

IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

**C.R.A 51 of 2017**

**Abu Fazel Fakir & Ors**

**Vs.**

**The State of West Bengal**

**With**

**C.R.A 18 of 2017**

**Salam Mallick**

**Vs.**

**The State of West Bengal**

For the Appellants: Mr. Imtaz Ahmed, Adv.

For the State: Mr. Ranabir Ray Chowdhury, Adv.,  
Ms. Faria Hossain, Adv.,  
Mr. Sandip Chakrabarty, Adv.

Heard on: 23 November, 2021.

Judgment on: 29 March, 2022.

**BIBEK CHAUDHURI, J. : –**

1. These two appeals arise from the judgment and order of conviction and sentence passed in Sessions Trial No.418 of 2017; namely, Abu Fazel Fakir, Sakina Khatun, Ashma Begum, Sahanara Begum, Rausan Fakir, Sajehar Fakir, Mojehar Fakir, Sahida Begum.

2. The appellants in CRA 51 of 2017, were convicted for committing the offence under Section 324/34 of the IPC and sentenced to suffer imprisonment for two years each with fine and default clause.

3. The appellant, namely, Salam Mallick in CRA 18 of 2017 was convicted for the offence punishable under Section 304-(II)/324/34 of the IPC and sentenced to suffer simple imprisonment for three years with fine and default clause for the offence punishable under Section 304-(II)/34 of the IPC. The appellant also suffered punishment with simple imprisonment for two years with fine and default clause for the offence punishable under Section 324/34 of the IPC in Sessions Trial No.418 of 2009 by the learned Additional Sessions Judge, Uluberia, Howrah.

4. The appellants in both the appeals faced trial under the charge of Sections 341/326/323/506 and 304-(II)/34 of the IPC on the basis of a charge-sheet filed against them upon a written complaint submitted by one Noor Jahan Khatun with the officer-in-charge, Shyampur P.S on 15<sup>th</sup> May, 2008. In the written complaint, it is alleged by the de facto complainant that on 15<sup>th</sup> May, 2008 at about 1.30 pm her grand-father, Amantu Fakir was going to take bath in a pond near Kalitala, Pichaldaha. At that time, accused Nazir Fakir asked her grand-father as to why he had cast his vote to a rival political party. Nazir Fakir also wrongfully restrained him on his way to pond and abused him with filthy language. When Amantu Fakir raised protest against the said abusive language of Nazir Fakir, later assaulted Amantu with a stick. In the mean time, other accused persons namely Abu Fazal Fakir, Rausan Fakir, Nasir Fakir,

Sajehar Fakir, Mojehar Fakir, Sakina Begum, Ashma Begum, Sahida Begum, Sahanara Begum and Ananuara Begum assembled at the place of occurrence and assaulted Amantu Fakir, Nader Kazi, Rustam Kazi Fakir, Saddam Kazi Fakir, Ruksana Khatun, Afsar Kazi Fakir and Rahima Begum seriously. They were medically treated in the local hospital. Amantu Fakir and Saddam Kazi were referred to bigger hospital for proper medical treatment.

5. During investigation of the case Saddam Hossain @ Saddam Kazi Fakir succumbed to his injury on 17<sup>th</sup> May, 2008.

6. During trial, prosecution examined as many as 17 witnesses. Amongst them the de facto complainant deposed in the trial court as PW1. PW2 is one Motiyer Rahaman who is the scribe of the written complaint. PW3 Amantu Fakir. PW.4 Rahima Begum and PW5 Rustam Kazi Fakir are the injured eyewitnesses. PW6 Jahadul Islam, and PW7 Mujibor Fakir also claimed to be the eyewitnesses of the occurrence. PW7 brought his father Amantu Fakir and four other injured persons to the hospital. PW8 Kazi Abdul Kader is a witness to the seizure of certain articles from the place of occurrence. PW13 Dr. Gautam Sarkar was posted as Medical Officer at Jhumjhum Block Primary Health Center. On 15<sup>th</sup> May, 2008, he medically examined one Saddam Fakir who had defused swelling on left temporal region of head with a history of assault by one Nazir Fakir. PW9 Dr. Sagarika Bhattacharya was a Medical Officer attached to N.R.S Medical College and Hospital. On 16<sup>th</sup> May, 2008, she examined injured Saddam Hossain who was referred to the hospital from

Uluberia Sub-Divisional Hospital. The injury report prepared by PW9 and PW11 were marked exhibits during trial of the case. Remaining witnesses except PW13, PW15, PW16 and PW17 are police personnel. PW13, PW15, PW16 and PW17 are Medical Officer including the Autopsy surgeon.

7. At the outset let me record that charge as aforesaid were framed against 10 accused persons. Amongst them accused Nasiruddin Fakir was acquitted from the charge by the learned Judge in the court below. From the evidence of the de facto complainant and other witnesses, viz., PW2 to PW5 it is ascertained that the incident dated 15<sup>th</sup> May, 2008 was an outcome of political rivalry between supporters of two rival political parties. It is further ascertained that Amantu Fakir was a supporter of CPIM, while the accused persons were supporters of TMC.

8. The de facto complainant was examined in this case as PW1. She stated in her evidence that on the date of occurrence at about 11.30/12 noon his grand-father was going to take bath. At that time accused Nazir Fakir obstructed him and abused him with filthy language. When the grand-father of the de facto complainant, namely, Amantu Fakir raised protest and asked Nazir as to why he was abusing him, Nazir asked him as to why he had cast vote in favour of CPIM. During such altercation between Amantu Fakir and Nazir Fakir other accused persons, namely, Abu Fazel Fakir, Mojehar Fakir, Salehar Fakir, Salam Mallick, Saiful Mallick, Nasir Fakir, Rausan Fakir, Sakina Begum, Asma Begum, Sahida Begum and Sahanara Begum rushed to the spot being armed with lathi and sword and assaulted him. The family members of Amantu, namely,

Nader Fakir, Rustam Kajir Fakir, Afsar, Saddam Fakir, Rahima Begum, Ruksana Khatun also rushed to the spot but the accused persons assaulted them with lathi, iron rod and sword all of them sustained bleeding injury. They were medically treated in the local hospital. Amantu Fakir and Saddam Hossain were referred to Uluberia hospital. During cross examination of PW1 it was suggested that Amantu Fakir and other injured persons of this case assaulted some of the accused persons on the selfsame date at about 10.30 am and ransacked the house of the Jahangir Fakir which the de facto complainant denied PW3 Amantu Fakir is one of the injured persons. He corroborated the evidence of the de facto complainant. It is found from his evidence that on the date of occurrence at about 11.30/12 noon when he was going to take bath, Nazir Fakir prevented him and assaulted him on his head with a mugur like article (a bamboo made hammer mainly used to break chunks of earth) due to political rivalry. As a result of assault he sustained bleeding injury on his head. He raised hue and cry and immediately other accused persons came out from their house with lathi, iron rod, sword etc on their hands. Salam Mallick and Bubai Mallick also joined with the accused. The family members of Amantu Fakir also rushed to the spot to save him but the accused persons assaulted them causing bleeding injury on their persons. PW3 specifically stated that Salam Mallick assaulted Saddam Hossain with a lathi. Saddam fell down on the ground. Then Bubai Mallick and Nazir Fakir also assaulted him with a lathi and mugur like substance. The injured persons were medically treated. PW3 and Saddam Hossain

were referred to Uluberia S.D Hospital. From Uluberia S.D Hospital Saddam was referred to N.R.S Medical College and Hospital, Calcutta and he succumbed to his injury. From his cross examination, it is found that accused Salam Mallick was a leader of TMC in their locality at the relevant point of time.

9. PW4 Rahima Begum is another injured witness who corroborated the evidence of PW3 in her examination in chief. She further stated that she along with others came to the place of occurrence to save Amantu Fakir from the hands of the accused persons but she was assaulted by the accused persons causing bleeding injury to her. Deceased Saddam Hossain was his son.

10. PW5 Rustam Kazi Fakir is the elder brother of deceased Saddam Hossain. In his examination in chief he stated on oath that Salam Mallick assaulted his brother Saddam Hossain with the help of a lathi. As a result of assault Saddam fell down. Then Nazir Fakir and Bubai Mallick started assaulting Saddam. Thereafter they also assaulted Afsar Ali, Nader Kazi Fakir, Ruksana and Rahima Khatun the injured persons were taken to the local hospital. After initial medical support Amantu Fakir and Saddam was referred to Uluberia S.D Hospital thereafter Saddam was referred to N.R.S Medical College and Hospital, Calcutta as his physical condition was deteriorating. On the next day, at about 10 pm Saddam succumbed to his injuries. The witness admitted in his cross examination that the accused persons also filed a criminal case against them and the said case is still pending. PW6 Jahadul Islam also corroborated the evidence of

witnesses on behalf of the prosecution regarding the incident that took place on 15<sup>th</sup> May, 2008. It is found from his evidence that accused Nazir Fakir assaulted Saddam Hossain on his head with a bamboo. Saddam Hossain and Amantu Fakir received bleeding injury and they were taken to hospital. On the next date of occurrence Saddam Hossain expired at N.R.S Medical College and Hospital. From his cross examination it is found that police seized one *mugur* from Kalitala. The said Kalitala is at a walking distance of one or two minutes from the house of the witnesses. There are 10-15 houses in between the house of PW6 and Kalitala. PW7 Mujibor Fakir is the son of Amantu Fakir. According to him, he took his father and four injured persons to the local hospital for medical treatment. Saddam Hossain was then taken to Jhumjhumi Hospital by his mother. Amantu Fakir and Saddam Hossain were referred to Uluberia S.D Hospital. Thereafter Saddam was referred to N.R.S Medical College and Hospital where he succumbed to his injury on the next date of occurrence. He specifically stated that accused Salam Mallick assaulted Saddam on his head with a lathi.

11. Thus, from the evidence of the eyewitnesses, it is ascertained that Nazir Fakir, Mojehar Fakir, Abu Fazel Fakir, Salehar Fakir, Salam Mallick, Saiful Mallick, Nasir Fakir, Rausan Fakir, Sakina Begum, Ashma Begum, Sahida Begum and Sahanara Begum were the assailants of Amantu Fakir, Saddam Hossain, Rahima Khatun, Ruksana Khatun and Afsar Ali. The injury report prepared by Dr. Bhudeb Mondal who medically treated the injured persons on 15<sup>th</sup> May, 2008 at Kamalpur

Block Primary Health Centre for the first time was marked as exhibit-9 collectively. The said Dr. Bhudeb Mondal deposed during trial as PW15. On examination he found following injuries on the person of PW3 Amantu Fakir:-

- (i) Fresh lacerated wound over left parietal region, length approximately 2 and  $\frac{1}{2}$ " x 1 and  $\frac{1}{2}$ ".
- (ii) Lacerated wound over frontal parietal region, measuring about 2 and  $\frac{1}{2}$ ".
- (iii) Lacerated wound over occipital region of scalp length 1 and  $\frac{1}{2}$ ".

All the wounds were stitched by PW15 and he was referred to Uluberia S.D Hospital. According to the patient party, Amantu Fakir was assaulted by Nazir Fakir, Abu Fazel Fakir and Sajehar Fakir.

12. PW15 also medically examined Sk. Rustam Ali and found the following injuries:-

- (i) Fresh lacerated wound over left forearm, length 1" x  $\frac{1}{2}$ ".
- (ii) Abrasion over right side of back.

The injury No.1 was stitched by the Medical Officer. According to the patient he was assaulted by sharp metallic weapon by the above named accused persons who assaulted Amantu Fakir.

13. PW15 also examined another injured namely, Sk. Nader Ali who suffered the following injuries in the said incident:-



- (i) Fresh lacerated wounds over right parietal region of scale measuring about 2" x ½ ". The said injury was stitched.

14. PW15 also medically examined SK. Afsar Ali who received the following injury on his person in the same incident by the above named accused persons:-

- (i) Fresh lacerated wounds over frontal bone of scalp measuring about 2" x ½ ". The said injury was stitched.

15. PW15 also medically examined Rupsana Khatun who suffered the following injury on her person in the said incident by the above named accused persons:-

- (i) Fresh lacerated wounds over frontal bone along mid line sagital suture, measuring 1 and ½ " x 1 and ½ ". The said one was stitched.

16. Mr. Imtaz Ahmed, learned Amicus Curie on behalf of the appellant submits at the outset that the alleged incident which took place on 15<sup>th</sup> May, 2008 at about 11.30/12 noon was an outcome of political rivalry between the two groups of people of the same village. The de facto complainant and her relatives were the supporters of CPIM, while the accused persons were supporters of TMC. It is found from the cross examination of the witnesses that on the previous day of the incident there was Panchyat Election. According to the prosecution case, quarrel broke out between the parties over the issue of casting vote. It is also found from the cross examination of the witnesses on behalf of the

prosecution that the accused persons lodged a complaint of criminal trespass, physical assault and other offences against the de facto complainant and the witnesses that took place allegedly on the same date at about 10.30 am. Thus, it is contended by the learned Advocate for the appellants that as a result of political rivalry and due to the fact of existence of counter case, it was not safe to hold the accused persons guilty for committing offence under Section 324/34 of the IPC.

17. It is also submitted by Mr. Ahmed that the evidence against accused Salam Mallick who was convicted under Section 304-(II)/34 of the IPC is full of contradictions and the learned trial judge committed gross error in convicting the accused Salam Mallick for committing offence under Section 304-(II)/34 of the IPC.

18. Secondly, it is pointed out by Mr. Ahmed that PW2 Motiyer Rahaman was a local leader of CPIM. At the relevant point of time he was the pradhan of the Gram Panchyat of the said locality. He being the scribe of the FIR, it is reasonably presumed that the said Motiyer Rahaman was the mastermind in filing a complaint against the accused persons. Thirdly, it is argued by Mr. Ahmed that the witnesses admitted that during the incident the accused persons not only assaulted the injured witnesses, but also pelted bricks towards them. PW15 Dr. Bhudeb Mondal admitted during cross examination that similar type of injury which he found over the person of Amantu Fakir, Rustam Ali, Sk. Nader Kazi might be caused being hit by bricks in course of pelting of bricks. Therefore, it is not proved beyond all shadow of doubt that the above named persons

received injury being assaulted by the accused persons. So, it was unsafe for the learned trial judge to record conviction against the appellants. Mr. Ahmed has next urged that PW14 Nikunja Behari Das was the first Investigating Officer of the case. During investigation, he seized one bamboo made mugur, one iron made sword, one old scarf (orna) stained with blood, one old used check lungi stained with blood and one burnt wood by under a seizure list in presence of witnesses. The bamboo made mugur and sword were not sent to the forensic expert to ascertain as to whether there was any finger print of any of the accused persons/appellants or not. In the absence of such evidence it cannot be specifically held that the accused persons committed offence under which they were charged.

19. Thus, it is submitted by Mr. Ahmed that where the genesis of occurrence was suppressed by the prosecution on behalf of the prosecution and the accused persons was absolutely inimical and the evidence of the eyewitnesses, including injured witnesses did not at all inspire confidence in view of the conflict and contradiction between each other, the accused persons were entitled to get benefit of doubt. It is further submitted by the learned Advocate for the appellant that when PW15 clearly stated that the injuries received by the injured persons might be caused on being hit by bricks, the accused persons were entitled to get an order of acquittal because from the evidence it is found that two view are possible, one for acquitting the accused person and other for convicting them. In such a situation rule of prudence should guide this

court to pass an order of acquittal of the appellants. In support of his contention he refers to a decision of the Hon'ble Supreme Court in **Mahendra Pratap Singh vs. State of Uttar Pradesh** reported in **(2009) 11 SCC 334**. On the point of contradiction and discrepancy between medical evidence and ocular testimony the learned Counsel for the appellants relies upon the decisions of the Hon'ble Supreme Court in **Chandu vs. State of Maharashtra : (2002) 9 SCC 408, Brijpal Singh vs. State of M.P : (2003) 11 SCC 219**.

20. Learned P.P-in-Charge on the other hand, submits that FIR was lodged in the instant case on the following date of occurrence. In the written complaint it is stated on 15<sup>th</sup> May, 2008 during noon when Amantu Fakir was going to take bath in a pond. He was obstructed by Nazir Fakir on the road near Kalitala @ Pirtala. Thereafter, Nazir Fakir abused Amantu Fakir over the issue of casting vote. He also assaulted Amantu Fakir with stick. When Amantu Fakir protested, other accused persons came to the spot being armed with lathi, iron rod, sword, knife etc. All the accused persons assaulted Amantu Fakir, Nader Kazi, Nader Kazi, Rustam Kazi Fakir, Saddam Kazi, Saddam Hossain, Ruksana Khatun, Afshar Ali and Rahima Begam. The prosecution case was fully corroborated by the de facto complainant (PW1), Amantu Fakir (PW3), Rahima Begum (PW4), Rustam Kazi Fakir (PW5), Jahadul Islam (PW6), Mozibur Fakir (PW7). From the evidence of PW15 Dr. Bhudeb Mondal it transpires that Amantu Fakir, Sk. Rustam Ali, Sk. Nader Ali, Sk. Afsar Ali

and Ruksana Khatun received bleeding injury on their persons. The wounds of the injured persons were stitched by PW15.

21. It is submitted by the learned P.P-in-Charge that the testimony of the injured witnesses as its own efficacy and relevancy. The fact that the witness sustained injuries on his body when they would show that he was present at the place of occurrence and has seen the occurrence by himself. Therefore, generally the evidence of injured witness should not be discarded in the absence of convincing evidence from the side of the accused persons. PW3 stated in his evidence that he was first assaulted by Nazir Fakir on his head with a mugur like substance. Then other accused persons armed with lathi, iron rod, knife etc attacked him. Then Salam Mallick and Bubai Mallick also joined with the accused persons. Deceased Saddam, Rustam, Rahima, Nader and Afsar rushed to the spot to save PW3 but the accused persons also assaulted them. Salam Mallick assaulted Saddam Hossain with a lathi. Saddam fell down on the ground then Bubai Mallick and Nazir also assaulted him with a lathi and mugur like substance. Other injured witnesses corroborated the evidence of PW3 in course of their deposition. Therefore, there is no reason to disbelieve the evidence of the eyewitnesses. The ocular testimony of the eyewitnesses was corroborated by the evidence of the Medical Officer. And therefore they were rightly convicted by the learned trial judge. According to the learned P.P-in-Charge there is no reason to take an alternative view in the instant appeal.

22. Evidence of the injured eyewitnesses was doubted by the learned Counsel for the appellant on the ground that the injured persons and the accused persons had political rivalry and a counter case was lodged against the injured witnesses also. It was also submitted by the learned Amicus Curie for the appellant that the witnesses on behalf of the prosecution might be injured as a result of pelting of bricks. However, during trial, the accused persons failed to produce any document to show the existence of counter case against the de facto complainant and the witnesses.

23. I have already discussed the evidence of PW3. PW4 another eyewitness who stated on oath that hearing the hue and cry of PW3 the family members of Amantu Fakir, namely Rustam Kaji Fakir, Saddam Kaji, Rahima Begum (PW4), Nader Kaji Fakir, Sk. Afsar Ali, Ruksana Khatun came out of their house and they saw that Nazir Kaji, Abu Fazel Fakir, Mozahar Fakir, Sazehar Fakir, Rousan Fakir, Nasir Fakir, Salam Mallick, Bubai Mallick, Ashma Begum, Sakena Begum, Sahida Begum, Sahanara Begum were assaulting by PW3. When they reached the place of occurrence the said accused persons also assaulted them with lathi, iron rod and knife as a result they sustained bleeding injury. Salam Mallick assaulted Saddam Hossain on his head with a lathi as a result of which he fell down. Nazir Fakir and Bubai Mallick also assaulted Saddam with lathi. The injured persons raised hue and cry then the accused persons fled away. PW4 took Saddam Hossain to Jhumjhum Hospital but doctor referred him Uluberia Hospital. From Uluberia S.D Hospital he was

referred to N.R.S Medical College and Hospital where he succumbed to his injuries on the next day. PW4 Rahima Bigum is the mother of Saddam Hossain. This Court does not find any reason to disbelieve the evidence of PW4 on the ground that due to political rivalry PW4 would implicate some persons other than the real culprits who caused death of her son. The evidence of PW5 also corroborates on all material particulars the evidence of PW3 and PW4. In his examination in chief he stated that seeing the accused persons assaulted Amantu Fakir, he first rushed to the spot but Nazir Fakir assaulting him on his back with a sword. Blood stain sword was recovered from the place of occurrence by PW14. It is true that the said weapon was not sent to the forensic science laboratory for examination, but for this reason, the evidence of Rustam Kaji Fakir cannot be discarded. PW6 Jahadul Islam is a disinterested witness of the locality. He supported the prosecution case in all material particulars. PW7 Muzibor Fakir is the son of PW3 Amantu Fakir. He is an eyewitness and corroborated the evidence of the injured witness. PW8 Kaji Abdul Kader proved the seizure list of a mugur made of bamboo, one knife, one blood stain scarf (orna) and one stripe lungi from the place of occurrence in his presence.

24. It is ascertained from the trend of cross examination that the learned defence counsel in the trial court engaged himself mainly to cross examine the witness to establish that deceased Saddam Hossain was not assaulted by Salam Mallick and he is not an accused under the charge of Section 304(II) of the IPC. There was however, little cross examination

regarding the involvement of the accused persons in assaulting Amantu Fakir and four other relatives of Amantu.

25. From the evidence on record, presence of injured witnesses at the place of occurrence and witnessing the incident does not raise any doubt in the mind of this court. However, on careful perusal of the evidence of the eyewitnesses it is found that during evidence they stated the names of Nazir Fakir, Salam Mallick and Bubai Mallick as the perpetrator of specific assault upon deceased Saddam Hossain. PW3 Amantu Fakir stated on oath that he was first assaulted by Nazir Fakir and then other accused persons also assaulted him. Before the Medical Officer the injured Amantu Fakir stated the names of Nazir Fakir, Abul Fazal Fakir, Sezeher Fakir as his assailants. He received four numbers of bleeding injuries on different parts of his head. Other injured witness also stated the names of the above named persons before the Medical Officer.

26. Therefore, a reasonable question falls for adjudication as to whether the learned trial judge was correct in convicting all the appellants taking aid of Section 34 of the IPC.

27. It is well known that to establish the common intention of several persons so as to attract the mischief of Section 34 of the IPC, the following two fundamental facts have to be established; (i) common intention to commit an offence, and (ii) participation of the accused in commission of the offences. If the above two ingredients are satisfied, even overt act on the part of some of the persons sharing the common intention was held to be not necessary. A finding that the assailant concerned had a common



intention with the other accused is necessary for taking resort to Section 34. In other words, to attract Section 34 of the IPC, it is not necessary that each one of the accused must assault the injured persons. It is enough if it is shown that they shared a common intention to commit the offence and in furtherance thereof each one played his assigned role by doing separate acts, similar or diverse. The facts of this case are eloquent and the role played by the accused persons preventing PW3 Amantu Fakir from going to the pond to take bath, assaulting him and his relatives when they came to the spot to save Amantu Fakir has been proved beyond any shadow of doubt. Therefore, the learned trial judge rightly held that all the accused persons took part in causing physical assault to the injured witnesses and they acted pursuant to a pre-arranged plan. The facts clearly are consistent only with the hypothesis of their acting in furtherance of a common intention. They have, therefore, rightly been convicted with the aid of Section 34 of the IPC.

28. The learned trial judge convicted all the appellants under Section 324/34 of the IPC, while accused Salam Mallick was convicted also for committing offence under Section 304(II) of the IPC for causing culpable homicide not amounting to murder of Saddam Hossain.

29. It is found from the evidence of the eyewitnesses that Saddam Hossain was first assaulted on his head by Salam Mallick and he fell down on the ground. Then Nazir Fakir and Bubai Mallick also assaulted him with the help of lathi and iron rod on his head. It is ascertained from the evidence of PW9 Dr. Sagarika Bhattacharya who examined Saddam

Hossain at N.R.S Medical College and Hospital that at the time of his examination, the patient was totally unconscious, pulse was not palpable, blood pressure could not be recorded, pupil was dilated, almost fixed and heart song was very occasionally audible. From the post-mortem report it is found that he had one stitched up injury over left parietal region, left parietal and temporal region, subdural hemorrhage over both cerebral hemisphere, intra cerebral hemorrhage with clot over right parietal lobe. All the injuries showed evidence of vital reaction and the patient died due to the effects of head injury, antemortem in nature. From the evidence on record it is found that he received at least four injuries on different parts of his head and he was not assaulted alone by Salam Mallick. He was also assaulted by Nazir Fakir, Bubai Mallick and according to the injury report Sezhar Fakir and seven and eight others. Therefore, this Court is not in a position to hold conclusively as to who gave the fatal blow to Saddam Hossain causing his death. Therefore, Salam Mallick could not be convicted alone under Section 304-(II) of the IPC. Therefore, Salam Mallick, the appellant of Criminal Appeal No.18 of 2017 is entitled to get benefit of doubt and the learned trial judge ought to have passed an order of acquittal of the charge under Section 304-(II) of the IPC.

30. For the reasons stated above the appellants in CRA 51 of 2017 namely, Abu Fazel Fakir, Sakina Khatun, Ashma Begum, Sahanara Begum, Rausan Fakir, Sajehar Fakir, Mojehar Fakir, Sahida Begum were rightly convicted under Section 324/34 of the IPC.

31. Appellant Salam Mallick in CRA 18 of 2017 is entitled to be acquitted of the charge under Section 304(II)/34 of the IPC.

32. However, the order of conviction passed against him by the court below under Section 324/34 of the IPC stands.

33. Now comes the question of sentence. The incident took place in the year 2008. The appellants are facing trial before the learned court below and also in this court for last 14 years. They have suffered tremendous mental agony during these years with pendency of a criminal case on their head. All the appellants are villagers, mostly maintain their livelihood as agricultural labourer. Some of the convicts are village housewives. The appellants do not know the intricacies of political ideology they become supporters of different political parties without having any knowledge about politics. They are practically preys and pawns in the hands of political powers.

34. Therefore, for the offence punishable under Section 324/34 of the IPC this Court is of the view that the accused persons shall be adequately punished if they are sentenced to suffer simple imprisonment of one year with fine of Rs.1000/- in default to undergo further simple imprisonment for three months each for the offence under Section 324/34 of the IPC.

35. The appellants in CRA 51 of 2014 and CRA 18 of 2017 are sentenced accordingly.

36. The CRA 51 of 2017 is dismissed on contest. CRA 18 of 2017 is partly allowed on contest and conviction and order of sentence passed

against the appellant Salam Mallick under the charge of Section 304(II)/34 of the IPC is set aside.

37. Period of detention of the appellants in custody during investigation, trial and hearing of the appeal, if any shall be set off against the actual period of sentence of imprisonment in terms of Section 428 of the Code of Criminal Procedure.

38. Before I part with, I acknowledge of the serious effort of the learned amicus curie in assisting the hearing of the appeal on behalf of the appellants. The court appreciates his endeavour.

39. Let a copy of this judgment be handed over to the appellants duly signed by the ACO of this Court free of cost.

40. Let a copy of this judgment be sent to the court below with the lower court record.

**(Bibek Chaudhuri, J.)**