, has yet to prove the other facts referred to above. No direct evidence was adduced in proof of those facts. Reliance was placed by the prosecution and by the courts below on certain circumstances, and intrinsic evidence contained in the impugned document, Ext. P-3A. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson to jury in R. v Hodge where he said:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established,

and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In spite of the forceful arguments addressed to us by the learned Advocate General on behalf of the State we have not been able to discover any such evidence either intrinsic within Ext. P-3A or outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the abovementioned case."

Laxman Prasad Vs. State of M.P. [(2023) 6 SCC 399]

"2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.

3. We do not find such conclusion of the High Court to be strictly in accordance with law. In case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point."

Shailendra Rajdev Pasvan v. State of Gujarat [(2020) 14 SCC 750]

"13. Thus, the entire case of the prosecution is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates twofold requirements:

- (i) Every link in the chain of the circumstances to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.
- (ii) All the circumstances must be consistent pointing only towards the guilt of the accused.

14. This Court in **Trimukh Maroti Kirkan v. State of Maharashtra, [(2006) 8 SCC 681]** has enunciated the aforesaid principle as under: (SCC p. 689, para 12)-

"12. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence."

15. Another important aspect to be considered in a case resting on circumstantial evidence is the lapse of time between the point when the accused and deceased were seen together and when the deceased is found dead. It ought to be so minimal so as to exclude the possibility of any intervening event involving the death at the hands of some other person. In **Bodhraj v. State of J & K (2002) 8 SCC 45**, **Rambraksh v. State of Chhattisgarh, (2016) 12 SCC 251**, **Anjan Kuman Sarma v. State of Assam (2017) 14 SCC 359** following principle of law, in this regard, has been enunciated: (Shailendra Rajdev Pasvan case, SCC Online Guj 9958).

"16. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen within the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

17. It is well settled by now that in a case based on circumstantial evidence the courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

[54] As per the Hon'ble Supreme Court in **Laxman Prasad v. State of M.P.** as highlighted above, to prove the case of circumstantial evidence, the prosecution must establish three links

of the chain i.e. (i) motive, (ii) last seen, (iii) recovery of weapon of assault.

In the instant case, the only prosecution theory pointing the guilt of the accused is derived from the narration of the P.W. No. 16 to a police officer Shri Sarojkumar Sharma (the future I.O. of the case) that the accused P. Sahahajahan Singh with a friend in a scooter came to his house seeking his help for settlement of dispute of the deceased and the accused P. Shahajahan Singh and inquired about the deceased Satyajit saying that the deceased Satyajit assaulted him and he would like to make a amicable settlement between the deceased and the accused Shahajahan Singh previous day. The said police officer started investigation of the case after hearing/getting this information straightaway. On examination of the statements of the P.Ws., it emerged and is seen that the prosecution is suspecting the accused as he was slapped by the deceased on 22.06.1989 and further, trying to prove the case only on the ground that the accused surrendered before the police and also that the deceased slapped the accused P. Joykumar Singh and suspicious that the accused might have committed the crime without clear evidence in this regard. But, mention is made here that the accused with one of his friends came to the house of Shri Sidham Singh, P.W. No. 16 was just for amicable settlement. The prosecution failed to prove that

the accused has that motive to assault and kill the deceased. It is the duty of the prosecution to prove their case beyond reasonable doubt but, no one else. The prosecution also failed to prove unlawful assembly of the 8 (eight) accused (out of the 8, only 6 were chargesheeted) for commission of the crime. The prosecution has also failed to prove the commission of the crime by the accused except on the statement made by the accused to the police, even the former I.O. as well as the O.C. who gave his statement in place of the second I.O. (expired).

The Hon'ble Supreme Court in **Jagga Singh v. State of Punjab**[1994 Supp (3) SCC 463 (supra)]at para No. 10 observed that –

"10. The aforesaid is all that is on record which the prosecution relied upon to fasten the guilt on the appellant. According to us, the aforesaid material only points the needle of suspicion towards the appellant and nothing more. Suspicion, however, is no substitute for proof, and in criminal law the prosecution has to prove the guilt beyond reasonable doubt. The offence alleged in the present case being murder, which visits the perpetrator of the crime with the minimum sentence is imprisonment for life, a court of law would be justified in demanding full satisfaction before the lethality of Section 302 can be used against anyone. The materials on record in the present case do not have so much of cutting-edge as to penetrate the fortress of innocence built round an accused in our criminal jurisprudence."

In his statement, the P.W. No. 16 mentioned the following:

"It is true that Thangal Bazar Road which is known as Khoyathong Road, where the deceased late Seitrajit was executing contract work for black topping, is one of the busiest roads in Imphal town. There are rows of shops, business establishments, post office, banks and other private establishments on both road sides."

The portion reproduced is corroborated by the P.W. No. 8, 18.

[55] The narration made above by the P.W. No. 16 stating that the accused has prior motive to commit the crime of assault cannot be taken because as per the statement he went there for amicable settlement between the two.

Now, let us examine the statement of the other witnesses whether the narration made above by P.W. No. 16 to take home as to whether the accused has motive to assault the deceased or not. P.W. No. 8 who is the brother-in-law of the deceased stated in his P.W. statement that "while the work of black topping was going on, they blocked the road by using a rop at both ends at Khoyathong and Jalal Provision Store in order to prevent the disturbance from the passersby and in order to work smoothly and as a result of this several problems were created by the passersby, some persons were trying to enter forcibly and some argumatic persons threatened him as such, he was compelled to proceed to Khoyathong to talk with the deceased whether he was to permit to enter the person in the area. But, on reaching the area, he saw some people were gathering there on his inquiry about the one labourer told him that one person was slapped on his head by the deceased but, he did not find the deceased as well as the person who was slapped by the deceased (brother-in-law). While he objected to the passerby to enter in the working area, some persons threatened him and also stated that he met one

Tomba Singh, roller driver of P.W.D. who was engaged in the work, told him that one Sidam Singh and one person who was slapped by the deceased search for brother-in-law (the deceased). The facts, as set out by P.W. No. 8, cannot link to the fact that the present accused assaulted the deceased.

[56] P.W. No. 17 stated that about 20 years ago, one day, at about 1.00 p.m. came to the work site for taking a sum of Rs. 400/- from the deceased for purchasing of diesel, but when he reached the work site, the deceased went to his home to take money. Thereafter, the witness went towards a woman vendor who was running the vendor situated at the road side of Khoyathong for having Pan. When he reached near the said woman vendor, he found three young persons standing near the said woman vendor in angry mood and he asked '**what happned**'; to that, the woman told him that the deceased Seitrajit Singh assaulted one person among them and he told the said three persons not to get angry. **Further, he stated that while he was about to take bath at his courtyard, two labourers of the contract work came and told him that the deceased was assaulted by unknown person. In cross-examination, he stated that the deceased was a hot tampered person reacted to provocations easily by his nature. Further, he stated that his house is on the road lying to the adjacent north of the Khoyathong Pukhri Achouba. Further, he stated that he cannot remember any of those three persons who were found standing near the said pan shop. The prosecution failed to establish as to whether the accused was one of the persons among the three or not.**

[57] P.W. No. 18, in his examination-in-chief, stated that while he was playing **Ludus** saw some persons gathering on the Khoyathong bridge at Thangal Bazar near the cremation ground and rushed towards the said place and when reaching, they found the deceased and accused, Shahajahan. On his inquiry, he came to know that Shahajahan was assaulted by the deceased. In his cross-examination, he stated that he agrees that the deceased was a quarrelsome person who came easily provoked. The prosecution failed to examine the said woman vendor who saw the slapping a person by the deceased thereby creating doubt about the investigation of the case.

In the facts and circumstances, the prosecution failed to establish the motive of the accused for assaulting the deceased.

Reliable witness:

In this regard, we rely on the observation made by the Hon'ble Supreme Court in **Anil Phukan v. State of Assam [(1993) 3 SCC 282]**(supra).

Suspicion is no substitute of proof:

In this regard, we rely on the observation made by the Hon'ble Supreme Court, in **Jagga Singh v. State of Punjab [1994 (3) SCC 463]**(supra).

[58] Of the 36 (thirty six) witnesses produced as prosecution witnesses, not even a single witness stated that the accused was with the deceased before the deceased was found

injured as assaulted by unknown rather it was the P.W. No. 4, some labourers, roller driver and P.W. No. 17 (except in the statement of P.W. No. 18 that while he was playing Ludu with his friends at about 11/12 a.m., he saw some persons gathering at Khoyathong bridge, they rushed towards the said place and found Seityajit Singh and Shahajahan Singh and on enquiry, the deceased assaulted the accused Shahajahan Singh). The witness stated that he did not see the actual quarrel between the two and assault meted out to the accused by the deceased.

Quality of the evidence

In this regard, we rely on the observation made by the Hon'ble Supreme Court in **Gulbar Sarbar Vs. State of Bihar [(2014) 3 SCC 401]** at para No. 19 (supra).

[59] **Recovery of weapon of assault at the pointing of the appellant:**

It was stated by P.W. No. 9, who along with his friend, Ksh. Ronikanta were the seizure witnesses of the seizure of alleged weapons of crime at the pointing of the accused, P. Joykumar Singh. Further, he along with his friend, Ksh. Ronikanta were the witnesses of the recording of extrajudicial confession statement under Section 27 of Evidence Act of the accused, Joykumar Singh in the police station. In his statement, he stated that he knows S.I. Sarojkumar Sharma who was the I.O. of the case and resident of his next neighbouring Leikai. When he and his

friend were at Yaiskul Atheletic Club in front of the Kalimai Hotel, the said S.I. Sarojkumar Sharma came and asked them to become a witness in connection with a case relating to the death of Satyajit Singh the deceased. As asked, he and his friend along with the S.I. Sarojkumar Sharma reached Imphal P.S. and while sitting, S.I. Sarojkumar Sharma took one accused person from police lock-up and removed the towel covered on his face by S.I. Sarojkumar Sharma and examined the said accused, later on, came to know the name of the accused was Joykumar Singh of Sagolband as disclosed his identity to the police. **Further stated that one day, in the night he along with his friends numbering 4/5/6 persons, whose names he cannot remember, assaulted the deceased Satyajit Singh with deadly weapons such cane stick, iron handle of Jeep, knife near the Thangmeiband Pukhri Achouba Mapal and left the place of occurrence by a Jeep. Further stated that the weapons of crime were kept concealed inside the clumb of bamboo which was lying in the eastern side of his grrage. He further stated that he would be able to point the hidden place of weapons.**

The witness further stated that he along with his friends put their signatures on the statement of the accused. Thereafter, he along with his friend led by S.I. Sarojkumar Sharma with the accused Joykumar went to the said place and when reached the accused Joykumar Singh pointed his finger at the

hidden place of weapons and took out one iron handle of the vehicle, one knife and one cane stick having bold head and handed over to SI Sarojkumar Sharma and the same was seized and seizure memo was prepared. He and his friend put their signatures on the seizure memo. The witness identified the said weapons before the Court and he stated that he cannot identify the said accused Joykumar Singh due to lapse of time. (The witness did not identify the accused in the Court.)

[60] The witness stated that he is from Moirangkhom Bokul Makhong and the said SI Sarojkumar Sharma was a resident of Bramhapur Nahabam, his neighbouring Leikai. Further, he stated that he knew SI Sarojkumar Sharma since childhood. Further he stated that Smt. Chaobi Devi w/o the deceased is from Bokul Makhong. She was related to him as his daughter, she is daughter of cousin brother. Her parental house lies on the southern side of his house intervened by two ingkhols. Further, he stated that apart from him and his friend, there were many other Leikai people at the said round when the SI Sarojkumar Sharma came. Further, he stated that the said statement of the accused, on which he and his friend put their signatures. The statement was not read out by the I.O. to them and he also did not read the same on his own. He just put his signature on the said statement as asked by the I.O.

[61] The statement made above by the witnesses is doubtful and he is not to be regarded as reliable witness as highlighted above as the said SI Sarojkumar Sharma who was from the neighbouring Leikai and who were known to each other since childhood, came all the way to Yaiskul Atheletic ground and from amongst the people gathering there chosen the present witness and his friend to be the witness of the recording of extrajudicial confession of the accused Joykumar Singh and the seizure witness not only that the witness happened to be the close relative of the wife of the deceased. And again, the witness who came face to face with the accused did not identify the accused in the Court. Further, the facts of the case, the involvement of the accused and facts of the seized weapons of offence and said jeep surfaced for the first time in the FIR which was registered at 4.30 p.m. of 23.06.1989 when the matter was informed by P.W. No. 4 to P.W. No. 1 at 3.00 p.m. and the P.W. No. 1 lodging a complaint to the police at 4.00 pm and subsequent registration at 4.30 p.m.**It is to mention that the said police officer seized the jeep, one battery, one polyester full shirt having blood stain, sample of blood on a paper, sample of scalp hair, 2 pieces of stick, smeared with blood measurer 5 feet long, half broken wooden stick having blood stains measuring 3 ½ ft., a piece of broken wooden stick measuring about 22 inches long with wooden handel of about 3 inches long, half lantern with broken chimney etc.were seized in**

the morning before the arrest of the accused and before the registration of FIR.

None of the prosecution witnesses could point out the seized articles reproduced hereinabove and seized on the pointing of accused as mentioned above, were weapons of crime nor did any of the prosecution witnesses testify to the fact that the accused used the said weapons, assaulted and resulted in the subsequent death of the deceased thereby. The prosecution failed to connect the seized articles with the commission of crime and to the accused. Not only that, the prosecution sent the following articles to the Director of Central Forensic Science laboratory, 30 Gorachand Road, Calcutta for examination in order to ascertain whether the stains of clothes blood/is human blood or not.

The articles:- 1) sample of blood of the deceased Seityajit Singh, 2) blood stained stones, earth, paper mark containing the blood, 7 brown glasses, 2 large pieces of broken wooden stick, 3 small pieces of wooden sticks, white Pajama, long pant, 3 small cut pieces of the hood of the jeep marked E1, E2 and E3 respectively other cut pieces of the hood marked stained with blood, one iron handle of jeep marked as F, one cane stick with tempering hole marked F2, one knife with wooden handle bearing small areas of Faint

brown stems marked F3, one wooden club stained with blood marked as G, one photostat copy of PM examination marked as H, 2 photographs marked as 1(A) and 1(B) respectively. However, the report of the expert opinion was as follows:

"As per opinion of the Expert i.e. filter paper cutting marked A, one stone marked 8(1), stone 8(2), stone 8(3), earth 8(4), paper cutting (5), broken wooden B(13), broken wooden piece marked B(14), broken wooden piece marked (15), broken wood piece marked 8(16), cut piece of the hoot marked E1, cut pieces of hoot E2, cut pieces of hoot marked E. The above articles are marked as Sl. No.7 to 20. The item No. Sl.No.7 to 13 excluding Sl. No. 14 noted above are stained with human blood. The blood stains on the item No.14,18,19 and 20 are disintegrated and their origin cannot be determined."

Of the witnesses who participated and witnessed the recording of confessional statement of the 2 (two) accused i.e. Shahajahan and Dhananjay, for the accused Shahajahan, Shri Bebe Singh and Ronikanta were examined as P.Ws. in the Court, not only failed to identify the accused in the Court but their examination before the Court are contradictory to each other (reference is made in the above reproduced statements of the witnesses). Also, these witnesses who saw and were the witnesses to the recording of the confessional statement of Dhananjay and subsequent recovery of seized articles were not produced P.Ws. to prove the said statement as well as the recovery. During the examination of the accused under Section 313 of Criminal Procedure Code, 1973, the accused had denied the incriminating circumstances appearing against them. Further, it is to be mentioned that in so far as the evidence of extra judicial confession, under Section 27 of Evidence

Act, concerning the 2 (two) above mentioned accused, the confession was made before the police i.e. the I.O. of the case and the above mentioned 2 (two) witnesses i.e. Bebe and Ronikanta who were from Yaiskul and one of the witnesses Shri Bebe was the close relative of the wife of the deceased and other witness was from same locality of the wife of the deceased and the close friend of Shri Bebe and the I.O. of the case was also from the same locality. The witnesses failed to identify the accused in the Court and also failed to point out that the seized articles which they were the witnesses during the seizure was the weapon used in the commission of the crime by the accused. The I.O. of the case went all the way to Yaiskul and asked the said witnesses to be the witnesses for the recording of 27 Evidence Act of the said 2 (two) accused. For all the reasons above, that the view taken by the Ld. Trial Court regarding the recovery of weapons of assault at the pointing of the appellant, we do not find the said conclusion/decision taken by the Ld. Trial Court was in accordance with law.

[62] In the facts and circumstance as narrated above, the seizure of the weapons of offence and the confessional statement of the accused are doubtful hence, not reliable.

Reliable witness:

In this regard, we rely on the observation made by the Hon'ble Supreme Court, in **Anil Phukan v. State of Assam [(1993) 3 SCC 282]**, (supra).

[63] The P.W. No. 13, Shri Ksh. Ronikanta Singh stated that in the morning at about 10.00 am while standing at Yaiskul Atheletic Club near Kalimai Hotel with his friend, Bebe Sharma @ Chandrakumar Sharma (PW No. 9), one person in civil dress came to ask them and asked his friend to go to Imphal P.S. Accordingly, he and his friend, P.W. No. 9 with the said unknown person in civil dress went to Imphal P.S. While sitting inside the room at Imphal P.S., the said person who was a police officer brought one person before them. The face of the said person was covered by towel and examined by the said police officer and the accused disclosed that the weapons such as iron handle of the jeep, cane stick, knife etc. used by them at the time of commission of crime were kept concealed inside the clump of bamboos which was lying in the eastern side of his garage and the accused further stated that he would be able to point out the hidden place of the weapons. After recording the extrajudicial confessional statement, he and his friend (PW No. 9) put their signatures on the statement. Thereafter, he and his friend (PW No. 9) with the police went to the house of the said accused on the pointing of the accused. The said accused pointed his finger at the concealing place of the weapons of crime and took out one iron handle of vehicle, one knife and one cane stick and handed over to the police officer. He and his friend put

their signatures on the seizure memo prepared by the said police officer. The witness identified the knife and cane stick. But, he stated that he cannot identify the said iron handle of the jeep due to lapse of time.

In his examination-in-chief, the witness said that he put his signature on the seizure memo after knowing the full contents of it. But, in his cross examination, he stated that he was not knowing while the statements were recorded in which language the said statements being recorded. However, after recording the statement, the contents were read over in their presence and he did not read the contents of the said statement and he put his signature without reading it. But, after hearing the contents being read over, further, he stated that he never read the contents of the seizure memo. The witnesses as well as the police officer who deposed before the Court failed to state that the weapons of offence allegedly recovered at the instance of the accused were sealed or not. In the expert opinion of the seized articles, it is opined that the articles seized cannot be linked to the alleged crime.

[64] The prosecution failed to examine the important witnesses who came face to face with the accused Shahajahan and who would have thrown light on the incident in order to identify (i) the woman vendor who saw the slapping of the

accused Shahajahan by the deceased (ii) the labourers who saw the slapping of the accused Shahajahan by the deceased (iii) the roller driver. PW No. 17 who went to collect Rs. 400/- for purchasing diesel oil from the deceased and when the deceased went to his home for taking money, **he went towards the woman vendor at the road side of Khoyathong road for having pan when he reached the vendor, he found three young persons standing near the said woman vendor in angry mood and on inquiry, the woman told him that the deceased assaulted to one person among them.** He told the said three persons not to get angry. He was also had dinner with the deceased along with a driver of the roller, S.O. and labourers with PW No. 4, N. Megha Singh and who saw the deceased and the said PW No. 4 remained at the said khola when they left the said place. The witness while giving his statement before the Court did not identify the accused who were in the Dock nor did the said three young persons standing near the said woman vendor. ***(Emphasis given).***

[65] PW No. 18 stated that while he was playing Ludu with his friends they saw some persons were gathering on the Khoyathong bridge near cremation ground immediately on seeing the said crowd they rushed towards the said place and found the deceased Satyajit Singh and the accused Shahajahan Singhand, came to know that the deceased assaulted the said accused Shri

Shahajahan Singh. Further, the witness stated that he himself did not see the actual quarreling between the deceased the accused Shahajahan Singh. But, the witness failed to identify the accused in the Court and the prosecution failed to examine the said friends and did not make them witnesses in the present case.

Since the accused were not identified in the Court (Dock Identification) by the eyewitness as well as the witnesses mentioned above, the prosecution failed to prove their case basing on the above mentioned solitary eyewitness (direct evidence) and the above mentioned witnesses more importantly, the above mentioned reliable witnesses. The Hon'ble Supreme Court in catena of its judgment regarding Dock Identification saying that Dock Identification is a conclusive and substantive evidence. We rely on the Hon'ble Supreme Court's observation in this regard which were reproduced herein above.

[66] The prosecution failed to seize the wearing apparels of the PW No. 4 (sole eyewitness) which were soaked with blood as he was with the deceased till his death.

[67] The Ld. Trial Court, at Para No. 11 of the judgment and order, discussed about the eyewitness i.e. P.W. No. 4 N. Megha Singh and its reliability of the statement given in the Court. For the sack of brevity and to save time, we will not reproduce the entire statement of the P.W. No. 4 but relying on his statement narrated

and discussed above as the same is already reproduced herein above.

The Ld. Trial Court, while relying upon the statement of the P.W. No. 4, stated that the statement of the P.W. No. 4 are well supported by P.W. No. 8, 16, 17 and 18. The Ld. Trial Court, while dealing with the importance of eyewitness, failed to appreciate the Dock Identification of the eyewitness as well as those who came in contact with the accused (including the important witnesses which were not produced as P.Ws. which was mentioned above). But, on perusal of the statements of P.W. No. 8, 16, 17 and 18, we found no corroboration with the statement of P.W. No. 4 and do not support the version of P.W. No. 4 at all. We rely on the judgment and order of the Hon'ble Supreme Court about Dock Witness as relied and reproduced above.

[68] The Ld. Trial Court, inspite of discussing the eyewitness version and thereafter, giving opinion that the oral testimony of P.W. No. 4 has shown a clear picture for believing such incident to exist and considers its existence so probable that a prudent men under the circumstances of its particular case to act upon the supposition that it exists.

(But, the Ld. Trial Court failed to give clear decision as to whether he is relying on the instant case on the statement of the solitary eyewitness; instead of that, the Ld. Trial Court

continued to go on discussing about the statements made by the other witnesses and continued his elaboration of the evidences of the case.)

[69] It is an admitted fact that there was an assault meted out to the deceased, the deceased was injured and as per the doctor's report, the death was caused due to assault and opined that the cause of death in his opinion is due to head injuries fractures of skull bones and laceration of the brain, injury No. (viii) and (ix) were produced by sharp weapon; injury No. (x) and (xi) were produced by pointed weapon and the rest of the injuries were produced by blunt weapon. The injuries are homicidal in nature and ante mortem naturee. The time since death is 4 to 12 hours. The age of the injuries i.e. survival period fresh. But, in spite of the doctor's statement, prosecution failed to link the accused to the commission of crime and this fact is not narrated and is missing in the judgment as the prosecution failed to prove in this regard by their witnesses as well as material objects and the documents. The conviction of the accused is solely on the basis of the statement of sole eyewitness (solitary eyewitness) and basing on the reports of the P.W. No. 16 who narrated about the accused Shahajahan with a friend coming to his house for settlement of the incident of the deceased assaulting the accused Shahajahan. The arrest of the accused, the seizure of jeep and the seizure of some

with alleged weapons of the offence (seized in the morning) were made in the morning prior to the registration of the FIR which was registered at 4:30 pm and before the arrest of the accused. (The P.W. No. 4 the solitary eyewitness narrated about the incident to the father of the deceased at 3:00 pm, the father of the deceased filed original ejahar (complaint) to the police at 4:00 pm.) The fact of examination of the complainant (the father of the deceased) is not explained anywhere in the judgment even though the defence counsel raised about this issue. The justification made by the Ld. Trial Court about the registration of the FIR is not enough in the eyes of law. This fact is to be clarified/justified by the I.O. himself not by the Court. The former I.O. of the case Heli Mao as well as the O.C. who made over the case to another I.O. S.I. Shri Sarojkumar Sharma stated and admitted that the investigation of the case started after receiving the original ejahar (complaint) which was filed by the father of the deceased (P.W. No. 1) at 04:00 p.m. Even before registering FIR the said SI Sarojkumar after hearing the narration of the P.W. No. 16 Shri Sidham Singh to the fact that the accused Shahajahan with a friend came to his house to settle the issue of quarrel which occurred between the accused Shahajahan and the deceased in which the deceased slapped the accused Shahajahan, the said SI Sarojkumar Singh even before handing over the case to him took the said P.W. No. 16 to the

house of the accused Shahajahan and seized a jeep which was alleged by the prosecution used in the commission of crime. The postmortem was done before the registration of the FIR, the said half lantern was seized in the morning on the production of the PW No. 4 before the registration of FIR. The PW No. 4 did not narrate about the said occurrence to the Police even though he was with the deceased from the place where they have dinner with S.O. of P.W.D., labourers, driver of roller, the deceased and himself at the Khola till the death of the deceased. The police also seized the following :

"i) one polyester full shirt having blood stain, ii) sample of blood on a paper, iii) sample of scalp hair under a seizure memo prepared by the said police officer at RMC Forensic Science and Medical Department, Lamphel.

The TI Parade was done after 15 (fifteen) days from the date of occurrence inspite of having an eyewitness.

[70] The Ld. Trial Court in its judgment admitted that there are discrepancies in the statements of the prosecution and observed thus:

"Sir Elijah Impey told the Jury in Nuncumar's Case (Stephen's story of Nuncumar 1 p. 168):

"You will consider on which side the weight of evidence lies, always remembering that in criminal and more especially in capital cases, you must not weight the evidence in golden scales; there ought to be a great difference of weight in the opposite scale before you find

the prisoner guilty. In cases of property, the stake on each side is equal and the least preponderance of evidence ought to turn the scale; but in a capital case, as there can be nothing of equal value to life, you should thoroughly convinced that there does not remain a possibility on innocence before you give a verdict against the prisoner."

In Dhupa Chamar and Ors. Vs. State of Bihar [2002(4) SLT 611], the Hon'ble Apex Court held that for an offence to fall under Section 300, the following facts must be proved by the prosecution:

- i) First, it must establish, quite objectively, that a bodily injury is present;*
- ii) Secondly, the nature of the injury must be proved. These are purely objective investigation;*
- iii) Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended."*

It is admitted proposition of law that if the discrepancies are blattenly wide and deep during the course of investigation as well as during the course of trial that no such other justification could be cured and it is settled proposition of law that benefit of doubt always goes in favour of the accused. In the instant case, this proposition of law can be well applied.

After going through the narration and later finding given by the Ld. Trial Court and giving due consideration to the facts and circumstances of the case and on our perusal of the evidences collected/adduced for the prosecution against the accused and our subsequent analysis, assessment and reasoning made above, it is observed that the Ld. Trial Court failed to consider the evidences adduced by the prosecution witnesses in

whole/full and failed to consider the doubt created by the investigation authority and later during the trial the doubt created by the prosecution and failure of the I.O. of the case and prosecutors to do their legal duties. We also further observe that due to the Ld. Trial Court's failure to appreciate the settled provision of law and errors committed in fact as well as in law in deciding the case on eyewitness (direct evidence) as well as on circumstantial evidences, we found the following errors committed by the Ld. Trial Court:

- (i) The Ld. Trial Court discussed the contradictory timing of the registration of the FIR but, the discrepancies created by the I.O. of the case that has to be narrated and clarified only by the I.O. of the case not by the Court. However, the Court justified in its judgment on his own motion. (We rely on the observation and narration made by us above.)
- (ii) The Ld. Trial Court failed to find out why out of 8 (eight) accused arrested and remanded, only 6 (six) were chargesheeted without explaining the reason for the two accused. The Ld. Trial Court failed to appreciate the evidences of the P.W. No. 4 to the fact that inspite of the distance of 55 feet from the place of

occurrence to the place where the P.W. No. 4 was standing and the nature of light as mentioned by the P.W. No. 4 how the P.W. No. 4 can mention the weapons of offence i.e. knife, jeep handle, stick and also that the some of the weapons of offence and articles were seized even before the registration of FIR and before the arrest of the accused.

- (iii) The Ld. Trial Court also failed to discuss the necessary of Dock Identification of the accused before the Court instead relied upon the identification of T.I. Parade and the disclosure statement of the accused under Section 27 of Evidence Act. While relying on the statement under Section 27 of Evidence Act, the Ld. Trial Court was silent about the Dock Identification and non-production of the witnesses who witness the recording under Section 27 Evidence Act in respect of P. Dhananjoy Singh.
- (iv) The Ld. Trial Court, while discussing the case in hand on circumstantial evidence, failed to appreciate the statements of the witnesses in full/whole as required under the provision of law as well as the law laid down by the Apex Court.

- (v) The Ld. Trial Court failed to connect the evidences collected in the course of trial as well as during the investigation and with the recovery of weapons of offence with the accused. In our opinion, the Ld. Trial Court rather comes to the conclusion solely on the suspicion which needs to be proved without any iota of doubt as laid down in the series of laws laid down by the Apex Court. The Ld. Trial Court failed to appreciate the fact that the prosecution failed to connect the recovery of weapons with the accused.
- (vi) The Ld. Trial Court also failed to appreciate the expert opinion of the materials sent to the Central Forensic Science Laboratory, 30 Gorachand Road, Kolkata for examination in order to ascertain whether the stains of blood is human blood or not.
- (vii) The Ld. Trial Court erred in coming to the conclusion that the accused are guilty and convicted under circumstantial evidence without going into details that the prosecution failed to prove the (a) motive, (b) last seen and (c) recovery of weapon of assault.

- (viii) The Ld. Trial Court convicted the accused under Section 302/149 IPC but, as discussed above failed to appreciate that the prosecution failed to prove their case under Section 302 as well as 149 IPC (the prosecution failed to bring home the unlawful assembly of the accused and the common intention of the accused in commission of the crime.
- (ix) The Ld. Trial Court, while discussing the accused examination i.e. 313 Cr.P.C., misinterpreted the meaning and purpose of the accused examination under Section 313 Cr.P.C.
- (x) In the judgment, the Ld. Trial Court wrongly observed that the prosecution could establish 11 (eleven) specific facts without reasonable basis.
- (xi) The Ld. Trial Court committed error in relying upon inadmissible evidences of the prosecution thereby committing unfairness to the accused.
- (xii) The Ld. Trial Court failed to appreciate that the prosecution failed to bring home the allegation labelled against the appellant, instead appreciated the evidences and the materials produced by the prosecution beyond reasonable doubt. The Ld. Trial Court while

discussing about Section 313 of Cr.P.C. incorrectly gave its opinion without giving full appreciation of the law laid down by the Apex Court.

[71] As per the evidences as highlighted above and analysis made above by us, it is a fact that the bodily injury is present and the nature of injury as per the doctor who conducted post mortem over the body of the deceased opined that the death was homicidal in nature. But, as narrated and analysis given above, the intention and motive of the present accused could not be established as the prosecution failed to connect with the occurrence mentioned above which caused the injury to the body of the deceased resulting in his death.

[72] In the facts and circumstances aforesaid, in our considered view, all that is on record which the prosecution relied upon to fasten the guilt on the appellant, according to us, the aforesaid materials only point the needle of suspicion towards the appellant and nothing more as such, suspicion, however, is not substitute for proof and in criminal law the prosecution has to prove the guilt beyond reasonable doubt, the alleged offences in the present case being murder which visits the perpetrator of the crime with the minimum sentence of imprisonment for life, a court of law would be justified in demanding full satisfaction before the lethality of Section 302 can be used against anyone. The materials on record in the present case do not have so much of cutting-edge

as to penetrate the fortress of innocence built round an accused in our criminal jurisprudence.

[73] Accordingly, in our opinion, the appellants are entitled to benefit of doubt and granting that benefit, we set aside their conviction and sentence for the offences under Section 302 and 149 of the same Code and consequently, the judgment of the Ld. Trial Court is set aside and they are hereby acquitted.

[74] We, therefore, allow the appeal, acquit the appellants and order for their release from custody forthwith, if not needed in connection with any other case(s).

[75] A copy of the judgment and order be transmitted to the Jail Superintendent concerned to be communicated to the appellants as well as for compliance therewith, forthwith.

JUDGE

CHIEF JUSTICE

FR/NFR

Bipin