GAHC010183732019

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

Case No. : Crl.A./311/2019

SMT. DIPANJALI BORGOHAIN AND 2 ORS.

2: SHRI LILA GOGOI

3: SHRI JATIN DOWARI

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

For the appellants : Mr. A.K. Das …. Advocate.

For the respondent : Ms. S. Jahan …. Additional PP, Assam.

Linked Case : **Crl.A./305/2019**

MUHI HANDIQUE

VERSUS

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

2:AHMED ALI

For the appellant : Mr. D.K. Bhattacharyya …. Advocate.

For the respondent : Ms. S. Jahan …. Additional PP, Assam.

Linked Case : **Crl.A./365/2019**

SRI HEMEN GOGOI

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P.
ASSAM.

2:AHMED ALI

For the appellant : Mr. A. Khanikar …. Advocate.

For the respondent : Ms. S. Jahan …. Additional PP, Assam

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of hearing : 28.07.2023.

Date of judgment : 24.08.2023.

JUDGMENT AND ORDER (CAV)

(M. Zothankhuma, J)

Heard Mr. A.K. Das, learned counsel for the appellant in Criminal Appeal No.311/2019; D.K. Bhattacharyya, learned counsel for the appellant in Criminal Appeal No.305/2019 and Mr. A. Khanikar, learned counsel for the appellant in Criminal Appeal No.365/2019. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the respondents.

2. The appellants have filed the above three appeals under Section 374(2) Cr.P.C. against the judgment dated 04.07.2019 passed by the learned Sessions Judge, Dhemaji in Sessions Case No.127(DH)/2011 arising out of Dhemaji P.S. Case No.202/2004. The appellants Smt. Dipanjali Borgohain, Shri Lila Gogoi and Shri Jatin Dowari in Criminal Appeal No.311/2019 and appellant Muhi Handique in Criminal Appeal No.305/2019 have been convicted and sentenced under :- (i) Section 302 IPC read with Section 120B IPC; (ii) Section 323 IPC read with Section 120B IPC; (iii) Sections 3(a) and 4(b)(i) of the Explosive Substances Act read with Section 120B IPC and (iv)Section 10(b)(i) and 13(1)(a) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "the 1967 Act"). The appellant Hemen Gogoi in Criminal Appeal No.365/2019 has been

convicted and sentenced under Section 10(a)(iv) and 13(2) of the 1967 Act.

3. The appellants have been convicted on the above charges in relation to a bomb blast which occurred at 8:55 a.m. on 15.08.2004 in the Dhemaji College Play Ground, where Independence Day celebrations were going on. The effect of the bomb blast killed 13 persons including 10 children on the spot, while grievously injuring 19 to 20 persons. It is the case of the State respondents that the United Liberation Front of Assam (ULFA in short), a militant outfit banned by the Government of India, had exploded a bomb in order to create an atmosphere of terror, with an aim to create an independent nation by declaring war against the State.

4. The prosecution case in brief is that an FIR dated 15.08.2004 was submitted by S.I. Ahmed Ali, Dhemaji Police Station to the Officer-in-Charge, Dhemaji Sadar Police Station, praying that an investigation should be conducted due to the bomb blast that occurred on 15.08.2004 in the Dhemaji College Play Ground, killing 13 persons and grievously injuring 19 to 20 person. In pursuant to the FIR dated 15.08.2004, Dhemaji PS Case No.202/2004 under Section 120(B)/121/121(A)/122/302/326 IPC read with Section 3/4 of the Explosive Substance Act, 1884 and Section 10/13 of the 1967 Act was registered.

5. During investigation, the Investigating Officer (I.O.) found sufficient grounds to prosecute 15 persons, including the appellants, under the charges stated in the foregoing paragraphs and accordingly requested the District Magistrate, Dhemaji to grant prosecution sanction to prosecute the 15 accused persons. After prosecution sanction was granted, charge-sheet was filed on 28.02.2011.

6. After charge-sheet was submitted, charge under Section

12(B)/302/326/323 IPC, Section 3/4 Explosive Substance Act, 1884 and Section 10 & 13 of the 1967 Act were framed against the appellants (1) Jatin Dowari @ Rangman @ Mritunjoy Gohain, (2) Lila Gogoi @ Lila Khan, (3) Smti. Dipanjali Borgohain @ Lipi (appellants in Criminal Appeal No.311/2019), (4) Muhi Handique (appellant in Criminal Appeal No.305/2019) and (5) Hemen Gogoi (appellant in Criminal Appeal No.365/2019).

7. During the trial, 58 prosecution witnesses and 2 defence witnesses were examined by the learned Trial Court. After the deposition of the witnesses and statements of the appellants were recorded under Section 313 Cr.P.C., the learned Trial Court passed the impugned judgment dated 04.07.2019 in Sessions Case No. No.127(DH)/2011. By the said impugned judgment, the learned Trial Court convicted the four appellants in Criminal Appeal No.311/2019 and Criminal Appeal No.305/2019 under:- (i) Section 302 IPC read with Section 120B IPC; (ii) Section 323 IPC read with Section 120B IPC; (iii) Sections 3(a) and 4(b)(i) of the Explosive Substances Act read with Section 120B IPC and (iv) Section 10(b)(i) and 13(1)(a) of the 1967 Act. They were accordingly sentenced to undergo (a) R.I. for life and to pay a fine of Rs.10,000/- each, in default R.I. for another 2 months each under Section 302 IPC (b) R.I for life each and to pay a fine of Rs.10,000/- each, in default R.I. for another two months each under Section 120B IPC (c) R.I for 1 year under Section 323 IPC. (d) R.I. for life each and life and to pay a fine of Rs. Rs.10,000/- each, in default R.I. for another two months under Section 10(b)(i) of the 1967 Act. (e) R.I. for five years each and to pay a fine of Rs.2,000/- each, in default R.I. for 1 month each under Section 13(1)(a) of the 1967 Act. (f) R.I. for 10 years each and to pay a fine of Rs.2,000/- each in default R.I. for one month each under Section 3(a) of the Explosive Substances Act and (g) R.I. for 10 years each and to pay a fine of

Rs.2,000/- each in default R.I. for one month each under Section 4(b)(i) of the Explosive Substance Act, 1884 .

8. The appellant in Criminal Appeal No.365/2019, i.e. Hemen Gogoi was convicted under Section 10(a)(iv) of the 1967 Act and under Section 13(2) of the 1967 Act. He was accordingly sentenced to undergo R.I. for 2 years with a fine of Rs.5,000/-, in default R.I. for 2 months under Section 10(a)(iv) of the 1967 Act. He was also sentenced to undergo R.I. for 4 years with a fine of Rs.5,000/-, in default R.I. for 2 months under Section 13(2) of the 1967 Act.

9. Being aggrieved by the impugned judgment, the appellants have filed the above three appeals.

10. Mr. A.K. Das, learned counsel for the appellants in Criminal Appeal No.311/2019 and Mr. D.K. Bhattacharyya, counsel for the appellant in Criminal Appeal No.305/2019 submit that except for the depositions of PW-55 & 56, the evidence of the other witnesses do not have any relevance, with regard to the question whether the appellants are guilty of having masterminded the bomb blast that took away the lives of 13 persons and injured 19 to 20 persons. They submit that the entire basis for convicting the appellants is the retracted confessional statement of Jatin Dowari, the appellant no.3 in Criminal Appeal No.311/2019, wherein he has made an exculpatory statement under Section 164 Cr.P.C. to the Magistrate, to the effect that ULFA cadres namely Lila Khan @ Lila Gogoi, Pintu Borah, Prafulla Bhuyan, Rashi Bharali and Neog came to his house and took him out by threatening him at gunpoint. They took him to the college gate through the front of the girls hostel and asked him to show them the college field a few days before the incident. He showed them the college field and thereafter the said persons sent him to Tiniali. After waiting for them for some time as per their instructions, he was told to escort them to a safe

passage which he did.

11. The counsels for the appellants submit that the confessional statement made by Jatin Dowari was retracted during his examination under Section 313 Cr.P.C. and as such, the learned Trial Court could have only acted on the basis of the retracted confessional statement, if there was some other corroborative evidence. There being no other corroborative evidence to link Jatin Dowari or the other appellants with the bomb blast, the learned Trial Court erred in convicting the appellants, including Jatin Dowari

12. The learned counsels for the appellants submits that a bare perusal of the impugned judgment of the learned Trial Court, goes to show that the finding of guilt made by the learned Trial Court against the appellants, was based on the statement of the witnesses under Section 164 Cr.P.C., as well as the retracted confessional statement of the appellant Jatin Dowari under Section 164 Cr.P.C. The learned Trial Court also held that the appellants had recreated the scene of the crime during police investigation, which showed that the appellant Jatin Dowari was a party to the conspiracy to commit the bomb blast. They submit that the learned Trial Court had erroneously held that from the cumulative evaluation of the evidence and materials on record, it transpired that ULFA militants planned the bomb attack at Dhemaji College field and engaged it's active members for carrying out the operation when there was no evidence to that effect. PW-56 (I/O) had recovered a mobile handset with SIM card bearing no. 9435088784 from the possession of accused Dipanjali Borgohain and Mobile handset bearing No. 9435088773 from the possession of accused Muhi Handique, with which the appellants were alleged to have used to make calls to ULFA leaders Rashid Bharali and others. Also copy of daily call report of those mobile phones had also been collected from BSNL. IO/PW-56 recovered and

seized one Maroti Car bearing Registration No. AS-07-2399 from the possession of accused Muhi Handique. The learned Trial Court, without coming to any finding as to what was the contents of the conversation made by the appellants Deepanjali Borgohain and Muhi Handique and without making any connection/link with the above articles and the bomb blast, besides keeping in view the retracted confession of the accused Jatin Dowari, held that there were also other corroborating materials regarding involvement of accused Lila Khan @ Lila Gogoi, Jatin Dowari, Muhi Handique and Dipanjali Borgohain in the bomb blast.

13. The counsels for the appellants submit that the confessional statement of Jatin Dowari was exculpatory in nature and the same having been retracted during his examination under Section 313 Cr.P.C, the same could not have been used as a basis for coming to a finding that the appellants were guilty. Further, the retracted confessional statement of Jatin Dowari does not in any manner implicate the maker or the other appellants with regard to the bomb blast which occurred on 15.08.2004. Also there is nothing in the evidence to show that Jatin Dowari had recreated the scene of the crime. They also submit that the prosecution having failed to provide any certificate under Section 65B of the Evidence Act, the alleged phone calls made from the recovered mobile handset with SIM card bearing no. 9435088784 and Mobile handset bearing No. 9435088773 to the ULFA leader Rashid Bharali and others, does not in any way connect the appellants with the bomb blast. No record of the conversation or the contents of the conversation was ever produced in Court. The alleged communication made through the above mobile handsets and SIM cards was thus inadmissible as evidence. Further, there was no proof that the appellants were members of ULFA. They also submit that while the learned Trial Court had

come to a finding that Maruti Car bearing Registration No. AS-07-2399 had been seized from the possession of the appellant Muhi Handique, the evidence of PW-56, i.e. the I.O. of the case, is to the effect that the said Maruti Car had been seized from Rubi Handique, wife of Muhi Handique, which had been alleged to be used for committing the crime. They submit that no specifics have been given as to how and when the Car had been used for committing the crime. Whether the bomb was carried in the Car or whether the appellants used the Car for the bomb blast. No details have been provided by the prosecution as to how the said Car had been used for committing the crime i.e. the bomb blast. They also submit that in the retracted confessional statement of Jatin Dowari, no mention of the appellant Muhi Handique or the Car was made. Further, if the Car had been used between 05.08.2004 and 15.08.2004 for carrying the bomb or parts of it, the Car should have been sent to the FSL for examination, which was not done. They also submit that there was nothing incriminating found in the pocket diary seized from the possession of the Muhi Handique. They accordingly submit that the entire case of the prosecution having been based on the fabricated story made up by PW-56, who is the I.O. of the case, without giving any details or making any attempt to connect the appellants with the bomb blast, the conviction of the appellants by the learned Trial Court, in the absence of evidence, is perverse. Accordingly, the conviction of the appellants in Criminal Appeal No.311/2019 and Criminal Appeal No.305/2019 should be set aside and the appellants should be acquitted of the charges framed against them.

14. The counsel for the appellant Hemen Gogoi in Criminal Appeal No.365/2019 submits that the appellant has been convicted and sentenced under Section 10(a)(iv) and Section 13(2) of the 1967 Act, in view of some

incriminating materials having been recovered from his house, i.e. a Gamocha (a white rectangular piece of cloth with a red border) and Colgate toothpaste, which did not belong to Hemen Gogoi or to his wife, Smt. Bhabani Gogoi (PW-30). PW-30 in her evidence has stated that sometime in August, 2004 some 4/5 boys had gone to their house during the absence of her husband and had threatened her that if food was not given to them they would face dire consequences. Accordingly, food was served to them. A small bag containing a Gamocha and Colgate, which did not belong to appellant Hemen Gogoi or PW-30, but belonged to the group of boys was seized by the police. The learned Counsel for Hemen Gogoi submits that there is nothing to link the appellant Hemen Gogoi with the seized Gamocha and Colgate vis-à-vis the bomb blast, inasmuch as, the 4/5 boys who had apparently eaten in his house would have to be first linked to the bomb blast. The same not having been done, there was no basis for the learned Trial Court to have convicted and sentenced the appellant under the 1967 Act.

15. The learned counsels for the appellants submit that the prosecution sanction order made under Section 45 of the 1967 Act had not been exhibited before the learned Trial Court, thereby implying that no sanction for the same had been issued. They also submit that while prosecution sanction under the Explosive Substances Act had been given for prosecuting the appellants under Section 3 & 4 of the Explosive Substances Act, the same had been exhibited as Ext-64 by the I.O. and not by the District Magistrate, who had drafted the said sanction order. They also submit that though the sanction order for prosecution under the Explosive Substances Act had been made under Section 3 & 4, the same can be read as an order made under Section 7 of the Explosive Substances Act.

16. The learned counsels for the appellants submit that in terms of the evidence given by PW-57 (I.O), which is to the effect that he handed over the Case Diary to his successor Lalit Buragohain, who thereafter collected the prosecution sanction order under the Explosive Substances Act read with Section 10 & 13 of the 1967 Act, there could not have been one prosecution sanction under both the Acts. They submit that while prosecution sanction under Explosive Substances Act would have to be given by the District Magistrate, the prosecution sanction under Section 45 of the 1967 Act would have to be given by the Central Government, or any other person authorized by the Central Government. In this case, there is nothing to show that any prosecution sanction had been issued under the 1967 Act. The appellants' counsels also submit that the Police Officer Lalit Buragohain who had submitted the charge-sheet was not examined as a prosecution witness in the learned Trial Court. As such, the appellant's could not have been prosecuted or tried in the absence of two different Prosecution Sanction orders

17. The learned counsels for the appellants further submit that the learned Magistrate, who recorded the confessional statement of Jatin Dowari under Section 164 Cr.P.C did not ask the appellant, Jatin Dowari, as to whether his confession was being made voluntarily and as such, the learned Magistrate could not have satisfied itself that the confession made by Jatin Dowari was voluntary. As the alleged confession of the appellant, Jatin Dowari was not voluntary and as it had been retracted during his examination under Section 313 Cr.P.C., the retracted confession had no value. In support of this submission, he has relied upon the judgment of the Supreme Court the case of ***Kalawati & Another vs The State of Himachal Pradesh***, reported in ***AIR 1953 SC 131***. They also submit that prior to making his confessional statement, Jatin

Dowari had not been informed that he would not be remanded/sent back to Police custody, even if he did not make a confession. In the absence of the appellant Jatin Dowari being informed of the above, his retracted confessional statement made under Section 164 Cr.PC could not have been said to be freely/voluntarily made. In support of their submission, they have relied upon the judgment of the Division Bench of this Court in the case of ***Abdul Subhan –vs- State of Assam***, reported in **2022 (4) GLT 679**. They submit that the said confessional statement, in any event, does not establish or prove any link between the appellants and the bomb blast.

18. The learned counsels for the appellants submit that as there is no prosecution sanction order exhibited in respect of the 1967 Act, no conviction of the appellants could have been made in respect of the 1967 Act. That being the case, evidence was to be led showing the involvement of the appellants in respect of the charge under Section 302 IPC. However, there being no such evidence on that issue, the appellants would have to be acquitted of the charges framed against them.

19. Ms. S Jahan, learned Additional Public Prosecutor, on the other hand submits that the appellants are members of ULFA and were responsible for the blast in the Dhemaji College Field on 15.08.2004, wherein a number of children were killed, besides many people being injured. She submits that PW-17, Smti. Tilottama Chutia, during her re-examination before the Trial Court deposed that she did not remember the contents of her statement made before the Magistrate under Section 164 Cr.P.C. In her statement before the Magistrate under Section 164 Cr.P.C., PW-17 had stated that her cousin Joya Chutia came to her house on 14.08.2004 and told her that a member of a terrorist organization, Shri Lila Gogoi @ Khan, who took refuge in Joya Chutia’s house,

had told Joya Chutia that there would be a bomb blast on 15th August at Dhemaji.

20. The Addl. Public Prosecutor also submits that the confession of the co-accused/appellant Jatin Dowari lends support to the Prosecution case that the appellants were guilty of blasting the bomb. In support of her submission that the confessional statement of a co-accused can support the Prosecution case, she has relied upon the judgment of the Supreme Court in ***Jamiluddin Nasir Vs. State of West Bengal,*** reported in ***2014 7 SCC 443*.**

21. The Addl. Public Prosecutor submits that PW-30 and 31, wives of two brothers Chandra Nath Gogoi and wife of Hemen Gogoi respectively, stated in their evidence that prior to the bomb blast, 4/5 boys, who were members of ULFA, at the point of a gun took food and stayed at their place. A bag containing a note book, a small dagger etc, was seized on 24.08.2004 from the house of Hemen Gogoi, which was left by the 4/5 boys. The bag was recovered from Hemen Gogoi's house, as stated in the evidence of PW-44, the Assistant Sub-Inspector. However, Hemen Gogoi never reported the matter to the police at any time. Further, Appellant No. 3 in Criminal Appeal No. 311/2019, i.e. Shri Jatin Dowari, in his confession recorded under Section 164 Cr.P.C., confessed that while he was in his house on 05.08.2004, members of a terrorist organization/unlawful assembly, including Sri Lila Gogoi @ Khan made him show them the college field and a safe route out of the field under threat, which he accordingly did. Further, the Magistrate who recorded the confession of Sri Jatin Dowari was examined as PW-55 and he deposed that he had followed all the guidelines prescribed, prior to recording the confession under Section 164 Cr.P.C

22. The Addl. Public Prosecutor submits that PW-41, Sri Khagen Buragohain

in his statement under Section 164 Cr.P.C., stated that one day he met one Mr. Bharali, who is a member of ULFA, who told him to tell Sri Muhi Handique, to get two forms for mobile connections and that Ext. No. 39 proved that the two forms were issued.

23. The Addl. Public Prosecutor submists that PW-32, Sri Rebot Chutia in his statement under Section 164 Cr.P.C., stated that one day his maternal aunt, whose name was Lipi Gohain and who was a member of a terrorist organization visited his house. The Additional Public Prosecutor submits that Smti. Dipanjali Borgohain is also known as Lipi, as can be seen from the statement of Dipanjali Borgohain recorded under Section 313 Cr.P.C, where she mentioned her name as Dipanjali Borgohain @ Lipi. Mobile handsets belonging to Smti. Dipanjali Borgohain and Muhi Handique were used to communicate with members of the terrorist organization/ULFA, during the time of occurrence. Further, United Liberation Front of Assam (ULFA) was declared as an Unlawful Assembly by the Central Government under section 3 of the Unlawful Activities (Prevention) Act, 1967. She accordingly submits that the above evidences showed that the appellants were guilty of having been involved and being instrumental in blasting a bomb in the Dhemaji College Field on the fateful day, killing and injuring a number of persons.

24. Ms. S. Jahan, learned Additional Public Prosecutor submits that there is no infirmity in the District Magistrate not exhibiting the prosecution sanction order made under the Explosive Substances Act, as the same had been exhibited by the I.O, to whom the prosecution sanction had been given. In respect of non-exhibiting the prosecution sanction under the 1967 Act, the learned Additional Public Prosecutor submits that the charge-sheet having categorically stated that two prosecution sanctions had been made, the non-exhibiting of the prosecution

sanction order under the 1967 Act cannot be fatal to the prosecution case.

25. The learned Additional Public Prosecutor submits that in the Form for recording a confessional statement under Section 164 Cr.P.C. made by the Guwahati High Court, to be used uniformly throughout the jurisdiction of the Guwahati High Court, there is a question which requires the person who is to make a confessional statement to answer, i.e. that he would not be sent back to police custody even if he did not confess. The Question No. (vii) that is a part of the Form for recording confessional statement under Section 164 Cr.P.C., made by the Guwahati High Court, is as follows :

"*I assure you that you will not be remanded/sent back to police custody if you do not confess. Are you clear about it* ?

Ans : ....."

Though the said question was not included in the Form used by the Judicial Magistrate, who recorded the confession of Jatin Dowari, the Additional Public Prosecutor submits that the confessional statement being voluntary, a finding/decision can be made on the basis of the same.

26. The learned Additional Public Prosecutor submits that the voluntariness of Jatin Dowari's confession having been proved by his statement in the confessional form, where it was stated that it was made on his own volition, the absence of giving any reassurance by the learned Magistrate to Jatin Dowari, that he would not be sent to the police custody if he did not make any confession, was redundant. In this respect, the learned Additional Public Prosecutor has taken us through the confessional statement Form under Section 164 Cr.P.C., which had been used by the Magistrate for recording the confessional statement of Jatin Dowari. She has specifically taken us to

Question No.4 in the said form, which is to the following effect :

"*Are you making confession on being tutored by somebody*?"

The answer to the above was as follows :

" *No. I want to make confession on my own volition*."

The learned Additional Public Prosecutor submits that the above answer given by Jatin Dowari clearly showed that the confession had been made voluntarily.

27. The learned Additional Public Prosecutor has relied on a number of judgments of the Hon'ble Supreme Court, in support of her submissions that the appellants are guilty of the offence for which they have been convicted and sentenced by the learned Trial Court. The same are as follows:-

(i) Dhanbal & Ors. vs. state of Tamil Nadu, reported in (1980) 2 SCC 84;

(ii) Tuku vs. State of Orissa, reported in MANU/OR/0026/2022;

(iii) K.I. Pavunny vs. Assistant Collector, reported in (1997) 3 SCC 721;

(iv) Trimukh Maroti Kirkan vs. State of Maharashtra, reported in (2006) 10 SCC 681;

(v) Keshoram Bora vs. State of Assam, reported in (1978) 2 SCC 407;

(vi) Kehar Singh & Ors. vs. State (Delhi Administration), reported in (1988) 3 SCC 609; and

(vii) Jamiluddin Nasir vs. State of West Bengal, reported in (2014) 7 SCC 443.

28. We have considered the submissions made by learned counsels for the parties and have also gone through the materials available on record

meticulously.

29. The basic issue is whether the prosecution was able to prove it's case beyond any reasonable doubt against the appellants and whether the findings and conviction of the appellants by the learned Trial Court was based on evidence, connected to the bomb blast that occurred on 15.08.2004.

30. The evidence of PW-1 is to the effect that on 15.08.2004, she sent the dead bodies of the victims of the bomb blast to Dhemaji Civil Hospital for performing Post Mortem examination. The evidence of PW-2, who was the A.S.I. of Police of Dhemaji Police Station is that he received information about the bomb explosion at Dhemaji College field, in which 13 persons had died. The evidence of PW-3 is that he carried the dead bodies to the hospital. The evidence of PW-4 is that he was on duty at Dhemaji College field from 23.07.2004 to 03.08.2004 along with four other Home Guards. The evidence of PW-5, who is the A.S.I. of Police is that he was on duty from the evening of 14.08.2004 till 8:00 a.m. of 15.08.2004 . After hoisting of the flag, he went to the Police Reserve where he came to learn that a bomb blast had taken place. PW-6 is the one who submitted the FIR on 15.08.2004 with regard to the bomb blast.

31. PW-7 deposed that he was present in the Dhemaji College field when the bomb blast took place. He sustained injury on his back and took treatment at Dhemaji Civil Hospital. Though he did not know who caused the bomb explosion, he heard that the bomb blast was caused by ULFA militants. However, PW-7 does not say as to who had told him that the bomb blast was caused by ULFA militants. PW-8 states that he did not have knowledge about the occurrence of the bomb blast.

32. PW-9, 10, 11, 12, 13, 14 and 15 deposed during recording of their evidence that they were in the Dhemaji College field on 15.08.2004 and were injured by the bomb blast, due to which they were given medical treatment.

33. The evidence of PW-16 is that he was in his house on 15.08.2004. At about 7:30 a.m. he heard a loud sound and saw people running. He heard that due to a bomb blast, a lot of people died and had sustained injuries. During investigation, Police called him to the police station, wherein he saw the appellant Jatin Dowari narrating to the police as to how the incident had occurred. Further, video recording of Jatin Dowari giving his statement was also being done. The police had also seized one mobile phone in connection with the incident. In his cross-examination, PW-16 states that he did not remember the things stated by the appellant Jatin Dowari before the police and he did not know from whom the mobile phone was seized. However, PW-16 denied the suggestion that Jatin Dowari had not narrated before the police as to how the incident had occurred or that he had given false evidence.

34. PW-17 in her testimony states that she heard that there was a bomb blast in the College field due, to which some persons died and a few were injured. She also states that she did not know how the bomb blast took place. She further states that she had given her statement before a Magistrate under Section 164 Cr.P.C. which was exhibited as Ext.46. Ext.46 is to the effect that PW-17's cousin Joya Chutia had told her that one ULFA member, Lila Khan had taken refuge in their house for the night. Lila Khan told Joya Chutia that a bomb would explode in Dhemaji on 15th August. As she did not trust the veracity of the said information told to her, she did not divulge the same to anybody.

35. The evidence of PW-18, who was the Lot Gaonburah (Village Headman) is

to the effect that when she was called by the police to the Dhemaji police station, she saw appellant Jatin Dowari and Dipanjali Borgohain making statements before the Officer in Charge (O.C.) of the Police Station, with regard to the bomb blast that had taken place in the Dhemaji College field. Their statements were also video recorded in her presence. However, she did not remember what had been stated by them in their statements, which were video recorded. The video recording, which were made in four cassettes, was seized in her presence. The seizure of the four video cassettes was made by a seizure list, which was exhibited as Ext. 29 and she identified her signature on the seizure list as Ext.29(1). PW-18 also denied the suggestion that Jatin Dowari and Dipanjali Borgohain had been tutored to say what they were saying at the time of the video recording. She also denied the suggestion that she was not present when the video recording was being done. However, the video recording stored in the four cassettes had not been produced and exhibited before the learned Trial Court. In her evidence before the learned Trial Court, PW-18 has not made any mention of the statement given by her to the Judicial Officer under Section 164 Cr.PC and which had been exhibited as Ext. 58(1) by PW-55, i.e., the retired Judicial Officer, who had allegedly recorded the statement. Further the contents/details of the statement allegedly made by PW-18 under Section 164 Cr.P.C does not find any mention in the evidence adduced by PW-18 before the learned Trial Court. As such, the details/contents of the statement made by PW-18 under Section 164 Cr.P.C is not corroborated by any independent evidence or evidence given by PW-18. As such, there is no proof of the involvements of the above appellants in the bomb blast.

36. The evidence of PW-19, 20, 21, 22, 23, 24, 25, 26, 27, 28 & 29 is that though they heard the bomb blast, they did not know who caused the bomb

blast. Further, some of the witnesses amongst PW-19 to 29 got injured in the bomb blast. There is no evidence by PW-19 to 29 as to who had caused the bomb blast.

37. The evidence of PW-30, Smt. Bhabani Gogoi W/o Shri Chandra Nath Gogoi and sister-in-law of Hemen Gogoi (the appellant in Criminal Appeal No.305/2019), is to the effect that some 4/5 boys had come to her house at about 10:30 p.m. sometime in August, 2004. As they threatened her that she would face dire consequences if food was not given to them, she provided then with food. She was in the house with her children and her husband was not present at the relevant time. The police came the next day and questioned her. The Police also found a small bag containing a Gamocha (towel-like-cloth) and Colgate which they seized. The bag did not belong to PW-30 or her husband and she did not know who was the owner of the seized bag. The incident occurred before the bomb blast. In her cross-examination, PW-30 states that the boys had showed her a gun and asked for food. She also states that she did not know why the Police had seized the bag.

38. The evidence of PW-31, who is the wife of Hemen Gogoi (appellant in Criminal Appeal No.305/2019) is to the effect that some boys had come to their house and had forcefully stayed, after threatening them. Further, her signature had been taken by the Police without knowing why the same had been taken. PW-31 also stated that she did not know anything about the bomb blast.

39. The evidence of PW-32 and 33 is to the effect that they did not know the appellants or Ahmed Ali. They also did not know anything about the Dhemaji bomb blast. They further stated that the police had caught them and questioned them, wherein they stated that they did not know anything.

40. The evidence of PW-34, who is a Police Constable is only to the effect that he knew appellants Jatin Dowari and Dipanjali Borgohain. A video recording of Dipanjali's house was done and 4 cassettes were seized by the Police.

41. The evidence of PW-35 is to the effect that the Police had taken him to Court, wherein his statement was recorded by a Magistrate. He further states that the Police told him what to say before the Magistrate. The statement recorded by the Magistrate under Section 164 Cr.PC was thereafter exhibited as Ext.30. He also states that the Police had threatened him that they would send him to jail if he did not make the said statement. He also states that he did not know any SI Ahmed Ali. Ext – 30 is the seizure list which shows the description of the seized article, i.e., (1) One black bag with long black strap (2) One "Gamosa" (bath towel) (3) One small dagger (4) One Note Book (Diary) and (5) One small tube of Colgate toothpaste. However, as the police had told PW-35 what to say to the Magistrate during the recording of his statement under Section 164 Cr.PC, the said statement is inadmissible as evidence, as the same cannot be said to be a voluntary statement. In his Section 164 Cr.P.C. statement, PW-35 had stated that the appellant Muhi Handique had introduced him to one Mr. Bharali, who was stated to be a member of an organisation. Mr. Bharali then asked PW-35 to talk with the Minister Bharati Narah to make the terms of negotiation acceptable for surrender and that if Rani Narah gets elected, she should raise a demand for plebiscite for Assam's independence. Further the road from Kori Beel to Lalung Tiniali and from Butiker to Norsuwa Than should be restored to a good condition. PW-35 in the Section 164 Cr.P.C. statement further states that Narah had told him that Bharali had threatened him. Later, he got to know from newspapers that Bharali had been involved in the Dhemaji bomb blast. As stated earlier, the statement made by PW-35 under

Section 164 Cr.P.C. has no value and cannot be considered as evidence, as the same had been dictated to him by the Police.

42. The evidence of PW-36 is that he did not know any SI Ahmed Ali. He also did not know anything about the blast. He was brought before the Magistrate by the Police and had been tortured by the Police. The statement recorded under Section 164 Cr.PC by the Magistrate was exhibited as Ext.31. In his cross examination he stated that the statement given in Ext.31 was made as per what the Police had told him to say. He also states that he did not know who actually caused the bomb blast. In Ext- 31, which was recorded under Section 164 Cr.PC by the Magistrate on 08.10.2004, PW-36 states that on the day of Biswa Karma Puja of the last year, at about 5 – 5:30 am, one Rahul along with two others, who identified themselves as Lila Gogoi and Popi entered his house and introduced themselves as members of ULFA. They spent a day in his house. Lila Gogoi had come back to his house some three months later with an unknown youth, who identified himself as Chila Rai. They stayed in their house the whole day and left in the evening. Again on 12.08.2004, only Lila Gogoi came at night to his house and left on 13.08.2004 at 11 – 11:30 am. However, as stated earlier, the police having told PW 36 what to say to the Magistrate under Section 164 Cr.P.C., the said statement is inadmissible as evidence. In any event, there is nothing in the above statement (Ext.-31), to show that the visits made to the house of PW-36 by Lila Gogoi, Popi and Chila Rai had any link/connection with the bomb blast.

43. The evidence of PW-37 is that he knew SI Ahmed Ali and he had seen the accused Lila Gogoi. He also stated that he did not know anything about the bomb blast, except that the same had occurred. He had also signed as a seizure

witness with respect to the seizure of some articles (mobile) by the Investigating Officer (I.O.). He however stated in his cross-examination that he did not know from whom the mobile was seized and why they took his signature in the seizure list.

44. The evidence of PW-38 is that he did not know any SI Ahmed Ali and that he had heard that a bomb blast had occurred.

45. The evidence of PW-39, who is the Senior Medical and Health Officer, Dhemaji Civil Hospital, is to the effect that he had conducted the Post Mortem examination on the bodies of the deceased victims of the bomb blast.

46. The evidence of PW-40 is that he did not know any SI Ahmed Ali and that he learned from newspapers that ULFA had blasted a bomb.

The evidence of PW-41 is that he came to know that a bomb had exploded in Dhemaji College field in the news broadcasted through TV.

The evidence of PW-42 and PW-43 is that they heard the sound of the bomb blast and did not know who were responsible for the same.

47. The evidence of PW-44, who is the ASI of Police in Dhemaji Police Station is that on 24.08.2004, he went to Bormer Village in search of militants. Upon getting information that militants had been hiding in the house of Chandra Nath Gogoi, PW-44 questioned Chandra Nath Gogoi's brother, Hemen Gogoi (appellant in Criminal Appeal No. 365/2019). Hemen Gogoi then handed over one bag left by the members of the militant outfit in their house, which was seized by the Police. In the bag which was seized by the Police, which was

exhibited as Ext.30, one small dagger, one diary and one small tube of Colgate toothpaste was found inside the bag.

The evidence of PW-44 does not throw any light to how PW-44 could assume that the members of the militant outfit had left behind the seized articles, as there is no basis for assuming they were members of a militant outfit.

48. The evidence of PW-45, who is the Minister of Water Resource Department, Government of Assam is that he was informed that a bomb had exploded at the place where the National Flag was to be hoisted.

The evidence of PW-46 & PW-47 is that they went to the Dhemaji College field to watch the Flag hoisting Ceremony. They heard a loud sound which made them fall down and that they sustained injuries on various parts of their bodies.

49. The evidence of PW-48, (who was the JTO, BSNL, Dhemaji,) PW-49, (who was the Technical Assistant, BSNL, Dhemaji) and PW-50, (who was the Counter Clerk, BSNL, Dhemaji) is that in the year 2004, Police seized documents in connection with the issue of SIM Cards from their Department and prepared a seizure list which they signed. In the cross examination of PW-49, he states that he could not say the names of the persons, against whose names the SIM Cards were issued or with regard to the documents seized by the Police. In his cross examination, PW-50 states that he did not know what documents were seized by the Police.

50. The deposition of PW-51 is that the Police had seized one Maruti car and prepared a seizure list (Ext.41) and he had given his signature in the seizure list,

which was exhibited as Ext.41(1).

51. The deposition of PW-52 is that he had given his signature as a seizure witness. He identified his signature as Ext.-42(1) in Ext.42 and Ext.43(1) in Ext.43. He also stated that he did not know why the Police had taken his signature. Ext. 42 is the seizure list made with respect to one small grey pocket diary containing phone numbers and names of some persons. Ext. 43 is the seizure list by which one Samsung mobile bearing No. 94350 88773 was seized.

52. The evidence of PW-53, who is a Constable, is that he knew the complainant and the accused/appellants Muhi Handique, Mina Baruah, Dipanjali Borgohain, Jatin Duari and Lila Gogoi. He states that Ext.44(1) was his signature in Ext.44, which is the seizure list. He also states that the Police team inspected the site of the bomb blast and collected splinters and other materials used in the bomb blast and seized the same. Ext-44 is the seizure list of the below stated articles:-

(1) Some pieces of articles that seemed to be made of Aluminium where Black mark was present on one side of each of them, which were suspected to be the pieces of blasted bomb.

(2) About 1 kg soil collected from the place where the bomb exploded.

53. The evidence of PW-54 is that he did not know the accused persons and that he had sold his Motorcycle to one Shyamol Gogoi @ Ajan Neog about 15/16 years back. Further, he came to learn later that Shyamol Gogoi belonged to a militant organization, namely ULFA. He further stated that Ext.45(1) was his signature in the Section 164 Cr.PC statement made by him on 01.11.2004,

which was exhibited as Ext. 45. In his statement made under Section 164 Cr.PC, PW-54 stated that he came to know that Shymal Gogoi had connections with ULFA, which he was not aware of at the time of selling his bike in last February.

54. The evidence of PW-55 who is a retired Judicial Officer is to the effect that on 12.10.2004, he was working as a Judicial Magistrate First Class in Dhemaji. On the said date, he recorded the confessional statement of the appellant Jatin Dowari, after giving him time for reflection and on being satisfied that the appellant Jatin Dowari was going to make his statement voluntarily. He also stated that he recorded the statements made under Section 164 Cr.PC of the witness Khagen Bora Gohain on 05.10.2004, Simanta Chutia on 08.10.2004, Keshab Dihingia on 11.10.2004, Smt. Tilottama Chutia on 11.10.2004, Padmeswar Chutia on 11.10.2004 and Mrs. Bohagi Konwar on 11.10.2004. In his cross examination, PW-55 states that before recording the statement, he did not ask the accused Jatin Dowari as to why he wanted to make a confession. He also did not ask the accused persons whether they were going to make the statement for fear of police torture or under pressure. The above testimony of PW-55 does not instil confidence in us that the statements were made voluntarily.

55. The evidence of PW-56, who is the I/O, is to the effect that he made GD Entry No. 719 on 15.08.2004 as he heard a huge sound, which seemed like a bomb blast and on reaching the college field he saw a huge gathering of people, wherein some persons were seriously injured. He found that 10 children and 3 women had died in the bomb blast. Dead bodies were sent to the hospital along with the injured persons and an FIR was submitted by one S.I Ahmed Ali whereupon Dhemaji PS Case No. 2002/2004 was registered. During

investigation, he recovered many incriminating documents and interrogated many persons. He also seized many materials, such as Maruti car, phone call details, mobiles etc. In his cross-examination, he stated that he did not know the contents of the pocket diary. He also stated that security guards are deployed 10 days before 15th August (Independence Day) to guard the field chosen for 15th August programme.

56. PW-57, who was the O/C, Dhemaji P.S, in his evidence states that he recorded statement of injured witnesses and arrested Lila Gogoi @ Lila Khan. He also recorded the statement of other witnesses and concluded his part of the investigation whereafter, he arrested 16 accused persons. On his transfer on 31.10.2010, he handed over his case diary to his successor i.e., Mr. Lalit Borgohain. The I/O Lalit Borgohain thereafter obtained prosecution sanction and filed chargesheet against the accused persons under Section 120B/120/121A/122/302/326 IPC read with Section 3/4 of the Explosive Substances Act, read with Section 10/13 of the Unlawful Activities (Prevention) Act, 1967.

57. The evidence of PW-58 who is a retired Senior Scientific Officer of the Directorate of FSL, Kahilipara is to the effect that on examining the 850 grams of soil and five numbers of silver coloured metallic pieces, he found traces of RDX and PETN, (both high explosives).

58. The evidence of Defense Witness No. 1, Hemen Gogoi, who is a cultivator, is to the effect that on 15.08.2004, he was busy in the construction of his elder brother's house in Dhemaji, Jyoti Nagar. Police came to his house and called him to the Police Station. After questioning him, he was arrested. DW-1 states that

he was not involved in the alleged offense and that he knew nothing about the alleged offense. Thus, he claimed that his arrest had been made without any ground or reason.

59. The evidence of DW-2 i.e., Chandra Nath Gogoi, the brother of DW-1 and who is a retired teacher, is that he was busy in the construction of his house at Dhemaji, Jyoti Nagar and that he was arrested without any ground or reason. He also states that he was not involved in the alleged offense and knew nothing about the same.

60. In his examination under Section 313 Cr.PC, appellant Jatin Dowari stated that he was a cultivator and that he was not involved in the alleged offense. The answers given by all the other appellants in their examination under Section 313 Cr.PC was that they were not involved in the bomb blast.

61. The learned Trial Court on considering the evidence adduced by the witnesses, came to a finding that the appellant Jatin Dowari had made a confessional statement, which revealed that a conspiracy was hatched to blast a bomb in Dhemaji College field on Independence Day. As such, Jatin Dowari had played an active role in getting other ULFA members to the college field to plant a bomb in the college field. The learned Trial Court also held that though the appellant Jatin Dowari had made a confession implicating other persons with regard to the bomb blast, the same could not absolve him, as he was found to be actively involved in the said conspiracy, besides keeping in mind the fact that he had recreated the scene of the crime during police investigation. The learned Trial Court also held that though the confession was retracted, the same should have been retracted earlier. The confessional statement of Jatin Dowari was

found to be voluntarily made by the learned Trial Court.

62. We are unable to understand how the learned Trial Court could have come to a finding that Jatin Dowari was a party to a conspiracy to commit a bomb blast on the basis of having allegedly recreated the scene of the crime, when there is nothing to show in the evidence as to how the appellant had recreated the scene of the crime. There is no video cassette produced to substantiate the said allegation. Further, the statement made by the appellant Jatin Dowari under Section 164 Cr.PC is exculpatory in nature, besides having been retracted during his examination under Section 313 Cr.PC. The retracted confessional statement made by the appellant Jatin Dowari does not in any way implicate the maker of the same and in any event, a confessional statement can be only be used for the purpose of corroboration and if it is to be used as the basis for conviction, there has to be corroboration of the same from evidences from other sources. The retracted confession of the appellant Jatin Dowari is reproduced herein below as follows:-

> "*In the evening hours on 05-08-2004, while I was in home ULFA cadres, namely, Lila Khan alias Lila Gogoi whom I know from before, Pintu Bora, Prafulla Bhuyan, Rasid Bharali, and Ajan Neog came to my house and taking me out of the house by threatening me at gunpoint, they took me to College gate through the front of the girls hostel after crossing our village as well as Tongona Para. As they asked me to show the college field, I showed them the college field and thereafter they sent me to hostel Tiniali. As they had told me to wait there, I kept waiting there. As they had threatened me not to leave my position till they allowed me to go, I kept waiting there for a long time and when Lila Khan and Pintu Bora returned there at about 11:00 pm, they threatened me to escort them through a safe passage whereupon I escorted them through a safe passage whereupon I escorted them through a safe route and stopped at the gate way of my house. Thereafter, they left. I have only this much to*

say. I was a member of ULFA earlier. I surrendered to the government in the year 1997. Pintu Bora's house is at Lakhimpur while Rasid Bharali's house is at Ghilamora."

The showing of the field by Jatin Dowari does not indicate that he had any knowledge that a bomb was going to be planted in the field, though it can be inferred that there could be a connection with the bomb blast. However, the same does not take away the fact that the showing of the field proves that he was involved in the bomb blast, however strong a suspicion may exist. Further, the retracted confessional statement has not been corroborated by any evidence to the effect that Jatin Dowari was involved in the bomb blast and as such, the same cannot be the basis for conviction of the appellants.

63. In the case of ***Dhanabal and Others Vs. State of Tamil Nadu,*** reported in ***(1980) 2 SCC 84,*** the Apex Court has held that if a witness does not resile from his statement under Section 164 CrPC while deposing during trial, then that statement under Section 164 can be used for corroboration. However, in the present case, the appellant Jatin Dowari not being a witness, the above decision is not applicable to this case. There is nothing to show that the appellant Jatin Dowari had been involved in the making, transportation, planting or in the blasting of the bomb. It is again reiterated that there is nothing to show in the evidence adduced by the prosecution witnesses, as to how the appellant Jatin Dowari had recreated the scene of the crime. No whisper of the same is made in the evidence adduced and no video recording/cassette has been produced. No notes are shown and no evidence has been led by any witness as to what the appellant had stated while allegedly recreating the scene of the crime. As such, we are of the view that the finding of the learned Trial Court with regard to appellant Jatin Dowari having any

involvement in the bomb blast is not supported by any of the evidence recorded by the learned Trial Court. The law laid down by the Supreme Court in certain cases with regard to a retracted confession, is that the same can form the basis of a conviction of an accused, if it was found to be true and voluntarily made. However, as a matter of caution and prudence, it should be ccorroborated by evidence from some independent source.

64. In the case of ***Kashmira Singh Vs State of Madhya Pradesh***, reported in ***1952 SCR 526***, the Supreme Court has held that the confession of an accused person against a co-accused is not evidence in the ordinary sense of the term and can only be used for corroboration. It cannot be the basis of a conviction. There is no evidence against the other appellants except the retracted confessional statement of Jatin Dowari, which in any event, only refers to one appellant, i.e. Lila Khan @ Lila Gogoi.

The learned Trial Court has also found the accused appellants Dipanjali Borgohain and Muhi Handique guilty of having a hand in the bomb blast, as their mobile phones had been allegedly used for making calls to ULFA leaders like Rashid Bharali and others. However, the prosecution has not adduced any evidence with regard to the contents of the communication that had allegedly taken place between the accused appellants Dipanjali Borgohain, Muhi Handique and ULFA leaders, connecting them with the bomb blast. Also, no certificate under Section 65B of the Evidence Act has been produced during evidence, which proved that phone calls had been made from the mobile handsets of the above 2 appellants to the ULFA leaders, which could show a connection with the bomb blast that occurred at Dhemaji College field. In the absence of a certificate under Section 65 of the Evidence Act, the appellants involvement with

the ULFA leaders, in relation to the bomb blast that had occurred cannot be proved and as such, the finding of the learned Trial Court on this ground cannot withstand the scrutiny of law.

65. The learned Trial Court had also come to a finding that Muhi Handique was guilty, on account of the seizure of a Maruti car bearing registration No. AS 07 2399 from the possession of Muhi Handique. However, the evidence of PW-56, who is the I/O of the case, is to the effect that, the said Maruti car had been seized from the wife of Muhi Handique i.e., Rubi Handique. No evidence has been led by the prosecution with regard to whether the car was used for committing the crime, i.e. the bomb blast. There is no evidence recorded to the effect that the perpetrators of the crime had used the car or carried the bomb or parts of it for the purpose of committing the bomb blast. As such, we fail to understand as to how the seizure of a Maruti car, which has not been shown to be connected with the bomb blast, could be the basis for coming to a finding that the appellant Muhi Handique was guilty of having been involved with the bomb blast. The evidence of the I/O (PW-56) is that the one pocket diary was recovered from Muhi Handique. However, PW-56 (I/O) states in his cross examination that he has no knowledge regarding the contents of the pocket diary. As such, the basis for finding the appellant Muhi Handique guilty of being involved in the bomb blast is absolutely absent in the evidence recorded by the prosecution witnesses.

66. In the present case, statements have been made under Section 164 Cr.PC by PW-16, 17, 18, 36, 41 and one Padmeshwar Chutia. Padmeshwar Chutia was however never examined by the Trial Court. It may be noted here that the makers of the statements under Section 164 Cr.PC, i.e., PW-16, PW-18 & PW-41

did not identify their signatures made in their statements. Only PW-17 & 36 identified their signatures in their statements made under Section 164 Cr.PC. PW-16 in his statement under Section 164 Cr.PC states that he was the Gaonburah of a single Lot covering three villages. On being called to the police station, he went there and saw that the O/C was questioning the appellant Dipanjali Borgohain in connection with the bomb blast. PW-16 states he heard Dipanjali Borgohain telling the O/C of the Dhemaji Police Station that she had links with the ULFA. Also, an ULFA member Rashi Bharali had informed Dipanjali Borgohain over phone about the plan to blast a bomb on 15th August. Further, he also heard Dipanjali Borgohain telling the Police that the majority of her mobile phone bills had been paid by Muhi Handique. Also, Pintu Borah, Lila Khan, Ajan Neog and Rashi Bharali were involved in the bomb blast. Interestingly, PW-16 does not make any mention of Dipanjali Borgohain in his evidence before the Trial Court. He instead speaks of seeing the appellant Jatin Dowari telling the police how the incident had happened. Further, PW-16 does not make any mention of Jatin Dowari in his statement (Ext. 56) under Section 164 Cr.PC. The contradictions in the facts/occurrence of events made by PW-16 in his statement under Section 164 Cr.PC vis-a-vis his evidence before the learned Trial Court, shows that PW-16 is not a reliable witness. His statement under Section 164 Cr.P.C. and his testimony being at odds with another, it would not be safe to rely on his evidence.

67. Ext. 46 is the statement given by PW-17 under Section 164 Cr.PC. PW-17 states in her Section 164 Cr.PC statement, that her cousin Joya Chutia had told her, that one ULFA member Lila Khan had told Joya Chutia that there would be a bomb blast in Dhemaji on 15th August. However, the statement given by PW-17

under Section 164 Cr.PC has not been reiterated in her evidence given before the learned Trial Court. The only thing PW-17 has stated during recording of her evidence is to say that she did not know how the bomb blast had taken place. She does not mention Joya Chutia or Lila Khan in her evidence. Though her Section 164 Cr.PC statement has been exhibited, the contents of the said statement have not been proved. As such, the statement given by PW-17 under 164 Cr.PC cannot be said to be substantive evidence. Also the same has not been corroborated. It may also be stated that Joya Chutia was acquitted by the learned Trial Court on the ground that the evidence against her was in the nature of hearsay evidence.

68. The statement given by PW-18 under Section 164 Cr.PC has been exhibited by the Judicial Magistrate as Ext.58. In her statement, she has stated that she is the Gaonburah of a single Lot covering three villages. On being called by the O/C of Dhemaji Police Station on 10.10.2004, she saw and heard Jatin Dowari telling the O/C of the Dhemaji Police Station that about 8 pm on 05.08.2004, two ULFA members entered his house and asked him at gun point to show them the route to Dhemaji College field, by escorting them across the village, with a threat that they would otherwise annihilate his entire family. Being helpless, Jatin Dowari took the two ULFA members to Dhemaji, Chariali on bicycle that night itself. They went across Tongonapara village and stopped in front of the girls hostel. Thereafter, he took the two ULFA members inside the college field. PW-18 also stated in his statement made under Section 164 Cr.P.C that Jatin Dowari had mentioned the names of the ULFA members as Rashi Bharali and Pintu Kalita. Jatin Dowari also stated that Pintu dug out soil and planted the bomb. Jatin Dowari also stated that after completion of the task, he took the ULFA members through a safe route. Thereafter, they reached Beohal

where they met three other ULFA members Lila Khan, Bidur Bhuyan and Ajan Neog, who had been waiting for them. After having a conversation, Rashi Bharali gave the responsibility of exploding the bomb on 15th August to the other four ULFA members and left the scene. Thereafter, the other ULFA members also left the scene. PW-18 further states in her statement under Section 164 Cr.PC that Mrinal Hazarika, the Lieutenant Commander of ULFA had issued an order to Rashi Bharali to plant the bomb in Dhemaji on 15th August. PW-18 states that she heard all the above being stated by Jatin Dowari to the O/C, Dhemaji Police Station with her own ears.

The evidence of PW-18 before the learned Trial Court on the other hand, is to the effect that she was called to Dhemaji Police Station and she saw the appellant Jatin Dowari and the appellant Dipanjali Borgohain at the police station. She saw that they were making statements to the O/C with regard to the bomb blast in the Dhemaji College field. However, she did not remember what statements they had made. Their statements were also video recorded. The four cassettes, where the video recording was done were seized in her presence. The seizure list was exhibited as Ext.29 and she identified her signature as Ext.29(1). In her cross examination, PW-18 denies the suggestion that the police tutored the appellant Jatin Dowari and Dipanjali Borgohain, with regard to what they had stated before the Police and which was video recorded. She also denies the suggestion that she was not at the police station when the video recording was done.

69. The statement made by PW-18 under Section 164 Cr.PC which is Ext. 58(1), is a very detailed statement. However, there was no mention of Dipanjali

Borgohain in the statement made under Section 164 Cr.PC. The above being said, the detailed statement made by PW-18 under Section 164 Cr.PC does not find mention in the evidence given by PW-18. The only evidence given by PW-18 before the Trial Court is that the appellant Jatin Dowari and accused Dipanjali Borgohain were in the Police Station and they were making statements to the O/C, with regard to the bomb blast in the Dhemaji College field. Though she had stated that video recording of the statements made by the two appellants had been done in four cassettes and that she was a seizure witness to the seizure of the video cassettes, the prosecution has not been able to produce the video cassettes recordings in this Court or in the Trial Court. As such, there is a doubt as to the reliability of the evidence of PW-18, as to whether she had really witnessed and heard the appellants making statements, as described in her statement made under Section 164 Cr.P.C. Besides PW-18 stated in her evidence that she did not remember the statements made by the two appellants Dipanjali Borgohain and Jatin Dowari. In any event, there are contradictions and major inconsistencies in her statement made under Section 164 Cr.P.C and her evidence, as there is no mention of any video recording being made, in her statement made under Section 164 Cr.PC. It is also disturbing that the police are unable to produce the alleged video recorded statements, if the same had really been made.

70. The statement made under Section 164 Cr.PC by PW-36 has been exhibited by the Magistrate who recorded the same as Ext.31. The said statement is to the effect that three youths namely Rahul, Lila Gogoi and Popi came to his house at around 5-5:30 a.m on the day of Biswa Karma Puja in the year 2003. They introduced themselves as members belonging to ULFA and spent the whole day in his house. Lila Gogoi was carrying a gun. Three months

later, Lila Gogoi again came to his house with one Chila Rai. They stayed in the house by threatening them, ate food and left in the evening. Lila Gogoi again came to their house on 12.08.2004 and on 13.08.2004.

The evidence given by PW-36 in the Trial Court is to the effect that he does not know the accused persons present in the Court, except for the accused Jiten Chutia. He did not know anything about the bomb blast and police had taken him to Court to have his statement recorded by a Magistrate. The Police had tortured him and he did not remember what he had said in his statement. He also exhibited his statement under Section 164 Cr.PC and his signature. In his cross-examination, PW-36 states that the statement given in Exbt.-31 was as per what the police had forced him to say. He again reiterates that he did not know who caused the blast. It may also be stated here that the learned Trial Court acquitted the accused Jiten Chutia.

71. The statement of PW-41 recorded under Section 164 Cr.PC has been exhibited by the Magistrate as Ext.55. In the statement made under Section 141 Cr.PC, PW-41 states that he came across a youth who asked him whether he could bring two mobile connection application forms. When PW-41 told him that he would not be able to do so due to paucity of time, the said person asked him whether PW-41 was the brother-in-law of Biplab Gohain, to which he replied in the affirmative. When PW-41 asked the identity of the said person, he was told to call him "Bharali". Bharali then asked him whether he knew Muhi Handique, to which he replied in the affirmative. Bharali asked him to tell Muhi Handique to make arrangements to bring two mobile application forms. Thereafter, PW-41 told his brother-in-law Biplab Gohain about the said Bharali. He also met Muhi Handique's wife in the market and told her to tell her husband about the two

forms that Bharali had asked for. Muhi Handique's wife thereafter acknowledged the said information.

The evidence of PW-41 before the learned Trial Court is that he came to know about the bomb blast from the news on TV. He does not make any mention in his evidence, with regard to his statement under Section 164 Cr.PC to the Magistrate and neither is his evidence in consonance with the alleged statement made by him under Section 164 Cr.PC.

72. As stated earlier, statements made under Section 164 Cr.PC can only be used for the purpose of corroboration and cannot be the sole basis for conviction, unless the same is corroborated by evidence. The above being said, the Magistrate while recording a statement under Section 164 Cr.PC has to be satisfied that the statement is being voluntarily given. A bare perusal of the Form used by the Magistrate for recording the statements made under Section 164 Cr.PC, appears to show that the satisfaction of the Magistrate is present. Though the Form used by the Magistrate for recording the statements is in a printed form, which contains the words 'I believe that this confession was voluntarily made', the Form also contains a requirement for the Magistrate to give a brief statement of reasons for believing that the statement was voluntarily made. However, there is no brief statement of reasons given by the Magistrate in the said Forms used by the Magistrate, for believing the statements made were voluntarily made under Section 164 Cr.PC. As such, in the present case, it cannot be said that the statements made under Section 164 Cr.PC were voluntarily made.

73. The only evidence adduced by the prosecution witnesses regarding the

involvement of the appellant Lila Khan having any involvement with the bomb blast, is the evidence provided by PW-17, who states in her re-examination in the learned Trial Court on 11.04.2004 that she had given a statement before the Magistrate under Section 164 Cr.PC, which had been exhibited as Ext. 46. In Ext. 46, which is the statement made under Section 164 Cr.PC, PW -17 states that her cousin i.e., Joya Chutia had told her a couple of days earlier that one Lila Khan, ULFA member had taken shelter in their house for the night, who informed her that there would be a bomb blast in Dhemaji on 15 August. Joya Chutia, who was made an accused in the case was acquitted by the learned Trial Court, as no involvement of Joya Chutia was found in the case. On the other hand, the appellant Lila Khan's name has been mentioned in two documents i.e., the statement made by PW-17 under Section 164 Cr.P.C and the retracted confessional statement made by Jatin Dowari. The statement made by PW-17 under Section 164 Cr.P.C cannot be the basis for convicting Lila Khan, as there is nothing stated in the evidence of PW-17 to the effect that Joya Chutia implicated Lila Khan. The confessional statement made by PW-17 under Section 164 Cr.PC has not been corroborated by evidence from other sources. In the absence of any evidence corroborating the retracted confession of Jatin Dowari and in the absence of evidence showing the involvement of the appellant Lila Khan in the bomb blast, the appellant Lila Khan cannot be held to be guilty with respect to the bomb blast on the basis of a statement made under Section 164 Cr.P.C., which has not been corroborated by evidence.

74. In the case of ***Veera Ibrahim Vs. The State of Maharashtra***, reported in ***(1976) 2 SCC 302***, the Supreme Court has held that a statement to amount to a confession, must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of an

incriminating fact, however grave, is not by itself a confession. It further held that a statement which contains an exculpatory assertion of some fact, which if true, would negative the offence alleged, cannot amount to a confession. In the present case, there is no admission of any incriminating fact in the retracted confession of the appellant Jatin Dowari. As such, the retracted confession cannot in any event, be the basis for convicting Jatin Dowari, as the same is not only exculpatory, but is also not corroborated by any evidence.

75. In the case of ***Paramananda Pegu Vs. The State of Assam***, reported in ***(2004) 7 SCC 779***, the Supreme Court has, by referring to other judgments, held that a retracted confession may form the basis of a conviction, if the Court is satisfied that it was true and was voluntarily made. But it has been held that a Court shall not base a conviction on such a confession without corroboration. However, in the case of ***K.I. Pavunny*** *(supra)*, the Supreme Court has held that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same the basis for conviction of the accused. However, practice and prudence requires that the Court could examine the evidence adduced by the prosecution, to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution, to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary, in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied

upon to base conviction. However, prudence and practice requires that the Court would seek assurance by getting corroboration from other evidence adduced by the prosecution. The question to be decided in ***K.I. Pavunny*** *(supra)* was as to whether the confessional statement made to a Custom Officer under Section 108 of the Customs Act, 1962, though retracted at a later stage, is admissible in evidence and could form the basis for conviction and whether a retracted confessional statement required corroboration on material particulars from independent evidence. We have to bear in mind the fact that a statement made under Section 108 of the Customs Act in any event is admissible in evidence, while a statement under Section 164 Cr.P.C needs to be corroborated by evidence. In ***Naresh J. Sukhwani Vs. Union of India***, reported in ***1995 Supl (4) SCC 663***, the Supreme Court held that a statement recorded under Section 108 of the Customs Act is substantive evidence. However, the statements made in this case are under Section 164 Cr.PC and not under Section 108 of the Customs Act. The Supreme Court in ***Keshoram Bora*** (supra) has also held in the same lines. In the case of ***Kehar Singh*** (supra), the Supreme Court has held that if the Magistrate considers the confession voluntary, non-mentioning in the form is not fatal. In the present case, we are of view that the statement made by the appellant Jatin Dowari is voluntary. However, in the said confession of Jatin Dowari, he does not implicate himself and as such, it cannot be said to be a confession in its true sense. It is exculpatory in nature and as such, the learned Trial Court could not have made the same the basis for coming to a finding that the said appellant was guilty of the offense of being involved in the bomb blast. As stated earlier, the alleged confession of the appellant Jatin Dowari was retracted and there was no corroboration of the contents of the same from any independent evidence.

76. In the case of ***Tuku Vs. State of Orissa*** (supra), the Supreme Court has held that the statements of witnesses made under Section 164 Cr.PC can be used for corroboration and contradiction.

77. In this case, the circumstantial evidence do not form an unbroken chain that leads to the only possible inference that the appellants are guilty of the crime. In fact, there is no evidence at all, except the statements made under Section 164 Cr.PC, which are not supported/corroborated by evidence. Further, the Judicial Officer recording the same, has not given reasons for believing the same were made voluntary, as required in law. As can be seen from the Form issued by the Gauhati High Court for recording confessional statements under Section 164 Cr.P.C, the person who is going to make a confessional statement has to be informed with regard to the fact that he/she will not remanded/sent back to police custody, even if he/she does not confess.

78. In the case of ***Abdul Subhan (Supra),*** the Division Bench of this Court has held that as the appellant did not get assurance from the Court that he was free to confess his guilt, if any, voluntarily, without having any fear of going back to the police custody, the confession recorded did not inspire confidence to make it believe that the said confessional statement was freely/voluntary made and without any influence or threat. In the case of ***Parmananda Pegu (Supra),*** the Supreme Court held that before acting on a confession made in terms of Section 164 Cr.P.C, the court must be satisfied first that the procedural requirements laid down in sub-sections (2) to (4) are complied with. After this first requirement of acting on a confession is satisfied, the endeavour of the court should be to apply its mind to the question whether the accused was free from threat, duress or inducement at the time of making the confession. In doing so, the court should bear in mind that under Section 24 of the Evidence

Act, a stringent rule of proof as to the existence of threat, duress or inducement should not be applied and a prima facie opinion based on evidence and circumstances may be adopted as the standard laid down. In view of the decision of the Division Bench of this Court in ***Abdul Subhan (Supra),*** we are of the view that the retracted confessional statement of Jatin Dowari was not made freely/voluntary, as he was not informed that in the event of refusal to make confessional statement, he would not be given to police custody again. Besides the above, it is again reiterated that the retracted confessional statement does not in any manner inculpate the appellant Jatin Dowari.

79. In the case of ***Pyare Lal Bhargava –vs- State of Rajeasthan***, reported in ***1963 Supl. 1 SCR 689***, the four Judges Bench of the Supreme Court held that a retracted confession may form the legal basis of a conviction, if the court is satisfied that it was true and voluntarily made. But it has been held that a Court shall not base it's conviction on such a confession without corroboration. It is not a Rule of law, but is only a rule of prudence.

80. As stated in the foregoing paragraphs, as sufficient assurance was not given to the appellant Jatin Dowari in terms of the Form made by the Gauhati High Court for recording of a confessional statement made under Section 164 Cr.P.C, the retracted confessional statement of Jatin Dowari cannot be acted upon. It is also not understood as to how the learned Trial Court had come to a finding that the appellant Jatin Dowari had recreated the scene of the crime, as there is no evidence to that effect recorded by the learned Trial Court. The recreation of the scene of crime would must probably have been in the recording done by the police in four video cassettes as has been stated in the evidence of PW-16 and PW-18. However, as stated earlier, no video cassettes

were produced by the prosecution during trial to show the appellant Jatin Dowari recreating the scene of the crime. In view of the reasons stated above, there was no evidence to prove the guilt of Jatin Dowari.

81. The learned Trial Court has found the appellants Lila Khan @ Lila Gogoi, Jatin Dowari, Dipanjali Borgohain and Muhi Handique guilty of having hatched a conspiracy to blast a bomb in Dhemaji College field and in the process, having killed 13 persons and injuring several others. Though the learned Trial Court found them to be ULFA members or/and active supporters of ULFA, the learned Trial Court has not given the basis for coming to such a finding. There is nothing in the evidence to show that there was any conspiracy made to do any illegal act and there is nothing to prove that they are members of ULFA.

82. The learned Trial Court had convicted the appellant Dipanjali Borgohain and Muhi Handique on the ground that the mobile hand sets that had been seized had been used to make calls to ULFA leaders. However, as stated earlier, the prosecution has not been able to show or prove what was the contents of the communication between Dipanjali Borgohain and Muhi Handique and whether it had anything to do with the bomb blast. Further, no certificate under Section 65B of the Evidence Act having been produced by the prosecution, there was no means to connect the alleged calls made by the above appellants with ULFA leaders. Thus on this count also, the learned Trial Court has committed an error in convicting the appellant Dipanjali Borgohain and Muhi Handique.

83. The learned Trial Court has also found Lila Khan @ Lila Gogoi, Jatin Dowari, Dipanjali Borgohain and Muhi Handique to be ULFA members and accordingly convicted them under Section 10(b)(i) amd 13(1)(a) of the 1967 Act. However, as rightly pointed out by the counsels for the appellants, no

prosecution sanction order has been exhibited by the prosecution and as such, their conviction under the above sections of law cannot withstand the scrutiny of law, as their trial, sans the prosecution sanction, is vitiated.

84. The learned Trial Court has come to a finding that Hemen Gogoi had given shelter to ULFA members in the house that he shared with this brother and their wives. This was due to the fact that 4/5 boys had tea in their house and that one bag containing 'Gamosa', one small note book and one colgate (toothpaste) left behind by the 4/5 boys had been produced by him, which was seized by the Police. Accordingly, the learned Trial Court came to a finding that Hemen Gogoi was guilty of the offense under Section 10a(iv) and 13(2) of the UA (P) Act. It baffles the mind as to how the above seized articles proves anything connecting Hemen Gogoi with the bomb blast.

85. The evidence recorded by the learned Trial Court does not show that Hemen Gogoi had voluntarily given shelter to any ULFA member in his house, inasmuch as, the evidence of PW-30, who is the sister-in-law of Hemen Gogoi is to the effect that some four or five boys had gone to their house and threatened her that if food was not given to them, she would face consequences. Similar is the story given by PW-31, who is the wife of Hemen Gogoi. As stated earlier, PW-30 & 31 are living in the same house, as they are married to Hemen Gogoi and Chandra Nath Gogoi, who are brothers. The above evidence does not prove or indicate, in any manner, that the four or five boys who had gone to the house of Hemen Gogoi were members of ULFA, though they might have been the same. In any event, there is nothing to show that shelter had been given to the four or five boys willingly or that food had been served to them willingly. There is nothing in the evidence showing the names of the 4/5 boys or that they

belonged to ULFA or had anything to do to with the bomb blast. In fact, the evidence recorded by the learned Trial Court goes to show that the bag containing 'Gamosa', one small note book and one tube of colgate had been given to the police by Hemen Gogoi. There is nothing stated in the evidence that the articles contained in the bag were in any way connected with the bomb blast or that they proved that Hemen Gogoi was a member of the ULFA, which warranted the attraction of the provisions of the UA(P) Act. Further, none of the witnesses, including the Police witnesses, have stated as to what was the contents of the Notebook and whether it had any relevance to the case in hand.

86. The appellant Hemen Gogoi has been found to give shelter to ULFA members by the learned Trial Court. The evidence of the witnesses however does not give any indication with regard to the identity or affiliation of the 4/5 boys who had taken food in the house of Hemen Gogoi during his absence and who were given shelter by the appellant Hemen Gogoi's wife. There is no evidence and no finding by the learned Trial Court that the 4/5 boys who took food in the house of Hemen Gogoi were ULFA members. As such, it cannot be said that the appellant Hemen Gogoi had given shelter to ULFA members without the prosecution being able to prove that 4/5 boys were ULFA members.

87. In the case of ***Rabindra Kumar Dey Vs. State of Orissa***, reported in ***(1976) 4 SCC 233***, the Supreme Court has held that three cardinal principles of criminal jurisprudence are well-settled, namely:

(1) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit from the weakness or falsity of the defence version while proving its case;

(2) that in a criminal trial the accused must be presumed to be innocent unless

he is proved to be guilty; and

(3) that the onus of the prosecution never shifts.

In this particular case, the prosecution has failed to prove its case beyond any reasonable doubt and that the evidence recorded shows that the findings of the learned Trial Court has not been made on the basis of the evidence adduced by the Prosecution witnesses.

88. In the case of ***Anvar P.V Vs. P.K. Basheer and Others*** reported in ***(2014) 10 SCC 473***, the Supreme Court has held that any documentary evidence by way of electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. It thus held that the very admissibility of a electronic record depends upon the satisfaction of the four conditions under Section 65-B(2) of the Evidence Act, which are as follows:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time,

the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

In the present case, there being no certificate with regard to the call records allegedly made by the appellants with their mobile phones, there is no proof with regard to who they had called and the CDR, if any, is accordingly inadmissible in evidence. Further, there is nothing to show as to what they had stated in their conversation, connecting them in any manner to the bomb blast that had occurred. As there is no certificate in terms of Section 65-B, any secondary evidence pertaining to the said electronic record is in-admissible in evidence.

89. In the case of ***Sarwant Singh Ratan Singh Vs. State of Punjab***, reported in ***AIR 1957 SC 637***, the Supreme Court has held that though a prosecution story may be considered to be true, there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.

90. In case of ***Kali Ram Vs. State of Himachal Pradesh***, reported in ***(1973) 2 SCC 808***, the Supreme Court has held that if two views are possible, then the one favourable to the accused is to be adopted. It further held that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from the accused. In para 26 of the said judgment, the Supreme Court has held that the Courts would not be justified in withholding that benefit because the acquittal might have an impact upon the law and order

situation or create adverse reaction in society or amongst those members of the society who believe the accused to be guilty. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record.

91. In the case of ***Juwarsingh, S/o Bheraji & Others vs. State of Madhya Pradesh,*** reported in ***1980 (Supp) SCC 417***, the Supreme Court has held that cross-examination is not the only method of discrediting a witness. If the oral testimony of certain witnesses is contrary to proved facts, their evidence might well be discarded on that ground. If their testimony is on the face of it unacceptable, Courts are not bound to accept their testimony merely because there was no cross-examination.

92. On a perusal of the impugned judgment, we find that the learned Trial Court had found the appellant Jatin Dowari guilty in view of the confessional statement made by him and the allegation that he had recreated the scene of the crime during police investigation. The learned Trial Court had also stated that though the appellant Jatin Dowari had retracted his confession at a later stage of the trial, the same was an afterthought and the confession had been made voluntarily. However, as stated in the earlier paragraphs, the retracted confessional statement was exculpatory in nature and the video recording of Jatin Dowai allegedly recreating the scene of the crime was never produced during trial.

In the case of ***Krishan Kumar vs. Union of India***, reported in ***AIR 1959 SC 1390***, the Apex Court has held that it is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate an accused. If these facts are within the knowledge of the accused then he has to prove them. However, the prosecution has to establish a

prima facie case in the first instance. It is not enough to establish facts which give rise to a suspicion and then by reason of Section 106 of the Evidence Act to throw the onus on the accused to prove his innocence.

In the present case, the prosecution has not been able to establish a *prima facie* case against the accused persons in the first instance and the retracted confessional statement of Jatin Dowari only gives rise to a suspicion and it is by no means an establishment of any fact pointing towards the guilt of the accused Jatin Dowari having any knowledge that a bomb would have been planted in the Dhemaji College field.

93. In the case of ***Trimukh Maroti Kirkan Vs. State of Maharashtra,*** reported in ***(2006) 10 SCC 681***, the matter pertained to the death of a wife inside the privacy of a house. The Supreme Court held that in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principles of circumstantial evidence is insisted upon by the Courts. It thus held that in such cases, the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. It also held that a judge does not preside over a criminal trial merely to see that no innocent man is punished. In our view, the judgment of the Supreme Court in ***Trimukh Maroti Kirkan*** (supra) is not applicable to the facts of this case, as the bomb blast did not occur within the privacy of a home, but in an open college field which was guarded by police.

94. In the present case, the prosecution has not been able to conclusively prove the guilt of the appellants, as there is no continuous chain of

circumstantial evidence, with regard to the hypothesis that the appellants had hatched a conspiracy and had blasted the bomb on the fateful day in the Dhemaji College Field.

95. We find that the findings of the learned Trial Court have not been supported by the evidence recorded by the prosecution witnesses. The Trial Court cannot make findings on the basis of speculations or suspicion and the same has to be based on evidence. It has been held by the Supreme Court that Courts should be wary of the fact that it is human instinct to react adversely to the commission of an offense and make an effort to see that such instinctive reaction does not prejudice the accused in any way. While the offence committed is a serious one and though conviction may be based solely on circumstantial evidence, the prosecution must provide greater assistance to the Court that its case has been proved beyond reasonable doubt. In essence, not only has the Prosecution been unable to prove the foundational facts against the appellants, but the learned Trial Court has come to a finding based on suspicion and speculation, not supported by the evidence adduced by the Prosecution witness.

96. The facts of the case show that the prosecution case is based entirely on circumstantial evidence. In the case of ***Aftab Ahmad Anasari vs. State of Uttaranchal***, reported in ***(2010) 2 SCC 583***, the Supreme Court held that in cases where 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. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the

conviction would be justified even though it may be that one or more of these facts, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis, except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. It should also be kept in mind that suspicion over strong evidence cannot take the place of proof. The conviction cannot be based on speculation, conjunctures and a broken chain of circumstantial evidence.

97. In the case of *Sharad Birdhi Chand Sarda Vs. State of Maharashtra Vs. State of Maharashtra,* reported in *1984 (4) SCC 116*, the Supreme Court has held that the circumstances from which the conclusion of the guilt of an accused is to be drawn should be fully established. As such, there cannot be any missing links when considering the circumstantial evidence as a whole. Individual circumstances considered in isolation, which does not support the over all picture that is sought to be projected by the prosecution, cannot be forcefully stitched together to paint the picture showing the appellant to be guilty, though there may be suspicious circumstantial evidence. The prosecution cannot bring home the guilt of an accused without providing evidence proving the case beyond all reasonable doubt. The lack of evidence to bring home the guilt of the appellants is clear from the testimony of some of the witnesses and the statements given by them under Section 164 CrPC. It is the duty of the Court to ensure that the evidence is legally admissible and on considering the evidence adduced by the witnesses, we do not find any link to forge the chain of circumstantial evidence together. Further, as per the law laid down by the Supreme Court, when two views are possible, the view favourable to the

accused has to be adopted. As such, we are of the view that the learned Trial Court has convicted the appellants, without the prosecution being able to prove the charges against them beyond all reasonable doubt. As such, we do not find any alternative, but to interfere with the findings of the learned Trial Court and the conviction of the appellants by the learned Trial Court.

98. In view of the reasons stated above, as the Prosecution has not been able to prove the guilt of the appellants in respect of the charges framed against them, they are acquitted of the charges framed against them, by giving them the benefit of doubt. As we find the impugned judgment dated 04.07.2019, passed by the learned Trial Court in Sessions Case No. 127(DH)/2011 is not sustainable, the same is accordingly set aside. The State authorities are directed to release the appellants from judicial custody immediately, if not wanted in some other criminal case. Send back the LCR.

JUDGE **JUDGE**

Comparing Assistant