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2026:GAU-AS:16600-DB

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

Case No. : Crl.A./255/2023

ABUL HUSSAIN
S/O LATE SAMIRUDDIN
RESIDENT OF VILLAGE SIMOLUGURI, PS AND DIST NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MAINUL HOQUE
S/O LATE MATAB ALI
RESIDENT OF VILLAGE SIMOLUGURI
PS AND DIST NAGAON
ASSA

Advocate for the Petitioner : MR F HAQUE, MR A ISLAM,MR. S K M ALOMGIR

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./259/2023

RAHAM ALI AND 5 ORS.
S/O IDRISH ALI

RESIDENT OF VILLAGE SILONGANI
PO AND PS NAGAON
DIST NAGAON

ASSAM

2: NABI HUSSAIN
S/O JAFAR ALI
RESIDENT OF VILLAGE SILONGANI
PO AND PS NAGAON
DIST NAGAON
ASSAM

3: KERAMAT ALI
S/O IDRISH ALI

RESIDENT OF VILLAGE SILONGANI
PO AND PS NAGAON
DIST NAGAON
ASSAM

4: MAMTAZ ALI
S/O IDRISH ALI

RESIDENT OF VILLAGE SILONGANI
PO AND PS NAGAON
DIST NAGAON
ASSAM

5: KUDRAT ALI
S/O IDRISH ALI

RESIDENT OF VILLAGE SILONGANI
PO AND PS NAGAON
DIST NAGAON
ASSAM

6: NIYAMAT ALI
S/O IDRISH ALI

RESIDENT OF VILLAGE SILONGANI
PO AND PS NAGAON
DIST NAGAON
ASSAM
VERSUS

STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MD. MAINUL HOQUE
S/O LATE MATAB ALI

RESIDENT OF NO 1 MOLLAPATTY
PO AND PS NAGAON
DIST NAGAON
ASSAM

Advocate for : MR. A M BORA
Advocate for : PP
ASSAM appearing for STATE OF ASSAM AND ANR.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	: 05.11.2026
Date of pronouncement of judgment	: 12.11.2026
Whether the pronouncement is of the operative part of the judgment ?	: N/A
Whether the full judgment has been pronounced?	: Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

1. This common judgment shall dispose of both the aforesaid two criminal appeals.

2. Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. S. Nawaz, learned counsel for appellant Nos. 1, 4, 5, and 6 and Mr. P. Kataki, learned Senior Counsel assisted by Mr. S. S. Zia, learned counsel for appellant Nos. 2 and 3 in Criminal Appeal No. 259 of 2023. Also heard Mr. F. Haque, learned

counsel for the appellant in Criminal Appeal No. 255 of 2023. Also heard Mrs. A. Begum, learned Additional Public Prosecutor for the State respondent in both the above criminal appeals.

3. Both the appeals are directed against the impugned Judgment & Sentence dated 31.05.2023 passed by the learned Additional Sessions Judge No. 3, Nagaon in Session (T-1) Case No. 47(N) of 2015 convicting the appellants under Section 302/34 IPC and sentencing them to undergo R.I. for life and a fine of Rs/. 5,000/- each, in default imprisonment for a period of one year.

4. The factual matrix of the case as unfolded in the first information report (in short FIR) is that on 11-08-14, at about 9.30 pm the informant with his brother Nurul Haque went to give food to their father who lives in Shillongani by their motorcycle. After some time Md Raham Ali called their father to his house for discussing some boundary land dispute. After one hour the informant heard some halla (noise/disturbance) in the house of Raham Ali. When the informant and his brother went to the place of occurrence, they saw that their father was being assaulted by the accused persons with a heavy object. Thereafter, seeing the large number of the accused, they moved back and informed their elder brother and uncle over telephone about the incident. They again went to the place of occurrence with their family and saw that the accused persons killed

their father and their father was lying dead on the ground. When the accused persons saw them, they fled from the place of occurrence. According to the informant, the accused persons killed their father due to some land dispute in a pre-planned manner. Hence, the informant lodged the FIR, to set the wheels of law in motion against the accused persons.

5. On receipt of the FIR, police registered a case, investigated the case and on completion of investigation, submitted charge-sheet against the accused Raham Ali, Muntaz Ali, Niyamat Ali, Kudrat Ali, Keramat Ali, Nabi Hussain and Abul Hussain. Akkash Ali and Ali Hussain were shown as absconders.

6. Charge under Section 302/34 IPC was framed against all the accused persons, to which they pleaded not guilty and claimed to be tried.

7. In due course of trial, the prosecution has examined as many as 8 witnesses, including the informant and the I.O. to prove its case. Defence cross-examined all the prosecution witnesses in detail. Thereafter, the statements of the accused persons have been recorded in terms of provision of Section 313 of the Code of Criminal Procedure (in short the "Code"). Defence plea was of total denial and defence adduced four witnesses.

The Evidence:

8. PW-1, Mainul Haque, is the informant in this case. He testified that the

accused persons are his neighbours and is also a distant relation. According to him, the occurrence took place on 11-08-14 and on that day at about 9pm, he along with his brother went to give food to their father by motorcycle, who was staying at Shillongani to look after their cultivation. At that time one neighbour Md Raham Ali called their father to his house for discussing some boundary land dispute. After one hour they heard some halla in the house of Raham Ali, then when they went to the place of occurrence they saw their father being assaulted by the accused Raham Ali, Mamtaz Ali, Niyamat Ali, Kudrat Ali, Keramat Ali, Ali Hussain, Akkash Ali and Nabi Hussain with a heavy wooden object. Thereafter, they instantly moved back and informed their elder brother Aminul Haque and uncle Akkash Ali over telephone about the incident. According to him, they can identify the accused persons and after 5-10 minutes their family members came to the place of occurrence and saw that the accused persons killed their father and their father was lying dead on the ground. When the accused persons saw them, they fled from the place of occurrence. According to him, police came at 12 midnight and thereafter the police took the dead body of their father to the B.P. Civil Hospital, Nagaon. He stated that next day he lodged an FIR. Ext.1 is the FIR and Ext.1(1) is his signature. He identified the dead body of his father. Ext.2 is the inquest report and Ext.2(1)(2) are his signatures. He stated that after one month his statement U/S 164 Cr.P.C was recorded by the Magistrate.

Ext.3 is the statement recorded U/S 164 C.rP.C and Ext.3(1)(2)(3) are his signatures.

9. In cross-examination he testified that his father had 3 wives. He testified that as his father lives in Shillongani since 1995 so they provide food to him in the morning and evening. According to him, the distance between Shillongani and Haiborgaon P.S. is about 5-6 Kms. He denied the fact that his father's mental condition was bad and was searching for his wife who left him and for that he entered into other houses. He testified that the boundary between the accused Raham Ali and his father who lives at Shillongani is same. According to him, towards north there is the house of Akram, Akhtar and near their house there are the houses of the accused persons at Shillongani. He stated that during assault to his father by the accused persons there were no people but they came later on. He further stated that there was a enemity between the accused persons and his father due to some land dispute at Shillongani. According to him, while the accused Raham Ali on the day of occurrence called his father to accompany the accused to their house, at that time his father did not refuse to go. He stated that he saw the assault committed by the accused persons upon his father and he could identify the accused persons as there was light at that time. He testified that while bringing his father to the civil hospital they should cross the Haiborgaon police out post, but at that time he did not

inform the police. He further stated that while they saw that the accused assaulting their father, they did not try to resist them. According to him, the ejahar was written by an advocate but he did not remember his name.

10. PW-2, Aminul Haque is the son of the deceased Matab Ali. He has testified that the informant is his younger brother. According to him, the occurrence took place on 11-08-14 at about 10.30 pm. He testified that on the day of occurrence at 10.30 pm Mainul Hoque called him over telephone and told him that the accused persons assaulted their father and after hearing that he along with his uncle Akkash Ali went to the place of occurrence and saw that his father was lying down on the ground of accused Raham Ali after assault. Thereafter, he along with Nurul Haque and Akash Ali brought his father to the roadside then the sons of Idrish Ali again assaulted his father. He further testified that they called for 108 but when 108 did not come, then they informed the police. Police came at about 11.30 PM and brought their father in a tempo to the civil hospital where his father was declared dead by the doctor. Ext.4 is the statement recorded U/S 164 CrPC by the Magistrate. Ext.4(1)(2) are his signatures.

11. During cross-examination he testified that when Mainul Haque informed him about the assault committed upon his father by the accused, he also mentioned the names of the Idrish Ali's sons who assaulted his father. He

further stated that he did not know the names of three persons standing in the dock. He stated that he saw that his father was lying on the ground but he did not witness the occurrence. He reached the place of occurrence at about 10.40 pm. He further testified that when they picked up his father from the place of occurrence then his father told them that the sons of Idrish Ali assaulted him.

12. PW-3, Akram Ali has testified that the occurrence took place about one year ago from the date of his deposition. According to him, when he heard halla outside his house then he went to the place of occurrence near the house of Raham Ali. He stated that many people gathered near the place of occurrence. He further stated that Siraj Master and Jamaluddin asked Matab Ali that why he has come, then Matabl Ali replied that he was searching for his wife. Thereafter, Siraj Master called the sons of Matab Ali and Matab Ali suddenly fell down on the ground. After that the sons of Matab Ali came and treated their father and took their father. Later he got information that Matab Ali died.

13. During cross-examination he stated that there are 60-70 houses near the house of accused and deceased Matab Ali. He stated that Matab Ali has 6-7 wives and during the time of occurrence no wife was present with him. According to him, Matab Ali earlier also searched for his wife.

14. PW-4, Dr Narendra Bhagawati, has testified that on 12-08-14 he did post

mortem of deceased Matab Ali and found the body in stout condition, rigor mortis present, both eyes were closed, mouth was also closed. Wound over the body was not found. Fracture of the skull bone present over the upper middle part of the occipital lobe of the skull, size 5 cm in length on transverse direction. Vertebrae- healthy, Membrane congested. Clotted blood present over the membrane of the upper middle part of the occipital lobe. Brain congested. Hemorrhage and clotted blood present inside the upper middle part of the occipital lobe of the brain, size-6 cm in length on transverse direction. In his opinion the case of death was due to shock and hemorrhage as a result of head injury, leading to comma. Ext.5 is the P.M report and Ext.5(1) is his signature.

15. During cross-examination he stated that there was no external injury on his scalp. He also stated that fracture of the scalp bone may be caused by falling over hard substance.

16. PW-5, Nurul Haque deposed similarly as PW-1. Ext.2 is the inquest report and Ext.2(3)(4) are his signatures. He also gave his statement U/S 164 CrPC before the Magistrate. Ext.6 is his statement recorded U/S 164 CrPC. Ext.6(1)(2)(3) are his signatures.

17. During cross-examination he stated that in Ext.2, police did not mention any injury on the person of his father. He stated that he did not know the

numbers of sons Idrish Ali had. He further testified that no wife stayed with his father. He stated that one wife was dead, one stayed with them and other two wives left the cohabitation of his father. Therefore, his father searched his wives day and night who left him. He denied the fact that Raham Ali did not call his father for discussing some boundary land dispute.

18. PW-6 Akkash Ali has testified that the deceased Matab Ali was his relative. According to him, the occurrence took place on 11-08-14 at about 10.30 pm. He stated that Mainul Haque informed him over telephone that his father was being assaulted by the sons of Idrish Ali. Thereafter, he went to the place of occurrence and saw that Matab Ali was lying down on the ground of accused Raham Ali in an injured condition. Thereafter, he along with Nurul Haque, Mainul Haque and Aminul brought Matab Ali to the roadside. He further testified that they called for 108 but when 108 did not come, then they informed the police. Police came and brought Matab Ali in a tempo to the civil hospital where Matab Ali was declared dead by the doctor. Ext.7 is the statement recorded U/S 164 CrPC before the Magistrate. Ext.7(1) & 7(2) are his signatures.

19. In cross-examination he testified that the relation of Matab Ali with the village people was good.

20. PW-7, Nur Banu has testified that the occurrence took place about 3-4

years ago from the date of her deposition at about 11 PM. She stated that on hearing halla in the house of Raham Ali, she went to the place of occurrence and saw Matab Ali was lying on the ground and then she and others treated Matab Ali by pouring water on his head. She testified that on the next day she heard that Matab Ali had died. This witness was declared hostile by the prosecution.

21. During cross-examination by the prosecution she denied that she did not state before the police that on the day of occurrence she did not wake up at night and next day she came to know that Raham Ali called Matab Ali to his house and accused Raham Ali, Mamtaz Ali, Niyamat Ali, Keramat Ali and other accused persons assaulted Matab Ali by lying him down on the ground.

22. During cross-examination by defence she stated that she heard from the gathering people that Matab Ali was searching for his wife. Thereafter, Siraj Master and two others called the sons of Matab Ali and Matab Ali suddenly fell down on the ground.

23. PW-8 Pinaki Chakrabarty, is the I.O. of this case. He testified that on 12-08-14 he was working at Haiborgaon T.O.P. On that day he received an FIR from Mainul Haque. And after getting the ejahar he started investigation. He visited the place of occurrence, recorded statement of the witnesses. He drew sketch

map. Ext. 8 is the sketch map and Ext.8(1) is his signature. Thereafter, he collected the inquest and P.M report and submitted charge sheet against the accused persons. Ext.5 is the P.M report and Ext.9 is the charge sheet. Ext.9(1) is his signature.

24. During cross-examination he testified that when he drew the sketch map, the dead body was not there. So, he did not mention the place of dead body in his sketch map. He stated that on 12-08-14 at about 12.15 am, Akkash Ali informed him that some unknown persons killed a man by assaulting and left unattended. Then he advised to take the man to the hospital.

PW-5 Nurul Haque did not state before him that before the occurrence their father went to the house of Raham Ali leaving them in his house. He also did not state before him that at the time of occurrence there was light in the place of occurrence.

25. DW-1 Md Akbar Ali testified that his house is about 150 feet away from the house of deceased Matab Ali. He testified that on the day of occurrence at about 9.30/10.00 PM he heard hue and cry on the north of his house and went to the place of occurrence and saw that there was some people gathering there. He testified that Siraj Mastar was something to Matab Ali (since deceased) that why he came there and on reply Matab Ali replied that as his wife is there so he

came there. He testified that Matab Ali has 5-6 wives and only the eldest one is alive and stayed at Dhing Gate. He further testified that Matab Ali was alone in his home. On the day of occurrence in the house of Matab Ali there was Sirajul Master, Kitab Ali, Habibur Rahman, Safikul Islam, Nur Banu, Akram Ali etc and accused Raham Ali. He testified that Sirajul Master rang up to Mainul Ali who is the son of Matab Ali but Mainul Ali did not come. He testified that in between their talking Matab Ali fell down where there was bricks, stones and roots of trees. That after that he became senseless and so some people poured water on him thinking it to be high pressure. That thereafter, Sirajul Master rang up to Akkash and after about one hour police came. He testified that he was not present at the place of occurrence when police came. He further testified that there was no enemity between Matab Ali and the accused persons. He testified that there was land dispute between Akkash Ali, Abu Hussain and Ali Hussain. He testified that at the place of occurrence there was no light as there was no electricity on that prevailing day and so lamp and torch light were there in the hands of gathering people. After 12 pm, electricity was available in the place of occurrence. He testified that he did not see assaulting of Matab Ali by the accused persons.

26. During cross-examination he testified that the occurrence took place about 3 years ago but he did not remember the date and time of the incident. He

testified that the occurrence may have taken place in the month of August but he could not remember it exactly. On the day of occurrence he only met Nemat Ali but Mamtaz Ali and Kudrat Ali was not present. The house of Matab Ali is about 80/100 feet away from the house of the accused. His house is at Bhakatgaon and the occurrence took place at Shillongani gaon and in between it there is a road towards Dhing. He testified that he heard about stealing something and shouting "thief, thief". The deceased and the accused persons are not his relatives. He did not see anything in the house of the people gathering in the place of occurrence. He only saw lamp and torch in the hands of people. He testified that in the light of torch he could identify Matab Ali. He testified that at what time Sirajul came to the place of occurrence he did not know. He testified that there was land dispute between the deceased and the accused persons.

27. DW-2 Kitab Ali testified that on the day of occurrence at night he heard somebody shouting as thief, thief then he went to the place of occurrence and saw that Siraj Master was asking to Matab Ali that is why he came there at night. Then Matab Ali replied that he came there in search of his wife. In the place of occurrence the gathering people were holding lamp and torch lights in their hands and he was also having a torch light as there was no current on that day. But current was restored at 12 pm. He testified that Siraj Master informed

the sons of Matab Ali and his brother Akkash ali over telephone about Matab Ali and Matabl Ali fell down after about five minutes. He testified that Raham Ali and his brothers used oil and water on the head of Matab Ali but he did not regain his sense. He testified that Mainul, Aminul and Akkash went to the place of occurrence after 20/25 minutes and they brought Matab ali to the side of the main road and laid him down in a shop and he came back home. He testified that Matab Ali lived alone and he used to prepare his own food at his house. He further testifies that sometimes after 10/15 days his sons used to serve him with something to eat in day time. He testified that Matab Ali married 4-5 women and only one is there who lives in town.

28. During cross-examination he testified that he heard the shouting as thief, thief at about n10/10.30 pm.

29. DW-3 Sirajul Islam testified that he knew both the parties and his house is near the house of DW Akbar Ali. He testified that on the day of occurrence at about 10.30/11 pm when he was about to go to bed hen he heard hue and cry of people and so he went to the place of occurrence in front of the house of accused Rohom Ali. He testified that the accused persons are all brother but they live separately. He testified that at the time of occurrence there was no light as there was no current and current was restored at 1 am and as such he

used the torch of his mobile phone to go to the place. He testified that on reaching the place of occurrence he found Rohom Ali, Kudrat Ali, Mumtaz Ali, Nur Banu (PW-7), Akram Ali, Sofiqul Islam, Matab Ali and many other people who were standing there having lamp, saki, torch light in their hands. He testified that Matab Ali told him that his wife no.5 or 6 is missing and he came in search of her. He testified that Matab Ali is a normal person, but sometimes he acts abnormally. He testified that he first tried to contact Matab Ali's son Mainul but since he did not receive the phone call then he rang up to Akkash Ali, the brother of Matab Ali and asked him to take Matab Ali to home as Matab Ali did not want to go home from the house of Rohom Ali. He testified that before Akkash and others arrived suddenly Matab Ali fell down on the left out stump of a tree and became senseless and at that moment Rohom, Kidrat and some women put oil and ater on the head of Matab Ali. He testified that there was no blood oozing out from the body of Matab Ali. He testified that when the sons of Matab Ali asked him about the incident then he narrated the incident to them. He testified that thereafter Akkash Ali and others called 108 but it did not come then Akkash Ali informed the Haiborgaon TOP and after about 15/20 minutes police patrolling party came to the place of occurrence.

30. During cross-examination he testified that there was no land dispute in between the deceased and the accused persons.

31. DW-4 Rohom Ali (accused) testified that one of the wife of Matab Ali lives at town and rest 4-5 wives could not stay with Matab Ali as Matab Ali used to assault them. He testified that the last wife left Matab Ali two and half years ago before the incident and since then Matab Ali searched for his wife in the village specially at night. He testified that about three and half years ago. He testified that Matab Ali asked him about his wife as he thinks that his wife is taking shelter in his house. That hearing this exchange of words Nur Banu (PW-7), Safikul, Akram (PW-3), Kitab Ali, Siraj Master (DW-3) Akbor (DW-1) came to the place of occurrence with torch and lamps in their hands as there was no current at that time. He testified that Siraj Master also questioned Matab Ali as to why he came out at night the Matab Ali replied that he is searching for his wife as she is in his house. He testified that he informed the sons of Matab Ali and as the sons did not come then he informed the brother of Matab Ali to take Matab Ali to his house. At that time suddenly Matab Ali fell down on the ground with the back side of his head. That the place where Matab Ali fell down was some boulders and a stump of a tree. That thereafter Matab Ali lost his sense. He testified that at that moment Akkash Ali, Aminul and Nurul Haque came and lifted him to the road side and laid him before a shop. He testified that later police came and took Matabl Ali to the hospital.

32. During cross-examination he testified that Matab Ali has 25/26 bighas of

land where he used to cultivate by some labourers.

33. Mr. P. Kataki, learned Senior Counsel submits that although it has been the testimony of some of the prosecution witnesses that the appellants had severely assaulted the deceased with a heavy object (wooden batam), the post-mortem report did not show up any external injury and in fact, the only internal injury suffered by the deceased was a fracture of the skull, and further to that, there was no external injury on the head either. Furthermore, even the inquest report did not indicate any external injury. In view of the same, the testimonies of the aforesaid PWs cannot be believed, and they must be regarded as totally unreliable witnesses.

34. It is vehemently contended that the deceased, who was aged above 50 years, had died by falling on the ground, and this possibility cannot be ruled out as the Medical Officer (MO), who was examined as PW-4, stated in his cross-examination that the injury sustained by the deceased could be caused by falling on a hard substance.

35. Mr. A. M. Bora, learned Senior Counsel submitted that the testimonies offered by the prosecution witnesses contradicted to each other. Learned Senior Counsel further submitted that the prosecution may take alternative stands at the stage of framing of charge as to how the incident occurred, but at the end

of the trial, the prosecution must succeed in showing that the occurrence took place in one and only one manner. In other words, the prosecution cannot resort to alternative stands as to how the death of the deceased took place.

36. In this regard, learned Senior Counsel has pointed out that PW-1, PW-2 and PW-5, who are the sons of the deceased, have testified that they saw some of the appellants assaulting the deceased with a heavy wooden object. However, PW-3, Akram Ali, who lived very near to the place of occurrence, deposed that upon hearing halla outside his house, he went near the house of Raham Ali and found the deceased. When two persons in the crowd asked him why he had come, the deceased replied that he was searching for his wife and thereafter, he suddenly fell down on the ground, whereafter, the sons of the deceased came, attended to their father, and took him away. Since this prosecution witness was not declared hostile and neither was any prayer made by the prosecution in that regard, the evidence of the said PW stands alongside the evidence of the other PWs. Thus, the evidence of the said PW points to a manner of occurrence that is completely at variance with the one deposed to by PW-1, PW-2 and PW-5, who are the sons of the deceased.

37. PW-7, Nur Banu, had testified that she proceeded to the place of occurrence upon hearing halla and saw the deceased lying on the ground,

whereupon she and others treated him by pouring water on his head and though declared hostile, her aforesaid testimony was not contradicted by the prosecution.

38. Referring to the evidence of the DWs as well as that of PW-3, it is submitted that the deceased was a mentally disturbed person who frequently went out in search of his two wives who had deserted him. Despite having other wives and sons, he did not reside with them, but stayed alone in a separate house, and from the prosecution evidence itself, it emerges that his sons used to take food to him daily. Therefore, the version of PW-3 that on the night of the incident, the deceased had gone out looking for his wife, fell down, and sustained the fatal injury is a possible and plausible one. In any event, such a possibility cannot be ruled out, particularly in light of the medical evidence indicating a single internal injury to the head, which, as per expert opinion, could be caused by a fall.

39. Learned Senior Counsel further submitted that the version offered by PW-1, PW-2, and PW-5 have been subsequently developed, inasmuch as, the occurrence took place on the night of 11.08.2014 at around 9:30 PM, whereas, the FIR was lodged the next evening at around 7:30 PM, and there is no explanation for the said delay. While it is true that the deceased was the father

of the informant, it is reflected in the evidence that he was already dead when he arrived at the hospital and therefore, there was no question of the informant and the other sons and relatives of the deceased being busy in the treatment of the deceased. Therefore, the learned Senior Counsel submits that there has arisen sufficient doubt regarding the testimony of the prime prosecution witnesses, and therefore, it would be unsafe to sustain the conviction of the appellants based on the evidence on record.

40. Mr. F. Haque, learned counsel appearing for the appellant Abul Hussain in Criminal Appeal No. 255 of 2023, submits that prosecution witnesses PW-1, PW-2, and PW-5 have referred to the assailants as the sons of Idris Ali, whereas the appellant Abul Hussain is the son of one Samiruddin and besides that the appellant, Abul Hussain has not been named by any of the PWs as one of the assailants; therefore, his conviction is wholly unsustainable.

41. Learned Additional Public Prosecutor has reiterated the prosecution's stand that the testimonies of the prosecution witnesses, particularly PW-1, PW-2, and PW-5, whose testimonies are corroborated by their statements recorded before the Magistrate under Section 164 Cr.P.C., considered alongside the medical evidence, have clearly established the prosecution case and the guilt of the appellants.

42. A perusal of the impugned judgment indicates that the learned Trial Court, while discussing the evidence on record, simply went by the medical evidence to form the view that the deceased was assaulted on his head by blunt weapons, but failed to take into account the complete absence of any external injuries on the person of the deceased despite being allegedly struck with heavy wooden objects, although the said point was urged during the arguments by the learned defence counsel before the learned Trial Court, which fact is also reflected in the impugned judgment itself. The learned Additional Public Prosecutor during the hearing of the appeal could not offer any plausible explanation for the same.

43. Furthermore, we find sufficient force in the submissions of the learned Senior Counsels to the effect that the witnesses have given different versions of the same occurrence inasmuch as, the PW-3, who was not declared hostile and whose presence at the place of occurrence is not denied has clearly stated that the deceased fell down and lost consciousness, which aligns with the medical opinion, whereas, the version given by PW-1, PW-2, and PW-5 that the deceased was subjected to an assault with heavy objects is totally contradicted by the said medical findings. Therefore, the defence version of the events, adduced through four numbers of defence witnesses, appears to be more plausible. It is settled law that when there are two possible views, one pointing to the guilt of the accused and the other pointing to his innocence, the view

favorable to the accused must be adopted. In the present case, a reasonable doubt has been created as to whether the appellants had caused the death of the deceased and as such, we find that the Prosecution has not been able to prove the guilt of the appellants beyond all reasonable doubt.

44. We also find merit in the submission of the learned counsel for the appellant in Criminal Appeal No. 255 of 2023 that he has not been implicated by name by any of the witnesses.

45. In view of what has been discussed above, we find the impugned judgment to be unsustainable and accordingly, the same is set aside. The appellants are accordingly acquitted of the charges framed against them, by giving them the benefit of doubt. Both the appeals stands allowed. The appellants be set at liberty forthwith.

46. Send back the Trial Court Records (TCR).

JUDGE **JUDGE**

Comparing Assistant